

RESOLUTION NUMBER 02-33

A RESOLUTION granting a loan of \$250,000.00 to THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC.

WHEREAS, the Town of Fort Myers Beach Public Works Agency, has authorized the purchase of the water system by THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC.; and,

WHEREAS, the TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC., is in need of short term working capital; and,

WHEREAS, the TOWN OF FORT MYERS BEACH has available funds to invest and it is in the public's interest that the Town loan the necessary funds on the terms hereinafter set forth.

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

SECTION 1. The Town agrees to loan THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC. \$ 250,000.00. The Note will mature October 1, 2003. Interest payments for the Note will be payable April 1, 2003 and principal and interest on October 1, 2003. The interest rate shall be a fixed rate of 4%. The Borrower may repay all or a portion of the outstanding principal of The Note at any time without incurring a penalty. The Note Shall be secured by a secondary pledge of the Net Revenues of the Water utility.

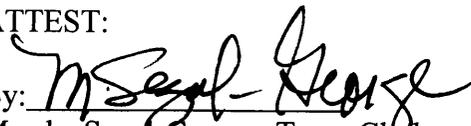
SECTION 2. Effective Date. This resolution shall take effect immediately.

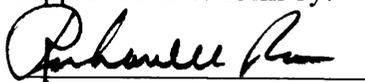
The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

Howard Rynearson	aye
Daniel Hughes	aye
Bill Thomas	aye
W. H. "Bill" Van Duzer	aye
Terry Cain	aye

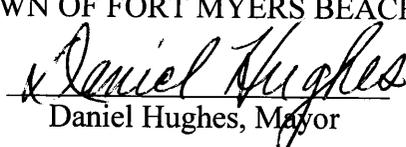
APPROVED this 23rd day of September, 2002.

ATTEST:

By: 
Marsha Segar-George, Town Clerk
Approved as to form by:


Richard V.S. Roosa, Town Attorney

TOWN OF FORT MYERS BEACH

By: 
Daniel Hughes, Mayor

No. 2002-1

\$250,000.00

**TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC.
REVENUE NOTE, SERIES 2002**

Maturity Date October 1, 2003

Rate of Interest 4%

Holder: TOWN OF FORT MYERS BEACH

Principal Amount: TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00)

KNOW ALL MEN BY THESE PRESENTS, that the Town of Fort Myers Beach Public Works Services, Inc., a Florida not for profit corporation (hereinafter called "Issuer"), pursuant to the Issuer's Resolution adopted on September 23, 2002 (the "Resolution"), for value received, hereby promises to pay to the Holder identified above, or registered assigns, from the Pledged Revenues, the Principal Amount, of \$250,000.00 on the maturity date together with accrued interest only April 1, 2003, and October 1, 2003, at an annual interest rate equal to 4 percent per annum, computed on a 360-day year for the actual number of days elapsed.

If the date for payment of the principal of or interest on the Note shall be a Saturday, Sunday, legal holiday or a day on which banking institutions are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday or legal holiday or a day on which banking institutions are authorized to close, and interest shall continue to accrue until the date of payment.

This Note may be prepaid prior to maturity at the option of the Issuer, in whole or in part, at any time, without penalty, or premium.

All principal of and interest on this Note shall be immediately due and payable upon an Event of Default in this Note.

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

This Note has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code - Investment Securities of the State of Florida. The Note is transferable by the Holder in person or by his attorney duly authorized in writing, at the office of the Secretary of the Issuer.

IN WITNESS WHEREOF, The Town of Fort Myers Beach Public Works Services, Inc. has issued this Note and has caused the same to be signed by its President and attested by its Secretary, and the official seal of the Issuer, if any, or a facsimile thereof to be affixed, impressed, imprinted, lithographed or reproduced hereon all as of the 27th day of September, 2002.

TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC.

(SEAL)

By: *Daniel Hughes*
Name: Daniel Hughes

ATTEST:

By: *John J. Gucciardo*
Name: John J. Gucciardo, Secretary

LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement"), made and entered into this 1st day of October, 2002, by and between THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC., a Florida not for profit corporation (the "Borrower") and its successors and assigns, and THE TOWN OF FORT MYERS BEACH, a Florida municipal corporation, and its successors and assigns (the "Town").

WITNESSETH

WHEREAS, the TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC., is in need of short-term working capital; and,

WHEREAS, the TOWN OF FORT MYERS BEACH has available funds to invest and it is in the public's interest that the Town loan the necessary funds on the terms hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

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

"Borrower" shall mean Town of Fort Myers Public Works Services, Inc., a Florida not for profit corporation.

"Event of Default" shall have the meaning stated in Article IV of this Agreement.

"Fiscal Year" shall mean the period commencing on October 1 of each year and continuing to and including the succeeding September 30, or such other annual period as may be established by law as the Borrower's fiscal year.

"Maturity Date" shall mean October 1, 2003.

"Note" shall mean the promissory note of the Borrower, in substantially the form of Exhibit "A" hereto.

"Payment Date" or "Payment Dates" shall mean those dates set forth in the Note whereby the Borrower is obligated pursuant to this Agreement to pay to the Town, in the manner as provided herein, principal and interest payments in the amounts as provided in the Note.

"Pledged Revenues" shall mean the Water System Revenues.

"Town" shall mean the Town of Fort Myers Beach, Florida and any subsequent registered holder of the Note.

"Water System Revenues" shall mean the net revenues of the Borrower.

"Water System" shall mean the water utility system serving the Town including but not limited to, any extensions or additions to such system.

ARTICLE II

2.01 The Note. On the date of this Agreement, the Town shall purchase the Note for the principal amount of \$250,000.

2.02 Form of Note. The Note shall be substantially in the form set forth as Exhibit "A" to this Agreement.

2.03 Security for Note. The payment of the principal of and interest on the Note shall be secured by a pledge of and irrevocable lien upon the Pledged Revenues. The Borrower does hereby irrevocably pledge the Pledged Revenues to the payment of the principal of and interest on the Note, until fully paid. This lien and pledge is junior to and subordinate to the lien and pledge in favor of the SunTrust Bank as to any claim upon any Pledged Revenues.

ARTICLE III

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

3.02 Enforcement of Rights to Revenues. The Borrower will diligently enforce its right to receive and dispose of the Pledged Revenues. The Borrower will take all lawful action necessary or appropriate to continue the Borrower's right to receive the Pledged Revenues. The Borrower will take all steps, actions and proceedings for the enforcement and collection of Pledged Revenues as shall become delinquent to the full extent permitted or authorized by law.

ARTICLE IV

4.01 Events of Default. The following events shall each constitute an "Event of Default" under this Agreement and the Note:

- (a) failure to pay the principal of or interest on the Note when due;
- (b) the dissolution or liquidation of the Borrower, or the filing by the Borrower of a voluntary petition in bankruptcy, or the commission by the Borrower of any act of bankruptcy, or adjudication of the Borrower as bankrupt, or assignment by the Borrower for the benefit of its creditors, or appointment of a receiver for the Borrower, or the entry by the Borrower into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Borrower in any proceeding for its reorganization instituted under the provisions of the Federal Bankruptcy Act, as amended, or under any similar act in any jurisdiction which may not be in effect or hereafter enacted;
- (c) the Borrower shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Note or this Agreement on the part of the Borrower to be performed, and such default shall continue for a period of ten (10) days after written notice from the Town.

4.02 Exercise of Remedies. The Town may either at law or in equity, by suit, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted or contained in the Note and this Agreement and may enforce and compel the performance of all duties required by this Agreement and the Note or by any applicable statute to be performed by the Borrower or any officer thereof.

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

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

ARTICLE V

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

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

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

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

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

5.06 No Personal Liability. Notwithstanding anything to the contrary contained herein or in the Note, or in any other instrument or document executed by or on behalf of the Borrower in connection herewith, no stipulation, covenant, agreement or obligation contained herein or therein shall be deemed or construed to be a stipulation, covenant, agreement or obligation of any present

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

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

TOWN OF FORT MYERS BEACH
PUBLIC WORKS SERVICES, INC.

By: *Daniel Hughes*
Name: Daniel Hughes
President

ATTEST:

By: *John J. Gucciardo*
Name: John J. Gucciardo
Secretary

TOWN OF FORT MYERS BEACH

By: *Daniel Hughes*
Name: Daniel Hughes
Mayor

ATTEST:

By: *Marsha Segal-George*
Name: Marsha Segal-George
Clerk

Exhibit A

No. 2002-1

\$250,000.00

**TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC.
REVENUE NOTE, SERIES 2002**

Maturity Date October 1, 2003

Rate of Interest 4%

Holder: TOWN OF FORT MYERS BEACH

Principal Amount: TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS
(\$250,000.00)

KNOW ALL MEN BY THESE PRESENTS, that the Town of Fort Myers Beach Public Works Services, Inc., a Florida not for profit corporation (hereinafter called "Issuer"), pursuant to the Issuer's Resolution adopted on September 23, 2002 (the "Resolution"), for value received, hereby promises to pay to the Holder identified above, or registered assigns, from the Pledged Revenues, the Principal Amount, of \$250,000.00 on the maturity date together with accrued interest only April 1, 2003, and October 1, 2003, at an annual interest rate equal to 4 percent per annum, computed on a 360-day year for the actual number of days elapsed.

If the date for payment of the principal or interest on the Note shall be a Saturday, Sunday, legal holiday or a day on which banking institutions are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday or legal holiday or a day on which banking institutions are authorized to close, and interest shall continue to accrue until the date of payment.

This Note may be prepaid prior to maturity at the option of the Issuer, in whole or in part, at any time, without penalty, or premium.

All principal of and interest on this Note shall be immediately due and payable upon an Event of Default in this Note.

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

This Note has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code - Investment Securities of the State of Florida. The Note is transferable by the Holder in person or by his attorney duly authorized in writing, at the office of the Secretary of the Issuer.

IN WITNESS WHEREOF, The Town of Fort Myers Beach Public Works Services, Inc. has issued this Note and has caused the same to be signed by its President and attested by its Secretary, and the official seal of the Issuer, if any, or a facsimile thereof to be affixed, impressed, imprinted, lithographed or reproduced hereon all as of the 23^d day of September, 2002.

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

By: Daniel Hughes, President

(SEAL)

ATTEST:

By: John J. Gucciardo, Secretary

Maturity Date October 1, 2003

Rate of Interest 4%

Holder: TOWN OF FORT MYERS BEACH

Principal Amount: TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS
(\$250,000.00)

KNOW ALL MEN BY THESE PRESENTS, that the Town of Fort Myers Beach Public Works Services, Inc., a Florida not for profit corporation (hereinafter called "Issuer"), pursuant to the Issuer's Resolution adopted on September 23, 2002 (the "Resolution"), for value received, hereby promises to pay to the Holder identified above, or registered assigns, from the Pledged Revenues, the Principal Amount, of \$250,000.00 on the maturity date together with accrued interest only April 1, 2003, and October 1, 2003, at an annual interest rate equal to 4 percent per annum, computed on a 360-day year for the actual number of days elapsed.

If the date for payment of the principal of or interest on the Note shall be a Saturday, Sunday, legal holiday or a day on which banking institutions are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday or legal holiday or a day on which banking institutions are authorized to close, and interest shall continue to accrue until the date of payment.

This Note may be prepaid prior to maturity at the option of the Issuer, in whole or in part, at any time, without penalty, or premium.

All principal of and interest on this Note shall be immediately due and payable upon an Event of Default in this Note.

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

This Note has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code - Investment Securities of the State of Florida. The Note is transferable by the Holder in person or by his attorney duly authorized in writing, at the office of the Secretary of the Issuer.

IN WITNESS WHEREOF, The Town of Fort Myers Beach Public Works Services, Inc. has issued this Note and has caused the same to be signed by its President and attested by its Secretary, and the official seal of the Issuer, if any, or a facsimile thereof to be affixed, impressed, imprinted, lithographed or reproduced hereon all as of the ____ day of September, 2002.

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

By: Daniel Hughes, President

(SEAL)
ATTEST: