

RESOLUTION NO. 23-138

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING CERTAIN AMENDMENTS TO LOAN DOCUMENTS RELATING TO A LOAN FROM FIRST FLORIDA INTEGRITY BANK, N/K/A FIRST FOUNDATION PUBLIC FINANCE, PREVIOUSLY MADE ON OR ABOUT NOVEMBER 18, 2020 FOR THE PURPOSE OF FINANCING THE REDEVELOPMENT OF CERTAIN TOWN-WIDE CAPITAL IMPROVEMENT PROJECTS, AS DESCRIBED THEREIN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF SAID AMENDMENTS AS DESCRIBED HEREIN; PROVIDING FOR THE RIGHTS AND SECURITIES OF THE OWNER OF THE NOTE; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Resolution No. 20-51 adopted by the Town Council of the Town of Fort Myers Beach, Florida (the "Town"), the Town entered into that certain Loan Agreement by and between the Town and First Florida Integrity Bank n/k/a First Foundation Public Finance (the "Bank") dated November 18, 2020 (the "Original Loan Agreement") whereby a loan in the amount not to exceed \$10,000,000 was made by the Bank to the Town for the purpose of financing certain Town-wide capital improvement projects within the Town; and

WHEREAS, the Original Loan Agreement provided that Town would draw down all of the funds within 36 months; and

WHEREAS, the Town and the Bank have agreed to amend the Original Loan Agreement to extend the period in which the funds can be drawn down; and

WHEREAS, the Town hereby determines it is in the best interest of the Town to amend the Original Loan Agreement and enter into a First Amendment to Loan Agreement by and between the Town and the Bank, a copy of which is attached hereto as **Exhibit A** (the "Amendment"); and

WHEREAS, the Town desires to approve the Amendment; and

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

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant the provisions of the Constitution and the laws of the State of Florida, Chapter 166, *Florida Statutes*, as amended, Chapter 202, *Florida Statutes*, as amended, the Town Charter, Chapters 24 and 26 of the Town Code, and other applicable provisions of law.

SECTION 2. RECITALS. It is hereby found, ascertained, determined and declared that:

A. The WHEREAS clauses recited above are hereby incorporated herein as a part of this Resolution.

B. The Town is a duly constituted and validly existing municipal corporation and public body corporate and politic of the State of Florida, with requisite powers derived from the Constitution and laws of the State of Florida and the Charter and ordinances of the Town to authorize, execute and deliver this Resolution and the Amendment and to carry out and perform its duties and obligations hereunder and thereunder.

SECTION 3. AUTHORIZATION OF THE AMENDMENT. The Town does hereby authorize the execution and delivery, on behalf of the Town, by the Mayor or Vice Mayor, under the seal of the Town, attested by the Town Clerk, of the Amendment by and between the Town and the Bank. The Amendment shall be in substantially the form attached hereto and marked Exhibit "A", and is hereby approved, with such changes therein as shall be approved by any of the authorized officers executing the same, with such execution constituting conclusive evidence of such officer's approval and the Town's approval of any changes therein to the form of the Amendment attached hereto.

SECTION 4. GENERAL AUTHORITY. The Town Council hereby authorizes the Mayor or the Vice Mayor, the Town Clerk, the Town Manager and the Town Attorney to execute the Amendment, this Resolution, and any and all other documents necessary in connection with delivery of the Amendment.

SECTION 5. PREREQUISITES PERFORMED. The Town has performed all acts, conditions, and things relating to the passage of this Resolution as are required by the Constitution and Laws of the State of Florida.

SECTION 6. SEVERABILITY. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

SECTION 7. APPLICABLE PROVISIONS OF LAW. This Resolution shall be governed by and construed in accordance with the laws of the State of Florida.

SECTION 8. RULES OF INTERPRETATION. Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

SECTION 9. CAPTIONS. The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

SECTION 10. MEMBERS OF THE TOWN COUNCIL EXEMPT FROM PERSONAL LIABILITY. No recourse under or upon any obligation, covenant or agreement of this Resolution, or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the Town Council, as such, of the Town, past, present or future, either directly or through the Town it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the members of the Town Council, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or the Amendment or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such member of the Town Council, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the Amendment, on the part of the Town.

SECTION 11. REPEALER. All resolutions or parts thereof in conflict herewith, if any, are hereby repealed.

SECTION 12. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption and authentication as provided by law.

[Remainder of this page intentionally left blank

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Veach and seconded by Council Member Woodson, 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 20th day of November 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH, FLORIDA


Y (Nov 20, 2023 13:57 EST)

Dan Allers, Mayor

ATTEST:


AMY BAKER (Nov 20, 2023 17:45 EST)

Amy Baker, Town Clerk

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


Becky Vose (Nov 20, 2023 17:29 EST)

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 20th day of November 2023

EXHIBIT A

FORM OF FIRST AMENDMENT TO LOAN AGREEMENT

FIRST AMENDMENT TO LOAN AGREEMENT

By and between

**TOWN OF FORT MYERS BEACH, FLORIDA
(the "Town")**

and

**FIRST FOUNDATION PUBLIC FINANCE
F/K/A FIRST FLORIDA INTEGRITY BANK.
(the "Bank")**

Dated as of November [], 2023

FIRST AMENDMENT TO LOAN AGREEMENT

THIS FIRST AMENDMENT TO LOAN AGREEMENT (the "Amendment") is made and entered into as of November [___], 2023, by and between the **TOWN OF FORT MYERS BEACH, FLORIDA** a municipal corporation and public body corporate of the State of Florida duly organized under the laws of the State of Florida and its successors and assigns (the "Borrower") and **FIRST FOUNDATION PUBLIC FINANCE, f/k/a FIRST FLORIDA INTEGRITY BANK** and its successors (the "Bank") for the purpose of amending the hereinafter described Loan Agreement.

WITNESSETH:

WHEREAS, the Borrower and the Bank previously entered into that certain Loan Agreement dated as of November 18, 2020, (the "Original Loan Agreement"), pursuant to which the Bank extended a loan to the Borrower in an amount not to exceed \$10,000,000 (the "Loan"); and

WHEREAS, the Borrower and the Bank wish to make certain amendments and modifications to the terms and conditions contained in the Original Loan Agreement.

NOW, THEREFORE, for and in consideration of the mutual premises contained herein and for other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Amendment to Original Loan Agreement. The first sentence of Section 3.01(b) of the Original Loan Agreement is hereby amended and restated as follows:

"Proceeds of the Loan may be drawn down by the Borrower as needed, but all proceeds of the Loan shall be drawn down by the Borrower no later than May 1, 2024".

2. Representations and Warranties.

A. In order to induce the Bank to execute and deliver this Amendment, the Borrower represents and warrants that the representations and warranties contained in the Original Loan Agreement are true and correct on the date hereof and are hereby incorporated by reference into the body of this Amendment as if set forth herein in their entirety, except for those representations and warranties given as of a specific date, and shall remain in effect until all obligations of the Borrower hereunder are discharged.

B. In addition to the foregoing, the Borrower represents and warrants as follows:

(i) The execution, delivery and performance by the Borrower of this Amendment and the Original Loan Agreement, as amended hereby, are within its powers, have been duly authorized by all necessary action and do not contravene any law or any contractual restriction binding on or affecting the Borrower.

(ii) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Borrower of this Amendment or the Original Loan Agreement, as amended hereby.

(iii) This Amendment and the Original Loan Agreement, as amended hereby, constitute legal, valid and binding obligations of the Borrower, enforceable against the Borrower, in accordance with their respective terms.

3. Covenants. The Borrower hereby reaffirms its Original Loan Agreement to observe and perform each of the respective covenants and obligations of the Borrower contained in the Original Loan Agreement, except as may be modified by this Amendment.

4. Provisions of Original Loan Agreement Not Otherwise Modified. Except as expressly modified or amended hereby, the Original Loan Agreement shall remain in full force and effect. To the extent of any conflict between the terms of this Amendment and the Original Loan Agreement, the terms hereof shall control.

5. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and shall be binding upon all parties, their successors and permitted assigns.

6. Complete Agreement. This Amendment constitutes the complete agreement between the parties hereto and incorporates all prior discussions, agreements and representations made in regard to the matters set forth herein.

7. Capitalized Terms. Capitalized terms used in this Amendment shall have the meanings assigned to them in the Original Loan Agreement unless the context hereof clearly dictates otherwise.

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

TOWN OF FORT MYERS BEACH,
FLORIDA

(SEAL)

By: 
Y (Nov 20, 2023 13:57 EST)
Dan Allers, Mayor

ATTEST:


By: AMY BAKER (Nov 20, 2023 17:45 EST)
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL:


Becky Vose (Nov 20, 2023 17:29 EST)
Vose Law Firm, Town Attorneys

FIRST FOUNDATION PUBLIC
FINANCE

By: _____
Name: Trevor Mael
Title: Senior Vice President