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**To:** Patricia D. Walker  
Raul Aguila, Esq.  
Rafael E. Granado

**From:** Luis Reiter 

**Date:** June 9, 2014

**Subject:** City of Miami Beach, Florida \$60,000,000 Loan By Wells Fargo Bank, National Association to City of Miami Beach, Florida

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Enclosed please find a velo bound transcript for the above matter.

It was a pleasure working with you on this transaction.

LR:ge  
Encl.

CLOSING DOCUMENTS

\$60,000,000

LOAN BY

WELLS FARGO BANK, NATIONAL ASSOCIATION

to

CITY OF MIAMI BEACH, FLORIDA

May 30, 2014

LIST OF CLOSING DOCUMENTS

1. Certified copy of Resolution No. 2014-28599.
2. Loan Agreement.
3. Tax-Exempt Promissory Note.
4. Taxable Promissory Note.
5. Closing Certificate of the City.
6. Closing and Disclosure Certificate of the Bank.
7. Notice of Sale to Division of Bond Finance.
8. State of Florida Division of Bond Finance Form BF-2003/BF-2004.
9. Opinion of Squire Sanders (US) LLP.
10. Opinion of City Attorney.



RESOLUTION NO. **2014-28599**

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 \$60,000,000 OUTSTANDING AT ANY TIME FROM WELLS FARGO BANK, NATIONAL ASSOCIATION, TO PAY COSTS OF CAPITAL PROJECTS; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND PROMISSORY NOTES TO EVIDENCE THE OBLIGATION OF THE CITY TO REPAY SUCH LOAN; PROVIDING SECURITY FOR THE REPAYMENT OF THE LOAN; AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE LOAN AND THE FINANCING PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach, Florida (the "City") is duly authorized, pursuant to the Constitution of the State of Florida, Chapter 166, Part II, Florida Statutes, as amended, Chapter 159, Part VII, Florida Statutes, as amended, and the Charter of the City (collectively, the "Act"), to borrow money to finance capital projects; and

WHEREAS, the City is in need of interim financing to pay costs of capital projects (the "Financing Program"); and

WHEREAS, in connection with the Financing Program, Wells Fargo Bank, National Association (the "Bank"), has offered to the City a loan through two revolving lines of credit in an aggregate principal amount not to exceed \$60,000,000 outstanding at any time (the "Loan"); and

WHEREAS, the City has determined that it is in the best interests of the City to undertake the Financing 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 Tax-Exempt Note and a Taxable Note (such notes collectively, the "Notes"); 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 Notes.

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 shall have the meanings assigned in the Loan Agreement, unless the context affirmatively requires otherwise.

## SECTION 2. FINDINGS.

The preambles are incorporated as findings. In addition, it is found, determined and declared that:

(A) The Financing Program and the Loan are permitted under the Act, are necessary and desirable, are in the public interest and will serve a proper public purpose.

(B) In accordance with Section 218.385, Florida Statutes, as amended, undertaking the Financing Program on a negotiated basis through the Loan is in the best interest of the City (rather than a sale through competitive bidding) because it offers (i) borrowing at lower rates than those which the City could command in the market, and (ii) flexibility of financing which could not be obtained in a sale through competitive bidding.

## SECTION 3. LOAN AUTHORIZED.

The Loan in an aggregate principal amount not to exceed \$60,000,000 outstanding at any time to undertake the Financing 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 NOTES.

The Loan shall be evidenced by the Notes. The Notes, in substantially the forms 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 Notes, are approved by the City. The City authorizes and directs the Mayor to make and execute the Notes and to issue and deliver the Notes 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 Notes. Neither the Loan nor the Notes 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 Notes. The City shall not be obligated to exercise its taxing power to pay the principal of the Loan and the Notes, the related interest or other payments or costs.

SECTION 7. GENERAL AUTHORITY.

The City's 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 or the Notes, or desirable or consistent with the requirements of this Resolution, the Loan Agreement or the Notes, in order to obtain the Loan, accomplish the Financing Program and provide for the full, punctual and complete performance of all the terms, covenants and agreements contained in the Loan Agreement, the Notes and this Resolution, including the execution of any necessary Tax Compliance Certificate and the execution and filing of any necessary form or other document with the Internal Revenue Service with respect to any Advance under the Tax-Exempt Note.

SECTION 8. 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 or the Notes.

SECTION 9. 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.

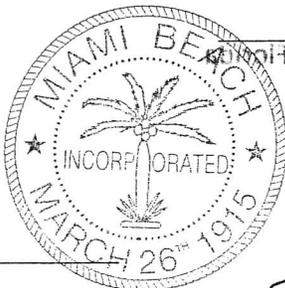
SECTION 10. EFFECTIVE DATE.

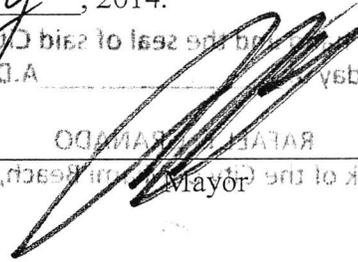
This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 21 day of May, 2014.

Attest:

  
\_\_\_\_\_  
City Clerk



  
\_\_\_\_\_  
City Attorney

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

 5-9-14  
\_\_\_\_\_  
City Attorney Date

EXHIBIT "A"  
LOAN AGREEMENT  
(including Notes)

## LOAN AGREEMENT

This LOAN AGREEMENT (the "Agreement") is made and entered into as of \_\_\_\_\_, 2014 (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 Wells Fargo Bank, National Association, and its successors and assigns, as holder(s) of the hereinafter defined Notes (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:

"Advance" means a borrowing of money under the Notes, pursuant to Section 5.03 hereof.

"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 Sanders (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.

"Code" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto.

"Costs" means, with respect to the Project, any lawful expenditure of the Borrower which meets the further requirements of this Agreement.

"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.

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

“Loan Amount” means, in the aggregate, \$60,000,000 principal amount.

“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.

“Notes” means the Borrower’s Promissory Notes in the forms attached hereto as Attachments A-1 and A-2.

“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.

“Project” means the capital improvements approved by the Mayor and City Commission of the Borrower being financed by the Loan.

“State” means the State of Florida.

“Tax Compliance Certificate” means the Tax Compliance Certificate to be executed and delivered concurrently with the first Advance, if any, under the Tax-Exempt Note.

“Taxable Note” means the Note attached hereto as Attachment A-2.

“Tax-Exempt Note” means the Note attached hereto as Attachment A-1.

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 Notes and this Agreement, to secure the Notes in the manner contemplated hereby and to perform and observe all

the terms and conditions of the Notes and this Agreement on its part to be performed and observed. The Borrower may lawfully borrow funds hereunder in order to pay Costs of the Project.

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 Notes, 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 Notes 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 Notes. The Notes have been duly authorized, executed, issued and delivered to the Bank and constitute legal, valid and binding obligations of the Borrower enforceable in accordance with the terms thereof and the terms hereof, and are 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 Notes or the execution and delivery of or the performance by the Borrower of its obligations under this Agreement and the Notes 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 Notes. The making and performing by the Borrower of this Agreement and the Notes 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 Notes.

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 Notes 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 Notes is outstanding or is available to be advanced hereunder or any duty or obligation of the Borrower hereunder or under the Notes 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 Notes at the time and place, and in the manner and from the sources provided herein and in the Notes.

(b) Use of Proceeds. Proceeds from the Notes will be used only to pay costs of the Project and to pay closing costs of the Loan.

(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 Notes have been paid in full.

(e) Records. The Borrower agrees that any and all records of the Borrower with respect to the Loan and the Project 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 Notes.

(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 Notes.

(i) Payment of Document Taxes. In the event the Notes 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 provide the owner of the Notes with (i) a copy of its annual operating budget for each fiscal year ending after September 30, 2014 promptly upon request therefor by the Bank, 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, 2014 within 210 days after the end thereof.

(k) Proceeds of Bonds. Proceeds of bonds issued by the Borrower in connection with any portion of the Project shall first be applied to repay the Advance(s) relating to such portion of the Project.

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 Notes is outstanding or is available to be advanced hereunder or any duty or obligation of the Borrower hereunder or under the Notes remains unpaid or unperformed, the Borrower covenants to the Bank that, without the prior written consent of the Bank, but subject to the last sentence of Section 5.03(d) of this Agreement, the Borrower shall not hereafter request any Advance hereunder or 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 Notes (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 such Advance or 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 Notes (including the amount of the Advance being requested) 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 Notes 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, 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; and (B) any Advances hereunder shall be assumed to be payable over ten years on a level debt service basis.

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

Section 3.03. Bank 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 Notes in the amount of \$ \_\_\_\_\_, said amount to be due and payable upon the execution and delivery of this Agreement.

In addition, the Borrower will pay the Bank a fee (the "Unused Facility Fee") equal to 0.20% of the unfunded amount of the Loan, calculated on the basis of a 360 day year and the actual number of days elapsed, payable in arrears as of last day of each March, June, September and December, commencing \_\_\_\_\_, 2014, and on the date on which this Agreement terminates, subject in each case to a fifteen (15) day grace period.

Section 3.04. Registration and Exchange of Notes; Persons Treated as Banks. The Notes are owned by the Bank. The ownership of the Notes may only be transferred, and the Borrower will transfer the ownership of the Notes, upon written request of the Bank specifying the name, address and taxpayer identification number of the transferee, and the Borrower will keep a record setting forth the identification of the owner of the Notes. The Bank will not transfer the Notes except in compliance with all applicable laws and the Bank may only transfer both Notes to the same transferee and at the same time.

Section 3.05. Notes Mutilated, Destroyed, Stolen or Lost. In case a 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 mutilated, destroyed, stolen or lost, 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 Notes 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 Notes solely from the Non-Ad Valorem Revenues budgeted and appropriated for such purpose as provided herein, and nothing in the Notes 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 Notes. The City pledges and grants a lien on the Budgeted Revenues to secure the City's payment obligations hereunder and under the Notes. 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. The Borrower is not and shall not be liable for the payment of the principal of and interest on the Notes or for the performance of any pledge, obligation or agreement for payment undertaken by the Borrower hereunder or under the Notes 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 Notes or this Loan Agreement from any source other than the Budgeted Revenues.

The Borrower covenants that, so long as Notes shall remain unpaid or any other amounts are owed by the Borrower under this Agreement or the Notes, 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 Notes and other amounts owed under this Agreement as the same shall become due. In the event that the amount previously budgeted for such purpose is ever insufficient to pay such principal and interest on the Notes 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 Notes and such other amounts. Such covenants 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 Notes 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 Notes.

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 Notes shall not be subject to the covenant to budget and appropriate. 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 Notes 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 Notes 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 Notes 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 Notes 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 Notes, 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 Notes 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 Notes 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, if one is ever executed.

## 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 Notes 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 Notes 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 Notes 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 Notes;

(b) The opinion of Bond Counsel regarding the validity and enforceability of the Agreement and the Notes and the exemption of the Notes from certain taxes imposed under the laws of the State; and

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

## ARTICLE V

### FUNDING THE LOAN

Section 5.01. The Loan. The Bank hereby agrees to loan to the Borrower the amount of up to the Loan Amount to be evidenced by the Notes to provide funds to finance the Costs of the Project upon the terms and conditions set forth in this Agreement and the Notes. Each Note sets forth the maximum principal amount which may be outstanding at any time thereunder. The Borrower agrees to repay the principal amount borrowed plus interest thereon, upon the terms and conditions set forth in this Agreement and the Notes.

Section 5.02. Description and Payment Terms of the Notes. To evidence the Loan, the Borrower shall issue and deliver to the Bank the Notes in the forms attached hereto as Attachments A-1 and A-2.

Section 5.03. Advances on Notes.

(a) The Borrower may borrow from time to time up to the Loan Amount by requesting Advances hereunder. Each Advance shall be for at least \$250,000, provided that the initial Advance on the Tax-Exempt Note shall be for at least \$55,000, and no more than one Advance may be requested in any month. Amounts advanced and repaid on the Notes may be re-advanced, provided that after cumulative Advances of the Tax-Exempt Note equal \$59,000,000, no further Advance will be requested by the Borrower thereon nor will the Bank have any obligation to fund any such Advance, unless the Borrower and the Bank have on or prior to the date of such Advance received an opinion of Bond Counsel to the effect that taking into account the fact that cumulative advances will exceed \$59,000,000, the interest on the Tax-Exempt Note will remain excluded from gross income for federal income tax purposes and the Note is not an item of tax preference under Section 57 of the Code.

(b) The Bank shall not be obligated to Advance any funds unless (i) no Event of Default has occurred and is continuing, and (ii) the Borrower delivers to the Bank a written request for such Advance in the form of Attachment C, executed by an Authorized Individual, indicating the amount of the Advance requested, the date on which such Advance is to be made (which shall be not less than two Business Days after the date such request is received by the Bank) and stating that the representations and warranties of the Borrower contained herein are true and correct as of such date. The Bank will not fund any Advance unless the conditions set forth in (i) and (ii) above are satisfied, provided that the Bank may in its sole discretion waive any or all such conditions.

(c) No Advance will be requested by the Borrower on the Tax-Exempt Note, and the Bank will have no obligation to fund any such Advance, unless the Borrower and the Bank have on or prior to the date of such Advance received an opinion of Bond Counsel to the effect that the interest on the Tax-Exempt Note is excluded from gross income for federal income tax purposes and the Note is not an item of tax preference under Section 57 of the Code.

(d) No Advance will be made unless the request for Advance is accompanied by a certification signed by an Authorized Individual indicating that the Borrower has satisfied the requirements of this Agreement and of any and all other agreement(s) binding upon the Borrower that limit or condition the Borrower's ability to incur indebtedness such as the Notes, and including calculations demonstrating such compliance. As of the date of this Agreement, the Borrower is also bound by covenants contained in certain loan agreements, dated as of August 1, 2001, with the City of Gulf Breeze, Florida and U.S. Bank National Association, as successor Trustee. Notwithstanding anything to the contrary contained in this Agreement, the requirements of Section 3.02 of this Agreement with respect to all Advances may be 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 has been borrowed under such Advance so long as the City certifies at the time of any future Advances that it has not, since the date of such certification, incurred any Competing Debt.

## 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 the principal of or interest on the Loan when the same shall become due and payable; 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 Notes, 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; or

(d) Any representation or warranty made in writing by or on behalf of the Borrower in this Agreement or the Notes 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.

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

Except as otherwise provided in the Notes, 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 Notes to be immediately due and payable without further action of any kind and upon such declaration the Notes and the interest accrued thereon shall become immediately due and payable. In addition, and regardless whether such declaration is or is not made, the Bank may terminate its commitment to make Advances hereunder 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 Notes 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 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 Notes are 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 Notes (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 Notes 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-1, A-2, B and C 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 Notes (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.

CITY OF MIAMI BEACH, FLORIDA

By: \_\_\_\_\_  
Name: Philip Levine  
Title: Mayor

Attest

By: \_\_\_\_\_  
Name: Rafael E. Granado  
Title: City Clerk

WELLS FARGO BANK, NATIONAL  
ASSOCIATION

By: \_\_\_\_\_  
Name: Lance Aylsworth  
Title: Vice President

ATTACHMENT A-1

TAX-EXEMPT 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 Wells Fargo Bank, National Association, or registered assigns (hereinafter, the "Bank"), the principal sum of \$59,000,000 or such lesser amount as shall be outstanding hereunder, together with interest on the principal balance outstanding at the rate per annum equal to the Applicable Rate (hereinafter defined) (subject to adjustment as hereinafter provided) based upon a year of 360 days for the actual number of days elapsed.

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 Applicable Rate is 70% of the sum of the LIBOR Rate (hereinafter defined) plus 0.50%.

The Borrower shall pay the Bank interest hereon in arrears on the first Business Day (as defined in the Loan Agreement hereinafter defined) of each month, and the entire unpaid principal balance hereof, together with all accrued and unpaid interest hereon, on \_\_\_\_\_, 2016 (the "Maturity Date").

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

As used in this Note,

(1) "Code" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto;

(2) "Determination of Taxability" means interest on this Note is determined or declared, by the Internal Revenue Service or a court of competent jurisdiction to be includable in the gross income of the Bank for federal income tax purposes under the Code, which determination or declaration has become final and not subject to further contest or appeal under applicable law.

(3) "Interest Period" means (a) the period commencing on the date of the original issuance of this Note and ending on the day preceding the first Business Day of the following month; and (b) thereafter, each period commencing on the first Business Day of each month and ending on the day preceding the first Business Day of the following month.

(4) "LIBOR Rate" means the rate of interest per annum determined by Bank based on the rate for United States dollar deposits for delivery of funds for one (1) month as reported on Reuters Screen LIBOR01 page (or any successor page) at approximately 11:00 a.m., London time, on the second London Business Day prior to the first day of each Interest Period, or, for any day not a London Business Day, the immediately preceding London Business Day (or if not so reported, then as determined by Bank from another recognized source or interbank quotation).

(5) "London Business Day" means any day that is a day for trading by and between banks in Dollar deposits in the London interbank market.

(6) "Prime Rate" means a rate of interest equal to the announced prime commercial lending rate per annum of Wells Fargo Bank, National Association. 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.

(7) "Taxable Rate" means a rate equal to the Prime Rate times that percentage which after the Determination of Taxability will result in the same federal after-tax yield to the Bank as before said Determination of Taxability.

In the event a Determination of Taxability shall have occurred, the rate of interest on this Note shall be increased to the Taxable Rate, 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. 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.

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 of America by the Bank as a result of such Determination of Taxability. 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.

In the event that the maximum effective federal corporate tax rate (the "Maximum Corporate Tax Rate") during any period with respect to which interest shall be accruing on this Note on a tax-exempt basis, changes from the Maximum Corporate Tax Rate then in effect, which causes a reduction in yield on this Note, the interest rate on this Note that is bearing interest on a tax-exempt basis shall be adjusted to the product obtained by multiplying the Applicable Rate then in effect by a fraction equal to  $(1-A \text{ divided by } 1-B)$ , where A equals the Maximum Corporate Tax Rate in effect as of the date of adjustment and B equals the Maximum Corporate Tax Rate in effect on the date of the original issuance of this Note.

So long as any portion of the principal amount of this Note or interest hereon remains unpaid (a) if any law, rule, regulation or executive order is enacted or promulgated by any federal or Florida public body or governmental agency which changes the basis of taxation of interest on this Note or causes a reduction in yield on this Note (other than by reason of a change described above) to the Bank, including without limitation the imposition of any excise tax or surcharge thereon, or (b) if, as result of action by any federal or Florida public body or governmental agency, any payment is required to be made by, or any federal, Florida state or Florida local income tax deduction is denied to, the Bank (other than by reason of a change described above or by reason of any action or failure to act on the part of the Bank), by reason of the ownership of this Note, the Borrower shall reimburse the Bank within five (5) days after receipt by the Borrower of written demand for such payment, and, to the extent permitted by law, the Borrower agrees to indemnify the Bank against any loss, cost, charge or expense with respect to any such change. The determination of the after-tax yield calculation shall be calculated by the Bank, and such calculation, in the absence of manifest error, shall be binding on the Borrower and the Bank.

The principal of and interest on this Note may be prepaid at the option of the Borrower in whole or in part, on the first Business Day of each month, without prepayment premium or penalty.

Upon the occurrence of an Event of Default (as defined in the Loan Agreement) then 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.

Any amount payable to the Bank hereunder which is not paid when due shall bear interest at the Default Rate. For purposes of this Note, "Default Rate" means the higher of (1) the Prime Rate plus 4% and (2) the Adjusted One-Month LIBOR Rate plus 4%. "Adjusted One-Month LIBOR Rate" means the sum of 2.50% plus the quotient of (a) the LIBOR Rate on the immediately preceding London business day for U.S. dollar deposits with a one month term, divided by (b) one minus the "Reserve Requirement" applicable to U.S. dollar deposits in the

London interbank market with a maturity equal to one month. The Default Rate shall be determined as of the day immediately following the date on which any amount payable to the Bank hereunder is not paid when due.

Anything provided herein or in this Note to the contrary notwithstanding, in no event shall this Note bear interest in excess of the Maximum Rate (hereinafter defined). In the event the interest rate exceeds the Maximum Rate, this Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the interest rate to a rate less than the Maximum Rate until such time as interest shall accrue on this Note in an amount (the "Excess Interest") that would have accrued hereon had the interest rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the rate of interest otherwise payable on this Note, the Borrower shall pay to the Bank a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

"Maximum Rate" means the maximum rate of interest permitted for non-rated governmental bonds as set forth in Section 215.84(3), Florida Statutes, as may be amended from time to time.

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. Pursuant to the Loan Agreement, the Borrower may request Advances from time to time from the Bank hereunder, provided that the outstanding principal amount at any time under this Note shall not exceed the principal sum set forth in the first paragraph hereof, and provided that amounts borrowed and repaid may be re-borrowed hereunder as provided in the Loan Agreement.

All terms, conditions and provisions of Resolution No. 2014-\_\_\_\_\_ adopted by the Mayor and City Commission of the Borrower and the Loan Agreement 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 \_\_\_\_\_, 2014.

CITY OF MIAMI BEACH, FLORIDA

By: \_\_\_\_\_  
Name: Philip Levine  
Title: Mayor

ATTACHMENT A-2

TAXABLE 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 Wells Fargo Bank, National Association, or registered assigns (hereinafter, the "Bank"), the principal sum of \$1,000,000 or such lesser amount as shall be outstanding hereunder, together with interest on the principal balance outstanding at the rate per annum equal to the Applicable Rate (hereinafter defined) based upon a year of 360 days for the actual number of days elapsed.

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 Applicable Rate is the sum of the LIBOR Rate (hereinafter defined) plus 0.75%.

The Borrower shall pay the Bank interest hereon in arrears on the first Business Day (as defined in the Loan Agreement hereinafter defined) of each month, and the entire unpaid principal balance hereof, together with all accrued and unpaid interest hereon, on \_\_\_\_\_, 2016 (the "Maturity Date").

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

"LIBOR Rate" means the rate of interest per annum determined by Bank based on the rate for United States dollar deposits for delivery of funds for one (1) month as reported on Reuters Screen LIBOR01 page (or any successor page) at approximately 11:00 a.m., London time, on the second London Business Day prior to the first day of each Interest Period, or, for any day not a London Business Day, the immediately preceding London Business Day (or if not so reported, then as determined by Bank from another recognized source or interbank quotation).

"London Business Day" means any day that is a day for trading by and between banks in Dollar deposits in the London interbank market.

"Interest Period" means (a) the period commencing on the date of the original issuance of this Note and ending on the day preceding the first Business Day of the following month; and (b) thereafter, each period commencing on the first Business Day of each month and ending on the day preceding the first Business Day of the following month.

The principal of and interest on this Note may be prepaid at the option of the Borrower in whole or in part, on the first Business Day of each month, without prepayment premium or penalty.

Upon the occurrence of an Event of Default (as defined in the Loan Agreement) then 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.

Any amount payable to the Bank hereunder which is not paid when due shall bear interest at the Default Rate. For purposes of this Note, "Default Rate" means the higher of (1) the Prime Rate plus 4% and (2) the Adjusted One-Month LIBOR Rate plus 4%.

"Prime Rate" means a rate of interest equal to the announced prime commercial lending rate per annum of Wells Fargo Bank, National Association. 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.

"Adjusted One-Month LIBOR Rate" means the sum of 2.50% plus the quotient of (a) the LIBOR Rate on the immediately preceding London business day for U.S. dollar deposits with a one month term, divided by (b) one minus the "Reserve Requirement" applicable to U.S. dollar deposits in the London interbank market with a maturity equal to one month. The Default Rate shall be determined as of the day immediately following the date on which any amount payable to the Bank hereunder is not paid when due.

Anything provided herein or in this Note to the contrary notwithstanding, in no event shall this Note bear interest in excess of the Maximum Rate (hereinafter defined). In the event the interest rate exceeds the Maximum Rate, this Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the interest rate to a rate less than the Maximum Rate until such time as interest shall accrue on this Note in an amount (the "Excess Interest") that would have accrued hereon had the interest rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the rate of interest otherwise payable on this Note, the Borrower shall pay to the Bank a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

"Maximum Rate" means the maximum rate of interest permitted for non-rated governmental bonds as set forth in Section 215.84(3), Florida Statutes, as may be amended from time to time.

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. Pursuant to the Loan Agreement, the Borrower may request Advances from time to time from the Bank hereunder, provided that the outstanding principal amount at any time under this Note shall not exceed the principal sum set forth in the first paragraph hereof, and provided that amounts borrowed and repaid may be re-borrowed hereunder.

All terms, conditions and provisions of Resolution No. 2014-\_\_\_\_\_ adopted by the Mayor and City Commission of the Borrower and the Loan Agreement 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 \_\_\_\_\_, 2014.

CITY OF MIAMI BEACH, FLORIDA

By: \_\_\_\_\_  
Name: Philip Levine  
Title: Mayor

ATTACHMENT B

1. Authorized Individual(s): Patricia D. Walker, Chief Financial Officer  
Georgina P. Echert, Assistant 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: Wells Fargo Bank, National Association  
200 South Biscayne Boulevard  
14<sup>th</sup> Floor  
Miami, Florida 33131  
Attention: Lance Aylsworth, Vice President

ATTACHMENT C  
REQUEST FOR ADVANCE

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

To: Wells Fargo Bank, National Association

From: City of Miami Beach, Florida

Amount of Advance on Tax-Exempt Note: \$ \_\_\_\_\_

Amount of Advance on Taxable Note: \$ \_\_\_\_\_

Date of Advance: \_\_\_\_\_

Purpose of Advance (description and amount):

\_\_\_\_\_ - \$ \_\_\_\_\_

\_\_\_\_\_ - \$ \_\_\_\_\_

\_\_\_\_\_ - \$ \_\_\_\_\_

The above-named Borrower requests an Advance under the Loan Agreement dated as of \_\_\_\_\_, 2014 (the "Loan Agreement") and the Promissory Note identified above in the amount set forth above. The representations and warranties of the Borrower contained in the Loan Agreement are true and correct as of the date hereof.

Attached hereto are the showings, if any, required by Section 5.03 of the Loan Agreement, including the opinion(s) of Bond Counsel required thereunder.

Proceeds of the Advance should be wired as follows:

CITY OF MIAMI BEACH, FLORIDA

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

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

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



## LOAN AGREEMENT

This LOAN AGREEMENT (the "Agreement") is made and entered into as of May 30, 2014 (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 Wells Fargo Bank, National Association, and its successors and assigns, as holder(s) of the hereinafter defined Notes (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:

"Advance" means a borrowing of money under the Notes, pursuant to Section 5.03 hereof.

"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 Sanders (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.

"Code" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto.

"Costs" means, with respect to the Project, any lawful expenditure of the Borrower which meets the further requirements of this Agreement.

"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.

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

“Loan Amount” means, in the aggregate, \$60,000,000 principal amount.

“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.

“Notes” means the Borrower’s Promissory Notes in the forms attached hereto as Attachments A-1 and A-2.

“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.

“Project” means the capital improvements approved by the Mayor and City Commission of the Borrower being financed by the Loan.

“State” means the State of Florida.

“Tax Compliance Certificate” means the Tax Compliance Certificate to be executed and delivered concurrently with the first Advance, if any, under the Tax-Exempt Note.

“Taxable Note” means the Note attached hereto as Attachment A-2.

“Tax-Exempt Note” means the Note attached hereto as Attachment A-1.

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 Notes and this Agreement, to secure the Notes in the manner contemplated hereby and to perform and observe all

the terms and conditions of the Notes and this Agreement on its part to be performed and observed. The Borrower may lawfully borrow funds hereunder in order to pay Costs of the Project.

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 Notes, 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 Notes 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 Notes. The Notes have been duly authorized, executed, issued and delivered to the Bank and constitute legal, valid and binding obligations of the Borrower enforceable in accordance with the terms thereof and the terms hereof, and are 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 Notes or the execution and delivery of or the performance by the Borrower of its obligations under this Agreement and the Notes 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 Notes. The making and performing by the Borrower of this Agreement and the Notes 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 Notes.

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 Notes 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 Notes is outstanding or is available to be advanced hereunder or any duty or obligation of the Borrower hereunder or under the Notes 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 Notes at the time and place, and in the manner and from the sources provided herein and in the Notes.

(b) Use of Proceeds. Proceeds from the Notes will be used only to pay costs of the Project and to pay closing costs of the Loan.

(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 Notes have been paid in full.

(e) Records. The Borrower agrees that any and all records of the Borrower with respect to the Loan and the Project 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 Notes.

(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 Notes.

(i) Payment of Document Taxes. In the event the Notes 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 provide the owner of the Notes with (i) a copy of its annual operating budget for each fiscal year ending after September 30, 2014 promptly upon request therefor by the Bank, 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, 2014 within 210 days after the end thereof.

(k) Proceeds of Bonds. Proceeds of bonds issued by the Borrower in connection with any portion of the Project shall first be applied to repay the Advance(s) relating to such portion of the Project.

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 Notes is outstanding or is available to be advanced hereunder or any duty or obligation of the Borrower hereunder or under the Notes remains unpaid or unperformed, the Borrower covenants to the Bank that, without the prior written consent of the Bank, but subject to the last sentence of Section 5.03(d) of this Agreement, the Borrower shall not hereafter request any Advance hereunder or 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 Notes (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 such Advance or 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 Notes (including the amount of the Advance being requested) 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 Notes 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, 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; and (B) any Advances hereunder shall be assumed to be payable over ten years on a level debt service basis.

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

Section 3.03. Bank 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 Notes in the amount of \$4,000.00, said amount to be due and payable upon the execution and delivery of this Agreement.

In addition, the Borrower will pay the Bank a fee (the "Unused Facility Fee") equal to 0.20% of the unfunded amount of the Loan, calculated on the basis of a 360 day year and the actual number of days elapsed, payable in arrears as of last day of each March, June, September and December, commencing June 30, 2014, and on the date on which this Agreement terminates, subject in each case to a fifteen (15) day grace period.

Section 3.04. Registration and Exchange of Notes; Persons Treated as Banks. The Notes are owned by the Bank. The ownership of the Notes may only be transferred, and the Borrower will transfer the ownership of the Notes, upon written request of the Bank specifying the name, address and taxpayer identification number of the transferee, and the Borrower will keep a record setting forth the identification of the owner of the Notes. The Bank will not transfer the Notes except in compliance with all applicable laws and the Bank may only transfer both Notes to the same transferee and at the same time.

Section 3.05. Notes Mutilated, Destroyed, Stolen or Lost. In case a 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 mutilated, destroyed, stolen or lost, 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 Notes 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 Notes solely from the Non-Ad Valorem Revenues budgeted and appropriated for such purpose as provided herein, and nothing in the Notes 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 Notes. The City pledges and grants a lien on the Budgeted Revenues to secure the City's payment obligations hereunder and under the Notes. 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. The Borrower is not and shall not be liable for the payment of the principal of and interest on the Notes or for the performance of any pledge, obligation or agreement for payment undertaken by the Borrower hereunder or under the Notes 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 Notes or this Loan Agreement from any source other than the Budgeted Revenues.

The Borrower covenants that, so long as Notes shall remain unpaid or any other amounts are owed by the Borrower under this Agreement or the Notes, 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 Notes and other amounts owed under this Agreement as the same shall become due. In the event that the amount previously budgeted for such purpose is ever insufficient to pay such principal and interest on the Notes 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 Notes and such other amounts. Such covenants 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 Notes 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 Notes.

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 Notes shall not be subject to the covenant to budget and appropriate. 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 Notes 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 Notes 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 Notes 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 Notes 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 Notes, 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 Notes 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 Notes 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, if one is ever executed.

## 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 Notes 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 Notes 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 Notes 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 Notes;

(b) The opinion of Bond Counsel regarding the validity and enforceability of the Agreement and the Notes and the exemption of the Notes from certain taxes imposed under the laws of the State; and

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

## ARTICLE V

### FUNDING THE LOAN

Section 5.01. The Loan. The Bank hereby agrees to loan to the Borrower the amount of up to the Loan Amount to be evidenced by the Notes to provide funds to finance the Costs of the Project upon the terms and conditions set forth in this Agreement and the Notes. Each Note sets forth the maximum principal amount which may be outstanding at any time thereunder. The Borrower agrees to repay the principal amount borrowed plus interest thereon, upon the terms and conditions set forth in this Agreement and the Notes.

Section 5.02. Description and Payment Terms of the Notes. To evidence the Loan, the Borrower shall issue and deliver to the Bank the Notes in the forms attached hereto as Attachments A-1 and A-2.

Section 5.03. Advances on Notes.

(a) The Borrower may borrow from time to time up to the Loan Amount by requesting Advances hereunder. Each Advance shall be for at least \$250,000, provided that the initial Advance on the Tax-Exempt Note shall be for at least \$55,000, and no more than one Advance may be requested in any month. Amounts advanced and repaid on the Notes may be re-advanced, provided that after cumulative Advances of the Tax-Exempt Note equal \$59,000,000, no further Advance will be requested by the Borrower thereon nor will the Bank have any obligation to fund any such Advance, unless the Borrower and the Bank have on or prior to the date of such Advance received an opinion of Bond Counsel to the effect that taking into account the fact that cumulative advances will exceed \$59,000,000, the interest on the Tax-Exempt Note will remain excluded from gross income for federal income tax purposes and the Note is not an item of tax preference under Section 57 of the Code.

(b) The Bank shall not be obligated to Advance any funds unless (i) no Event of Default has occurred and is continuing, and (ii) the Borrower delivers to the Bank a written request for such Advance in the form of Attachment C, executed by an Authorized Individual, indicating the amount of the Advance requested, the date on which such Advance is to be made (which shall be not less than two Business Days after the date such request is received by the Bank) and stating that the representations and warranties of the Borrower contained herein are true and correct as of such date. The Bank will not fund any Advance unless the conditions set forth in (i) and (ii) above are satisfied, provided that the Bank may in its sole discretion waive any or all such conditions.

(c) No Advance will be requested by the Borrower on the Tax-Exempt Note, and the Bank will have no obligation to fund any such Advance, unless the Borrower and the Bank have on or prior to the date of such Advance received an opinion of Bond Counsel to the effect that the interest on the Tax-Exempt Note is excluded from gross income for federal income tax purposes and the Note is not an item of tax preference under Section 57 of the Code.

(d) No Advance will be made unless the request for Advance is accompanied by a certification signed by an Authorized Individual indicating that the Borrower has satisfied the requirements of this Agreement and of any and all other agreement(s) binding upon the Borrower that limit or condition the Borrower's ability to incur indebtedness such as the Notes, and including calculations demonstrating such compliance. As of the date of this Agreement, the Borrower is also bound by covenants contained in certain loan agreements, dated as of August 1, 2001, with the City of Gulf Breeze, Florida and U.S. Bank National Association, as successor Trustee. Notwithstanding anything to the contrary contained in this Agreement, the requirements of Section 3.02 of this Agreement with respect to all Advances may be 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 has been borrowed under such Advance so long as the City certifies at the time of any future Advances that it has not, since the date of such certification, incurred any Competing Debt.

## 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 the principal of or interest on the Loan when the same shall become due and payable; 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 Notes, 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; or

(d) Any representation or warranty made in writing by or on behalf of the Borrower in this Agreement or the Notes 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.

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

Except as otherwise provided in the Notes, 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 Notes to be immediately due and payable without further action of any kind and upon such declaration the Notes and the interest accrued thereon shall become immediately due and payable. In addition, and regardless whether such declaration is or is not made, the Bank may terminate its commitment to make Advances hereunder 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 Notes 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 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 Notes are 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 Notes (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 Notes 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-1, A-2, B and C 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

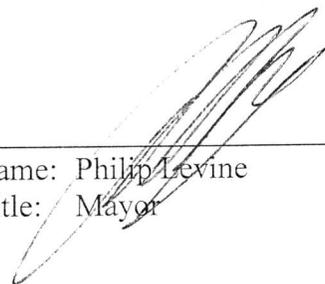
or instruments and shall cooperate with one another in all respects for the purpose of out the transactions contemplated by this Agreement.

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 Notes (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.

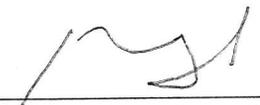
Section 7.14. Patriot Act. The Bank hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), it is required to obtain, verify and record information that identifies the Borrower, which information includes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

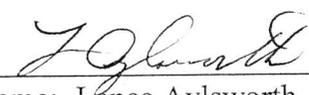
CITY OF MIAMI BEACH, FLORIDA

By:   
Name: Philip Levine  
Title: Mayor

Attest

By:   
Name: Rafael E. Granado  
Title: City Clerk

WELLS FARGO BANK, NATIONAL ASSOCIATION

By:   
Name: Lance Aylsworth  
Title: Vice President

ATTACHMENT A-1

TAX-EXEMPT 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 Wells Fargo Bank, National Association, or registered assigns (hereinafter, the "Bank"), the principal sum of \$59,000,000 or such lesser amount as shall be outstanding hereunder, together with interest on the principal balance outstanding at the rate per annum equal to the Applicable Rate (hereinafter defined) (subject to adjustment as hereinafter provided) based upon a year of 360 days for the actual number of days elapsed.

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 Applicable Rate is 70% of the sum of the LIBOR Rate (hereinafter defined) plus 0.50%.

The Borrower shall pay the Bank interest hereon in arrears on the first Business Day (as defined in the Loan Agreement hereinafter defined) of each month, and the entire unpaid principal balance hereof, together with all accrued and unpaid interest hereon, on May 30, 2016 (the "Maturity Date").

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

As used in this Note,

(1) "Code" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto;

(2) "Determination of Taxability" means interest on this Note is determined or declared, by the Internal Revenue Service or a court of competent jurisdiction to be includable in the gross income of the Bank for federal income tax purposes under the Code, which determination or declaration has become final and not subject to further contest or appeal under applicable law.

(3) "Interest Period" means (a) the period commencing on the date of the original issuance of this Note and ending on the day preceding the first Business Day of the following month; and (b) thereafter, each period commencing on the first Business Day of each month and ending on the day preceding the first Business Day of the following month.

(4) "LIBOR Rate" means the rate of interest per annum determined by Bank based on the rate for United States dollar deposits for delivery of funds for one (1) month as reported on Reuters Screen LIBOR01 page (or any successor page) at approximately 11:00 a.m., London time, on the second London Business Day prior to the first day of each Interest Period, or, for any day not a London Business Day, the immediately preceding London Business Day (or if not so reported, then as determined by Bank from another recognized source or interbank quotation).

(5) "London Business Day" means any day that is a day for trading by and between banks in Dollar deposits in the London interbank market.

(6) "Prime Rate" means a rate of interest equal to the announced prime commercial lending rate per annum of Wells Fargo Bank, National Association. 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.

(7) "Taxable Rate" means a rate equal to the Prime Rate times that percentage which after the Determination of Taxability will result in the same federal after-tax yield to the Bank as before said Determination of Taxability.

In the event a Determination of Taxability shall have occurred, the rate of interest on this Note shall be increased to the Taxable Rate, 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. 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.

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 of America by the Bank as a result of such Determination of Taxability. 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.

In the event that the maximum effective federal corporate tax rate (the "Maximum Corporate Tax Rate") during any period with respect to which interest shall be accruing on this Note on a tax-exempt basis, changes from the Maximum Corporate Tax Rate then in effect, which causes a reduction in yield on this Note, the interest rate on this Note that is bearing interest on a tax-exempt basis shall be adjusted to the product obtained by multiplying the Applicable Rate then in effect by a fraction equal to  $(1-A \text{ divided by } 1-B)$ , where A equals the Maximum Corporate Tax Rate in effect as of the date of adjustment and B equals the Maximum Corporate Tax Rate in effect on the date of the original issuance of this Note.

So long as any portion of the principal amount of this Note or interest hereon remains unpaid (a) if any law, rule, regulation or executive order is enacted or promulgated by any federal or Florida public body or governmental agency which changes the basis of taxation of interest on this Note or causes a reduction in yield on this Note (other than by reason of a change described above) to the Bank, including without limitation the imposition of any excise tax or surcharge thereon, or (b) if, as result of action by any federal or Florida public body or governmental agency, any payment is required to be made by, or any federal, Florida state or Florida local income tax deduction is denied to, the Bank (other than by reason of a change described above or by reason of any action or failure to act on the part of the Bank), by reason of the ownership of this Note, the Borrower shall reimburse the Bank within five (5) days after receipt by the Borrower of written demand for such payment, and, to the extent permitted by law, the Borrower agrees to indemnify the Bank against any loss, cost, charge or expense with respect to any such change. The determination of the after-tax yield calculation shall be calculated by the Bank, and such calculation, in the absence of manifest error, shall be binding on the Borrower and the Bank.

The principal of and interest on this Note may be prepaid at the option of the Borrower in whole or in part, on the first Business Day of each month, without prepayment premium or penalty.

Upon the occurrence of an Event of Default (as defined in the Loan Agreement) then 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.

Any amount payable to the Bank hereunder which is not paid when due shall bear interest at the Default Rate. For purposes of this Note, "Default Rate" means the higher of (1) the Prime Rate plus 4% and (2) the Adjusted One-Month LIBOR Rate plus 4%. "Adjusted One-Month LIBOR Rate" means the sum of 2.50% plus the quotient of (a) the LIBOR Rate on the immediately preceding London business day for U.S. dollar deposits with a one month term, divided by (b) one minus the "Reserve Requirement" applicable to U.S. dollar deposits in the

London interbank market with a maturity equal to one month. The Default Rate shall be determined as of the day immediately following the date on which any amount payable to the Bank hereunder is not paid when due.

Anything provided herein or in this Note to the contrary notwithstanding, in no event shall this Note bear interest in excess of the Maximum Rate (hereinafter defined). In the event the interest rate exceeds the Maximum Rate, this Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the interest rate to a rate less than the Maximum Rate until such time as interest shall accrue on this Note in an amount (the "Excess Interest") that would have accrued hereon had the interest rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the rate of interest otherwise payable on this Note, the Borrower shall pay to the Bank a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

"Maximum Rate" means the maximum rate of interest permitted for non-rated governmental bonds as set forth in Section 215.84(3), Florida Statutes, as may be amended from time to time.

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. Pursuant to the Loan Agreement, the Borrower may request Advances from time to time from the Bank hereunder, provided that the outstanding principal amount at any time under this Note shall not exceed the principal sum set forth in the first paragraph hereof, and provided that amounts borrowed and repaid may be re-borrowed hereunder as provided in the Loan Agreement.

All terms, conditions and provisions of Resolution No. 2014-28599 adopted by the Mayor and City Commission of the Borrower and the Loan Agreement 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 May 30, 2014.

CITY OF MIAMI BEACH, FLORIDA

By: \_\_\_\_\_  
Name: Philip Levine  
Title: Mayor

ATTACHMENT A-2

TAXABLE 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 Wells Fargo Bank, National Association, or registered assigns (hereinafter, the "Bank"), the principal sum of \$1,000,000 or such lesser amount as shall be outstanding hereunder, together with interest on the principal balance outstanding at the rate per annum equal to the Applicable Rate (hereinafter defined) based upon a year of 360 days for the actual number of days elapsed.

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 Applicable Rate is the sum of the LIBOR Rate (hereinafter defined) plus 0.75%.

The Borrower shall pay the Bank interest hereon in arrears on the first Business Day (as defined in the Loan Agreement hereinafter defined) of each month, and the entire unpaid principal balance hereof, together with all accrued and unpaid interest hereon, on May 30, 2016 (the "Maturity Date").

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

"LIBOR Rate" means the rate of interest per annum determined by Bank based on the rate for United States dollar deposits for delivery of funds for one (1) month as reported on Reuters Screen LIBOR01 page (or any successor page) at approximately 11:00 a.m., London time, on the second London Business Day prior to the first day of each Interest Period, or, for any day not a London Business Day, the immediately preceding London Business Day (or if not so reported, then as determined by Bank from another recognized source or interbank quotation).

"London Business Day" means any day that is a day for trading by and between banks in Dollar deposits in the London interbank market.

"Interest Period" means (a) the period commencing on the date of the original issuance of this Note and ending on the day preceding the first Business Day of the following month; and (b) thereafter, each period commencing on the first Business Day of each month and ending on the day preceding the first Business Day of the following month.

The principal of and interest on this Note may be prepaid at the option of the Borrower in whole or in part, on the first Business Day of each month, without prepayment premium or penalty.

Upon the occurrence of an Event of Default (as defined in the Loan Agreement) then 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.

Any amount payable to the Bank hereunder which is not paid when due shall bear interest at the Default Rate. For purposes of this Note, "Default Rate" means the higher of (1) the Prime Rate plus 4% and (2) the Adjusted One-Month LIBOR Rate plus 4%.

"Prime Rate" means a rate of interest equal to the announced prime commercial lending rate per annum of Wells Fargo Bank, National Association. 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.

"Adjusted One-Month LIBOR Rate" means the sum of 2.50% plus the quotient of (a) the LIBOR Rate on the immediately preceding London business day for U.S. dollar deposits with a one month term, divided by (b) one minus the "Reserve Requirement" applicable to U.S. dollar deposits in the London interbank market with a maturity equal to one month. The Default Rate shall be determined as of the day immediately following the date on which any amount payable to the Bank hereunder is not paid when due.

Anything provided herein or in this Note to the contrary notwithstanding, in no event shall this Note bear interest in excess of the Maximum Rate (hereinafter defined). In the event the interest rate exceeds the Maximum Rate, this Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the interest rate to a rate less than the Maximum Rate until such time as interest shall accrue on this Note in an amount (the "Excess Interest") that would have accrued hereon had the interest rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the rate of interest otherwise payable on this Note, the Borrower shall pay to the Bank a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

"Maximum Rate" means the maximum rate of interest permitted for non-rated governmental bonds as set forth in Section 215.84(3), Florida Statutes, as may be amended from time to time.

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. Pursuant to the Loan Agreement, the Borrower may request Advances from time to time from the Bank hereunder, provided that the outstanding principal amount at any time under this Note shall not exceed the principal sum set forth in the first paragraph hereof, and provided that amounts borrowed and repaid may be re-borrowed hereunder.

All terms, conditions and provisions of Resolution No. 2014-28599 adopted by the Mayor and City Commission of the Borrower and the Loan Agreement 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 May 30, 2014.

CITY OF MIAMI BEACH, FLORIDA

By: \_\_\_\_\_  
Name: Philip Levine  
Title: Mayor

ATTACHMENT B

1. Authorized Individual(s): Patricia D. Walker, Chief Financial Officer  
Georgina P. Echert, Assistant 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: Wells Fargo Bank, National Association  
200 South Biscayne Boulevard  
14<sup>th</sup> Floor  
Miami, Florida 33131  
Attention: Lance Aylsworth, Vice President

ATTACHMENT C  
REQUEST FOR ADVANCE

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

To: Wells Fargo Bank, National Association

From: City of Miami Beach, Florida

Amount of Advance on Tax-Exempt Note: \$ \_\_\_\_\_

Amount of Advance on Taxable Note: \$ \_\_\_\_\_

Date of Advance: \_\_\_\_\_

Purpose of Advance (description and amount):

\_\_\_\_\_ - \$ \_\_\_\_\_  
\_\_\_\_\_ - \$ \_\_\_\_\_  
\_\_\_\_\_ - \$ \_\_\_\_\_

The above-named Borrower requests an Advance under the Loan Agreement dated as of May 30, 2014 (the "Loan Agreement") and the Promissory Note identified above in the amount set forth above. The representations and warranties of the Borrower contained in the Loan Agreement are true and correct as of the date hereof.

Attached hereto are the showings, if any, required by Section 5.03 of the Loan Agreement, including the opinion(s) of Bond Counsel required thereunder.

Proceeds of the Advance should be wired as follows:

CITY OF MIAMI BEACH, FLORIDA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## TAX-EXEMPT 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 Wells Fargo Bank, National Association, or registered assigns (hereinafter, the "Bank"), the principal sum of \$59,000,000 or such lesser amount as shall be outstanding hereunder, together with interest on the principal balance outstanding at the rate per annum equal to the Applicable Rate (hereinafter defined) (subject to adjustment as hereinafter provided) based upon a year of 360 days for the actual number of days elapsed.

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 Applicable Rate is 70% of the sum of the LIBOR Rate (hereinafter defined) plus 0.50%.

The Borrower shall pay the Bank interest hereon in arrears on the first Business Day (as defined in the Loan Agreement hereinafter defined) of each month, and the entire unpaid principal balance hereof, together with all accrued and unpaid interest hereon, on May 30, 2016 (the "Maturity Date").

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

As used in this Note,

(1) "Code" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto;

(2) "Determination of Taxability" means interest on this Note is determined or declared, by the Internal Revenue Service or a court of competent jurisdiction to be includable in the gross income of the Bank for federal income tax purposes under the Code, which determination or declaration has become final and not subject to further contest or appeal under applicable law.

(3) "Interest Period" means (a) the period commencing on the date of the original issuance of this Note and ending on the day preceding the first Business Day of the following month; and (b) thereafter, each period commencing on the first Business Day of each month and ending on the day preceding the first Business Day of the following month.

(4) "LIBOR Rate" means the rate of interest per annum determined by Bank based on the rate for United States dollar deposits for delivery of funds for one (1) month as reported on Reuters Screen LIBOR01 page (or any successor page) at approximately

11:00 a.m., London time, on the second London Business Day prior to the first day of each Interest Period, or, for any day not a London Business Day, the immediately preceding London Business Day (or if not so reported, then as determined by Bank from another recognized source or interbank quotation).

(5) "London Business Day" means any day that is a day for trading by and between banks in Dollar deposits in the London interbank market.

(6) "Prime Rate" means a rate of interest equal to the announced prime commercial lending rate per annum of Wells Fargo Bank, National Association. 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.

(7) "Taxable Rate" means a rate equal to the Prime Rate times that percentage which after the Determination of Taxability will result in the same federal after-tax yield to the Bank as before said Determination of Taxability.

In the event a Determination of Taxability shall have occurred, the rate of interest on this Note shall be increased to the Taxable Rate, 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. 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.

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 of America by the Bank as a result of such Determination of Taxability. 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.

In the event that the maximum effective federal corporate tax rate (the "Maximum Corporate Tax Rate") during any period with respect to which interest shall be accruing on this Note on a tax-exempt basis, changes from the Maximum Corporate Tax Rate then in effect, which causes a reduction in yield on this Note, the interest rate on this Note that is bearing interest on a tax-exempt basis shall be adjusted to the product obtained by multiplying the Applicable Rate then in effect by a fraction equal to  $(1-A \text{ divided by } 1-B)$ , where A equals the Maximum Corporate Tax Rate in effect as of the date of adjustment and B equals the Maximum Corporate Tax Rate in effect on the date of the original issuance of this Note.

So long as any portion of the principal amount of this Note or interest hereon remains unpaid (a) if any law, rule, regulation or executive order is enacted or promulgated by any federal or Florida public body or governmental agency which changes the basis of taxation of interest on this Note or causes a reduction in yield on this Note (other than by reason of a change described above) to the Bank, including without limitation the imposition of any excise tax or surcharge thereon, or (b) if, as result of action by any federal or Florida public body or governmental agency, any payment is required to be made by, or any federal, Florida state or Florida local income tax deduction is denied to, the Bank (other than by reason of a change described above or by reason of any action or failure to act on the part of the Bank), by reason of the ownership of this Note, the Borrower shall reimburse the Bank within five (5) days after receipt by the Borrower of written demand for such payment, and, to the extent permitted by law, the Borrower agrees to indemnify the Bank against any loss, cost, charge or expense with respect to any such change. The determination of the after-tax yield calculation shall be calculated by the Bank, and such calculation, in the absence of manifest error, shall be binding on the Borrower and the Bank.

The principal of and interest on this Note may be prepaid at the option of the Borrower in whole or in part, on the first Business Day of each month, without prepayment premium or penalty.

Upon the occurrence of an Event of Default (as defined in the Loan Agreement) then 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.

Any amount payable to the Bank hereunder which is not paid when due shall bear interest at the Default Rate. For purposes of this Note, "Default Rate" means the higher of (1) the Prime Rate plus 4% and (2) the Adjusted One-Month LIBOR Rate plus 4%. "Adjusted One-Month LIBOR Rate" means the sum of 2.50% plus the quotient of (a) the LIBOR Rate on the immediately preceding London business day for U.S. dollar deposits with a one month term, divided by (b) one minus the "Reserve Requirement" applicable to U.S. dollar deposits in the London interbank market with a maturity equal to one month. The Default Rate shall be determined as of the day immediately following the date on which any amount payable to the Bank hereunder is not paid when due.

Anything provided herein or in this Note to the contrary notwithstanding, in no event shall this Note bear interest in excess of the Maximum Rate (hereinafter defined). In the event the interest rate exceeds the Maximum Rate, this Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the interest rate to a rate less than the Maximum Rate until such time as interest shall accrue on this Note in an amount (the "Excess Interest") that would have accrued hereon had the interest rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the rate of interest otherwise payable on this Note, the Borrower shall pay to the Bank a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

"Maximum Rate" means the maximum rate of interest permitted for non-rated governmental bonds as set forth in Section 215.84(3), Florida Statutes, as may be amended from time to time.

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. Pursuant to the Loan Agreement, the Borrower may request Advances from time to time from the Bank hereunder, provided that the outstanding principal amount at any time under this Note shall not exceed the principal sum set forth in the first paragraph hereof, and provided that amounts borrowed and repaid may be re-borrowed hereunder as provided in the Loan Agreement.

All terms, conditions and provisions of Resolution No. 2014-28599 adopted by the Mayor and City Commission of the Borrower and the Loan Agreement 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 May 30, 2014.

CITY OF MIAMI BEACH, FLORIDA

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

Name: Philip Levine  
Title: Mayor

SPECIMEN



## TAXABLE 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 Wells Fargo Bank, National Association, or registered assigns (hereinafter, the "Bank"), the principal sum of \$1,000,000 or such lesser amount as shall be outstanding hereunder, together with interest on the principal balance outstanding at the rate per annum equal to the Applicable Rate (hereinafter defined) based upon a year of 360 days for the actual number of days elapsed.

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 Applicable Rate is the sum of the LIBOR Rate (hereinafter defined) plus 0.75%.

The Borrower shall pay the Bank interest hereon in arrears on the first Business Day (as defined in the Loan Agreement hereinafter defined) of each month, and the entire unpaid principal balance hereof, together with all accrued and unpaid interest hereon, on May 30, 2016 (the "Maturity Date").

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

"LIBOR Rate" means the rate of interest per annum determined by Bank based on the rate for United States dollar deposits for delivery of funds for one (1) month as reported on Reuters Screen LIBOR01 page (or any successor page) at approximately 11:00 a.m., London time, on the second London Business Day prior to the first day of each Interest Period, or, for any day not a London Business Day, the immediately preceding London Business Day (or if not so reported, then as determined by Bank from another recognized source or interbank quotation).

"London Business Day" means any day that is a day for trading by and between banks in Dollar deposits in the London interbank market.

"Interest Period" means (a) the period commencing on the date of the original issuance of this Note and ending on the day preceding the first Business Day of the following month; and (b) thereafter, each period commencing on the first Business Day of each month and ending on the day preceding the first Business Day of the following month.

The principal of and interest on this Note may be prepaid at the option of the Borrower in whole or in part, on the first Business Day of each month, without prepayment premium or penalty.

Upon the occurrence of an Event of Default (as defined in the Loan Agreement) then 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.

Any amount payable to the Bank hereunder which is not paid when due shall bear interest at the Default Rate. For purposes of this Note, "Default Rate" means the higher of (1) the Prime Rate plus 4% and (2) the Adjusted One-Month LIBOR Rate plus 4%.

"Prime Rate" means a rate of interest equal to the announced prime commercial lending rate per annum of Wells Fargo Bank, National Association. 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.

"Adjusted One-Month LIBOR Rate" means the sum of 2.50% plus the quotient of (a) the LIBOR Rate on the immediately preceding London business day for U.S. dollar deposits with a one month term, divided by (b) one minus the "Reserve Requirement" applicable to U.S. dollar deposits in the London interbank market with a maturity equal to one month. The Default Rate shall be determined as of the day immediately following the date on which any amount payable to the Bank hereunder is not paid when due.

Anything provided herein or in this Note to the contrary notwithstanding, in no event shall this Note bear interest in excess of the Maximum Rate (hereinafter defined). In the event the interest rate exceeds the Maximum Rate, this Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the interest rate to a rate less than the Maximum Rate until such time as interest shall accrue on this Note in an amount (the "Excess Interest") that would have accrued hereon had the interest rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the rate of interest otherwise payable on this Note, the Borrower shall pay to the Bank a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

"Maximum Rate" means the maximum rate of interest permitted for non-rated governmental bonds as set forth in Section 215.84(3), Florida Statutes, as may be amended from time to time.

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. Pursuant to the Loan Agreement, the Borrower may request Advances from time to time from the Bank hereunder, provided that the outstanding principal amount at any time under this Note shall not exceed the principal sum set forth in the first paragraph hereof, and provided that amounts borrowed and repaid may be re-borrowed hereunder.

All terms, conditions and provisions of Resolution No. 2014-28599 adopted by the Mayor and City Commission of the Borrower and the Loan Agreement 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 May 30, 2014.

CITY OF MIAMI BEACH, FLORIDA

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

Name: Philip Levine

Title: Mayor



CLOSING CERTIFICATE OF THE CITY

We, Philip Levine, Mayor of the City of Miami Beach, Florida (the "City"), and Rafael E. Granado, City Clerk of the City, DO HEREBY CERTIFY as follows:

(a) All terms used in capitalized form and not defined herein have the meaning assigned to such terms in the Loan Agreement, dated as of May 30, 2014 (the "Loan Agreement"), between the City and Wells Fargo Bank, National Association (the "Bank").

(b) The representations of the City contained or incorporated by reference in Article II and Section 4.02 of the Loan Agreement are true and correct in all material respects.

(c) No Event of Default exists as of the date hereof under the Loan Agreement.

(d) The persons named below are, on the date hereof, the duly qualified officers of the City and the signatures appearing at the end of this certificate are the genuine signatures of said officers:

<u>Title</u>	<u>Name</u>
Mayor	Philip Levine
City Clerk	Rafael E. Granado

(e) The City has duly executed and delivered to the Bank the Loan Agreement and its Tax-Exempt Promissory Note and its Taxable Promissory Note, each dated May 30, 2014.

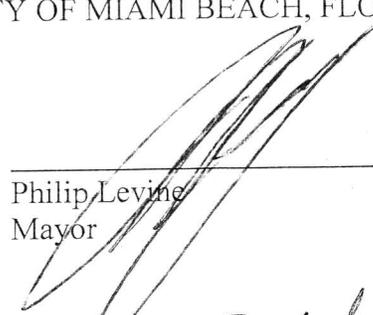
(f) The interest rate on the Tax-Exempt Promissory Note does not exceed the maximum rate permitted pursuant to Section 215.84, Florida Statutes. The interest rate on the Taxable Promissory Note does not exceed the maximum rate permitted pursuant to Section 159.825, Florida Statutes. In making these determinations, the City has:

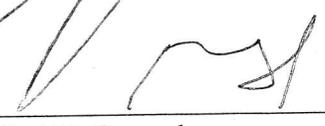
(i) in accordance with Section 215.84, Florida Statutes, calculated the interest rate on the Tax-Exempt Promissory Note based on the interest rate such Note would bear if there had been an advance thereunder on the date hereof (0.605%), which interest rate is less than The Bond Buyer "20 Bond Index" published immediately preceding May 1, 2014 plus 300 basis points (7.33%);

(ii) in accordance with Section 159.825, Florida Statutes, calculated the interest rate on the Taxable Promissory Note based on the interest rate such Note would bear if there had been an advance thereunder on the date hereof (0.900%), which interest rate is less than 30-year Treasury Bond yield published in The Bond Buyer immediately preceding May 1, 2014 plus 500 basis points (8.46%).

IN WITNESS WHEREOF, we have hereunto set our hands this 30<sup>th</sup> day of May, 2014.

CITY OF MIAMI BEACH, FLORIDA

By:   
Philip Levine  
Mayor

By:   
Rafael E. Granado  
City Clerk



CLOSING AND DISCLOSURE CERTIFICATE OF THE BANK

In connection with the Loan Agreement dated as of May 30, 2014 (the "Loan Agreement") between the City of Miami Beach, Florida (the "City") and Wells Fargo Bank, National Association (the "Bank") and the loan described in the Loan Agreement (the "Loan"), the Bank represents and certifies that:

(a) The Loan Agreement has been duly authorized, executed and delivered by the Bank, and assuming the due authorization, execution and delivery by the City, constitutes a legal, valid and binding agreement of the Bank, enforceable in accordance with its terms, except to the extent the enforceability thereof may be limited by (i) bankruptcy, insolvency or other laws affecting creditors' rights generally and (ii) general principles of equity.

(b) Attached hereto is a Bank Assistant Secretary's Certificate evidencing the authority of the undersigned to execute the Loan Agreement and this Certificate on behalf of the Bank.

(c) The nature and estimated amounts of expenses to be incurred by the Bank in connection with the Loan are legal fees of \$4,000.00 (to be paid by the City).

(d) There were no "finders," as defined in Section 218.386, Florida Statutes, as amended, in connection with the Loan.

(e) No management fee will be charged by the Bank.

(f) No fee, bonus or other compensation will be paid by the Bank in connection with the making of the Loan to any person not regularly employed or retained by the Bank.

(g) The name and address of the Bank is:

Wells Fargo Bank, National Association  
200 South Biscayne Boulevard  
14<sup>th</sup> Floor  
Miami, Florida 33131

(h) The City is proposing to borrow not exceeding \$60,000,000 for the purpose of paying Costs of the Project (as defined in the Loan Agreement). The source of funds for repayment of the Loan is Non-Ad Valorem Revenues (as defined in the Loan Agreement) of the City budgeted and appropriated for the that purpose. The Loan is required to be repaid by May 30, 2016. The interest rate on the Loan is variable and cannot be predicted. Neither can the amount that may actually be borrowed by the City be predicted. Authorizing this debt could result in an amount of revenues of the City of up to \$60,000,000, plus the amount of interest accrued on the amount of the Loan, not being available for use by the City other than for the repayment of the Loan.

(i) Without modifying in any way the rights and obligations of the Bank and the City pursuant to the Loan Agreement and the Notes (as defined in the Loan Agreement), the Bank (i)

is sufficiently knowledgeable and experienced in financial and business matters, including the purchase and ownership of municipal and other tax-exempt obligations, to be able to determine what investigation of the business and financial affairs of the City is necessary in order to evaluate the investment risks associated with the making of the Loan; (ii) has been offered copies of or full access to all records, reports, financial statements and other information concerning the business and financial affairs of the City which the Bank deemed to be significant in making its investment decision, and which were requested by the Bank in connection with the Loan; (iii) has made such investigation of the business and financial affairs of the City as the Bank deemed necessary in making its investment decision in connection with the Loan, and acknowledges that no official statement, placement memorandum, or other disclosure document has been prepared and is being delivered in connection with the Loan; and (iv) is making the Loan solely for its own account and not on behalf of others, and with no present intent to resell or otherwise distribute all or any part of or interest in the Loan.

Dated: May 30, 2014.

WELLS FARGO BANK, NATIONAL  
ASSOCIATION

By:   
Lance Aylsworth  
Vice President

## SECRETARY'S CERTIFICATE

### WELLS FARGO BANK, NATIONAL ASSOCIATION

I, Patricia A. Ruedenberg, hereby certify that I am an Assistant Secretary of Wells Fargo Bank, National Association, a national banking association organized and existing under the laws of the United States of America (the "Bank"), and I hereby further certify as follows:

1. The following is a true and correct extract from resolutions duly adopted by the Board of Directors of the Bank on November 25, 2003, as amended, and no modification, amendment, rescission or revocation of such resolutions has occurred affecting such extract as of the date of this certificate.

RESOLVED, that agreements, instruments, or other documents, including amendments and modifications thereto, relating to or affecting the property or business and affairs of the Bank, whether acting for its own account or in a fiduciary or other representative capacity, may be executed in its name by the persons hereinafter authorized;

FURTHER RESOLVED, that for the purposes of these resolutions, "Executive Officer" shall mean any person specifically designated as an Executive Officer of the Bank by resolution of the Board of Directors, and "Signing Officer" shall mean the Chairman of the Board, the President, any Senior Executive Vice President, any Executive Vice President, any Senior Vice President, the Treasurer, any Vice President, any Assistant Vice President, any person whose title includes the word "Officer" (e.g., Commercial Banking Officer, Personal Banking Officer, Trust Officer), or any other person whose title has been or is hereafter designated by the Board of Directors as a title for an officer of the Bank, and such officers are hereby authorized to sign agreements, instruments and other documents on behalf of the Bank in accordance with the signing authorities conferred in Parts A, B and C of these resolutions;

\* \* \*

#### C. Signing Officers

FURTHER RESOLVED, that any Signing Officer, acting alone, may execute on behalf of the Bank, whether acting for its own account or in a fiduciary or other representative capacity:

1. Loan and credit agreements, commitments to make or purchase loans, notes or other debt instruments, allonges,

funds transfer agreements, escrow instructions, development agreements, participation agreements (including risk participation agreements), certificates of participation, reimbursement agreements and similar documents related to the extension of credit; provided, however, that the foregoing authority shall exclude letters of credit.

\* \* \*

15. Agreements and proposals to provide services to or receive services from third parties.

\* \* \*

2. On the date hereof, the following named person was a duly appointed, qualified and acting officer of the Bank, that his correct title appears beside his name, and that on said date he was duly authorized to act on behalf of the Bank as set forth in the foregoing resolutions:

Name	Title
Lance Aylsworth	Vice President

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Bank this 20<sup>th</sup> day of July, 2010.

[Seal]

  
Assistant Secretary

\* \* \* Redacted [Indicates portions of the resolution which have been omitted because they are not relevant to the transaction for which this certificate has been requested.]



**STATE OF FLORIDA - DIVISION OF BOND FINANCE LOCAL BOND MONITORING**

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**Notice of Sale Status**

Notice of Sale submission successful.

Submit Date: 5/28/2014

Bond Issue City of Miami Beach, Florida \$59,000,000 Tax-Exempt Promissory Note Payable to Wells Fargo Bank, National Name: Association, and \$1,000,000 Taxable Promissory Note Payable to Wells Fargo Bank, National Association.

Sale Date: 5/30/2014

Closing Date: 5/30/2014

[Print this page](#)



NAME OF GOVERNMENTAL UNIT

City of Miami Beach, Florida

MAILING ADDRESS OF GOVERNMENTAL UNIT OR ITS MANAGER

Address(1) 1700 Convention Center Drive

Address(2)

City Miami Beach

State FL

Zip 33139

COUNT(IES) IN WHICH GOVERNMENTAL UNIT HAS JURISDICTION

Miami-Dade

TYPE OF ISSUER

City

IS THE ISSUER A COMMUNITY DEVELOPMENT DISTRICT?

ISSUE NAME	AMOUNT	INTEREST CALCULATION	YIELD
Tax-Exempt Promissory Note Payable to Wells Fargo Bank, National Association	\$59,000,000.00	Vari	VARI
Taxable Promissory Note Payable to Wells Fargo Bank, National Association	\$1,000,000.00	Vari	VARI

AMOUNT AUTHORIZED

\$60,000,000.00

DATED DATE (MM/DD/YYYY)

5/30/2014

SALE DATE (MM/DD/YYYY)

5/30/2014

DELIVERY DATE (MM/DD/YYYY)

5/30/2014

LEGAL AUTHORITY FOR ISSUANCE

Ch. 166, F.S.

TYPE OF ISSUE

Bank Loan/Line of Credit

IS THIS A PRIVATE ACTIVITY BOND (PAB)?

Did This Issue Receive a PAB Allocation?

Amount of Allocation

\$0.00

SPECIFIC REVENUES(S) PLEDGED

Primary

Other

Secondary

Other

Non-Ad Valorem Revenues

**PURPOSE(S) OF THE ISSUE**

Primary

Other

Secondary

Other

General Capital Projects

**IS THIS A REFUNDING ISSUE?**

REFUNDED DEBT HAS BEEN

-

DID THE REFUNDING ISSUE CONTAIN NEW MONEY?

APPROXIMATELY WHAT PERCENTAGE OF PROCEEDS IS NEW MONEY?

**TYPE OF SALE**

Negotiated Private Placement

**INSURANCE/ENHANCEMENTS**

No Credit Enhancement

**RATING(S)**

Moody's

NR

S & P

NR

Fitch

NR

Other

**DEBT SERVICE SCHEDULE PROVIDED BY**

E-mail

**OPTIONAL REDEMPTION PROVISIONS PROVIDED BY**

E-mail

**PROVIDE THE NAME AND ADDRESS OF THE SENIOR MANAGING UNDERWRITER OR SOLE PURCHASER**

**Underwriter** Wells Fargo Bank, National Association

Address(1) 200 S. Biscayne Blvd

Address(2) 14th Floor

City Miami

State FL

Zip 33131

**CO-Underwriter** None

Address(1)

Address(2)

City

State -  
Zip

PROVIDE THE NAME(S) AND ADDRESS(ES) OF ANY ATTORNEY OR FINANCIAL CONSULTANT WHO ADVISED THE UNIT OF LOCAL GOVERNMENT WITH RESPECT TO THE BOND ISSUE.

**Bond Counsel** Squire Sanders (US) LLP  
Address(1) 200 S. Biscayne Blvd  
Address(2) Suite 4100  
City Miami  
State FL  
Zip 33131

**CO-Bond Counsel** None  
Address(1)  
Address(2)  
City  
State -  
Zip

**Financial Advisor/Consultant** RBC Capital Markets, LLC  
Address(1) 100 Second Avenue South  
Address(2) Suite 800  
City St. Petersburg  
State FL  
Zip 33701

**CO-Financial Advisor/Consultant** None  
Address(1)  
Address(2)  
City  
State -  
Zip

**Other Professionals**  
Address(1)  
Address(2)  
City  
State -  
Zip

**PAYING AGENT**

None

**REGISTRAR**

None

**BF2004-A AND BF2004-B**

NOTE: The following items are required to be completed in full for all bond issues except those sold pursuant to Section 154 Part III, Sections 159 Parts II, III, or V; or Section 243 Part I, Florida Statutes.

**HAS ANY FEE, BONUS, OR GRATUITY BEEN PAID BY ANY UNDERWRITER OR FINANCIAL CONSULTANT, IN CONNECTION WITH THE BOND ISSUE, TO ANY PERSON NOT REGULARLY EMPLOYED OR ENGAGED BY SUCH UNDERWRITER OR CONSULTANT? IF YES, PLEASE PROVIDE THE FOLLOWING INFORMATION WITH RESPECT TO EACH SUCH UNDERWRITER OR CONSULTANT.**

**HAVE ANY OTHER FEES BEEN PAID BY THE UNIT OF LOCAL GOVERNMENT WITH RESPECT TO THE BOND ISSUE, INCLUDING ANY FEE PAID TO ATTORNEYS OF FINANCIAL CONSULTANTS? IF YES, PLEASE PROVIDE THE TOTAL FEES PAID TO APPLICABLE PARTICIPANTS.**

Total Bond Counsel Fees Paid

\$30,000.00

Total Financial Advisor Fees Paid

\$25,000.00

Other Fees Paid

COMPANY NAME	FEE PAID	SERVICE PROVIDED OR FUNCTION SERVED
Akerman LLP	\$4,000.00	Bank's Counsel

FILING OF THIS FORM HAS BEEN AUTHORIZED BY THE OFFICIAL OF THE ISSUER IDENTIFIED BELOW

Name

Patricia D. Walker

Title

Governmental Officer primarily responsible for coordinating issuance of the bonds

FEE CHARGED BY UNDERWRITER

Management Fee (Per Thousand Par Value)

0

Private Placement Fee

\$0.00

UNDERWRITER'S EXPECTED GROSS SPREAD (PER THOUSAND PAR VALUE)

0

FOR ADDITIONAL INFORMATION, THE DIVISION OF BOND FINANCE SHOULD CONTACT:

Name Niyala Harrison  
 Title Associate  
 Phone 3055777019  
 Company Squire Sanders (US) LLP  
 Address(1) 200 S. Biscayne Blvd  
 Address(2) Suite 4100  
 City Miami  
 State FL  
 Zip 33131

INFORMATION RELATING TO PARTY COMPLETING THIS FORM (IF DIFFERENT FROM ABOVE)

Name  
 Title  
 Phone  
 Company  
 Address(1)  
 Address(2)  
 City  
 State -  
 Zip

In order to better serve local governments, the Division of Bond Finance will remind issuers as their deadlines approach for filing continuing disclosure information required by SEC Rule 15c2-12, based on the following information:

IF THE ISSUER IS REQUIRED TO PROVIDE CONTINUING DISCLOSURE INFORMATION IN ACCORDANCE WITH SEC RULE 15c2-12, DO YOU WANT THE DIVISION OF BOND FINANCE TO REMIND YOU OF YOUR FILING DEADLINE?

ON WHAT DATE IS THE CONTINUING DISCLOSURE INFORMATION REQUIRED TO BE FILED? (MM/DD)

PROVIDE THE FOLLOWING INFORMATION REGARDING THE PERSON(S) RESPONSIBLE FOR FILING CONTINUING DISCLOSURE INFORMATION REQUIRED BY SEC RULE 15C2-12 AND THE CONTINUING DISCLOSURE AGREEMENT (INCLUDING OTHER OBLIGATED PARTIES, IF APPROPRIATE).

Name  
Title  
Phone  
Company  
Address(1)  
Address(2)  
City  
State -  
Zip  
Fax  
Email



May 30, 2014

To: Wells Fargo Bank, National Association  
Miami, Florida

We have served as bond counsel to our client the City of Miami Beach, Florida (the "City") and not as counsel to any other person in connection with the issuance by the City of its \$59,000,000 maximum outstanding principal amount Tax-Exempt Promissory Note payable to Wells Fargo Bank, National Association (the "Bank"), and its \$1,000,000 maximum outstanding principal amount Taxable Promissory Note payable to the Bank, each dated the date of this letter (collectively, the "Notes").

The Notes are being issued pursuant to Resolution No. 2014-28599 adopted by the Mayor and City Commission of the City on May 21, 2014 (the "Resolution") and a Loan Agreement dated as of May 30, 2014 (the "Loan Agreement") between the City and the Bank. Capitalized terms used herein and not defined have the meanings ascribed to such terms in the Loan Agreement.

In our capacity as bond counsel, we have examined the transcript of proceedings relating to the issuance of the Notes, copies of the signed Notes, the Resolution, the Loan Agreement and such other documents, matters and law as we deem necessary to render the opinions set forth in this letter.

Based on that examination and subject to the limitations stated below, we are of the opinion that under existing law:

1. The Notes and the Loan Agreement are valid and binding obligations of the City, enforceable in accordance with their respective terms.
2. The Notes constitute special, limited obligations of the City, and the principal of and interest on (collectively, "debt service") the Notes are payable from and secured solely by the Budgeted Revenues. The payment of debt service on the Notes is not secured by an obligation or pledge of any money raised by ad-valorem taxation, and the Notes do not represent or constitute a general obligation or a pledge of the faith and credit of the City, the State of Florida or any of its political subdivisions.

May 30, 2014  
Page 2

3. The Notes and the income thereon are exempt from taxation under the laws of the State of Florida, except estate taxes imposed by Chapter 198, Florida Statutes, as amended, and net income and franchise taxes imposed by Chapter 220, Florida Statutes. We express no opinion as to any other tax consequences regarding the Notes.

The opinions stated above are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. In rendering all such opinions, we assume, without independent verification, and rely upon (i) the accuracy of the factual matters represented, warranted or certified in the proceedings and documents we have examined and (ii) the due and legal authorization, execution and delivery of those documents by, and the valid, binding and enforceable nature of those documents upon, any parties other than the City.

The rights of the owner of the Notes and the enforceability of the Notes and the Loan Agreement are subject to bankruptcy, insolvency, arrangement, fraudulent conveyance or transfer, reorganization, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion, and to limitations on legal remedies against public entities.

The opinions rendered in this letter are stated only as of this date, and no other opinion shall be implied or inferred as a result of anything contained in or omitted from this letter. Our engagement as bond counsel with respect to the Notes has concluded on this date.

Respectfully submitted,

*Squire Sanders (US) LLP*





# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

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May 30, 2014

Wells Fargo Bank, National Association  
Miami, Florida

RE: City of Miami Beach, Florida \$59,000,000 Tax-Exempt Promissory Note Payable to Wells Fargo Bank, National Association, and \$1,000,000 Taxable Promissory Note Payable to Wells Fargo Bank, National Association.

Ladies and Gentlemen:

I am the City Attorney of the City of Miami Beach, Florida (the "City") and have served in such capacity in connection with the issuance by the City of its \$59,000,000 maximum outstanding principal amount Tax-Exempt Promissory Note payable to Wells Fargo Bank, National Association (the "Bank"), and its \$1,000,000 maximum outstanding principal amount Taxable Promissory Note payable to the Bank, each dated the date of this letter (collectively, the "Notes").

The Notes are being issued pursuant to Resolution No. 2014-28599 adopted by the Mayor and City Commission of the City on May 21, 2014 (the "Resolution"), and a Loan Agreement dated as of May 30, 2014 (the "Loan Agreement") between the City and the Bank. The Notes are being issued for the purpose of paying Costs of the Project. Capitalized terms used herein and not defined have the meanings ascribed to such terms in the Loan Agreement.

I am of the opinion as of the date hereof and under existing law, as follows:

1. The City is duly created and validly existing as a municipality pursuant to the Constitution and laws of the State of Florida.
2. The Resolution has been duly adopted by the City and constitutes the valid and binding action of the City.
3. The Loan Agreement and the Notes have been duly executed and delivered by the City. The Notes and, assuming that the Loan Agreement is a valid and binding obligation of the Bank, the Loan Agreement, constitute valid and binding obligations of the City enforceable against the City in accordance with their terms; provided that the rights of the Bank and the enforceability of the Notes and the Loan Agreement are subject to the provisions of the bankruptcy laws of the United States of America and to other applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting creditors' rights, and their enforcement may be subject to equitable principles that may affect remedies or other equitable relief.

Very truly yours,

Raul J. Aguila  
City Attorney