

**RESOLUTION NO. 07-27**

**A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING THE ISSUANCE BY THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC. (THE "BORROWER") OF ITS NOT TO EXCEED \$3,060,000 IN AGGREGATE PRINCIPAL AMOUNT OF ITS REVENUE REFUNDING NOTE, SERIES 2007 (THE "NOTE") IN ORDER TO REDEEM ITS UTILITY REVENUE NOTE, SERIES 2004 ORIGINALLY ISSUED BY THE BORROWER TO FINANCE THE ACQUISITION OF THE UTILITY SYSTEM; PROVIDING A COVENANT TO BUDGET AND APPROPRIATE NON-AD VALOREM REVENUES IN THE EVENT THAT PLEDGED REVENUES OF THE BORROWER ARE INSUFFICIENT TO PAY DEBT SERVICE ON THE NOTE; DESIGNATING THE NOTE AS A "QUALIFIED TAX-EXEMPT OBLIGATION" PURSUANT TO SECTION 265(B)(3) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA** as follows:

**SECTION 1. AUTHORIZATION.** This Resolution is adopted pursuant to the provisions of Chapter 166, Florida Statutes and other applicable provisions of law (the "Act").

**SECTION 2. FINDINGS.** The Town Council (the "Council") of the Town of Fort Myers Beach, Florida (the "Town") hereby finds and determines that:

(a) The Town of Fort Myers Beach Public Works Services, Inc. (the "Borrower") desires to authorize the issuance of its not to exceed \$3,060,000 Revenue Refunding Note, Series 2007 (the "Note") for the purpose of currently refunding the Borrower's outstanding Revenue Note, Series 2004 (the "2004 Note") which was originally issued to refinance the acquisition of the water utility system for the Town (the "System"); and

(b) The Borrower is authorized to pledge the net revenues of the System to the repayment of the Note; and

(c) The Town has agreed to provide a covenant to budget and appropriate Non-Ad Valorem Revenues (as defined herein) in the event that the revenues of the System (the "Pledged Revenues") are insufficient to pay principal and interest on the Note as the same shall become due; and

(d) Including the proposed Note, the Town, and all of its entities which issue obligations on behalf of the Town, has not issued more than \$10,000,000 of tax-exempt

obligations under Section 265(b)(3) of the Code in calendar year 2007 nor does it reasonably expect to do so.

**SECTION 3. AUTHORIZATION OF THE FINANCING AND ISSUANCE OF THE NOTE.** The Town hereby authorizes the financing and issuance of the Note by the Borrower.

**SECTION 4. COVENANT TO BUDGET AND APPROPRIATE.** Subject to the next paragraph, to the extent the Pledged Revenues are insufficient to pay amounts due and payable as to the Note, the Town covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from all revenues of the Town not derived from ad valorem taxation and which are lawfully available to be used to pay debt service on amounts due under the Note ("Non-Ad Valorem Revenues"), amounts sufficient to pay principal of and interest on amounts due under the Note as the same shall become due. 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 Pledged Revenues, 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. No lien upon or pledge of such budgeted Non-Ad Valorem Revenues shall be in effect until such monies are budgeted and appropriated. The Town further acknowledges and agrees that the obligations of the Town to include the amount of any deficiency in payments in each of its annual budgets and to pay such deficiencies from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it require the Town to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the holder of the Note a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the Town. Such covenant to budget and appropriate Non-Ad Valorem Revenues is subject in all respects to the prior 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). Anything in this Resolution to the contrary notwithstanding, it is understood and agreed that all obligations of the Town hereunder shall be payable from the portion of Non-Ad Valorem Revenues budgeted and appropriated as provided for hereunder and nothing herein shall be deemed to pledge ad valorem tax revenues or to permit or constitute a mortgage or lien upon any assets owned by the Town and no holder of the Note nor any other person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Town. Notwithstanding any provisions of this Resolution or the Note to the contrary, the Town shall never be obligated to maintain or continue any of the activities of the Town, which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. Except as provided hereafter, neither this Resolution nor the obligations of the Town hereunder shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the Town, but shall be payable solely as provided herein and is subject in all respects to the provisions of Section 166.241, Florida Statutes, and is 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.

**SECTION 5. DESIGNATION OF NOTE AS A QUALIFIED TAX-EXEMPT OBLIGATION.** The Town hereby designates the Note as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code. This designation is based upon the findings of the Town set forth in Section 2(d) of this Resolution. The Mayor, Vice Mayor, or the Clerk are authorized to certify such finding upon the issuance of the Note.

**SECTION 6. AUTHORIZATION OF EXECUTION OF NOTE, TAX EXEMPTION CERTIFICATE, OTHER CERTIFICATES AND OTHER INSTRUMENTS.** The Mayor or Vice Mayor of the Town is hereby authorized and directed to execute and deliver the Note and certificates of the Town certifying such facts as Note Counsel shall require, in connection with the issuance, sale and delivery of the Note and to execute and deliver such other instruments, including but not limited to, a tax exemption certificate relating to certain requirements set forth in Section 148 of the Code, as shall be necessary or desirable to authorize the issuance of the Note.

**SECTION 7. REMEDIES OF NOTEHOLDER.** The holder of the Note may, whether at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce and compel the performance of all duties required hereby, or by the Loan Agreement which secures such Note, to be performed by the Town.

**SECTION 8. GENERAL AUTHORITY.** The members of the Town Council and its officers, counsel, agents and officials are hereby authorized to do all acts and things required of them consistent with the requirements of this Resolution, the Proposal, the Loan Agreement and any other document relating to the issuance of the Note for the full punctual and complete performance of all the terms, covenants and agreements contained in the Note, this Resolution, the Proposal, the Loan Agreement and such other documents. The Vice Mayor or any other Councilmember is authorized to do all things required or permitted by this Resolution of the Mayor in his or her absence or unavailability.

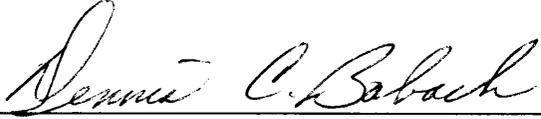
**SECTION 9. SEVERABILITY OF INVALID PROVISIONS.** If any one or more of the covenants, agreements or provisions contained herein shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions hereof and shall in no way affect the validity of any of the other provisions of this Resolution.

**SECTION 10. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption.

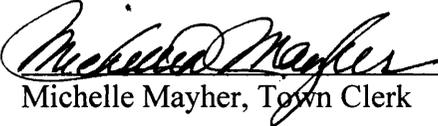
**ADOPTED** at a meeting of the Town Council of The Town of Fort Myers Beach on the 6<sup>th</sup> day of August, 2007.

**THE TOWN OF FORT MYERS BEACH**

[SEAL]

By:   
Dennis C. Boback, Mayor

**ATTEST:**

  
Michelle Mayher, Town Clerk

**Approved as to Legal Form:**

  
Anne Dalton, Esquire, Town Attorney

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