

RESOLUTION NO. 2020-\_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING A LOAN IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$41,000,000 FROM JPMORGAN CHASE BANK, N.A., TO REFUND THE OUTSTANDING 2010 PARKING BONDS AND THE CHASE EQUIPMENT LEASE PURCHASE FINANCING; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND PROMISSORY NOTE TO EVIDENCE THE OBLIGATION OF THE CITY TO REPAY SUCH LOAN; PROVIDING SECURITY FOR THE REPAYMENT OF THE LOAN; AUTHORIZING THE REFUNDING OF SUCH OBLIGATIONS TO BE REFUNDED; AND THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT; APPOINTING AN ESCROW AGENT; AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENTS TO THE TD BANK LOAN AGREEMENT AND THE RJ CAPITAL LOAN AGREEMENT; AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE LOAN AND THE REFUNDING PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach, Florida (the "City") has previously issued its \$4,155,000 outstanding principal amount of City of Miami Beach, Florida Parking Revenue Refunding Bonds, Series 2010A, and \$27,405,000 outstanding principal amount of City of Miami Beach, Florida Parking Revenue Bonds, Series 2010B (collectively, the "Outstanding 2010 Parking Bonds"); and

**WHEREAS**, the City has also previously entered into an equipment lease purchase financing with JPMorgan Chase, N.A. f/k/a Chase Equipment Finance, Inc. pursuant to a Master Lease-Purchase Agreement dated as of May 25, 2010 (the "Chase Equipment Lease Purchase Financing" and together with the Outstanding 2010 Parking Bonds, the "Obligations to be Refunded"); and

**WHEREAS**, the City has determined that it is financially beneficial to authorize the refunding of the Obligations to be Refunded as more particularly described in this Resolution (the "Refunding Program"); and

**WHEREAS**, in connection with the Refunding Program, in response to a request for proposals from the City, JPMorgan Chase Bank, N.A. (the "Bank"), has offered to the City a loan in an aggregate principal amount not to exceed \$41,000,000 (the "Loan"); and

**WHEREAS**, the City has determined that it is in the best interests of the City to undertake the Refunding Program through the Loan; and

**WHEREAS**, to evidence its obligation to repay the Loan, the City will execute and deliver to the Bank a Loan Agreement (the "Loan Agreement") and a Promissory Note (the "Note"); and

**WHEREAS**, to repay the Loan, the City wishes to covenant to budget and appropriate Non-Ad Valorem Revenues (as defined in the Loan Agreement), in accordance with and subject to the limitations contained in the Loan Agreement and the Note; and

**WHEREAS**, in connection with entering into the Loan, the City has determined that it is necessary to amend (i) that certain Loan Agreement dated as of December 22, 2016 between the City and TD Bank, N.A. ("TD Bank"), and (ii) that certain Loan Agreement dated as of December 5, 2018 between the City and Raymond James Capital Funding, Inc. ("RJ Capital"), as more particularly described in Exhibits "C" and "D" hereto.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1. DEFINITIONS.**

Terms defined in the preambles shall have the meanings set forth in such preambles. All capitalized terms used in this resolution (the "Resolution") which are defined in the Loan Agreement or the Note shall have the meanings assigned therein, unless the context affirmatively requires otherwise.

**SECTION 2. FINDINGS.**

The preambles are incorporated as findings. In addition, it is found, determined and declared that in accordance with Section 218.385, Florida Statutes, as amended, undertaking the Refunding Program on a negotiated basis through the Loan is in the best interest of the City (rather than a sale through competitive bidding) because of (i) the character of the Loan, (ii) the prevailing market conditions, (iii) the economic conditions due to COVID-19, and (iv) the recommendations of RBC Capital Markets, LLC, the City's financial advisor.

**SECTION 3. LOAN AUTHORIZED.**

The Loan in an aggregate principal amount not to exceed \$41,000,000 and an interest rate not to exceed, except upon a Determination of Taxability or an Event of Default, 3.50% per annum to undertake the Refunding Program, as described in this Resolution and in the manner provided in the Loan Agreement, is authorized and approved.

**SECTION 4. AUTHORIZATION OF EXECUTION AND DELIVERY OF LOAN AGREEMENT.**

The Loan Agreement, in substantially the form attached as Exhibit "A" to this Resolution, with such changes, alterations and corrections as may be approved by the Mayor of the City (the "Mayor"), after consultation with the Chief Financial Officer of the City (the "Chief Financial Officer") and the City Attorney of the City (the "City Attorney"),

such approval to be presumed by the execution by the Mayor of the Loan Agreement, is approved by the City. The City authorizes and directs the Mayor to execute and the City Clerk or Deputy City Clerk of the City (the "City Clerk") to attest under the seal of the City the Loan Agreement and to deliver the same to the Bank.

#### **SECTION 5. ISSUANCE OF NOTE.**

The Loan shall be evidenced by the Note. The Note, in substantially the form attached to the Loan Agreement, with such changes, alterations and corrections as may be approved by the Mayor, after consultation with the Chief Financial Officer and the City Attorney, such approval to be presumed by the execution by the Mayor of the Note, are approved by the City. The City authorizes and directs the Mayor to make and execute the Note and to issue and deliver the Note to the Bank.

#### **SECTION 6. SECURITY FOR THE LOAN.**

The Loan shall be payable solely from Non-Ad Valorem Revenues, in accordance with and subject to the limitations contained in the Loan Agreement and the Note. Neither the Loan nor the Note shall be a general obligation of the City, or a pledge of its faith, credit or taxing power within the meaning of any constitutional or statutory provisions or limitations, but shall be payable solely as provided in the Loan Agreement and Note. The City shall not be obligated to exercise its taxing power to pay the principal of the Loan and the Note, the related interest or other payments or costs.

#### **SECTION 7. REFUNDING AUTHORIZED; ESCROW DEPOSIT AGREEMENT; ESCROW AGENT.**

The refunding, defeasance and payment at maturity and redemption, as applicable, of the Outstanding 2010 Parking Bonds and the refunding and prepayment in full of the Chase Equipment Lease Purchase Financing are hereby authorized and approved.

The Outstanding 2010 Parking Bonds shall be paid at maturity and redeemed, as applicable, as set for in the Escrow Deposit Agreement (the "Escrow Deposit Agreement") to be executed and delivered by the City and U.S. Bank National Association, which is hereby appointed escrow agent thereunder (the "Escrow Agent"). The Escrow Deposit Agreement, in substantially the form attached as Exhibit "B" to this Resolution, with such changes, alterations and corrections as may be approved by the Mayor, after consultation with the Chief Financial Officer and the City Attorney, such approval to be presumed by the execution by the Mayor of the Escrow Deposit Agreement, is approved by the City. The City authorizes and directs the Mayor to execute and the City Clerk to attest under the seal of the City the Escrow Deposit Agreement and to deliver the same.

**SECTION 8. AUTHORIZATION OF EXECUTION AND DELIVERY OF AMENDMENT TO TD BANK LOAN AGREEMENT AND RJ CAPITAL LOAN AGREEMENT.**

The First Amendment to Loan Agreement between the City and TD Bank and the First Amendment to Loan Agreement between the City and RJ Capital (collectively, the "Amendments"), in substantially the forms attached as Exhibit "C" and "D" to this Resolution, respectively, with such changes, alterations and corrections as may be approved by the Mayor, after consultation with the Chief Financial Officer and the City Attorney, such approval to be presumed by the execution by the Mayor of the Amendments, is approved by the City. The City authorizes and directs the Mayor to execute and the City Clerk to attest under the seal of the City the Amendments and to deliver the same.

**SECTION 9. GENERAL AUTHORITY.**

The Mayor, City Manager of the City, Chief Financial Officer, Deputy Finance Director of the City, City Attorney and other City officials, officers, attorneys, agents and employees are authorized to do all acts and things and execute and deliver any and all documents necessary by this Resolution, the Loan Agreement, the Note, the Escrow Deposit Agreement or the Amendments, or desirable or consistent with the requirements of this Resolution, the Loan Agreement, the Note, the Escrow Deposit Agreement or the Amendments, in order to obtain the Loan, accomplish the Refunding Program and provide for the full, punctual and complete performance of all the terms, covenants and agreements contained in the Loan Agreement, the Note, the Escrow Deposit Agreement, the Amendments and this Resolution, including the execution and delivery of a tax compliance certificate and a Form 8038-G to be filed with the Internal Revenue Service.

**SECTION 10. SEVERABILITY OF INVALID PROVISIONS.**

If any one or more of the provisions contained in this Resolution shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions of this Resolution or of the Loan Agreement, the Note, the Escrow Deposit Agreement or the Amendments.

**SECTION 11. REPEALING CLAUSE.**

All resolutions or parts of such resolutions of the City in conflict with the provisions contained in this Resolution are, to the extent of such conflict, superseded and repealed.

**SECTION 12. EFFECTIVE DATE.**

This Resolution shall become effective immediately upon adoption.

**PASSED and ADOPTED** this \_\_\_\_ day of July, 2020.

**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**


  
\_\_\_\_\_  
City Attorney *RAP* 7/21/20  
Date

EXHIBIT "A"  
LOAN AGREEMENT  
(including Note)

## LOAN AGREEMENT

This LOAN AGREEMENT (the "Agreement") is made and entered into as of August \_\_\_, 2020 (the "Closing Date"), and is by and between the City of Miami Beach, Florida, a municipal corporation in the State of Florida, and its successors and assigns (the "Borrower"), and JPMorgan Chase Bank, N.A., and its successors and assigns, as holder of the hereinafter defined Note (the "Bank").

The parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, DO HEREBY AGREE as follows:

### ARTICLE I DEFINITION OF TERMS

Section 1.01. Definitions. The words and terms used in this Agreement shall have the meanings as set forth in the recitals above and the following words and terms as used in this Agreement shall have the following meanings:

"Agreement" means this Loan Agreement and any and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

"Authorized Individual" means any one of the individuals identified on Attachment B.

"Bond Counsel" means Squire Patton Boggs (US) LLP or such other attorney-at-law or firm of such attorneys having expertise in the legal aspects of the issuance of indebtedness by states and political subdivisions thereof and acceptable to the Bank.

"Budgeted Revenues" means the Non-Ad Valorem Revenues budgeted and appropriated pursuant to Section 3.06 hereof.

"Business Day" means any day except any Saturday or Sunday or day on which the Principal Office of the Bank is lawfully closed.

"Chase Equipment Lease Purchase Financing" means the equipment lease purchase financing entered into between the Borrower and Chase Equipment Finance, Inc. pursuant to the Master Lease-Purchase Agreement dated as of May 25, 2010.

"Default Rate" has the meaning given to such term in the Note.

"Essential Government Services" means the provision of public safety and general governmental services by the Borrower, the expenditures for which are set forth as the line items entitled "General Government Expenditures" and "Public Safety Expenditures" as reflected in the City of Miami Beach Statement of Revenues, Expenditures and Changes in Fund Balances - Governmental Funds and as reported in the City's latest Comprehensive Annual Financial Report.

“Event of Default” means an Event of Default specified in Article VI of this Agreement.

“Governmental Authority” means the government of the United States of America or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

“Loan” means the loan by the Bank to the Borrower contemplated hereby.

“Loan Amount” means \$\_\_\_\_\_ principal amount.

“Maturity Date” means September 1, 2040.

“Non-Ad Valorem Revenues” means in any fiscal year of the Borrower, all revenues received by the Borrower in such fiscal year that are not derived from ad valorem taxation.

“Note” means the Promissory Note in the form attached hereto as Attachment A.

“Notice Address” means,

As to the Borrower:	As set forth on Attachment B
As to the Bank:	As set forth on Attachment B

or to such other address as either party may have specified in writing to the other using the procedures specified in Section 7.06.

“Principal Office” means, with respect to the Bank, the Notice Address, or such other office as the Bank may designate to the Borrower in writing.

“Refunded Bonds” means the \$4,155,000 outstanding principal amount of City of Miami Beach, Florida Parking Revenue Refunding Bonds, Series 2010A, and \$27,405,000 outstanding principal amount of City of Miami Beach, Florida Parking Revenue Bonds, Series 2010B.

“Refunding Requirements” means the amount necessary to defease and pay at maturity and redeem, as applicable, the Refunded Bonds, prepay in full the Chase Equipment Lease Purchase Financing and pay closing costs of the Loan.

“Resolution” means Resolution No. 2020-\_\_\_\_\_ adopted by the Mayor and City Commission of the Borrower on July \_\_, 2020.

“State” means the State of Florida.



“Tax Compliance Certificate” means the Tax Compliance Certificate to be executed and delivered concurrently with the Note.

Section 1.02. Titles and Headings. The titles and headings of the articles and sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

## **ARTICLE II** **REPRESENTATIONS OF BORROWER**

The Borrower represents and warrants to the Bank that:

Section 2.01. Powers of Borrower. The Borrower is a municipal corporation in the State, duly organized and validly existing under the laws of the State. The Borrower has the power to borrow the amount provided for in this Agreement, to execute and deliver the Note and this Agreement, to secure the Note in the manner contemplated hereby and to perform and observe all the terms and conditions of the Note and this Agreement on its part to be performed and observed. The Borrower may lawfully borrow funds hereunder in order to pay the Refunding Requirements.

Section 2.02. Authorization of Loan. The Borrower had, has, or will have, as the case may be, at all relevant times, full legal right, power, and authority to execute this Agreement, to make the Note, and to carry out and consummate all other transactions contemplated hereby, and the Borrower has complied and will comply with all provisions of applicable law in all material matters relating to such transactions. The Borrower has duly authorized the borrowing of the amount provided for in this Agreement, the execution and delivery of this Agreement, and the making and delivery of the Note to the Bank and to that end the Borrower warrants that it will take all action and will do all things which it is authorized by law to take and to do in order to fulfill all covenants on its part to be performed and to provide for and to assure payment of the Note. The Note has been duly authorized, executed, issued and delivered to the Bank and constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms and the terms hereof, and is entitled to the benefits and security of this Agreement. All approvals, consents, and orders of and filings with any governmental authority or agency which would constitute a condition precedent to the issuance of the Note or the execution and delivery of or the performance by the Borrower of its obligations under this Agreement and the Note have been obtained or made and any consents, approvals, and orders to be received or filings so made are in full force and effect.

Section 2.03. No Violation of Law or Contract. The Borrower is not in default in any material respect under any agreement or other instrument to which it is a party or by which it may be bound, the breach of which could result in a material and adverse impact on the financial condition of the Borrower or the ability of the Borrower to perform its obligations hereunder and under the Note. The making and performing by

the Borrower of this Agreement and the Note will not violate any applicable provision of law, and will not result in a material breach of any of the terms of any agreement or instrument to which the Borrower is a party or by which the Borrower is bound, the breach of which could result in a material and adverse impact on the financial condition of the Borrower or the ability of the Borrower to perform its obligations hereunder and under the Note.

Section 2.04. Pending or Threatened Litigation. There are no actions or proceedings pending against the Borrower or affecting the Borrower or, to the knowledge of the Borrower, threatened, which, either in any case or in the aggregate, might result in any material adverse change in the financial condition of the Borrower, or which questions the validity of this Agreement or the Note or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

Section 2.05. Financial Information. The financial information regarding the Borrower furnished to the Bank by the Borrower in connection with the Loan is accurate, and there has been no material and adverse change in the financial condition of the Borrower from that presented in such information.

### **ARTICLE III** **COVENANTS OF THE BORROWER**

Section 3.01. Affirmative Covenants. For so long as any of the principal amount of or interest on the Note is outstanding or any duty or obligation of the Borrower hereunder or under the Note remains unpaid or unperformed, the Borrower covenants to the Bank as follows:

(a) Payment. The Borrower shall pay the principal of and the interest on the Note at the time and place, and in the manner and from the sources provided herein and in the Note.

(b) Use of Proceeds. Proceeds from the Note will be used only to pay the Refunding Requirements.

(c) Notice of Defaults. The Borrower shall within ten (10) days after it acquires knowledge thereof, notify the Bank in writing at its Notice Address upon the happening, occurrence, or existence of any Event of Default, and any event or condition which with the passage of time or giving of notice, or both, would constitute an Event of Default, and shall provide the Bank with such written notice, a detailed statement by a responsible officer of the Borrower of all relevant facts and the action being taken or proposed to be taken by the Borrower with respect thereto.

(d) Maintenance of Existence. The Borrower will take all legal action necessary to maintain its existence until all amounts due and owing from the Borrower to the Bank under this Agreement and the Note have been paid in full.

(e) Records. The Borrower agrees that any and all records of the Borrower with respect to the Loan shall be open to inspection by the Bank or its representatives at all reasonable times at the offices the Borrower.

(f) Notice of Liabilities. The Borrower shall promptly inform the Bank in writing of any actual or potential contingent liabilities or pending or threatened litigation of any amount that could reasonably be expected to have a material and adverse effect upon the financial condition of the Borrower or upon the ability of the Borrower to perform its obligation hereunder and under the Note.

(g) Insurance. The Borrower shall maintain such liability, casualty and other insurance as is reasonable and prudent for similarly situated governmental entities of the State of Florida.

(h) Compliance with Laws. The Borrower shall comply with all applicable federal, state and local laws and regulatory requirements, the violation of which could reasonably be expected to have a material and adverse effect upon the financial condition of the Borrower or upon the ability of the Borrower to perform its obligation hereunder and under the Note.

(i) Payment of Document Taxes. In the event the Note or this Agreement should be subject to the excise tax on documents or the intangible personal property tax of the State, the Borrower shall pay such taxes or reimburse the Bank for any such taxes paid by it.

(j) Financial Information. The Borrower will cause an audit to be completed of its books and accounts and shall furnish to the Bank audited year-end financial statements of the Borrower together with a report by an independent certified public accountant acceptable to the Bank stating without qualification unacceptable to the Bank that the audit was conducted in accordance with generally accepted auditing standards and stating that such financial statements present fairly in all material respects the financial position of the Borrower and the results of its operations and cash flows for the periods covered by the audit report, all in conformity with generally accepted accounting principles applied on a consistent basis. The Borrower shall adopt an annual budget as required by law. The Borrower shall make publicly available (i) a copy of its annual operating budget for each fiscal year ending after September 30, 2020 within 60 days after its adoption, and (ii) its audited financial statements described above and its comprehensive annual financial report (if one is prepared by the Borrower) for each fiscal year ending on and after September 30, 2020 within 210 days after the end thereof.

(k) Immunity. To the fullest extent permitted by law, the Borrower will not assert any immunity it may have as a public entity under the laws of the State from lawsuits with respect to the Note and this Agreement; provided, however, that nothing contained herein shall be deemed a waiver in any respect to the Borrower's immunity with respect to tort liabilities.

Section 3.02. Additional Debt Payable from Non-Ad Valorem Revenues. For so long as any of the principal amount of or interest on the Note is outstanding or any duty or obligation of the Borrower hereunder or under the Note remains unpaid or unperformed, the Borrower covenants to the Bank that, without the prior written consent of the Bank, the Borrower shall not hereafter incur any indebtedness payable from any Non-Ad Valorem Revenues (which includes any increases in the outstanding amount under any line of credit or similar arrangement), other than any Non-Ad Valorem Revenues accounted for in an enterprise fund under governmental accounting principles ("Enterprise Revenues"), which could, but for such future indebtedness, be lawfully used to pay principal of or interest on the Note (any and all such indebtedness payable from Non-Ad Valorem Revenues, other than Enterprise Revenues, whether now existing or incurred in the future, is referred to as "Competing Debt"), unless (i) the amount of Non-Ad Valorem Revenues, other than Enterprise Revenues, if any, received by the Borrower during the fiscal year of the Borrower most recently concluded prior to the date of the incurrence of such indebtedness for which audited financial statements are available, minus the excess, if any, of the expenditures by the Borrower for Essential Government Services for such fiscal year over the amount of ad valorem taxes (other than any ad valorem taxes levied pursuant to referendum approval by the electorate) received by the Borrower in such fiscal year, equals or exceeds 200% of the maximum amount of principal and interest scheduled to be payable on the Note and all Competing Debt (including the proposed debt) during the then current or any future fiscal year and (ii) an Authorized Individual certifies in writing to the Bank that to the best of his or her knowledge no event has occurred which would cause him or her to believe that the amount of Non-Ad Valorem Revenues, other than any Enterprise Revenues, to be received in any future fiscal year minus the excess, if any, of the expenditures by the Borrower for Essential Government Services for such fiscal year over the amount of ad valorem taxes (other than any ad valorem taxes levied pursuant to referendum approval by the electorate) received by the Borrower in such fiscal year, would be less than 200% of the amount of principal and interest scheduled to be payable on the Note and all Competing Debt during such fiscal year.

For purposes of calculating the foregoing, (A) if any indebtedness bears a rate of interest that is not fixed for the entire term of the debt (excluding any provisions that adjust the interest rate upon a change in tax law or in the tax treatment of interest on the debt or upon a default), then the interest rate on such indebtedness shall be assumed to be the highest of (i) to the extent applicable, the average rate of actual interest borne by such indebtedness during the most recent complete month prior to the date of issuance of such proposed indebtedness, (ii) for tax-exempt debt, The Bond Buyer Revenue Bond Index last published in the month preceding the date of issuance of such proposed indebtedness plus one percent, (iii) for taxable debt, the yield on a U.S. Treasury obligation with a constant maturity closest to but not before the maturity date of such indebtedness, as reported in Statistical Release H.15 of the Federal Reserve on the last day of the month preceding the date of issuance of such proposed indebtedness, plus three percent, provided that if the Borrower shall have entered into an interest rate swap or interest rate cap or shall have taken any other action which has the effect of fixing or capping the interest rate on such indebtedness for the entire term thereof, then such fixed or capped rate shall be used as the applicable rate for the

period of such swap or cap up to the notional amount of such swap, and provided further that if The Bond Buyer Revenue Bond Index or Statistical Release H.15 of the Federal Reserve is no longer available or no longer contains the necessary data, such other comparable source of comparable data as selected by the Bank shall be utilized in the foregoing calculations; (B) with respect to all advances under any line of credit or similar arrangement, the above requirements shall be deemed satisfied by a certification delivered to the Bank at the time of any advance to the extent such certification assumes that the full loan amount under such line of credit or similar arrangement has been borrowed at the time of such advance; and (C) with respect to any indebtedness (including, without limitation, in clause (B)) which has 25% or more of the aggregate principal amount coming due in any one year ("Balloon Indebtedness"), including the Loan, at the option of the Borrower, principal and interest thereon shall be assumed to be payable over a period of twenty years on a level debt service basis computed at the interest rate provided in (A)(ii) above if the Balloon Indebtedness is tax-exempt, and (A)(iii) above if the Balloon Indebtedness is taxable.

Nothing in this Agreement limits the Borrower's ability to incur indebtedness payable from Enterprise Revenues.

Section 3.03. Bank Counsel Fees and Expenses. The Borrower hereby agrees to pay the fee and expenses of counsel to the Bank in connection with the issuance of the Note in the amount of \$8,500.00, said amount to be due and payable upon the execution and delivery of this Agreement.

Section 3.04. Registration and Exchange of Note; The Borrower shall keep a registration book setting forth the identification of the owner of the Note. The Bank's right, title and interest in and to the Note and any amounts payable by the Borrower thereunder may be assigned and reassigned in whole only by the Bank, without the necessity of obtaining the consent of the Borrower; provided, that any such assignment, transfer or conveyance shall be made only to (a) an affiliate of the Bank or (b) a bank, insurance company or their affiliate, provided that any such entity is purchasing the Note for its own account with no present intention to resell or distribute the Note, subject to each investor's right at any time to dispose of the Note as it determines to be in its best interests or (c) a "qualified institutional buyer," as defined in Rule 144A of the Securities Act of 1933, or an "accredited investor," as defined in Rule 501 of Regulation D. Upon notification by the Bank to the Borrower of the Bank's intent to assign and sell its right, title and interest in and to the Note as herein provided, the Borrower agrees that it shall execute and deliver to the assignee, a Note in the principal amount so assigned, registered in the name of the assignee, executed and delivered by the Borrower in the same manner as provided herein and with a schedule attached thereto setting forth the amounts to be paid on each principal payment date with respect to the Note. In all cases of an assignment of the Note, the Borrower shall at the earliest practical time enter the change of ownership in the registration book kept by the Borrower; provided, however, the written notice of assignment must be received by the Borrower at the Borrower's address set forth in Attachment B hereto no later than the close of business on the fifteenth (15th) day (whether or not a Business Day) of the calendar month next preceding an interest payment date in order to have such transfer

recorded on the registration book of the Borrower on such next succeeding interest payment date.

Section 3.05. Note Mutilated, Destroyed, Stolen or Lost. In case the Note shall become mutilated, or be destroyed, stolen or lost, the Borrower shall issue and deliver a new Note having the same terms as the Note, in exchange and in substitution for such mutilated Note, or in lieu of and in substitution for the Note destroyed, stolen or lost and upon the Bank furnishing the Borrower proof of ownership thereof and indemnity reasonably satisfactory to the Borrower and paying such expenses as the Borrower may incur.

Section 3.06. Payment of Principal and Interest; Limited Obligation. The Borrower promises that it will promptly pay the principal of and interest on the Note at the place, on the dates and in the manner provided therein, provided that the Borrower may be compelled to pay the principal of and interest on the Note solely from the Non-Ad Valorem Revenues budgeted and appropriated for such purpose as provided herein, and nothing in the Note or this Agreement shall be construed as pledging any other funds or assets of the Borrower to such payment. Nothing herein shall, however, prevent the Borrower from using any lawfully available funds to pay its obligations hereunder and under the Note. The City pledges and grants a lien on the Budgeted Revenues to secure the City's payment obligations hereunder and under the Note. Except with respect to the Budgeted Revenues, the covenant to budget and appropriate does not create a lien upon or pledge of the Non-Ad Valorem Revenues nor does it preclude the Borrower from pledging its Non-Ad Valorem Revenues. Such covenant to budget and appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other instruments). The Borrower is not and shall not be liable for the payment of the principal of and interest on the Note or for the performance of any pledge, obligation or agreement for payment undertaken by the Borrower hereunder or under the Note from any property other than the Budgeted Revenues. The Bank shall not have any right to resort to legal or equitable action to require or compel the Borrower to make any payment required by the Note or this Loan Agreement from any source other than the Budgeted Revenues.

Subject to the provisions of this Section 3.06, the Borrower covenants that, so long as the Note shall remain unpaid or any other amounts are owed by the Borrower under this Agreement or the Note, it will budget and appropriate in its annual budget, by amendment, if required, from the Non-Ad Valorem Revenues, amounts sufficient to pay the principal of and interest on the Note and other amounts owed under this Agreement as the same shall become due (the "Budgeted Revenues"). In the event that the amount previously budgeted for such purpose is ever insufficient to pay such principal and interest on the Note and other amounts owed under this Agreement, the Borrower covenants to take immediate action to amend its budget so as to budget and appropriate an amount from the Non-Ad Valorem Revenues sufficient to pay such debt service on the Note and such other amounts. Such covenant to budget and appropriate from Non-Ad Valorem Revenues shall be cumulative to the extent not paid and shall

continue until such Non-Ad Valorem Revenues sufficient to make all required payments have been budgeted, appropriated and used to pay such debt service on the Note and such other amounts. The Bank and the Borrower acknowledge the existence of Section 166.241, Florida Statutes, which prescribes the budgetary process of the Borrower and which prohibits any expenditure or contractual obligation therefor from being made or incurred except in pursuance of budgeted appropriations.

Notwithstanding any provisions of this Agreement to the contrary, the Borrower shall not be obligated to maintain or continue any of the activities of the Borrower which generate Non-Ad Valorem Revenues. In addition, in any fiscal year of the Borrower, the Borrower may pay or make provision for payment of the expenses of providing Essential Government Services of the Borrower due or coming due in such fiscal year from Non-Ad Valorem Revenues prior to being required to use any Non-Ad valorem Revenues to pay amounts due hereunder and under the Note.

Any Non-Ad Valorem Revenues which are restricted by a contract in existence on the date hereof from being used to pay principal and interest on the Note shall not be subject to the covenant to budget and appropriate, to the extent provided therein. Any Non-Ad Valorem Revenues which are prohibited by a general or special law of the State in existence on the date hereof from being used to pay principal and interest on the Note shall not be subject to the covenant to budget and appropriate. Any source of Non-Ad Valorem Revenues which is created after the date hereof and which is prohibited by a general or special law of the State from being used to pay principal and interest on the Note shall not be subject to the covenant to budget and appropriate.

Section 3.07. Officers and Employees of the Borrower Exempt from Personal Liability. No recourse under or upon any obligation, covenant or agreement of this Loan Agreement or the Note or for any claim based hereon or thereon or otherwise in respect thereof, shall be had against any officer (which includes elected and appointed officials), agent or employee, as such, of the Borrower past, present or future, it being expressly understood (a) that the obligation of the Borrower under this Agreement and under the Note is solely a corporate one, limited as provided in the preceding Section 3.06, (b) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the officers, agents, or employees, as such, of the Borrower, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, and (c) that any and all such personal liability of, and any and all such rights and claims against, every such officer, agent, or employee, as such, of the Borrower under or by reason of the obligations, covenants or agreements contained in this Agreement and under the Note, or implied therefrom, are waived and released as a condition of, and as a consideration for, the execution of this Agreement and the issuance of the Note on the part of the Borrower.

Section 3.08. Business Days. In any case where the due date of interest on or principal of the Note is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day, provided that credit for payments made shall not be given until the payment is actually received by the Bank.

Section 3.09. Tax Representations, Warranties and Covenants of the Borrower. The Borrower agrees to comply with the provisions of the Tax Compliance Certificate.

#### **ARTICLE IV CONDITIONS OF LENDING**

The obligations of the Bank to lend hereunder are subject to the following conditions precedent:

Section 4.01. Representations and Warranties. The representations and warranties set forth in this Agreement and the Note are and shall be true and correct on and as of the date hereof.

Section 4.02. No Default. On the date hereof the Borrower shall be in compliance with all the terms and provisions set forth in this Agreement and the Note on its part to be observed or performed, and no Event of Default nor any event that, upon notice or lapse of time or both, would constitute such an Event of Default, shall have occurred and be continuing at such time.

Section 4.03. Supporting Documents. On or prior to the date hereof, the Bank shall have received the following supporting documents, all of which shall be satisfactory in form and substance to the Bank (such satisfaction to be evidenced by the purchase of the Note by the Bank):

(a) The opinion of the City Attorney of the Borrower regarding the due authorization, execution, delivery, validity and enforceability of this Agreement and the Note;

(b) The opinion of Bond Counsel regarding the validity and enforceability of the Agreement and the Note, the exclusion of interest on the Note from gross income for federal income tax purposes and the exemption of the Note from certain taxes imposed under the laws of the State;

(c) The opinion of Bond Counsel regarding the defeasance of the Refunded Bonds; and

(d) Such additional supporting documents as the Bank may reasonably request.

#### **ARTICLE V THE LOAN**

Section 5.01. The Loan. The Bank hereby agrees to loan to the Borrower the amount of the Loan Amount to be evidenced by the Note to provide funds to finance the Refunding Requirements upon the terms and conditions set forth in this Agreement and the Note. The proceeds of the Loan shall be applied as provided in a certificate of an Authorized Individual. The Borrower agrees to repay the principal amount borrowed



plus interest thereon, upon the terms and conditions set forth in this Agreement and the Note.

Section 5.02. Description and Payment Terms of the Note. To evidence the Loan, the Borrower shall issue and deliver to the Bank the Note in the form attached hereto as Attachment A.

## **ARTICLE VI** **EVENTS OF DEFAULT**

Section 6.01. General. An "Event of Default" shall be deemed to have occurred under this Agreement if:

(a) The Borrower shall fail to make any payment of (i) the principal of or interest on the Loan when the same shall become due and payable, or (ii) any other amount payable hereunder when the same shall be due and payable and such failure shall continue for a period of twenty (20) days; or

(b) The Borrower does not comply with Section 3.01(c), (d), (e), (f) or (j) or Section 3.02; or

(c) The Borrower shall default in the performance of or compliance with any term or covenant contained in this Agreement and the Note, other than a term or covenant a default in the performance of which or noncompliance with which is elsewhere specifically dealt with, which default or non-compliance shall continue and not be cured within thirty (30) days after (i) written notice thereof to the Borrower by the Bank, or (ii) the Bank is notified of such noncompliance or should have been so notified pursuant to the provisions of Section 3.01(c) of this Agreement, whichever is earlier; provided, however, that such continued breach shall not be an Event of Default at the end of such thirty (30) day period, so long as (i) such breach is, in the sole judgment of the Bank, capable of cure; (ii) the Borrower is proceeding diligently to cure such breach; and (iii) such breach, in any event, is cured within one hundred twenty (120) days of such written notification by the Bank; or

(d) Any representation or warranty made in writing by or on behalf of the Borrower in this Agreement or the Note shall prove to have been false or incorrect in any material respect on the date made or reaffirmed; or

(e) The Borrower admits in writing its inability to pay its debts generally as they become due or files a petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or trustee for itself; or

(f) The Borrower is adjudged insolvent by a court of competent jurisdiction, or it is adjudged a bankrupt on a petition in bankruptcy filed by or against the Borrower, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the Borrower, a receiver or trustee of the Borrower or of the whole or any part of its property, and if the aforesaid adjudications, orders,

judgments or decrees shall not be vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or

(g) The Borrower shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or the State; or

(h) The Borrower shall default in the due and punctual payment or performance of covenants related to any other obligation for the payment of money to the Bank or any other subsidiary or affiliate of any bank holding company of which the Bank is a subsidiary; or

(i) The Borrower shall default in the due and punctual payment of any Competing Debt or an event of default exists with respect to any Competing Debt which results in the acceleration of the time for payment of such debt or entitles the holder of such Competing Debt to accelerate the time for payment of such debt; or

(j) A debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any debt of the Borrower by the Borrower or any Governmental Authority with appropriate jurisdiction; or

(k) Any material provision of this Agreement, the Note or the Resolution shall at any time for any reason cease to be valid and binding on the Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or shall be declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid, or unenforceable, or the validity or enforceability thereof shall be publicly contested by the Borrower.

#### Section 6.02. Effect of Event of Default.

Except as otherwise provided in the Note, immediately and without notice, upon the occurrence of any Event of Default, the Bank may declare all obligations of the Borrower under this Agreement and the Note to be immediately due and payable without further action of any kind and upon such declaration the Note and the interest accrued thereon shall become immediately due and payable. In addition, and regardless whether such declaration is or is not made, all amounts due and payable hereunder and the Note shall bear interest at the Default Rate and may also seek enforcement of and exercise all remedies available to it under any applicable law.

### **ARTICLE VII** **MISCELLANEOUS**

Section 7.01. No Waiver; Cumulative Remedies. No failure or delay on the part of the Bank in exercising any right, power, remedy hereunder or under the Note shall operate as a waiver of the Bank's rights, powers and remedies hereunder, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power or remedy hereunder

or thereunder. The remedies herein and therein provided are cumulative and not exclusive of any remedies provided by law or in equity.

Section 7.02. Amendments, Changes or Modifications to the Agreement. This Agreement and the Note shall not be amended, changed or modified except in writing signed by the Bank and the Borrower. The Borrower agrees to pay all of the Bank's costs and reasonable attorneys' fees incurred in modifying and/or amending this Agreement at the Borrower's request or behest.

Section 7.03. 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.

Section 7.04. Severability. If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any other provisions or sections hereof, and this Agreement shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced, as if such illegal or invalid clause, provision or section had not been contained herein.

Section 7.05. Term of Agreement. Except as otherwise specified in this Agreement, this Agreement and all representations, warranties, covenants and agreements contained herein or made in writing by the Borrower in connection herewith shall be in full force and effect from the date hereof and shall continue in effect as long as the Note is outstanding.

Section 7.06. Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic telephone line facsimile transmission or other similar electronic or digital transmission method (provided customary evidence of receipt is obtained); the day after it is sent, if sent by overnight common carrier service; and five days after it is sent, if mailed, certified mail, return receipt requested, postage prepaid. In each case notice shall be sent to the Notice Address.

Section 7.07. Applicable Law; Venue. This Agreement shall be construed pursuant to and governed by the substantive laws of the State. The parties waive any objection to venue in any judicial proceeding brought in connection herewith lying in Miami-Dade County, Florida.

Section 7.08. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the successors in interest and permitted assigns of the parties. The Borrower shall have no rights to assign any of its rights or obligations hereunder without the prior written consent of the Bank.

Section 7.09. No Third Party Beneficiaries. It is the intent and agreement of the parties hereto that this Agreement is solely for the benefit of the parties hereto and no person not a party hereto shall have any rights or privileges hereunder.

Section 7.10. Attorneys Fees. To the extent legally permissible, the Borrower and the Bank agree that in any suit, action or proceeding brought in connection with this Agreement or the Note (including any appeal(s)), the prevailing party shall be entitled to recover costs and attorneys' fees from the other party.

Section 7.11. Entire Agreement. Except as otherwise expressly provided, this Agreement and the Note embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof. Attachments A and B hereto are a part hereof.

Section 7.12. Further Assurances. The parties to this Agreement will execute and deliver, or cause to be executed and delivered, such additional or further documents, agreements or instruments and shall cooperate with one another in all respects for the purpose of out the transactions contemplated by this Agreement.

Section 7.13. Waiver of Jury Trial. This Section 7.13 concerns the resolution of any controversies or claims between the Borrower and the Bank, whether arising in contract, tort or by statute, that arise out of or relate to this Agreement or the Note (collectively a "Claim"). The parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Claim. This provision is a material inducement for the parties entering into this Agreement.

Section 7.14. Patriot Act. The Bank hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Bank to identify the Borrower in accordance with such Act.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective between them as of the date of first set forth above.

**ATTEST:**

**CITY OF MIAMI BEACH, FLORIDA**

\_\_\_\_\_  
Rafael E. Granado, City Clerk

By: \_\_\_\_\_  
Dan Gelber, Mayor

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

**JPMORGAN CHASE BANK, N.A.**

By: \_\_\_\_\_  
Caitlin Tarr, Associate

Rafael Granado 7/21/20  
City Attorney RAG Date

## ATTACHMENT A

### PROMISSORY NOTE

KNOW ALL MEN BY THESE PRESENTS that the undersigned maker (the "Borrower"), a municipal corporation created and existing pursuant to the Constitution and the laws of the State of Florida, for value received, promises to pay from the sources hereinafter provided, to the order of JPMorgan Chase Bank, N.A., or registered assigns (hereinafter, the "Bank"), the principal sum of \$\_\_\_\_\_, together with interest on the principal balance outstanding at the rate per annum equal to \_\_\_\_% computed based upon a 360-day year of twelve 30-day months.

Principal of and interest on this Note are payable in immediately available funds constituting lawful money of the United States of America at such place as the Bank may designate to the Borrower.

The Borrower shall pay the Bank interest hereon in arrears on March 1 and September 1 of each year, commencing on September 1, 2020, and principal hereon as set forth in Schedule A attached hereto.

All payments by the Borrower pursuant to this Note shall apply first to accrued interest and the balance thereof shall apply to the principal sum due.

The principal of and interest on this Note may be prepaid at the option of the Borrower, in whole or in part, at any time, on and after September 1, 202\_, without prepayment penalty or premium.

This Note shall be subject to mandatory tender for purchase on September 1, 2030 (the "Tender Date") at a purchase price equal to the principal amount of this Note then outstanding; provided, however, that at the written request of the Borrower delivered to the Bank no later than sixty (60) days prior to the Tender Date, the Bank may, in its sole discretion, extend the Tender Date to a later date as shall be acceptable to the Bank, and subject to any change in the interest rate or other terms as the Bank may require in connection with such extension.

In the event a Determination of Taxability (as defined below) shall have occurred, the rate of interest on this Note shall be increased to the Taxable Rate (as defined below), effective retroactively to the date on which the interest payable on this Note is includable for federal income tax purposes in the gross income of the Bank. In addition, the Bank shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America by the Bank as a result of such Determination of Taxability that are not part of the Taxable Rate. All such additional interest, additions to tax, penalties and interest shall be paid by the Borrower within sixty (60) days following the Determination of Taxability and demand by the Bank.

For purposes of the foregoing paragraph, "Determination of Taxability" means the following, which shall be the result of actions or inactions of the Borrower: (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on this Note is includable for federal income tax purposes in the gross income of the holder thereof, which notice or notification is not contested by either the Borrower or the Bank, or (ii) a determination by a court of competent jurisdiction that the interest payable on this Note is includable for federal income tax purposes in the gross income of the Bank, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Borrower to the effect that interest on this Note is includable for federal income tax purposes in the gross income of the Bank. A Determination of Taxability does not include and is not triggered by a change in law by the U.S. Congress that causes the interest to be includable in the Bank's gross income. "Taxable Rate" means a rate of interest that will result in the same after-tax yield to the Bank as before said Determination of Taxability.

In the alternative, in the event that interest on this Note during any period becomes partially taxable as a result of a Determination of Taxability applicable to less than all of this Note, then the interest rate on this Note shall be increased during such period by an amount equal to:  $(A-B) \times C$  where:

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

(B) "B" equals the interest rate on this Note (expressed as a percentage); and

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

In addition, the Bank shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Bank as a result of such Determination of Taxability that are not part of the Taxable Rate. All such additional interest, additions to tax, penalties and interest shall be paid by the Borrower within sixty (60) days following the Determination of Taxability and demand by the Bank.

Upon the occurrence and during the continuance of an Event of Default, (as defined in the Loan Agreement), the Bank may declare the entire debt then remaining unpaid hereunder immediately due and payable; and in any such default and acceleration, the Borrower shall also be obligated to pay (but only from the Budgeted Revenues) as part of the indebtedness evidenced by this Note, all costs of collection and enforcement hereof, including such fees as may be incurred on appeal or incurred in any proceeding under bankruptcy laws as they now or hereafter exist, including specifically but without limitation, claims, disputes and proceedings seeking adequate protection or relief from the automatic stay.

Upon the occurrence and during the continuance of an Event of Default, the Note shall bear interest at the Default Rate. For purposes of this Note, "Default Rate" means the Prime Rate plus 4.00% but not to exceed the maximum rate permitted by law.

"Prime Rate" means a rate of interest equal to the announced prime commercial lending rate per annum of JPMorgan Chase Bank, N.A. The Prime Rate is a reference rate for the information and use of the Bank in establishing the actual rate to be charged to the Borrower. The Prime Rate is purely discretionary and is not necessarily the lowest or best rate charged any customer. The Prime Rate shall be adjusted from time to time without notice or demand as of the effective date of any announced change thereof.

The Borrower to the extent permitted by law hereby waives presentment, demand, protest and notice of dishonor.

THIS NOTE AND THE INTEREST HEREON DOES NOT AND SHALL NOT CONSTITUTE A GENERAL INDEBTEDNESS OF THE BORROWER BUT SHALL BE PAYABLE SOLELY FROM THE MONEYS AND SOURCES DESIGNATED THEREFOR PURSUANT TO THE LOAN AGREEMENT. NEITHER THE FAITH AND CREDIT NOR ANY AD VALOREM TAXING POWER OF THE BORROWER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS NOTE OR OTHER COSTS INCIDENTAL HERETO.

This Note is issued in conjunction with a Loan Agreement, dated of even date herewith between the Borrower and the Bank (the "Loan Agreement") and is subject to all the terms and conditions of the Loan Agreement. All terms, conditions and provisions of the Loan Agreement and Resolution No. 2020-\_\_\_\_\_ adopted by the Mayor and City Commission of the Borrower are by this reference thereto incorporated herein as a part of this Note. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

This Note is payable solely from and is secured by a lien upon and pledge of the "Budgeted Revenues" as described in the Loan Agreement. Notwithstanding any other provision of this Note, the Borrower is not and shall not be liable for the payment of the principal of and interest on this Note or otherwise monetarily liable in connection herewith from any property other than the Budgeted Revenues.

This Note may be exchanged or transferred but only as provided in the Loan Agreement.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in the execution, delivery and the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Note is in full compliance with and does not exceed or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed in its name as of the date hereinafter set forth.

The date of this Promissory Note is August \_\_, 2020.

CITY OF MIAMI BEACH, FLORIDA

By: \_\_\_\_\_  
Dan Gelber, Mayor

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

Ralph      7/21/20  
City Attorney      Date  
RAP



SCHEDULE A

<u>Date</u> <u>(September 1.)</u>	<u>Principal</u>
2020	\$
2021	
2022	
2023	
2024	
2025	
2026	
2027	
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2030	
2031	
2032	
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2039	
2040	

ATTACHMENT B

1. Authorized Individuals: John Woodruff, Chief Financial Officer  
Allison R. Williams, Deputy Finance Director
  
2. Notice Address of Borrower: City of Miami Beach, Florida  
1700 Convention Center Drive  
3<sup>rd</sup> Floor  
Miami Beach, Florida 33139  
Attention: Chief Financial Officer
  
3. Notice Address of Bank: JPMorgan Chase Bank, N.A.  
8181 Communications Pkwy  
Building B, Floor 6  
Plano, Texas 75024  
Attention: Caitlin Tarr, Associate

EXHIBIT "B"  
ESCROW DEPOSIT AGREEMENT

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**CITY OF MIAMI BEACH, FLORIDA**  
**and**  
**U.S. BANK NATIONAL ASSOCIATION,**  
**as Escrow Agent**

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**ESCROW DEPOSIT AGREEMENT**  
**Relating to**  
**PARKING REVENUE REFUNDING BONDS,**  
**SERIES 2010A**  
**and**  
**PARKING REVENUE BONDS,**  
**SERIES 2010B**

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**DATED AS OF \_\_\_\_\_, 2020**

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## **ESCROW DEPOSIT AGREEMENT**

THIS ESCROW DEPOSIT AGREEMENT (the "Agreement") made and entered into as of \_\_\_\_\_, 2020, by and between the CITY OF MIAMI BEACH, FLORIDA (the "City") and U.S. BANK NATIONAL ASSOCIATION, as Escrow Agent (the "Escrow Agent").

### **W I T N E S S E T H:**

**WHEREAS**, the City has heretofore issued its \$17,155,000 aggregate principal amount City of Miami Beach, Florida Parking Revenue Refunding Bonds, Series 2010A, dated November 16, 2010, presently outstanding in the principal amount of \$4,155,000, as more particularly described in Schedule A attached hereto and made a part hereof (the "Outstanding Series 2010A Bonds"), and its \$27,405,000 aggregate principal amount City of Miami Beach, Florida Parking Revenue Bonds, Series 2010B, dated November 16, 2010, of all of which are presently outstanding, as more particularly described in Schedule A attached hereto and made a part hereof (the "Outstanding Series 2010B Bonds"), pursuant to the provisions of Resolution No. 2010-27491, adopted by the Mayor and City Commission of the City (the "Commission") on September 20, 2010 (the "Refunded Bonds Bond Resolution"); and

**WHEREAS**, the City desires to refund, defease and pay at maturity or redeem, as applicable, the Outstanding Series 2010A Bonds and the Outstanding Series 2010B Bonds (hereinafter referred to as the "Refunded Bonds"); and

**WHEREAS**, the City has issued its Promissory Note in the principal amount of \$ \_\_\_\_\_ to JPMorgan Chase Bank, N.A. (the "Note"), pursuant to the provisions of Resolution No. 2020-\_\_\_\_\_, adopted by the Commission on \_\_\_\_\_, 2020, a portion of the proceeds of which Note is to be deposited with the Escrow Agent to provide for the refunding, defeasance and payment at maturity or redemption, as applicable, of the Refunded Bonds; and

**WHEREAS**, in order to provide for the proper and timely application of the moneys deposited hereunder to the payment of the Refunded Bonds, it is necessary for the City to enter into this Agreement with the Escrow Agent;

**NOW, THEREFORE**, the City and the Escrow Agent, in consideration of the foregoing and the mutual covenants herein set forth and in order to secure the payment of the principal of and interest on all of the Refunded Bonds according to their tenor and effect, do hereby agree as follows:

**ARTICLE I**  
**CREATION AND CONVEYANCE OF TRUST ESTATE**

Section 1.01. Creation and Conveyance of Trust Estate. The City hereby grants, warrants, remises, releases, conveys, assigns, transfers, aliens, pledges, sets over and confirms unto the Escrow Agent and to its successors in the trust hereby created, and to it and its assigns forever, all and singular the property hereinafter described, to wit:

**DIVISION I**

All right, title and interest in and to \$\_\_\_\_\_ in moneys deposited directly with the Escrow Agent and derived from the proceeds of the Note upon issuance and delivery of the Note and execution of and delivery of this Agreement.

**DIVISION II**

Any and all other property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, conveyed, pledged, assigned or transferred as and for additional security hereunder by the City, or by anyone on behalf of the City to the Escrow Agent for the benefit of the Refunded Bonds.

**DIVISION III**

All property which is by the express provisions of this Agreement required to be subject to the pledge hereof and any additional property that may, from time to time hereafter, by delivery or by writing of any kind, by the City, or by anyone in its behalf, be subject to the pledge hereof.

**TO HAVE AND TO HOLD**, all and singular, the Trust Estate (as such term is hereinafter defined), including all additional property which by the terms hereof has or may become subject to the encumbrances of this Agreement, unto the Escrow Agent, and its successors and assigns, forever in trust, however, for the sole benefit and security of the holders from time to time of the Refunded Bonds, but if the principal of and interest on all of the Refunded Bonds shall be fully and promptly paid upon the maturity or redemption thereof, as applicable, in accordance with the terms thereof, then this Agreement shall be and become void and of no further force and effect except as otherwise provided herein; otherwise the same shall remain in full force and effect, and upon the trusts and subject to the covenants and conditions hereinafter set forth.

**ARTICLE II**  
**DEFINITIONS**

Section 2.01. Definitions. In addition to words and terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings, unless some other meaning is plainly intended.

“Trust Estate”, “trust estate” or “pledged property” shall mean the property, rights and interests described or referred to under Divisions I, II and III in Article I above.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. The word "person" shall include corporations, associations, natural persons and public bodies unless the context shall otherwise indicate. Reference to a person other than a natural person shall include its successors.

### **ARTICLE III**

#### **ESTABLISHMENT OF ESCROW DEPOSIT TRUST FUND; FLOW OF FUNDS**

Section 3.01. Creation of Escrow Deposit Trust Fund and Deposit of Moneys. There is hereby created and established with the Escrow Agent a special and irrevocable trust fund designated "City of Miami Beach, Florida Parking Revenue Bonds, Series 2010 Escrow Deposit Trust Fund" (the "Escrow Deposit Trust Fund"), to be held by the Escrow Agent for the sole benefit of the holders of the Refunded Bonds and accounted for separate and apart from the other funds of the City and, to the extent required by law, of the Escrow Agent.

Concurrently with the delivery of this Agreement, the City herewith causes to be deposited with the Escrow Agent and the Escrow Agent acknowledges receipt of immediately available moneys for deposit in the Escrow Deposit Trust Fund in the amount of \$\_\_\_\_\_, all of which shall be held uninvested and will provide moneys sufficient to pay the principal of and interest on the Refunded Bonds, upon the maturity or redemption thereof, as applicable, as more particularly described in Schedule B attached hereto and made a part hereof.

Notwithstanding the foregoing, if the amounts deposited in the Escrow Deposit Trust Fund are insufficient to make said payments of principal and interest, the City shall cause to be deposited into the Escrow Deposit Trust Fund the amount of any deficiency immediately upon notice from the Escrow Agent.

Section 3.02. Irrevocable Trust Created. The deposit of moneys or other property hereunder in the Escrow Deposit Trust Fund shall constitute an irrevocable deposit of said moneys and other property hereunder for the sole benefit of the holders of the Refunded Bonds, subject to the provisions of this Agreement. The holders of the Refunded Bonds, subject to the provisions of this Agreement, shall have an express lien on all moneys and other property in the Escrow Deposit Trust Fund. The moneys deposited in the Escrow Deposit Trust Fund and other property hereunder shall be held in trust by the Escrow Agent, and shall be applied for the payment of Refunded Bonds, as more specifically set forth in Schedule B hereto.

Section 3.03. Transfers from Escrow Deposit Trust Fund. The Escrow Agent, in its capacity of Bond Registrar (as defined in the Refunded Bonds Bond Resolution) with respect to the Refunded Bonds (the "Refunded Bonds Bond Registrar"), no later than the payment date for the Refunded Bonds, as specified in Schedule B hereof, shall pay from such moneys the principal of and interest on the Refunded Bonds, as specified in Schedule B hereof. The City previously instructed the Refunded Bonds Bond Registrar, to call the Refunded Bonds for redemption on September 1, 2020, pursuant to a

conditional notice of redemption, at a redemption price of 100% of the principal amount thereof in accordance with the Refunded Bonds Bond Resolution, except that the Outstanding Series 2010A Bonds maturing on September 1, 2020 shall be paid at maturity, and the Refunded Bonds Bond Registrar has previously provided conditional notice of redemption in accordance with the Refunded Bonds Bond Resolution. The City shall perform, and shall cause the Refunded Bonds Bond Registrar to perform, as applicable, the responsibilities, described in the Refunded Bonds Bond Resolution, in connection with the payment at maturity or redemption, as applicable, of the Refunded Bonds.

Section 3.04. Escrow Deposit Trust Fund Constitutes Trust Fund. The Escrow Deposit Trust Fund created and established pursuant to this Agreement shall be and constitute a trust fund for the purposes provided in this Agreement and shall be kept separate and distinct from all other funds of the City and, to the extent required by law, of the Escrow Agent and used only for the purposes and in the manner provided in this Agreement.

Section 3.05. Transfer of Funds After All Payments Required by this Agreement are Made. After all of the transfers by the Escrow Agent to the payment of the principal of and interest on the Refunded Bonds provided in Schedule B have been made, all remaining moneys and securities in the Escrow Deposit Trust Fund shall be transferred to the City for the payment of principal of or interest on the Note; provided, however, that no such transfers shall be made until all of the principal of and interest on the Refunded Bonds have been paid.

#### **ARTICLE IV** **CONCERNING THE ESCROW AGENT**

Section 4.01. Liability of Escrow Agent. The Escrow Agent shall not be liable in connection with the performance of its duties hereunder except for its own negligence, misconduct or default. The Escrow Agent shall not be liable for the accuracy of the calculations as to the sufficiency of moneys to pay the Refunded Bonds. So long as the Escrow Agent applies any moneys to pay the Refunded Bonds as provided herein, and complies fully with the terms of this Agreement, the Escrow Agent shall not be liable for any deficiencies in the amounts necessary to pay the Refunded Bonds caused by such calculations.

The duties and obligations of the Escrow Agent shall be determined by the express provisions of this Agreement. The Escrow Agent may consult with counsel with respect to any matter relevant to this Agreement, who may or may not be counsel to the City, and be entitled to receive from the City reimbursement of the reasonable fees and expenses of such counsel, and in reliance upon the opinion of such counsel have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the City and the Escrow Agent may in good faith conclusively rely upon such certificate.



The Escrow Agent shall have no lien, security interest or right of set-off whatsoever upon any of the moneys in the Escrow Deposit Trust Fund for the payment of fees or expenses for the services rendered by the Escrow Agent under this Agreement.

Section 4.02. Permitted Acts. The Escrow Agent and its affiliates may become the owner of all or may deal in the Refunded Bonds as fully and with the same rights as if it were not the Escrow Agent.

Section 4.03. Payment to Escrow Agent. The City shall pay to the Escrow Agent reasonable compensation for all services rendered by it hereunder and also its reasonable expenses, charges and other disbursements and those of its attorneys, agents and employees incurred in and about the administration and execution of the trusts hereby created, and the performance of its powers and duties hereunder, including, without limitation, all advances, counsel fees and other expenses reasonably made or incurred by the Escrow Agent in connection with such services, all as provided in Schedule C hereto.

## **ARTICLE V** **MISCELLANEOUS**

Section 5.01. Amendments to this Agreement. This Agreement is made for the benefit of the holders from time to time of the Refunded Bonds and shall not be repealed, revoked, altered or amended without the written consent of all such holders of the Refunded Bonds, the Escrow Agent and the City; provided, however, that the City and the Escrow Agent may, without the consent of, or notice to, such holders, enter into such agreements supplemental to this Agreement which shall not adversely affect the rights of such holders and shall not be inconsistent with the terms and provisions of this Agreement for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Agreement; or
- (b) to grant to or confer upon the Escrow Agent for the benefit of the holders of the Refunded Bonds any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Escrow Agent.

The Escrow Agent shall be entitled to rely upon an unqualified opinion of a nationally recognized counsel in the field of law relating to municipal bonds with respect to compliance with this Section.

Prior to any repeal, revocation, alteration or amendment of this Agreement, the City shall provide written notice of such proposed repeal, revocation, alteration or amendment to S&P Global Ratings and Moody's Investors Service, Inc. at their addresses set forth below:

S&P Global Ratings  
55 Water Street  
New York, New York 10041  
Attn: Municipal Ratings Desk/Refunded Bonds

Moody's Investors Service, Inc.  
7 World Trade Center  
250 Greenwich Street, 23<sup>rd</sup> Floor  
New York, New York 10007

Section 5.02. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the City or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

Section 5.03. Agreement Binding. All the covenants, proposals and agreements in this Agreement contained by or on behalf of the City or by or on behalf of the Escrow Agent shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 5.04. Notices to Escrow Agent and City. Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the Escrow Agent or the City, shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if personally delivered and receipted for, or if sent by registered or certified United States mail, return receipt requested, addressed as follows:

(a) As to the City:

City of Miami Beach, Florida  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attention: Chief Financial Officer

(b) As to the Escrow Agent:

U.S. Bank National Association  
500 West Cypress Creek Road, Suite 460  
Fort Lauderdale, Florida 33309  
Attention: Corporate Trust Services

Any party hereto may, by notice sent to the other parties hereto, designate a different or additional address to which notices under this Agreement are to be sent.

Section 5.05. Termination. This Agreement shall terminate when all transfers and payments required to be made by the Escrow Agent under the provisions hereof shall have been made.

Section 5.06. Execution by Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 5.07. Notice of Defeasance. The Chief Financial Officer is hereby instructed to (i) mail, or cause the Refunded Bonds Bond Registrar to mail, to the Holders, and (ii) file, or cause to be filed, with the Municipal Securities Rulemaking Board, a notice of defeasance of the Refunded Bonds, substantially in the form attached hereto as Schedule D.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers and, with respect to the City, its official seal to be hereunto affixed and attested as of the date first above written.

**CITY OF MIAMI BEACH, FLORIDA**

**ATTEST:**

By: \_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

**U.S. BANK NATIONAL ASSOCIATION,  
as Escrow Agent**

By: \_\_\_\_\_  
Vice President

U.S. Bank National Association, as Refunded Bonds Bond Registrar, hereby agrees to the provisions of this Agreement applicable to the Refunded Bonds Bond Registrar.

**U.S. BANK NATIONAL ASSOCIATION,  
as Refunded Bonds Bond Registrar**

By: \_\_\_\_\_  
Vice President

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

Rafael E. Granado      7/21/20  
City Attorney      Date  
RAP

**SCHEDULE A**  
**REFUNDED BONDS**

<b>Series</b>	<b>Maturity Date</b>	<b>Principal Amount</b>	<b>Interest Rate</b>
2010A	09/01/2020	\$ 1,725,000	5.000%
2010A	09/01/2021	1,810,000	5.000
2010A	09/01/2022	620,000	4.000
2010B	09/01/2022	1,170,000	4.000
2010B	09/01/2023	960,000	4.125
2010B	09/01/2024	1,000,000	4.250
2010B	09/01/2025	350,000	5.000
2010B	09/01/2030*	6,690,000	4.625
2010B	09/01/2040*	17,235,000	5.000

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\* Term bond.

**SCHEDULE B**  
**SCHEDULE OF PAYMENTS ON**  
**REFUNDED BONDS**

<b>Series</b>	<b>Date</b>	<b>Principal</b>	<b>Interest</b>	<b>Total</b>
2010A	09/01/2020	\$ 4,155,000		
2010B	09/01/2020	27,405,000		

## **SCHEDULE C**

### **ESCROW AGENT FEES AND EXPENSES**

- (i) In consideration of the services to be rendered by the Escrow Agent under the Agreement, the City upon execution hereof agrees to pay the Escrow Agent a one-time fee of \$500.00 to be paid at closing for all services to be incurred as Escrow Agent in connection with such services, plus agrees to pay as incurred reimbursement at cost for ordinary out-of-pocket expenses. The term "ordinary out-of-pocket expenses" means expenses of holding, investing and disbursing the Escrow Deposit Trust Fund as provided herein and includes, but is not limited to publication costs, postage and legal fees as incurred.
- (ii) The City shall also reimburse the Escrow Agent for any extraordinary expenses incurred by it in connection herewith. The term "extraordinary expenses" includes (a) expenses arising out of the assertion of any third party to any interest in the Escrow Deposit Trust Fund or any challenge to the validity hereof, including reasonable attorneys' fees and (b) expenses (other than ordinary expenses) not occasioned by the Escrow Agent's misconduct or negligence.
- (iii) The fees and expenses payable by the City under clause (i) or (ii) above shall not be paid from the Escrow Deposit Trust Fund, but shall be paid by the City from legally available funds of the City.

## SCHEDULE D

### NOTICE OF DEFEASANCE

City of Miami Beach, Florida  
Parking Revenue Refunding Bonds, Series 2010A  
and  
City of Miami Beach, Florida  
Parking Revenue Bonds, Series 2010B

Dated: November 16, 2010

<u>Series</u>	<u>Maturity Date (September 1,)</u>	<u>Principal Amount</u>	<u>CUSIP Numbers*</u>
2010A	2020	\$ 1,725,000	593235FM1
2010A	2021	1,810,000	593235FN9
2010A	2022	620,000	593235FP4
2010B	2022	1,170,000	593235FR0
2010B	2023	960,000	593235FS8
2010B	2024	1,000,000	593235FT6
2010B	2025	350,000	593235FU3
2010B	2030*	6,690,000	593235FV1
2010B	2040*	17,235,000	593235FW9

\* Term bond.

NOTICE IS HEREBY GIVEN that monies have been deposited with U.S. Bank National Association, as Escrow Agent, for the payment of the principal and interest on the above bonds (collectively, the "Bonds"). U.S. Bank National Association, as Bond Registrar for the Bonds, has called the Bonds for redemption on September 1, 2020 (the "Redemption Date") at a redemption price of 100% of the principal amount thereof, except that the Series 2010A Bonds maturing on September 1, 2020 referenced above shall be paid at maturity.

The amount so deposited as aforesaid has been calculated to be adequate to pay the principal of and interest on the Bonds through and including the Redemption Date. The Bonds are therefore deemed not to be "Outstanding" within the meaning of Resolution No. 2010-27491 adopted by the Mayor and City Commission of the City of Miami Beach, Florida on September 20, 2010.

CITY OF MIAMI BEACH, FLORIDA

Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_  
John Woodruff,  
Chief Financial Officer

\* No representation is made as to the correctness of these CUSIP numbers either as printed on the Bonds or contained in this Notice.

EXHIBIT "C"

FIRST AMENDMENT TO TD BANK LOAN AGREEMENT



FIRST AMENDMENT (this "Amendment") dated as of August 3, 2020, to the LOAN AGREEMENT dated as of December 22, 2016 (the "Loan Agreement") by and between the City of Miami Beach, Florida, a municipal corporation in the State of Florida, and its successors and assigns (the "Borrower"), and TD Bank, N.A., and its successors and assigns (the "Bank").

The parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, DO HEREBY AGREE as follows:

## **ARTICLE I** **AMENDMENTS**

Section 1.01. Definitions. Capitalized terms used in this Amendment shall have the meanings as set forth in the Loan Agreement.

Section 1.02. Amendments. The second paragraph under Section 3.02 of the Loan Agreement is hereby amended and restated to read as follows:

"For purposes of calculating the foregoing, (A) if any indebtedness bears a rate of interest that is not fixed for the entire term of the debt (excluding any provisions that adjust the interest rate upon a change in tax law or in the tax treatment of interest on the debt or upon a default), then the interest rate on such indebtedness shall be assumed to be the highest of (i) to the extent applicable, the average rate of actual interest borne by such indebtedness during the most recent complete month prior to the date of issuance of such proposed indebtedness, (ii) for tax-exempt debt, The Bond Buyer Revenue Bond Index last published in the month preceding the date of issuance of such proposed indebtedness plus one percent, (iii) for taxable debt, the yield on a U.S. Treasury obligation with a constant maturity closest to but not before the maturity date of such indebtedness, as reported in Statistical Release H.15 of the Federal Reserve on the last day of the month preceding the date of issuance of such proposed indebtedness, plus three percent, provided that if the Borrower shall have entered into an interest rate swap or interest rate cap or shall have taken any other action which has the effect of fixing or capping the interest rate on such indebtedness for the entire term thereof, then such fixed or capped rate shall be used as the applicable rate for the period of such swap or cap up to the notional amount of such swap, and provided further that if The Bond Buyer Revenue Bond Index or Statistical Release H.15 of the Federal Reserve is no longer available or no longer contains the necessary data, such other comparable source of comparable data as selected by the Bank shall be utilized in the foregoing calculations; (B) with respect to all advances under any line of credit or similar arrangement, the above requirements shall be deemed satisfied by a certification delivered to the Bank at the time of any advance to the extent such certification assumes that the full loan amount under such line of credit or similar arrangement has been borrowed at the time of such advance; and (C) with respect to any indebtedness (including, without limitation, in clause (B)) which has 25% or more of the aggregate principal amount coming due in any one year ("Balloon Indebtedness"), at the option of the Borrower, principal and interest thereon shall be assumed to be payable over a period of twenty years on a level debt service basis computed at the interest rate provided in (A)(ii) above if the Balloon Indebtedness is tax-exempt, and (A)(iii) above if the Balloon Indebtedness is taxable."

**ARTICLE II**  
**MISCELLANEOUS**

Section 2.01. Effect of Amendment. Except as specifically amended by this Amendment, the Loan Agreement shall remain in full force and effect and is hereby ratified and affirmed by the Borrower and the Bank.

Section 2.02. Governing Law. This Amendment is a contract made under the laws of the State of Florida and shall be governed and construed in accordance with such laws.

Section 2.03. Counterparts. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

Section 2.04. Binding Effect. This instrument shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns subject to the limitations contained herein.

Section 2.05. Section Headings. Section headings in this Amendment are for convenience of reference only, shall not constitute part of this Amendment and shall not be used to continue the meaning or intent of the provisions hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective between them as of the date of first set forth above.

**CITY OF MIAMI BEACH, FLORIDA**

**ATTEST:**

By: \_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

**TD BANK, N.A.**

By: \_\_\_\_\_  
Robert Catoe, Vice President

EXHIBIT "D"

FIRST AMENDMENT TO RJ CAPITAL LOAN AGREEMENT

FIRST AMENDMENT (this "Amendment") dated as of August 3, 2020, to the LOAN AGREEMENT dated as of December 5, 2018 (the "Loan Agreement") by and between the City of Miami Beach, Florida, a municipal corporation in the State of Florida, and its successors and assigns (the "Borrower"), and Raymond James Capital Funding, Inc., and its successors and assigns (the "Lender").

The parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, DO HEREBY AGREE as follows:

## **ARTICLE I** **AMENDMENTS**

Section 1.01. Definitions. Capitalized terms used in this Amendment shall have the meanings as set forth in the Loan Agreement.

Section 1.02. Amendments. The second paragraph under Section 3.02 of the Loan Agreement is hereby amended and restated to read as follows:

"For purposes of calculating the foregoing, (A) if any indebtedness bears a rate of interest that is not fixed for the entire term of the debt (excluding any provisions that adjust the interest rate upon a change in tax law or in the tax treatment of interest on the debt or upon a default), then the interest rate on such indebtedness shall be assumed to be the highest of (i) to the extent applicable, the average rate of actual interest borne by such indebtedness during the most recent complete month prior to the date of issuance of such proposed indebtedness, (ii) for tax-exempt debt, The Bond Buyer Revenue Bond Index last published in the month preceding the date of issuance of such proposed indebtedness plus one percent, (iii) for taxable debt, the yield on a U.S. Treasury obligation with a constant maturity closest to but not before the maturity date of such indebtedness, as reported in Statistical Release H.15 of the Federal Reserve on the last day of the month preceding the date of issuance of such proposed indebtedness, plus three percent, provided that if the Borrower shall have entered into an interest rate swap or interest rate cap or shall have taken any other action which has the effect of fixing or capping the interest rate on such indebtedness for the entire term thereof, then such fixed or capped rate shall be used as the applicable rate for the period of such swap or cap up to the notional amount of such swap, and provided further that if The Bond Buyer Revenue Bond Index or Statistical Release H.15 of the Federal Reserve is no longer available or no longer contains the necessary data, such other comparable source of comparable data as selected by the Lender shall be utilized in the foregoing calculations; (B) with respect to all advances under any line of credit or similar arrangement, the above requirements shall be deemed satisfied by a certification delivered to the Lender at the time of any advance to the extent such certification assumes that the full loan amount under such line of credit or similar arrangement has been borrowed at the time of such advance; and (C) with respect to any indebtedness (including, without limitation, in clause (B)) which has 25% or more of the aggregate principal amount coming due in any one year ("Balloon Indebtedness"), at the option of the Borrower, principal and interest thereon shall be assumed to be payable over a period of twenty years on a level debt service basis computed at the interest rate provided in (A)(ii) above if the

Balloon Indebtedness is tax-exempt, and (A)(iii) above if the Balloon Indebtedness is taxable.”

**ARTICLE II**  
**MISCELLANEOUS**

Section 2.01. Effect of Amendment. Except as specifically amended by this Amendment, the Loan Agreement shall remain in full force and effect and is hereby ratified and affirmed by the Borrower and the Lender. The Borrower hereby reaffirms its agreement to observe and perform each covenant and obligation of the Borrower contained in the Loan Agreement. In order to induce the Lender to execute and deliver this Amendment, the Borrower hereby makes each of the representations and warranties contained in the Loan Agreement as of the date hereof, except those made as of a specific date. The Borrower shall pay the fees and expenses of, or incurred by counsel to, the Lender in connection with the review and delivery of this Amendment.

Section 2.02. Governing Law. This Amendment is a contract made under the laws of the State of Florida and shall be governed and construed in accordance with such laws.

Section 2.03. Counterparts. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

Section 2.04. Binding Effect. This instrument shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns subject to the limitations contained herein.

Section 2.05. Section Headings. Section headings in this Amendment are for convenience of reference only, shall not constitute part of this Amendment and shall not be used to continue the meaning or intent of the provisions hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective between them as of the date of first set forth above.

**CITY OF MIAMI BEACH, FLORIDA**

**ATTEST:**

By: \_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

**RAYMOND JAMES CAPITAL FUNDING, INC.**

By: \_\_\_\_\_  
Chad E. Colby, Senior Vice President and  
Managing Director

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney      7/21/20  
RAP      Date