

**1. Requested Motion:**

**Meeting Date:**

Motion to approve Resolution No. 10-06-U relating to the refinancing of a prior utility system loan

August 2, 2010

**Why the action is necessary:**

The prior utility system loan has matured and needs to be refinanced.

**What the action accomplishes:**

Authorizes the execution of all documents necessary to accomplish the refinancing of the prior utility system loan.

**2. Agenda:**

**3. Requirement/Purpose:**

**4. Submitter of Information:**

Consent  
 Administrative

Resolution  
 Ordinance  
 Other

Council  
 Town Staff  
 Town Attorney

**5. Background:**

In 2007, debt was incurred to acquire the water system of the Town of Fort Myers Beach and to finance capital additions and/or improvements to the water system. The loan has matured and needs to be refinanced. SunTrust has provided the Town with a proposal to refinance the existing loan.

**6. Alternative Action:**

Not approve the Resolution.

**7. Management Recommendations:**

Approve the Resolution.

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

**9. Council Action:**

Approved    Denied    Deferred    Other

**RESOLUTION NUMBER 10-06-U**

**A RESOLUTION OF THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC., A FLORIDA NOT FOR PROFIT CORPORATION, ACCEPTING A PROPOSAL FROM SUNTRUST BANK RELATED TO THE REFINANCING OF A PRIOR LOAN; APPROVING THE FORM OF A LOAN AGREEMENT WITH SUNTRUST BANK; AUTHORIZING THE ISSUANCE OF ITS REVENUE REFUNDING NOTE, SERIES 2010 IN ORDER TO REFINANCE ITS REVENUE REFUNDING NOTE, SERIES 2007, PURSUANT TO SUCH LOAN AGREEMENT AS A QUALIFIED TAX-EXEMPT OBLIGATION IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$2,520,000; AUTHORIZING THE REPAYMENT OF SUCH SERIES 2010 NOTE FROM CERTAIN REVENUES; DELEGATING CERTAIN AUTHORITY TO THE PRESIDENT; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Fort Myers Beach Public Works Services, Inc. (the "Corporation") is desirous, at this time, of refinancing its Revenue Refunding Note, Series 2007 (the "Prior Debt") which was originally issued to refinance debt incurred to acquire the water system of the Town of Fort Myers Beach, Florida (the "Town") and to finance capital additions and/or improvements to the water system of the Town; and

**WHEREAS**, SunTrust Bank (the "Bank") has committed to providing the Corporation with a loan, to be facilitated by the execution of the herein defined Loan Agreement and issuance of the herein defined Series 2010 Note in the principal amount of not to exceed \$2,520,000, which Loan Agreement and Series 2010 Note will be secured by certain revenues, as described in the Loan Agreement, or, if these fees are insufficient, legally available non-ad valorem revenues of the Town as described in the Loan Agreement and the herein defined Town Resolution; and

**WHEREAS**, the Series 2010 Note is to be considered a qualified tax-exempt obligation which serves to reduce the interest rate being applied; and

**WHEREAS**, the Board of Directors of the Corporation deems it to be in the best interest of the residents and citizens of the Town to accept the proposal of the Bank regarding this loan, to approve the form of Loan Agreement and Series 2010 Note and to make findings in support of the facilitation of this transaction.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CORPORATION AS FOLLOWS:**

**SECTION 1. INCORPORATION BY REFERENCE.** The foregoing "Whereas" clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

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

A. There is currently a need for the Corporation to refinance the Prior Debt and that the refinancing of the Prior Debt will be in the best interest of the Corporation and the citizens of the Town and serves a valid public purpose.

B. The Bank has submitted its commitment letter to provide the Corporation with a term loan in the amount of not to exceed \$2,520,000 to refinance the Prior Debt, which commitment letter is attached hereto as EXHIBIT A.

C. The Series 2010 Note, to be designated as the "Town of Fort Myers Beach Public Works Services, Inc. Revenue Refunding Note, Series 2010," shall be repaid solely from certain revenues, as described in the Loan Agreement, and, to the extent such revenues are insufficient, a covenant of the Town to budget and appropriate legally available non-ad valorem revenues, in the manner and to the extent set forth herein and in the Loan Agreement and the Town Resolution, and the ad valorem taxing power of the Town will never be necessary or authorized to pay said amounts.

D. It is not reasonably anticipated that more than \$30,000,000 of tax-exempt obligations as defined under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, will be issued by the Corporation during calendar year 2010.

E. Due to the potential volatility of the market for tax-exempt obligations such as the Series 2010 Note and the complexity of the transactions relating to such Series 2010 Note, it is in the best interest of the Corporation to issue the Series 2010 Note by a negotiated sale to the Bank, allowing the Corporation to enter the market at the most advantageous time, rather than at a specified advertised date, thereby permitting the Corporation to obtain the best possible price, terms and interest rate for the Series 2010 Note.

F. The Town has authorized the Corporation to issue the Series 2010 Note.

**SECTION 3. DEFINITIONS.** When used in this Resolution, terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement, unless the context clearly indicates a different meaning.

**"Bank"** shall mean SunTrust Bank, and its successors and assigns.

**"Board"** shall mean the Board of Directors of the Corporation.

**"Corporation"** shall mean the Town of Fort Myers Beach Public Works Services, Inc., a Florida not-for-profit corporation, and its successors and assigns, duly organized and validly existing under the laws of the State of Florida and designated a title holding corporation under Section 501(c)(2) of the Code, organized by the Town for the purpose of acquiring, owning, operating, maintaining and expanding the water system of the Town.

**"Designated Revenues"** shall have the meaning assigned such term in the Loan Agreement.

**"Loan Agreement"** shall mean the Loan Agreement to be executed between the Bank and the Corporation, which shall be substantially in the form attached hereto as EXHIBIT B.

**"President"** shall mean the President of the Corporation, or any duly authorized designees.

**"Prior Debt"** shall mean the Corporation's Revenue Refunding Note, Series 2007, issued in the principal amount of \$3,060,000 on August 6, 2007 and currently outstanding in the principal amount of \$2,520,000.

**"Secretary"** shall mean the Secretary of the Corporation, or her or his duly authorized designee.

**"Series 2010 Note"** shall mean the Town of Fort Myers Beach Public Works Services, Inc. Revenue Refunding Note (SunTrust Bank), Series 2010 as such Series 2010 Note is more particularly described in the Loan Agreement.

**"Town"** shall mean the Town of Fort Myers Beach, Florida.

**"Town Resolution"** shall mean a resolution of the Town, adopted on August 6, 2010, authorizing the issuance of the Series 2010 Note by the Corporation and pledging its non-ad valorem revenues to the payment of the Series 2010 Note to the extent the Designated Revenues are insufficient.

The words "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms shall refer to this Resolution. Words importing the singular number include the plural number, and vice versa.

**SECTION 4. RESOLUTION TO CONSTITUTE CONTRACT.** In consideration of the purchase and acceptance of the Series 2010 Note by the Bank, the provisions of this Resolution shall be a part of the contract of the Corporation with the Bank, and shall be deemed to be and shall constitute a contract between the Corporation

and the Bank. The pledge made in this Resolution and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Corporation shall be for the benefit, protection and security of the Bank.

**SECTION 5. AUTHORIZATION OF REFINANCING.** The refinancing of the Prior Debt is hereby authorized and approved.

**SECTION 6. ACCEPTANCE OF SUNTRUST COMMITMENT:** The Corporation hereby accepts the commitment of the Bank to provide the Corporation with a term loan not to exceed \$2,520,000. The commitment letter of the Bank attached hereto as EXHIBIT A is hereby approved and accepted, and the President is hereby authorized and directed to execute and deliver such commitment letter to the Bank. All actions taken by the President with respect to such commitment prior to the date hereof are hereby authorized and ratified.

**SECTION 7. APPROVAL OF FORM OF LOAN AGREEMENT AND SERIES 2010 NOTE.** The Corporation hereby approves a loan from the Bank in the principal amount of not to exceed \$2,520,000. The terms and provisions of the Loan Agreement, in substantially the form attached hereto as EXHIBIT B, are hereby approved, with such changes, insertions and additions as the President may approve and as approved as to form and legality by the Corporation Attorney. The Corporation hereby authorizes the President to execute and deliver, and the Secretary to attest and affix the Corporation seal to, the Loan Agreement substantially in the form attached hereto as EXHIBIT B, with such changes, insertions and additions as the President may approve, his execution thereof being evidence of such approval, and as approved as to form and legality by the Corporation Attorney. In order to evidence the loan under the Loan Agreement, it is necessary to provide for the execution and delivery of the Series 2010 Note. The President and the Secretary are authorized to execute and deliver the Series 2010 Note substantially in the form attached to the Loan Agreement with such changes, insertion and additions as they may approve, their execution thereof being evidence of such approval, and as approved as to form and legality by the Corporation Attorney.

**SECTION 8. DESIGNATION OF THE SERIES 2010 NOTE AS A QUALIFIED TAX-EXEMPT OBLIGATION.** The Corporation hereby designates the Series 2010 Note as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Internal Revenue Code. This designation is based upon the findings of the Corporation set forth in Section 2(D) hereof, and the President is authorized to certify such finding upon the issuance of the Series 2010 Note.

**SECTION 9. LIMITED OBLIGATION.** The obligation of the Corporation to repay the Series 2010 Note is a limited and special obligation payable from Designated Revenues solely in the manner and to the extent set forth in the Loan Agreement and shall not be deemed a pledge of the faith and credit or taxing power of the

Town and such obligation shall not create a lien on any property whatsoever of or in the Town other than the Designated Revenues. The Designated Revenues shall consist of net water system revenues, as more particularly described in the Loan Agreement, proceeds of the Series 2010 Note pending their application and, to the extent such revenues and proceeds are insufficient, legally available non-ad valorem revenues budgeted and appropriated by the Town to pay debt service on the Series 2010 Note, all to the extent described in the Loan Agreement.

**SECTION 10. GENERAL AUTHORITY.** The President and the Secretary are authorized to execute and deliver such documents, instruments and contracts, whether or not expressly contemplated hereby, and the Corporation Attorney and other employees or agents of the Corporation are hereby authorized and directed to do all acts and things required hereby or thereby as may be necessary for the full, punctual and complete performance of all the terms, covenants, provisions and agreements herein and therein contained, or as otherwise may be necessary or desirable to effectuate the purpose and intent of this Resolution.

**SECTION 11. REPEAL OF INCONSISTENT DOCUMENTS.** All resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

**SECTION 12. EFFECTIVE DATE.** This Resolution shall take effect immediately upon adoption.

**THE FOREGOING RESOLUTION WAS ADOPTED BY THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC. ON AUGUST 2, 2010.**

**THE TOWN OF FORT MYERS BEACH  
PUBLIC WORKS SERVICES, INC.**

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Tom Babcock, Secretary

Approved as to Legal Sufficiency:

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Fowler White Boggs & Banker, P.A.  
Corporate Attorney

**EXHIBIT A**

**SUNTRUST BANK COMMITMENT LETTER**



**Nicholas Ayotte, AVP**  
Institutional & Governmental Banking  
12751 New Brittany Boulevard  
Fort Myers, Florida 33907  
Tel: 239-277-2697  
Email: [nicholas.ayotte@suntrust.com](mailto:nicholas.ayotte@suntrust.com)

**July 9, 2010**

## **LETTER OF PROPOSAL**

**Town of Fort Myers Beach**  
**Attn: Mr. Terry Stewart and Ms. Evelyn Wicks**  
**2523 Estero Boulevard**  
**Fort Myers Beach, FL 33931**

**Re: Town of Fort Myers Beach Public Works Services, Inc. – \$2,520,000 Bank Qualified Bank Loan for the Refinancing of Series 2007 Bank Loan**

Dear Mr. Stewart and Ms. Wicks

On behalf of SunTrust Bank (the “Bank”), I am pleased to present this proposal to the Town of Fort Myers Beach Public Works Services, Inc. (the “Borrower”) for a tax-exempt bank qualified (BQ) bank loan of up to two million, five hundred twenty thousand and 00/100 dollars (\$2,520,000.00) to be used to refinance the Revenue Refunding Note, Series 2007 Bank Loan which was originally used to finance the acquisition of the utility system.

Although the following provisions, terms and conditions are intended to be comprehensive, they are not necessarily inclusive of all the anticipated terms that will be applicable to the credit. All of such terms will be set forth in the final, definitive loan documents, and all such terms must be acceptable to the Bank and its counsel. This financing proposal is contingent upon the accuracy of all facts, statements and financial information submitted to the Bank by the Borrower and is conditioned upon the terms outlined below.

**Borrower:** Town of Fort Myers Beach Public Works Services, Inc.

**Lender:** SunTrust Bank

**Amount:** \$2,520,000.00

**Facility Type:** Tax Exempt, Bank Qualified Bank Loan

**Maturity:** August 6, 2013. The bank loan will have a maturity date of three (3) years from the date of closing with an amortization period of fourteen (14) years.

**Note:** The annual principal payment of \$180,000 remains in effect since the original 2004 Loan was originally amortized over 20 years and subsequently the 2007 loan was amortized over 17 years.

**Repayment Terms:** Annual principal payments due on Oct 1 of each year through maturity. First annual principal payment is due on Oct 1, 2010.

Semi annual interest payments due on Oct 1 and April 1 of each year through maturity. First semi annual interest payment is due on Oct 1, 2010.

Any and all principal outstanding along with any and all accrued interest will be due in full at the maturity date.

**Prepayment:** SunTrust is providing interest rate options both with and without prepayment penalties.

**Purpose:** To refinance the Revenue Refunding Note, Series 2007 Bank Loan which was originally used to finance the acquisition of the utility system.

**Security/Collateral:**

The Bank Loan will be secured by a pledge of Net Revenues from The Borrower. Payment of the Note will also be secured by a pledge of a covenant to budget and appropriate from legally available non-ad valorem revenues of the Town of Fort Myers Beach.

**Proposed Pricing:**

**Option A (No Prepayment Penalty): 3 Year Term with 14 Year Amortization**

**BQ Tax Exempt with No Prepayment Penalty (30/360):**

**2.78%**

**Option B (With Prepayment Penalty): 3 Year Term with 14 Year Amortization**

**BQ Tax Exempt with Prepayment Penalty (30/360):**

**2.51%**

**Note 1:**

This loan will be fully drawn at closing.

**Expiration:**

Proposal expires on August 6, 2010 if not accepted by the Borrower or extended by Lender. Please see below.

**Legal Fees:**

If Bank Counsel is to provide all closing documentation and opinions the fee will not to exceed \$18,000.00 and will be payable in full at closing. If Bank Counsel is used for document review only, the fee shall not exceed \$5,000.00 and will be payable in full at closing. Bank Counsel will be Mr. Mike Watkins from Greenburg Traurig.

**Covenants and Conditions**

- A) All matters relating to this loan, including all instruments and documents required, are subject to the Bank's policies and procedures in effect, applicable governmental regulations and/or statutes, and approval by the Bank and the Bank's Counsel.
- B) Borrower shall submit CPA audited annual financial statements within 180 days of fiscal year end, together with an annual budget within 30 days of adoption, together with any other information the Bank may reasonably request.

- C) The interest rates quoted herein take into consideration a corporate tax rate of 35%. In the event of a change in the maximum corporate tax rate, the Bank shall have the right to adjust the interest rate in order to maintain the same after tax yield.
- D) The Bank shall have the right to adjust the tax-exempt interest rate in order to maintain the same after tax yield if any amendments to existing law are enacted which would adversely affect the Bank's after tax yield.
- E) The Borrower shall comply with and agree to such other covenants, terms, and conditions that may be reasonably required by the Bank and its Counsel and are customary in taxable and/or tax exempt financings of this nature. These covenants would include, but are not to be limited to, covenants regarding compliance with laws and regulation, remedies in the event of default.
- F) The "Bank-Qualified" interest rate quoted herein assumes the obligations is a "qualified tax-exempt obligation" as defined in Section 265(b)(3) of the Internal Revenue Service Code.
- G) Additional Debt Test: Any additional debt issued with this same security shall meet the following test: The net revenues from the Borrower's Total Proprietary Funds during the Computation Period, as evidenced by the written certificate of the Independent Certified Public Accountants, shall have been at least equal to the sum of (i) One Hundred Twenty percent (120%) of the average of the Maximum Annual Debt Service Requirements (MADS) on (A) this 2010 Refinancing Bank Loan proposed to be issued (B) any Additional Parity Bonds theretofore issued and then outstanding and (C) and any outstanding parity bonds. The term "Computation Period" is any period of twelve (12) consecutive months of the twenty-four (24) consecutive months immediately preceding the month of sale of any Additional Parity Bonds.
- H) Rate Covenant: The City agrees to set rates at levels which will always provide Total Proprietary Net Revenues in each year sufficient to pay the aggregate of the amount needed to pay 100% of all Costs of Operation and Maintenance as the same shall become due in such year, plus 120% of the Debt Service.
- I) Debt Service Coverage: The debt service coverage for the Borrower will be no less than 1:20 to 1:00 and will be tested each fiscal year based on the audited CPA statements. The covenant will read: Net Income of System (including connection fees) plus Interest Expense plus Depreciation divided by Interest Expense plus Current Maturities of Long Term Debt.

This Proposal Letter is merely an expression of interest by the Bank in the proposed Facility and should not be construed to be, expressly or by implication, a commitment, an offer, an agreement in principle or an agreement by the Bank to provide the proposed Facility. After the Bank has conducted further due diligence, we may decide to modify the proposed terms and conditions, or we may decide not to provide the proposed Facility or any other financing at all.

The Borrower must notify the Bank, in writing, that SunTrust is the winner of this credit facility RFP no later than July 21, 2010. This proposal is valid through August 6, 2010 unless otherwise extended by SunTrust. This loan must close no later than August 6, 2010 unless otherwise extended by SunTrust.

After you have had a chance to review the following information, please contact Nick Ayotte at (239) 277-2697 with any questions. SunTrust Bank greatly appreciates the opportunity to provide this proposed financing for the above referenced project, and eagerly awaits your response.

Sincerely,

SunTrust Bank  
Nicholas Ayotte  
AVP – Governmental Banking

Accepted by:

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

**EXHIBIT B**

**FORM OF LOAN AGREEMENT**

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**LOAN AGREEMENT**

**BETWEEN**

**TOWN OF FORT MYERS BEACH  
PUBLIC WORKS SERVICES, INC.**

**AND**

**SUNTRUST BANK**

**Dated as of August 6, 2010**

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This **LOAN AGREEMENT** (the "Loan Agreement") is made and entered into as of August 6, 2010, by and between **TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC.**, a Florida not-for-profit corporation, and its successors and assigns (the "Corporation"), and **SUNTRUST BANK**, a Georgia banking corporation organized under the laws of the State of Georgia and authorized to do business in the State of Florida and its successors and assigns (the "Bank");

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

**WHEREAS**, the Corporation is authorized as a component unit of the Town of Fort Myers Beach, Florida (the "Town") and other applicable provisions of law to, among other things, acquire, construct, equip, own, sell, lease, operate and maintain the herein defined Water System in furtherance of preserving the water resources of the Town and minimizing costs of water services to residents of the Town and to borrow money to finance and refinance the acquisition, construction, equipping and maintenance of such Water System; and

**WHEREAS**, the Corporation previously issued its Revenue Refunding Note, Series 2007, dated August 6, 2007, to the Bank (the "Prior Debt") to refinance moneys expended to acquire the herein defined Water System and certain capitalized costs associated therewith and to finance the capital additions and/or improvements to the Water System; and

**WHEREAS**, the Corporation finds it necessary and in its best interest to refinance the Prior Debt; and

**WHEREAS**, due to the present volatility of the market for tax-exempt obligations such as the Series 2010 Note and the complexity of the transactions relating to such Series 2010 Note, it is in the best interest of the Corporation to sell the Series 2010 Note by a negotiated sale to the Bank, allowing the Corporation to enter the market at the most advantageous time and conditions, thereby permitting the Corporation to obtain the best possible price and interest rate for the Series 2010 Note. The Corporation acknowledges receipt of the information required by Section 218.385, Florida Statutes, from the Bank in connection with the negotiated sale of the Series 2010 Note. A copy of the disclosure statement provided by the Bank containing the aforementioned information has been provided under separate cover to the Corporation; and

**WHEREAS**, the Bank is willing to make a term loan to the Corporation, and the Corporation is willing to incur such loan, pursuant to the terms and provisions of this Loan Agreement in an aggregate principal amount of \$2,520,000 to refinance the Prior Debt.

**NOW, THEREFORE, THIS LOAN AGREEMENT WITNESSETH:**

That the parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, **DO HEREBY AGREE** as follows:

**ARTICLE I  
DEFINITION OF TERMS**

**SECTION 1.01. DEFINITIONS.** The terms defined in this Article I shall, for all purposes of this Loan Agreement, have the meanings in this Article I specified, unless the context clearly otherwise requires.

**"Additional Parity Debt"** shall mean any additional debt of the Corporation secured by the Net Water System Revenues.

**"Authorized Officer"** shall mean the President or his or her duly authorized designee.

**"Bank"** shall mean SunTrust Bank, and its successors and assigns.

**"Board"** shall mean the Board of Directors of the Corporation.

**"Bond Counsel"** shall mean Nabors, Giblin & Nickerson, P.A., Tampa, Florida or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America.

**"CERCLA"** shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

**"CERCLIS"** shall mean the Comprehensive Environmental Response Compensation Liability Information System List.

**"Business Day"** shall mean any day other than a Saturday, Sunday or a day on which the Bank is authorized or required to be closed.

**"Code"** shall mean the Internal Revenue Code of 1986, as amended, and applicable rules and regulations.

**"Corporation"** shall mean the Town of Fort Myers Beach Public Works Services, Inc., a Florida not-for-profit corporation, and its successors and assigns, duly organized and validly existing under the laws of the State of Florida and designated a title holding corporation under Section 501(c)(2) of the Code, organized by the Town for the purpose

of acquiring, owning, operating, maintaining and expanding the Water System of the Town.

**"Corporation Resolution"** shall mean Resolution No. 10-\_\_-U adopted by the Corporation on August 6, 2010, which among other things authorized the execution and delivery of this Loan Agreement and the issuance of the Series 2010 Note.

**"Council"** shall mean the Town Council of the Town of Fort Myers Beach, Florida.

**"Debt Service"** shall mean (a) the principal and interest payments on the outstanding Series 2010 Note due in the applicable Fiscal Year and (b) any Additional Parity Debt issued and outstanding hereunder and due during the applicable Fiscal Year payable from or secured by any Net Water System Revenues. With respect to any variable rate debt, the interest rate used to determine the maximum annual debt service shall be the actual interest rate in effect on such debt at the time of calculation plus \_\_ basis points or, in the event no rate is then in effect, \_\_% per annum. With respect to any debt having 25% or more of the aggregate principal amount coming due in any one year, maximum annual debt service shall be determined as if the principal of and interest on such debt were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of \_\_ years.

**"Debt Service Coverage Ratio"** shall mean Net Water System Revenues (including connection fees) plus the amount of depreciation expense included in Operating Expenses divided by Debt Service.

**"Default Rate"** shall mean the rate of interest to be applicable to the Series 2010 Note at all times following the occurrence and during the continued existence of an Event of Default, with such rate to be equal to the Prime Rate, and to change as end when the Prime Rate changes. In no event, however, shall the Default Rate ever exceed the highest rate of interest permitted by applicable law.

**"Designated Revenues"** shall mean, with respect to the Series 2010 Note, (a) the Net Water System Revenues and (b) to the extent that the funds set forth in (a) are insufficient, the Non-Ad Valorem Revenues budgeted and appropriated by the Town pursuant to the Town Resolution to pay debt service on the Series 2010 Note in accordance with Section 2.05 hereof and the Town Resolution.

**"Determination of Taxability"** shall mean the circumstance of interest paid or payable on the Series 2010 Note becoming includable for federal income tax purposes in the gross income of the Bank as a consequence of any act, omission or event whatsoever and regardless of whether the same was within or beyond the control of the Corporation. A Determination of Taxability will be deemed to have occurred upon (a) the receipt by the Corporation or the Bank of an original or a copy of an Internal Revenue Service

Technical Advice Memorandum or Statutory Notice of Deficiency or other official correspondence from the Internal Revenue Service which concludes that any interest payable on the Series 2010 Note is includable in the gross income of the Bank; (b) the issuance of any public or private ruling of the Internal Revenue Service that any interest payable on the Series 2010 Note is includable in the gross income of the Bank; or (c) receipt by the Corporation or the Bank of an opinion of Bond Counsel that any interest on the Series 2010 Note has become includable in the gross income of the Bank for federal income tax purposes. For all purposes of this definition, a Determination of Taxability will be deemed to occur on the date as of which the interest on the Series 2010 Note is deemed includable in the gross income of the Bank. A Determination of Taxability shall not occur in the event such interest is taken into account in determining adjusted current earnings for the purpose of the alternative minimum income tax imposed on corporations.

**"Environmental Laws"** shall mean all applicable federal, state, or local statutes, laws, ordinances, codes, rules, regulations and guidelines (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, the handling, storage, transportation or disposal of hazardous waste, hazardous substance, or petroleum products or byproducts or natural gas, or environmental permitting, including, without limitation (a) the Resource Conservation and Recovery Act, (b) CERCLA, (c) Section 403.703(21), Florida Statutes, (d) the Clean Water Act, (e) the Clean Air Act, (f) the Solid Waste Disposal Act, and (g) the Superfund Amendments and Reauthorization Act of 1986.

**"Final Maturity Date"** shall mean August 6, 2013.

**"Fiscal Year"** shall mean the 12-month period commencing on October 1 of any year and ending on September 30 of the immediately succeeding year.

**"GAAP"** shall mean generally accepted accounting principles as defined by the Financial Accounting Standards Board and applicable to not-for-profit corporations, as from time to time in effect that are consistently applied and, when used with respect to the Corporation, are consistent with the accounting practices of the Corporation.

**"General Fund Revenues"** shall mean all revenues of the Town actually received and deposited or credited to the Town's General Fund as identified in the Town's audited financial statements.

**"Hazardous Material"** shall mean (a) any "hazardous substance," as defined by CERCLA; (b) any "hazardous waste," as defined by the Resource Conservation and Recovery Act, as amended; (c) any petroleum product or by-product or natural gas; or (d) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance within the meaning of any Environmental Law or any other applicable federal, state, or local law, regulation, ordinance or requirement (including consent decrees and administrative orders and any amendments thereof) relating to or imposing liability or

standards of conduct concerning any hazardous, toxic or dangerous waste, substance, or material.

**"Interest Rate"** shall mean a fixed rate of interest equal to 2.78% and shall be subject to adjustment pursuant to Section 3.03 hereof.

**"Loan Agreement"** shall mean this Loan Agreement, dated as of August 6, 2010, by and between the Corporation and the Bank and any and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

**"Loan Obligations"** shall mean all payment and performance duties, obligations and liabilities of any kind or nature of the Corporation to the Bank under this Loan Agreement, the Series 2010 Note, or any other financing documents related to the issuance of the Series 2010 Note, or any thereof, or any and all renewals, extensions, modifications or amendments of any thereof, including but not limited to (a) the indebtedness evidenced by the Series 2010 Note together with all accrued but unpaid interest thereon, (b) all fees payable to the Bank under this Loan Agreement, (c) all reasonable costs, expenses and reasonable attorneys' and paralegals' fees and expenses for which the Corporation may be liable under this Loan Agreement, the Series 2010 Note, or any other financing documents related to the issuance of the Series 2010 Note, and (d) all other payment and performance duties, obligations and liabilities of the Corporation to the Bank under this Loan Agreement, the Series 2010 Note, or any other financing documents related to the issuance of the Series 2010 Note, or any and all renewals, extensions, modifications or amendment of any thereof, however and whenever incurred, acquired or evidenced, whether primary or secondary, direct or indirect, absolute or contingent, sole or joint and several, or due or to become due.

**"Maximum Annual Debt Service"** shall mean the largest aggregate amount of the annual Debt Service coming due in any Fiscal Year.

**"Maximum Corporate Tax Rate"** shall mean the highest marginal United States federal income tax rate applicable to the taxable income of corporations without regard to any increase in tax designed to normalize the rate for all income at the highest marginal tax rate, which as of the date hereof is 35%.

**"Net Water System Revenues"** shall mean Operating Revenues of the Water System less Operating Expenses of the Water System.

**"Non-Ad Valorem Revenues"** shall mean all revenues of the Town derived from any source whatsoever other than ad valorem taxation on real or personal property, which are legally available to make the payments, if necessary, as required herein and in the Town Resolution and which are deposited to the Town's General Fund as identified in the Town's audited financial statements.

**"Operating Expenses"** shall mean the Corporation's expenses for operation, maintenance, repairs and replacements with respect to the Water System and shall include, without limiting the generality of the foregoing, payments for the purchase of materials essential to or used in the operation of the Water System, including bulk purchases of water services, fees for management of the Water System insurance and surety bond premiums, accounting, legal and engineering expenses, ordinary and current rentals of equipment or other property, administrative expenses, and any other expenses required to be paid for or with respect to the proper operation or maintenance of the Water System, all to the extent properly attributable to the Water System under GAAP.

**"Operating Revenues"** shall mean all income and moneys received by the Corporation from the rates, fees, rentals, charges and other income to be made and collected by the Corporation for the use of products, services and facilities to be provided by the Water System, or otherwise received by the Corporation or accruing to the Corporation in the management and operation of the Water System, calculated in accordance with GAAP.

**"Person"** shall mean any individual, joint venture, partnership, limited liability company, firm, corporation, trust, unincorporated organization or other organization or entity, or a governmental body or any department or agency thereof.

**"President"** shall mean the President of the Corporation or any duly authorized designees.

**"Prime Rate"** shall mean the rate of interest from time to time announced and charged by the Bank as its prime rate, which is only a benchmark, is purely discretionary and is not necessarily the lowest or best rate charged to any class of borrowing customers of the Bank, with any change in the prime rate to be effective on the day any such change in the prime rate is announced by the Bank.

**"Prior Debt"** shall mean the Corporation's Revenue Refunding Note, Series 2007, issued in the principal amount of \$3,060,000 on August 6, 2007 and currently outstanding in the principal amount of \$2,520,000.

**"Secretary"** shall mean the Secretary of the Corporation, or her or his duly authorized designee.

**"Series 2010 Note"** shall mean the Revenue Refunding Note, Series 2010 authorized to be issued by the Corporation Resolution and more particularly described in Article III hereof.

**"State"** shall mean the State of Florida.

**"Taxable Rate"** shall mean, upon a Determination of Taxability, the interest rate per annum that shall provide the Bank with the same after tax yield that the Bank would

have otherwise received had the Determination of Taxability not occurred taking into account the increased taxable income of the Bank as a result of such Determination of Taxability. The Bank shall provide sufficient evidence supporting such rate calculation to the Corporation.

**"Tax Certificate"** shall mean the Certificate as to Arbitrage and certain Other Tax Matters to be executed by the Corporation in connection with the issuance of the Series 2010 Note, as such Certificate may be amended from time to time.

**"Test Period"** shall mean any period of 12 consecutive months of the 24 consecutive months preceding the month of issue of any Additional Parity Debt.

**"Town"** shall mean the Town of Fort Myers Beach, Florida.

**"Town Resolution"** shall mean Resolution No. 10-\_\_ of the Town, adopted on August 6, 2010, authorizing the issuance of the Series 2010 Note by the Corporation and pledging its Non-Ad Valorem Revenues to the payment of the Series 2010 Note to the extent the Designated Revenues are insufficient.

**"Water System"** shall mean the water utility system serving the Town and acquired by the Corporation with the proceeds of the Prior Debt, including but not limited to, any extensions or additions to such system.

**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 Loan Agreement not herein defined shall have the meaning ascribed to such terms in the Corporation Resolution. This Loan 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 Loan 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 Loan Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

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**ARTICLE II**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS;**  
**SECURITY FOR SERIES 2010 NOTE**

**SECTION 2.01. REPRESENTATIONS BY THE CORPORATION.** The Corporation represents, warrants and covenants that:

(a) The Corporation is a Florida not-for-profit corporation duly organized by the Town and validly existing under the laws of the State and designated a title holding corporation under Section 501(c)(2) of the Code. Pursuant to the Corporation Resolution, articles and bylaws, the Corporation has duly authorized the execution and delivery of this Loan Agreement, the performance by the Corporation of all of its obligations hereunder, and the issuance of the Series 2010 Note in the aggregate principal amount of \$2,520,000.

(b) The Corporation has complied with all of the provisions of the constitution and laws of the State and has full power and authority to enter into and consummate all transactions contemplated by this Loan Agreement or under the Series 2010 Note, and to perform all of its obligations hereunder and under the Series 2010 Note and, to the best knowledge of the Corporation, the transactions contemplated hereby do not conflict with the terms of any statute, order, rule, regulation, judgment, decree, agreement, instrument or commitment to which the Corporation is a party or by which the Corporation is bound.

(c) The Corporation is duly authorized and entitled to issue the Series 2010 Note and enter the Loan Agreement and, when issued in accordance with the terms of this Loan Agreement, the Series 2010 Note and the Loan Agreement will each constitute legal, valid and binding obligations of the Corporation enforceable in accordance with their respective terms, subject as to enforceability to bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(d) There are no actions, suits or proceedings pending or, to the best knowledge of the Corporation, threatened against or affecting the Corporation, at law or in equity, or before or by any governmental authority, that, if adversely determined, would materially impair the ability of the Corporation to perform the Corporation's obligations under this Loan Agreement or under the Series 2010 Note.

(e) The Corporation has all licenses, permits, authorizations, consents and approvals required as of the date hereof to own its assets and to carry out its business as now being or proposed to be conducted.

(f) No authorization, license, consent, approval, or undertaking is required under any applicable law in connection with the execution, delivery and performance by

the Corporation of this Loan Agreement, the Series 2010 Note and any financing documents related to the issuance of the Series 2010 Note to which the Corporation is a party, except for such authorizations, licenses, consents, approvals, or undertakings as have been obtained.

(g) The Corporation will furnish to the Bank within 210 days after the close of each Fiscal Year a copy of the annual audited financial statements of the Corporation, including a balance sheet, a statement of revenues, expenditures and charges in the fund balance, and any other statements required by law, prepared by a certified public accountant. The Corporation shall also provide the Bank with a copy of the annual budget of the Corporation each year within 30 days of the final adoption of such budget. Together with each delivery of financial statements required herein, the Corporation will deliver or cause to be delivered to the Bank an officer's certificate of the chief financial officer of the Corporation, on a form provided by the Bank, certifying that said financial statements are true and correct to the best of his or her knowledge. Further, the Corporation will furnish or cause to be furnished to the Bank, on an annual basis within 30 days after filing with the Internal Revenue Service a copy of all federal tax returns, if any, of the Corporation, certified by the chief financial officer of the Corporation. The Corporation will maintain its books and records in a condition reasonably consistent with prudent practice in the utility industry. With reasonable promptness the Corporation shall provide such other data and information as may be requested by the Bank from time to time.

(h) The Corporation has no material direct or contingent liabilities, liabilities for taxes, long-term leases, or unusual forward or long-term commitments as of the date of this Loan Agreement which are not disclosed by, provided for, or reserved against in the financial statements or referred to in notes thereto, and at the date of this Loan Agreement there are no material unrealized or anticipated losses from any unfavorable commitments of the Corporation. Except as otherwise described herein, the financial statements furnished to the Bank have been prepared in accordance with GAAP applied on a consistent basis maintained throughout the period involved. There has been no material adverse change in the business condition, financial or otherwise, of the Corporation since the date of such financial statements.

(i) All foreign, federal, state, and local tax returns and reports, if any, of the Corporation required to be filed have been filed, and all taxes, assessments, fees and other governmental charges, if any, upon the Corporation or upon its properties, assets, incomes or franchises, which are due and payable in accordance with such returns and reports, have been paid, other than those presently (a) payable without penalty or interest, or (b) being contested in good faith and by appropriate and lawful proceedings prosecuted diligently. The aggregate amount of the taxes, assessments, charges and levies being so contested is not material to the condition (financial or otherwise) or operations of the Corporation. The charges, accruals, and reserves on the books of the

Corporation in respect of federal, state, and local taxes for all fiscal periods to date are adequate and the Corporation is not aware of any other unpaid assessment for additional federal, state, or local taxes for any such fiscal period or of any basis therefor. The Corporation has and will establish all necessary reserves and make all payments required of it to be set aside or made in regard to all contributions required under the Federal Insurance Contributions Act ("FICA"), withholding, sales or excise, and all other similar federal, state, and local taxes.

(j) The Corporation is not in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions contained in any material agreement or instrument to which it is a party.

(k) The Corporation (a) has good and sufficient title to its material real properties other than material properties that it leases and good title to all of its other properties and assets, and (b) enjoys peaceful and undisturbed possession under all leases necessary in any material respect for the operation of its properties and assets. All such leases are valid and subsisting and are in full force and effect.

(l) Environmental Matters. [Except as disclosed to the Bank on July 23, 2007,] or as set forth in EXHIBIT B attached hereto and incorporated herein by reference, to the best knowledge of the Corporation:

(i) Compliance with Environmental Laws. All facilities and property (including underlying groundwater) owned or leased by the Corporation have been, and continue to be, owned or leased by the Corporation, free and clear of any breaches of the Environmental Laws that singly or in the aggregate could reasonably be expected to have a material adverse effect on the financial condition, operations, assets, business, properties or prospects of the Corporation;

(ii) No Complaints, Etc. There have been no past, and there are no pending or threatened;

(A) claims, complaints, notices or requests for information received by the Corporation with respect to any alleged violation of any Environmental Law that, singly or in the aggregate, have, or may reasonably be expected to have a material adverse effect on the financial condition, operations, assets, business, properties or prospects of the Corporation; or

(B) complaints, notices or inquiries to the Corporation regarding potential liability under any Environmental Law that, singly or in the aggregate, have, or may reasonably be expected to have, a material adverse effect on the financial condition, operations, assets, business, properties or prospects of the Corporation;

(iii) No Releases. There have been no Releases of Hazardous Materials at, on or under any property now or previously owned or leased by the Corporation that, singly or in the aggregate, have, or may reasonably be expected to have, a material adverse effect on the financial condition, operations, assets, business, properties or prospects of the Corporation;

(iv) Permits. The Corporation has obtained all environmental, health and safety permits, licenses and other authorizations required under all Environmental Laws to carry on its business as now being or as proposed to be conducted, except to the extent failure to have any such permit, license or authorization could not singly or in the aggregate, have, or be reasonably be expected to have, a material adverse effect on the financial condition, operations, assets, business, properties or prospects of the Corporation or on the ability of the Corporation to perform its respective obligations under the Loan Documents;

(v) Listing of Properties. No property now or previously owned or leased by the Corporation is listed or, to the knowledge of the Corporation, is proposed for listing (with respect to owned property only) on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any similar state list of sites requiring investigation or clean-up;

(vi) Underground Tanks. There are no underground storage tanks, active or abandoned, including petroleum storage tanks, on or under any property now or previously owned or leased by the Corporation that, singly or in the aggregate, have, or may reasonably be expected to have, a material adverse effect on the financial condition, operations, assets, business, properties or prospects of the Corporation;

(vii) Hazardous Materials. The Corporation has not directly transported or directly arranged for the transportation of any Hazardous Material to any location that is listed or proposed for listing on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any similar state list or which is the subject of federal, state, or local enforcement actions or other investigations which may lead to claims against the Corporation. for any remedial work, damage to natural resources or personal injury, including claims under CERCLA, that, singly or in the aggregate, have, or may reasonably be expected to have, a material adverse effect on the financial condition, operations, assets, business, properties or prospects of the Corporation;

(viii) PCB's and Asbestos. There are no polychlorinated biphenyls or friable asbestos present at any property now or previously owned or leased by the Corporation that, singly or in the aggregate, have, or may reasonably be expected to have, a material adverse effect on the financial condition, operations, assets, business, properties or prospects of the Corporation; and

(ix) Absence of Conditions. No conditions exist at, on or under any property now or previously owned or leased by the Corporation that, with the passage of time, or the giving of notice or both, would give rise to liability under any Environmental Law, that, singly or in the aggregate, have, or may reasonably be expected to have, a material adverse effect on the financial condition, operations, assets, business, properties or prospects of the Corporation.

(m) The Corporation owns or has the absolute right to use all of the patents, trademarks, service marks, trade names, trade dress, copyrights, franchises and licenses, and rights with respect thereto, necessary for the conduct of its business as now conducted or proposed to be conducted, without any conflict with the rights of others.

(n) The Corporation does not own any "margin securities" as defined in Regulation G (12 CFR Part 207) of the Board of Governors of the Federal Reserve System (herein called a "margin security"). Neither the Corporation nor any agent acting on its behalf has taken any action that might cause this Loan Agreement, the Series 2010 Note or any financial documents related to the issuance of the Series 2010 Note to violate any of Regulations G, T, U or X or any other regulation of the Board of Governors of the Federal Reserve System or to violate the Securities Act of 1933 or the Securities Exchange Act of 1934, in each case as the same is now in effect or as the same hereafter may be in effect.

(o) No representation, warranty or other statement of the Corporation or as to the Corporation in this Loan Agreement, the Series 2010 Note or any financing documents related to the issuance of the Series 2010 Note contains any false or misleading statement of a material fact or omits the statement of a fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

(p) The Corporation shall at all times operate in full compliance with all applicable laws (including, without limitation, Environmental Laws, all requirements of the Occupational Safety and Health Administration, and all laws relating to health care) statutes, regulations, certificates of authority and orders in respect to the conduct of its business the breach of which singly or in the aggregate could reasonably be expected to have a material adverse effect on the financial condition, operations, assets, business, properties or prospects of the Corporation.

(q) The Corporation shall maintain or cause to be maintained in good repair, working order and condition all properties pertaining to or useful in its business including, but not limited to, any real property and all improvements located thereon, and from time to time will make or cause to be made all appropriate repairs, renewals, improvements and replacements thereof so that the businesses carried on in connection therewith may be properly and advantageously conducted at all times. The Corporation shall not do or permit any act or thing that might impair the value or commit or permit

any waste of its properties or any part thereof, or permit any unlawful occupation, business or trade to be conducted on or from any of its properties. To the extent the Corporation leases any of its property, it shall maintain and keep current at all times all leases for said property.

(r) The Corporation shall pay and discharge (a) all of its indebtedness and obligations in accordance with their terms and before they shall become in default, (b) all taxes, assessments governmental charges or levies imposed upon it or upon its income and profits against its properties, prior to the date on which penalties attach thereto, and (c) all lawful claims which, if unpaid, might become a material lien or charge upon any of its properties; provided, however, that the Corporation shall not be required to pay any such indebtedness, obligation, tax, assessment, charge, levy or claim that is being contested in good faith by appropriate and lawful proceedings diligently pursued and for which adequate reserves have been set aside on its books. The Corporation also shall set aside and/or pay as and when due all moneys required to be set aside and/or paid by any federal, state, or local statute or agency in regard to FICA (as defined above), withholding, sales or excise or other similar taxes.

**SECTION 2.02. GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE BANK.** The Bank hereby represents, warrants and agrees that it is a Georgia banking corporation authorized to execute and deliver this Loan Agreement and to perform its obligations hereunder, and such execution and delivery will not constitute a violation of its charter, articles of association or bylaws. Pursuant to the terms and provisions of this Loan Agreement, the Bank agrees to provide a term loan to the Corporation as evidenced hereby and by the Series 2010 Note for the purpose of refinancing the Prior Debt.

**SECTION 2.03. TAX COVENANT.** (a) In order to maintain the exclusion from gross income for purposes of Federal income taxation of interest on the Series 2010 Note, the Corporation shall comply with each requirement of the Code applicable to the Series 2010 Note. In furtherance of the covenant contained in the preceding sentence, the Corporation agrees to continually comply with the provisions of the Tax Certificate as a source of guidance for achieving compliance with the Code.

(b) The Corporation shall make any and all rebate payments required to be made to the United States Department of the Treasury in connection with the Series 2010 Note pursuant to Section 148(f) of the Code.

(c) So long as necessary in order to maintain the exclusion from gross income of interest on the Series 2010 Note for Federal income tax purposes, the covenants contained in this Section shall survive the payment of the Series 2010 Note and the interest thereon, including any payment or defeasance thereof.

(d) The Corporation shall maintain and retain all records pertaining to compliance with Section 148(f) of the Code with respect to the Series 2010 Note and required payments in compliance with Section 148(f) of the Code with respect to the Series 2010 Note for at least six years after the final maturity of the Series 2010 Note or such other period as shall be necessary to comply with the Code.

(e) The Corporation shall refrain from taking any action that would cause the Series 2010 Note issued hereunder to be classified as a private activity bond under Section 141(a) of the Code.

(f) The Corporation shall not take or permit any action or fail to take any action which would cause the Series 2010 Note to be an "arbitrage bond" within the meaning of Section 148(a) of the Code.

**SECTION 2.04. SERIES 2010 NOTE NOT TO BE INDEBTEDNESS OF THE TOWN OR STATE.** The Series 2010 Note, when delivered by the Corporation pursuant to the terms of this Loan Agreement, shall not be or constitute an indebtedness of the Corporation, the Town, the State of Florida or any political subdivision or agency thereof, within the meaning of any constitutional, statutory or charter limitations of indebtedness, but shall be payable solely as herein provided. The Bank shall never have the right to compel the exercise of the ad valorem taxing power of the Town, or taxation in any form on any property therein to pay the Series 2010 Note or the interest thereon. The Series 2010 Note is a special and limited obligation secured by and payable as to principal and interest from the Designated Revenues.

**SECTION 2.05. TOWN'S COVENANT TO BUDGET AND APPROPRIATE NON-AD VALOREM REVENUES.** To the extent the Net Water System Revenues are insufficient to pay scheduled debt service on the Series 2010 Note, the Town covenanted and agreed, pursuant to the Town Resolution, to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues lawfully available in each Fiscal Year, amounts which shall be sufficient to pay debt service on the Series 2010 Note. Such covenant and agreement on the part of the Town to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Town, the Town does not covenant to maintain any services or programs, now provided or maintained by the Town, which generate Non-Ad Valorem Revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Town from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Town to levy and collect any particular Non-Ad Valorem Revenues. Such covenant to appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a

pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). However, the covenant to budget and appropriate in its annual budget for the purposes and in the manner stated herein and in the Town Resolution shall have the effect of making available for the payment of debt service on the Series 2010 Note in the manner described herein and in the Town Resolution, Non-Ad Valorem Revenues and placing on the Town a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of Section 166.241(2), Florida Statutes, which provides, in part, that the governing body of each Town make appropriations for each Fiscal Year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Town or which are legally mandated by applicable law.

**SECTION 2.06. PAYMENT COVENANT.** The Corporation covenants that it shall duly and punctually pay from the Designated Revenues the principal of and interest on the Series 2010 Note at the dates and place and in the manner provided herein and in the Series 2010 Note according to the true intent and meaning thereof and all other amounts due under this Loan Agreement.

**SECTION 2.07. ISSUANCE OF ADDITIONAL INDEBTEDNESS.** The Corporation covenants and agrees that it shall not issue any debt obligations secured by or payable from any Net Water System Revenues if the Net Water System Revenues calculated during the Test Period would be less than 1.20 of the average of the Maximum Annual Debt Service. A certified public accountant shall provide the Bank with a certificate evidencing compliance with the provisions of this Section 2.07 at least five days prior to the issuance of any such debt, in form and substance satisfactory to the Bank.

Prior to the issuance of Additional Parity Debt, the Corporation shall have delivered to the Bank a certificate signed by the President or chief financial officer of the Corporation stating that Event of Default as outlined in Section 5.01 herein shall have occurred unless such default shall have been completely cured by the Corporation or waived by the Bank in its sole discretion, and the Corporation shall otherwise be in full compliance with the covenants and agreements contained herein, both prior to and after the issuance of such proposed Additional Parity Debt.

**SECTION 2.08. CONTINUED RECEIPT OF WATER SYSTEM REVENUES.** The Corporation covenants to do all things necessary or required on its part to entitle the Corporation to receive Net Water System Revenues. The Corporation shall exercise all legally available remedies to enforce such receipt now or hereafter available under law.

**SECTION 2.09. RATE COVENANT.** The Corporation agrees to set rates at the levels which shall provide Operating Revenues in each year sufficient to pay 100% of all Operating Expenses as the same shall become due in such year, plus 120% of Debt Service.

**SECTION 2.10. DEBT SERVICE COVERAGE RATIO.** The Corporation shall maintain a Debt Service Coverage Ratio of not less than 1:20 to 1:00 and shall be tested each Fiscal Year based on the Corporation's audited financial statements that are required to be provided to the Bank pursuant to Section 2.01(f) above.

**SECTION 2.11 NEGATIVE COVENANTS OF THE CORPORATION.**  
The Corporation covenants that:

(a) The Corporation shall not enter into any arrangement, contractual or otherwise, that would materially and adversely affect its ability to perform its obligations hereunder and under the Series 2010 Note or the rights of the Bank under the this Loan Agreement, the Series 2010 Note and any financing documents relation to the issuance of the Series 2010 Note or that is inconsistent with or limits or abrogates any such documents.

(b) The Corporation shall not permit any of its material (whether separately or in the aggregate) assets to be levied upon under legal process.

(c) The Corporation shall not suffer to exist any uncured event of default under any other loan or obligation or under any other financing agreement by the Corporation with any Person other than the Bank which, in any Fiscal Year, will or could reasonably be expected to result in liabilities in excess of fifty thousand dollars (\$50,000) determined in the aggregate with respect to such event of default and all other events of default occurring during such Fiscal Year. Notwithstanding the fore going the Corporation may contest in good faith by appropriate and lawful proceedings diligently pursued any such loan or obligation as long as adequate reserves therefor have been set aside on its books.

(d) The Corporation shall not directly or indirectly apply any part of the proceeds of the Loan to the purchasing or carrying of any "margin stock" the meaning of Regulation U of the Board of Governors of the Federal Reserve System or any regulations, interpretations or rulings thereunder.

(e) Unless required by applicable law, the Corporation shall not change its Fiscal Year without the consent of the Bank, which shall not be unreasonably withheld.

(f) During the period in which Loan Obligations remain outstanding, the Corporation shall not experience or incur, in the reasonable opinion of the Bank, any material, adverse change in its financial condition or in the ability of the Corporation to pay or perform the Loan Obligations.

**ARTICLE III**  
**DESCRIPTION OF SERIES 2010 NOTE; PAYMENT TERMS;**  
**OPTIONAL PREPAYMENT**

**SECTION 3.01. DESCRIPTION OF THE SERIES 2010 NOTE.** (a) The Corporation hereby authorizes the issuance and delivery of the Series 2010 Note to the Bank which Series 2010 Note shall be in an amount equal to TWO MILLION FIVE HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS (\$2,520,000) and shall be designated as the "Town of Fort Myers Beach Public Works Services, Inc. Revenue Refunding Note (SunTrust Bank), Series 2010." The text of the Series 2010 Note shall be substantially in the form attached hereto as Exhibit A, with such omissions, insertions and variations as may be necessary and desirable to reflect the particular terms of the Series 2010 Note. The provisions of the form of the Series 2010 Note are hereby incorporated in this Loan Agreement.

(b) The Series 2010 Note shall be dated the date of its delivery. The Series 2010 Note shall be executed in the name of the Corporation by the manual signature of the President and the official seal of the Corporation shall be affixed thereto and attested by the manual signature of the Secretary. In case any one or more of the officers, who shall have signed or sealed the Series 2010 Note, shall cease to be such officer of the Corporation before the Series 2010 Note so signed and sealed shall have been actually delivered, such Series 2010 Note may nevertheless be delivered as herein provided and may be issued as if the person who signed or sealed such Series 2010 Note had not ceased to hold such office.

(c) The Series 2010 Note shall bear interest from its date of issuance at the Interest Rate (calculated on a 30/360 day count basis) as the same may be adjusted pursuant to Section 3.03 hereof. Interest on the Series 2010 Note shall be payable semi-annually on April 1 and October 1 of each year, commencing October 1, 2010 (each an "Interest Payment Date") so long as any amount under the Series 2010 Note remains outstanding. Principal of the Series 2010 Note shall be payable annually on October 1 of each year, commencing October 1, 2010 (each a "Principal Payment Date"), in accordance with Appendix I attached to the Series 2010 Note. Any principal outstanding, together with any interest accrued thereon, shall be paid in full on the Final Maturity Date.

(d) All payments of principal of and interest on the Series 2010 Note shall be payable in any coin or currency of the United States which, at the time of payment, is legal tender for the payment of public and private debts and shall be made to the Bank (i) in immediately available funds, (ii) by delivering to the Bank no later than the applicable Interest Payment Date or Principal Payment Date a check or draft of the Corporation, or (iii) in such other manner as the Corporation and the Bank shall agree upon in writing. If any Interest Payment Date or Principal Payment Date is not a

Business Day, the corresponding payment shall be due on the next succeeding Business Day.

(e) The Corporation will pay Bank's Counsel fee of not to exceed \$5,000 and all other fees associated with costs of issuance of the Series 2010 Note out of legally available funds of the Corporation. Except as otherwise provided herein, the Bank shall pay for all of its costs relating to servicing the term loan.

**SECTION 3.02. OPTIONAL PREPAYMENT.** (a) The Series 2010 Note may be prepaid at any time prior to its maturity, at the option of the Corporation, from any moneys legally available therefor, upon notice as provided herein, in whole or in part at any time or from time to time, without a prepayment premium or penalty, by paying to the Bank all or a part of the principal amount of the Series 2010 Note to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment.

(b) Any prepayment shall be made on such date and in such principal amount as shall be specified by the Corporation in a written notice provided to the Bank not less than two (2) Business Days prior thereto by first class mail. Notice having been given as aforesaid, the amount of principal of the Series 2010 Note stated in such notice or the whole thereof, as the case may be, shall become due and payable on the date of prepayment stated in such notice, together with interest accrued and unpaid to the date of prepayment on the principal amount then being paid. If on the date of prepayment moneys for the payment of the principal amount to be prepaid on the Series 2010 Note, together with interest to the date of prepayment on such principal amount, shall have been paid to the Bank as above provided, then from and after the date of prepayment, interest on such prepaid principal amount of the Series 2010 Note shall cease to accrue. If said money shall not have been so paid on the date of prepayment, such principal amount of the Series 2010 Note shall continue to bear interest until payment thereof at the Interest Rate.

(c) In the event any portion of the Series 2010 Note is optionally prepaid pursuant to this Section 3.02, the amount so prepaid shall be applied as a credit against the principal amount due on the then latest scheduled Principal Payment Date. The Bank shall make appropriate notations in its records indicating the amount and date of any such prepayment and shall promptly transmit an acknowledgment to the Corporation indicating the amount and date of such prepayment.

**SECTION 3.03. ADJUSTMENTS TO INTEREST RATES.** (a) If for any reason it shall be determined that any portion of the Series 2010 Note is not a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code, then the Interest Rate thereon shall be increased to provide the Bank with the same yield on the Series 2010 Note that the Bank would have otherwise received had the loss of such status not occurred; provided, however, such increased rate shall never exceed the maximum

rate allowable by law. The Bank shall provide the Corporation with sufficient evidence supporting any such increase.

(b) In the event of a Determination of Taxability, the Interest Rate shall be immediately increased (effective retroactively to the date of the Determination of Taxability) to the Taxable Rate; provided, however, such increased rate shall never exceed the maximum rate allowable by law.

(c) If the Maximum Corporate Tax Rate as applicable to the Bank decreases or increases from 35%, the Interest Rate otherwise borne by the Series 2010 Note shall be increased or decreased, as the case may be, to the product obtained by multiplying the Interest Rate otherwise borne thereby by a fraction, the numerator of which is 1 minus the Maximum Corporate Tax Rate as decreased or increased, as the case may be, and the denominator of which is 0.65; provided, however, such increased rate shall never exceed the maximum rate allowable by law.

[Remainder of page intentionally left blank]

**ARTICLE IV**  
**CONDITIONS FOR ISSUANCE OF THE SERIES 2010 NOTE**

**SECTION 4.01. CONDITIONS FOR ISSUANCE.** (a) In connection with the issuance of the Series 2010 Note, the Bank shall not be obligated to purchase the Series 2010 Note pursuant to this Loan Agreement unless at or prior to the issuance thereof the Corporation delivers to the Bank the following items in form and substance acceptable to the Bank:

(i) A fully executed Tax Certificate;

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

(iii) An opinion of Bond Counsel in form and substance to the effect that (A) the Series 2010 Note has been duly authorized by the Corporation and is enforceable obligations in accordance with its terms (enforceability of it may be subject to standard bankruptcy exceptions and the like), (B) interest on the Series 2010 Note shall be excluded from gross income for federal income tax purposes and will not be treated as a preference item for purposes of computing the federal alternative minimum tax imposed on individuals and corporations [(however, the interest on the Series 2010 Note owned by corporations may be subject to the Federal alternative minimum tax which is based in part on adjusted net book income or adjusted current earnings)], and (C) the Series 2010 Note is a "qualified tax-exempt obligation" under Section 265(b)(3)(B); and

(iv) Such additional certificates, instruments and other documents as the Bank, Bond Counsel, or the Corporation Attorney may deem necessary or appropriate.

(b) The Corporation shall apply the proceeds of the Series 2010 Note to refinance the Prior Debt.

[Remainder of page intentionally left blank]

**ARTICLE V**  
**EVENTS OF DEFAULT; REMEDIES**

**SECTION 5.01. EVENTS OF DEFAULT.** An "Event of Default" shall be deemed to have occurred under this Loan Agreement if:

(a) The Corporation shall fail to make timely payment of principal or interest then due with respect to the Series 2010 Note whether at maturity by acceleration as permitted herein at the discretion of the Bank, or otherwise; or

(b) Any representation or warranty of the Corporation contained in Article II of this Loan Agreement shall prove to be untrue in any material respect; or

(c) Any covenant of the Corporation contained in this Loan Agreement shall be breached or violated for a period of thirty [(30)] days after the Corporation's notice of such breach or violation, unless the Bank shall agree in writing, in its sole discretion, to an extension of such time prior to its expiration; or

(d) If the Corporation shall be in default of any obligation under any other agreement evidencing or securing any other indebtedness of the Corporation to the Bank (1) for a period of fifteen (15) days after receipt of written notice from the Bank, or (2) that shall have resulted in the acceleration of such other indebtedness by the Bank; or

(e) If the Corporation shall default in the performance of any obligation in respect of any other indebtedness in a principal amount of fifty thousand dollars (\$50,000) or more if the effect of such default is to accelerate the maturity of such indebtedness or if the Corporation shall have failed to pay any such indebtedness at maturity (giving effect to applicable grace periods);

(f) If any representation or warranty made in writing by or on behalf of the Corporation herein or in the Series 2010 Note or any other financing documents related to the issuance of the Series 2010 Note shall prove to have been false or incorrect in any material respect on the date as of which it was made or reaffirmed; or

(g) If the Corporation shall admit in writing its inability, or be generally unable, to pay its debts as they become due or shall make an assignment for the benefit of creditors, file a petition in bankruptcy, petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for itself or a substantial part of its assets, or shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if there shall have been filed any such petition or application, or any such proceeding shall have been commenced against the Corporation in which an order for relief is entered or which remains undismissed for a period of sixty (60) days or more, or if the Corporation by any act or omission shall indicate its consent

to, approval of or acquiescence in any such petition, application, or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for itself or himself or any substantial part of any of its properties, or shall suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of sixty (60) days or more; or

(h) If any order, judgment, or decree is entered in any proceedings against the Corporation decreeing the dissolution of the Corporation, or

(i) If the Corporation shall suffer one or more final judgments for payment of money aggregating in excess of fifty thousand dollars (\$50,000) and shall not discharge the same within a period of thirty (30) days unless, pending further proceedings, execution has not been commenced or has been effectively stayed; or

(j) If a judgment creditor of the Corporation shall obtain possession of a material portion of the assets of the Corporation by way of levy, distraint, replevin or self help; or

(k) If the validity or enforceability of this Loan Agreement, the Series 2010 Note or any other financing documents related to the issuance of the Series 2010 Note shall be contested by the Corporation; or if the Corporation shall deny that it has any or further liability or obligations hereunder or thereunder.

**SECTION 5.02. REMEDIES.** Upon the occurrence and continuance of any Event of Default as described above in Section 5.01, the Bank shall have and may exercise any or all of the rights set forth herein; provided however, Bank shall be under no duty or obligation to do so:

(a) To declare the indebtedness evidenced by the Series 2010 Note and all other Loan Obligations to be forthwith due and payable, whereupon the Series 2010 Note and all other Loan Obligations shall become forthwith due and payable, both as to principal and interest, without presentment, demand, protest or any other notice or grace period of any kind, all of which are hereby expressly waived, anything contained herein or in the Series 2010 Note or in such other financing documents related to the issuance of the Series 2010 Note to the contrary notwithstanding and, upon such acceleration, the unpaid principal balance and accrued interest upon the Series 2010 Note shall from and after such date of acceleration bear interest at the Default Rate, to the extent that they already did not bear interest at the Default Rate.

(b) To exercise such other rights and remedies as may be permitted under this Loan Agreement, the Series 2010 Note or any financing document related to the issuance of the Series 2010 Note or as may be available at law or in equity, including instituting a suit or suits with the courts of proper jurisdiction for collection.

(c) Each and every right, power and remedy hereby specifically given to the Bank shall be in addition to every other right, power and remedy specifically given under this Loan Agreement or any of the Loan Obligations, or any document related thereto or now or hereafter existing at law or in equity, or by statute and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by the Bank. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of exercise of one shall not be deemed a waiver of the right to exercise of any other or others. No delay or omission of the Bank in the exercise of any such right, power or remedy and no renewal or extension of any of the Loan Obligations shall impair any such right, power or remedy or shall be construed to be a waiver of any Event of Default or an acquiescence therein. No notice to or demand on the Corporation in any case shall entitle the Corporation to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Bank to any other further action in any circumstances without notice or demand. In the event that the Bank shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Bank may recover reasonable expenses, including attorneys' fees, and the amounts thereof shall be included in such judgment.

(d) The exercise by the Bank of, or failure to so exercise, any authority granted under this Loan Agreement shall in no manner affect the Corporation's liability to the Bank and the Bank shall be under no obligation or duty to exercise any of the powers hereby conferred upon it.

(e) The Bank has no obligation to marshal any assets or property in favor of the Corporation or any other lienholders of Corporation, or against or in payment of:

- (i) the Series 2010 Note;
- (ii) this Loan Agreement;
- (iii) any of the Loan Obligations; or
- (iv) any other obligation owed to the Bank by the Corporation or any other Person.

## **ARTICLE VI MISCELLANEOUS**

**SECTION 6.01. AMENDMENTS, CHANGES OR MODIFICATIONS TO THE AGREEMENT.** This Loan Agreement shall not be amended, changed or modified without the prior written consent of the Bank and the Corporation.

**SECTION 6.02. COUNTERPARTS.** This Loan 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 Loan Agreement, and, in making proof of this Loan Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**SECTION 6.03. SEVERABILITY.** If any clause, provision or section of this Loan Agreement shall be held illegal or invalid by any court, the invalidity of such provisions or sections shall not affect any other provisions or sections hereof, and this Loan Agreement shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced, as if such illegal or invalid clause, provision or section had not been contained herein.

**SECTION 6.04. TERM OF AGREEMENT.** This Loan Agreement shall be in full force and effect from the date hereof and shall continue in effect as long as the Series 2010 Note is outstanding.

**SECTION 6.05. NOTICE OF CHANGES IN FACT.** Promptly after the Corporation becomes aware of the same, the Corporation will notify the Bank of (a) any change in any material fact or circumstance represented or warranted by the Corporation in this Loan Agreement or in connection with the issuance of the Series 2010 Note; (b) any default or event which, with notice or lapse of time or both, could become a default under the Loan Agreement, specifying in each case the nature thereof and what action the Corporation has taken, is taking and/or proposed to take with respect thereto; (c) the occurrence of any material casualty to any material facility of Corporation or any other force majeure (including, without limitation, any strike or other labor disturbance) materially affecting the operation or value of any such facility (specifying whether or not such casualty or force majeure is covered by insurance); and (d) the commencement or any material change in the nature or status of any litigation, dispute, or proceeding that may involve a claim for damages, injunctive relief, enforcement, or other relief pending, being instituted, or threatened by, against or involving the Corporation, or any attachment, levy, execution, or other process being instituted by or against any assets of Corporation, which might impair the conduct of the Corporation's business or might materially adversely affect financially or otherwise its business, operations, assets, properties, prospects, or condition. Such notice required under this subsection (b) above shall be provided by the chief financial officer of the Corporation.

Further, the Corporation shall give the Bank notice in writing within twenty-five (25) days of the occurrence of (a) all actions or suits (at law or in equity) and of all investigations or proceedings by or before any court, arbitrator or any governmental department, commission, board, bureau, agency or other instrumentality, state, federal or foreign, affecting the Corporation or its rights or properties that the officers or the Board believe in good faith are likely to materially and adversely affect the financial condition of the Corporation or to impair the right or ability of the Corporation to carry on its business as now conducted or to pay the Obligations or perform its duties under this Loan Agreement, the Series 2010 Note or any of the financing documents related to the issuance of the Series 2010 Note; and (b) any material seizure or levy upon any part of the properties of the Corporation under any process or by a receiver.

**SECTION 6.06. NOTICES.** Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally or sent registered or certified mail, postage prepaid, to: Town of Fort Myers Beach Public Works Services, Inc., 2523 Estero Boulevard, Fort Myers Beach, Florida 33931, Attention: President, with a copy to Town of Fort Myers Beach, Florida, 2523 Estero Boulevard, Fort Myers Beach, Florida 33931, Attention: Town Manager; and to the Bank, SunTrust Bank, 12751 New Brittany Boulevard, Fort Myers, Florida 33907, Attention: Institutional & Governmental Banking, or at such other address as shall be furnished in writing by any such party to the other, and shall be deemed to have been given as of the date so delivered or deposited in the United States mail.

**SECTION 6.07. RIGHT TO INSPECT.** The Corporation will permit any Person designated by the Bank, at the Bank's expense, and upon reasonable notice, to visit and inspect any of their respective properties, corporate books, records, papers, and financial reports, including the making of any copies thereof and abstracts therefrom, and to discuss their respective affairs, finances, and accounts. With their principal officers, all at such reasonable times and as often as Bank reasonably may request. The Corporation also will permit the Bank, or its designated representative, to audit or appraise any of their respective assets or financial and business records at the Bank's expense.

**SECTION 6.08. NO THIRD-PARTY BENEFICIARIES.** This Loan Agreement is for the benefit of the Corporation and the Bank and their respective successors and assigns, and there shall be no third-party beneficiary with respect thereto.

**SECTION 6.09. APPLICABLE LAW.** The substantive laws of the State of Florida shall govern this Loan Agreement.

**SECTION 6.10. WAIVER OF JURY TRIAL.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any proceedings relating to this Loan Agreement.

**SECTION 6.11. INCORPORATION BY REFERENCE.** All of the terms and obligations of the Resolution are hereby incorporated herein by reference as if said Resolution was fully set forth in this Loan Agreement and the Series 2010 Note.

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

(SEAL)

**TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC.**

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

ATTEST:

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

**SUNTRUST BANK**

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

\$2,520,000

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
TOWN OF FORT MYERS BEACH PUBLIC  
WORKS SERVICES, INC.  
REVENUE REFUNDING NOTE (SUNTRUST BANK)  
SERIES 2010

<u>Interest Rate</u>	<u>Date of Issuance</u>	<u>Final Maturity Date</u>
2.78%	August 6, 2010	August 6, 2013

TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC. (the "Corporation"), for value received, hereby promises to pay, solely from the Designated Revenues described in the within mentioned Loan Agreement, to the order of SunTrust Bank, Tampa, Florida, or its successors or assigns (the "Bank"), the principal sum of TWO MILLION FIVE HUNDRED AND TWENTY THOUSAND AND 00/100 DOLLARS (\$2,520,000) pursuant to that certain Loan Agreement by and between the Bank and the Corporation, dated as of August 6, 2010 (the "Loan Agreement"), and to pay interest on such the outstanding principal amount hereof from the Date of Issuance set forth above, or from the most recent date to which interest has been paid, at the Interest Rate per annum identified above (subject to adjustment as provided in the Loan Agreement) on April 1 and October 1 of each year, commencing on October 1, 2010, so long as any amount under this Note remains outstanding. Principal of this Note shall be payable on October 1 of each year, commencing on October 1, 2010, in accordance with the repayment schedule set forth on Appendix I attached hereto. Any principal outstanding, together with any interest accrued thereon, shall be paid in full on the Final Maturity Date. The principal and interest on this Note is payable 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.

This Note is issued under Resolution No. 10-\_\_-U duly adopted by the Corporation on August 2, 2010 (the "Corporation Resolution"), and is subject to all terms and conditions of the Corporation Resolution and the Loan Agreement. Any term used in this Note and not otherwise defined shall have the meaning ascribed to such term in the Loan Agreement.

This Note is being issued to refinance the Prior Debt. This Note is secured by and shall be payable from the Designated Revenues as described in the Loan Agreement.

This Note shall bear interest at the Interest Rate identified above on a 30/360 day count basis. Such Interest Rate is subject to adjustment as provided in Section 3.03 of the Loan Agreement. The Bank shall provide to the Corporation upon request such documentation to evidence the amount of interest due with respect to the Series 2010 Note.

Notwithstanding any provision in this Note to the contrary, in no event shall the interest contracted for, charged or received in connection with this Note (including any other costs or considerations that constitute interest under the laws of the State of Florida which are contracted for, charged or received) exceed the maximum rate of interest allowed under the State of Florida as presently in effect.

All payments made by the Corporation hereon shall apply first to accrued interest, and then to the principal amount then due on this Note.

The Corporation may prepay this Note as a whole or in part, at any time or from time to time, by paying to the Bank all or part of the outstanding principal amount thereof, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment, without a prepayment premium or penalty. Each prepayment of the Note shall be made on such date and in such principal amount as shall be specified by the Corporation in a written notice delivered to the Bank not less than two (2) Business Days prior thereto, all in accordance with the provisions of the Loan Agreement. All of the prepayment provisions contained in Section 3.02 of the Loan Agreement shall apply with respect to this Note.

The Corporation and the Town of Fort Myers Beach, Florida (the "Town") have designated this Note as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

This Note, when delivered by the Corporation pursuant to the terms of the Loan Agreement and the Corporation Resolution, shall not be or constitute an indebtedness of the Corporation, the Town or of the State of Florida, within the meaning of any constitutional, statutory or charter limitations of indebtedness, but shall be payable from and secured solely by the Designated Revenues, as provided in the Loan Agreement and the Corporation Resolution. The Bank 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 the Note or the interest thereon.

This Note shall be and have all the qualities and incidents of a negotiable instrument under the commercial laws and the Uniform Commercial Code of the State of Florida, subject to any provisions for registration and transfer contained in the Loan Agreement. So long as any of this Note shall remain outstanding, the Corporation shall maintain and keep books for the registration and transfer of this Note.

**IN WITNESS WHEREOF**, the Corporation caused this Note to be signed by the manual signature of the President and the seal of the Corporation to be affixed hereto or imprinted or reproduced hereon, and attested by the manual signature of the Secretary, and this Note to be dated the Date of Issuance set forth above.

(SEAL)

**TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC.**

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

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Corporation Attorney

**CERTIFICATE OF APPROVAL**

The issuance of this Note has been approved by the Town of Fort Myers Beach, Florida.

(SEAL)

**TOWN OF FORT MYERS BEACH, FLORIDA**

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

ATTEST:

By: \_\_\_\_\_  
Town Clerk

**Repayment Schedule for the**

**TOWN OF FORT MYERS BEACH PUBLIC WORKS  
SERVICES, INC. REVENUE REFUNDING NOTE (SUNTRUST BANK)  
SERIES 2010**

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
10/01/2010	\$180,000	\$	\$
04//01/2011	-0-		
10/01/2011	180,000		
04/01/2012	-0-		
10/01/2012	180,000		
04/01/2013	-0-		
08/06/2013	_____	_____	_____
Total	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>

**EXHIBIT B**  
**ENVIRONMENTAL MATTERS**