

ADOPTION COPY

ORDINANCE NO. 96-01

AN ORDINANCE AUTHORIZING THE BORROWING OF NOT TO EXCEED \$500,000 TO PROVIDE INTERIM FUNDS FOR THE PAYMENT OF OPERATING EXPENSES OF THE TOWN DURING THE CURRENT FISCAL YEAR AND 1997 FISCAL YEAR UNTIL RECEIPT OF TAX AND OTHER REVENUES; ACCEPTING THE PROPOSAL OF FIRST UNION NATIONAL BANK FOR SUCH LOAN; AUTHORIZING ISSUANCE OF TAX ANTICIPATION NOTES, SERIES 1996, OF THE TOWN OF FORT MYERS BEACH, FLORIDA; PLEDGING AD VALOREM TAXES TO BE RECEIVED BY THE TOWN AND THE FULL FAITH AND CREDIT OF THE TOWN TO THE REPAYMENT OF THE NOTES; SPECIFYING THE AUTHORITY FOR THIS ORDINANCE; PROVIDING DEFINITIONS; FINDINGS; ORDINANCE TO CONSTITUTE CONTRACT; AUTHORIZATION AND DESCRIPTION OF NOTES; EXECUTION AND AUTHENTICATION OF NOTES; NOTES MUTILATED, DESTROYED, STOLEN OR LOST; NEGOTIABILITY, REGISTRATION AND TRANSFER OF NOTES; FORM OF NOTES; GENERAL OBLIGATION OF TOWN; SINKING FUND; APPLICATION OF NOTE PROCEEDS; COVENANTS OF TOWN; ADDITIONAL COVENANTS FOR BENEFIT OF BANK; TAX COMPLIANCE; DEFEASANCE; EXECUTION OF DOCUMENTS; ACCEPTANCE OF COMMITMENT; REMEDIES; SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AUTHORITY FOR THIS ORDINANCE. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. DEFINITIONS. The following terms shall have the following meanings herein, unless the text otherwise expressly requires:

"Act" means Chapter 95-494, Laws of Florida, and Chapter 166, Florida Statutes.

"Bank" means First Union National Bank of Florida, N.A., Fort Myers, Florida.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commitment" means the letter of the Bank, dated January 3, 1996, a copy of which is attached hereto as Exhibit A.

"County" means Lee County, Florida, a political subdivision of the State.

"Current Fiscal Year" means the initial fiscal year of the Town commencing January 1, 1996, and ending September 30, 1996.

"Escrow Investments" means any of the following if and to the extent the same are at the time legal for investment of Town funds: (a) direct obligations of or obligations fully guaranteed by the United States of America; or (b) the Local Government Surplus Funds Trust Fund as described in Section 218.405, Florida Statutes.

"Holder" or "Noteholder" means the registered owner of a Note.

"LIBOR Rate" means the 30-day London InterBank Offered Rates, as published on the date of the applicable loan, for dollar deposits in same day funds in amounts comparable to the outstanding amount for which the interest rate is being determined.

"Maturity Date" means the date which the principal and interest on the Notes shall be due and payable, being December 31, 1996.

"Note" or "Notes" means one or more of the tax anticipation notes authorized by this Ordinance.

"Operating Budget" means the Board's operating budget for the Current Fiscal Year, presently being prepared in accordance with the Act and the Board's tentative operating budget for the 1997 Fiscal Year.

"Operating Costs" means expenses necessary for the operation of municipal government of the Town.

"Paying Agent" or "Note Registrar" means Town Manager of the Town.

"Pledged Revenues" means the receipts of ad valorem taxes collected by the Tax Collector of the County for the benefit of the Town during the 1997 Fiscal Year, and any other funds of the Town, from whatever source derived, legally available to pay the principal of and interest on the Notes.

"Register" means the books maintained by the Town Manager in which are recorded the names, and addresses of the Holders of the Notes.

"Regulations" means the income tax regulations promulgated by the Internal Revenue Service under Section 103 and Sections 141-150 of the Code, in effect from time to time.

"State" means the State of Florida.

"Town" means the Town of Fort Myers Beach Florida, a political subdivision of the State.

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

"1997 Fiscal Year" means the fiscal year of the Town commencing October 1, 1996, and ending September 30, 1997.

SECTION 3. FINDINGS. It is hereby found, determined and declared as follows:

A. Pursuant to Section 15.05 of the Town of Fort Myers Beach Charter and other provisions of law, the Town is authorized to borrow money necessary for the operation of municipal government until such time as a budget is adopted and revenues are raised in accordance with the provisions of the Act.

B. A Feasibility Study has been prepared reflecting the reasonable estimates of receipts and expenditures during the Current Fiscal Year and the 1997 Fiscal Year. It is estimated based on such estimates Town funds will be insufficient, at various times during the Current Fiscal Year and the 1997 Fiscal Year, to pay obligations of the Town.

C. It is necessary for the benefit of the Town and its citizens that the Town borrow to meet the disbursement requirements of the Operating Budgets through the issuance of its tax anticipation notes. Such tax anticipation notes will be retired from the Pledged Revenues anticipated to be received in accordance with the Operating Budgets.

D. The Notes shall be general obligations of the Town payable as to both principal and interest from, and secured by a lien upon and pledge of, the Pledged Revenues. The full faith and credit and taxing power of the Town will be pledged to the payment of the principal of and the interest on the Notes.

E. It is estimated that the Pledged Revenues will be sufficient to pay the principal of and interest on the Notes when due.

F. The 20 "Bond-Buyer" Average Yield Index (the "Index") published immediately prior to the first day of January, 1996 was 5.44. One hundred and fifty basis points above the Index is 6.94, which rate is the statutory initial interest rate limit (the "Interest Rate Limit") applicable to the Notes.

SECTION 4. ORDINANCE TO CONSTITUTE CONTRACT. In consideration of the acceptance of the Notes authorized to be issued hereunder, this Ordinance shall be deemed to be and shall constitute a contract between the Town and the Holders. The covenants and agreements herein set forth to be performed by the Town shall be for the equal benefit, protection and security of the Noteholders; all Notes delivered to the Bank hereunder shall be of equal rank and without preference, priority or distinction of any of such Notes over any other thereof, except as expressly provided therein and herein.

SECTION 5. AUTHORIZATION AND DESCRIPTION OF NOTES. For the purpose of financing the cost of obligations incurred in the ordinary operations of the Town during the Current Fiscal Year and the 1997 Fiscal Year, there are hereby authorized to be issued by the

Town its Tax Anticipation Notes, Series 1996, in the aggregate principal amount not to exceed \$500,000.

The Notes shall be dated the date of initial delivery thereof, shall be issued in the denomination of \$5,000 each or integral multiples thereof, shall mature on December 31, 1996, shall be in fully registered form, and shall bear interest on the principal amount thereof from their date until the Maturity Date at the rate of interest determined as set forth in the form of Note attached hereto as Exhibit B, provided that in no event shall the interest rate exceed the maximum rate allowed by law. Interest will be computed on an actual day basis over a 366-day year. The Notes may be prepaid prior to maturity in whole or in part on any date.

SECTION 6. EXECUTION AND AUTHENTICATION OF NOTES. The Notes shall be executed in the name of the Town by the Mayor or Vice Mayor of the Town, and attested and countersigned by the Town Manager and the corporate seal of the Town or a facsimile thereof shall be affixed thereto or reproduced thereon. The Notes may be signed and sealed on behalf of the Town by any person who at the actual time of the execution of such Notes shall hold such office in the Town, although at the date of such Notes such person may not have been so authorized. The Notes may be executed by the facsimile signatures of the Mayor or Vice Mayor and the Town Manager, so long as the Notes bear one manual signature.

There shall be a Certificate of Authentication of the Note Registrar on the Notes, and no Note shall be valid or obligatory for any purpose or be entitled to any security or benefit under the provisions of this Ordinance unless such certificate shall have been duly executed on such Note. The authorized signature for the Note Registrar shall be either manual or in facsimile; provided, however, that at least one of the above signatures, including that of the authorized signature for the Note Registrar, appearing on the Notes shall be a manual signature.

SECTION 7. NOTES MUTILATED, DESTROYED, STOLEN OR LOST. In case any Note in certificate form shall be mutilated, or be destroyed, stolen or lost, upon the Holder furnishing the Town proof of his ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Town may prescribe and paying such expenses as the Town may incur, the Town shall issue and deliver a new Note of like tenor as the Note so mutilated, destroyed, stolen or lost, in lieu of or substitution for the Note, if any, destroyed, stolen or lost, or in exchange and substitution for such mutilated Note, upon surrender of such mutilated Note, if any, to the Town and the cancellation thereof; provided however, if the Note shall have matured or be about to mature, instead of issuing a substitute Note, the Town may pay the same, upon being indemnified as aforesaid, and if such Note be lost, stolen or destroyed, without surrender thereof. Any Note surrendered under the terms of this section shall be cancelled by the Town Manager.

Any such duplicate Note issued pursuant to this section shall constitute an original, additional contractual obligation on the part of the Town whether or not, as to duplicate Notes, the lost, stolen or destroyed Note be at any time found by anyone, and such duplicate Note shall be entitled to equal and proportionate benefits and rights as to lien on and source and security for payment from the funds hereinafter pledged to the same extent as the other Notes issued hereunder.

SECTION 8. NEGOTIABILITY, REGISTRATION AND TRANSFER OF NOTES.

All Notes shall be and shall have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code-Investment Securities Laws of the State of Florida, and each successive Holder, in accepting any of the Notes, shall be conclusively deemed to have agreed that such Notes shall be and have all of the qualities and incidents of negotiable instruments thereunder.

There shall be a Registrar who shall be responsible for maintaining the Register. The Acting Town Manager shall be the initial Registrar. The person in whose name ownership of any Note is shown on the Register shall be deemed the Holder thereof by the Town the Registrar, and any notice to the contrary shall not be binding upon the Town or the Registrar. The Town and the Registrar may treat the Holder of any Note as the absolute owner thereof for all purposes, whether or not such Note shall be overdue, and shall not be bound by any notice to the contrary.

Ownership of Notes may be transferred only upon the Register. Upon surrender to the Registrar for transfer or exchange of any Notes accompanied by an assignment or written authorization for exchange, whichever is applicable, duly executed by the Holder or his attorney duly authorized in writing, the Registrar shall deliver in the name of the Holder or the transferee or transferees, as the case may be, a new fully registered Note or Notes of authorized denominations and of the same maturity and interest rate and for the aggregate principal amount as the Notes surrendered.

All Notes presented for transfer, exchange, redemption or payment (if so required by the Town or the Registrar) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Town or the Registrar, duly executed by the Holder or by his duly authorized attorney.

The Town and the Registrar may charge the Holder a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such exchange or transfer following the delivery of such Notes. The Registrar or the Town may also require payment from the Holder or his transferee, as the case may be, of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new Note shall be delivered.

New Notes delivered upon any transfer or exchange shall be valid obligations of the Town, evidencing the same debt as the Notes surrendered, shall be secured under this Ordinance, and shall be entitled to all of the security and benefits hereof to the same extent as the Notes surrendered.

Whenever any Note shall be delivered to the Registrar for cancellation, upon payment of the principal amount thereof, or for replacement, transfer or exchange, such Note shall be cancelled and destroyed by the Registrar, and counterparts of a certificate of destruction evidencing such destruction shall be furnished to the Town.

SECTION 9. FORM OF NOTES. The text of the Notes shall be in substantially the form of Exhibit B hereto, with such variations, omissions and insertions as may be necessary

and desirable, and as may be authorized or permitted by this Ordinance or as may be approved in writing by the Mayor prior to the issuance thereof.

SECTION 10. GENERAL OBLIGATIONS OF TOWN. The Notes and the interest thereon constitute general obligations of the Town, payable from and secured by a lien upon and pledge of the Pledged Revenues in the manner provided herein.

SECTION 11. SINKING FUND. There is hereby established the "Town of Fort Myers Beach, Florida, Tax Anticipation Notes, Series 1996, Sinking Fund" (herein the "Sinking Fund") to be held by the Town as a separate special fund for the benefit of the Noteholders; provided, that the cash required to be accounted for therein may be commingled with other funds of the Town so long as adequate accounting records are maintained to reflect and control the restricted purposes of such Sinking Fund money. The Sinking Fund shall constitute a trust fund of the Town for the sole benefit of the Holders, and the Holders are granted an express lien on the money and investments held in the Sinking Fund. The Town shall deposit sufficient money into the Sinking Fund no later than December 31, 1996, so that the balance on deposit therein will equal the amount of principal and interest becoming due on the Notes at maturity. If, on December 31, 1996, and continuously thereafter, there is not on deposit in the Sinking Fund an amount equal to the principal of and interest on the Notes, the Town shall designate the Sinking Fund as its depository for the receipt of Pledged Revenues, and continue such designation until such time as the amount in the Sinking Fund, together with the earnings to be received thereon, is equal to all principal and interest due on the Notes. Money in the Sinking Fund may be invested only as permitted by law in investments which mature on or prior to the date of maturity of the Notes. Earnings on investments held in the Sinking Fund shall be retained therein. Amounts in the Sinking Fund shall be applied solely to the payment of the principal of and interest on the Notes. After all such principal and interest shall have been paid, or until provision for payment thereof shall have been made pursuant to Section 16 hereof, any amounts remaining in the Sinking Fund may be used by the Town for any lawful purpose.

SECTION 12. APPLICATION OF NOTE PROCEEDS. The proceeds of the Notes will be applied by the Town to pay its lawful operating expenses as the Town shall direct. The Holders shall have no responsibility for the use of the proceeds of the Notes, and the use of such Note proceeds by the Town shall in no way affect the rights of the Bank.

SECTION 13. COVENANTS OF TOWN. The Town covenants on its behalf and on behalf of the Town with the Holders, so long as any of the Notes are outstanding and unpaid, or no provision has been made for the payment thereof as specified in Section 16 hereof, as follows:

(a) To comply promptly with the Act and other applicable statutes in regard to adoption of the Operating Budget, determination of the amounts necessary to be raised for current operating purposes for the Current Fiscal Year and the 1997 Fiscal Year, determination of millage necessary to be levied for operating purposes for the Current Fiscal Year and the 1997 Fiscal Year, certification of such millage to the County Property Appraiser, ordering the County Property Appraiser to assess such millage, and collecting the ad valorem taxes paid from the County Tax Collector.

(b) To the extent necessary to pay when due the principal of and the interest on the Notes, the Pledged Revenues are irrevocably pledged to the payment of the Notes, and such pledge and lien upon the Pledged Revenues shall be superior to all other liens and encumbrances on such funds.

(c) In preparing, approving and adopting its Operating Budget controlling or providing for the expenditures of its funds, it will appropriate, allot and approve, in the manner required by law from the Pledged Revenues, the amounts sufficient to pay the principal of and interest on the Notes.

(d) Unless previously approved in writing by the Holders, not to issue any (i) indebtedness of any kind payable from the Pledged Revenues which indebtedness is secured by a lien upon the Pledged Revenues equal or superior to that of the Notes; and (ii) additional obligations having a junior lien upon the Pledged Revenues.

(e) Except as otherwise expressly provided herein, no contract or other agreement will be entered into and no action taken by which the rights of any Holder might be impaired or diminished.

(f) Not to modify or amend this Ordinance or any ordinance amendatory hereof or supplemental hereto, unless such modification or amendment would not, in the opinion of counsel nationally recognized as expert in municipal finance, have a material adverse effect on the interests of the Holders, without the consent in writing of the Holders of 51% or more in principal amount of the Notes then outstanding to be affected by such modification or amendment; but no modification or amendment shall permit, without the consent of all the Holders, a change (i) in the maturity of the Notes or a reduction in the rate of interest thereon, (ii) in the amount of the principal obligation evidenced by the Notes, (iii) that would affect the unconditional promise of the Town to collect the ad valorem tax revenues, (iv) that would reduce such percentage of Holders required above, for such modifications or amendments, or (v) impair the obligation of the Town to pay the principal of and interest on the Notes at maturity or the remedies granted herein for the enforcement of such obligation. For the purpose of Holders' voting rights or consents, the Notes owned by or held for the account of the Town, directly or indirectly, shall not be counted.

SECTION 14. ADDITIONAL COVENANTS FOR THE BENEFIT OF THE BANK.
So long as any Notes are Outstanding, the Town agrees to comply with the following additional covenants:

(a) The Town shall provide the Bank with financial information as the Bank may reasonably request.

(b) The Town shall prepare its annual budget in accordance with Florida law and shall provide the Lender a copy of its tentative and final annual budget for each fiscal year as soon as practicable upon adoption thereof by the Town Council and in any event prior to the commencement of the fiscal year for which such budget is prepared.

SECTION 15. TAX COMPLIANCE. Neither the Town, the Town nor any third party over whom the Town or the Town have control, will make any use of the proceeds of the Notes or the Pledged Revenues at any time during the term thereof which would cause the Notes to be "private activity bonds" within the meaning of Section 103(b)(1) of the Code, or "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code.

The Town hereby acknowledges and affirms that the Mayor, Vice Mayor and the Town Manager are officers of the Town responsible for issuing the Notes, for the purpose of authorizing any of them to execute a tax compliance certificate with respect to the Notes.

The Town hereby designates the Notes as "qualified tax-exempt obligations" pursuant to Section 265(b)(3)(B) of the Code.

SECTION 16. DEFEASANCE. If, at any time the Town shall have paid, or shall have made provision for payment of, the principal of and interest on the Notes then, and in that event, the pledge of and lien on the Pledged Revenues in favor of the holders of the Notes shall be no longer in effect and the Notes shall no longer be deemed to be outstanding and unpaid for the purposes of this Ordinance. For purposes of the preceding sentence, deposit of sufficient Escrow Investments (or deposit of any other securities or investments which may be authorized by law from time to time and sufficient under such law to effect such a defeasance) in irrevocable trust with the State Board of Administration of the State or with a bank or trust company for the sole benefit of the Noteholders, the principal of which, together with the earnings to be received thereon, will be sufficient to make timely payment of the principal of and interest on the Notes, shall constitute provision for payment.

SECTION 17. EXECUTION OF DOCUMENTS. The Mayor, Vice Mayor, Town Manager and Town Attorney are hereby authorized to execute and deliver documents and certificates, in addition to those expressly authorized by this Ordinance, and to take such further actions as they shall deem reasonably necessary or appropriate to effect the issuance of the Notes and the other transactions contemplated by this Ordinance.

Those officers are further authorized to make or effect any election, selection, choice, consent, approval or waiver on behalf of the Town with respect to the Notes as the Town is permitted or required to make or give under the federal income tax laws, for the purpose of assuring, enhancing or protecting favorable tax treatment or characterization of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments of penalties thereon, or making payments in lieu thereof, or obviating such amounts or payments, as determined by such officer. Any such action of such officer shall be in writing and signed by the officer.

SECTION 18. ACCEPTANCE OF COMMITMENT. The proposal from the Bank to provide a loan up to the \$500,000 to provide financing for meeting the disbursement requirements of the Operating Budgets, attached hereto as Exhibit A is hereby accepted, subject to the terms and conditions contained therein and herein, and the proper officers of the Town are hereby authorized on behalf of the Town, in their official capacities, to acknowledge the acceptance thereof.

SECTION 19. REMEDIES. Any Holder may sue to protect and enforce any and all rights, including the right to the appointment a receiver, existing under the laws of the State or the United States of America, or granted and contained in this Ordinance, and to enforce and compel the performance of all duties required by this Ordinance or by any applicable laws to be performed by the Town, the Town or by any officer thereof, and may take all steps to enforce this Ordinance to the full extent permitted or authorized by the laws of the State or the United States of America.

SECTION 20. SEVERABILITY. If any one or more of the covenants, agreements or provisions of this Ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although 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 separate from the remaining covenants, agreements or provisions of this Ordinance, and in no way affect the validity of all other provisions of this Ordinance or of the Notes issued hereunder.

SECTION 21. REPEALING CLAUSE. All ordinances or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 22. EFFECTIVE DATE. This Ordinance shall be effective immediately upon its adoption.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Anita T. Cereceda and seconded by Council Member Ted FitzSimons and, upon being put to a vote, the result was as follows:

Anita T. Cereceda	<u>Aye</u>
Ted FitzSimons	<u>Aye</u>
William (Rusty) Isler	<u>Aye</u>
Garr Reynolds	<u>Aye</u>
Ray Murphy	<u>Aye</u>

DULY PASSED AND ADOPTED this 22nd day of January, 1996.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
William A. Mills, Town Clerk

By: 
Anita T. Cereceda, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney

EXHIBIT A

COMMITMENT/TERM SHEET



Government Banking

January 3, 1996

Mr. Bill Mills
Acting Town Manager
Town of Fort Myers Beach
800 Dunlop Road
Sanibel FL 33957-4096

Dear Mr. Mills:

First Union National Bank of Florida (the "Bank") is pleased to Commit the credit facility described below to the Town of Fort Myers Beach (the "Town") subject to the following terms and conditions:

Borrower: The Town of Fort Myers Beach.

Amount: \$500,000.00

Facility: Term Loan/Tax Anticipation Note

Purpose: To finance operating expenditures for the newly created Town of Fort Myers.

Term: Approximately one year from the date of closing. Principal and interest due and payable December 31, 1996. Interest calculated based on actual days elapsed over a 366-day year.

Security: Ad-Valorem Tax Anticipation Revenues and the General Obligation of the Town.

Interest Rate: 4.07% fixed rate.

Conditions

1. The Town of Fort Myers Beach, by official action, shall cause any borrowing under this facility to be designated as a "Qualified Obligation" pursuant to Section 265(b)(3)(B) Internal Revenue Code of 1986, as amended.

Should subsequent but currently unforeseen events cause any borrowing under this facility to be determined to be a "non-qualified" obligation pursuant to Section 265(b)(3)(B), Internal Revenue Code of 1986, as amended, the Bank shall adjust the interest rate on any outstandings hereunder so that it shall receive the same after tax yield equivalent contemplated as of the time of this Facility.

2. In the event that the interest on any drawing under this Facility is ever determined to be taxable for purposes of federal or state income taxation, or in the event that any or all of the interest on any drawing under this Facility is deemed to be included in the gross income of the Bank for federal or state income taxation, or in the event the Bank is unable to deduct any other amounts as a result of purchasing or carrying any borrowings resultant from the Facility, or in the event of a change in the marginal tax rate applicable to corporations or the alternative minimum tax or in the method of calculating the alternative minimum tax to which the Bank may be subject, or in the event of any action which would otherwise decrease the after tax or taxable equivalent yield to the Bank, the interest on this Facility shall be subject to a full gross up modification. A determination by the Bank, its counsel and bond counsel shall be conclusive. In no event, however, shall the interest rate on this Facility exceed the maximum rate permitted by law.
3. Legal opinions and closing documents relating to this facility shall be prepared by bond counsel, Squire, Sanders & Dempsey. The legal fees for Squire, Sanders & Dempsey are not to exceed \$4,000. All legal costs relating to the preparation of documents shall be paid for by the Town and shall be in form and content acceptable to the Bank.
4. This Commitment shall remain in full force and effect through 5:00 p.m., local time, January 30, 1996, at which time, if not accepted by execution of the acceptance clause below and delivered to the Bank at its 77 East Camino Real, Boca Raton, Florida office to my attention, this Commitment shall expire and shall not be enforceable by either the Bank or the Town of Fort Myers Beach unless extended in writing. Unless extended by the Bank in writing, this facility must close on or before February 15, 1996, after which time this Commitment shall expire.
5. If the Bank chooses to waive any covenant, paragraph, or provision of this Commitment, or if any covenant, paragraph, or provision of this Commitment is construed by a court of competent jurisdiction to be invalid, it shall not affect the applicability, validity or enforceability of the remaining covenants, paragraphs or provisions.

First Union National Bank of Florida appreciates the opportunity to submit this Commitment to you and looks forward to your favorable response. Should you have any questions, please do not hesitate to contact me at (407) 338-3903.

Very Truly Yours,
FIRST UNION NATIONAL BANK OF FLORIDA

Jerry Hudson for Steven Whittingslow
Steven Whittingslow
Vice President

cc: Peter Dame of Squire, Sanders & Dempsey
Richard Roosa of Aloia, Dudley, Roosa, Suttan, Brant

ACCEPTANCE

The foregoing Commitment is hereby accepted on the terms and conditions outlined therein by authority of the Governing Board of the:

Town of Fort Myers Beach

By: _____ Dated: _____

Its: _____

EXHIBIT B

NO. R-1

\$500,000

UNITED STATES OF AMERICA
STATE OF FLORIDA
TOWN OF FORT MYERS BEACH
TAX ANTICIPATION NOTE, SERIES 1996

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATE OF ORIGINAL ISSUE</u>
4.07%	December 31, 1996	January __, 1996

REGISTERED OWNER: First Union National Bank of Florida, N.A.

PRINCIPAL AMOUNT: \$500,000

KNOW ALL MEN BY THESE PRESENTS, that the Town of Fort Myers Beach, Florida (the "Town"), for value received, hereby promises to pay to the Registered Owner, upon the presentation and surrender hereof at the office of the Town Manager, as paying agent and note registrar (the "Registrar"), solely from the special funds described below, on the Maturity Date set forth above, the principal amount shown above, plus interest on such Principal Amount hereunder from the Date of Original Issue, at the rate or rates determined as set forth below, until payment of the Principal Amount, such interest to be calculated on a 366-day year and actual days elapsed and paid on the Maturity Date set forth above. This Note may be prepaid in whole or in part on any business day prior to maturity.

The principal amount shall bear interest from the date hereof at a rate equal to 4.07% per annum. The rate of interest is subject to adjustment upon the happening of certain events, as more particularly described on Schedule B hereto.

This Note represents \$500,000 principal amount of Notes designated "Tax Anticipation Notes, Series 1996," issued under the authority of Chapter 166, Florida Statutes, and other applicable provisions of law, and pursuant and subject to the terms and conditions of an ordinance duly enacted by Town Council of the Town of Fort Myers Beach, Florida, on January 22, 1996 (the "Ordinance"), to which reference should be made to ascertain those terms and conditions.

This Note and the interest hereon constitute a general obligation of the Town.

This Note is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code - Investment Securities laws of the State of Florida. The Town and the Paying Agent may treat the Registered Owner of this Note as the absolute owner hereof for all purposes, whether or not this Note be overdue, and the Town and the Paying Agent shall not be affected by notice to the contrary.

This Note may be transferred or exchanged upon the terms and conditions specified in the Ordinance.

It is hereby certified and recited that all acts, conditions and things required by the Constitution and laws of the State of Florida to happen, exist and be performed precedent to and in the issuance of this Note, have happened, exist and have been performed in regular and due form and time as so required.

This Note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the Certificate of Authentication hereon shall have been duly executed by the Paying Agent, as Note registrar.

IN WITNESS WHEREOF, the Town of Fort Myers Beach, Florida has caused this Note to be signed by the Mayor or Vice Mayor of the Town and attested by the Town Manager of the Town, either manually or with their facsimile signatures, and its seal or a facsimile thereof to be affixed, impressed, imprinted, lithographed or reproduced hereon, all as of January __, 1996.

TOWN OF FORT MYERS BEACH,
FLORIDA

(SEAL)

By: _____
Mayor

ATTEST:

Town Manager

NOTE REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This Note represents the Notes of the issue described in the Ordinance.

TOWN MANAGER OF THE TOWN OF
FORT MYERS BEACH, FLORIDA
As Note Registrar

By: _____
Town Manager

Date of Authentication:

Approved as to form:

January __, 1996

By: _____
Town Attorney

The following abbreviations, when used in the inscription on the face of the within Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common
TEN ENT - as tenants by the entireties
JT TEN - as joint tenants with right
of survivorship and not of
tenants in common

UNIF GIF MIN ACT - _____
(Cust.)
Custodian for _____
(Minor)
under Uniform Gifts to Minors Act
of _____
(State)

Additional abbreviations may also be used although not listed above.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers to _____

(Please insert Social Security or other Identifying Number of Assignee)

the within Note and does hereby irrevocably constitute and appoint the Note Trustee as his agent to transfer the Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature guaranteed:

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

Signature guarantee by guarantor institution participating in Securities Transfer Agents Medallion Program, or in other guarantee program acceptance to Note Register

SCHEDULE B

ADJUSTMENTS TO INTEREST RATE IN CERTAIN EVENTS

Adjustment to Interest Rate

(a) Change in Maximum Corporate Tax Rate. If the maximum federal corporate income tax rate for the Bank during any period in which interest is accruing, shall be other than 35%, then the interest on the Note during such period shall be modified by multiplying the interest on the Note (as adjusted) by a fraction equal to $(1 - A)/.65$ where A equals the maximum marginal corporate income tax rate then in effect.

(b) Loss of Federal Income Tax Deduction for State Income Taxes. If the federal income tax deduction for state income taxes paid on the interest on the Note during any period is reduced because of any change in the tax laws or regulations then the interest on the Note shall be increased during such period by an amount equal to $A \times B \times C \times D$ where:

(1) A equals the fraction (expressed as a decimal) of the total state income tax disallowed as a result of such tax law change;

(2) B equals the rate of the applicable state income tax (expressed as a decimal);

(3) C equals the maximum federal corporate tax rate then in effect for the Bank (expressed as a decimal); and

(4) D equals the interest on the Note (expressed as a percentage).

(c) Partial Taxability. If the interest on the Note during any period becomes partially taxable because of any change in the tax laws or regulations, then the interest on the Note shall be increased during such period by an amount equal to $(A - B) \times C$ where:

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

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

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

(d) Loss of Deduction Under Section 265(b)(3)(B) of Internal Revenue Code. In the event the Note is determined not to be a "qualified tax exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code, then the original interest rate on the Note shall be adjusted to 5.90% per annum and any intervening adjustments made shall be recalculated using the adjusted rate.

(e) Other Change in Tax Laws. If the tax laws or regulations are amended to cause the interest on the Note to be taxable, to be subject to a minimum tax or an alternative minimum tax or to otherwise change the after tax yield on the Note to the Bank (directly or indirectly, other than a change described in (a) through (d) above or because of a Determination of Taxability) then the interest on the Note shall be adjusted to cause the yield on the Note, after payment of any increase in tax, to equal what the yield on the Note would have been in the absence of such change or amendment in the tax laws or regulations.

The above adjustments shall be cumulative, but in no event shall the interest on the Note exceed the lesser of the maximum permitted by law or the Taxable Rate set forth below. The above adjustments to the interest rate on the Note shall be effective on the effective date of the applicable change in the tax laws or regulations. All tax rates and interest rates are expressed as annual rates. However, proper partial adjustment shall be made if the tax

law change is effective after the first day of the Bank's tax year or if the interest on the Note does not accrue for the entire tax year of the Bank. Adjustments which create a circular calculation because the interest on the Note is affected by the calculation shall be carried out sequentially, adjusting the interest on the Note accordingly in each successive calculation using as the new value the adjusted interest rate on the Note, until the change on the interest rate on the Note caused by the next successive calculation of the adjustment is de minimis. If more than one of paragraphs (a) through (e) apply, then the interest on the Note shall be adjusted in the order in which listed above.

Taxable Rate

Notwithstanding the foregoing, in the event of a "Determination of Taxability" (as hereinafter defined), this Note shall bear interest at the rate of six and eleven hundredths percent (6.11%) per annum (the "Taxable Rate"), from and after and retroactively to the date as of which such Determination of Taxability is made and the Noteholder shall be entitled to such additional interest on this Note. For purposes hereof, "Determination of Taxability" means the circumstance of the interest on the 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 City. A Determination of Taxability will be deemed to have occurred upon (i) the receipt by the City or the Bank of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency which holds that the interest on the Note is includable in the gross income of the Bank; (ii) the issuance of any public or private ruling of the Internal Revenue Service that the interest on the Note is includable in the gross income of the Bank; or (iii) receipt by the City or Lender of an opinion of a Note Counsel that the interest on the 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 Note is deemed includable in the gross income of the Bank.

In no event, however, shall interest be charged or paid in an amount in excess of the maximum interest rate permitted to be paid under applicable law.