TOWN OF FORT MYERS BEACH, FLORIDA

ORDINANCE NO. 2008-07

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RELATING TO CAPITAL IMPROVEMENTS AND RELATED SERVICES PROVIDING A SPECIAL BENEFIT TO LOCAL AREAS WITHIN THE TOWN PROVIDING DEFINITIONS AND FINDINGS; PROVIDING FOR TITLE AND CITATION; PROVIDING FOR THE CREATION OF ASSESSMENT AREAS; AUTHORIZING THE IMPOSITION AND COLLECTION OF SPECIAL ASSESSMENTS TO FUND THE COST OF CAPITAL IMPROVEMENTS AND RELATED SERVICES PROVIDING A SPECIAL BENEFIT TO LOCAL AREAS WITHIN THE TOWN; ESTABLISHING PROCEDURES FOR NOTICE AND ADOPTION OF ASSESSMENT ROLLS AND FOR CORRECTION OF ERRORS AND OMISSIONS; PROVIDING THAT ASSESSMENTS CONSTITUTE A LIEN ON ASSESSED PROPERTY UPON ADOPTION OF THE ASSESSMENT ROLLS; ESTABLISHING PROCEDURES AND METHOD OF COLLECTION OF ASSESSMENTS; AUTHORIZING THE ISSUANCE OF OBLIGATIONS SECURED BY ASSESSMENTS; PROVIDING FOR VARIOUS RIGHTS AND REMEDIES OF THE HOLDERS OF SUCH OBLIGATIONS; PROVIDING THAT SUCH OBLIGATIONS WILL NOT CREATE A GENERAL DEBT OR OBLIGATION OF THE TOWN; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

ARTICLE I
INTRODUCTION

SECTION 1.01. DEFINITIONS. When used in this Ordinance, the following terms shall have the following meanings, unless the context clearly requires otherwise:

"Annual Assessment Resolution" means the resolution described in Section 2.08 hereof, approving an Assessment Roll for a specific Fiscal Year.

"Assessment" means a special assessment imposed by the Town pursuant to this Ordinance to fund the Project Cost of Local Improvements or the Operating Cost of Related Services.

"Assessment Area" means any of the areas created by resolution of the Town Council pursuant to Section 2.01 hereof, that specially benefit from a Local Improvement or Related Service.

"Assessment Roll" means the special assessment roll relating to Local Improvements or Related Services, approved by a Final Assessment Resolution pursuant to Section 2.07 hereof or an Annual Assessment Resolution pursuant to Section 2.08 hereof.

"Assessment Unit" means the unit or criteria utilized to determine the Assessment for each parcel of property, as set forth in the Initial Assessment Resolution. "Assessment Units" may include, by way of example only and not limitation, one or a combination of the following: front footage, platted lots or parcels of record, land area, improvement area, equivalent residential connections, permitted land use, trip generation rates, rights to future trip generation capacity under applicable concurrency management

regulations, property value, boat slips, docks or any other physical characteristic or reasonably expected use of the property that the Town determines is related to the Local Improvement or Related Service to be funded from proceeds of the Assessment.

"Capital Cost" means all or any portion of the expenses that are properly attributable to the acquisition, design, construction, installation, reconstruction, renewal or replacement (including demolition, environmental mitigation and relocation) of Local Improvements and imposition of the related Assessments under generally accepted accounting principles; and including reimbursement to the Town for any funds advanced for Capital Cost, including but not limited to, engineering fees, architect fees, planning fees, permitting fees and materials and labor costs, and interest on any interfund or intrafund loan for such purposes.

"Finance Director" means the Finance Director of the Town, or such person's designee.

"Final Assessment Resolution" means the resolution described in Section 2.07 hereof, which shall confirm, modify or repeal the Initial Assessment Resolution and which shall be the final proceeding for the imposition of an Assessment.

"Fiscal Year" means the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be prescribed by law as the fiscal year for the Town.

"Government Property" means property owned by the United States of America, the State of Florida, a county, a special district, a municipal corporation, or any of their respective agencies or political subdivisions.

"Initial Assessment Resolution" means the resolution described in Section 2.03 hereof, which shall be the initial proceeding for the imposition of an Assessment.

"Local Improvement" means a capital improvement constructed or installed by the Town for the special benefit of a localized area.

"Obligations" means bonds or other evidence of indebtedness including but not limited to, notes, commercial paper, capital leases, reimbursable advances by the Town, or any other obligation issued or incurred to finance any portion of the Project Cost of Local Improvements or Related Services and secured, in whole or in part, by proceeds of the Assessments.

"Ordinance" means this Capital Project and Related Service Assessment Ordinance.

"Operating Cost" means all or any portion of the expenses that are properly attributable to Related Services under generally accepted accounting principles, including, without limiting the generality of the foregoing, reimbursement to the Town for any funds advanced for Related Services, and interest on any interfund or intrafund loan for such purpose.

"Pledged Revenue" means, as to any series of Obligations, (A) the proceeds of such Obligations, including investment earnings, (B) proceeds of the Assessments pledged to secure the payment of such Obligations, and (C) any other legally available non-ad valorem revenue pledged, at the Town Council's sole option, to secure the payment of such Obligations, as specified by the ordinance and resolution authorizing such Obligations.

"Project Cost" means (A) the Capital Cost of a Local Improvement, (B) the Transaction Cost associated with the Obligations which financed the Local Improvement, (C) interest accruing on such Obligations for such period of time as the Town deems appropriate, (D) the debt service reserve fund or account, if any, established for the Obligations which financed the Local Improvement, and (E) any other costs or expenses related thereto.

"Property Appraiser" means the Lee County Property Appraiser.

"Related Service" means the operation and maintenance of a Local Improvement.

"Resolution of Intent" means the resolution expressing the Town Council's intent to collect Assessments on the ad valorem tax bill required by the Uniform Assessment Collection Act.

"Tax Collector" means the Lee County Tax Collector.

"Tax Roll" means the real property ad valorem tax assessment roll maintained by the Property Appraiser for the purpose of the levy and collection of ad valorem taxes.

"Town" means the Town of Fort Myers Beach, a municipal corporation duly organized and validly existing under Chapter 95-494, Laws of Florida and other applicable laws of the State of Florida.

"Town Charter" shall mean the Town of Fort Myers Beach Charter, as amended and supplemented from time to time.

"Town Clerk" shall mean the official custodian of all Town records and papers of an official character, or such person's designee.

"Town Council" means the Town Council of the Town of Fort Myers Beach, Florida.

"Town Manager" means the Town's Manager, or such person's designee.

"Transaction Cost" means the costs, fees and expenses incurred by the Town in connection with the issuance and sale of any series of Obligations, including but not limited to (A) rating agency and other financing fees; (B) the fees and disbursements of issuer's counsel, bond counsel and disclosure counsel, if any; (C) the underwriters' discount; (D) the fees and disbursements of the Town's financial advisor; (E) the costs of preparing and printing the Obligations, the preliminary official statement, the final official statement, and all other documentation supporting issuance of the Obligations; (F) the fees payable in respect of any municipal bond insurance policy; (G) administrative, development, credit review, and all other fees incurred by or paid for by the Town, associated with any pooled commercial paper or similar interim financing program; and (H) any other costs of a similar nature incurred in connection with issuance of such Obligations.

"Uniform Assessment Collection Act" means Sections 197.3632 and 197.3635, Florida Statutes, or any successor statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

SECTION 1.02. INTERPRETATION; TITLE AND CITATION.

(A) Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa; the terms "hereof," "hereby," "herein,"

"hereto," "hereunder" and similar terms refer to this Ordinance; and the term "hereafter" means after, and the term "heretofore" means before, the effective date of this Ordinance. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise.

(B) This Ordinance, being necessary for the welfare of the inhabitants of the Town, particularly the owners of property located within the Assessment Areas, shall be liberally construed to effect the purposes hereof.

(C) This Ordinance shall be known and cited as the "Capital Project and Related Service Assessment Ordinance."

SECTION 1.03. GENERAL FINDINGS. It is hereby ascertained, determined and declared that:

(A) Pursuant to Article VIII, Section 2(b) of the Florida Constitution, Sections 166.021 and 166.041, Florida Statutes, and Chapter 95-494, Florida Law, the Town Council has governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services. The Town Council is permitted to exercise any power for municipal purposes except as otherwise provided by law and such powers may be exercised by the enactment of legislation in the form of municipal ordinances.

(B) The Town Council may exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law, and the Town Council may legislate on any subject matter on which the Florida Legislature may act, except those subjects described in (a), (b), (c), and (d) of section 166.021(3),

Florida Statutes. The subject matter of paragraphs (a), (b), (c), and (d) of section 166.021(3), Florida Statutes, are not relevant to the imposition of Assessments to fund the Project Cost or Operating Cost of Local Improvements.

(C) The Assessments imposed pursuant to this Ordinance will be imposed by the Town Council, not the Property Appraiser or Tax Collector. Any activity of the Property Appraiser or Tax Collector under the provisions of this Ordinance shall be construed solely as ministerial.

ARTICLE II
ASSESSMENTS

SECTION 2.01. CREATION OF ASSESSMENT AREAS; SPECIAL BENEFIT. The Town Council is hereby authorized to create assessment areas in accordance with the procedures set forth herein. Each Assessment Area shall encompass only that property specially benefitted by the Local Improvements and Related Services proposed for funding from the proceeds of Assessments to be imposed therein. As described in Section 2.03 hereof, the Initial Assessment Resolution proposing each Assessment Area shall include specific legislative findings that recognize the special benefit to be provided by each proposed Local Improvement and Related Service to property within the Assessment Area.

SECTION 2.02. ASSESSMENTS. The Town Council is hereby authorized to impose Assessments against property located within an Assessment Area to fund the Project Cost and Related Services of Local Improvements. The Assessment shall be computed in a manner that fairly and reasonably apportions the Project Cost and Operating Cost among the parcels of property within the Assessment Area, based upon objectively determinable Assessment Units.

SECTION 2.03. INITIAL ASSESSMENT RESOLUTION. The initial proceeding for creation of an Assessment Area and imposition of an Assessment shall be the Town Council's adoption of an Initial Assessment Resolution. The Initial Assessment Resolution shall (A) describe the property to be located within the proposed Assessment Area; (B) describe the Local Improvement and Related Service proposed for funding

from proceeds of the Assessments; (C) estimate the Capital Cost, Project Cost or Operating Cost; (D) describe with particularity the proposed method of apportioning the Capital Cost, Project Cost or Operating Cost among the parcels of property located within the proposed Assessment Area, such that the owner of any parcel of property can objectively determine the number of Assessment Units and the amount of the Assessment; (E) describe the provisions, if any, for acceleration and prepayment of the Assessment; (F) describe the provisions, if any, for reallocating the Assessment upon future subdivision; (G) include specific legislative findings that recognize the special benefit to be provided by each proposed Local Improvement and Related Service to property within the Assessment Area, and (H) include specific legislative findings that recognize the fairness provided by the apportionment methodology.

SECTION 2.04. ASSESSMENT ROLL.

(A) The Town Manager shall prepare a preliminary Assessment Roll that contains the following information:

(1) a summary description of each parcel of property (conforming to the description contained on the Tax Roll) subject to the Assessment;

(2) the name of the owner of record of each parcel, as shown on the Tax Roll;

(3) the number of Assessment Units attributable to each parcel;

(4) the estimated maximum annual Assessment to become due in any Fiscal Year for each Assessment Unit; and

(5) the estimated maximum annual Assessment to become due in any Fiscal Year for each parcel.

(B) Copies of the Initial Assessment Resolution and the preliminary Assessment Roll shall be on file in the office of the Town Clerk and open to public inspection. The foregoing shall not be construed to require that the Assessment Roll be in printed form if the amount of the Assessment for each parcel of property can be determined by use of a computer terminal available to the public.

SECTION 2.05. NOTICE BY PUBLICATION. After filing the Assessment Roll in the office of the Town Clerk, as required by Section 2.04(B) hereof, the Town Clerk shall publish once in a newspaper of general circulation within the Town a notice stating that a public hearing of the Town Council will be held on a certain day and hour, not earlier than 20 calendar days from such publication, at which hearing the Town Council will receive written comments and hear testimony from all interested persons regarding creation of the Assessment Area and adoption of the Final Assessment Resolution. The published notice shall conform to the requirements set forth in the Uniform Assessment Collection Act.

SECTION 2.06. NOTICE BY MAIL. In addition to the published notice required by Section 2.05, the Town Clerk shall provide notice of the proposed Assessment by first class mail to the owner of each parcel of property subject to the Assessment. The mailed notice shall conform to the requirements set forth in the Uniform Assessment Collection Act. Notice shall be mailed at least 20 calendar days prior to the hearing to each property owner at such address as is shown on the Tax Roll

within ninety (90) days prior to the date of mailing. Notice shall be deemed mailed upon delivery thereof to the possession of the U.S. Postal Service. The Town Clerk may provide proof of such notice by affidavit. Failure of the owner to receive such notice due to mistake or inadvertence shall not affect the validity of the Assessment Roll nor release or discharge any obligation for the payment of an Assessment imposed by the Town Council pursuant to this Ordinance.

SECTION 2.07. ADOPTION OF FINAL ASSESSMENT RESOLUTION. At the time named in such notice, or such time to which an adjournment or continuance may be taken, the Town Council shall receive written objections and hear testimony of interested persons and may then, or at any subsequent meeting of the Town Council, adopt the Final Assessment Resolution which shall (A) create the Assessment Area; (B) confirm, modify or repeal the Initial Assessment Resolution with such amendments, if any, as may be deemed appropriate by the Town Council; (C) establish the maximum amount of the Assessment for each Assessment Unit; (D) approve the Assessment Roll, with such amendments as it deems just and right; and (E) determine the method of collection. Following adoption of the Final Assessment Resolution but prior to the date on which the Assessment Roll is certified for collection pursuant to Article III hereof, the Town Council may obtain a written legal opinion that the Assessments have been validly imposed from the Town Attorney, an attorney-at-law or firm of attorneys of recognized standing in matters pertaining to local government law; provided however, that the failure to obtain such opinion shall not invalidate the Assessments or affect the factual findings made by the Town Council in connection therewith.

SECTION 2.08. ANNUAL ASSESSMENT RESOLUTION. During its budget adoption process or, in any event, prior to September 15 of each year, the Town Council shall adopt an Annual Assessment Resolution for each Fiscal Year in which Assessments will be imposed to approve the Assessment Roll for such Fiscal Year. The Final Assessment Resolution shall constitute the Annual Assessment Resolution for the initial Fiscal Year. The Assessment Roll shall be prepared in accordance with the Initial Assessment Resolution, as confirmed or amended by the Final Assessment Resolution. If the proposed Assessment for any parcel of property exceeds the maximum amount established in the notice provided pursuant Section 2.06 hereof or if an Assessment is imposed against property not previously subject thereto, the Town Council shall provide notice to the owner of such property in accordance with Sections 2.05 and 2.06 hereof and conduct a public hearing prior to adoption of the Annual Assessment Resolution. Failure to adopt an Annual Assessment Resolution during the budget adoption process for a Fiscal Year may be cured at any time.

SECTION 2.09. EFFECT OF FINAL ASSESSMENT RESOLUTIONS. The adoption of the Final Assessment Resolution shall be the final adjudication of the issues presented (including, but not limited to, the apportionment methodology, the rate of assessment, the adoption of the Assessment Roll and the levy and lien of the Assessments), unless proper steps are initiated in a court of competent jurisdiction to secure relief within 20 days from the date of Town Council adoption of the Final Assessment Resolution. The Assessments for each Fiscal Year shall be established upon adoption of the Annual Assessment Resolution. The Assessment Roll, as approved by the

Annual Assessment Resolution, shall be certified to the Tax Collector, or such other official as the Town Council by resolution deems appropriate.

SECTION 2.10. LIEN OF ASSESSMENTS.

(A) Upon adoption of the Annual Assessment Resolution for each Fiscal Year, Assessments to be collected under the Uniform Assessment Collection Act shall constitute a lien against assessed property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other liens, titles and claims, until the ad valorem tax bill for such year is otherwise paid in full pursuant to the Uniform Assessment Collection Act. The lien shall be deemed perfected upon adoption by the Town Council of the Annual Assessment Resolution and shall attach to the property included on the Assessment Roll as of January 1 of the Assessment year, the lien date for ad valorem taxes.

(B) Upon adoption of the Final Assessment Resolution, Assessments to be collected under any alternative method of collection provided in Section 3.02 hereof shall constitute a lien against assessed property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other liens, titles and claims, until paid. The lien shall be deemed perfected on the date notice thereof is recorded in the Official Records of Lee County, Florida.

SECTION 2.11. REVISIONS TO ASSESSMENTS. If any Assessment made under the provisions of this Ordinance is either in whole or in part annulled,

vacated or set aside by the judgment of any court, or if the Town Council is satisfied that any such Assessment is so irregular or defective that the same cannot be enforced or collected, or if the Town Council has failed to include any property on the Assessment Roll which property should have been so included, the Town Council may take all necessary steps to impose a new Assessment against any property benefitted by the Local Improvement or Related Service, following as nearly as may be practicable, the provisions of this Ordinance and in case such second Assessment is annulled, the Town Council may obtain and impose other Assessments until a valid Assessment is imposed.

SECTION 2.12. PROCEDURAL IRREGULARITIES. Any irregularity in the proceedings in connection with the levy of any Assessment under the provisions of this Ordinance shall not affect the validity of the same after the approval thereof, and any Assessment as finally approved shall be competent and sufficient evidence that such Assessment was duly levied, that the Assessment was duly made and adopted, and that all other proceedings adequate to such Assessment were duly had, taken and performed as required by this Ordinance; and no variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby. Notwithstanding the provisions of this Section 2.12, any party objecting to an Assessment imposed pursuant to this Ordinance must file an objection with a court of competent jurisdiction within the time periods prescribed herein.

SECTION 2.13. CORRECTION OF ERRORS AND OMISSIONS.

(A) No act of error or omission on the part of the Town Council, Finance Director, Town Manager, Property Appraiser, Tax Collector, Town Clerk, or their

respective deputies, representatives, agents or employees, shall operate to release or discharge any obligation for payment of any Assessment imposed by the Town Council under the provisions of this Ordinance.

(B) The number of Assessment Units attributed to a parcel of property may be corrected at any time by the Town Manager. Any such correction which reduces an Assessment shall be considered valid from the date on which the Assessment was imposed and shall in no way affect the enforcement of the Assessment imposed under the provisions of this Ordinance. Any such correction which increases an Assessment or imposes an assessment on omitted property shall first require notice to the affected owner in the manner described in Section 2.06 hereof, providing the date, time and place that the Town Council will consider confirming the correction and offering the owner an opportunity to be heard.

(C) After the Assessment Roll has been delivered to the Tax Collector in accordance with the Uniform Assessment Collection Act, any changes, modifications or corrections thereto shall be made in accordance with the procedures applicable to errors and insolvencies for ad valorem taxes.

ARTICLE III
COLLECTION OF ASSESSMENTS

SECTION 3.01. METHOD OF COLLECTION.

(A) Unless directed otherwise by the Town Council, Assessments (other than Assessments imposed against Government Property) shall be collected pursuant to the Uniform Assessment Collection Act, and the Town shall comply with all applicable provisions thereof. The Resolution of Intent required by the Uniform Assessment Collection Act may be adopted either prior to or following the Initial Assessment Resolution; provided however, that the Resolution of Intent must be adopted prior to January 1 (or March 1 with consent of the Property Appraiser and Tax Collector) of the year in which the Assessments are first collected on the ad valorem tax bill. Any hearing or notice required by this Ordinance may be combined with any other hearing or notice required by the Uniform Assessment Collection Act.

(B) The amount of an Assessment to be collected using the uniform method pursuant to the Uniform Assessment Collection Act for any specific tax parcel may include an amount equivalent to the payment delinquency, delinquency fees and recording costs for a prior year's Assessment for a comparable service, facility, or program provided, (1) the collection method used in connection with the prior year's Assessment was not made pursuant to the Uniform Assessment Collection Act, (2) notice is provided to the owner as required under the Uniform Assessment Collection Act, and (3) any lien on the affected tax parcel for the prior year's Assessment is supplanted and

transferred to such current year's Assessment upon certification of the Assessment Roll to the Tax Collector by the Town.

SECTION 3.02. ALTERNATIVE METHOD OF COLLECTION. In lieu of using the Uniform Assessment Collection Act, the Town may elect to collect the Assessment by any other method which is authorized by law or provided by this Section 3.02 as follows:

(A) The Town shall provide Assessment bills by first class mail to the owner of each affected parcel of property, other than Government Property. The bill or accompanying explanatory material shall include (1) a brief explanation of the Assessment, (2) a description of the Assessment Units used to determine the amount of the Assessment, (3) the number of Assessment Units attributable to the parcel, (4) the total amount of the parcel's Assessment for the appropriate period, (5) the location at which payment will be accepted, (6) the date on which the Assessment is due, and (7) a statement that the Assessment constitutes a lien against assessed property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments.

(B) A general notice of the lien resulting from imposition of the Assessments shall be recorded in the Official Records of Lee County, Florida. Nothing herein shall be construed to require that individual liens or releases be filed in the Official Records.

(C) The Town shall have the right to appoint or retain an agent to foreclose and collect all delinquent Assessments in the manner provided by law. An Assessment shall become delinquent if it is not paid within 30 days from the due date. The Town or its

agent shall notify any property owner who is delinquent in payment of an Assessment within 60 days from the date such Assessment was due. Such notice shall state in effect that the Town or its agent will initiate a foreclosure action and cause the foreclosure of such property subject to a delinquent Assessment in a method now or hereafter provided by law for foreclosure of mortgages on real estate, or otherwise as provided by law.

(D) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any foreclosure action as described herein shall be included in any judgment or decree rendered therein. At the sale pursuant to decree in any such action, the Town may be the purchaser to the same extent as an individual person or corporation. The Town may join in one foreclosure action the collection of Assessments against any or all property assessed in accordance with the provisions hereof. All delinquent property owners whose property is foreclosed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the Town and its agents, including reasonable attorney fees, in collection of such delinquent Assessments and any other costs incurred by the Town as a result of such delinquent Assessments including, but not limited to, costs paid for draws on a credit facility and the same shall be collectible as a part of or in addition to, the costs of the action.

(E) In lieu of foreclosure, any delinquent Assessment and the costs, fees and expenses attributable thereto, may be collected pursuant to the Uniform Assessment Collection Act; provided however, that (1) notice is provided to the owner in the manner required by law and this Ordinance, and (2) any existing lien of record on the affected

parcel for the delinquent Assessment is supplanted by the lien resulting from certification of the Assessment Roll to the Tax Collector.

SECTION 3.03. RESPONSIBILITY FOR ENFORCEMENT. The Town and its agent, if any, shall maintain the duty to enforce the prompt collection of Assessments by the means provided herein. The duties related to collection of Assessments may be enforced by any holder of Obligations by a suit brought in a court of competent jurisdiction by mandamus or other appropriate proceedings or actions.

SECTION 3.04. GOVERNMENT PROPERTY.

(A) If Assessments are imposed against Government Property, the Town shall provide Assessment bills by first class mail to the owner of each affected parcel of Government Property. The bill or accompanying explanatory material shall include (1) a brief explanation of the Assessment, (2) a description of the Assessment Units used to determine the amount of the Assessment, (3) the number of Assessment Units attributable to the parcel, (4) the total amount of the parcel's Assessment for the appropriate period, (5) the location at which payment will be accepted, and (6) the date on which the Assessment is due.

(B) Assessments imposed against Governmental Property shall be due on the same date as Assessments against other property within the Assessment Area and, if applicable, shall be subject to the same discounts for early payment.

(C) An Assessment shall become delinquent if it is not paid within 30 days from the due date. The Town shall notify the owner of any Government Property that is delinquent in payment of its Assessment within 60 days from the date such Assessment

was due. Such notice shall state in effect that the Town will initiate a mandamus or other appropriate judicial action to compel payment.

(D) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any mandamus or other action as described herein shall be included in any judgment or decree rendered therein. All delinquent owners of Government Property against which a mandamus or other appropriate action is filed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the Town, including reasonable attorney fees, in collection of such delinquent Assessments and any other costs incurred by the Town as a result of such delinquent Assessments including, but not limited to, costs paid for draws on a credit facility and the same shall be collectible as a part of or in addition to, the costs of the action.

(E) As an alternative to the foregoing, an Assessment imposed against Government Property may be collected on the bill for any utility service provided to such Governmental Property. The Town Council may contract for such billing services with any utility provider.

ARTICLE IV
ISSUANCE OF OBLIGATIONS

SECTION 4.01. GENERAL AUTHORITY.

(A) Upon adoption of the Final Assessment Resolution imposing Assessments to fund a Local Improvement or Related Service or at any time thereafter, the Town Council shall have the power and is hereby authorized to provide by resolution, at one time or from time to time in series, for the issuance of Obligations to fund the Project Cost thereof in accordance with Article XI, section 11.03(b) of the Town's Charter and any additional requirements imposed by the Town's Charter, as amended and supplemented from time to time.

(B) The principal of and interest on each series of Obligations shall be payable from Pledged Revenue. At the option of the Town Council, the Town may agree, by resolution, to budget and appropriate funds to make up any deficiency in the reserve account established for the Obligations or in the payment of the Obligations, from other non-ad valorem revenue sources. The Town Council may also provide, by resolution, for a pledge of or lien upon proceeds of such non-ad valorem revenue sources for the benefit of the holders of the Obligations. Any such resolution shall determine the nature and extent of any pledge of or lien upon proceeds of such non-ad valorem revenue sources.

SECTION 4.02. TERMS OF THE OBLIGATIONS. The Obligations shall be dated, shall bear interest at such rate or rates, shall mature at such times as may be determined by resolution of the Town Council, and may be made redeemable before maturity, at the option of the Town, at such price or prices and under such terms and

conditions, all as may be fixed by the Town Council. Said Obligations shall mature as required under Article XI, section 11.03(b) of the Town's Charter, but in no event shall said Obligation mature later than 40 years after their issuance. The Town Council shall determine by resolution the form of the Obligations, the manner of executing such Obligations, and shall fix the denominations of such Obligations, the place or places of payment of the principal and interest, which may be at any bank or trust company within or outside of the State of Florida, and such other terms and provisions of the Obligations as it deems appropriate. The Obligations may be sold at public or private sale for such price or prices as the Town Council shall determine by resolution. The Obligations may be delivered to any contractor to pay for construction of the Local Improvements or to pay for Related Services or may be sold in such manner and for such price as the Town Council may determine by resolution to be for the best interests of the Town.

SECTION 4.03. VARIABLE RATE OBLIGATIONS. At the option of the Town Council, Obligations may bear interest at a variable rate.

SECTION 4.04. TEMPORARY OBLIGATIONS. Prior to the preparation of definitive Obligations of any series, the Town Council may, under like restrictions, issue interim receipts, interim certificates, or temporary Obligations, exchangeable for definitive Obligations when such Obligations have been executed and are available for delivery. The Town Council may also provide for the replacement of any Obligations which shall become mutilated, destroyed or lost. Obligations may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Ordinance.

SECTION 4.05. ANTICIPATION NOTES. In anticipation of the sale of Obligations, the Town Council may, by resolution, issue notes and may renew the same from time to time. Such notes may be paid from the proceeds of the Obligations, the proceeds of the Assessments, the proceeds of the notes and such other legally available moneys as the Town Council deems appropriate by resolution. Said notes shall mature as required under Article XI, section 11.03(b) of the Town's Charter, but in no event shall said notes mature later than five years of their issuance and said notes shall bear interest at a rate not exceeding the maximum rate provided by law. The Town Council may issue Obligations or renewal notes to repay the notes. The notes shall be issued in the same manner as the Obligations.

SECTION 4.06. TAXING POWER NOT PLEDGED. Obligations issued under the provisions of this Ordinance shall not be deemed to constitute a general obligation or pledge of the full faith and credit of the Town within the meaning of the Constitution of the State of Florida, but such Obligations shall be payable only from Pledged Revenue in the manner provided herein and by the resolution authorizing the Obligations. The issuance of Obligations under the provisions of this Ordinance shall not directly or indirectly obligate the Town to levy or to pledge any form of ad valorem taxation whatever therefor. No holder of any such Obligations shall ever have the right to compel any exercise of the ad valorem taxing power on the part of the Town to pay any such Obligations or the interest thereon or to enforce payment of such Obligations or the interest thereon against any property of the Town, nor shall such Obligations constitute a

charge, lien or encumbrance, legal or equitable, upon any property of the Town, except the Pledged Revenue.

SECTION 4.07. TRUST FUNDS. The Pledged Revenue received pursuant to the authority of this Ordinance shall be deemed to be trust funds, to be held and applied solely as provided in this Ordinance and in the resolution authorizing issuance of the Obligations. Such Pledged Revenue may be invested by the Town, or its designee, in the manner provided by the resolution authorizing issuance of the Obligations. The Pledged Revenue upon receipt thereof by the Town shall be subject to the lien and pledge of the holders of any Obligations or any entity other than the Town providing credit enhancement on the Obligations.

SECTION 4.08. REMEDIES OF HOLDERS. Any holder of Obligations, except to the extent the rights herein given may be restricted by the resolution authorizing issuance of the Obligations, may, whether at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the State of Florida or granted hereunder or under such resolution, and may enforce and compel the performance of all duties required by this part, or by such resolution, to be performed by the Town.

SECTION 4.09. REFUNDING OBLIGATIONS. The Town may, by resolution of the Town Council, issue Obligations to refund any Obligations issued pursuant to this Ordinance, or any other obligations of the Town theretofore issued to finance the Project Cost of a Local Improvement or Related Service, and provide for the rights of the holders hereof. Such refunding Obligations may be issued in an amount

sufficient to provide for the payment of the principal of, redemption premium, if any, and interest on the outstanding Obligations to be refunded. If the issuance of such refunding Obligations results in an annual Assessment that exceeds the estimated maximum annual Assessments set forth in the notice provided pursuant to Section 2.06 hereof, the Town Council shall provide notice to the affected property owners and conduct a public hearing in the manner required by Article II of this Ordinance.

ARTICLE V
GENERAL PROVISIONS

SECTION 5.01. ALTERNATIVE METHOD. This Ordinance shall be deemed to provide an additional and alternative method for the imposition and collection of Assessments and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may hereafter come into existence.

SECTION 5.02 CODIFICATION. It is the intention of the Town Council that the provisions of this Ordinance shall become a part of the Town's Code of Ordinances, as amended. The provisions of this Ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section," "article" or other appropriate word to accomplish such intention.

SECTION 5.03. SEVERABILITY. If any portion of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holding shall not affect the remaining portions of this Ordinance. If this Ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstances, such holding shall not affect its applicability to any other person, property or circumstances.

SECTION 5.04. EFFECT OF ORDINANCE. The provisions of this Ordinance shall be deemed cumulative and supplemental and shall have no legal effect upon the ordinances of the Town of Fort Myers Beach, except as expressly provided.

SECTION 5.05 EFFECTIVE DATE. This Ordinance shall become effective immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Babcock and seconded by Council Member List and, upon being put to a vote, the results was as follows:

Larry Kiker, Mayor	aye	Herb Acken, Vice Mayor	aye
Tom Babcock	aye	Jo List	aye
Bob Raymond	aye		

DULY PASSED AND ENACTED this 16th day of June, 2008.

TOWN OF FORT MYERS BEACH,
FLORIDA

Larry Kiker, Mayor

ATTEST:

Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND
CORRECTNESS:

Anne Dalton, Town Attorney