

**RESOLUTION NO. 23-33**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, APPROVING A LOAN AGREEMENT BETWEEN THE TOWN AND THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY IN THE PRINCIPAL AMOUNT OF \$11,900,000.00 TO FUND GOVERNMENTAL OPERATIONS; MAKING CERTAIN FINDINGS OF PARAMOUNT PUBLIC PURPOSE; COVENANTING TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES TO PAY THE INDEBTEDNESS; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE PROMISSORY NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; DESIGNATING AN OFFICIAL WITH AUTHORITY TO EXECUTE THE LOAN DOCUMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF THE LOAN DOCUMENTS ATTACHED AS EXHIBIT "A"; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach ("Town") empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, on September 28, 2022, Hurricane Ian made landfall in Fort Myers Beach as a category four hurricane with 150-mph winds and a storm surge of approximately fifteen feet (15') causing catastrophic damage to the Town's beach, beach access facilities, public buildings, public communication systems, public drainage and utility systems, public streets and roads, and commercial and residential buildings and areas; and

**WHEREAS**, financial assistance from the State of Florida is going to essential to rebuilding of the Town and to the Town's ability to provide essential services to its business owners, residents, and visitors; and

**WHEREAS**, the Town believes it is in the best interest for the health, safety and welfare of the Town's business owners, residents, and visitors to the enter into the Loan Documents with the State of Florida Department of Economic Opportunity attached as Exhibit "A" ("Loan Agreement").

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

Section 1. The above recitals are true and correct, and incorporated herein by this reference and adopted as the legislative and administrative findings of the Town Council; all exhibits referenced and attached are incorporated herein and made a specific part of this Resolution.

Section 2. This Resolution is adopted pursuant to the provisions of the Constitution of the State of Florida, Chapter 166, *Florida Statutes*, as amended and other applicable provisions of law.

Section 2. The following words and phrases shall have the following meanings when used herein:

*“Local Government”* means The Town of Fort Myers Beach, Florida, a Florida municipal corporation established under the legal authority of the Constitution of the State of Florida.

*“Debt”* or *“Loan”* means the \$11,900,000 in loan funds applied for by the Local Government and awarded by the Department, and subject to the terms and conditions of the Loan Agreement and the Promissory Note.

*“Debt Service Fund”* means the Local Government’s “DEO Bridge Loan Debt Service” account created and held by the Finance Director of the Local Government.

*“Department”* means the Department of Economic Opportunity, with its principal office at 107 East Madison Street, MSC 160, The Caldwell Building, Tallahassee, Florida, 32399.

*“Governmental Fund Revenues”* means the total revenues of the Local Government derived from any source whatsoever and that are allocated and accounted for in the “governmental funds” as shown in the annual audited financial statements of the Local Government for the applicable fiscal year, excluding any ad valorem revenues, grants, and restricted gifts.

*“Governmental Operations”* means costs associated with continuing, expanding, or modifying local governmental operations to meet disaster-related needs, and includes costs such as, but not necessarily limited to, staff salaries and payroll. This term does not include capital and equipment costs associated with the construction, repair, or renovation of damaged public facilities or infrastructure.

*“Loan Agreement”* means the loan agreement entered into by and between the Local Government and the Department, a form of which is attached hereto as Exhibit A.

*“Loan Documents”* means collectively the Loan Agreement and the Promissory Note.

“*Non-Ad Valorem Revenues*” means all Governmental Fund Revenues, other than (1) revenues generated from ad valorem taxation on real or personal property, (2) grants, and (3) restricted gifts, which are legally available to make the payments required herein.

“*Pledgeable Non-Ad Valorem Revenues*” means all legally available Non-Ad Valorem Revenues of the Local Government, including any funds received from any federal programs for disaster-related expenses, which are legally available to make the payments required by the Resolution.

“*Pledged Revenues*” means the Pledgeable Non-Ad Valorem Revenues and the proceeds of any indebtedness incurred for the purpose of financing the Governmental Operations.

“*Promissory Note*” means the promissory note evidencing the indebtedness of the Local Government to the Department for the Loan amount, a form of which is attached hereto as Exhibit B.

“*Resolution*” means this Resolution, including any supplemental resolution(s) hereto.

“*State*” means the State of Florida.

Section 4. It is hereby ascertained, determined, and declared that:

(A) It is necessary and desirable for the benefit of its inhabitants and the continued preservation of the economic welfare, and the health, welfare, and safety of the Local Government and its inhabitants, to obtain a loan from the Department through the Local Government Emergency Bridge Loan Program, section 288.066, Florida Statutes, in the amount of \$11,900,000,00, to provide funds that the Local Government may use for Governmental Operations.

(B) It is necessary and desirable to provide for the execution and delivery of the Loan Documents to implement and deliver the Loan.

Section 5. *Repayment*

(A) The Local Government shall accept, subject to the terms and conditions of the Loan Documents, the Loan amount, for the purposes described above. The Loan amount shall bear interest not to exceed the maximum legal rate per annum, and shall be payable, mature, and be subject to redemption and such other characteristics as provided in the Loan Documents.

(B) Amounts due under the Loan Documents shall be payable from Pledgeable Non-Ad Valorem Revenues of the Local Government derived from the Local Government’s covenant to budget and appropriate from Pledgeable Non-Ad Valorem Revenues each year such monies sufficient to pay principal and interest on the Promissory Note.

(C) The Local Government shall ensure that sufficient Pledgeable Non-Ad Valorem Revenues will be available to pay the principal and interest due and payable on the Promissory Note as of the date such payment is due.

(D) The Local Government will maintain all unexpended Loan funds received from the Department in bank accounts separate from its other operating or other special purposes accounts. The Local Government will not commingle the Loan funds with any other funds, projects, or programs. Any interest earned on unexpended Loan funds remain State funds, pursuant to section 288.006, Florida Statutes.

(E) The Mayor, Vice Mayor, Town Clerk, Town Manager and Finance Director are hereby authorized to take such further actions and execute and deliver such further documents, certificates and agreements as are necessary to facilitate the purposes of this Resolution.

Section 6.      *Covenant to Budget and Appropriate; Establish Debt Service Fund.*

(A) There is hereby created and established the Debt Service Fund, which fund shall be a trust fund held by the Finance Director, for the benefit of the Department and solely for the payment of the Debt. The Debt Service Fund shall be deemed to be held in trust for the purposes provided herein. The money in the Debt Service Fund shall be continuously secured in the same manner as state and municipal deposits are authorized to be secured by the laws of the State of Florida, and as evidenced and more completely described in the Loan Documents. The Local Government may at any time and from time to time appoint one or more depositaries to hold, for the benefit of the Department, the Debt Service Fund established hereby. Such depository or depositaries shall perform at the direction of the Local Government the duties of the Local Government in depositing, transferring and disbursing moneys to and from the Debt Service Fund as herein set forth, and all records of such depository in performing such duties shall be open at all reasonable times to inspection by the Local Government and its agents and employees. Any such depository shall be a bank or trust company duly authorized to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and having a combined capital, surplus and undivided profits aggregating not less than fifty million dollars (\$50,000,000). Notwithstanding anything herein to the contrary, the Local Government may invest amounts on deposit in the Debt Service Fund in accordance with the Investment of Local Government Surplus Funds Act, Florida Statutes 218.415, and the Local Government's investment policy.

(B) The Local Government covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Pledgeable Non-Ad Valorem Revenues, and to deposit into the Debt Service Fund hereinafter created Pledgeable Non-Ad Valorem Revenues sufficient to pay principal of and interest on the Promissory Note as the same shall become due. Such covenant and agreement on the part of the Local Government to budget, appropriate, and deposit such amounts of Pledgeable Non-Ad Valorem Revenues shall be cumulative to the extent not paid and shall continue until such Pledgeable Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated, deposited and actually paid. The Local Government hereby expressly pledges the Pledged Revenues for the repayment of the Debt until the Loan has been repaid in full. The Local Government further acknowledges that the obligations of the Local Government to include the

amount of any deficiency in payments in each of its annual budgets and to pay such deficiencies from Pledgeable Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth in the Loan Documents.

(C) The Local Government is not prohibited from pledging future Non-Ad Valorem Revenues, nor is the Local Government required to levy and collect any particular Non-Ad Valorem Revenues, nor does the Local Government give the Department a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general secured creditors of the Local Government. All obligations of the Local Government hereunder shall be payable from the Pledgeable Non-Ad Valorem Revenues budgeted, appropriated, and deposited as provided herein and nothing herein shall be deemed to pledge ad valorem taxing power or ad valorem tax revenues, or to permit or constitute a mortgage or lien upon any assets owned by the Local Government. Neither the Department nor any other person may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Local Government, or the use or application of ad valorem tax revenues to satisfy any payment obligations hereunder, or to maintain or continue any of the activities of the Local Government which generate user service charges, regulatory fees, or any other Non-Ad Valorem Revenues. The obligation of the Local Government to budget, appropriate, deposit, and make payments hereunder from its Pledgeable Non-Ad Valorem Revenues is subject to the availability of Pledgeable Non-Ad Valorem Revenues after the satisfaction of the funding requirements for obligations incurred prior to the effective date of the Loan Documents, and the funding requirements for essential governmental services of the Local Government or for essential public purposes affecting the health, welfare, and safety of the Local Government's inhabitants. The Debt shall be payable as provided herein and is subject in all respects to the provisions of Chapter 166, *Florida Statutes*.

Section 7.     *Anti-Dilution Test.* During such time as the Loan is outstanding hereunder, the Local Government shall not incur any other new debt unless it demonstrates that Non-Ad Valorem Revenues shall cover maximum annual debt service on the Loan, any other existing debt, and such proposed new debt by at least 1.50x. The calculation required in the preceding sentence shall be determined using (a) the average of actual Non-Ad Valorem Revenues for the prior two Fiscal Years based on the Local Government's two most recent annual audited financial statements divided by (b) Maximum Annual Debt Service on Debt. For the purposes of the covenant contained in this Section 6, Maximum Annual Debt Service on Debt means, with respect to debt that bears interest at a fixed interest rate, the actual annual debt service, and, with respect to debt which bears interest at a variable interest rate, annual debt service on such debt shall be determined assuming that interest accrues on such debt at the greater of (i) 5% per annum, or (ii) current "Bond Buyer Revenue Bond Index" as published in *The Bond Buyer* no more than two weeks prior to any such calculation.

Section 8.     *Budget, Financial, and Other Information.*

(A) The Local Government shall provide the Department with a copy of its annual budget, prepared in accordance with Florida law, within thirty (30) days of its adoption date by the Local Government's Town Council of the Town of Fort Myers Beach, Florida, and such other financial information regarding the Local Government as the Department may reasonably request.

(B) Not later than thirty (30) days following the Local Government Auditor's presentation of the Local Government's annual audited financial statements to the Local Government's Town Council, the Local Government shall provide the Department with its Audited Annual Financial Report including annual financial statements for each fiscal year of the Local Government, prepared in accordance with applicable law and generally accepted accounting principles and audited by an independent certified public accountant, including calculations detailing the financial covenant in Section 6.

Section 9. *Impairment of Contract.* The Local Government will not, without the written consent of the Department, amend this Resolution, or enact any ordinance or adopt any resolution which could reasonably be considered to repeal, impair, or amend in any manner the rights granted to the Department hereunder and under the Loan Documents.

Section 10. *Limitation of Rights.* With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Loan Documents is intended or shall be construed to give to any person other than the Local Government and the Department any legal or equitable right, remedy, or claim under or with respect to this Resolution, the Loan funds, the Loan Documents, or any covenants, conditions and provisions herein contained; this Resolution and all of the covenants, conditions, and provisions hereof being intended to be and being for the sole and exclusive benefit of the Local Government and the Department.

Section 11. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 12. This resolution shall take effect immediately upon its adoption.

The foregoing Resolution was approved by the Town Council upon a motion by Vice Mayor Atterholt and seconded by Council Member King, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	aye
Jim Atterholt, Vice Mayor	aye
John R. King, Council Member	aye
Bill Veach, Council Member	aye
Karen Woodson, Council Member	aye

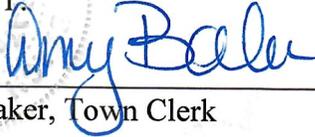
ADOPTED this 1<sup>st</sup> day of May 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



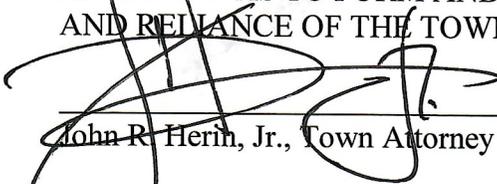
\_\_\_\_\_  
Dan Allers, Mayor

ATTEST:



\_\_\_\_\_  
Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:



\_\_\_\_\_  
John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 3 day of May  
2023.

# FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY LOCAL GOVERNMENT EMERGENCY BRIDGE LOAN AGREEMENT

THIS LOAN AGREEMENT ("Agreement"), made by and between THE TOWN OF FORT MYERS BEACH (the "Local Government" or "Borrower"), and THE STATE OF FLORIDA, DEPARTMENT OF ECONOMIC OPPORTUNITY (the "Lender"). The Borrower and the Lender may be referred to individually each as a "Party" and collectively as the "Parties."

WHEREAS, the Borrower has applied to Lender for an extension of credit pursuant to section 288.066 of the Florida Statutes; and

WHEREAS, Lender has agreed to provide an extension of credit as set forth in section 288.066 of the Florida Statutes and in accordance with the terms hereof; and

WHEREAS, the Borrower has the authority to enter into this Agreement, as set forth in the Town Council of the Town of Fort Myers Beach Resolution No. 23-33, attached hereto and incorporated herein by reference; and

WHEREAS, this agreement is not a general obligation of the State of Florida, nor is it backed by the full faith and credit of the State of Florida, and payment of funds hereunder is conditioned on and subject to appropriations by the Florida Legislature; and

WHEREAS, the Borrower has the authority to enter into this Agreement.

NOW THEREFORE, the Parties hereby agree as follows:

## 1. DEFINITIONS

- 1.1 "Agreement" means this instrument, as it may from time to time be amended.
- 1.2 "Debt" or "Loan" means the \$11,900,000.00 in loan funds applied for by the Borrower and awarded by the Department, and subject to the terms and conditions of the Loan Agreement and the Promissory Note.
- 1.3 "Debt Service Fund" means the Local Government's DEO Bridge Loan DEBT SERVICE FUND held by the Finance Director of the Town.
- 1.4 "Default" means any of the events specified in Section 5 of this Agreement, whether any such requirement in connection with such event for the giving of notice or the lapse of time or the happening of any further condition, event, or act has been satisfied.
- 1.5 "Event of Default" means any of the events specified in Section 5 of this Agreement, provided there has been satisfied any requirements in connection with such event for the giving of notice or the lapse of time or the happening of any further condition, event, or act.
- 1.6 "Financial Statements" means a balance sheet and statement of income and surplus as of the end of and for the applicable period for the Borrower.
- 1.7 "Governmental Fund Revenues" means the total revenues of the Local Government derived from any source whatsoever and that are allocated and accounted for in the "governmental funds" as shown in the annual audited financial statements of the Local Government for the applicable fiscal year, excluding any ad valorem revenues, grants, and restricted gifts.

- 1.8 “Governmental Operations” means costs associated with continuing, expanding, or modifying local governmental operations to meet disaster-related needs, and includes costs such as, but not necessarily limited to, staff salaries and payroll. This term does not include capital and equipment costs associated with the construction, repair, or renovation of damaged public facilities or infrastructure.
- 1.9 “Indebtedness” means all amounts due from Borrower to Lender under the Loan Documents, including, without limitation, principal, interest, cost of collection, attorneys’ fees, and other expenses of the Lender which Borrower is obligated to pay and amounts advanced by Lender in discharge of obligations of the Borrower hereunder or other persons under the Loan Documents, whether such debts are now due or hereafter incurred, direct or indirect, and whether such debts are from time to time reduced and thereafter increased or entirely extinguished and thereafter reincurred.
- 1.10 “Loan Documents” means this Agreement, the Promissory Note, and Opinion of Borrower’s Counsel.
- 1.11 “Non-Ad Valorem Revenues” means all Governmental Fund Revenues, other than (1) revenues generated from ad valorem taxation on real or personal property, (2) grants, and (3) restricted gifts, which are legally available to make the payments required herein.
- 1.12 “Pledgeable Non-Ad Valorem Revenues” means all legally available Non-Ad Valorem Revenues of the Local Government, including any funds received from any federal programs for disaster-related expenses, which are legally available to make the payments required by the Resolution.
- 1.13 “Pledged Revenues” means the Pledgeable Non-Ad Valorem Revenues and the proceeds of any indebtedness incurred for the purpose of financing the Governmental Operations.
- 1.14 “Promissory Note” means that promissory note executed by the Borrower as maker to the Lender as payee in the original principal amount of \$11,900,000.00, or any subsequent renewals of the original promissory note.
- 1.15 “Obligation” means each and every obligation to pay money, whether direct, indirect, or contingent, however arising, including, without limitation, general accounts payable, payments under leases, installment purchase contracts, and debts for money borrowed.
- 1.16 “Opinion of Borrower’s Counsel” shall be an opinion letter written by the Borrower’s Counsel to the Lender, in a form acceptable to the Lender, which shall include, but is not limited to, a statement that all Loan Documents have been legally and properly executed and obligate the Borrower and are enforceable according to their terms.

## 2. BORROWING AND PAYMENTS

- 2.1 Note: The funds loaned hereunder will be evidenced by the Promissory Note indicating the aggregate principal amount; provided, however, that the amount actually due from Borrower to Lender from time to time will be evidenced by the Lender’s records.
- 2.2 Conditions Precedent to Lender’s Obligations: Prior to the Lender having any obligations hereunder, Lender in its sole discretion may require the following in form and content reasonably acceptable to Lender and its counsel (1) the Promissory Note; (2) the Opinion of Borrower’s Counsel; (3) Such other documents as Lender may reasonably request.
- 2.3 Interest: From the Maturity Date until the principal is paid interest shall accrue on the unpaid principal balance at a rate of 10% per annum. The interest shall be repaid as described in paragraph 2.4 below.

- 2.4 Repayment of Principal and Interest: The principal and interest shall be repaid as follows:
- 2.4.1 The Borrower shall repay principal of \$11,900,000.00 (the "Outstanding Principal") on or before [redacted] [twelve (12) months after disbursement date] (the "Maturity Date"). The Outstanding Principal may be repaid at any time without penalty.
- 2.4.2 No interest will accrue for the term of the loan. At the Maturity Date, simple interest will be computed on the basis of the actual number of days elapsed over an assumed 360-day year on the then outstanding principal balance. From the Maturity Date until the principal is paid the interest rate shall be based on a fixed rate of interest at 10% per annum.
- 2.4.3 The Borrower may request a six-month extension to the Maturity Date at any time before the Maturity Date. If approved by the Lender, the new date after the extension shall become the Maturity Date.
- 2.5 Application of Payments: All payments received on the Indebtedness shall be applied first to interest to the extent then accrued and then to principal.

### 3. AFFIRMATIVE COVENANTS

- 3.1 Amounts due under the Loan Documents shall be payable from Non-Ad Valorem Revenues of the Borrower derived from the Borrower's covenant to budget and appropriate from legally available Non-Ad Valorem Revenues each year such monies sufficient to pay principal and interest on the Promissory Note.
- 3.2 The Borrower shall ensure that sufficient Non-Ad Valorem revenues will be available to pay the principal and interest due and payable on the Promissory Note as of the date such payment is due.
- 3.3 The Borrower will maintain all unexpended Loan funds received from the Department in bank accounts separate from its other operating or other special purposes accounts. The Borrower will not commingle the Loan funds with any other funds, projects, or programs. Any interest earned on expended Loan funds remain State funds, pursuant to section 288.006, Florida Statutes.
- 3.4 There is hereby created and established the Debt Service Fund held by the Finance Director, of the Town Clerk's office, held for the benefit of the Department and solely for the payment of the Debt. The Debt Service Fund shall be deemed to be held in trust for the purposes provided herein for such Fund. The money in such Fund shall be continuously secured in the same manner as state and municipal deposits are authorized to be secured by the laws of the State of Florida, and as evidenced and more completely described in the Loan Documents. The Local Government may at any time and from time to time appoint one or more depositaries to hold, for the benefit of the Department, the Debt Service Fund established hereby. Such depository or depositaries shall perform at the direction of the Local Government the duties of the Local Government in depositing, transferring and disbursing moneys to and from each such Fund as herein set forth, and all records of such depository in performing such duties shall be open at all reasonable times to inspection by the Local Government and its agents and employees. Any such depository shall be a bank or trust company duly authorized to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and having a combined capital, surplus and undivided profits aggregating not less than fifty million dollars (\$50,000,000). Notwithstanding anything herein to the contrary, the Local Government may invest amounts on deposit in the Debt Service Fund in accordance with the Act, Florida Statutes 218.415, and the Local Government's investment policy.

- 3.5 The Local Government covenants and agrees to appropriate in its annual budget, by amendment if necessary, from Pledgeable Non-Ad Valorem Revenues, and to deposit into the Debt Service Fund hereinafter created, Pledgeable Non-Ad Valorem Revenues sufficient to pay principal of and interest on the Promissory Note as the same shall become due. Such covenant and agreement on the part of the Borrower to budget, appropriate, and deposit such amounts of Pledgeable Non-Ad Valorem Revenues shall be cumulative to the extent not paid and shall continue until such Pledgeable Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated, deposited and actually paid. The Borrower hereby expressly pledges the Pledged Revenues for the repayment of the Debt until the Loan has been repaid in full. The Borrower further acknowledges that the obligations of the Borrower to include the amount of any deficiency in payments in each of its annual budgets and to pay such deficiencies from Pledgeable Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth in the Loan Documents.
- 3.6 The Borrower is not prohibited from pledging future Non-Ad Valorem Revenues, nor is the Borrower required to levy and collect any particular Non-Ad Valorem Revenues, nor does the Borrower give the Department a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general secured creditors of the Borrower. All obligations of the Borrower hereunder shall be payable from the Pledgeable Non-Ad Valorem Revenues budgeted, appropriated, and deposited as provided herein and nothing herein shall be deemed to pledge ad valorem taxing power or ad valorem tax revenues, or to permit or constitute a mortgage or lien upon any assets owned by the Borrower. Neither the Department nor any other person may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Borrower, or the use or application of ad valorem tax revenues in order to satisfy any payment obligations hereunder, or to maintain or continue any of the activities of the Borrower which generate user service charges, regulatory fees, or any other Non-Ad Valorem Revenues. The obligation of the Borrower to budget, appropriate, deposit and make payments hereunder from its Pledgeable Non-Ad Valorem Revenues is subject to the availability of Pledgeable Non-Ad Valorem Revenues after the satisfaction of the funding requirements for obligations incurred prior to the effective date of the Loan Documents, and the funding requirement for essential governmental services of the Borrower or for essential public purposes affecting the health, welfare, and safety of the Borrower's inhabitants. The Debt shall be payable as provided herein and is subject in all respects to the provisions of Section 166.241, Florida Statutes.
- 3.7 Right of Inspection: Whenever Lender, in its sole discretion, deems it necessary, the Borrower will permit Lender or any agent designated by Lender to visit and inspect any of Borrower's properties and its organizational documents, bylaws, minute books and records, all at such reasonable times and as often as Lender may reasonably request.
- 3.8 Insurance: The Borrower will maintain adequate insurance (both casualty {if improved} and liability) with responsible insurers with coverage normally obtained by organizations similar to the Borrower and shall annually provide documentation of the insurance coverage and its payment to Lender so long as this Agreement is in force.
- 3.9 Taxes and Other Charges: The Borrower will pay and discharge or cause to be paid and discharged all taxes, charges, or claims of any type at any time assessed against the Borrower which could become a lien against the Borrower or any of its properties. The Borrower shall also pay all inspection costs. Nothing in this subsection shall require the payment of any sum so long as the Borrower shall, by

appropriate proceedings, contest the same in good faith and so long as Borrower, if so requested by Lender, creates a funded reserve equal to the amount so claimed or assessed.

- 3.10 Further Assurances: If at any time Lender or its counsel is of the reasonable opinion that any additional documents or materials are required or appropriate to carry out the intentions of the parties hereto to perfect the liens, debts, or obligations, or complete the construction and improvements contemplated by this Agreement, then Borrower shall, within 10 days after written notice of such opinion from Lender, do or cause to be done all things and matters necessary (including, without limitation, obtaining any consents) to assure to the reasonable satisfaction of counsel for Lender that such intentions are properly carried out.
- 3.11 Compliance with Certain Requirements: The Borrower agrees that in its operations the Borrower will comply with all applicable rules and regulations of any federal, state or local governmental authorities which may be applicable to Borrower and/or any of its businesses.
- 3.12 Executive Officers: The Borrower agrees that at all times that it shall follow its rules, bylaws and requirements concerning the service of its officers and Commission members and that it shall notify the Lender (and provide a certified copy of the appropriate resolution) within five days of any change in its officers and within five days of notification of election or appointment of Commission members. The undersigned is the current authorized signatory authority or an authorized delegate of Borrower and has the right, power, and authority to execute and deliver documents, including but not limited to the Loan Documents, on behalf of the Borrower and thereby bind the Borrower to the terms thereof. This Agreement shall be executed by the Borrower's Board members and shall have the effect of a resolution as to all material stated herein. The above notwithstanding, no member of the Borrower's Board of Commissioners is individually liable as to the Loan Documents.
- 3.13 Maintenance of Existence, Rights: The Borrower will do or cause to be done all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the State of Florida or any other jurisdiction where, in the opinion of counsel of Borrower, Borrower shall be qualified to operate and will do or cause to be done all things necessary to preserve and keep in full force and effect its rights to operate in a manner not less favorable to Borrower than those now in existence.
- 3.14 Use of Proceeds: Borrower agrees that the proceeds of any funds received from Lender shall be used for Governmental Operations.
- 3.15 Subordination of Debt: Any and all indebtedness of Borrower of more than 12 months duration, incurred while this Agreement is in effect, shall be subordinate and inferior to the indebtedness of Borrower to Lender hereunder unless specifically approved by Lender and said subordinated debt shall not be repaid without the written consent of Lender.
- 3.16 Reports: Borrower shall submit its annual audit or reviewed financial statements for each fiscal year in which this Agreement and any extensions are in effect. If neither audits nor reviewed financial statements are available, Borrower shall submit annual financial statements which have been prepared according to generally accepted accounting principles. Such statements shall be accompanied by a certification from the preparer that they have been prepared according to generally accepted accounting principles and by a certification by the Borrower's authorized signatory authority or authorized delegate that neither audited nor reviewed financial statements are available.

- 3.17 Single Audit Act Reports: In addition to the requirements set out in paragraph 6.12 of this Agreement, Borrower shall also comply with the applicable audit provisions contained in "Exhibit A," attached hereto and incorporated within.

#### 4. NEGATIVE COVENANTS

- 4.1 Liens, Etc.: The Borrower will not create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, or other encumbrance of any nature whatsoever on any of the assets of Borrower, which are pledged to Lender, whether now owned or hereafter acquired, nor enter into or suffer to exist any conditional sale contracts except such as exist on the date hereof and as are reflected on the most recent financial statement of Borrower delivered to Lender. Capital leases are excluded from this paragraph.
- 4.2 Merger, Consolidation, Sale of Substantial Assets: The Borrower will not merge into, consolidate with, or sell all or a substantial part of its assets to any other person. Provided, however, that this negative covenant shall not prohibit a merger of Borrower with another entity so long as Borrower is a surviving entity.

#### 5. EVENT OF DEFAULT

- 5.1 Each of the following constitute an Event of Default:
- 5.1.1 If the Borrower defaults in the payment of any principal or interest under the Promissory Note within 30 calendar days from when the same shall become due either by the terms thereof or otherwise; or
- 5.1.2 If the Borrower fails to comply with the non-monetary terms and conditions of any of the Loan Documents after 30 calendar days' notice from the Lender; or
- 5.1.3 If any material representation or warranty made by the Borrower herein or in any writing furnished in connection with or pursuant to the Loan Documents shall be false or breached in any material respect and shall remain so after 30 days' notice; or
- 5.1.4 If the Borrower makes an assignment for the benefit of creditors or petitions for appointment of a trustee or receiver of the Borrower, or of any substantial part of the assets of the Borrower, or commences any proceedings relating to the Borrower, under any bankruptcy, reorganization, arrangement, insolvency readjustment or debt, dissolution, or liquidation law of any jurisdiction, whether now or hereafter in effect; or
- 5.1.5 If any such petition or application is filed, or any such proceedings are commenced against the Borrower or any guarantor, and the Borrower or any guarantor by any act indicates its or his/her approval hereof, consent thereto, or acquiescence therein, or if an order is entered appointing a trustee or receiver of any portion of the assets of Borrower or any guarantor or adjudicate the Borrower or any guarantor bankrupt or insolvent or approving the petition in any such proceedings and any such order remains in effect for more than 30 days; or
- 5.1.6 If any order is entered in any proceedings against the Borrower decreeing the dissolution or split-up of the Borrower or any material judgment or attachment is entered against the Borrower, or any of its assets then there shall exist an Event of Default. When there shall exist an Event of Default, thereupon, Lender may, at its option, refuse to make any future advances to Borrower under the notes referenced in paragraph 1.5 above, and declare all of the Indebtedness of the Borrower with the Lender to be immediately mature, due and payable together with interest accrued thereon, and exercise any and all other remedies lawfully available to it; or
- 5.1.7 If the Borrower employs unauthorized aliens or commits a violation of Section 274(e) of the U.S. Immigration and Nationality Act; or

5.1.8 If the Borrower fails to enroll in and utilize the E-Verify system to verify the citizenship status of Borrower's new employees within 60 days of execution.

5.2 While there shall exist an Event of Default, Lender may, at its option, refuse to make any advances to Borrower under the Promissory Note and declare all the indebtedness to be immediately due and payable, together with interest accrued thereon, and exercise any and all other remedies lawfully available to it, including any remedies available under the Promissory Note.

## 6. MISCELLANEOUS

6.1 Expenses: The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to pay and save Lender harmless against liability for the payment of all out-of-pocket expenses arising in connection with this transaction, including any state documentary stamp taxes or other taxes (including interest and penalties, if any) which may be determined to be payable in respect to the execution and delivery of any Loan Documents executed in connection with this Agreement. If an Event of Default shall occur, Borrower shall also pay all Lender's costs of collection, including Lender employee travel expenses, court costs, and attorney's fees whether incurred with collection efforts, trial, appeal, or bankruptcy proceedings. If an Event of Default shall occur, Borrower may not use proceeds of this loan to pay Lender's costs of collection enumerated above.

6.2 Limitation of Lender's Duties: While the Lender has the option to make certain inspections of the property of Borrower and to make certain determinations as to the purpose for which advances are requested hereunder, the Lender is under no obligation to do so. Moreover, Lender shall have no responsibility whatsoever for any aspect of any matter in which Borrower runs his business nor the reasons of any investment by Borrower.

6.3 Survival of Representation and Warranties: All representations and warranties contained herein or made in writing in connection herewith shall survive the execution and delivery of Loan Documents.

6.4 Successors and Assigns: All covenants and agreements in this Agreement contained by or on behalf of either of the parties hereto shall bind and insure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not.

6.5 Notices: All written communications provided for hereunder shall be sent by first class mail as follows or to such other address with respect to any party as such party shall notify the others in writing:

TO LENDER: Florida Department of Economic Opportunity  
Strategic Business Development  
107 East Madison Street, MSC80  
The Caldwell Building  
Tallahassee, Florida 32399

TO BORROWER: Chris Holley, Town Manager  
Town of Fort Myers Beach  
2525 Estero Boulevard  
Fort Myers Beach, Florida 33931

6.6 Applicable Law: This Agreement is being delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida. The recitals of this Agreement are

incorporated herein by reference and shall apply to the terms and provisions of this Agreement and the Parties.

- 6.7 Headings: The descriptive section headings herein have been inserted for convenience only and shall not be deemed to limit or otherwise affect the construction of any provisions hereof.
- 6.8 Counterparts: This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.
- 6.9 Remedies Cumulative: All rights and remedies of Lender hereunder are cumulative and in addition to any rights and remedies which Lender may have under any applicable laws, and the exercise of any of one right or remedy by Lender against one party hereto will not deprive Lender of any right or remedy against that party or any other parties hereto.
- 6.10 Severability: If any portion of any Loan Document is found to be illegal, invalid, or unenforceable, such term shall be severed and the remainder of the Loan Document in question shall continue in full effect.
- 6.11 Waivers: No delay or omission by the Lender in exercising any right hereunder or under any Loan Document or with respect to the Indebtedness shall operate as a waiver of that or any other right, and no single or partial exercise of any right shall preclude the Lender from any other or further exercise of any other right or remedy. The Lender may cure any Event of Default in any reasonable manner without waiving that or any other prior or subsequent Event of Default by the Borrower.
- 6.12 Maintenance of Records: Borrower shall retain and maintain all records in connection with the Indebtedness and make such records available for financial audit as may be requested. Records shall include books, documents, and other evidence, including, but not limited to, vouchers, bills, and invoices, requests for payment and other supporting documentation, and independent auditors' working papers which, according to generally accepted accounting principles, procedures and practices, sufficiently and properly reflect all transactions related to this Indebtedness. Such records shall be retained by Borrower for a minimum period of five years after the repayment in full of the Indebtedness. The records shall be subject at all times to inspection, review, or audit by personnel of the Office of the Auditor General, Department of Financial Services, Office of the Chief Inspector General, or other personnel authorized by Lender and copies of the records shall be delivered to Lender upon request.
- 6.13 Small and Minority Business: Borrower is encouraged to use small businesses, including minority and women-owned businesses as subcontractors or sub-vendors under this Agreement. The directory of certified minority and women-owned businesses can be accessed from the website of the Department of Management Services, Office of Supplier Diversity.
- 6.14 Lobbying: Funds from this loan may not be used for lobbying the Florida Legislature, the Florida judicial branch, the Governor or the Executive Office of the Governor, or a State of Florida agency pursuant to Section 216.347, Florida Statutes.
- 6.15 Public Entity Crime: Borrower affirms that at no time has Borrower been convicted of a public entity crime pursuant to Section 287.133(2)(a), Florida Statutes, and agrees that it shall not violate any such law and further acknowledges and agrees that any such conviction during the term of this Agreement may result in the termination of this Agreement. Borrower shall place this provision in any executed agreements resulting from this Agreement.

- 6.16 Non-Discrimination:
- 6.16.1 Borrower will not discriminate against any employee employed in the performance of this agreement, or against any applicant for employment because of age, race, creed, color, handicap, national origin, or sex.
  - 6.16.2 Borrower affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes, and that at no time has Borrower been placed on the Discriminatory Vendor List or conducted business with an entity listed. Borrower further agrees that it shall not violate such law and doing so during the term of the Agreement may result in the termination of this Agreement.
  - 6.16.3 Borrower shall include similar provisions in any executed agreements resulting from this Indebtedness.
- 6.17 Subcontracts: Any and all contracts that Borrower executes with a person or organization under which such person or organization agrees to perform services on behalf of Borrower or Lender shall include provisions requiring that such person or organizations report on performance, account for proper use of funds provided under the contract including the provision of audit rights pursuant to paragraph 3.11 of this Agreement, avoid duplication of existing state and local services and activities, and agree to abide by all local, state, and federal laws.
- 6.18 Pledging Credit: Borrower shall not pledge the State of Florida's or Lender's credit or make the State of Florida or Lender a guarantor of payment or surety for any contract, debt, obligation, judgment lien, or any form of indebtedness. Any attempt shall be *void ab initio*.
- 6.19 Term of Agreement: This Agreement shall continue in effect so long as any part of the Indebtedness remains unpaid.
- 6.20 Jurisdiction; Venue: The laws of the State of Florida shall govern the construction, enforcement and interpretation of this Agreement, regardless of and without reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction. Each Party shall perform its obligations hereunder in accordance with the terms and conditions of this Agreement. The Parties hereby agree that the exclusive personal jurisdiction and venue to resolve any and all disputes between them including, without limitation, any disputes arising out of or relating to this Agreement shall be in the state courts of the State of Florida in the County of Leon. The Parties expressly consent to the exclusive personal jurisdiction and venue in any state court located in Leon County, Florida, and waive any defense of forum non conveniens, lack of personal jurisdiction, or like defense, and further agree that any and all disputes between them shall be solely in the State of Florida. IN ANY LEGAL OR EQUITABLE ACTION BETWEEN THE PARTIES, THE PARTIES HEREBY EXPRESSLY WAIVE TRIAL BY JURY TO THE FULLEST EXTENT PERMITTED BY LAW.

IN WITNESS WHEREOF, the Parties have caused this Agreement to become effective as of the date executed by the Lender ("Effective Date").

**Town of Fort Myers Beach**

**Florida Department of Economic Opportunity**

By: 

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

Name: Andy Hyatt

Name: \_\_\_\_\_

Title: Town Manager

Title: \_\_\_\_\_

Date: May 8, 2023

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGAL SUFFICIENCY, SUBJECT ONLY TO FULL AND PROPER EXECUTION OF THE PARTIES.

OFFICE OF THE GENERAL COUNSEL  
FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY

By \_\_\_\_\_

Approved Date: \_\_\_\_\_

# PROMISSORY NOTE

U.S. \$11,900,000.00

Tallahassee, Florida

Date: \_\_\_\_\_

Maturity Date: (12 months after disbursement)

Date: \_\_\_\_\_

FOR VALUE RECEIVED, The Town of Fort Myers Beach ("Borrower"), promises to pay to the order of the State of Florida, Department of Economic Opportunity, ("Lender"), the sum of \$11,900,000.00, together with interest from the date hereof until maturity at the rate stated below.

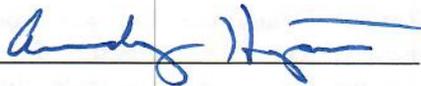
1. **NOTE:** This is an interest-bearing Note and the principal sum shown above together with interest thereon from the date hereof calculated in accordance with the interest as calculated in Paragraph 2 shall be payable in accordance with the payment provision pursuant to Paragraph 3. All payments made hereunder shall be credited first to interest and lawful charges and the remainder to principal.
2. **INTEREST CALCULATION:** No interest will accrue for the term of the loan. At the Maturity Date, simple interest will be computed on the basis of the actual number of days elapsed over an assumed 360-day year on the then outstanding principal balance. From the Maturity Date until the principal is paid the interest rate shall be based on a fixed rate of interest at 10% per annum.
3. **PAYMENT:** The Borrower hereby agrees to repay principal of \$11,900,000.00 on or before \_\_\_\_\_ (the "Maturity Date"). This Note may be repaid at any time without penalty.
4. **ENABLING RESOLUTION:** The Borrower has adopted Local Government Emergency Bridge Loan, Florida Resolution No. 23-33, a copy of which is attached hereto as "Exhibit A" and incorporated by reference herein (the "Resolution"). The Resolution authorizes Borrower to perform its obligations under this Note and the Loan Agreement of even date herewith (the "Loan Agreement") including, without limitation, the obligation to pay the amounts due under the Note and all other liabilities of the undersigned to Lender. A default under the terms and conditions of the Loan Agreement shall also be deemed a default under the terms and conditions of this Note.
5. **DEFAULT:** In the event of any default in the payment of any amount due hereunder or in the Loan Agreement, or the insolvency of the Borrower, or the filing by or against any of them of any bankruptcy, insolvency, or other proceedings for the relief of debtors under any state or federal law, or the making by any of them of any assignment for benefit of creditors, or the failure to pay or supersede within 30 days any judgment entered against any of them or the issuance of any writ of attachment or garnishment against any of the property of any of them, or the failure of any of the undersigned to observe or perform any agreement of any nature whatsoever with the lender, or if Lender deems itself insecure, this Note and all Obligations shall forthwith become immediately due and payable without demand or notice, at the option of Lender. After maturity, this Note shall bear interest at the rate stated above.
6. **ATTORNEYS' FEES:** If any amount payable hereunder is not paid when due or declared due, this Note may be placed in the hands of an attorney at law for collection, and in that event, the Borrower agrees to pay all costs of collection, including any reasonable attorneys' fees and costs. Such attorneys' fees and costs shall include, but not be limited to, fees and costs incurred in all matters of collection and enforcement, construction and interpretation, before, during, and after trial proceedings and appeals, as well as appearances in and connected with any bankruptcy proceedings, creditors' reorganization proceedings, or probate proceedings.

7. **RATE CHARGED:** In no event shall the interest charged hereunder be in excess of the legal maximum rate of interest (if any) allowed by applicable law as the law now exists or as the law may be changed in the future to allow higher rates of interest, and in the event that interest is charged at a rate in excess of the maximum rate allowed, any excess sums collected by the Lender shall be applied as reduction to principal, it being the intent of the undersigned hereof and the Lender that the undersigned pay no more and the Lender collect no more than the sums allowed using a lawful rate of interest.
8. **AUTHORITY:** The Borrower has the authority to execute this Note and has all authority to bind itself to the obligations set forth herein and in the Loan Agreement.
9. **AMENDMENT:** This Agreement may only be modified or amended by written instrument executed by both the Borrower and the Lender.
10. **GENERAL:** Each Party to this Note, whether maker, endorser or guarantor, hereby waives presentment for payment, demand, protest and notice of protest and assents to each and every extension or postponement of the time of payment or other indulgence, or to any substitution, addition, exchange or release of the security held by Lender. The undersigned hereby acknowledge that they have received a completed copy of this Note and agree to all the terms contained herein. Capitalized terms used but not defined herein shall carry the meaning ascribed in the Loan Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to become effective as of the date executed by the Lender ("Effective Date").

**Town of Fort Myers Beach**

**Florida Department of Economic Opportunity**

By: 

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

Name: Andy Hyatt

Name: \_\_\_\_\_

Title: Town Manager

Title: \_\_\_\_\_

Date: May 8, 2023

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGAL SUFFICIENCY, SUBJECT ONLY TO FULL AND PROPER EXECUTION OF THE PARTIES.

OFFICE OF THE GENERAL COUNSEL  
FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY

By \_\_\_\_\_

Approved Date: \_\_\_\_\_

## TERM SHEET

This loan facility ("Facility") is provided by the Florida Department of Economic Opportunity ("DEO"), located at 107 East Madison Street, Tallahassee Florida, 32399, to The Town of Fort Myers Beach ("Borrower") 2525 Estero Boulevard, Fort Myers Beach, Florida. 33931. DEO and the Borrower are collectively referred to as the "Parties" and each individually as a "Party."

**Background.** This Term Sheet sets out the terms and conditions pursuant to which DEO will provide the Facility of up to \$11,900,000.00 to the Borrower for Governmental Operations, as that term is used in Section 288.066, Florida Statutes and Rule ER 73AER23-1.

**Full Documents.** This Term Sheet is not intended to create a legal obligation between the Parties, and is intended only to set forth the terms under which the Facility will be offered, subject to the terms and execution of definitive documents embodying all of the terms and conditions between the Parties with respect to the Facility (the "Loan Documents").

Working Capital Facility	
<b>Nature and Purpose of the Facility</b>	DEO has agreed to provide the Borrower with a loan facility (the "Facility") that is non-interest bearing for the term of the Facility.
<b>Use of Funds</b>	The use of funds will be limited to costs associated with continuing, expanding, or modifying local governmental operations to meet disaster-related needs, and includes costs such as, but not necessarily limited to, staff salaries and payroll. This term does not include capital and equipment costs associated with the construction, repair, or renovation of damaged public facilities or infrastructure.
<b>Amount of Facility</b>	\$11,900,000.00
<b>Fee</b>	There is no fee associated with this Facility.
<b>Interest Rate</b>	During the term of the Facility interest shall not accrue.  Subject to the Repayment Term section below, simple interest will accrue on an annualized basis on the Outstanding Principal at a rate of 10% (the "Interest Rate").
<b>Preconditions to Availability of Facility</b>	DEO is not obliged to provide the Facility to the Borrower until DEO: <ul style="list-style-type: none"> <li>• has received a certified copy of one or more resolutions of the Borrower's Town Council ] authorizing the execution and delivery of the Loan Documents;</li> <li>• has received one or more signed copies of the Loan Documents from the Borrower; and</li> <li>• has countersigned and returned to the Borrower the Loan Documents.</li> </ul>
<b>Availability of Facility</b>	The Facility is available for disbursement immediately after the execution of all Loan Documents.
<b>Repayment Term</b>	Amounts outstanding (the "Outstanding Principal") under the Facility may be repaid at any time without any penalty.  Within 12 months after disbursement the Borrower shall begin repayments of principal and interest, unless the Borrower has requested, and DEO has approved, an extension for 6 months. Amounts unpaid shall rollover each month and interest shall be accrued only on the Outstanding Principal.  Any amount outstanding under the Facility becomes immediately repayable in full on the earlier of: <ul style="list-style-type: none"> <li>• the termination of the Loan Documents (other than termination resulting from the conclusion of a formal agreement), or if a formal agreement was entered into incorporating the provisions of the Loan Documents, the formal agreement;</li> <li>• the occurrence of an Event of Default (which is not remedied within the time period required to remedy such a default after notice to that effect from DEO).</li> </ul>
<b>Event of Default</b>	The Borrower will be given five business days to remedy an event of default for failure to pay an amount owing to DEO and 10 business days to remedy any other default (other than insolvency type defaults).

	<p>An event of default will occur where:</p> <ul style="list-style-type: none"> <li>• the Borrower fails to pay any amounts owing under the Facility as and when due;</li> <li>• the Borrower fails to perform or observe any obligation under the Facility and does not remedy the failure within five business days after receipt of a notice;</li> <li>• any warranty, representation, or statement by the Borrower is or becomes false, misleading, or incorrect when made or regarded as made under the Loan Documents; and</li> <li>• there is a material adverse change in the Borrower's assets, liabilities, financial position, or prospects.</li> </ul>
<b>Representations and Warranties</b>	<p>It is acknowledged that DEO may require additional warranties to be provided by the Borrower.</p> <p>The Borrower represents and warrants upon execution of the Loan Documents that:</p> <ul style="list-style-type: none"> <li>• it has consulted, and as appropriate obtained the review and opinions of, its legal counsel and accountants.</li> <li>• it has full power and authority to enter into and perform its obligations contemplated by Term Sheet and has taken all necessary action to authorize the execution, delivery, and performance thereof;</li> <li>• no event has occurred which constitutes an Event of Default;</li> <li>• it is solvent and able to pay its debts as and when they become due and payable;</li> <li>• all information furnished by the Borrower to the Lender in connection with this Term Sheet is true and correct in all respects and there are no other facts or circumstances of which it is aware that would render any such information misleading;</li> <li>• it has not violated any law or agreements which may have a material adverse effect on the business or financial condition of the Borrower; and</li> <li>• it has disclosed to DEO any information which might reasonably be expected to adversely influence the decision of a lender to make a general borrowings facility available to the Borrower on terms and conditions similar to those contained in this Term Sheet.</li> <li>• it will, in good faith, take all steps necessary to facilitate the execution the Loan Documents, and the transactions contemplated thereby.</li> </ul>
<b>Indemnity</b>	The Borrower will indemnify DEO for all loss that it suffers occurring as a result of an Event of Default or DEO exercising its powers as a result of an Event of Default.
<b>Costs and Expenses</b>	Except as otherwise set forth herein, each Party bears its own costs and fees, including attorney's fees.
<b>Confidentiality</b>	This Term Sheet is a public record, subject to the public record disclosure requirements of Article I, Section 24 of the Florida Constitution and Chapter 119 of the Florida Statutes.
<b>Formal Documents</b>	DEO will prepare the Loan Documents incorporating the provisions set out above and other terms customarily found in a loan facility of this type.