

RESOLUTION NO. 20-51

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A LOAN FROM FIRST FLORIDA INTEGRITY BANK, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000 FOR THE PURPOSE OF FINANCING THE REDEVELOPMENT OF CERTAIN TOWN-WIDE CAPITAL IMPROVEMENT PROJECTS, AS DESCRIBED HEREIN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A TOWN OF FORT MYERS BEACH, FLORIDA CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2020 TO EVIDENCE THE TOWN'S OBLIGATIONS UNDER THE LOAN AGREEMENT, SUCH NOTE TO BE A LIMITED OBLIGATION OF THE TOWN, PAYABLE FROM AND SECURED BY A PLEDGE OF AND LIEN ON THE TOWN'S PUBLIC SERVICE TAX REVENUES AND IF EVER INSUFFICIENT TO PAY DEBT SERVICE ON THE NOTE, A PLEDGE OF AND LIEN ON THE TOWN'S COMMUNICATION SERVICE TAX REVENUES; PROVIDING FOR THE RIGHTS AND SECURITIES OF THE OWNER OF THE NOTE; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach ("Town") empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town of Fort Myers Beach, Florida (the "Town") desires to borrow money to fund the redevelopment of Bay Oaks, Bayside Park and Times Square, all located in the Town, and referred to herein collectively, as the "Project"; and

WHEREAS, the Town Council of the Town ("Town Council") has determined it to be in the best interests of the citizens to finance the Project; and

WHEREAS, the Town Council has determined it to be in the best interest of the Town and the citizens thereof to finance the Project through a loan from First Florida Integrity Bank (the "Bank") in an aggregate principal amount not to exceed \$10,000,000 to be payable from and secured by a pledge of the Town's public service tax levied pursuant to Chapter 24 of the Town Code, as supplemented and amended, as authorized by Section 166.231, *Florida Statutes*, as amended (the "Public Service Tax") and if ever insufficient to pay debt service on the Note (as hereinafter defined), a pledge of the Town's communication service tax revenues authorized by

Section 202, *Florida Statutes*, as amended and authorized by the Chapter 26 of the Town Code (the “Communications Tax, and together with the Public Service Tax, the “Pledged Revenues”); and

WHEREAS, the Town Council adopted Resolution 20-32 on August 17, 2020 authorizing the borrowing of not to exceed \$10,000,000 to finance the Project in accordance with the Town Charter; and

WHEREAS, the Town Council has determined that it is in the best interests of the Town to borrow \$10,000,000 from the Bank to finance the Project (the “Loan”) pursuant to the terms and conditions of a Loan Agreement to be entered into between the Town and the Bank, substantially in the form attached hereto as Exhibit “A” (the “Loan Agreement”); and

WHEREAS, amounts due under the Loan will be evidenced by the Town's Capital Improvement Revenue Note, Series 2020 (the “Note”) authorized herein to be issued pursuant to the Loan Agreement; and

WHEREAS, debt service on the Note shall be payable from and secured solely by a first priority pledge of and lien on the Public Service Tax and if ever insufficient to pay debt service on the Note, the Communications Tax; and

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant the provisions of the Constitution and the laws of the State of Florida, Chapter 166, *Florida Statutes*, as amended, Chapter 202, *Florida Statutes*, as amended, the Town Charter, Resolution No. 20-32 adopted by the Town on August 17, 2020, Chapters 24 and 26 of the Town Code, and other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby found, ascertained, determined and declared that:

A. The above recitals are true and correct and are hereby incorporated herein as a part of this Resolution.

B. The Town is a duly constituted and validly existing municipal corporation and public body corporate and politic of the State of Florida, with requisite powers derived from the Constitution and laws of the State of Florida and the Charter and ordinances of the Town to authorize, execute and deliver this Resolution and the Note and to carry out and perform its duties and obligations hereunder and thereunder.

C. It is in the public interest and serves a valid and proper public purpose to finance the Project.

D. It is in the best interests of the Town and the citizens thereof to accept the Bank's offer to provide the Loan to the Town on the terms set forth in the Loan Agreement to finance the Project and to pay the costs of issuance of the Note, including the Bank’s Commitment Fee (as defined in the Loan Agreement).

E. Because of the characteristics of the security pledged to repay the Loan and prevailing conditions in the financial markets, it is in the best interest of the Town to accept the offer of the Bank to enter into the Loan Agreement and sell the Note to the Bank at a negotiated sale.

F. In consideration of the purchase and acceptance by the Bank of the Note authorized to be issued hereunder, this Resolution, together with the terms and provisions of the Loan Agreement, shall constitute a contract between the Town and the Bank.

SECTION 3. AUTHORIZATION OF LOAN AGREEMENT. To provide for the issuance of and security for the Note and to express the contract between the Town and the holder thereof, the Town does hereby authorize the execution and delivery, on behalf of the Town, by the Vice Mayor, under the seal of the Town, attested by the Town Clerk of the Town, of the Loan Agreement by and between the Town and the Bank. The form of the Loan Agreement attached hereto as Exhibit "A" is hereby authorized and approved, subject to such changes, insertions, omissions and filling of blanks therein as shall be made in such form and approved by the Vice Mayor, execution of the Loan Agreement by the Vice Mayor constituting conclusive evidence of such approval. Subject and pursuant to the provisions of this Resolution and the terms and provisions of the Loan Agreement, there is hereby authorized to be issued a promissory note to evidence the Town's obligations under the Loan Agreement. The Note is authorized to be issued in the aggregate principal amount not to exceed \$10,000,000 and subject to the provisions of Section 4 hereof.

SECTION 4. AUTHORIZATION OF THE PROJECT AND THE NOTE. Financing of the Project is hereby authorized. To finance the Project, there is hereby authorized to be issued the "Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020," in an aggregate principal amount not to exceed TEN MILLION DOLLARS (\$10,000,000), which shall evidence and secure amounts outstanding under the Loan Agreement, and will be repaid over a term ending not later than November 1, 2040 as provided in the Loan Agreement. The Note shall bear interest at the Note Rate, as defined in the Loan Agreement, subject to adjustment and prepayment as provided in the Loan Agreement and the Note, and shall be dated the date of delivery. Interest on the Note shall be paid monthly on the first day of each month, as provided in the Loan Agreement and the Note. Principal on the Note will be payable in monthly installments payable on the first day of each month, commencing December 1, 2023 in accordance with Schedule I to the Note, subject to prepayment as provided in the Note and in the Loan Agreement.

The Note shall be substantially in the form attached to the Loan Agreement, with such changes, insertions, omissions and filling of blanks therein as shall be made in such form and approved by the Vice Mayor of the Town, such approval to be conclusively evidenced by the execution thereof by the Vice Mayor. The Note shall be executed on behalf of the Town with the manual signature of the Vice Mayor and the Town Clerk and the official seal of the Town, and be approved as to form and correctness with the manual signature of the Town Attorney. In case any one or more of the officers who shall have signed or sealed the Note shall cease to be such

officer of the Town before the Note so signed and sealed has been actually sold and delivered, such Note may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Note had not ceased to hold such office. The Note may be signed and sealed on behalf of the Town by such person who at the actual time of the execution of such Note shall hold the proper office of the Town, although, at the date of such Note, such person may not have held such office or may not have been so authorized.

SECTION 5. PAYMENT OF PRINCIPAL AND INTEREST; LIMITED OBLIGATION.

The Town promises that it will promptly pay the principal of and interest on the Note and all other amounts due under the Note and Loan Agreement at the place, on the dates and in the manner provided in the Loan Agreement according to the true intent and meaning hereof and thereof. Amounts due under the Note and Loan Agreement shall not be or constitute a general obligation or indebtedness of the Town as a "bond" within the meaning of the Constitution and the laws of the State of Florida, but shall be payable solely from the Pledged Revenues in accordance with the terms hereof and of the Loan Agreement. The holder of the Note issued hereunder shall never have the right to compel the exercise of any ad valorem taxing power to pay the Note, or be entitled to payment of such Note from any funds of the Town except from the Pledged Revenues as described herein and in the Loan Agreement.

SECTION 6. USE OF PROCEEDS. The proceeds of the Note shall be used by the Town to finance the Project and to pay the costs of issuance related thereto, including the Bank's Commitment Fee (as defined in the Loan Agreement).

SECTION 7. GENERAL AUTHORIZATION. The Town Council hereby authorizes the Vice Mayor, the Town Clerk, the Town Manager and the Town Attorney to execute the Note, the Loan Agreement, this Resolution, and any and all other documents necessary to initiate the loan closing in this matter.

SECTION 8. PREREQUISITES PERFORMED. The Town has performed all acts, conditions, and things relating to the passage of this Resolution and the authorization of the Loan, the Loan Agreement and the Note, as are required by the Constitution and Laws of the State of Florida and the Charter and ordinances of the Town.

SECTION 9. SEVERABILITY. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

SECTION 10. APPLICABLE PROVISIONS OF LAW. This Resolution shall be governed by and construed in accordance with the laws of the State of Florida.

SECTION 11. RULES OF INTERPRETATION. Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof,"

“hereinbefore,” “hereinafter” and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

SECTION 12. CAPTIONS. The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

SECTION 13. MEMBERS OF THE TOWN COUNCIL EXEMPT FROM PERSONAL LIABILITY. No recourse under or upon any obligation, covenant or agreement of this Resolution, the Loan Agreement or the Note or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the Town Council, as well as any appointee, employee or agent, of said Town, past, present or future, either directly or through the Town it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, any member of the Town Council, appointee, employee or agent of the Town as such, under or by reason of the obligations, covenants or agreements contained in this Resolution, the Loan Agreement or the Note or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such member of the Town Council, appointee, employee or agent as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the Loan Agreement and the issuance of the Note, on the part of the Town.

SECTION 14. REPEALER. All resolutions or parts thereof in conflict herewith, if any, are hereby repealed.

SECTION 15. NO THIRD PARTY BENEFICIARIES. Except such other persons as may be expressly described in this Resolution, nothing in this Resolution, expressed or implied, is intended or shall be construed to confer upon any person, other than the Town and the holder of the Note, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Town and the persons who shall from time to time be the holders of the Note.

SECTION 16. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption and authentication as provided by law.

[Remainder of this page intentionally left blank]

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Veach and seconded by Vice Mayor Hosafros, and upon being put to a vote, the result was as follows:

Raymond P. Murphy, Mayor	excused
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	aye
Jim Atterholt, Council Member	aye
Bill Veach, Council Member	aye

ADOPTED this 16th day of November 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH, FLORIDA



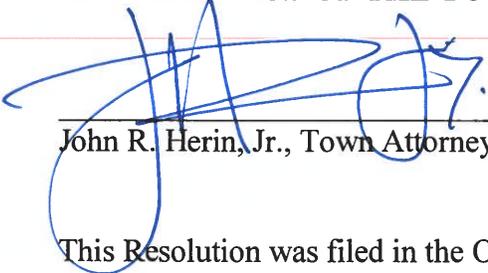
Rexann Hosafros, Vice Mayor

ATTEST:




Amy Baker, Deputy Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA SOLELY:**



John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 16 day of November 2020.

CLERK'S CERTIFICATE REGARDING RESOLUTION NO. 20-51

I, Amy Baker, the undersigned Deputy Town Clerk of the Town of Fort Myers Beach, Florida (the "Town"), DO HEREBY CERTIFY that:

(1) Resolution No. 20-51 was duly adopted by the Town Council of the Town at a meeting duly called and held on November 16, 2020, at which meeting a quorum was present and acting throughout.

(2) Attached hereto is a true and correct copy of Resolution No. 20-51, adopted as stated in paragraph (1) above, which has been compared by me with the original thereof as recorded in the Minute Book of said Town; and

(3) Resolution No. 20-51 has been duly adopted and has not been further modified, amended, supplemented or repealed and is full force and effect and as of the date hereof in the form attached.

IN WITNESS WHEREOF, I have hereunto set my hand and affix the official seal of the Town as of the 18th day of November, 2020.

(SEAL)



Amy Baker, Deputy Town Clerk

\$10,000,000
TOWN OF FORT MYERS BEACH, FLORIDA
CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2020

November 18, 2020

CLOSING DOCUMENTS

1. Opinion of Bryant Miller Olive P.A., Note Counsel
2. Opinion of John R. Herin, Jr., Esq., Town Attorney
3. Loan Agreement dated November 18, 2020 by and between the Town of Fort Myers Beach, Florida and First Florida Integrity Bank
4. Specimen Note
5. Tax Certificate
6. Certificate of Delivery and Application of Proceeds
7. Receipt for Note
8. Town's General Certificate
9. Public Meeting and No Conflict Certificate
10. Certified copy of Resolution No. 20-32 adopted by the Town Council on August 17, 2020 authorizing the Loan from the Purchaser
11. Certified copy of Resolution No. 20-51 adopted by the Town Council on November 16, 2020 authorizing the Loan Agreement and the Note
12. Disclosure Letter
13. Purchaser's Certificate
14. IRS Form 8038-G
15. Certificate Regarding Interest Rate
16. (a) Notice of Sale to Division of Bond Finance
(b) Bond Finance Forms 2003 and 2004-B

November 18, 2020

First Florida Integrity Bank
Naples, Florida

Town Council of
Town of Fort Myers Beach, Florida

\$10,000,000
Town of Fort Myers Beach, Florida
Capital Improvement Revenue Note, Series 2020

Ladies and Gentlemen:

We have acted as Note Counsel to our client, First Florida Integrity Bank., (the "Bank") in connection with the purchase by the Bank of the \$10,000,000 Town of Fort Myers, Beach, Florida Capital Improvement Revenue Note, Series 2020 (the "Note"), issued by the Town of Fort Myers Beach, Florida (the "Town") pursuant to and under the authority of the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the Town Charter, Resolution No. 20-32 adopted by the Town on August 17, 2020, Chapters 24 and 26 of the Town Code, and other applicable provisions of law (collectively, the "Act"), Resolution No. 20-51 adopted by the Town Council of the Town on November 16, 2020 (the "Note Resolution") and the Loan Agreement dated November 18, 2020 (the "Loan Agreement") by and between the Town and the Bank. In such capacity, we have examined such law and certified proceedings, certifications and other documents as we have deemed necessary to render this opinion. Any capitalized undefined terms used herein shall have the meanings set forth in the Loan Agreement.

As to questions of fact material to our opinion, we have relied upon representations of the Town contained in the Note Resolution, the Loan Agreement, and in the certified proceedings and other certifications of public officials and others furnished to us, without undertaking to verify the same by independent investigation. We have not undertaken an independent audit, examination, investigation or inspection of such matters and have relied solely on the facts, estimates and circumstances described in such proceedings and certifications. We have assumed

the genuineness of signatures on all documents and instruments, the authenticity of documents submitted as originals and the conformity to originals of documents submitted as copies.

In rendering this opinion, we have examined and relied upon the opinion of even date herewith of John Herin, Jr. Esq., Town Attorney, as to the due creation and valid existence of the Town, the due adoption of the Note Resolution, the due execution and delivery of the Note and the Loan Agreement and the enforceability thereof against the Town and the compliance by the Town with all conditions contained in the Charter and ordinances of the Town and the Note Resolution precedent to the execution and delivery of the Loan Agreement and the issuance of the Note.

The Note is payable from Pledged Revenues which consist of the Public Service Tax Revenues, and if such Public Service Tax Revenues are ever insufficient to pay debt service on the Note, the Communications Service Tax Revenues in the manner and to the extent provided in the Loan Agreement.

The Note does not constitute a general obligation or indebtedness of the Town within the meaning of any constitutional, statutory or other limitation of indebtedness and the holders thereof shall never have the right to compel the exercise of any ad valorem taxing power of the Town or taxation in any form on any real or personal property for the payment of the principal of or interest on the Note.

The opinions set forth below are expressly limited to, and we opine only with respect to, the laws of the State of Florida and the federal income tax laws of the United States of America.

Based on our examination, we are of the opinion that, under existing law:

1. The Note is a valid and binding special obligation of the Town enforceable against the Town in accordance with its terms..

2. Interest on the Note is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax. The opinion set forth in the preceding sentence is subject to the condition that the Town complies with all requirements of the Internal Revenue Code of 1986, as amended (the "Code") that must be satisfied subsequent to the issuance of the Note in order that the interest thereon be, and continue to be, excludable from gross income for federal income tax purposes. The Town has covenanted in the Loan Agreement to comply with all such requirements. Failure to comply with certain of such requirements may cause interest on the Note to be included in gross income for federal income tax purposes retroactively to the date of issuance of the Note.

We render this opinion in reliance upon federal tax law and interpretations thereof in effect on the date of the issuance of the Note. We note that pursuant to Internal Revenue Service Notice 2010-81, each advance ("Advance") is a draw of principal on the Note and is therefore treated as a separate bond, issued on the date on which the Town receives the purchase price (the proceeds of such Advance). Accordingly, the treatment for federal income tax purposes of

interest on such Advances of principal of the Note after the date hereof may be subject to changes in federal income tax law. We specifically express no opinion as to the impact of changes in federal income tax law on the exclusion from gross income of interest on Advances of principal of the Note after the date hereof and assume no duty to update this opinion or provide notice of changes in federal tax law or the impact thereof on the opinions rendered thereby.

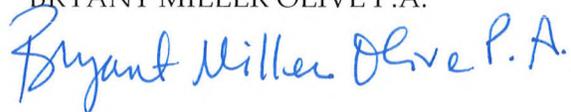
It is to be understood that the rights of the owner of the Note and the enforceability thereof may be subject to the exercise of judicial discretion in accordance with general principles of equity, to the valid exercise of the sovereign police powers of the State of Florida and of the constitutional powers of the United States of America and to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted.

For purposes of this opinion, we have not been engaged or undertaken to review and, therefore, express no opinion herein regarding the accuracy, completeness or adequacy of any offering material relating to the Note. This opinion should not be construed as offering material, an offering circular, prospectus or official statement and is not intended in any way to be a disclosure statement used in connection with the sale or delivery of the Note. In addition, we have not been engaged to and, therefore, express no opinion as to compliance by the Town or the purchaser with any federal or state statute, regulation or ruling with respect to the sale and distribution of the Note or regarding the perfection or priority of the lien on the Pledged Revenues created by the Note Resolution and Loan Agreement. Further, we express no opinion regarding federal income or state tax consequences arising with respect to the Note other than as expressly set forth herein.

Our opinions expressed herein are predicated upon present law, facts and circumstances, and we assume no affirmative obligation to update the opinions expressed herein if such laws, facts or circumstances change after the date hereof. Delivery of this opinion to the Town does not create an attorney-client relationship.

Respectfully submitted,

BRYANT MILLER OLIVE P.A.

A handwritten signature in blue ink that reads "Bryant Miller Olive P.A." in a cursive script.



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JOHN R. HERIN, JR.
DIRECT DIAL: 786- 501-7377
EMAIL ADDRESS: JHerin@foxrothschild.com

November 18, 2020

Town Council of
Town of Fort Myers Beach, Florida

First Florida Integrity Bank
Naples, Florida

Bryant Miller Olive P.A.
Orlando, Florida

\$10,000,000
Town of Fort Myers Beach, Florida
Capital Improvement Revenue Note, Series 2020

I have served as Town Attorney to the Town of Fort Myers Beach, Florida (the “Town”) in connection with the authorization, sale and delivery by the Town of its \$10,000,000 Capital Improvement Revenue Note, Series 2020 (the “Note”), pursuant to the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the Town Charter, Resolution No. 20-32 adopted by the Town on August 17, 2020, Chapters 24 and 26 of the Town Code, and other applicable provisions of law (collectively, the “Act”), Resolution No. 20-51 adopted by the Town Council of the Town on November 16, 2020 (the “Note Resolution”) and the Loan Agreement dated November 18, 2020 (the “Loan Agreement”) by and between the Town and First Florida Integrity Bank (the “Bank”). The Note is being issued by the Town to finance the redevelopment of Bay Oaks, Bayside Park and Times Square, all located in the Town. The undefined capitalized terms used herein have the meanings ascribed in the Loan Agreement.

In connection with the execution and delivery of the Loan Agreement and the issuance of the Note, you have requested my opinion, as Town Attorney, on matters addressed herein. In my capacity as Town Attorney, I have examined such documents and have made such examinations of law, as I have deemed necessary or useful in rendering the opinions set forth below. As to questions of fact material to my opinion, I have relied upon representations of the Town contained in the Note Resolution, the Loan Agreement, the proceedings of Town, and other representations of officials of the Town, without undertaking to verify the same by independent investigation.

A Pennsylvania Limited Liability Partnership

California Colorado Connecticut Delaware District of Columbia Florida Illinois
Minnesota Nevada New Jersey New York Pennsylvania Texas Washington

116228716



November 18, 2020

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Based on the foregoing, and subject to the assumptions, limitations and qualifications set forth below, I am of the opinion that:

- (i) the Town is a municipal corporation and a public body corporate and politic of the State of Florida, duly created and validly existing under the laws of the State of Florida and has full legal right, power and authority to adopt and perform its obligations under the Note Resolution, and to authorize, execute and deliver and to perform its obligations under the Loan Agreement and the Note;
- (ii) the Town has duly adopted the Note Resolution and duly authorized, executed and delivered the Loan Agreement and such instruments constitute legal, binding and valid obligations of the Town, enforceable in accordance with their respective terms; provided, however, the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity and the exercise of judicial discretion;
- (iii) except for post-closing disclosures to be filed with the State Division of Bond Finance and Form 8038-G to be filed with the Internal Revenue Service, all authorizations, consents, approvals and reviews of governmental bodies or regulatory authorities required for the Town's enactment, adoption, execution, approval and performance of the Loan Agreement, the Note, and the Note Resolution have been obtained, provided that no opinion is expressed with respect to any authorizations, consents, approvals or reviews required by the securities laws of the United States of America or of any state, or of any other jurisdiction;
- (iv) the meetings of the Town Council during which matters relating to the Note, the Note Resolution and the Loan Agreement were considered were held in accordance with all applicable rules and all of the laws of the State that govern the meetings of the Town Council;
- (v) the adoption of the Note Resolution and the authorization, execution and delivery of the Loan Agreement and the Note, and compliance with the provisions thereof, will not conflict with, or constitute a breach of or default under, any law, administrative regulation, consent decree, resolution or any agreement or other instrument to which the Town is subject nor will such adoption, execution, delivery, authorization 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 Town, or under the terms of any law, administrative regulation, resolution or instrument, except as expressly provided hereby;
- (vi) the Loan Agreement and the Note have been duly executed and delivered and the Town is in compliance with all conditions precedent contained in the Note Resolution, and under applicable law and the Loan Agreement to the issuance of the Note; and



Fox Rothschild LLP
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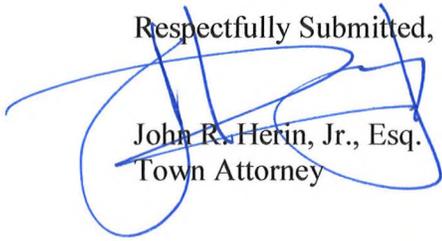
November 18, 2020

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- (vii) the Town is duly authorized to pledge the Pledged Revenues for payment of amounts due under the Note; and
- (viii) as of the date hereof, 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, to the best of my knowledge, threatened against the Town, affecting or seeking to prohibit, restrain or enjoin the Town from adopting the Note Resolution, entering into the Loan Agreement or the issuance or delivery of the Note or contesting or affecting as to the Town the validity or enforceability of the Act in any respect relating to the authorization of the Loan Agreement or authorization for the issuance of the Note and the Note Resolution, or contesting the tax-exempt status of interest on the Note, or contesting the powers of the Town to impose, levy, collect and pledge the Pledged Revenues or any authority for the issuance of the Note or the adoption of the Note Resolution.

Notwithstanding the foregoing, no opinion shall be required as to the applicability of any approvals, consents or orders as may be required under the blue sky or securities laws or legal investment laws of any state in connection with the offering and sale of the Note or in connection with the registration of the Note under the Federal securities laws.

Respectfully Submitted,



John R. Herin, Jr., Esq.
Town Attorney

LOAN AGREEMENT

dated November 18, 2020

by and between

TOWN OF FORT MYERS BEACH, FLORIDA
(the "Town")

and

FIRST FLORIDA INTEGRITY BANK
(the "Bank")

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EXHIBIT A - FORM OF NOTE

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LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement"), made and entered as of the 18th day of November, 2020, by and between the **TOWN OF FORT MYERS BEACH, FLORIDA** (the "Town"), a municipal corporation and public body corporate and politic of the State of Florida duly organized and existing under the laws of the State of Florida and its successors and assigns, and **FIRST FLORIDA INTEGRITY BANK**, a Florida banking corporation authorized to do business in Florida, and its successors (the "Bank").

WITNESSETH:

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

WHEREAS, the Town, pursuant to the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the Town Charter, Resolution 20-32 adopted by the Town Council of the Town on August 17, 2020, Chapters 24 and 26 of the Town Code, and other applicable provisions of law (collectively, the "Act") and Resolution No. 20-51 adopted by the Town Council of the Town on November 16, 2020 (the "Note Resolution"), is authorized to borrow money to finance the redevelopment Bay Oaks, Bayside Park and Times Square, all located in the Town and referred to herein collectively as the "Project", and to pay the costs of issuance related thereto, including, but not limited to the Bank's Commitment Fee; and

WHEREAS, the Town receives the Pledged Revenues, as described herein; and

WHEREAS, the Town desires to borrow \$10,000,000 to finance the Project (the "Loan") and to secure the repayment of the Loan with a pledge of and lien on the Pledged Revenues; and

WHEREAS, the Bank is willing to provide the Loan to the Town as provided herein, but only upon the terms and conditions of this Agreement and the Note;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I DEFINITION OF TERMS

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

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

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

“Bank” shall mean First Florida Integrity Bank, a Florida banking corporation and its successors or affiliates.

“Business Day” shall mean any day other than a Saturday, a Sunday, or a day on which banks in the Lee County, Florida are authorized or required to be closed.

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

“Commitment Fee” means a fee charged by the Bank in an amount equal to \$20,000.00 payable on the Date of Delivery.

“Communication Service Tax Revenues” shall mean monies received by the Town from the communications services tax authorized under Chapter 202, Florida Statutes, as amended.

“Date of Delivery” shall mean November 18, 2020.

“Debt Service” means principal of and interest on the Note, and other debt related costs, due in connection with the Note and this Agreement.

“Debt Service Account” means the Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020 Debt Service Account created pursuant to Section 3.09 hereof.

“Determination of Taxability” shall mean, with respect to the Note, (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on the Note is includable for federal income tax purposes in the gross income of the Owner thereof, or (ii) a determination by a court of competent jurisdiction that the interest payable on the Note is includable for federal income tax purposes in the gross income of the Owner thereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Town to the effect that interest on the Note is includable for federal income tax purposes in the gross income of the Owner thereof.

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

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

“Loan” shall refer to the loan in a principal amount of Ten Million Dollars (\$10,000,000), together with the interest accrued thereon pursuant to and in accordance with this Agreement.

“Maturity Date” shall mean November 1, 2040.

“Maximum Rate” means the maximum rate of interest permitted by applicable law to be borne by the Note.

“Note” shall mean the Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020 issued by the Town under the Note Resolution and this Agreement to evidence amounts due under this Agreement, the form of which is attached hereto as Exhibit A.

“Note Rate” shall mean the rate of interest to be borne by the Note, which shall be for the period from the Date of Delivery of the Note through November 1, 2030, at an interest rate equal to 3.15% per annum, and as described in Section 3.02(e) hereof, so long as no Event of Default has occurred and is continuing on November 2, 2030 the interest rate on the Note shall be adjusted to a fixed rate based on the prevailing ten-year treasury rate plus 255 basis points, subject to the fees as described herein.

“Note Resolution” shall mean the Resolution No. 20-51 adopted by the Town Council of the Town on November 16, 2020, which, among other things, authorized and confirmed the borrowing of the Loan and execution and delivery of this Agreement and the issuance of the Note.

“Noteholder,” “Owner” or “Holder” shall mean the Bank as the purchaser and initial holder of the Note and any subsequent registered owner of the Note.

“Pledged Revenues” means the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on the Note, the Communications Service Tax Revenues.

“Project” has the meaning provided in the Recitals hereof.

“Public Service Tax Revenues” shall mean the moneys received by the Town from the utility services tax levied by the Town or the purchase of electricity pursuant to Chapter 24 of the Town Code, as supplemented and amended, as authorized by Section 166.231, Florida Statutes, as amended.

“Taxable Rate” shall mean a rate equal to the interest rate per annum which after the Determination of Taxability will result in the same after-tax yield to the Owner of the Note as before said Determination of Taxability, as determined by the Owner of the Note in good faith and communicated in writing to the Town.

“Town” shall mean the Town of Fort Myers Beach, Florida, a municipal corporation and public body corporate and politic of the State of Florida.

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

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

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

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE PARTIES

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

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

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

(c) No Financial Material Adverse Change. There are no actions, proceedings or investigations pending against the Town or affecting the Town (or any basis therefor known to the Town) which, either in any case or in the aggregate, might result in any material adverse change in the financial condition, business, prospects, affairs or operations of the Town or in any of its properties or assets, or in any material impairment of the right or ability of the Town to carry on its operations as now conducted or proposed to be conducted, or in the levy, receipt and/or collection of the Pledged Revenues or in any material liability on the part of the Town and none which questions the validity of this Agreement, the Note or the Note Resolution or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

(d) Liens and Encumbrances. There are no pledges of, or liens or encumbrances on, the Public Service Tax Revenues.

(e) Levy and Collection of Pledged Revenues. The Town currently levies the utilities services tax on purchases of electricity at the rate of [ten percent (10%)] of the amount of such sale, exclusive of governmental charges with respect to the Public Service Tax Revenues, and receives the communications services tax as authorized by Chapter 202, Florida Statutes, as amended.

(f) No Litigation. There are no suits or proceedings pending or to the knowledge of the Town, threatened, in any court or before any regulatory commission, board or other administrative governmental agency against or affecting the Town, concerning or affecting the Pledged Revenues or which would have a material adverse affect on the ability of Town to fulfill its obligations under this Agreement.

(g) Confirmation. The representations and warranties of the Town contained in the Note Resolution are hereby confirmed to be true and accurate and are incorporated as a part of this Agreement.

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

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

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

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

**ARTICLE III
THE NOTE**

Section 3.01. The Loan; Purpose and Use. On the date of this Agreement, the Bank shall provide the Loan to the Town in the aggregate principal amount of Ten Million Dollars (\$10,000,000).

(a) The proceeds of the Loan shall be used to finance the Project and to pay the costs of issuance related thereto, including the Commitment Fee.

(b) Proceeds of the Loan may be drawn down by the Town as needed during the initial thirty-six (36) months of the Loan. On the Date of Delivery a minimum amount of \$50,001 must be drawn down by the Town. In no event shall the total principal amount drawn exceed \$10,000,000. The Town shall make draw requests in writing to the Bank stating the amount and use of the funds requested, along with invoices, contractor draw request forms or such other information acceptable to the Bank prior to its funding of such draw requests. Each amount drawn shall be funded by the Bank within 24 hours of the written request into a checking account of the Town held by the Bank.

Section 3.02. The Note. The Town shall issue the Note to the Bank to evidence and secure its obligation to repay the Loan. The Note shall be substantially in the form set forth as Exhibit "A" to this Agreement. The general terms of the Note shall be as follows; provided, however, that in the event of a conflict between the terms of this Agreement and the terms of the executed Note, the terms of the Note shall prevail:

(a) Amount of Note. The Note shall have an initial principal amount of Ten Million Dollars (\$10,000,000).

(b) Interest. The Note shall bear interest on the outstanding principal amount thereof at the Note Rate from the Date of Delivery through November 1, 2030. Thereafter, subject to subject subsection (e) below, interest on the Note shall be adjusted through the Maturity Date at a fixed rate of interest based on the prevailing ten year treasury rate plus 255 basis points. In connection with such adjustment, the Town shall pay to the Bank a loan fee equal to 50 basis points on the outstanding principal amount of the Loan, plus reasonable costs and expenses of the Bank, including reasonable legal fees in documenting the adjustment. Upon the occurrence of one or more of the events specified in Section 3.03 of this Agreement, the Note Rate shall be adjusted as therein provided. Interest on the Note shall be computed on the basis of a 365/360 day year, that is by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance multiplied by the actual number of days the principal balance is outstanding. Interest shall accrue only on the outstanding principal amount of the Loan drawn down.

(c) Payments. Interest on the Note shall be paid on the first day of each month, with interest payments commencing December 1, 2020 until the Note is paid in full and principal payments paid on the first day of each month commencing on December 1, 2023, as set forth on

Schedule I attached to the Note, subject to prepayment by the Town prior to the Note's maturity as provided in subsection 3.02(d) below and mandatory prepayment subject to subsection 3.02(e) below.

(d) Prepayment. The Town may prepay the Note in whole or in part on any date at a redemption price equal to the principal amount to be prepaid, plus accrued interest thereon to the redemption date, without premium or prepayment penalty.

(e) Mandatory Prepayment. The Note shall be subject to mandatory prepayment by the Town on November 1, 2030 (the "Redemption Date") if there has occurred or is continuing any Event of Default under this Agreement or the Note. The Bank will notify the Town of its intent to call the Note due and payable along with the total amount of principal and interest to be paid within 30 days prior to November 1, 2030.

Section 3.03. Adjustments to Note Rate.

(a) Adjustment of Note Rate in the Event of a Determination of Taxability. In the event a Determination of Taxability shall have occurred, the Note Rate shall be increased to the Taxable Rate, effective retroactively to the date on which the interest payable on the Note is includable for federal income tax purposes in the gross income of the Owner thereof. In addition, the Owner of the Note or any former Owners of the Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America by the Owner or former Owners of the Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Owner.

(b) Adjustment of Note Rate for Partial Taxability. In the alternative, in the event that interest on the Note during any period becomes partially taxable as a result of a Determination of Taxability applicable to less than all of the Note, then the interest rate on the Note shall be increased during such period by an amount equal to: $(A-B) \times C$ where:

(A) "A" equals the Taxable Rate (expressed as a percentage);

(B) "B" equals the interest rate on the Note (expressed as a percentage); and

(C) "C" equals the portion of the Note the interest on which has become taxable as the result of such tax change (expressed as a decimal).

In addition, the Owner of the Note or any former Owners of the Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Owner or former Owners of the Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the

Determination of Taxability and demand by the Owner.

(c) Anything provided herein or in the Note to the contrary notwithstanding, in no event shall the Note bear interest in excess of the Maximum Rate. In the event the Note Rate exceeds the Maximum Rate, the Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the Note Rate to a rate less than the Maximum Rate until such time as interest shall accrue on the Note in an amount (the "Excess Interest") that would have accrued thereon had the Note Rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the rate of interest otherwise payable on the Note, the Town shall pay to the Owner of the Note a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

(d) If required, the Town agrees to take whatever action is necessary to comply with the provisions of Section 215.84, Florida Statutes, relating to the Maximum Rate of interest including, but not limited to, filing a request with the State Board of Administration for the authorization of an adjusted interest rate derived by the terms of this Section 3.03, if such rate is in excess of the Maximum Rate.

Section 3.04. Compliance with Section 215.84. The Town represents, warrants, and covenants that the Note Rate, as currently calculated in accordance with Section 215.84, Florida Statutes, is in compliance with Section 215.84, Florida Statutes.

Section 3.05. Conditions Precedent to Funding. Prior to or simultaneously with the delivery of the Note by the Town there shall be filed with the Bank the following, each in form and substance reasonably acceptable to the Bank:

(a) an opinion of counsel to the Town to the effect that (i) the Town is a municipal corporation and a public body corporate and politic of the State of Florida, duly created and validly existing under the laws of the State of Florida and has full legal right, power and authority to adopt and perform its obligations under the Note Resolution, and to authorize, execute and deliver and to perform its obligations under this Agreement and the Note; (ii) the Town has duly adopted the Note Resolution and duly authorized, executed and delivered this Agreement and such instruments constitute legal, binding and valid obligations of the Town, enforceable in accordance with their respective terms; provided, however, the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity and the exercise of judicial discretion; (iii) except for post-closing disclosures to be filed with the State Division of Bond Finance and Form 8038-G to be filed with the Internal Revenue Service, all authorizations, consents, approvals and reviews of governmental bodies or regulatory authorities required for the Town's enactment, adoption, execution, approval and performance of this Agreement, the Note, and the Note Resolution have been obtained, provided that no opinion shall be required with respect to any authorizations, consents, approvals or reviews required by the securities laws of the United States of America or of any state, or of any other jurisdiction; (iv) the meetings of the Town Council during which matters

relating to the Note, the Note Resolution and this Agreement were considered were held in accordance with all applicable rules and all of the laws of the State that govern the meetings of the Town Council; (v) the adoption of the Note Resolution and the authorization, execution and delivery of this Agreement and the Note, and compliance with the provisions hereof and thereof, will not conflict with, or constitute a breach of or default under, any law, administrative regulation, consent decree, resolution or any agreement or other instrument to which the Town is subject nor will such adoption, execution, delivery, authorization 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 Town, or under the terms of any law, administrative regulation, resolution or instrument, except as expressly provided hereby; (vi) this Agreement and the Note have been duly executed and delivered and the Town is in compliance with all conditions precedent contained in the Note Resolution, and under applicable law and this Agreement to the issuance of the Note; and (vii) the Town is duly authorized to pledge the Pledged Revenues for payment of amounts due under the Note; and (viii) as of the Date of Delivery that 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, to the best of his knowledge, threatened against the Town, affecting or seeking to prohibit, restrain or enjoin the Town from adopting the Note Resolution, entering into this Agreement or the issuance or delivery of the Note or contesting or affecting as to the Town the validity or enforceability of the Act in any respect relating to the authorization of this Agreement or authorization for the issuance of the Note and the Note Resolution, or contesting the tax-exempt status of interest on the Note, or contesting the powers of the Town to impose, levy, collect and pledge the Pledged Revenues or any authority for the issuance of the Note or the adoption of the Note Resolution. Notwithstanding the foregoing, no opinion shall be required as to the applicability of any approvals, consents or orders as may be required under the blue sky or securities laws or legal investment laws of any state in connection with the offering and sale of the Note or in connection with the registration of the Note under the Federal securities laws.

(b) an opinion of Bryant Miller Olive P.A., counsel to the Bank, (who may rely on the opinion of Counsel to the Town), stating that such counsel is of the opinion that assuming compliance by the Town with certain covenants in this Agreement relating to requirements contained in the Code, interest on the Note is excluded from gross income for purposes of federal income taxation, and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations.

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

(d) a certificate of the Town indicating that since September 30, 2019, there has been no material adverse change in the financial condition, operations or prospects of the Town or laws, rules or regulations (or their interpretation or administration) that, in any case, may adversely affect the Town's ability to comply with its obligations hereunder and under the Note.

(e) such other documents as the Bank reasonably may request (including, without limitation, appropriate Florida Division of Bond Finance forms).

When the documents and items mentioned in clauses (a) through (e), inclusive, of this Section shall have been filed with the Bank, and when the Note shall have been executed as required by this Agreement, and all conditions of the Note Resolution have been met, the Town shall deliver the Note to or upon the order of the Bank, but only against the Town's receipt of the proceeds of the Loan.

Section 3.06. Registration of Transfer; Assignment of Rights of Bank. The Town shall keep at the office of the Town Clerk in the Town's records the registration of the Note and the registration of transfers of the Note as provided in this Agreement. Subject to the restriction set forth in the fourth paragraph of this Section, the transfer of the Note may be registered only upon the books kept for the registration of the Note and registration of transfer thereof upon surrender thereof to the Town together with an assignment duly executed by the Bank or its attorney or legal representative in the form of the assignment set forth on the form of the Note attached as Exhibit "A" to this Agreement; provided, however, that the Note may be transferred only in whole and not in part. In the case of any such registration of transfer, the Town shall execute and deliver in exchange for the applicable Note a new Note registered in the name of the transferee. In all cases in which the Note shall be transferred hereunder, the Town shall execute and deliver at the earliest practicable time a new Note in accordance with the provisions of this Agreement. The Town may make a charge for every such registration of transfer of the Note sufficient to reimburse it for any tax or other governmental charges required to be paid (other than a tax or other governmental charge imposed by the Town) with respect to such registration of transfer, but no other charge shall be made for registering the transfer hereinabove granted. The Note shall be issued in fully registered form and shall be payable in any coin or currency of the United States.

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

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

Nothing in this Agreement or in the Note shall be construed to prohibit the Bank from granting a participation or participations in the Note to any other bank or banks affiliated with

the Bank or any subsidiary thereof. No such bank participant shall, however, be a registered holder of the Note or any portion thereof.

Section 3.07. Ownership of the Note. The person in whose name the Note is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the Note shall be made only to the registered owner thereof or such owner's legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note, and interest thereon, to the extent of the sum or sums so paid.

The registered owner of the Note is hereby granted power to transfer absolute title thereof by assignment thereof to a bona fide purchaser for value (present or antecedent) without notice of prior defenses or equities or claims of ownership enforceable against such owner's assignor or any person in the chain of title and before the maturity of the Note; provided, however, that the Note may be transferred only in whole and not in part. Every prior registered owner of the Note shall be deemed to have waived and renounced all of such owner's equities or rights therein in favor of every such bona fide purchaser, and every such bona fide purchaser shall acquire absolute title thereto and to all rights represented thereby.

Section 3.08. Use of Proceeds of Loan Permitted Under Applicable Law. The Town represents, warrants and covenants that the proceeds of the Loan will be used solely to finance costs of the Project in accordance with applicable law.

Section 3.09. [Reserved].

ARTICLE IV COVENANTS OF THE TOWN

Section 4.01. Performance of Covenants. The Town covenants that it will perform faithfully at all times its covenants, undertakings and agreements contained in this Agreement and the Note or in any proceedings of the Town relating to the Loan.

Section 4.02. Use of Proceeds. The proceeds of the Note shall be applied by the Town to pay to pay the costs of the Project, and the costs of issuance related thereto, including the Bank's Commitment Fee.

Section 4.03. Payment of the Note. The Town promises that it will promptly pay the Debt Service on the Note and all other amounts due under this Agreement at the place, on the dates and in the manner provided in Section 3.02 hereof and in the Note according to the true intent and meaning hereof and thereof. Debt Service on the Note and all other amounts due under this Agreement shall not be or constitute a general obligation or indebtedness of the Town as a "bond" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from the Public Service Tax Revenues, and if ever insufficient from the Town's Communication Service Tax Revenues in accordance with the terms hereof and of the Note. The holder of the Note shall never have the right to compel the exercise of any ad valorem

taxing power to pay Debt Service on the Note, or be entitled to payment of such from any funds of the Town except from the Pledged Revenues, as described herein and in the Note.

Section 4.04. Security for Note. The payment of the principal of and interest on the Note and all other amounts payable under this Agreement or the Note or in connection therewith shall be secured by a first priority pledge of and lien on the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on the Note, a pledge of the Town's Communication Service Tax Revenues. The Town does hereby create and grant to the Owner of the Note a first priority pledge of and lien on the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on the Note, from the Town's Communication Service Tax Revenues, to provide for and secure the payment of principal of and interest on the Note and all other obligations of the Town under the Note and this Agreement.

The Pledged Revenues shall immediately be subject to the pledge and lien created and granted hereby without physical delivery thereof or further act, and such pledge and liens shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Town.

The Town shall not grant, create or suffer to be created a pledge of or lien on the Pledged Revenues prior to or on a parity with the pledge thereof and lien thereon created hereby securing the Note. Any pledge of or lien on the Pledged Revenues shall be, and shall be expressed to be, junior and subordinate in all respects to the pledge of and lien on the Pledged Revenues securing the Note.

Section 4.05. Books and Records. The Town shall keep books and records of the receipt of the Pledged Revenues and the application of the proceeds of the Note in accordance with generally accepted accounting principles, and the Owners of the Note shall have the right at all reasonable times to inspect the records, accounts and data of the Town relating thereto.

Section 4.06. Annual Audit. The Town shall, within a reasonable amount of time after the close of each Fiscal Year, cause the financial statements of the Town to be properly audited by a recognized independent certified public accountant or recognized independent firm of certified public accountants, and shall require such accountants to complete their report on the annual financial statements in accordance with applicable law. Such annual financial statements shall contain, but not be limited to, a balance sheet, a statement of revenues, expenditures and changes in fund balance, and any other statements as required by law or accounting convention. The annual financial statements shall be prepared in conformity with generally accepted accounting principles and shall include a separate line item showing the annual amount of the Pledged Revenues received during the subject fiscal year. A copy of the audited financial statements for each Fiscal Year shall be furnished within one hundred eighty (180) days following the close of each Fiscal Year to the Owner of the Note. The Town will annually provide to the Owner of the Note the Town's annual budget within 30 days after the Town Council's approval thereof.

Section 4.07. No Impairment. As long as the Note remains outstanding, the pledging of the Pledged Revenues in the manner provided herein shall not be subject to repeal, modification or impairment by any subsequent ordinance, resolution or other proceedings of the Town Council.

Section 4.08. Collection of Pledged Revenues. The Town covenants to do all things necessary on its part to continue the receipt of the Pledged Revenues in compliance with the Act, and any successor provision of law governing the same and will not reduce the rate at which the Public Service Tax Revenues are currently levied. The Town will proceed diligently to perform legally and effectively all steps required on its part to receive the Pledged Revenues and shall exercise all legally available remedies to enforce such collections, as applicable, now or hereafter available under State law.

Section 4.09. Federal Income Tax Covenants.

(A) The Town covenants with the Owners from time to time of the Note that it shall not use the proceeds of the Note in any manner which would cause the interest on the Note to be or become includable in the gross income of the Owner thereof for federal income tax purposes.

(B) The Town covenants with the Owners from time to time of the Note that neither the Town nor any Person under its control or direction will make any use of the proceeds of the Note (or amounts deemed to be proceeds under the Code) in any manner which would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code and neither the Town nor any other Person shall do any act or fail to do any act which would cause the interest on the Note to become includable in the gross income of the Owner thereof for federal income tax purposes.

(C) The Town hereby covenants with the Owners from time to time of the Note that it will comply with all provisions of the Code necessary to maintain the exclusion of interest on the Note from the gross income of the Owner thereof for federal income tax purposes, including, in particular, the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code.

Section 4.10. Coverage Covenant. The Town covenants that for each Fiscal Year it shall generate a minimum annual Debt Service Coverage Ratio during such Fiscal Year of not less than 1.10 to 1. "Debt Service Coverage Ratio" shall mean total annual revenues less total annual expenses divided by the annual aggregate total debt service obligations of the Town. Additionally, the Town covenants that for each Fiscal Year it shall generate Public Service Tax Revenues annually during such Fiscal Year at a minimum of not less than 1.10 to 1.

Section 4.11. Primary Bank Deposit Accounts. So long as the Loan is outstanding, the Town covenants that it will maintain its primary bank deposit accounts with the Bank.

ARTICLE V
EVENTS OF DEFAULT AND REMEDIES

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

1. payment of the principal of or interest on the Note or other fees or amounts due thereunder or hereunder shall not be made when such amounts are due and payable and such amounts shall remain unpaid for a period of ten (10) days;

2. the Town shall default in the due and punctual performance of any other of the material covenants, conditions, agreements and provisions contained in the Note or in this Agreement and such default shall continue for thirty (30) consecutive days after written notice shall have been given to the Town by the Noteholder specifying such default and requiring the same to be remedied;

3. any representation or warranty of the Town contained in this Agreement or in any certificate or other closing document executed and delivered by the Town in connection with the closing of this Loan shall prove to have been untrue in any material respect when executed and delivered, thereby adversely impairing the security for the Note;

4. any proceedings are instituted with the consent or acquiescence of the Town, for the purpose of effecting a compromise between the Town and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereinafter enacted;

5. the Town admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors, declares a financial emergency or consents to the appointment of a receiver or trustee for itself or shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof;

6. the Town is adjudged insolvent by a court of competent jurisdiction or is adjudged bankrupt on a petition of bankruptcy filed against the Town, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the Town, a receiver or trustee of the Town or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof;

7. if, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Town or of the whole or any substantial part of its property and such custody or control shall not be terminated within ninety (90) consecutive days from the date of assumption of such custody or control; or

8. the Town fails to pay when due any payment of principal of or interest on any other obligation of the Town held by the Bank.

9. failure by the Town to maintain its primary bank deposit accounts with the Bank.

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

Notwithstanding anything herein, or in the Note to the contrary, an Event of Default under Section 5.01.9 above for which the Bank does not accelerate the Loan as a result of the Town's failure to maintain the required deposit accounts as required pursuant to Section 4.11 hereof, the Bank shall increase the Note Rate by 0.50% beginning ten (10) days after written notice of said Event of Default to the Town. Such Event of Default interest rate shall apply to the outstanding principal balance of the Loan. Upon the curing of the Event of Default, the interest rate on the Loan shall revert to the initially agreed upon Note Rate effective on the date on which such Event of Default is cured.

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

Section 5.03. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Noteholder is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

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

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

ARTICLE VI MISCELLANEOUS PROVISIONS

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

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

Section 6.03. Notice of Changes in Fact. Promptly after the Town becomes aware of the same, the Town will notify the Bank of (a) any changes in any material fact or circumstance represented or warranted by the Town in this Agreement or in connection with the issuance of the Note, and (b) any default under this Agreement, specifying in each case the nature thereof and what action the Town has taken, is taking and/or proposes to take with respect thereto.

Section 6.04. Amendments and Supplements. This Agreement may be amended or supplemented from time to time only by a writing duly executed by the Town and the Noteholder.

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

As to the Town:

Town of Fort Myers Beach, Florida
2525 Estero Boulevard
Fort Myers Beach, Florida 33931
Attention: Town Manager

As to the Bank:

First Florida Integrity Bank of Florida, N.A.
3560 Kraft Road
Naples, Florida 34105
Attention: Michael Kozak

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

Section 6.06. Waiver of Jury Trial. To the extent permitted by applicable law, each of the Town and the Bank, knowingly, voluntarily and intentionally waives any right each may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with the Note Resolution, this Agreement, the Note or any agreement contemplated to be executed in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party with respect hereto. This provision is a material inducement to the Bank to enter into this Agreement.

Section 6.07. Benefits Exclusive. Except as herein otherwise provided, nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the Town and the Noteholder, any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof, this Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the Town and the Noteholder.

Section 6.08. Severability. In case any one or more of the provisions of this Agreement, any amendment or supplement hereto or of the Note shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, any amendment or supplement hereto or the Note, but this Agreement, any amendment or supplement hereto and the Note shall be construed and enforced at the time as if such illegal or invalid provisions had not been contained therein, nor shall such illegality or invalidity or any application thereof affect any legal and valid application thereof from time to time. In case any covenant, stipulation, obligation or agreement contained in the Note or in this Agreement shall

for any reason be held to be in violation of law, then such covenant, stipulation, obligation, or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Town to the full extent from time to time permitted by law.

Section 6.09. Business Days. In any case where the date of maturity of interest on or principal of the Note or the date fixed for prepayment of the Note shall not be a Business Day, then payment of such interest or principal shall be made on the next succeeding Business Day with the same force and effect as if paid on the date of maturity or the date fixed for prepayment, but interest on any such principal amount shall accrue through the date payment is received.

Section 6.10. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 6.11. Applicable Law. This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Florida.

Section 6.12. No Personal Liability. Notwithstanding anything to the contrary contained herein or in the Note, or in any other instrument or document executed by or on behalf of the Town in connection herewith, no stipulation, covenant, agreement or obligation of any present or future member of the Town Council, officer, employee or agent of the Town, officer, employee or agent of a successor to the Town, in any such person's individual capacity, and no such person, in his or her individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of or interest on the Note or for any claim based thereon or on any such stipulation, covenant, agreement or obligation, against any such person, in his or her individual capacity, either directly or through the Town or any successor to the Town, under any rule or law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise and all such liability of any such person, in his or her individual capacity, is hereby expressly waived and released.

Section 6.13. Incorporation by Reference. All of the terms and obligations of the Note Resolution and the Exhibit hereto are hereby incorporated herein by reference as if all of the foregoing were fully set forth in this Agreement. All recitals appearing at the beginning of this Agreement are hereby incorporated herein by reference.

[Remainder of page intentionally left blank – Signatures follow]

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



(SEAL)

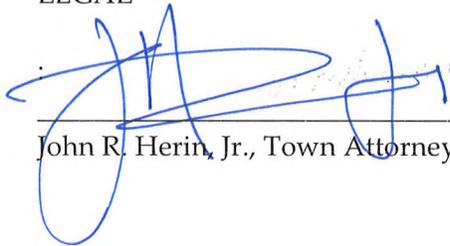
TOWN OF FORT MYERS BEACH,
FLORIDA

By: 
Rexann Hosafros, Vice Mayor

ATTEST:

By: 
Amy Baker, Deputy Town Clerk

APPROVED AS TO FORM AND
LEGAL


John R. Herin, Jr., Town Attorney

FIRST FLORIDA INTEGRITY BANK

By: _____
Name: Michael J. Kozak
Title: Senior Vice President

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

TOWN OF FORT MYERS BEACH,
FLORIDA

(SEAL)

By: _____
Rexann Hosafros, Vice Mayor

ATTEST:

By: _____
Amy Baker, Deputy Town Clerk

APPROVED AS TO FORM AND
LEGAL

:

John R. Herin, Jr., Town Attorney

FIRST FLORIDA INTEGRITY BANK

By:  _____
Name: Michael J. Kozak
Title: Senior Vice President

EXHIBIT A

FORM OF NOTE

**TOWN OF FORT MYERS BEACH, FLORIDA
CAPITAL IMPROVEMENT REVENUE NOTE,
SERIES 2020**

Principal Sum	Interest Rate	Maturity Date	Date of Issuance
\$10,000,000	The "Note Rate" as defined herein.	November 1, 2040	November 18, 2020

The **TOWN OF FORT MYERS BEACH, FLORIDA** (the "Town"), for value received, hereby promises to pay to the order of **FIRST FLORIDA INTEGRITY BANK**, a Florida banking corporation, or its registered assigns (the "Holder"), at 3560 Kraft Road, Naples, Florida 34105, or at such other place as the Holder may from time to time designate in writing, solely from the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on this Note, from the Communication Service Tax Revenues, each as defined in and in the manner and to the extent described in that certain Loan Agreement by and between the Holder and the Town, dated November 18, 2020 (the "Agreement"), the Principal Sum stated above loaned to the Town by the Holder pursuant to the Agreement, together with interest thereon at the Note Rate as hereinafter provided until the Maturity Date or the date the principal amount of this Note is paid in the manner hereinafter set forth in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts, which payments shall be made to the Holder hereof by bank wire or bank transfer as such Holder may specify in writing to the Town or otherwise as the Town and the Holder may agree.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

This Note shall bear interest per annum at the Note Rate, as defined below, calculated on the basis of a 365/360 day year, that is by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance multiplied by the actual number of days the principal balance is outstanding. The "Note Rate" shall mean the rate of interest to be borne by this Note, which shall be for the period from the Date of Issuance of this Note through November 1, 2030, at an interest rate equal to 3.15% per annum, and as described in Section 3.02(e) of the Agreement, so long as no Event of Default has occurred and is continuing, on November 2, 2030 the interest rate on the Note shall be adjusted to a fixed rate based on the prevailing ten-year treasury rate plus 255 basis points, subject to the fees as described therein.

Interest Rate on this Note is subject to adjustment as provided herein and in the Agreement. The Holder shall provide to the Town such documentation to evidence any adjustment to the Note Rate and the calculations made in connection therewith. All calculations and determinations by the Holder of the amounts payable pursuant to the following Interest Rate adjustment provisions or of any element thereof, if made in accordance with its then standard procedures for so calculating or determining such amounts, shall be conclusive absent manifest arithmetic error.

In the event a Determination of Taxability shall have occurred, the Interest Rate shall be increased to the Taxable Rate, effective retroactively to the date on which the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof. In addition, the Holder of this Note or any former Holders of this Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America by the Holder or former Holders of this Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Holder. "Determination of Taxability" shall mean, with respect to this Note, (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof, or (ii) a determination by a court of competent jurisdiction that the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Town to the effect that interest on this Note is includable for federal income tax purposes in the gross income of the Holder hereof.

"Taxable Rate" shall mean a rate equal to the interest rate which after the Determination of Taxability will result in the same after-tax yield to the Holder of this Note as before said Determination of Taxability.

In the alternative, in the event that interest on this Note during any period becomes partially taxable as a result of a Determination of Taxability applicable to less than all of this Note, then the Interest Rate on this Note shall be increased during such period by an amount equal to: $(A-B) \times C$ where:

- (A) "A" equals the Taxable Rate (expressed as a percentage);
- (B) "B" equals the Interest Rate on this Note (expressed as a percentage); and
- (C) "C" equals the portion of this Note the interest on which has become taxable as the result of such tax change (expressed as a decimal).

In addition, the Holder of this Note or any former Holders of this Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Holder or former Holders of this

Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Holder.

Proceeds from the sale of the Note may be drawn down by the Town as needed during the initial thirty-six (36) months of the Loan as provided in the Agreement. Interest on this Note shall be paid monthly on the first day of each month, commencing December 1, 2020 until this Note is paid in full. Principal on this Note shall be paid in accordance with the amortization schedule as set forth on Schedule I attached hereto and made a part hereof, subject to prepayment by the Town prior to the Note's maturity as provided below and in subsections 3.02(d) and (e) of the Agreement.

The Town may prepay this Note in whole or in part on any date at a redemption price equal to the principal amount to be prepaid, plus accrued interest thereon to the redemption date, without premium or prepayment penalty.

This Note shall be subject to mandatory prepayment by the Town on November 1, 2030 (the "Redemption Date") if there has occurred or is continuing any Event of Default under the Agreement or this Note. The Holder will notify the Town of its intent to call this Note due and payable along with the total amount of principal and interest to be paid within 30 days prior to November 1, 2030.

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

This Note is authorized to be issued in the outstanding aggregate principal amount equal to the Principal Sum under the authority of and in full compliance with the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the Town Charter of the Town, Chapters 24 and 26 of the Town Code, Resolution 20-32 adopted by the Town Council on August 17, 2020, and other applicable provisions of law and Resolution No. 20-51 adopted by the Town Council of the Town on November 16, 2020 (the "Note Resolution"), and is subject to all terms and conditions of said Note Resolution and the Agreement.

Notwithstanding any provision in this Note to the contrary, in no event shall the Note bear interest in excess of the Maximum Rate, as defined in the Agreement. In the event the Interest Rate exceeds the Maximum Rate, the Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the Interest Rate to a rate less than the Maximum Rate until such time as interest shall accrue on this Note in an amount (the "Excess Interest") that would have accrued thereon had the Interest Rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the Interest Rate otherwise payable on this Note, the Town shall pay to the Holder of the Note a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

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

Payment of the principal of and interest on this Note and all other amounts payable hereunder and under the Agreement are secured by a first priority pledge of and lien upon the Public Service Tax Revenues, and if ever insufficient a pledge of the Town's Communication Service Tax Revenues, in accordance with the terms of this Agreement.

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

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

This Note is transferrable in accordance with the terms of the Agreement only on the registration books of the Town. The Town may treat the registered owner hereof as the absolute owner hereof for all purposes, whether or not this Note shall be overdue, and shall not be affected by any Notice to the contrary.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and be performed precedent to and in the issuance of this Note, exist, have happened and have been performed, in regular and due form and time as required by the laws of and Constitution of the State of Florida and the Charter and Ordinances of the Town, applicable thereto, and that the issuance of this Note does not violate any constitution or statutory or other legal limitations or provisions.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Town has caused this Note to be signed by the Mayor, and the seal of the Town to be affixed hereto or imprinted or reproduced hereon, and attested by the Town Clerk of the Town and this Note to be dated the Date of Issuance set forth above.

TOWN OF FORT MYERS BEACH,

FLORIDA

(SEAL)

By: _____
Raymond P. Murphy, Mayor

ATTEST:

By: _____
Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

By: _____
John R. Herin, Jr, Town Attorney

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto _____ (please print or typewrite name, address and tax identification number of assignee) _____ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ Attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Name of Noteholder: _____

By: _____

SCHEDULE I

Principal Amortization Schedule

Interest only shall be due and payable on the outstanding balance drawn down on the Loan on the first day of each month, commencing December 1, 2020 through December 1, 2023. Thereafter, principal and interest on this Note shall be payable in equal monthly installments of \$48,445.70 each payable on the first day of each month through November 1, 2030. The interest rate and amortization schedule shall thereafter be adjusted, or the Loan paid in full as provided in the Agreement and this Note.

**TOWN OF FORT MYERS BEACH, FLORIDA
CAPITAL IMPROVEMENT REVENUE NOTE,
SERIES 2020**

Principal Sum	Interest Rate	Maturity Date	Date of Issuance
\$10,000,000	The "Note Rate" as defined herein.	November 1, 2040	November 18, 2020

The **TOWN OF FORT MYERS BEACH, FLORIDA** (the "Town"), for value received, hereby promises to pay to the order of **FIRST FLORIDA INTEGRITY BANK**, a Florida banking corporation, or its registered assigns (the "Holder"), at 3560 Kraft Road, Naples, Florida 34105, or at such other place as the Holder may from time to time designate in writing, solely from the Pledged Revenues as defined in and in the manner and to the extent described in that certain Loan Agreement by and between the Holder and the Town, dated November 18, 2020 (the "Agreement"), the Principal Sum stated above loaned to the Town by the Holder pursuant to the Agreement, together with interest thereon at the Note Rate as hereinafter provided until the Maturity Date or the date the principal amount of this Note is paid in the manner hereinafter set forth in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts, which payments shall be made to the Holder hereof by bank wire or bank transfer as such Holder may specify in writing to the Town or otherwise as the Town and the Holder may agree.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

This Note shall bear interest per annum at the Note Rate, as defined below, calculated on the basis of a 365/360 day year, that is by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance multiplied by the actual number of days the principal balance is outstanding. The "Note Rate" shall mean the rate of interest to be borne by this Note, which shall be for the period from the Date of Issuance of this Note through November 1, 2030, at an interest rate equal to 3.15% per annum, and as described in Section 3.02(e) of the Agreement, so long as no Event of Default has occurred and is continuing, on November 2, 2030 the interest rate on the Note shall be adjusted to a fixed rate based on the prevailing ten-year treasury rate plus 255 basis points, subject to the fees as described therein.

Interest Rate on this Note is subject to adjustment as provided herein and in the Agreement. The Holder shall provide to the Town such documentation to evidence any adjustment to the Note Rate and the calculations made in connection therewith. All calculations and determinations by the Holder of the amounts payable pursuant to the following Interest Rate adjustment provisions or of any element thereof, if made in accordance with its then standard procedures for so calculating or determining such amounts, shall be conclusive absent manifest arithmetic error.

In the event a Determination of Taxability shall have occurred, the Interest Rate shall be increased to the Taxable Rate, effective retroactively to the date on which the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof. In addition, the Holder of this Note or any former Holders of this Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America by the Holder or former Holders of this Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Holder. "Determination of Taxability" shall mean, with respect to this Note, (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof, or (ii) a determination by a court of competent jurisdiction that the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Town to the effect that interest on this Note is includable for federal income tax purposes in the gross income of the Holder hereof.

"Taxable Rate" shall mean a rate equal to the interest rate which after the Determination of Taxability will result in the same after-tax yield to the Holder of this Note as before said Determination of Taxability.

In the alternative, in the event that interest on this Note during any period becomes partially taxable as a result of a Determination of Taxability applicable to less than all of this Note, then the Interest Rate on this Note shall be increased during such period by an amount equal to: $(A-B) \times C$ where:

- (A) "A" equals the Taxable Rate (expressed as a percentage);
- (B) "B" equals the Interest Rate on this Note (expressed as a percentage); and
- (C) "C" equals the portion of this Note the interest on which has become taxable as the result of such tax change (expressed as a decimal).

In addition, the Holder of this Note or any former Holders of this Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Holder or former Holders of this Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Holder.

Proceeds from the sale of the Note may be drawn down by the Town as needed during the initial thirty-six (36) months of the Loan as provided in the Agreement. Interest on this Note shall be paid monthly on the first day of each month, commencing December 1, 2020 until this Note is paid in full. Principal on this Note shall be paid in accordance with the amortization

schedule as set forth on Schedule I attached hereto and made a part hereof, subject to prepayment by the Town prior to the Note's maturity as provided below and in subsections 3.02(d) and (e) of the Agreement.

The Town may prepay this Note in whole or in part on any date at a redemption price equal to the principal amount to be prepaid, plus accrued interest thereon to the redemption date, without premium or prepayment penalty.

This Note shall be subject to mandatory prepayment by the Town on November 1, 2030 (the "Redemption Date") if there has occurred or is continuing any Event of Default under the Agreement or this Note. The Holder will notify the Town of its intent to call this Note due and payable along with the total amount of principal and interest to be paid within 30 days prior to November 1, 2030.

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

This Note is authorized to be issued in the outstanding aggregate principal amount equal to the Principal Sum under the authority of and in full compliance with the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the Town Charter of the Town, Chapters 24 and 26 of the Town Code, Resolution 20-32 adopted by the Town Council on August 17, 2020, and other applicable provisions of law and Resolution No. 20-51 adopted by the Town Council of the Town on November 16, 2020 (the "Note Resolution"), and is subject to all terms and conditions of said Note Resolution and the Agreement.

Notwithstanding any provision in this Note to the contrary, in no event shall the Note bear interest in excess of the Maximum Rate, as defined in the Agreement. In the event the Interest Rate exceeds the Maximum Rate, the Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the Interest Rate to a rate less than the Maximum Rate until such time as interest shall accrue on this Note in an amount (the "Excess Interest") that would have accrued thereon had the Interest Rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the Interest Rate otherwise payable on this Note, the Town shall pay to the Holder of the Note a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

THIS NOTE, WHEN DELIVERED BY THE TOWN PURSUANT TO THE TERMS OF THE AGREEMENT AND THE NOTE RESOLUTION, SHALL NOT BE OR CONSTITUTE AN INDEBTEDNESS OF THE TOWN OR THE STATE OF FLORIDA (THE "STATE"), WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR OTHER LIMITATIONS OF INDEBTEDNESS, BUT SHALL BE PAYABLE SOLELY FROM THE PLEDGED REVENUES AS PROVIDED IN THE AGREEMENT. THE HOLDER SHALL NEVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE TOWN OR THE

STATE, OR TAXATION IN ANY FORM OF ANY PROPERTY THEREIN TO PAY THIS NOTE OR THE INTEREST THEREON.

Payment of the principal of and interest on this Note and all other amounts payable hereunder and under the Agreement are secured by a first priority pledge of and lien upon the Pledged Revenues in accordance with the terms of this Agreement.

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

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

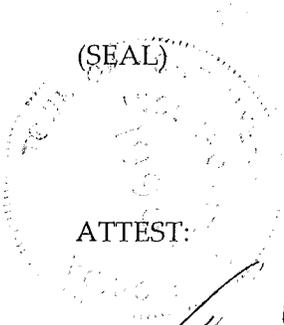
This Note is transferrable in accordance with the terms of the Agreement only on the registration books of the Town. The Town may treat the registered owner hereof as the absolute owner hereof for all purposes, whether or not this Note shall be overdue, and shall not be affected by any Notice to the contrary.

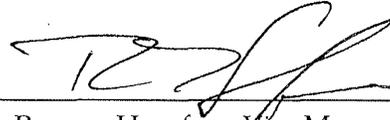
It is hereby certified and recited that all acts, conditions and things required to exist, to happen and be performed precedent to and in the issuance of this Note, exist, have happened and have been performed, in regular and due form and time as required by the laws of and Constitution of the State of Florida and the Charter and Ordinances of the Town, applicable thereto, and that the issuance of this Note does not violate any constitution or statutory or other legal limitations or provisions.

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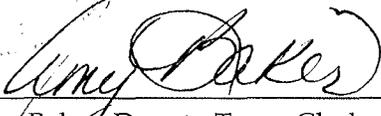
IN WITNESS WHEREOF, the Town has caused this Note to be signed by the Vice Mayor, and the seal of the Town to be affixed hereto or imprinted or reproduced hereon, and attested by the Deputy Town Clerk of the Town and this Note to be dated the Date of Issuance set forth above.

TOWN OF FORT MYERS BEACH,
FLORIDA

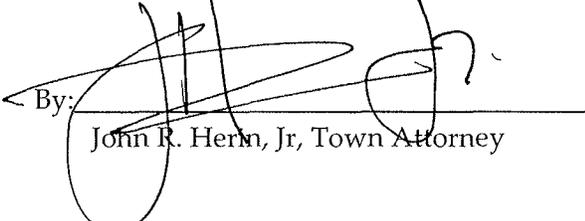


By: 
Rexann Hosafros, Vice Mayor

ATTEST:

By: 
Amy Baker, Deputy Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

By: 
John R. Herm, Jr, Town Attorney

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto _____ (please print or typewrite name, address and tax identification number of assignee) _____ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ Attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Name of Noteholder: _____

By: _____

SCHEDULE I

Principal Amortization Schedule

Interest only shall be due and payable on the outstanding balance drawn down on the Loan on the first day of each month, commencing December 1, 2020 through December 1, 2023. Thereafter, principal and interest on this Note shall be payable in equal monthly installments of \$48,445.70 each payable on the first day of each month through November 1, 2030. The interest rate and amortization schedule shall thereafter be adjusted, or the Loan paid in full as provided in the Agreement and this Note.

**TAX CERTIFICATE AS TO ARBITRAGE AND
THE PROVISIONS OF SECTIONS 141-150 OF
THE INTERNAL REVENUE CODE OF 1986, AS AMENDED**

Not to Exceed \$10,000,000
Town of Fort Myers Beach, Florida
Capital Improvement Revenue Note, Series 2020

In connection with the issuance by the Town of Fort Myers Beach, Florida (the "Town") of its Not to Exceed \$10,000,000 Capital Improvement Revenue Note, Series 2020 (the "Note"), the Town makes and enters into the following Tax Certificate as to Arbitrage and the Provisions of Sections 141-150 of the Internal Revenue Code of 1986, as amended (the "Code") and the Income Tax Regulations (the "Regulations").

The Town acknowledges that the opinion of Bond Counsel regarding the exclusion of interest on the Note from gross income under Section 103(a) and Sections 141-150 of the Code is rendered in reliance upon the representations and statements of fact and expectations contained herein and assumes the Town's continued compliance with the provisions of this Certificate.

1. The Note is being issued pursuant to and under the authority of the Constitution of the State of Florida, Chapter 166, Part II, Florida Statutes, the Town's Charter, and other applicable provisions of law, Resolution No. 20-32 adopted by the Town on August 17, 2020, Chapters 24 and 26 of the Town Code, Resolution No. 20-51 adopted by the Town Council of the Town on November 16, 2020 (collectively, the "Resolution") and the Loan Agreement dated November 18, 2020 (the "Loan Agreement") by and between the Town and First Florida Integrity Bank (the "Original Purchaser"). Unless otherwise specifically defined, all capitalized terms used in this Certificate shall have the meanings set forth in the Loan Agreement or the Regulations. The proceeds of the Note will be used to:

(a) finance the costs of various capital improvement projects of the Town, including the redevelopment of Bay Oaks, Bayside Park and Times Square (collectively, the "Project"); and

(b) pay the costs of issuing the Note (the "Issuance Expenses").

2. There are no other obligations of the Town that (i) are being sold at substantially the same time as the Note (within 15 days); (ii) are being sold pursuant to a common plan of financing together with the Note; and (iii) will be paid out of substantially the same source of funds as the Note.

3. On the basis of the facts, estimates and circumstances in existence on the date hereof, we reasonably expect the following with respect to the Note being issued this day and as to the use of the proceeds thereof:

(a) The Note is being issued as a draw-down loan, as described in Section 1.150-1(c)(4)(i) of the Regulations, and the Town will draw \$_____ of proceeds under the Note on the date hereof. Total proceeds in the amount of not more than \$10,000,000.00 (the "Sale Proceeds") are expected to be derived by the Town on a draw-down basis from the sale of the Note to the Original Purchaser and are expected to be needed and fully expended as follows:

(i) \$_____ of said proceeds will be used to pay costs of the Project; and

(ii) \$_____ of said proceeds will be used to pay the Issuance Expenses.

(b) The total Sale Proceeds to be received from the sale of the Note to the Original Purchaser, together with the investment earnings thereon, if any, do not exceed the amount necessary for the purposes described above.

(c) The Town does not expect to sell or otherwise dispose of any property comprising a part of the Project financed with the proceeds of the Note prior to the final maturity date of the Note, except such minor parts or portions thereof that may be disposed of due to natural wear, obsolescence or depreciation in the normal course of business.

4. Binding contracts or commitments obligating the expenditure of not less than 5 percent of the Sale Proceeds of the Note toward the cost of the Project will be entered into by the Town within 6 months from the date hereof. Work on the Project and the allocation of the Sale Proceeds of the Note to the costs of the Project will proceed with due diligence. It is expected that the Project will be completed and at least 85 percent of the Sale Proceeds of the Note will be allocated to Project expenditures within three years of the date hereof. The Town shall account for the allocation of Sale Proceeds of the Note to Project expenditures not later than 18 months after the later of the date the expenditure is made or the date that the Project is placed in service, but in no event later than 5 years after the date of issuance of the Note. The Town agrees to maintain records detailing the allocation of the Sale Proceeds to those Project costs financed by the Note throughout the term of the Note and for a period of three years thereafter.

5. Not more than 50 percent of the proceeds of the Note will be invested in obligations having a substantially guaranteed yield for 4 years or more.

6. The Resolution provides that the Town will utilize the Pledged Revenues on each payment date of the Note sufficient to pay principal of and interest on the Note.

7. There are no funds or accounts established pursuant to the Resolution, the Loan Agreement or otherwise which are reasonably expected to be used to pay debt service on the Note, or which are pledged as collateral for the Note (or subject to a negative pledge) and for which there is a reasonable assurance on the part of the Original Purchaser that amounts

therein will be available to pay debt service on the Note if the Town encounters financial difficulties.

8. Except for preliminary expenditures, such as architectural, engineering, surveying, soil testing, and similar costs, proceeds of the Note will not be used to reimburse the Town for Project costs paid prior to 60 days before November 16, 2020. Except for preliminary expenditures, any Project costs paid prior to the date of issuance of the Note which are to be reimbursed from Sale Proceeds will be reimbursed not later than 18 months after the later of (a) the date the original expenditure was paid; or (b) the date that the portion of the Project to which the reimbursement relates was placed in service, but in no event more than 3 years after the date that the expenditure was paid.

9. In the event that amounts drawn under the Note are not immediately used to pay or reimburse costs of the Project, the following represents the expectations of the Town with respect to the investment of such proceeds of the Note:

(a) Proceeds derived from the sale of the Note to be applied to pay Issuance Expenses may be invested at an unrestricted yield for a period not to exceed three years from the date hereof, although it is reasonably expected that all such amounts will be expended within 90 days of the date hereof.

(b) Proceeds derived from the sale of the Note to be used to pay Project costs may be invested at an unrestricted yield for a period not to exceed three years from the date hereof.

(c) Investment earnings on obligations acquired with amounts described in subparagraphs (a) and (b) above may be invested at an unrestricted yield for a period of three years from the date hereof or one year from the date of receipt, whichever period is longer.

(d) Amounts described in subparagraphs (a) through (c) that may not be invested at an unrestricted yield pursuant to such subparagraphs, may be invested at an unrestricted yield to the extent such amounts do not exceed \$100,000 (the "Minor Portion").

(e) Amounts described in subparagraph (d), not invested at an unrestricted yield pursuant to such subparagraph, shall be invested at a yield not in excess of the yield on the Note plus 1/8 of one percentage point or be invested in tax-exempt obligations under Section 103(a) of the Code the interest on which is not an item of preference within the meaning of Section 57(a)(5) of the Code.

To the extent that any amounts described in this Paragraph 9 are not permitted to be invested at an unrestricted yield, the Town may satisfy the applicable yield restriction by causing the appropriate amount of yield reduction payments to be made to the United States, but only to the extent permitted by Section 1.148-5(c) of the Regulations.

10. For purposes of this Certificate, "yield" means that yield which when used in computing the present worth of all payments of principal and interest to be paid on an obligation produces an amount equal to the purchase price of such obligation. The yield on obligations acquired with amounts described in Paragraph 9 hereof and the yield on the Note shall be calculated by the use of the same frequency interval of compounding interest. In the case of the Note, the purchase price is not to exceed \$10,000,000.00. The purchase price of the Note and the interest rate thereon were arrived at as a result of an arm's length negotiation between the Town and the Original Purchaser. The Original Purchaser has represented to the Town in its Certificate attached as Exhibit A hereto that it is acquiring the Note for its own account and is not acting as a broker or other intermediary for the purpose of reselling the Note to other investors. Any investments acquired with amounts that may not be invested at an unrestricted yield pursuant to Paragraph 9 above or which are subject to the rebate requirement described in Paragraph 12 below shall be purchased at prevailing market prices and shall be limited to securities for which there is an established market, shall be United States Treasury Obligations - State and Local Government Series, or shall be tax-exempt obligations under 103(a) of the Code the interest on which is not an item of tax preference within the meaning of Section 57(a)(5) of the Code. Because the Note is issued as a draw-down loan, the yield on the Note is not determinable at this time and the yield of the Note will be determined for each Computation Period as set forth in Section 1.148-4(c) of the Regulations.

11. No portion of the proceeds of the Note will be used as a substitute for other moneys of the Town which were otherwise to be used to finance the costs of the Project and which have been or will be used to acquire directly or indirectly, obligations producing a yield in excess of the yield on the Note.

12. The Town has covenanted in the Loan Agreement that so long as the Note remains outstanding, the moneys on deposit in any fund or account maintained in connection with the Note, will not be used in any manner that would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code or bonds not described under Section 103(a) of the Code and the applicable regulations promulgated from time to time thereunder. Accordingly, the Town shall comply with the guidelines and instructions in the Arbitrage Letter of Instructions from Bond Counsel, dated the date hereof, by which the Town shall, among other things, pay or cause to be paid to the United States an amount equal to the sum of (i) the excess of the aggregate amount earned from the investment of "Gross Proceeds" of the Note from the date of issue over the amount that would have been earned if such amounts had been invested at a yield equal to the yield of the Note, plus (ii) the income or earnings attributable to the excess amount described in (i). See Exhibit B attached hereto.

13. Neither the Town nor any person related to the Town has entered into or is expected to enter into any hedging transaction (such as an interest rate swap, cap or collar transaction) with respect to the Note.

14. The weighted average maturity of the Note does not exceed 120 percent of the reasonably expected economic life of the Project (within the meaning of Section 147(b) of the Code).

15. None of the proceeds of the Note will be used (directly or indirectly) to acquire any property which prior to its acquisition was used (or held for use) by a person other than a state or local governmental unit in connection with an output facility. For purposes of this Certificate, the term "output facility" means electric and gas generation, transmission, and related facilities.

16. The Town is not aware of any facts or circumstances that would cause it to question the accuracy of the representations made by the Original Purchaser in its Certificate attached as Exhibit A hereto.

17. None of the proceeds of the Note will be used (directly or indirectly) to make or finance a loan to any person.

18. The Town will not take any action which would cause the Note to be a "private activity bond" within the meaning of Section 141 of the Code. The Town will not permit payment of the principal of and interest on more than 10% of the Note (under the terms of such Note or any underlying arrangement) to be directly or indirectly secured by any interest in property used or to be used for a private business use (or by any interest in payments in respect of such property), or to be derived from payments (whether or not to the Town) in respect of property (or borrowed money) used or to be used for a private business use. In the event that proceeds of the Note are to be used for any private business use that is not related (or is disproportionate) to any governmental use of such proceeds (and to payments, property, and borrowed money with respect to such private business use), the preceding representation shall apply but not more than 5% (rather than 10%) of the Note may be so secured. The requirements set forth in this Paragraph 18 are referred to herein as the "private payment test."

19. In determining whether the Note meets the private payment test, the Town will compare the present value of all private payments allocated to the Note to the present value of the debt service to be paid over the term of the Note. The discount rate to be applied to such present value calculations shall be the yield of the Note. Payments taken into account in determining whether the Note meets the private payment test will include payments for any private business use of the Project. However, any payment that is properly allocable to the payment of ordinary or necessary expenses directly attributable to the operation and maintenance of the Project (other than general overhead or administrative expenses) will not be included as a payment taken into account for purposes of the private payment test.

20. The Town reasonably expects that the Project will continue to be owned and operated throughout the term of the Note in a manner that will not result in the Note meeting the private payment test. The Town will not take any action subsequent to the issuance of the Note that would result in the Note meeting the private payment test, unless it receives an

opinion of Bond Counsel that such action would not adversely affect the exclusion of interest on the Note from gross income for federal income tax purposes.

21. To the extent that proceeds of the Note are used to finance improvements to Times Square (such as shade structures) which are located in the area leased to businesses, revenues generated from the leases shall be considered "private payments" for the purposes of applying the private payment test described above. The Town agrees not to assess or collect any lease payments from such businesses until such time as the full principal amount of the Note (\$10,000,000) has been drawn. After such time that the full principal amount of the Note has been drawn, the Town may collect private payments not in excess of \$65,000.00 annually with respect to the Project. In the event that less than the full principal amount of the Note is drawn, the Town shall not collect private payments with respect to the bond-financed improvements unless it receives an opinion of Bond Counsel that such action would not adversely affect the exclusion of interest on the Note from gross income for federal income tax purposes.

22. The payment of the principal of and interest on the Note is not and will not be guaranteed directly or indirectly by the federal government within the meaning of Section 149(b) of the Code.

23. This Certificate is, in part, to serve as a guideline in implementing the requirements of Sections 141 to 150 of the Code. If regulations, rulings, announcements and notices validly promulgated under the Code contain requirements which differ from those outlined here which must be satisfied for the Note to be tax-exempt or in order to avoid the imposition of penalties under Section 148 of the Code, pursuant to the covenants contained in the Resolution, the Town is obligated to take such steps as are necessary to comply with such requirements. If under those pronouncements, compliance with any of the requirements of this Certificate is not necessary to maintain the exclusion of interest on the Note from gross income and alternative minimum taxable income or to avoid the imposition of penalties on the Town under Section 148 of the Code, the Town shall not be obligated to comply with that requirement. The Town has been advised to seek the advice of competent counsel with a nationally recognized expertise in matters affecting exclusion of interest on municipal bonds from gross income in fulfilling its obligations under the Code to take all steps as are necessary to maintain the tax-exempt status of the Note.

24. To the best of my knowledge, information and belief, the above expectations are reasonable.

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IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of November, 2020.

TOWN OF FORT MYERS BEACH, FLORIDA

By: 
Name: Rexann Hosafros
Title: Vice Mayor

EXHIBIT A

Not to Exceed \$10,000,000
Town of Fort Myers Beach, Florida
Capital Improvement Revenue Note,
Series 2020

CERTIFICATE OF THE ORIGINAL PURCHASER

The undersigned, on behalf of First Florida Integrity Bank (the "Original Purchaser"), hereby certifies as set forth below with respect to the purchase of the above-captioned obligation (the "Note").

1. *Purchase of the Note.* On the date of this certificate, the Original Purchaser is purchasing the Note for \$_____ and has agreed to advance additional amounts not to exceed, in aggregate, \$10,000,000.00, the stated principal amount of the Note. The Original Purchaser is not acting as an Underwriter with respect to the Note. The Original Purchaser has no present intention to sell, reoffer, or otherwise dispose of the Note (or any portion of the Note or any interest in the Note). The Original Purchaser has not contracted with any person pursuant to a written agreement to have such Person participate in the initial sale of the Note and the Original Purchaser has not agreed with the Town pursuant to a written agreement to sell the Note to Persons other than the Original Purchaser or a related party to the Original Purchaser.

2. *Defined Terms.*

(a) *Person* means natural persons, firms, trusts, estates, associations, corporations, partnerships, and public bodies.

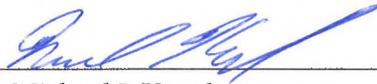
(b) *Public* means any Person other than an Underwriter or a related party. The term "related party" for purposes of this certificate generally means any two or more Persons who have greater than 50 percent common ownership, directly or indirectly.

(c) *Underwriter* means (i) any Person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Note to the Public, and (ii) any Person that agrees pursuant to a written contract directly or indirectly with a Person described in clause (i) of this paragraph to participate in the initial sale of the Note to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Note to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Original Purchaser's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended,

and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Note, and by Bryant Miller Olive P.A. in connection with rendering its opinion that the interest on the Note is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Original Purchaser or the Issuer from time to time relating to the Note.

FIRST FLORIDA INTEGRITY BANK

By: 
Name: Michael J. Kozak
Title: Senior Vice President

Dated: November 18, 2020

EXHIBIT B

November 18, 2020

Mayor and Town Council
Town of Fort Myers Beach, Florida

Re: Not to Exceed \$10,000,000
Town of Fort Myers Beach, Florida
Capital Improvement Revenue Note, Series 2020

Ladies and Gentlemen:

This Letter instructs you as to certain requirements of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), with respect to the Not to Exceed \$10,000,000 Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020, dated November 18, 2020 (the "Note"). Capitalized terms used in this Letter, not otherwise defined herein, shall have the same meanings as set forth in the Town's Tax Certificate as to Arbitrage and the Provisions of Sections 141-150 of the Internal Revenue Code of 1986, As Amended (the "Tax Certificate") executed on the date hereof.

This Letter is intended to provide you with general guidance regarding compliance with Section 148(f) of the Code. Because the requirements of the Code are subject to amplification and clarification, you should seek supplements to this Letter from time to time to reflect any additional or different requirements of the Code. In particular, you should be aware that regulations implementing the rebate requirements of Section 148(f) (the "Regulations") have been issued by the United States Treasury Department. These regulations will, by necessity, be subject to continuing interpretation and clarification through future rulings or other announcements of the United States Treasury Department. You should seek further advice of Bond Counsel as to the effect of any such future interpretations before the computation and payment of any arbitrage rebate.

For the purposes of this Letter, (i) any instructions relating to a fund or account shall be deemed to apply only to the portion of such fund or account allocable to the Note and (ii) any reference to "the date hereof" shall be deemed to mean November 18, 2020.

Section 1. Tax Covenants. Pursuant to the Resolution (as defined in the Tax Certificate), the Town has made certain covenants designed to assure that interest with respect to the Note is and shall remain excluded from gross income for federal income tax purposes. The Town has agreed, and by this Letter does hereby covenant, that it will not directly or indirectly use or permit the use of any proceeds of the Note or any other funds or take or omit to take any action

that would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code and that would cause interest on the Note to be included in gross income for federal income tax purposes under the provisions of the Code. You have further agreed by this Letter to comply with all other requirements as shall be determined by Bond Counsel (as hereinafter defined) to be necessary or appropriate to assure that interest on the Note will be excluded from gross income for federal income tax purposes. To that end, the Town will comply with all requirements of Section 148 of the Code to the extent applicable to the Note. In particular, the Town agrees to cause the proceeds of the Note and certain other amounts described in Paragraph 9 of the Tax Certificate to be invested in a manner that is consistent with the expectations set forth in such Certificate. In the event that at any time the Town is of the opinion that for purposes of this Section 1 it is necessary to restrict or to limit the yield on the investment of any moneys held by the Town, the Town shall take such action as may be necessary.

Section 2. Definitions. Unless the context otherwise requires, in addition to the use of the terms defined in the Tax Certificate, the following capitalized terms have the following meanings:

"Bond Counsel" shall mean Bryant Miller Olive P.A., or other nationally recognized bond counsel.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder.

"Computation Credit Amount" means the amount, as of each Computation Credit Date, set forth in Section 1.148-3(d)(1)(iv) of the Regulations.

"Computation Credit Date" means the last day of each Note Year during which there are amounts allocated to Gross Proceeds of the Note that are subject to the rebate requirement of Section 148(f) of the Code, and the Final Computation Date.

"Computation Date" means the last day of any Note Year ending on or before the first Installment Payment Date and, after the first Computation Date, either the last day of each subsequent Note Year or each fifth Note Year must be consistently treated as a Computation Date.

"Delivery Date" shall mean November 18, 2020.

"Economic Accrual Method" shall mean the method of computing yield that is based on the compounding of interest at the end of each compounding period (also known as the constant interest method or the actuarial method).

"Final Computation Date" shall mean the date that the last bond that is part of the Note is discharged.

"Gross Proceeds" shall mean with respect to the Note, any proceeds of the Note and any funds (other than the proceeds of the Note) that are a part of a reserve or replacement fund for the issue, which amounts include amounts which are (A) actually or constructively received by the Town from the sale of the Note (other than amounts used to pay Accrued Interest on the Note as set forth in the Tax Certificate); (B) treated as transferred proceeds (as defined in Section 1.148-9(b) of the Regulations); (C) treated as Replacement Proceeds under Section 1.148-1(c) of the Regulations; (D) invested in a reasonably required reserve or replacement fund (as defined in Section 1.148-2(f) of the Regulations); (E) pledged by the Town as security for payment of debt service on the Note; (F) received with respect to obligations acquired with proceeds of the Note; (G) used to pay debt service on the Note; and (H) otherwise received as a result of investing any proceeds of the Note. The determination of whether an amount is included within this definition shall be made without regard to whether the amount is credited to any fund or account established under the Loan Agreement or (except in the case of an amount described in (E) above) whether the amount is subject to the pledge of such instrument.

"Guaranteed Investment Contract" means any Nonpurpose Investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, and also includes any agreement to supply investments on two or more future dates (e.g., a forward supply contract).

"Installment Payment Date" shall mean a Computation Date that is not later than 5 years after the Delivery Date and subsequent Computation Dates which occur no later than 5 years after the immediately preceding Installment Payment Date.

"Investment Property" shall mean any security or obligation, any annuity contract or other investment-type property within the meaning of Section 148(b)(2) of the Code. The term Investment Property shall not include any obligation the interest on which is excluded from gross income (other than a Specified Private Activity Bond within the meaning of Section 57(a)(5)(C) of the Code) and shall not include an obligation that is a one-day certificate of indebtedness issued by the United States Treasury pursuant to the Demand Deposit State and Local Government Series Program described in 31 CFR, part 344.

"Issue Price" shall mean \$10,000,000.00 with respect to the Note.

"Issue Yield" shall mean the Note Yield unless the Note is described in Section 1.148-4(b)(3) or (4) of the Regulations, in which case, the Issue Yield shall be the Note Yield as recomputed in accordance with such provisions of the Regulations.

"Nonpurpose Investment" shall mean any Investment Property in which Gross Proceeds are invested, other than any Purpose Investment as defined in Section 1.148-1(b) of the Regulations.

"Nonpurpose Payment" shall, with respect to a Nonpurpose Investment allocated to the Note, include the following: (1) the amount actually or constructively paid to acquire the Nonpurpose Investment; (2) the Value of an investment not acquired with Gross Proceeds on the date such investment is allocated to the Note, and (3) any yield reduction payment to the United States Government made pursuant to Section 1.148-5(c) of the Regulations. In addition, the Computation Credit Amount shall be treated as a Nonpurpose Payment with respect to the Note on each Computation Credit Date.

"Nonpurpose Receipt" shall mean any receipt or payment with respect to a Nonpurpose Investment allocated to the Note. For this purpose the term "receipt" means any amount actually or constructively received with respect to the investment. In the event a Nonpurpose Investment ceases to be allocated to the Note other than by reason of a sale or retirement, such Nonpurpose Investment shall be treated as if sold on the date of such cessation for its Value. In addition, the Value of each Nonpurpose Investment at the close of business on each Computation Date shall be taken into account as a Nonpurpose Receipt as of such date, and each refund of Rebatable Arbitrage pursuant to Section 1.148-3(i) of the Regulations shall be treated as a Nonpurpose Receipt.

"Note Year" shall mean the one year period that ends at the close of business on the day in the calendar year that is selected by the Town. The first and last bond years may be short periods.

"Note Yield" shall be determined for each Computation Period as set forth in Section 1.148-4(c) of the Regulations.

"Rebatable Arbitrage" shall mean as of any Computation Date the excess of the future value of all Nonpurpose Receipts with respect to the Note over the future value of all Nonpurpose Payments with respect to the Note. The future value of a Nonpurpose Payment or a Nonpurpose Receipt as of any Computation Date is determined using the Economic Accrual Method and equals the value of that payment or receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the Issue Yield, using the same compounding interval and financial conventions used in computing that yield.

"Retirement Price" shall mean, with respect to a bond, the amount paid in connection with the retirement or redemption of the bond.

"Value" means value as determined under Section 1.148-5(d) of the Regulations for investments.

Section 3. Rebate Requirement.

(a) Pursuant to this Letter there shall be established a fund separate from any other fund designated the Rebate Fund (the "Rebate Fund"). The Town shall administer or cause to be administered the Rebate Fund and invest any amounts held therein in Nonpurpose Investments. Moneys shall not be transferred from the Rebate Fund except as provided in this Section 3.

(b) Unless one or more of the Spending Exceptions to Rebate described in Appendix I to this Letter is applicable to all or a portion of the Gross Proceeds of the Note, the Town specifically covenants that it will pay or cause to be paid to the United States Government the following amounts:

(1) No later than 60 days after each Installment Payment Date, an amount which, when added to the future value of all previous rebate payments made with respect to the Note, equals at least 90 percent of the Rebatable Arbitrage calculated as of each such Installment Payment Date; and

(2) No later than 60 days after the Final Computation Date, an amount which, when added to the future value of all previous rebate payments made with respect to the Note, equals 100 percent of the Rebatable Arbitrage as of the Final Computation Date.

(c) Any payment of Rebatable Arbitrage made within the 60-day period described in Section 3(b)(1) and (2) above may be treated as paid on the Installment Payment Date or Final computation date to which it relates.

(d) On or before 55 days following each Installment Payment Date and the Final Computation Date, the Town shall determine the amount of Rebatable Arbitrage to be paid to the United States Government as required by Section 3(b) of this Letter. Upon making this determination, the Town shall take the following actions:

(1) If the amount of Rebatable Arbitrage is calculated to be positive, deposit the required amount of Rebatable Arbitrage to the Rebate Fund;

(2) If the amount of Rebatable Arbitrage is calculated to be negative and money is being held in the Rebate Fund, transfer from the Rebate Fund the amount on deposit in such fund; and

(3) On or before 60 days following the Installment Payment Date or Final Computation Date, pay the amount described in Section 3(b) of this Letter to the United States Government at the Internal Revenue Service Center, Ogden, Utah 84201. Payment

shall be accompanied by Form 8038-T. A rebate payment is paid when it is filed with the Internal Revenue Service at the above location.

(e) The Town shall keep proper books of record and accounts containing complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation and application of the money related to the Note, including money derived from, pledged to, or to be used to make payments on the Note. Such records shall specify the account or fund to which each investment (or portion thereof) held by the Town is to be allocated and shall set forth, in the case of each investment security, (a) its purchase price; (b) nominal rate of interest; (c) the amount of accrued interest purchased (included in the purchase price); (d) the par or face amount; (e) maturity date; (f) the amount of original issue discount or premium (if any); (g) the type of Investment Property; (h) the frequency of periodic payments; (i) the period of compounding; (j) the yield to maturity; (k) date of disposition; (l) amount realized on disposition (including accrued interest); and (m) market price data sufficient to establish the fair market value of any Nonpurpose investment as of any Computation Date, and as of the date such Nonpurpose Investment becomes allocable to, or ceases to be allocable to, Gross Proceeds of the Note.

Section 4. Prohibited Investments and Dispositions.

(a) No Investment Property shall be acquired with Gross Proceeds for an amount (including transaction costs) in excess of the fair market value of such Investment Property. No Investment Property shall be sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment Property.

(b) For purposes of subsection 4(a), the fair market value of any Investment Property for which there is an established market shall be determined as provided in subsection 4(c). Except as otherwise provided in subsections 4(e) and (f), any market especially established to provide Investment Property to an issuer of governmental obligations shall not be treated as an established market.

(c) The fair market value of any Investment Property for which there is an established market is the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's-length transaction. Fair market value is generally determined on the date on which a contract to purchase or sell the Investment Property becomes binding (i.e., the trade date rather than the settlement date). If a United States Treasury obligation is acquired directly from or disposed of directly to the United States Treasury, such acquisition or disposition shall be treated as establishing a market for the obligation and as establishing the fair market value of the obligation.

(d) Except to the extent provided in subsections (e) and (f), any Investment Property for which there is not an established market shall be rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(e) In the case of a certificate of deposit that has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, the purchase price of such a certificate of deposit is treated as its fair market value on its purchase date if the yield on the certificate of deposit is not less than (1) the yield on reasonably comparable direct obligations of the United States; and (2) the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(f) The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if the Town complies with the competitive bidding procedures set forth in Section 1.148-5(d)(6)(iii) of the Regulations.

Section 5. Accounting for Gross Proceeds. In order to perform the calculations required by the Code and the Regulations, it is necessary to track the investment and expenditure of all Gross Proceeds. To that end, the Town must adopt a reasonable and consistently applied method of accounting for all Gross Proceeds.

Section 6. Administrative Costs of Investments.

(a) Except as otherwise provided in this Section, an allocation of Gross Proceeds of the Note to a payment or receipt on a Nonpurpose Investment is not adjusted to take into account any costs or expenses paid, directly or indirectly, to purchase, carry, sell or retire the Nonpurpose Investment (administrative costs). Thus, administrative costs generally do not increase the payments for, or reduce the receipts from, Nonpurpose Investments.

(b) In determining payments and receipts on Nonpurpose Investments, Qualified Administrative Costs are taken into account by increasing payments for, or reducing the receipts from, the Nonpurpose Investments. Qualified Administrative Costs are reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage or selling commissions, but not legal and accounting fees, recordkeeping, custody, and similar costs. General overhead costs and similar indirect costs of the Town such as employee salaries and office expenses and costs associated with computing Rebatale Arbitrage are not Qualified Administrative Costs

(c) Qualified Administrative Costs include all reasonable administrative costs, without regard to the limitation on indirect costs stated in subsection (b) above, incurred by:

- (i) A publicly offered regulated investment company (as defined in Section 67(c)(2)(B) of the Code); and
- (ii) A commingled fund in which the Town and any related parties do not own more than 10 percent of the beneficial interest in the fund.

(d) For a Guaranteed Investment Contract, a broker's commission paid on behalf of either the Town or the provider is not a Qualified Administrative Cost to the extent that the commission exceeds the amount set forth in Section 1.148-5(e)(iii) of the Regulations.

Section 7. Records; Bond Counsel Opinion.

(a) The Town shall retain all records with respect to the calculations and instructions required by this Letter for at least 3 years after the date on which the last of the principal of and interest on the Note has been paid, whether upon maturity, redemption or acceleration thereof.

(b) Notwithstanding any provisions of this Letter, if the Town shall be provided an opinion of Bond Counsel that any specified action required under this Letter is no longer required or that some further or different action is required to maintain or assure the exclusion from federal gross income of interest with respect to the Note, the Town may conclusively rely on such opinion in complying with the requirements of this Letter.

[Remainder of page intentionally left blank]

Section 8. Survival of Defeasance. Notwithstanding anything in this Letter to the contrary, the obligation of the Town to remit the Rebate Requirement to the United States Department of the Treasury and to comply with all other requirements contained in this Letter must survive the defeasance or payment of the Note.

Very truly yours,

BRYANT MILLER OLIVE P.A.

Acknowledgement and Assignment of Rebate Expert. The Town acknowledges that it has reviewed the foregoing Arbitrage Letter of Instructions of Bond Counsel and understands the arbitrage rebate requirement described therein. In order to effectuate compliance with federal tax laws, the Town has determined to undertake its arbitrage compliance as follows:

The Town has initially retained or intends to retain the firm of Integrity Public Finance Consulting LLC as Rebate Expert with respect to the Note.

The Town has initially retained or intends to retain the firm of _____ as Rebate Expert with respect to the Note.

The Town has decided not to designate a Rebate Expert with respect to the Note at this time and, as a result, undertakes and assumes full responsibility for arbitrage compliance and acknowledges that Bond Counsel has no such responsibility (unless later engaged in writing for such purpose).

TOWN OF FORT MYERS BEACH, FLORIDA

By:


Raymond P. Murphy, Mayor

Rexann Hozefros Vice Mayor

Dated: November 18, 2020

Appendix I

Spending Exceptions to Rebate

(a) Generally. All, or certain discrete portions, of an issue are treated as meeting the Rebate Requirement of Section 148(f) of the Code if one or more of the spending exceptions set forth in this Appendix are satisfied. Use of the spending exceptions is not mandatory, except that where an issuer elects to apply the 1-1/2 percent penalty (as described below) an issuer must apply that penalty to the Construction Issue. An issuer may apply the Rebate Requirement to an issue that otherwise satisfies a spending exception. Special definitions relating to the spending exceptions are contained in Section (h) of this Appendix.

Where several obligations that otherwise constitute a single issue are used to finance two or more separate governmental purposes, the issue constitutes a "multipurpose issue" and the bonds, as well as their respective proceeds, allocated to each separate purpose may be treated as separate issues for purposes of the spending exceptions. In allocating an issue among its several separate governmental purposes, "common costs" are generally not treated as separate governmental purposes and must be allocated ratably among the discrete separate purposes unless some other allocation method more accurately reflects the extent to which any particular separate discrete purpose enjoys the economic benefit (or bears the economic burden) of the certain common costs (e.g., a newly funded reserve for a parity issue that is partially new money and partially a refunding for savings on prior bonds).

Separate purposes include refunding a separate prior issue, financing a separate Purpose Investment (e.g., a separate loan), financing a Construction Issue, and any clearly discrete governmental purpose reasonably expected to be financed by the issue. In addition, as a general rule, all integrated or functionally related capital projects qualifying for the same initial temporary period (e.g., 3 years) are treated as having a single governmental purpose. Finally, separate purposes may be combined and treated as a single purpose if the proceeds are eligible for the same initial temporary period (e.g., advance refundings of several separate prior issues could be combined, or several non-integrated and functionally unrelated capital projects such as airport runway improvements and a water distribution system).

The spending exceptions described in this Appendix are applied separately to each separate issue component of a multipurpose issue unless otherwise specifically noted.

(b) Six-Month Exception. An issue is treated as meeting the Rebate Requirement under this exception if (i) the gross proceeds of the issue are allocated to expenditures for the governmental purposes of the issue within the six-month period beginning on the issue date (the "six-month spending period") and (ii) the Rebate Requirement is met for amounts not required to be spent within the six-month spending period (excluding earnings on a bona fide debt service fund). For purposes of the six-month exception, "gross proceeds" means Gross Proceeds other than amounts (i) in a bona fide debt service fund, (ii) in a reasonably required

reserve or replacement fund, (iii) that, as of the issue date, are not reasonably expected to be Gross Proceeds but that become Gross Proceeds after the end of the six-month spending period, (iv) that represent Sale Proceeds or Investment Proceeds derived from payments under any Purpose Investment of the issue and (v) that represent repayments of grants (as defined in Treasury Regulation Section 1.148-6(d)(4)) financed by the issue. In the case of an issue no bond of which is a private activity bond (other than a qualified 501(c)(3) bond) or a tax or revenue anticipation bond, the six-month spending period is extended for an additional six months for the portion of the proceeds of the issue which are not expended within the six-month spending period if such portion does not exceed the lesser of five percent of the Proceeds of the issue or \$100,000.

(c) 18-Month Exception. An issue is treated as meeting the Rebate Requirement under this exception if all of the following requirements are satisfied:

(i) the gross proceeds are allocated to expenditures for a governmental purpose of the issue in accordance with the following schedule (the "18-month expenditure schedule") measured from the issue date: (A) at least 15 percent within six months, (B) at least 60 percent within 12 months and (C) 100 percent within 18 months;

(ii) the Rebate Requirement is met for all amounts not required to be spent in accordance with the 18-month expenditure schedule (other than earnings on a bona fide debt service fund); and

(iii) all of the gross proceeds of the issue qualify for the initial temporary period under Treasury Regulation Section 1.148-2(e)(2).

For purposes of the 18-month exception, "gross proceeds" means Gross Proceeds other than amounts (i) in a bona fide debt service fund, (ii) in a reasonably required reserve or replacement fund, (iii) that, as of the issue date, are not reasonably expected to be Gross Proceeds but that become Gross Proceeds after the end of the 18-month expenditure schedule, (iv) that represent Sale Proceeds or Investment Proceeds derived from payments under any Purpose Investment of the issue and (v) that represent repayments of grants (as defined in Treasury Regulation Section 1.148-6(d)(4)) financed by the issue. In addition, for purposes of determining compliance with the first two spending periods, the investment proceeds included in gross proceeds are based on an issuer's reasonable expectations as of the issue date rather than the actual Investment Proceeds; for the third, final period, actual Investment Proceeds earned to date are used in place of the reasonably expected earnings. An issue does not fail to satisfy the spending requirement for the third spending period above as a result of a Reasonable Retainage if the Reasonable Retainage is allocated to expenditures within 30 months of the issue date. The 18-month exception does not apply to an issue any portion of which is treated as meeting the Rebate Requirement as a result of satisfying the two-year exception.

(d) Two-Year Exception. A Construction Issue is treated as meeting the Rebate Requirement for Available Construction Proceeds under this exception if those proceeds are allocated to expenditures for governmental purposes of the issue in accordance with the following schedule (the "two-year expenditure schedule"), measured from the issue date:

- (i) at least 10 percent within six months;
- (ii) at least 45 percent within one year;
- (iii) at least 75 percent within 18 months; and
- (iv) 100 percent within two years.

An issue does not fail to satisfy the spending requirement for the fourth spending period above as a result of unspent amounts for Reasonable Retainage if those amounts are allocated to expenditures within three years of the issue date.

(e) Expenditures for Governmental Purposes of the Issue. For purposes of the spending exceptions, expenditures for the governmental purposes of an issue include payments for interest, but not principal, on the issue and for principal or interest on another issue of obligations. The preceding sentence does not apply for purposes of the 18-month and two-year exceptions if those payments cause the issue to be a refunding issue.

(f) De Minimis Rule. Any failure to satisfy the final spending requirement of the 18-month exception or the two-year exception is disregarded if an issuer exercises due diligence to complete the project financed and the amount of the failure does not exceed the lesser of three percent of the issue price of the issue or \$250,000.

(g) Elections Applicable to the Two-Year Exception. An issuer may make one or more of the following elections with respect to the two-year spending exception:

(1) Earnings on Reasonably Required Reserve or Replacement Fund. An issuer may elect on or before the issue date to exclude from Available Construction Proceeds the earnings on any reasonably required reserve or replacement fund. If the election is made, the Rebate Requirement applies to the excluded amounts from the issue date.

(2) Actual Facts. For the provisions relating to the two-year exception that apply based on an issuer's reasonable expectations, an issuer may elect on or before the issue date to apply all of those provisions based on actual facts. This election does not apply for purposes of determining whether an issue is a Construction Issue and if the 1-1/2 percent penalty election is made.

(3) Separate Issue. For purposes of the two-year exception, if any proceeds of any issue are to be used for Construction Expenditures, an issuer may elect on or before the issue date to treat the portion of the issue that is not a refunding issue as two, and only two, separate issues, if (i) one of the separate issues is a Construction Issue, (ii) an issuer reasonably expects, as of the issue date, that such Construction Issue will finance all of the Construction Expenditures to be financed by the issue and (iii) an issuer makes an election to apportion the issue in which it identifies the amount of the issue price of the issue allocable to the Construction Issue.

(4) Penalty in Lieu of Rebate. An issuer of a Construction Issue may irrevocably elect on or before the issue date to pay a penalty (the "1-1/2 percent penalty") to the United States in lieu of the obligation to pay the rebate amount on Available Construction Proceeds upon failure to satisfy the spending requirements of the two-year expenditure schedule. The 1-1/2 percent penalty is calculated separately for each spending period, including each semiannual period after the end of the fourth spending period, and is equal to 1.5 percent times the underexpended proceeds as of the end of the spending period. For each spending period, underexpended proceeds equal the amount of Available Construction Proceeds required to be spent by the end of the spending period, less the amount actually allocated to expenditures for the governmental purposes of the issue by that date. The 1-1/2 percent penalty must be paid to the United States no later than 90 days after the end of the spending period to which it relates. The 1-1/2 percent penalty continues to apply at the each of each spending period and each semiannual period thereafter until the earliest of the following: (i) the termination of the penalty under Treasury Regulation Section 1.148-7(1), (ii) the expenditure of all of the Available Construction Proceeds or (iii) the last stated final maturity date of bonds that are part of the issue and any bonds that refund those bonds. If an issue meets the exception for Reasonable Retainage except that all retainage is not spent within three years of the issue date, an issuer must pay the 1-1/2 percent penalty to the United States for any Reasonable Retainage that was not so spent as of the close of the three-year period and each later spending period.

(h) Special Definitions Relating to Spending Expenditures.

(1) Available Construction Proceeds shall mean, with respect to an issue, the amount equal to the sum of the issue price of the issue, earnings on such issue price, earnings on amounts in any reasonably required reserve or replacement fund not funded from the issue and earnings on all of the foregoing earnings, less the amount of such issue price in any reasonably required reserve or replacement fund and less the issuance costs financed by the issue. For purposes of this definition, earnings include earnings on any tax-exempt bond. For the first three spending periods of the two-year expenditure schedule described in Treasury Regulation Section 1.148-7(e), Available Construction Proceeds include the amount of future earnings that an issuer reasonably expected as of the issue date. For the fourth spending period described in Treasury Regulation Section 1.148-7(e), Available Construction Proceeds include the actual earnings received. Earnings on any reasonably required reserve or replacement fund are Available Construction Proceeds only to the extent that those earnings accrue before the earlier

of (i) the date construction is substantially completed or (ii) the date that is two years after the issue date. For this purpose, construction may be treated as substantially completed when an issuer abandons construction or when at least 90 percent of the total costs of the construction that an issuer reasonably expects as of such date will be financed with proceeds of the issue have been allocated to expenditures. If only a portion of the construction is abandoned, the date of substantial completion is the date the non-abandoned portion of the construction is substantially completed.

(2) Construction Expenditures shall mean capital expenditures (as defined in Treasury Regulation Section 1.150-1) that are allocable to the cost of Real Property or Constructed Personal Property. Construction Expenditures do not include expenditures for acquisitions of interest in land or other existing Real Property.

(3) Construction Issue shall mean any issue that is not a refunding issue if (i) an issuer reasonably expects, as of the issue date, that at least 75 percent of the Available Construction Proceeds of the issue will be allocated to Construction Expenditures for property owned by a governmental unit or a 501(c)(3) organization and (ii) any private activity bonds that are part of the issue are qualified 501(c)(3) bonds or private activity bonds issued to financed property to be owned by a governmental unit or a 501(c)(3) organization.

(4) Constructed Personal Property shall mean Tangible Personal Property or Specially Developed Computer Software if (i) a substantial portion of the property is completed more than six months after the earlier of the date construction or rehabilitation commenced and the date an issuer entered into an acquisition contract; (ii) based on the reasonable expectations of an issuer, if any, or representations of the person constructing the property, with the exercise of due diligence, completion of construction or rehabilitation (and delivery to an issuer) could not have occurred within that six-month period; and (iii) if an issuer itself builds or rehabilitates the property, not more than 75 percent of the capitalizable cost is attributable to property acquired by an issuer.

(5) Real Property shall mean land and improvements to land, such as buildings or other inherently permanent structures, including interests in real property. For example, Real Property includes wiring in a building, plumbing systems, central heating or air-conditioning systems, pipes or ducts, elevators, escalators installed in a building, paved parking areas, roads, wharves and docks, bridges, and sewage lines.

(6) Reasonable Retainage shall mean an amount, not to exceed five percent of (i) Available Construction Proceeds as of the end of the two-year expenditure schedule (in the case of the two-year exception to the Rebate Requirement) or (ii) Net Sale Proceeds as of the end of the 18-month expenditure schedule (in the case of the 18-month exception to the Rebate Requirement), that is retained for reasonable business purposes relating to the property financed with the issue. For example, a Reasonable Retainage may include a retention to ensure or promote compliance with a construction contract in circumstances in which the retained

amount is not yet payable, or in which an issuer reasonably determines that a dispute exists regarding completion or payment.

(7) Specially Developed Computer Software shall mean any programs or routines used to cause a computer to perform a desired task or set of tasks, and the documentation required to describe and maintain those programs, provided that the software is specially developed and is functionally related and subordinate to Real Property or other Constructed Personal Property.

(8) Tangible Personal Property shall mean any tangible personal other than Real Property, including interests in tangible personal property. For example, Tangible Personal Property includes machinery that is not a structural component of a building, subway cars, fire trucks, automobiles, office equipment, testing equipment, and furnishings.

(i) Special Rules Relating to Refundings.

(1) Transferred Proceeds. In the event that a prior issue that might otherwise qualify for one of the spending exceptions is refunded, then for purposes of applying the spending exceptions to the prior issue, proceeds of the prior issue that become transferred proceeds of the refunding issue continue to be treated as unspent proceeds of the prior issue; if such unspent proceeds satisfy the requirements of one of the spending exceptions then they are not subject to rebate either as proceeds of the prior issue or of the refunding issue. Generally, the only spending exception applicable to refunding issues is the six-month exception. In applying the six-month exception to a refunding of a prior issue, only transferred proceeds of the refunding issue from a taxable prior issue and other amounts excluded from the definition of gross proceeds of the prior issue under the special definition of gross proceeds contained in Section (b) above are treated as gross proceeds of the refunding issue and so are subject to the six-month exception applicable to the refunding issue.

(2) Series of Refundings. In the event that an issuer undertakes a series of refundings for a principal purpose of exploiting the difference between taxable and tax-exempt interest rates, the six-month spending exception is measured for all issues in the series commencing on the date the first bond of the series is issued.

(j) Elections Applicable to Pool Bonds. An issuer of a pooled financing issue can elect to apply the spending exceptions separately to each loan from the date such loan is made or, if earlier, on the date on year after the date the pool bonds are issued. In the event this election is made, no spending exceptions are available and the normal Rebate Requirement applies to Gross Proceeds prior to the date on which the applicable spending periods begin. In the event this election is made, an issuer may also elect to make all elections applicable to the two-year spending exception, described in Section (g) above, separately for each loan; any such elections that must ordinarily be made prior to the issue date must then be made by an issuer before the earlier of the date the loan is made or one year after the issue date.

CERTIFICATE OF DELIVERY AND APPLICATION OF PROCEEDS

I, the undersigned officer of the Town of Fort Myers Beach, Florida (the "Town"), **DO HEREBY CERTIFY** that on the 18th day of November, 2020:

1. Pursuant to the Loan Agreement (the "Loan Agreement") dated November 4, 2020 between the Town and First Florida Integrity Bank (the "Purchaser"), the Town delivered to the Purchaser, the following described obligation of the Town:

\$10,000,000 Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020 dated November 18, 2020, bearing interest at 3.15% per annum through November 1, 2030 and, subject to the provisions of the Loan Agreement, adjusted on November 2, 2030 to a fixed rate based on the prevailing ten-year treasury rate plus 255 basis points, and maturing on November 1, 2040.

2. At the time of delivery of the Note, there was received by the Town from the Purchaser, an initial draw in the amount of \$50,001.00 (the "Note Proceeds"). Remaining draws of the full Note Proceeds shall be in the manner provided in the Loan Agreement.

3. The Note Proceeds are to be applied by the Town to finance the redevelopment of Bay Oaks, Bayside Park and Times Square all located in the Town (the "Project").

4. Terms used herein in capitalized form and not defined herein shall have the meanings ascribed thereto in the Loan Agreement.

[Signature page follows]

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18th day of November, 2020.

(SEAL)

TOWN OF FORT MYERS BEACH,
FLORIDA

By: 
Rexann Hosafros, Vice Mayor

ATTEST.



Amy Baker, Deputy Town Clerk

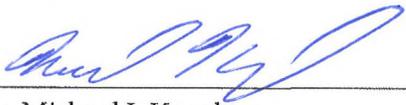
RECEIPT FOR NOTE

I, Michael J. Kozak, as Senior Vice President of First Florida Integrity Bank (the "Bank") **DO HEREBY ACKNOWLEDGE** receipt of the following described obligation of the Town of Fort Myers Beach, Florida (the "Town"):

\$10,000,000 Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020 dated November 18, 2020, bearing interest at 3.15% per annum through November 1, 2030 and, subject to the provisions of the Loan Agreement, adjusted on November 2, 2030 to a fixed rate based on the prevailing ten-year treasury rate plus 255 basis points, and maturing on November 1, 2040.

Dated this 18th day of November, 2020.

FIRST FLORIDA INTEGRITY BANK

By: 
Name: Michael J. Kozak
Title: Senior Vice President

TOWN'S GENERAL CERTIFICATE

STATE OF FLORIDA:

COUNTY OF LEE:

We, the undersigned officers and officials of the Town of Fort Myers Beach, Florida (the "Town"), hereby execute this certificate as of the 4th day of November 2020, in connection with the issuance and delivery by the Town of its \$10,000,000 Capital Improvement Revenue Note, Series 2020 (the "Note") under and pursuant to Resolution No. 20-51 duly adopted by the Town Council of the Town on November 16, 2020 (the "Note Resolution") and the Loan Agreement dated November 18, 2020 (the "Loan Agreement") by and between the Town and First Florida Integrity Bank, as purchaser (the "Bank").

The Note is being issued to (i) finance the redevelopment of Bay Oaks, Bayside Park and Times Square all located in the Town, and (ii) pay the costs of issuance of the Note including a Commitment Fee imposed by the Bank. All capitalized undefined terms used herein shall have the meanings ascribed thereto in the Note Resolution and the Loan Agreement.

The undersigned Mayor, Town Manager and Town Clerk hereby certify on behalf of the Town that:

1. The representations and warranties of the Town contained in the Note Resolution and the Loan Agreement are true and correct in all material respects on and as of the date hereof, as if made on the date hereof.
2. The Town has satisfied all conditions on its part to be performed or satisfied under the Charter and Ordinances of the Town and the Loan Agreement prior to the funding of the Loan.
3. The proceeds of the Note will be used as contemplated in the Loan Agreement.
4. Since September 30, 2019, there has been no material adverse change in the financial condition, operations or prospects of the Town or laws, rules or regulations (or their interpretation or administration), including, without limitation with respect to the Pledged Revenues that, in any case, may adversely affect the Town's ability to comply with its obligations under the Note or the Loan Agreement.
5. The Town is duly authorized to collect the Pledged Revenues and to pledge the Pledged Revenues in the manner provided in the Loan Agreement.
6. The Town has not previously pledged or granted a lien upon and, there currently exists no pledge or lien or other encumbrance upon the Pledged Revenues.

7. The names of the members of the Town Council and their respective terms of office are as follows:

<u>Mayor and Town Council</u>	<u>Term Expiration Date</u>
Raymond P. Murphy, Mayor	November 2022
Rexann Hosafros, Vice Mayor	November 2022
Dan Allers, Council Member	November 2024
Jim Atterholt, Council Member	November 2024
Bill Veach, Council Member	November 2024

8. That, Raymond P. Murphy, Mayor of the Town, has executed the Note by his manual signature, and that said Mayor was on the date he signed the Note and is now the duly elected, qualified and acting Mayor of the Town.

9. Michelle D. Mayher is the duly appointed and acting Town Clerk of the Town. The Town Clerk has signed the Note by her manual signature, and the signatures of the Town Clerk on the Note and at the end of this Certificate are the true and lawful signatures of the Town Clerk.

10. Roger T. Hernstadt is the duly appointed and acting Town Manager of the Town.

11. John R. Herin, Jr. is the duly appointed Town Attorney of the Town and accordingly, is entitled to render opinions and execute documents as the Town Attorney of the Town.

12. That the seal which has been impressed on or otherwise reproduced on the Note and upon this certificate is the legally adopted, proper and only seal of the Town.

13. The Town has never defaulted on any of its payment obligations.

14. There is no litigation or proceeding pending or, to our knowledge, threatened against the Town in any court or administrative body contesting the due creation or valid existence of the Town, its power or authority to collect the Pledged Revenues or the validity, due authorization, execution and delivery of the Loan Agreement and the Note, or in any way attempting to limit, enjoin or otherwise restrict or prevent the Town from funding and collecting revenues, including, without limitation, the Pledged Revenues, or performing its obligations under the Loan Agreement and the Note.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, we have hereunto set our hands and affixed the official seal of the Issuer this 18th day of November, 2020.

TOWN OF FORT MYERS BEACH, FLORIDA

(SEAL)



Rexann Hosafros
Vice Mayor

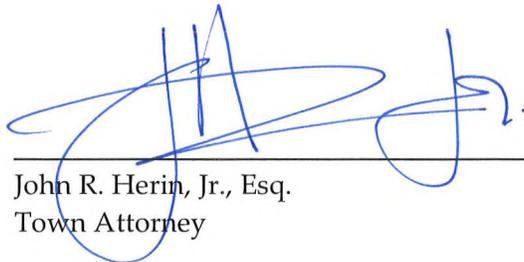


Amy Baker, Deputy Town Clerk



Roger T. Hernstadt
Town Manager

I, John R. Herin, Jr., Esquire, Town Attorney, do hereby certify that the signatures of the officers which appear above are true and genuine and that I know said officers and know them to hold the offices set opposite their names.



John R. Herin, Jr., Esq.
Town Attorney

**CERTIFICATE AS TO PUBLIC MEETINGS
AND NO CONFLICT OF INTEREST**

STATE OF FLORIDA:
COUNTY OF LEE:

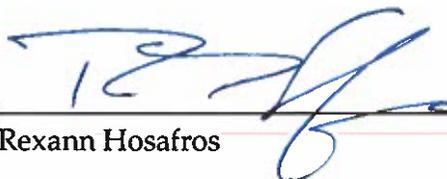
Each of the undersigned members of the Town Council ("Town Council") of the Town of Fort Myers Beach, Florida (the "Town") acting in their capacity as members of the Town Council of the Town, recognizing that the purchaser of the Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020 (the "Note") will have purchased said Note in reliance upon this Certificate, **DO HEREBY CERTIFY:**

(1) that he or she has no personal knowledge that any two or more members of the Town Council, meeting together, reached any prior conclusion as to whether the actions taken by the Town Council, with respect to said Note, the security therefor and the application of the proceeds thereof, should or should not be taken by the Town Council or should or should not be recommended as an action to be taken or not to be taken by the Town Council, except at public meetings of the Town Council, held after due notice to the public was given in the ordinary manner required by law;

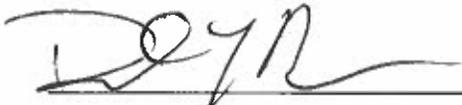
(2) that he or she does not have or hold any employment or contractual relationship with First Florida Integrity Bank, the purchaser of the Note, that would constitute a prohibited conflict of interest under Part III, Chapter 112, Florida Statutes.

IN WITNESS WHEREOF, we have hereunto affixed our official signatures the 16th day of November, 2020.

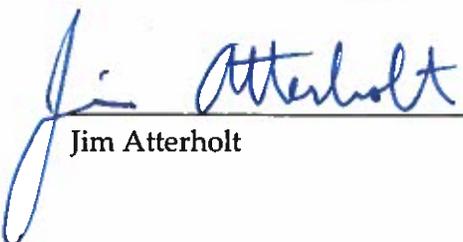
Raymond P. Murphy



Rexann Hosafros



Dan Allers



Jim Atterholt



Bill Veach

CLERK'S CERTIFICATE REGARDING RESOLUTION NO. 20-32

I, Amy Baker, the undersigned Deputy Town Clerk of the Town of Fort Myers Beach, Florida (the "Town"), DO HEREBY CERTIFY that:

(1) Resolution No. 20-32 was duly adopted by the Town Council of the Town at a meeting duly called and held on August 17, 2020, at which meeting a quorum was present and acting throughout.

(2) Attached hereto is a true and correct copy of Resolution No. 20-32, adopted as stated in paragraph (1) above, which has been compared by me with the original thereof as recorded in the Minute Book of said Town; and

(3) Resolution No. 20-32 has been duly adopted and has not been further modified, amended, supplemented or repealed and is full force and effect and as of the date hereof in the form attached.

IN WITNESS WHEREOF, I have hereunto set my hand and affix the official seal of the Town as of the 18th day of November, 2020.

(SEAL)



Amy Baker, Deputy Town Clerk

RESOLUTION NUMBER 20-32

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO TAKE ALL STEPS NECESSARY TO SECURE A LOAN COMMITMENT FROM FIRST FLORIDA INTEGRITY BANK IN THE PRINCIPAL AMOUNT OF \$10,000,000.00 WITH A 3.15% PER ANNUM INTEREST RATE, AMORTIZED FOR UP TO TWENTY (20) YEARS AND BRING FORWARD A LOAN NOTE FOR APPROVAL BEFORE SEPTEMBER 21, 2020; THE PURPOSE OF THE LOAN IS TO FINANCE NEEDED CAPITAL IMPROVEMENT PROJECTS THROUGHOUT THE TOWN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach ("Town") empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town desires to borrow monies to fund needed Town-wide capital improvement projects including, but not limited to the redevelopment of the Town's Bay Oaks Recreational Facility; and

WHEREAS, First Florida Integrity Bank has advised the Town of its willingness to loan the Town up to \$10,000,000.00 at a proposed interest rate of 3.15% per annum, and repayments amortized up to twenty (20) years as evidenced by certain correspondence dated August 4, 2020 ("Loan Letter"); and

WHEREAS, the Town is amenable to such a loan transaction as generally set forth in the Loan Letter.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein.

Section 2. The Town Council authorizes the appropriate Town officials to take all steps necessary to secure a loan commitment from First Florida Integrity Bank as generally set forth in the Loan Letter, attached hereto and made a part hereof as Exhibit "A", for use in funding needed Town-wide capital improvement projects.

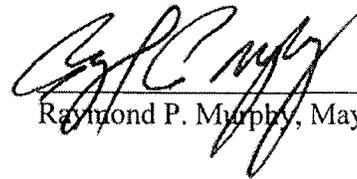
Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Allers and seconded by Council Member Allers and upon being put to a vote, the result was as follows:

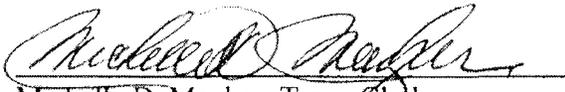
Raymond P. Murphy, Mayor	Aye
Rexann Hosafros, Vice Mayor	Aye
Dan Allers, Council Member	Aye
Jim Atterholt, Council Member	Aye
Bill Veach, Council Member	Aye

ADOPTED this 17th day of August, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Raymond P. Murphy, Mayor

ATTEST:


Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:


John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 21st day of August 2020.



First Florida Integrity Bank

August 4, 2020 (Updated as of September 1, 2020)

Roger Hernstadt
Town Manager
The Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

Dear Mr. Hernstadt:

We greatly appreciate the opportunity to establish our new relationship. Summarized below are the basic terms and conditions on a possible loan structure to meet your current financing needs. *This letter is for discussion purposes only and does not constitute a commitment from First Florida Integrity Bank (Bank).*

CREDIT FACILITY:

Borrower: The Town of Fort Myers Beach

Facility Type: Commercial Loan

Amount: \$10,000,000

Purpose: Provide construction/renovation financing for a new park.

Repayment Terms: The term of the loan shall be 10 years. The first 36 months shall be a non-revolving line of credit, then converting to a term loan. There shall be monthly principal and interest payments of \$48,448, throughout the term of the loan.

Loan Extension: The bank agrees to renew the loan at maturity as long as loan has been paid as agreed and all covenants have been met. The loan will be extended for an additional ten (10) years at a fixed rate based on the prevailing ten year treasury rate + 255 basis points. There shall be a 50 basis point loan fee based on the renewal amount, plus normal costs of renewal including a legal fee for the documentation process.

Interest Rate (Tax Free): Tax free interest rate of 3.15% if loan closes by October 15, 2020.

Commitment Fee: \$20,000

Other Fees: Legal fee for document preparation (to be determined).

Collateral: An assignment of public service tax revenue. A secondary assignment shall be communication service tax revenue.

Post Office Box 10910, Naples, FL 34101
(239) 348-8000 Office (239) 213-3342 Fax

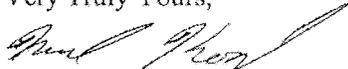
Primary conditions:

1. Borrower to maintain their primary bank deposit accounts with the Lender.
2. Receipt of opinion letter from the borrower's bond counsel that the loan is a tax-exempt government obligation.
3. Borrower to maintain a Debt Service Coverage Ratio of 1.10x. (Cash flow before interest expense divided by total debt obligations).
4. Receipt of opinion letter from Borrower's counsel that the respective tax revenue provided as collateral is legally assignable.

This proposal (i) is subject to completion of the Bank's normal due diligence and credit approval process, (ii) is not a commitment to lend and (iii) is not an attempt to define all of the terms and conditions which may be included in the final documentation. This proposal serves to outline certain basic provisions from which a final agreement can be structured. The Bank will not finish the underwriting and approval process if this proposal is not accepted by September 5, 2020.

If the foregoing terms are acceptable to you, and you would like to proceed with the underwriting and approval process, please acknowledge so by signing where indicated and returning the original, together with a check in the amount of \$10,000 payable to First Florida Integrity Bank. Should your Loan be approved upon the terms and conditions contained herein, the \$10,000 will be credited towards the closing costs. If after acceptance of the terms contained herein, you fail to close on the loan in accordance with terms contained herein prior to October 15, 2020, the \$10,000 will be forfeited. If the Loan is not approved and closed by the Bank in accordance with the accepted terms, the \$10,000 (less any costs paid to third parties by the bank) will be returned to you within 3 business days.

Very Truly Yours,



Michael Kozak
Senior Vice President
First Florida Integrity Bank

Accepted by:

The Town of Fort Myers Beach

By: _____

Its: _____

CLERK'S CERTIFICATE REGARDING RESOLUTION NO. 20-51

I, Amy Baker, the undersigned Deputy Town Clerk of the Town of Fort Myers Beach, Florida (the "Town"), DO HEREBY CERTIFY that:

(1) Resolution No. 20-51 was duly adopted by the Town Council of the Town at a meeting duly called and held on November 16, 2020, at which meeting a quorum was present and acting throughout.

(2) Attached hereto is a true and correct copy of Resolution No. 20-51, adopted as stated in paragraph (1) above, which has been compared by me with the original thereof as recorded in the Minute Book of said Town; and

(3) Resolution No. 20-51 has been duly adopted and has not been further modified, amended, supplemented or repealed and is full force and effect and as of the date hereof in the form attached.

IN WITNESS WHEREOF, I have hereunto set my hand and affix the official seal of the Town as of the 18th day of November, 2020.

(SEAL)



Amy Baker, Deputy Town Clerk

RESOLUTION NO. 20-51

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A LOAN FROM FIRST FLORIDA INTEGRITY BANK, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000 FOR THE PURPOSE OF FINANCING THE REDEVELOPMENT OF CERTAIN TOWN-WIDE CAPITAL IMPROVEMENT PROJECTS, AS DESCRIBED HEREIN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A TOWN OF FORT MYERS BEACH, FLORIDA CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2020 TO EVIDENCE THE TOWN'S OBLIGATIONS UNDER THE LOAN AGREEMENT, SUCH NOTE TO BE A LIMITED OBLIGATION OF THE TOWN, PAYABLE FROM AND SECURED BY A PLEDGE OF AND LIEN ON THE TOWN'S PUBLIC SERVICE TAX REVENUES AND IF EVER INSUFFICIENT TO PAY DEBT SERVICE ON THE NOTE, A PLEDGE OF AND LIEN ON THE TOWN'S COMMUNICATION SERVICE TAX REVENUES; PROVIDING FOR THE RIGHTS AND SECURITIES OF THE OWNER OF THE NOTE; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach ("Town") empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town of Fort Myers Beach, Florida (the "Town") desires to borrow money to fund the redevelopment of Bay Oaks, Bayside Park and Times Square, all located in the Town, and referred to herein collectively, as the "Project"; and

WHEREAS, the Town Council of the Town ("Town Council") has determined it to be in the best interests of the citizens to finance the Project; and

WHEREAS, the Town Council has determined it to be in the best interest of the Town and the citizens thereof to finance the Project through a loan from First Florida Integrity Bank (the "Bank") in an aggregate principal amount not to exceed \$10,000,000 to be payable from and secured by a pledge of the Town's public service tax levied pursuant to Chapter 24 of the Town Code, as supplemented and amended, as authorized by Section 166.231, *Florida Statutes*, as amended (the "Public Service Tax") and if ever insufficient to pay debt service on the Note (as hereinafter defined), a pledge of the Town's communication service tax revenues authorized by

Section 202, *Florida Statutes*, as amended and authorized by the Chapter 26 of the Town Code (the “Communications Tax, and together with the Public Service Tax, the “Pledged Revenues”); and

WHEREAS, the Town Council adopted Resolution 20-32 on August 17, 2020 authorizing the borrowing of not to exceed \$10,000,000 to finance the Project in accordance with the Town Charter; and

WHEREAS, the Town Council has determined that it is in the best interests of the Town to borrow \$10,000,000 from the Bank to finance the Project (the “Loan”) pursuant to the terms and conditions of a Loan Agreement to be entered into between the Town and the Bank, substantially in the form attached hereto as Exhibit “A” (the “Loan Agreement”); and

WHEREAS, amounts due under the Loan will be evidenced by the Town's Capital Improvement Revenue Note, Series 2020 (the “Note”) authorized herein to be issued pursuant to the Loan Agreement; and

WHEREAS, debt service on the Note shall be payable from and secured solely by a first priority pledge of and lien on the Public Service Tax and if ever insufficient to pay debt service on the Note, the Communications Tax; and

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant the provisions of the Constitution and the laws of the State of Florida, Chapter 166, *Florida Statutes*, as amended, Chapter 202, *Florida Statutes*, as amended, the Town Charter, Resolution No. 20-32 adopted by the Town on August 17, 2020, Chapters 24 and 26 of the Town Code, and other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby found, ascertained, determined and declared that:

A. The above recitals are true and correct and are hereby incorporated herein as a part of this Resolution.

B. The Town is a duly constituted and validly existing municipal corporation and public body corporate and politic of the State of Florida, with requisite powers derived from the Constitution and laws of the State of Florida and the Charter and ordinances of the Town to authorize, execute and deliver this Resolution and the Note and to carry out and perform its duties and obligations hereunder and thereunder.

C. It is in the public interest and serves a valid and proper public purpose to finance the Project.

D. It is in the best interests of the Town and the citizens thereof to accept the Bank's offer to provide the Loan to the Town on the terms set forth in the Loan Agreement to finance the Project and to pay the costs of issuance of the Note, including the Bank’s Commitment Fee (as defined in the Loan Agreement).

E. Because of the characteristics of the security pledged to repay the Loan and prevailing conditions in the financial markets, it is in the best interest of the Town to accept the offer of the Bank to enter into the Loan Agreement and sell the Note to the Bank at a negotiated sale.

F. In consideration of the purchase and acceptance by the Bank of the Note authorized to be issued hereunder, this Resolution, together with the terms and provisions of the Loan Agreement, shall constitute a contract between the Town and the Bank.

SECTION 3. AUTHORIZATION OF LOAN AGREEMENT. To provide for the issuance of and security for the Note and to express the contract between the Town and the holder thereof, the Town does hereby authorize the execution and delivery, on behalf of the Town, by the Mayor, under the seal of the Town, attested by the Town Clerk of the Town, of the Loan Agreement by and between the Town and the Bank. The form of the Loan Agreement attached hereto as Exhibit "A" is hereby authorized and approved, subject to such changes, insertions, omissions and filling of blanks therein as shall be made in such form and approved by the Mayor, execution of the Loan Agreement by the Mayor constituting conclusive evidence of such approval. Subject and pursuant to the provisions of this Resolution and the terms and provisions of the Loan Agreement, there is hereby authorized to be issued a promissory note to evidence the Town's obligations under the Loan Agreement. The Note is authorized to be issued in the aggregate principal amount not to exceed \$10,000,000 and subject to the provisions of Section 4 hereof.

SECTION 4. AUTHORIZATION OF THE PROJECT AND THE NOTE. Financing of the Project is hereby authorized. To finance the Project, there is hereby authorized to be issued the "Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020," in an aggregate principal amount not to exceed TEN MILLION DOLLARS (\$10,000,000), which shall evidence and secure amounts outstanding under the Loan Agreement, and will be repaid over a term ending not later than November 1, 2040 as provided in the Loan Agreement. The Note shall bear interest at the Note Rate, as defined in the Loan Agreement, subject to adjustment and prepayment as provided in the Loan Agreement and the Note, and shall be dated the date of delivery. Interest on the Note shall be paid monthly on the first day of each month, as provided in the Loan Agreement and the Note. Principal on the Note will be payable in monthly installments payable on the first day of each month, commencing December 1, 2023 in accordance with Schedule I to the Note, subject to prepayment as provided in the Note and in the Loan Agreement.

The Note shall be substantially in the form attached to the Loan Agreement, with such changes, insertions, omissions and filling of blanks therein as shall be made in such form and approved by the Mayor of the Town, such approval to be conclusively evidenced by the execution thereof by the Mayor. The Note shall be executed on behalf of the Town with the manual signature of the Mayor and the Town Clerk and the official seal of the Town, and be approved as to form and correctness with the manual signature of the Town Attorney. In case any one or more of the officers who shall have signed or sealed the Note shall cease to be such officer of the Town

before the Note so signed and sealed has been actually sold and delivered, such Note may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Note had not ceased to hold such office. The Note may be signed and sealed on behalf of the Town by such person who at the actual time of the execution of such Note shall hold the proper office of the Town, although, at the date of such Note, such person may not have held such office or may not have been so authorized.

SECTION 5. PAYMENT OF PRINCIPAL AND INTEREST; LIMITED OBLIGATION. The Town promises that it will promptly pay the principal of and interest on the Note and all other amounts due under the Note and Loan Agreement at the place, on the dates and in the manner provided in the Loan Agreement according to the true intent and meaning hereof and thereof. Amounts due under the Note and Loan Agreement shall not be or constitute a general obligation or indebtedness of the Town as a “bond” within the meaning of the Constitution and the laws of the State of Florida, but shall be payable solely from the Pledged Revenues in accordance with the terms hereof and of the Loan Agreement. The holder of the Note issued hereunder shall never have the right to compel the exercise of any ad valorem taxing power to pay the Note, or be entitled to payment of such Note from any funds of the Town except from the Pledged Revenues as described herein and in the Loan Agreement.

SECTION 6. USE OF PROCEEDS. The proceeds of the Note shall be used by the Town to finance the Project and to pay the costs of issuance related thereto, including the Bank’s Commitment Fee (as defined in the Loan Agreement).

SECTION 7. GENERAL AUTHORIZATION. The Town Council hereby authorizes the Mayor, the Town Clerk, the Town Manager and the Town Attorney to execute the Note, the Loan Agreement, this Resolution, and any and all other documents necessary to initiate the loan closing in this matter.

SECTION 8. PREREQUISITES PERFORMED. The Town has performed all acts, conditions, and things relating to the passage of this Resolution and the authorization of the Loan, the Loan Agreement and the Note, as are required by the Constitution and Laws of the State of Florida and the Charter and ordinances of the Town.

SECTION 9. SEVERABILITY. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

SECTION 10. APPLICABLE PROVISIONS OF LAW. This Resolution shall be governed by and construed in accordance with the laws of the State of Florida.

SECTION 11. RULES OF INTERPRETATION. Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words “herein,” “hereby,” “hereunder,” “hereof,”

“hereinbefore,” “hereinafter” and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

SECTION 12. CAPTIONS. The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

SECTION 13. MEMBERS OF THE TOWN COUNCIL EXEMPT FROM PERSONAL LIABILITY. No recourse under or upon any obligation, covenant or agreement of this Resolution, the Loan Agreement or the Note or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the Town Council, as well as any appointee, employee or agent, of said Town, past, present or future, either directly or through the Town it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, any member of the Town Council, appointee, employee or agent of the Town as such, under or by reason of the obligations, covenants or agreements contained in this Resolution, the Loan Agreement or the Note or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such member of the Town Council, appointee, employee or agent as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the Loan Agreement and the issuance of the Note, on the part of the Town.

SECTION 14. REPEALER. All resolutions or parts thereof in conflict herewith, if any, are hereby repealed.

SECTION 15. NO THIRD PARTY BENEFICIARIES. Except such other persons as may be expressly described in this Resolution, nothing in this Resolution, expressed or implied, is intended or shall be construed to confer upon any person, other than the Town and the holder of the Note, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Town and the persons who shall from time to time be the holders of the Note.

SECTION 16. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption and authentication as provided by law.

[Remainder of this page intentionally left blank]

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Veach and seconded by Vice Mayor Hosafros, and upon being put to a vote, the result was as follows:

Raymond P. Murphy, Mayor	excused
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	aye
Jim Atterholt, Council Member	aye
Bill Veach, Council Member	aye

ADOPTED this 16th day of November 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH, FLORIDA



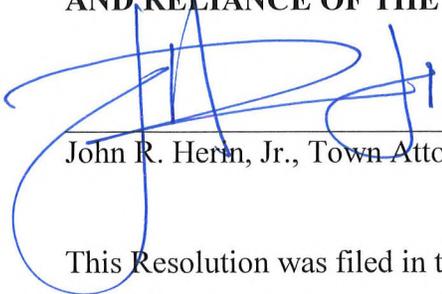
Rexann Hosafros, Vice Mayor

ATTEST:



Amy Baker, Deputy Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA SOLELY:**



John R. Hern, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 16 day of November 2020.

EXHIBIT A
FORM OF LOAN AGREEMENT

LOAN AGREEMENT

dated November 18, 2020

by and between

**TOWN OF FORT MYERS BEACH, FLORIDA
(the "Town")**

and

**FIRST FLORIDA INTEGRITY BANK
(the "Bank")**

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EXHIBIT A - FORM OF NOTE

A-1

LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement"), made and entered as of the 18th day of November, 2020, by and between the **TOWN OF FORT MYERS BEACH, FLORIDA** (the "Town"), a municipal corporation and public body corporate and politic of the State of Florida duly organized and existing under the laws of the State of Florida and its successors and assigns, and **FIRST FLORIDA INTEGRITY BANK**, a Florida banking corporation authorized to do business in Florida, and its successors (the "Bank").

WITNESSETH:

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

WHEREAS, the Town, pursuant to the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the Town Charter, Resolution 20-32 adopted by the Town Council of the Town on August 17, 2020, Chapters 24 and 26 of the Town Code, and other applicable provisions of law (collectively, the "Act") and Resolution No. 20-51 adopted by the Town Council of the Town on November 16, 2020 (the "Note Resolution"), is authorized to borrow money to finance the redevelopment Bay Oaks, Bayside Park and Times Square, all located in the Town and referred to herein collectively as the "Project", and to pay the costs of issuance related thereto, including, but not limited to the Bank's Commitment Fee; and

WHEREAS, the Town receives the Pledged Revenues, as described herein; and

WHEREAS, the Town desires to borrow \$10,000,000 to finance the Project (the "Loan") and to secure the repayment of the Loan with a pledge of and lien on the Pledged Revenues; and

WHEREAS, the Bank is willing to provide the Loan to the Town as provided herein, but only upon the terms and conditions of this Agreement and the Note;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I DEFINITION OF TERMS

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

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

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

“Bank” shall mean First Florida Integrity Bank, a Florida banking corporation and its successors or affiliates.

“Business Day” shall mean any day other than a Saturday, a Sunday, or a day on which banks in the Lee County, Florida are authorized or required to be closed.

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

“Commitment Fee” means a fee charged by the Bank in an amount equal to \$20,000.00 payable on the Date of Delivery.

“Communication Service Tax Revenues” shall mean monies received by the Town from the communications services tax authorized under Chapter 202, Florida Statutes, as amended.

“Date of Delivery” shall mean November 18, 2020.

“Debt Service” means principal of and interest on the Note, and other debt related costs, due in connection with the Note and this Agreement.

“Debt Service Account” means the Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020 Debt Service Account created pursuant to Section 3.09 hereof.

“Determination of Taxability” shall mean, with respect to the Note, (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on the Note is includable for federal income tax purposes in the gross income of the Owner thereof, or (ii) a determination by a court of competent jurisdiction that the interest payable on the Note is includable for federal income tax purposes in the gross income of the Owner thereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Town to the effect that interest on the Note is includable for federal income tax purposes in the gross income of the Owner thereof.

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

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

“Loan” shall refer to the loan in a principal amount of Ten Million Dollars (\$10,000,000), together with the interest accrued thereon pursuant to and in accordance with this Agreement.

“Maturity Date” shall mean November 1, 2040.

“Maximum Rate” means the maximum rate of interest permitted by applicable law to be borne by the Note.

“Note” shall mean the Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020 issued by the Town under the Note Resolution and this Agreement to evidence amounts due under this Agreement, the form of which is attached hereto as Exhibit A.

“Note Rate” shall mean the rate of interest to be borne by the Note, which shall be for the period from the Date of Delivery of the Note through November 1, 2030, at an interest rate equal to 3.15% per annum, and as described in Section 3.02(e) hereof, so long as no Event of Default has occurred and is continuing on November 2, 2030 the interest rate on the Note shall be adjusted to a fixed rate based on the prevailing ten-year treasury rate plus 255 basis points, subject to the fees as described herein.

“Note Resolution” shall mean the Resolution No. 20-51 adopted by the Town Council of the Town on November 16, 2020, which, among other things, authorized and confirmed the borrowing of the Loan and execution and delivery of this Agreement and the issuance of the Note.

“Noteholder,” “Owner” or “Holder” shall mean the Bank as the purchaser and initial holder of the Note and any subsequent registered owner of the Note.

“Pledged Revenues” means the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on the Note, the Communications Service Tax Revenues.

“Project” has the meaning provided in the Recitals hereof.

“Public Service Tax Revenues” shall mean the moneys received by the Town from the utility services tax levied by the Town or the purchase of electricity pursuant to Chapter 24 of the Town Code, as supplemented and amended, as authorized by Section 166.231, Florida Statutes, as amended.

“Taxable Rate” shall mean a rate equal to the interest rate per annum which after the Determination of Taxability will result in the same after-tax yield to the Owner of the Note as before said Determination of Taxability, as determined by the Owner of the Note in good faith and communicated in writing to the Town.

“Town” shall mean the Town of Fort Myers Beach, Florida, a municipal corporation and public body corporate and politic of the State of Florida.

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

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

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

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE PARTIES

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

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

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

(c) No Financial Material Adverse Change. There are no actions, proceedings or investigations pending against the Town or affecting the Town (or any basis therefor known to the Town) which, either in any case or in the aggregate, might result in any material adverse change in the financial condition, business, prospects, affairs or operations of the Town or in any of its properties or assets, or in any material impairment of the right or ability of the Town to carry on its operations as now conducted or proposed to be conducted, or in the levy, receipt and/or collection of the Pledged Revenues or in any material liability on the part of the Town and none which questions the validity of this Agreement, the Note or the Note Resolution or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

(d) Liens and Encumbrances. There are no pledges of, or liens or encumbrances on, the Public Service Tax Revenues.

(e) Levy and Collection of Pledged Revenues. The Town currently levies the utilities services tax on purchases of electricity at the rate of [ten percent (10%)] of the amount of such sale, exclusive of governmental charges with respect to the Public Service Tax Revenues, and receives the communications services tax as authorized by Chapter 202, Florida Statutes, as amended.

(f) No Litigation. There are no suits or proceedings pending or to the knowledge of the Town, threatened, in any court or before any regulatory commission, board or other administrative governmental agency against or affecting the Town, concerning or affecting the Pledged Revenues or which would have a material adverse affect on the ability of Town to fulfill its obligations under this Agreement.

(g) Confirmation. The representations and warranties of the Town contained in the Note Resolution are hereby confirmed to be true and accurate and are incorporated as a part of this Agreement.

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

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

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

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

**ARTICLE III
THE NOTE**

Section 3.01. The Loan; Purpose and Use. On the date of this Agreement, the Bank shall provide the Loan to the Town in the aggregate principal amount of Ten Million Dollars (\$10,000,000).

(a) The proceeds of the Loan shall be used to finance the Project and to pay the costs of issuance related thereto, including the Commitment Fee.

(b) Proceeds of the Loan may be drawn down by the Town as needed during the initial thirty-six (36) months of the Loan. On the Date of Delivery a minimum amount of \$50,001 must be drawn down by the Town. In no event shall the total principal amount drawn exceed \$10,000,000. The Town shall make draw requests in writing to the Bank stating the amount and use of the funds requested, along with invoices, contractor draw request forms or such other information acceptable to the Bank prior to its funding of such draw requests. Each amount drawn shall be funded by the Bank within 24 hours of the written request into a checking account of the Town held by the Bank.

Section 3.02. The Note. The Town shall issue the Note to the Bank to evidence and secure its obligation to repay the Loan. The Note shall be substantially in the form set forth as Exhibit "A" to this Agreement. The general terms of the Note shall be as follows; provided, however, that in the event of a conflict between the terms of this Agreement and the terms of the executed Note, the terms of the Note shall prevail:

(a) Amount of Note. The Note shall have an initial principal amount of Ten Million Dollars (\$10,000,000).

(b) Interest. The Note shall bear interest on the outstanding principal amount thereof at the Note Rate from the Date of Delivery through November 1, 2030. Thereafter, subject to subject subsection (e) below, interest on the Note shall be adjusted through the Maturity Date at a fixed rate of interest based on the prevailing ten year treasury rate plus 255 basis points. In connection with such adjustment, the Town shall pay to the Bank a loan fee equal to 50 basis points on the outstanding principal amount of the Loan, plus reasonable costs and expenses of the Bank, including reasonable legal fees in documenting the adjustment. Upon the occurrence of one or more of the events specified in Section 3.03 of this Agreement, the Note Rate shall be adjusted as therein provided. Interest on the Note shall be computed on the basis of a 365/360 day year, that is by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance multiplied by the actual number of days the principal balance is outstanding. Interest shall accrue only on the outstanding principal amount of the Loan drawn down.

(c) Payments. Interest on the Note shall be paid on the first day of each month, with interest payments commencing December 1, 2020 until the Note is paid in full and principal payments paid on the first day of each month commencing on December 1, 2023, as set forth on

Schedule I attached to the Note, subject to prepayment by the Town prior to the Note's maturity as provided in subsection 3.02(d) below and mandatory prepayment subject to subsection 3.02(e) below.

(d) Prepayment. The Town may prepay the Note in whole or in part on any date at a redemption price equal to the principal amount to be prepaid, plus accrued interest thereon to the redemption date, without premium or prepayment penalty.

(e) Mandatory Prepayment. The Note shall be subject to mandatory prepayment by the Town on November 1, 2030 (the "Redemption Date") if there has occurred or is continuing any Event of Default under this Agreement or the Note. The Bank will notify the Town of its intent to call the Note due and payable along with the total amount of principal and interest to be paid within 30 days prior to November 1, 2030.

Section 3.03. Adjustments to Note Rate.

(a) Adjustment of Note Rate in the Event of a Determination of Taxability. In the event a Determination of Taxability shall have occurred, the Note Rate shall be increased to the Taxable Rate, effective retroactively to the date on which the interest payable on the Note is includable for federal income tax purposes in the gross income of the Owner thereof. In addition, the Owner of the Note or any former Owners of the Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America by the Owner or former Owners of the Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Owner.

(b) Adjustment of Note Rate for Partial Taxability. In the alternative, in the event that interest on the Note during any period becomes partially taxable as a result of a Determination of Taxability applicable to less than all of the Note, then the interest rate on the Note shall be increased during such period by an amount equal to: $(A-B) \times C$ where:

(A) "A" equals the Taxable Rate (expressed as a percentage);

(B) "B" equals the interest rate on the Note (expressed as a percentage); and

(C) "C" equals the portion of the Note the interest on which has become taxable as the result of such tax change (expressed as a decimal).

In addition, the Owner of the Note or any former Owners of the Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Owner or former Owners of the Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the

Determination of Taxability and demand by the Owner.

(c) Anything provided herein or in the Note to the contrary notwithstanding, in no event shall the Note bear interest in excess of the Maximum Rate. In the event the Note Rate exceeds the Maximum Rate, the Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the Note Rate to a rate less than the Maximum Rate until such time as interest shall accrue on the Note in an amount (the "Excess Interest") that would have accrued thereon had the Note Rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the rate of interest otherwise payable on the Note, the Town shall pay to the Owner of the Note a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

(d) If required, the Town agrees to take whatever action is necessary to comply with the provisions of Section 215.84, Florida Statutes, relating to the Maximum Rate of interest including, but not limited to, filing a request with the State Board of Administration for the authorization of an adjusted interest rate derived by the terms of this Section 3.03, if such rate is in excess of the Maximum Rate.

Section 3.04. Compliance with Section 215.84. The Town represents, warrants, and covenants that the Note Rate, as currently calculated in accordance with Section 215.84, Florida Statutes, is in compliance with Section 215.84, Florida Statutes.

Section 3.05. Conditions Precedent to Funding. Prior to or simultaneously with the delivery of the Note by the Town there shall be filed with the Bank the following, each in form and substance reasonably acceptable to the Bank:

(a) an opinion of counsel to the Town to the effect that (i) the Town is a municipal corporation and a public body corporate and politic of the State of Florida, duly created and validly existing under the laws of the State of Florida and has full legal right, power and authority to adopt and perform its obligations under the Note Resolution, and to authorize, execute and deliver and to perform its obligations under this Agreement and the Note; (ii) the Town has duly adopted the Note Resolution and duly authorized, executed and delivered this Agreement and such instruments constitute legal, binding and valid obligations of the Town, enforceable in accordance with their respective terms; provided, however, the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity and the exercise of judicial discretion; (iii) except for post-closing disclosures to be filed with the State Division of Bond Finance and Form 8038-G to be filed with the Internal Revenue Service, all authorizations, consents, approvals and reviews of governmental bodies or regulatory authorities required for the Town's enactment, adoption, execution, approval and performance of this Agreement, the Note, and the Note Resolution have been obtained, provided that no opinion shall be required with respect to any authorizations, consents, approvals or reviews required by the securities laws of the United States of America or of any state, or of any other jurisdiction; (iv) the meetings of the Town Council during which matters

relating to the Note, the Note Resolution and this Agreement were considered were held in accordance with all applicable rules and all of the laws of the State that govern the meetings of the Town Council; (v) the adoption of the Note Resolution and the authorization, execution and delivery of this Agreement and the Note, and compliance with the provisions hereof and thereof, will not conflict with, or constitute a breach of or default under, any law, administrative regulation, consent decree, resolution or any agreement or other instrument to which the Town is subject nor will such adoption, execution, delivery, authorization 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 Town, or under the terms of any law, administrative regulation, resolution or instrument, except as expressly provided hereby; (vi) this Agreement and the Note have been duly executed and delivered and the Town is in compliance with all conditions precedent contained in the Note Resolution, and under applicable law and this Agreement to the issuance of the Note; and (vii) the Town is duly authorized to pledge the Pledged Revenues for payment of amounts due under the Note; and (viii) as of the Date of Delivery that 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, to the best of his knowledge, threatened against the Town, affecting or seeking to prohibit, restrain or enjoin the Town from adopting the Note Resolution, entering into this Agreement or the issuance or delivery of the Note or contesting or affecting as to the Town the validity or enforceability of the Act in any respect relating to the authorization of this Agreement or authorization for the issuance of the Note and the Note Resolution, or contesting the tax-exempt status of interest on the Note, or contesting the powers of the Town to impose, levy, collect and pledge the Pledged Revenues or any authority for the issuance of the Note or the adoption of the Note Resolution. Notwithstanding the foregoing, no opinion shall be required as to the applicability of any approvals, consents or orders as may be required under the blue sky or securities laws or legal investment laws of any state in connection with the offering and sale of the Note or in connection with the registration of the Note under the Federal securities laws.

(b) an opinion of Bryant Miller Olive P.A., counsel to the Bank, (who may rely on the opinion of Counsel to the Town), stating that such counsel is of the opinion that assuming compliance by the Town with certain covenants in this Agreement relating to requirements contained in the Code, interest on the Note is excluded from gross income for purposes of federal income taxation, and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations.

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

(d) a certificate of the Town indicating that since September 30, 2019, there has been no material adverse change in the financial condition, operations or prospects of the Town or laws, rules or regulations (or their interpretation or administration) that, in any case, may adversely affect the Town's ability to comply with its obligations hereunder and under the Note.

(e) such other documents as the Bank reasonably may request (including, without limitation, appropriate Florida Division of Bond Finance forms).

When the documents and items mentioned in clauses (a) through (e), inclusive, of this Section shall have been filed with the Bank, and when the Note shall have been executed as required by this Agreement, and all conditions of the Note Resolution have been met, the Town shall deliver the Note to or upon the order of the Bank, but only against the Town's receipt of the proceeds of the Loan.

Section 3.06. Registration of Transfer; Assignment of Rights of Bank. The Town shall keep at the office of the Town Clerk in the Town's records the registration of the Note and the registration of transfers of the Note as provided in this Agreement. Subject to the restriction set forth in the fourth paragraph of this Section, the transfer of the Note may be registered only upon the books kept for the registration of the Note and registration of transfer thereof upon surrender thereof to the Town together with an assignment duly executed by the Bank or its attorney or legal representative in the form of the assignment set forth on the form of the Note attached as Exhibit "A" to this Agreement; provided, however, that the Note may be transferred only in whole and not in part. In the case of any such registration of transfer, the Town shall execute and deliver in exchange for the applicable Note a new Note registered in the name of the transferee. In all cases in which the Note shall be transferred hereunder, the Town shall execute and deliver at the earliest practicable time a new Note in accordance with the provisions of this Agreement. The Town may make a charge for every such registration of transfer of the Note sufficient to reimburse it for any tax or other governmental charges required to be paid (other than a tax or other governmental charge imposed by the Town) with respect to such registration of transfer, but no other charge shall be made for registering the transfer hereinabove granted. The Note shall be issued in fully registered form and shall be payable in any coin or currency of the United States.

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

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

Nothing in this Agreement or in the Note shall be construed to prohibit the Bank from granting a participation or participations in the Note to any other bank or banks affiliated with

the Bank or any subsidiary thereof. No such bank participant shall, however, be a registered holder of the Note or any portion thereof.

Section 3.07. Ownership of the Note. The person in whose name the Note is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the Note shall be made only to the registered owner thereof or such owner's legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note, and interest thereon, to the extent of the sum or sums so paid.

The registered owner of the Note is hereby granted power to transfer absolute title thereof by assignment thereof to a bona fide purchaser for value (present or antecedent) without notice of prior defenses or equities or claims of ownership enforceable against such owner's assignor or any person in the chain of title and before the maturity of the Note; provided, however, that the Note may be transferred only in whole and not in part. Every prior registered owner of the Note shall be deemed to have waived and renounced all of such owner's equities or rights therein in favor of every such bona fide purchaser, and every such bona fide purchaser shall acquire absolute title thereto and to all rights represented thereby.

Section 3.08. Use of Proceeds of Loan Permitted Under Applicable Law. The Town represents, warrants and covenants that the proceeds of the Loan will be used solely to finance costs of the Project in accordance with applicable law.

Section 3.09. [Reserved].

ARTICLE IV COVENANTS OF THE TOWN

Section 4.01. Performance of Covenants. The Town covenants that it will perform faithfully at all times its covenants, undertakings and agreements contained in this Agreement and the Note or in any proceedings of the Town relating to the Loan.

Section 4.02. Use of Proceeds. The proceeds of the Note shall be applied by the Town to pay to pay the costs of the Project, and the costs of issuance related thereto, including the Bank's Commitment Fee.

Section 4.03. Payment of the Note. The Town promises that it will promptly pay the Debt Service on the Note and all other amounts due under this Agreement at the place, on the dates and in the manner provided in Section 3.02 hereof and in the Note according to the true intent and meaning hereof and thereof. Debt Service on the Note and all other amounts due under this Agreement shall not be or constitute a general obligation or indebtedness of the Town as a "bond" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from the Public Service Tax Revenues, and if ever insufficient from the Town's Communication Service Tax Revenues in accordance with the terms hereof and of the Note. The holder of the Note shall never have the right to compel the exercise of any ad valorem

taxing power to pay Debt Service on the Note, or be entitled to payment of such from any funds of the Town except from the Pledged Revenues, as described herein and in the Note.

Section 4.04. Security for Note. The payment of the principal of and interest on the Note and all other amounts payable under this Agreement or the Note or in connection therewith shall be secured by a first priority pledge of and lien on the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on the Note, a pledge of the Town's Communication Service Tax Revenues. The Town does hereby create and grant to the Owner of the Note a first priority pledge of and lien on the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on the Note, from the Town's Communication Service Tax Revenues, to provide for and secure the payment of principal of and interest on the Note and all other obligations of the Town under the Note and this Agreement.

The Pledged Revenues shall immediately be subject to the pledge and lien created and granted hereby without physical delivery thereof or further act, and such pledge and liens shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Town.

The Town shall not grant, create or suffer to be created a pledge of or lien on the Pledged Revenues prior to or on a parity with the pledge thereof and lien thereon created hereby securing the Note. Any pledge of or lien on the Pledged Revenues shall be, and shall be expressed to be, junior and subordinate in all respects to the pledge of and lien on the Pledged Revenues securing the Note.

Section 4.05. Books and Records. The Town shall keep books and records of the receipt of the Pledged Revenues and the application of the proceeds of the Note in accordance with generally accepted accounting principles, and the Owners of the Note shall have the right at all reasonable times to inspect the records, accounts and data of the Town relating thereto.

Section 4.06. Annual Audit. The Town shall, within a reasonable amount of time after the close of each Fiscal Year, cause the financial statements of the Town to be properly audited by a recognized independent certified public accountant or recognized independent firm of certified public accountants, and shall require such accountants to complete their report on the annual financial statements in accordance with applicable law. Such annual financial statements shall contain, but not be limited to, a balance sheet, a statement of revenues, expenditures and changes in fund balance, and any other statements as required by law or accounting convention. The annual financial statements shall be prepared in conformity with generally accepted accounting principles and shall include a separate line item showing the annual amount of the Pledged Revenues received during the subject fiscal year. A copy of the audited financial statements for each Fiscal Year shall be furnished within one hundred eighty (180) days following the close of each Fiscal Year to the Owner of the Note. The Town will annually provide to the Owner of the Note the Town's annual budget within 30 days after the Town Council's approval thereof.

Section 4.07. No Impairment. As long as the Note remains outstanding, the pledging of the Pledged Revenues in the manner provided herein shall not be subject to repeal, modification or impairment by any subsequent ordinance, resolution or other proceedings of the Town Council.

Section 4.08. Collection of Pledged Revenues. The Town covenants to do all things necessary on its part to continue the receipt of the Pledged Revenues in compliance with the Act, and any successor provision of law governing the same and will not reduce the rate at which the Public Service Tax Revenues are currently levied. The Town will proceed diligently to perform legally and effectively all steps required on its part to receive the Pledged Revenues and shall exercise all legally available remedies to enforce such collections, as applicable, now or hereafter available under State law.

Section 4.09. Federal Income Tax Covenants.

(A) The Town covenants with the Owners from time to time of the Note that it shall not use the proceeds of the Note in any manner which would cause the interest on the Note to be or become includable in the gross income of the Owner thereof for federal income tax purposes.

(B) The Town covenants with the Owners from time to time of the Note that neither the Town nor any Person under its control or direction will make any use of the proceeds of the Note (or amounts deemed to be proceeds under the Code) in any manner which would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code and neither the Town nor any other Person shall do any act or fail to do any act which would cause the interest on the Note to become includable in the gross income of the Owner thereof for federal income tax purposes.

(C) The Town hereby covenants with the Owners from time to time of the Note that it will comply with all provisions of the Code necessary to maintain the exclusion of interest on the Note from the gross income of the Owner thereof for federal income tax purposes, including, in particular, the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code.

Section 4.10. Coverage Covenant. The Town covenants that for each Fiscal Year it shall generate a minimum annual Debt Service Coverage Ratio during such Fiscal Year of not less than 1.10 to 1. "Debt Service Coverage Ratio" shall mean total annual revenues less total annual expenses divided by the annual aggregate total debt service obligations of the Town. Additionally, the Town covenants that for each Fiscal Year it shall generate Public Service Tax Revenues annually during such Fiscal Year at a minimum of not less than 1.10 to 1.

Section 4.11. Primary Bank Deposit Accounts. So long as the Loan is outstanding, the Town covenants that it will maintain its primary bank deposit accounts with the Bank.

ARTICLE V
EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Events of Default. Each of the following is hereby declared an “Event of Default:”

1. payment of the principal of or interest on the Note or other fees or amounts due thereunder or hereunder shall not be made when such amounts are due and payable and such amounts shall remain unpaid for a period of ten (10) days;

2. the Town shall default in the due and punctual performance of any other of the material covenants, conditions, agreements and provisions contained in the Note or in this Agreement and such default shall continue for thirty (30) consecutive days after written notice shall have been given to the Town by the Noteholder specifying such default and requiring the same to be remedied;

3. any representation or warranty of the Town contained in this Agreement or in any certificate or other closing document executed and delivered by the Town in connection with the closing of this Loan shall prove to have been untrue in any material respect when executed and delivered, thereby adversely impairing the security for the Note;

4. any proceedings are instituted with the consent or acquiescence of the Town, for the purpose of effecting a compromise between the Town and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereinafter enacted;

5. the Town admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors, declares a financial emergency or consents to the appointment of a receiver or trustee for itself or shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof;

6. the Town is adjudged insolvent by a court of competent jurisdiction or is adjudged bankrupt on a petition of bankruptcy filed against the Town, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the Town, a receiver or trustee of the Town or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof;

7. if, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Town or of the whole or any substantial part of its property and such custody or control shall not be terminated within ninety (90) consecutive days from the date of assumption of such custody or control; or

8. the Town fails to pay when due any payment of principal of or interest on any other obligation of the Town held by the Bank.

9. failure by the Town to maintain its primary bank deposit accounts with the Bank.

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

Notwithstanding anything herein, or in the Note to the contrary, an Event of Default under Section 5.01.9 above for which the Bank does not accelerate the Loan as a result of the Town's failure to maintain the required deposit accounts as required pursuant to Section 4.11 hereof, the Bank shall increase the Note Rate by 0.50% beginning ten (10) days after written notice of said Event of Default to the Town. Such Event of Default interest rate shall apply to the outstanding principal balance of the Loan. Upon the curing of the Event of Default, the interest rate on the Loan shall revert to the initially agreed upon Note Rate effective on the date on which such Event of Default is cured.

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

Section 5.03. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Noteholder is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

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

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

ARTICLE VI MISCELLANEOUS PROVISIONS

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

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

Section 6.03. Notice of Changes in Fact. Promptly after the Town becomes aware of the same, the Town will notify the Bank of (a) any changes in any material fact or circumstance represented or warranted by the Town in this Agreement or in connection with the issuance of the Note, and (b) any default under this Agreement, specifying in each case the nature thereof and what action the Town has taken, is taking and/or proposes to take with respect thereto.

Section 6.04. Amendments and Supplements. This Agreement may be amended or supplemented from time to time only by a writing duly executed by the Town and the Noteholder.

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

As to the Town:

Town of Fort Myers Beach, Florida
2525 Estero Boulevard
Fort Myers Beach, Florida 33931
Attention: Town Manager

As to the Bank:

First Florida Integrity Bank of Florida, N.A.
3560 Kraft Road
Naples, Florida 34105
Attention: Michael Kozak

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

Section 6.06. Waiver of Jury Trial. To the extent permitted by applicable law, each of the Town and the Bank, knowingly, voluntarily and intentionally waives any right each may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with the Note Resolution, this Agreement, the Note or any agreement contemplated to be executed in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party with respect hereto. This provision is a material inducement to the Bank to enter into this Agreement.

Section 6.07. Benefits Exclusive. Except as herein otherwise provided, nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the Town and the Noteholder, any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof, this Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the Town and the Noteholder.

Section 6.08. Severability. In case any one or more of the provisions of this Agreement, any amendment or supplement hereto or of the Note shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, any amendment or supplement hereto or the Note, but this Agreement, any amendment or supplement hereto and the Note shall be construed and enforced at the time as if such illegal or invalid provisions had not been contained therein, nor shall such illegality or invalidity or any application thereof affect any legal and valid application thereof from time to time. In case any covenant, stipulation, obligation or agreement contained in the Note or in this Agreement shall

for any reason be held to be in violation of law, then such covenant, stipulation, obligation, or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Town to the full extent from time to time permitted by law.

Section 6.09. Business Days. In any case where the date of maturity of interest on or principal of the Note or the date fixed for prepayment of the Note shall not be a Business Day, then payment of such interest or principal shall be made on the next succeeding Business Day with the same force and effect as if paid on the date of maturity or the date fixed for prepayment, but interest on any such principal amount shall accrue through the date payment is received.

Section 6.10. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 6.11. Applicable Law. This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Florida.

Section 6.12. No Personal Liability. Notwithstanding anything to the contrary contained herein or in the Note, or in any other instrument or document executed by or on behalf of the Town in connection herewith, no stipulation, covenant, agreement or obligation of any present or future member of the Town Council, officer, employee or agent of the Town, officer, employee or agent of a successor to the Town, in any such person's individual capacity, and no such person, in his or her individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of or interest on the Note or for any claim based thereon or on any such stipulation, covenant, agreement or obligation, against any such person, in his or her individual capacity, either directly or through the Town or any successor to the Town, under any rule or law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise and all such liability of any such person, in his or her individual capacity, is hereby expressly waived and released.

Section 6.13. Incorporation by Reference. All of the terms and obligations of the Note Resolution and the Exhibit hereto are hereby incorporated herein by reference as if all of the foregoing were fully set forth in this Agreement. All recitals appearing at the beginning of this Agreement are hereby incorporated herein by reference.

[Remainder of page intentionally left blank – Signatures follow]

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

TOWN OF FORT MYERS BEACH,
FLORIDA

(SEAL)

By: _____
Rexann Hosafros, Vice Mayor

ATTEST:

By: _____
Amy Baker, Deputy Town Clerk

APPROVED AS TO FORM AND
LEGAL

:

John R. Herin, Jr., Town Attorney

FIRST FLORIDA INTEGRITY BANK

By: _____
Name: Michael J. Kozak
Title: Senior Vice President

EXHIBIT A

FORM OF NOTE

TOWN OF FORT MYERS BEACH, FLORIDA
CAPITAL IMPROVEMENT REVENUE NOTE,
SERIES 2020

Principal Sum	Interest Rate	Maturity Date	Date of Issuance
\$10,000,000	The "Note Rate" as defined herein.	November 1, 2040	November 18, 2020

The **TOWN OF FORT MYERS BEACH, FLORIDA** (the "Town"), for value received, hereby promises to pay to the order of **FIRST FLORIDA INTEGRITY BANK**, a Florida banking corporation, or its registered assigns (the "Holder"), at 3560 Kraft Road, Naples, Florida 34105, or at such other place as the Holder may from time to time designate in writing, solely from the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on this Note, from the Communication Service Tax Revenues, each as defined in and in the manner and to the extent described in that certain Loan Agreement by and between the Holder and the Town, dated November 18, 2020 (the "Agreement"), the Principal Sum stated above loaned to the Town by the Holder pursuant to the Agreement, together with interest thereon at the Note Rate as hereinafter provided until the Maturity Date or the date the principal amount of this Note is paid in the manner hereinafter set forth in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts, which payments shall be made to the Holder hereof by bank wire or bank transfer as such Holder may specify in writing to the Town or otherwise as the Town and the Holder may agree.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

This Note shall bear interest per annum at the Note Rate, as defined below, calculated on the basis of a 365/360 day year, that is by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance multiplied by the actual number of days the principal balance is outstanding. The "Note Rate" shall mean the rate of interest to be borne by this Note, which shall be for the period from the Date of Issuance of this Note through November 1, 2030, at an interest rate equal to 3.15% per annum, and as described in Section 3.02(e) of the Agreement, so long as no Event of Default has occurred and is continuing, on November 2, 2030 the interest rate on the Note shall be adjusted to a fixed rate based on the prevailing ten-year treasury rate plus 255 basis points, subject to the fees as described therein.

Interest Rate on this Note is subject to adjustment as provided herein and in the Agreement. The Holder shall provide to the Town such documentation to evidence any adjustment to the Note Rate and the calculations made in connection therewith. All calculations and determinations by the Holder of the amounts payable pursuant to the following Interest Rate adjustment provisions or of any element thereof, if made in accordance with its then standard procedures for so calculating or determining such amounts, shall be conclusive absent manifest arithmetic error.

In the event a Determination of Taxability shall have occurred, the Interest Rate shall be increased to the Taxable Rate, effective retroactively to the date on which the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof. In addition, the Holder of this Note or any former Holders of this Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America by the Holder or former Holders of this Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Holder. "Determination of Taxability" shall mean, with respect to this Note, (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof, or (ii) a determination by a court of competent jurisdiction that the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Town to the effect that interest on this Note is includable for federal income tax purposes in the gross income of the Holder hereof.

"Taxable Rate" shall mean a rate equal to the interest rate which after the Determination of Taxability will result in the same after-tax yield to the Holder of this Note as before said Determination of Taxability.

In the alternative, in the event that interest on this Note during any period becomes partially taxable as a result of a Determination of Taxability applicable to less than all of this Note, then the Interest Rate on this Note shall be increased during such period by an amount equal to: $(A-B) \times C$ where:

- (A) "A" equals the Taxable Rate (expressed as a percentage);
- (B) "B" equals the Interest Rate on this Note (expressed as a percentage); and
- (C) "C" equals the portion of this Note the interest on which has become taxable as the result of such tax change (expressed as a decimal).

In addition, the Holder of this Note or any former Holders of this Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Holder or former Holders of this

Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Holder.

Proceeds from the sale of the Note may be drawn down by the Town as needed during the initial thirty-six (36) months of the Loan as provided in the Agreement. Interest on this Note shall be paid monthly on the first day of each month, commencing December 1, 2020 until this Note is paid in full. Principal on this Note shall be paid in accordance with the amortization schedule as set forth on Schedule I attached hereto and made a part hereof, subject to prepayment by the Town prior to the Note's maturity as provided below and in subsections 3.02(d) and (e) of the Agreement.

The Town may prepay this Note in whole or in part on any date at a redemption price equal to the principal amount to be prepaid, plus accrued interest thereon to the redemption date, without premium or prepayment penalty.

This Note shall be subject to mandatory prepayment by the Town on November 1, 2030 (the "Redemption Date") if there has occurred or is continuing any Event of Default under the Agreement or this Note. The Holder will notify the Town of its intent to call this Note due and payable along with the total amount of principal and interest to be paid within 30 days prior to November 1, 2030.

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

This Note is authorized to be issued in the outstanding aggregate principal amount equal to the Principal Sum under the authority of and in full compliance with the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the Town Charter of the Town, Chapters 24 and 26 of the Town Code, Resolution 20-32 adopted by the Town Council on August 17, 2020, and other applicable provisions of law and Resolution No. 20-51 adopted by the Town Council of the Town on November 16, 2020 (the "Note Resolution"), and is subject to all terms and conditions of said Note Resolution and the Agreement.

Notwithstanding any provision in this Note to the contrary, in no event shall the Note bear interest in excess of the Maximum Rate, as defined in the Agreement. In the event the Interest Rate exceeds the Maximum Rate, the Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the Interest Rate to a rate less than the Maximum Rate until such time as interest shall accrue on this Note in an amount (the "Excess Interest") that would have accrued thereon had the Interest Rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the Interest Rate otherwise payable on this Note, the Town shall pay to the Holder of the Note a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

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

Payment of the principal of and interest on this Note and all other amounts payable hereunder and under the Agreement are secured by a first priority pledge of and lien upon the Public Service Tax Revenues, and if ever insufficient a pledge of the Town's Communication Service Tax Revenues, in accordance with the terms of this Agreement.

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

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

This Note is transferrable in accordance with the terms of the Agreement only on the registration books of the Town. The Town may treat the registered owner hereof as the absolute owner hereof for all purposes, whether or not this Note shall be overdue, and shall not be affected by any Notice to the contrary.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and be performed precedent to and in the issuance of this Note, exist, have happened and have been performed, in regular and due form and time as required by the laws of and Constitution of the State of Florida and the Charter and Ordinances of the Town, applicable thereto, and that the issuance of this Note does not violate any constitution or statutory or other legal limitations or provisions.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Town has caused this Note to be signed by the Mayor, and the seal of the Town to be affixed hereto or imprinted or reproduced hereon, and attested by the Town Clerk of the Town and this Note to be dated the Date of Issuance set forth above.

TOWN OF FORT MYERS BEACH,

FLORIDA

(SEAL)

By: _____
Rexann Hosafros, Vice Mayor

ATTEST:

By: _____
Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

By: _____
John R. Herin, Jr, Town Attorney

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto _____ (please print or typewrite name, address and tax identification number of assignee) _____ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ Attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Name of Noteholder: _____

By: _____

SCHEDULE I

Principal Amortization Schedule

Interest only shall be due and payable on the outstanding balance drawn down on the Loan on the first day of each month, commencing December 1, 2020 through December 1, 2023. Thereafter, principal and interest on this Note shall be payable in equal monthly installments of \$48,445.70 each payable on the first day of each month through November 1, 2030. The interest rate and amortization schedule shall thereafter be adjusted, or the Loan paid in full as provided in the Agreement and this Note.

DISCLOSURE LETTER

The undersigned, as purchaser, proposes to negotiate with the Town of Fort Myers Beach, Florida (the "Issuer") for the private purchase of the Issuer's Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020 (the "Note") securing amounts due under a Loan Agreement by and between First Florida Integrity Bank (the "Purchaser") and the Issuer (the "Loan Agreement") in the principal amount of \$10,000,000. Prior to the award of the Note, the following information is hereby furnished to the Issuer:

1. Set forth is an itemized list of the nature and estimated amounts of expenses to be incurred for services rendered to us (the "Bank") in connection with the issuance of the Note (such fees and expenses to be paid by the Issuer):

Bryant Miller Olive PA
Bank's Counsel -- \$15,000.00
Bank's Commitment Fee -- \$20,000.00

2. (a) No fee, bonus or other compensation is estimated to be paid by the Bank in connection with the issuance of the Note to any person not regularly employed or retained by the Bank (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes).

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

3. The amount of the underwriting spread expected to be realized by the Bank is \$0.

4. The management fee to be charged by the Bank is \$0.

5. Truth-in-Bonding Statement:

The Note is being issued primarily to finance the redevelopment of Bay Oaks, Bayside Park and Times Square all located in the Town of Fort Myers Beach.

Unless earlier redeemed, and assuming a full draw at Closing of \$10,000,000 at an interest rate of 3.15% per annum for first 10 years that the Note is outstanding, and an interest rate of 3.36% for the remaining term of the Loan (calculated as of the date hereof based on the prevailing ten-year treasury rate plus 255 basis points,) and assuming interest rates do not change based on the aforementioned calculation, total interest paid over the life of the Note is estimated to equal \$5,079,600.18.

The Note will be payable solely from and secured by a pledge of and lien upon the Pledged Revenues in the manner provided in the Loan Agreement. Based upon the

aforementioned calculation, as of the date hereof, and assuming a full draw of \$10,000,000 issuance of the Note is estimated to result in a maximum of approximately \$591,509.28 of Pledged Revenues of the Issuer not being available to finance the services of the Issuer in any one fiscal year during the life of the Note.

[Remainder of page intentionally left blank]

6. The name and address of the Bank is as follows:

First Florida Integrity Bank
3560 Kraft Road
Naples, Florida 34105
Attention: Michael J. Kozak

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Bank this 18th day of November, 2020.

FIRST FLORIDA INTEGRITY BANK

By: 
Name: Michael J. Kozak
Title: Senior Vice President

PURCHASER'S CERTIFICATE

This is to certify that First Florida Integrity Bank (the "Purchaser") has not required the Town of Fort Myers Beach, Florida (the "Issuer") to deliver any offering document and has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the Issuer in connection with the issuance by the Issuer of its \$10,000,000 Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020 (the "Note") and no inference should be drawn that the Purchaser, in the acceptance of said Note, is relying on John R. Herin, Jr., Esq., Town Attorney as to any such matters other than the legal opinion rendered by the Town Attorney. Any capitalized undefined terms used herein and not otherwise defined shall have the meanings set forth in the Loan Agreement dated as of November 18, 2020 by and between the Issuer and the Purchaser (the "Loan Agreement").

We acknowledge and understand that Resolution No. 20-51 adopted by the Town Council of the Town on November 16, 2020 (the "Resolution") is not being qualified under the Trust Indenture Act of 1939, as amended, and is not being registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, Section 517.051(1), Florida Statutes, and/or Section 517.061(7), Florida Statutes, and that neither the Town, Note Counsel, nor the Town Attorney shall have any obligation to effect any such registration or qualification.

We acknowledge that no CUSIP numbers or credit ratings have been obtained with respect to the Note. We are not acting as a broker or other intermediary, and are purchasing the Note for our own account and not with a present view to a resale or other distribution to the public. However, we may transfer the Note in accordance with the provisions of the Loan Agreement.

We are a bank as contemplated by Section 517.061(7), Florida Statutes. We are not purchasing the Note for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes.

We are an accredited investor.

[Signature page follows]

DATED this 18th day of November, 2020.

FIRST FLORIDA INTEGRITY BANK

By:  _____

Name: Michael J. Kozak

Title: Senior Vice President

[Signature page to Purchaser's Certificate]

Part I Reporting Authority		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name Town of Fort Myers Beach, Florida		2 Issuer's employer identification number (EIN) 65-0632342	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions) Rhonda Bond-Collins, Bond Counsel		3b Telephone number of other person shown on 3a (407) 426-7001	
4 Number and street (or P.O. box if mail is not delivered to street address) 255 South Orange Avenue		Room/suite Ste. 1350	5 Report number (For IRS Use Only) 3
6 City, town, or post office, state, and ZIP code Orlando, Florida 32801		7 Date of issue 11/18/2020	
8 Name of issue Capital Improvement Revenue Note, Series 2020		9 CUSIP number N/A	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) Roger Hernstadt, City Manager		10b Telephone number of officer or other employee shown on 10a 239-765-0202	

Part II Type of Issue (enter the issue price). See the instructions and attach schedule.

11	Education	11		
12	Health and hospital	12		
13	Transportation	13		
14	Public safety	14		
15	Environment (including sewage bonds)	15		
16	Housing	16		
17	Utilities	17		
18	Other. Describe Miscellaneous Capital Improvement Projects	18	10,000,000	00
19a	If bonds are TANs or RANs, check only box 19a			<input type="checkbox"/>
19b	If bonds are BANs, check only box 19b			<input type="checkbox"/>
20	If bonds are in the form of a lease or installment sale, check box			<input type="checkbox"/>

Part III Description of Bonds. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	11/01/2040	\$ 10,000,000.00	\$ 10,000,000.00	** years	VR %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22	Proceeds used for accrued interest	22		0	00
23	Issue price of entire issue (enter amount from line 21, column (b))	23		10,000,000	00
24	Proceeds used for bond issuance costs (including underwriters' discount)	24		00	
25	Proceeds used for credit enhancement	25		0	00
26	Proceeds allocated to reasonably required reserve or replacement fund	26		0	00
27	Proceeds used to refund prior tax-exempt bonds. Complete Part V	27		0	00
28	Proceeds used to refund prior taxable bonds. Complete Part V	28		0	00
29	Total (add lines 24 through 28)	29			00
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30			00

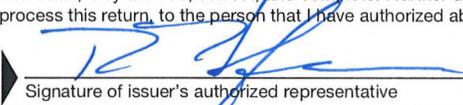
Part V Description of Refunded Bonds. Complete this part only for refunding bonds.

31	Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded	years
32	Enter the remaining weighted average maturity of the taxable bonds to be refunded	years
33	Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY)	
34	Enter the date(s) the refunded bonds were issued (MM/DD/YYYY)	

** The Note is issued as a draw-down loan within the meaning of Section 1.150-1(c)(4) of the Regulations. Therefore, the weighted average maturity cannot be calculated at this time.

Part VI Miscellaneous

35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35		
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC). See instructions	36a		
b Enter the final maturity date of the GIC ▶ (MM/DD/YYYY) _____			
c Enter the name of the GIC provider ▶ _____			
37 Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units	37		
38a If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ <input type="checkbox"/> and enter the following information:			
b Enter the date of the master pool bond ▶ (MM/DD/YYYY) _____			
c Enter the EIN of the issuer of the master pool bond ▶ _____			
d Enter the name of the issuer of the master pool bond ▶ _____			
39 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ▶ <input checked="" type="checkbox"/>			
40 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶ <input type="checkbox"/>			
41a If the issuer has identified a hedge, check here ▶ <input type="checkbox"/> and enter the following information:			
b Name of hedge provider ▶ _____			
c Type of hedge ▶ _____			
d Term of hedge ▶ _____			
42 If the issuer has superintegrated the hedge, check box ▶ <input type="checkbox"/>			
43 If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box ▶ <input type="checkbox"/>			
44 If the issuer has established written procedures to monitor the requirements of section 148, check box ▶ <input type="checkbox"/>			
45a If some portion of the proceeds was used to reimburse expenditures, check here ▶ <input type="checkbox"/> and enter the amount of reimbursement ▶ _____			
b Enter the date the official intent was adopted ▶ (MM/DD/YYYY) _____			

Signature and Consent	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.			
	 Signature of issuer's authorized representative	11/18/2020 Date	Rexann Hosafros, Vice Mayor Type or print name and title	
Paid Preparer Use Only	Print/Type preparer's name Kenneth R. Artin	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed
	Firm's name ▶ Bryant Miller Olive P.A.		Firm's EIN ▶ 59-1315801	PTIN P01297696
	Firm's address ▶ 255 South Orange Avenue, Suite 1350, Orlando, Florida 32801		Phone no. ▶ (407) 426-7001	

CERTIFICATE REGARDING INTEREST RATE

In accordance with the provisions of Section 215.84(3), Florida Statutes, the undersigned official of Town of Fort Myers Beach, Florida (the "Town"), **DOES HEREBY CERTIFY** that the rate of interest on the Note described below did not, on November 18, 2020, the date of initial sale, exceed an average net interest cost rate, computed by adding 300 basis points to The Bond Buyer "20 Bond Index" published immediately preceding the first day of the calendar month in which the Note is sold.

\$10,000,000 Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020 dated November 18, 2020, bearing interest at 3.15% per annum through November 1, 2030 and, subject to the provisions of the Loan Agreement, adjusted on November 2, 2030 to a fixed rate based on the prevailing ten-year treasury rate plus 255 basis points, and maturing on November 1, 2040.

EXECUTED this 18th day of November, 2020.

TOWN OF FORT MYERS BEACH, FLORIDA

By: 

Name: Roger T. Hernstadt

Title: Town Manager

Notice Of Sale

Printed On: 11/13/2020 4:56:15PM

Bond issue name: Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020

Sale date: 11/18/2020

Closing date: 11/18/2020

Submitted by: kfrancisco@bmlaw.com

Submission date: 10/26/2020

Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020

Submit Date: 11/18/2020

Printed On: 11/18/2020 4:27:34PM

Issuer

Name of Governmental Unit:

Town of Fort Myers Beach, Florida

Mailing Address of Governmental Unit or its Manager:

2525 Estero Boulevard

Address 2:

[blank]

City:

Fort Myers Beach

State:

FL

Zip Code:

33931

Counties in which governmental unit has jurisdiction:

Lee

Type of Issuer:

Other

Other Issuer Type:

Town

Is the Issuer a Community Development District?

No

Bond Information

Bond Issue Detail(s):

Name of Bond Issue	Amount Issued	Interest Calculation	Yield
Capital Improvement Revenue Note, Series 2020	\$10,000,000.00	Variable	NA

Amount Authorized:

\$10,000,000.00

Dated Date:

11/18/2020

Sale Date:

11/18/2020

Delivery Date:

11/18/2020

Legal Authority For Issuance:

Ch. 166, F.S.

Type Of Issue:

Bank Loan/Line of Credit

Is this a Private Activity Bond?

No

Specific Revenue(s) Pledged:

Primary: Public Service Tax

Secondary: Communications Services Tax

Purpose(s) of the Issue:

Primary: Redevelopment

Secondary: None

Is this a Refunding Issue?

No

Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020

Submit Date: 11/18/2020

Printed On: 11/18/2020 4:27:34PM

Bond Refunding Issue Detail(s):

Name of Refunding Issue	Dated Date	Original Par Value	Par Value Refunded
[blank]			

Type of sale:

Negotiated Private Placement

Insurance/Enhancements:

No Credit Enhancement

Rating(s):

Moody's: NR

S & P: NR

Fitch: NR

Other: [blank]

Debt Service schedule provided by:

Email

Optional Redemption Provisions provided by:

Email

Participants

Provide the name and address of the Senior Managing Underwriter or Sole Purchaser.

Underwriter:

First Florida Intergrity Bank

Mailing Address of Underwriter:

3560 Kraft Road

Address 2:

[blank]

City:

Naples

State:

FL

Zip Code:

34105

Co-Underwriter:

None

Provide the names and addresses of any attorneys who advised the unit of local government with respect to the bond issue.

Bond Counsel:

None

Co-Bond Counsel:

None

Provide the names and addresses of any financial consultant who advised the unit of local government with respect to the bond issue.

Financial Advisor/Consultant:

None

Co-Financial Advisor/Consultant:

None

Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020

Submit Date: 11/18/2020

Printed On: 11/18/2020 4:27:34PM

Other Professionals:

Bryant Miller Olive P.A. - Bank Counsel

Mailing Address of Other Professionals:

255 S. Orange Avenue, Suite 1350

Address 2:

[blank]

City:

Orlando

State:

FL

Zip Code:

32801

Paying Agent:

Town

Registrar:

Town

Fees

Has any fee, bonus, or gratuity been paid by any underwriter or financial consultant, in connection with the bond issue, to any person not regularly employed or engaged by such underwriter or consultant?

Fees Paid:

Company Name	Fee Paid	Service provided or function served
--------------	----------	-------------------------------------

[blank]

Have any other fees been paid by the unit of local government with respect to the bond issue, including any fee paid to attorneys of financial consultants?

Total Bond Counsel Fees Paid:

\$0.00

Total Financial Advisor Fees Paid:

\$0.00

Other Fees Paid:

Company Name	Fee Paid	Service Provided or Function Served
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Bryant Miller Olive P.A.	\$15,000.00	Bank Counsel
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First Florida Integrity Bank	\$20,000.00	Bank's Commitment Fee
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Filing of this form has been authorized by the official of the issuer identified below:

Name:

Rexann Hosafros - Vice Mayor

Title:

Governmental Officer primarily responsible for coordinating issuance of the bonds

Fees charged by Underwriter:

Management Fee (per thousand par value):

\$0.00

OR

Private Placement Fee:

\$0.00

Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020

Submit Date: 11/18/2020

Printed On: 11/18/2020 4:27:34PM

Underwriter's expected gross spread (per thousand par value):
\$0.00

Respondent

For additional information, the Division of Bond Finance should contact:

Name:

Rhonda Bond-Collins

Title:

Bank Counsel

Phone:

407-426-7001

Company:

Bryant Miller Olive P.A.

Mailing Address of Respondent:

255 S. Orange Avenue, Suite 1350

Address 2:

[blank]

City:

Orlando

State:

FL

Zip Code:

32801

Information relating to party completing this form (if different from above):

Name:

[blank]

Title:

[blank]

Phone:

[blank]

Company:

[blank]

Mailing Address:

[blank]

Address 2:

[blank]

City:

[blank]

State:

[blank]

Zip Code:

[blank]

Continuing Disclosure

Is the issuer required to provide continuing disclosure information in accordance with SEC Rule 15C2-12?

No

Kathy Francisco

From: Sharon Williams <Sharon.Williams@sbafla.com>
Sent: Thursday, November 19, 2020 8:19 AM
To: Kathy Francisco
Subject: RE: Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020

Thank you.
Sharon

From: Kathy Francisco <kfrancisco@bmlaw.com>
Sent: Wednesday, November 18, 2020 4:33 PM
To: Sharon Williams <Sharon.Williams@sbafla.com>
Subject: Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020

<<< **This message originated from outside of SBA's network (be cautious with links and attachments)**
>>>

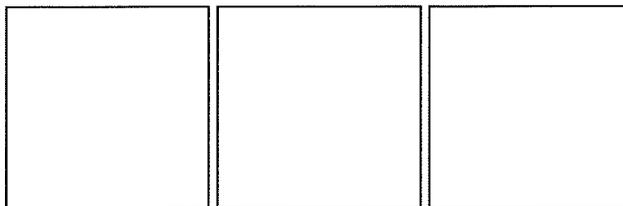
The Division of Bond Finance form was submitted today. The Principal Amortization Schedule and Prepayment Provisions are below.

Principal Amortization Schedule Interest only shall be due and payable on the outstanding balance drawn down on the Loan on the first day of each month, commencing December 1, 2020 through December 1, 2023. Thereafter, principal and interest on the Note shall be payable in equal monthly installments of \$48,445.70 each payable on the first day of each month through November 1, 2030. The interest rate and amortization schedule shall thereafter be adjusted, or the Loan paid in full as provided in the Loan Agreement and the Note.

Prepayment Provisions The Town may prepay the Note in whole or in part on any date at a redemption price equal to the principal amount to be prepaid, plus accrued interest thereon to the redemption date, without premium or prepayment penalty.



Kathy Francisco, Paralegal | Bryant Miller Olive P.A.
255 S. Orange Avenue, Suite 1350 | Orlando, FL 32801
(407) 426-7001 (O) | (407) 398-7785 (D)
kfrancisco@bmlaw.com | www.bmlaw.com



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