

## REVOLVING LOAN AGREEMENT

**THIS AGREEMENT**, made and entered into as of the \_\_\_\_ day of January, 2023, by and between the **FORT PIERCE UTILITIES AUTHORITY OF THE CITY OF FORT PIERCE, FLORIDA**, a utilities authority created and made a part of the government of the City of Fort Pierce, Florida, hereinafter referred to as the "Borrower"; and **SEACOAST NATIONAL BANK**, a national banking association, hereinafter referred to as the "Bank";

### **WITNESSETH, THAT:**

**WHEREAS**, the Borrower has requested the Bank to establish and extend to the Borrower a taxable revolving line of credit in the maximum principal sum of Four Million and No/100ths Dollars (\$4,000,000.00), the proceeds of which shall be utilized by the Borrower from time to time in the course of its business as hereinafter described, and

**WHEREAS**, the Bank has agreed to establish and extend to the Borrower a taxable revolving line of credit in the maximum principal sum of Four Million and No/100ths Dollars (\$4,000,000.00) to be evidenced by the Borrower's Promissory Note of even date herewith, and

**WHEREAS**, the parties have agreed that the revolving line of credit shall be subject to and governed by the provisions of this Agreement, as the same are more fully set forth hereinafter,

**NOW, THEREFORE**, for valuable considerations, the receipt and sufficiency of which are hereby acknowledge, and as a condition precedent to the extension of the taxable revolving line of credit to the Borrower, it is agreed by and between the parties as follows:

### ARTICLE 15 DEFINITION OF TERMS

Section 1.01. **Defined Terms**: As utilized in this Agreement, the following terms shall be defined, construed, and interpreted as follows (terms defined in the singular shall have the same meaning when used in the plural and vice versa):

- A. "Agreement" shall mean this Revolving Loan Agreement, as amended, supplemented or modified in writing by the parties from time to time.
- B. "Bank" shall mean Seacoast National Bank, and its successors in interest and assigns.
- C. "Borrower" shall mean Fort Pierce Utilities Authority of the City, a utilities authority created and made a part of the government of the City, and its successors in interest and assigns.
- D. "City" shall mean the City of Fort Pierce, a Florida municipal corporation.
- E. "Commitment" shall mean the Bank's obligation to make advances on the Loan to the Borrower pursuant to this Agreement.

F. "Default" shall mean any of the events specified in Article 8, whether or not any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

G. "Electric and Natural Gas Power Cost Adjustments" shall mean the excess of the collections from the Borrower's electric and gas power adjustments over the Borrower's costs associated with purchases of wholesale power and natural gas.

H. "Event of Default" shall mean any one or more of the events specified in Article 8, provided that any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

I. "GAAP" shall mean generally accepted accounting principles for entities such as the Borrower generally accepted in the United States.

J. "Loan" shall mean the Taxable Revolving Line of Credit subject to this Agreement and as evidenced and set forth in the Loan Documents.

K. "Loan Documents" shall mean this Agreement, the Promissory Note and any other documents, instruments or agreements required by the Bank to be executed and delivered by the Borrower.

L. "Person" shall mean an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, or any other form of entity, as the context may require.

M. "Senior Bonds" shall mean any bonds or other evidences of indebtedness issued by the Borrower pursuant to the Senior Bond Resolution.

N. "Senior Bond Resolution" shall mean Resolution No. U.A. 2022-10, adopted by the Borrower on May 7, 2022, as amended and supplemented.

O. "Taxable Revolving Line of Credit" shall mean the taxable revolving line of credit and the Loan established hereby.

Section 1.02. **Accounting Terms**: All accounting terms not specifically defined herein shall be construed in accordance with GAAP, and all financial and operational data submitted by the Borrower to the Bank pursuant to this Agreement shall be prepared in accordance with such principals.

## **ARTICLE II** **REVOLVING LINE OF CREDIT**

Section 2.01. **The Loan**: The Bank's obligation to extend the Loan under the Promissory Note shall be subject to the terms and conditions of this Agreement. Interest and principal

payments shall be made pursuant to the terms and conditions of the Promissory Note, as may be extended, amended or renewed from time to time. The Bank hereby agrees to establish and extend the Taxable Revolving Line of Credit to the Borrower in the maximum principal sum of Four Million and No/100ths Dollars (\$4,000,000.00). The Taxable Revolving Line of Credit shall be subject to the following additional terms:

A. **Promissory Note:** The indebtedness of the Borrower to the Bank shall be evidenced by a Promissory Note (hereinafter referred to as the "Promissory Note"), of even date herewith executed by the Borrower, in the stated maximum principal sum of Four Million and No/100ths Dollars (\$4,000,000.00).

B. **Principal Payments:** The entire principal sum then outstanding, together with all accrued interest then unpaid, shall be due and payable in full at maturity on January \_\_, 2024, with privilege of prepayment in whole or in part at any time prior to maturity without penalty.

C. **Interest Payments:** Accrued interest shall be due and payable monthly, with the first payment being due and payable on February \_\_, 2023, and with payments being due and payable on the same day of each succeeding month thereafter. Accrued interest shall be calculated on the principal sum outstanding from time to time on a 360-day per annum basis, at a rate equal to Adjusted One Month Term SOFR. The "Adjusted One Month Term SOFR" and related definitions are set forth in the Promissory Note and by this express reference incorporated herein.

D. **Term of Commitment:** The Bank's Commitment under this Agreement shall expire one year from the date of this Agreement.

E. **Attorney's Fees and Costs:** The Promissory Note shall provide that the Borrower shall be liable to the Bank for the payment of all reasonable costs and attorney's fees incurred by the Bank in the Event of Default by the Borrower.

F. **Non-Use Fee:** The Taxable Revolving Line of Credit is subject to a non-use fee equal to 10 basis points if the average utilization for the Loan is less than \$1,000,000.00. The non-use fee will be calculated by the Bank and provided to the Borrower in writing after the final maturity of the Promissory Note and shall be paid by the Borrower within thirty (30) days thereafter.

G. **Term of Line:** The Taxable Revolving Line of Credit shall be represented and evidenced by the Promissory Note and the other Loan Documents. The Bank's obligation to make advances under the Taxable Revolving Line of Credit shall expire one (1) year from the date of this Agreement. The Bank's obligation to make advances under the Taxable Revolving Line of Credit shall be subject to the Borrower's continued banking relationship with the Bank and the continued satisfactory financial condition of the Borrower, in the sole and reasonable judgment of the Bank. Funding under the Taxable Revolving Line of Credit and this Agreement may be extended by the Bank for an additional one (1) year term, at the sole discretion of the Bank, by written notice thereof to the Borrower.

H. **Loan Expiration:** The Borrower acknowledges and agrees that, upon the expiration of the term of this Loan, the Bank is under no obligation to refinance this Loan.

Section 2.02. **Security for the Taxable Revolving Line of Credit:** The obligations under the Taxable Revolving Line of Credit extended by the Bank to the Borrower shall be secured and collateralized solely by a subordinate lien on and pledge of the Electric and Natural Gas Power Cost Adjustments, as provided herein.

Section 2.03. **Utilization of Taxable Revolving Line of Credit Proceeds:** The proceeds of the Taxable Revolving Line of Credit shall be utilized by the Borrower for short- term working capital, and shall not be used for any other purpose without the prior written consent of Bank following underwriting and approval.

### **ARTICLE III** **CONDITIONS PRECEDENT**

Section 3.01. **Conditions Precedent Initial Advance:** The obligation of the Bank to make the initial advance to the Borrower under this Agreement is subject to the Borrower's full and complete satisfaction of the following conditions precedent:

A. **Execution and Delivery of Loan Documents:** The Borrower shall execute and deliver, or cause to be executed and delivered, the following loan documents in a form and substance satisfactory to the Bank, and the Bank's counsel:

1. **Promissory Note** - The Promissory Note executed by the Borrower; and
2. **Evidence of All Necessary Borrower Actions** - Certified copies (dated as of the date of this Agreement) of all actions taken by the Borrower and the City with respect to the transactions contemplated by this Agreement, including, but not limited to, resolutions adopted by the members of the Borrower's and the City's governing bodies, respectively, collectively authorizing the execution, delivery, and performance of the Loan Documents to which the Borrower is a party, and each of the Loan Documents to be delivered pursuant to this Agreement; and;
3. **Certification of Officers and Incumbency Certificate** - A certificate (dated as of the date of this Agreement) executed by the secretary of the Borrower certifying the names and true signatures of the members of the Borrower's governing body, the officers of the Borrower who have been duly authorized to execute the Loan Documents on behalf of the Borrower and the officers of the Borrower who are authorized to request advances of the Loan.
4. **Opinion of Counsel**— An opinion of counsel to the Borrower in form and substance acceptable to the Bank; and
5. **Miscellaneous** - such other documents as the Bank may require the Borrower to execute in connection with the Loan.

B. **Insurance:** Borrower shall procure and maintain insurance as required by the Senior Bond Resolution. The Borrower shall provide Bank proof of insurance, as requested by Bank.

Section 3.02. **Conditions Precedent to Subsequent Advances:** The Bank's obligation under this Agreement to extend additional advances of principal to the Borrower during the term of its Commitment shall be subject to the Borrower's full and complete satisfaction of the following conditions precedent with respect to each requested advance:

A. The representations and warranties contained in Article IV of this Agreement, and the representations and warranties set forth in the Loan Documents are true and correct as of the date of the requested advance; and

B. No Default or Event of Default has occurred and is continuing, or would result from the requested advance; and

C. The Bank shall have received such other approvals, opinions or documents as the Bank may reasonably request.

#### **ARTICLE IV** **WARRANTIES AND REPRESENTATIONS OF THE BORROWER**

The Borrower, with the intent to induce the Bank to enter into this Agreement, and with the intent to induce the Bank to establish and extend to the Borrower the Taxable Revolving Line of Credit in the maximum principal sum of Four Million and No/100ths Dollars (\$4,000,000.00), does hereby represent, covenant and warrant to the Bank as follows:

Section 4.01. **Power and Authority:** The Borrower's execution of this Agreement and the Borrower's performance hereunder have been duly authorized by all necessary action, and shall not violate any provision of law or of the charter of the City, and shall not result in the breach of, or constitute a default under, or, except as provided hereby, result in the creation of any security interest, lien, charge, or other encumbrance upon any property or assets owned by the Borrower, pursuant to any agreement, indenture or other instrument to which the Borrower may be a party.

Section 4.02. **Good Standing and Good Qualification:** The Borrower is a public body corporate and politic in the State of Florida (the "State") duly organized, validly existing and in good standing under the laws of the State, and has the full corporate power and authority to own its assets and to transact the business in which it is now engaged.

Section 4.03. **Financial Condition:** The Borrower is in good and sound financial condition; each and every financial statement given by the Borrower to the Bank in connection with this loan is true and accurate as of the respective date of such statement; and, the Borrower is not in default in the performance of any contractual agreement or any undertaking with any other Person, and are not delinquent in the payment of any financial obligation owing to any Person, and there is no event or condition now existing which may materially adversely affect the Borrower's financial condition, or their business or property.

Section 4.04. **Litigation**: No litigation or other proceedings are pending or, to the Borrower's knowledge, threatened in any court or tribunal, state or federal, which would have a material adverse effect upon (i) the operations or financial condition of the Borrower, or (ii) the transaction contemplated hereby.

Section 4.05. **No Transfer of Ownership, Control or Assets**: The Borrower shall not consent to, permit, or cause to occur, the transfer of ownership or control of the Borrower, or any material assets owned by the Borrower, other than in the ordinary course of business, without the prior written consent of the Bank.

Section 4.06. **Priority of Bank's Security Interest**: The principal of, premium, if any, and interest on the Taxable Revolving Line of Credit shall be payable from and secured solely by a valid and enforceable junior and subordinate (in all respects) lien on and pledge of the Electric and Natural Gas Power Cost Adjustments, in the manner and to the extent described herein.

Section 4.07. **No Judgments or Other Liens**: Except for Bonds issued by the Borrower pursuant to the Senior Bond Resolution and Additional Parity Obligations permitted by the Senior Bond Resolution, the lien and pledge of which on the Electric and Natural Gas Power Cost Adjustments the Bank acknowledges is senior to that of the Bank hereunder, there are no other pledges or liens on the Electric and Natural Gas Power Cost Adjustments.

Section 4.08. **Legally Enforceable Agreement**: This Agreement is, and any other Loan Documents which constitute an agreement or a contract when delivered pursuant to this Agreement, shall constitute the legal, valid and binding obligations of the Borrower, and shall be enforceable against the Borrower, in accordance with their respective terms, except to the extent that enforceability of the rights and remedies set forth therein may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and judicial discretion and the valid exercise of sovereign police power of the State of Florida and of the constitutional power of the United States of America, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law) .

Section 4.09. **Incorporation of Other Covenants, Warranties and Representations**: Each warranty, covenant, and representation made by the Borrower in any other Loan Document is hereby incorporated into this Agreement by this express reference.

## **ARTICLE V** **AFFIRMATIVE COVENANTS**

Until such time as the Borrower's indebtedness to the Bank has been repaid in full, and at any time during which the Bank's Commitment under this Agreement shall be in effect, the Borrower shall:

Section 5.01. **Maintenance of Existence**: Preserve and maintain its existence and good standing as a utility authority created by the City, and not seek to dissolve.

Section 5.02. **Maintenance of Records**: Keep and maintain adequate records and books of account in which complete entries are made in accordance with GAAP consistently applied, reflecting all material financial transactions of the Borrower.

Section 5.03. **Maintenance of Properties**: Maintain, keep and, subject to Section 5.01(E) of the Senior Bond Resolution, preserve all of its properties (tangible and intangible) necessary or useful in the proper conduct of its business, in all material respects, in good working order and condition, ordinary wear and tear accepted.

Section 5.04. **Conduct of Business**: Continue to engage in business in an efficient and economical manner of the same general type as conducted by the Borrower as of the date of this Agreement.

Section 5.05. **Maintenance of Insurance**: Procure and maintain insurance as required by the Senior Bond Resolution.

Section 5.06. **Compliance with Laws**: Comply in all respects with all applicable laws, rules, regulations and orders materially affecting the Borrower or its business operations, including, without limitation, the payment before delinquency of all taxes, assessments and governmental charges imposed upon the Borrower or its property.

Section 5.07. **Bank's Right of Inspection**: At any reasonable time and based on reasonable notice, and from time to time, the Borrower shall permit the Bank, or any agent or representative of the Bank, to examine and make copies of, and abstract from, the records and books of account of the Borrower, and to visit the properties of, the Borrower, and to discuss the affairs, finances and accounts of the Borrower with any of the Borrower's officers and directors, and the Borrower's independent accountants.

Section 5.08. **Deposit Relationship**. Borrower shall maintain its primary depository account relationship with Bank throughout the life of the Loan.

Section 5.09. **Reporting Requirements**: During the term of this Agreement, the Borrower shall furnish or caused to be furnished to the Bank:

A. **Annual Financial Statements**. Borrower shall deliver to Bank, by April 30<sup>th</sup> following the end of the prior fiscal year beginning with its fiscal year ended September 30, 2022, audited financial statements, prepared in conformity with GAAP, applied on a basis consistent with that of the preceding year.

B. RESERVED.

C. **Annual Budget**. Borrower shall deliver to Bank, within 120 days of the commencement of each fiscal year beginning with its fiscal year beginning October 1, 2023, a copy of the Borrower's adopted budget for such fiscal year. Bank hereby acknowledges receipt of the Borrower's budget for its fiscal year beginning October 1, 2022.

D. **Management Letters:** Promptly upon the Borrower's receipt thereof, the Borrower shall deliver to the Bank copies of any management letters submitted to the Borrower by independent certified public accountants in connection with the accountants' review of the Borrower's financial statements; provided, however, the Bank hereby acknowledges and agrees that the Borrower's response to any such management letter is a matter entirely within the discretion of the Borrower.

E. **Notice of Litigation or Claims:** The Borrower shall promptly advise the Bank in writing of any litigation, arbitration, quasi-judicial proceeding, governmental proceeding, or other form of action initiated against the Borrower, and which, if decided adversely to the Borrower in any one case or in the aggregate, may adversely and materially affect the Borrower's financial condition.

F. **Notice of Default or Events of Default:** As soon as possible and in any event within fifteen (15) days after Borrower's awareness of the occurrence of each Default or Event of Default, Borrower shall deliver a written notice to the Bank setting forth the details of each such Default or Event of Default and the action which is proposed to be undertaken by the Borrower with respect thereto.

G. **General Information:** Upon request by the Bank, the Borrower shall provide such other information concerning the Borrower's business or operations, financial or otherwise, which the Bank may reasonably request from time to time. The Borrower shall provide the Bank with a copy of any report of significant event the Borrower is required to file on the MSRB's EMMA web portal pursuant to any "undertaking" of the Borrower with respect to its publicly offered bonds, or any voluntary filing by the Borrower on EMMA.

## **ARTICLE VI** **NEGATIVE COVENANTS**

Until such time as the Borrower's indebtedness to the Bank has been repaid in full, and at any time during which the Bank's Commitment under this Agreement shall be in effect, the Borrower shall not:

Section 6.01. **Liens:** Create, incur, assume or suffer to exist any liens upon or with respect to the Electric and Natural Gas Power Cost Adjustments without the prior written consent of the Bank; provided, however, the Borrower may issue Additional Parity Obligations pursuant to the Senior Bond Resolution without consent of or notice to the Bank.

Section 6.02. **Mergers, Etc.:** Merge or consolidate with, or sell, assign, lease or otherwise dispose of (whether in one transaction or any series of transactions) all or substantially all of the Borrower's assets (whether now owned or hereafter acquired) to any person, corporation, firm or other entity, or acquire all or substantially all of the assets of the business of any person, firm, corporation, or other entity, without the prior written approval of the Bank.

Section 6.03. **Sale of Assets**: Sell, lease, or assign, transfer, or otherwise dispose of, any of its now owned or hereafter acquired material assets, except in accordance with Section 5.01(E) of the Senior Bond Resolution.

Section 6.04. **Limitation on Debt/Extension of Credit**. Borrower shall not, directly or indirectly, create, assume or become liable for any debt, contingent or direct, other than in the ordinary course of business, Additional Parity Obligations incurred pursuant to or in compliance with the Senior Bond Resolution or as otherwise permitted in this Section 6.04. Borrower shall not incur additional debt if the incurrence of such debt would cause the Borrower to fail to meet the requirements of Section 5.01(B) of the Senior Bond Resolution. Additionally, Borrower shall not extend any loans to third parties, other than in the ordinary course of business.

## **ARTICLE VII** **FINANCIAL COVENANTS**

Until such time as the Borrower's indebtedness to the Bank has been repaid in full, and at any time during which the Bank's Commitment under this Agreement shall be in effect:

Section 7.01 **Covenants under Senior Bond Resolution**. Borrower shall comply with the covenants contained in Article V of the Senior Bond Resolution, as the Senior Bond Resolution may be amended or supplemented from time to time hereafter. For purposes of such covenants, the Loan shall be treated as a "junior and subordinate debt service obligation." However, the Bank acknowledges that this Agreement and the Loan Documents are not subject to the Senior Bond Resolution, nor does the Bank have any right or remedy provided to any holder of Bonds under the Senior Bond Resolution.

## **ARTICLE VIII** **EVENTS OF DEFAULT**

Section 8.01. **Events of Default**: Any one or more of the following acts, events, or omissions after expiration of all applicable notice and cure provisions shall constitute an Event of Default by the Borrower under this Agreement:

A. The Borrower's failure to make within ten (10) days of when due any payment of principal and/or interest under the Promissory Note, or any renewal, extension or modification thereof.

B. The Borrower's breach of any covenant, warranty, representation or undertaking set forth in this Agreement, or the occurrence of any Event of Default as specified herein. Any Default, other than those described in Sections 8.01(A), (C), (D) or (G), may be cured within thirty (30) days after written notice thereof is mailed to Borrower by Bank. Borrower's right to cure as set forth herein shall be applicable only to curable Defaults.

C. The Borrower (a) shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as such debts become due; or (b) shall make an assignment for the benefit of creditors, petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it, or a substantial part of its assets; or (c) shall commence any proceedings

under any bankruptcy, reorganization, arrangements, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (d) shall have any such petition or application filed or any such proceedings commenced against it in which an order for relief is entered, or an adjudication or appointment is made, and which remains undismissed for a period of sixty (60) days or more; or, (e) by any act or omission shall indicate its consent to, approval of, or acquiescence in any such petition, application, or proceeding, or order for relief, or to the appointment of a custodian, receiver, trustee, or all or any substantial part of its properties; or, (f) shall suffer any such custodianship, receivership, or trusteeship, to continue undischarged for a period of sixty (60) days or more.

D. The Bank's determination that any material statement, certificate, representation or warranty made or given by the Borrower in connection with the extension of the Taxable Revolving Line of Credit was false, including any warranty or representation contained in this Agreement, or contained in any other agreement or instrument executed by the Borrower in connection with the Taxable Revolving Line of Credit.

E. A default by the Borrower under any other loan, obligation or indebtedness owed to the Bank, whether such loan or obligation or indebtedness, secured or unsecured, now existing or hereafter created, and the same is not cured within five (5) days in the case of a payment default, or ten (10) days, in the case of a non-payment default.

F. The entry of a judgment, decree or order for payment of money against the Borrower which remains unsatisfied and in effect for a period of thirty (30) consecutive days without being vacated, discharged, satisfied, or stayed, or bonded pending appeal, which judgment, decree or order would have a material adverse effect on the financial condition or operations of the Borrower.

G. If this Agreement shall at any time after its execution and delivery, and for any reason, cease (a) to create a valid and enforceable pledge and lien hereunder in the manner and to the extent described herein, or (b) to be in full force and effect, or shall be declared null and void, or the validity and enforceability thereof shall be contested by the Borrower, or the Borrower shall deny it has any further liability or obligation hereunder.

Section 8.02. **Bank's Remedies upon the Occurrence of any Event of Default:** Upon the occurrence of any Event of Default as defined herein, or as defined in any other Loan Document executed by the Borrower in connection with the Taxable Revolving Line of Credit, the Bank may, should it elect to do so, (i) cancel its Commitment and this Agreement and (ii) in the case of an Event of Default specified in Section 8.01(A) only, declare the entire principal balance then outstanding under the Promissory Note, together with all accrued interest then unpaid, to be immediately due and payable, without notice or demand. In such event, except as provided below, the Bank shall have the right to proceed with any and all remedies available to it under the Promissory Note, this Agreement, or any other remedy otherwise available to the Bank. It is expressly agreed and understood that the rights and remedies of the Bank hereunder, or under any other agreement, note or instrument, are cumulative, and are in addition to, and not in lieu of, one another. The Bank may, should it elect to do so, proceed to enforce any one or more of such rights or remedies, and such election on the part of the Bank shall not be deemed an election of remedies, nor a bar to, or a waiver of, the Bank's right to pursue any other right or remedy otherwise available

to it. If an Event of Default occurs prior to the Bank's initial funding under the Promissory Note, the Bank may, should it elect to do so, cancel this transaction.

Notwithstanding any provision of this Agreement, the Promissory Note or applicable law to the contrary, in no event shall the Bank, whether with or without demand or notice to the Borrower, exercise any right to set-off and apply deposits (whether certificates of deposit, demand, general, savings, special, time, or other, and whether provisional or final) held by Bank for the Borrower or any other liabilities or other obligations of the Bank to the Borrower against or to the Promissory Note. By its signature below, the Bank hereby waives any right it may have to set-off and apply such deposits or other liabilities against or to the Promissory Note.

Section 8.03. **Default Rate Of Interest:** Any payment of principal and interest due under the Promissory Note evidencing the Taxable Revolving Line of Credit which is not promptly paid upon the date upon which such payment becomes due shall bear interest at the Past Due Rate referenced in the Promissory Note commencing on the date immediately following the day upon which the payment was due. In the event the Bank elects to cancel this Agreement upon the occurrence of any Event of Default, all sums outstanding under the Promissory Note evidencing the Taxable Revolving Line of Credit shall thereupon immediately bear interest at the Past Due Rate, without notice to the Borrower or any affirmative action or declaration on the part of the Bank.

## **ARTICLE IX** **MISCELLANEOUS PROVISIONS**

Section 9.01. **Promissory Note not Debt of City or Borrower:** The Borrower has no taxing power. Neither the Promissory Note nor the interest thereon shall be or constitute general obligations or indebtedness of the Borrower or the City as "bonds" within the meaning of the Constitution of Florida, but shall be payable from and secured solely by a junior and subordinate (in all respects) lien upon and pledge of the Electric and Natural Gas Power Cost Adjustments as herein provided. The Bank shall never have the right to compel the exercise of the ad valorem taxing power of the City or taxation in any form of any property therein to pay such Promissory Note or the interest thereon or be entitled to payment of such principal and interest from any other funds of the Borrower or the City except from the Electric and Natural Gas Power Cost Adjustments pledged in the manner provided herein. Neither the Promissory Note nor the interest thereon shall have or be a lien upon any property of the Borrower, other than the Electric and Natural Gas Power Cost Adjustments in the manner provided herein, or any property of or located within the boundaries of the City.

Section 9.02. **Incorporation Of Other Agreements:** Each and every of the terms, conditions, warranties, and covenants contained in the Promissory Note and the other Loan Documents executed by the Borrower which secures or otherwise pertains to the Loan, are hereby incorporated into this Agreement by this express reference. In the event any term, covenant, or condition set forth in any other agreement expressly conflicts with a term, covenant, or condition set forth in this Agreement, the terms of this Agreement shall supersede any such expressly conflicting provision set forth in the other Loan Documents.

Section 9.03. **No Waiver:** No delay on the part of the Bank in the exercise of any power or right shall operate as a waiver thereof, nor as an acquiescence to any default, nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right, and rights and remedies of the Bank hereunder are cumulative to, and not exclusive of, any rights or remedies which the Bank would otherwise have.

Section 9.04. **Governing Law:** This Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted and enforced pursuant to the laws of the State of Florida.

Section 9.05. **Borrower to Pay Loan Costs and Expenses:** The Borrower agrees to pay all reasonable costs and expenses incurred by the Bank in connection with the Loan, including, but not limited to, reasonable attorneys' and other charges documented to Borrower.

Section 9.06. **Notices:** Any notice required to be sent by the Bank pursuant to this Agreement or any other Loan Document shall be deemed conclusively delivered and received if hand-delivered or sent certified mail, return receipt requested to the Borrower at the following addresses:

To Borrower: Fort Pierce Utilities Authority  
206 S. 6th Street  
Fort Pierce, FL 34950  
Attention: Barbara Mika  
Director of Financial Administration

Any notice required to be given by the Borrower pursuant to this Agreement or any other Loan Document, shall be deemed conclusively delivered and received if hand-delivered and receipted for or sent by certified mail, return receipt requested to the following addresses:

To Bank: Seacoast National Bank  
Attn: Commercial Loan Department  
P.O. Box 9012  
Stuart, Florida 34995

Section 9.07. **Gender and Number:** As utilized in this Agreement, any words, including pronouns, which indicate the masculine gender shall be construed to include the feminine or neuter, whenever such construction would be appropriate or applicable to any person or thing. Any words, including pronouns, which indicate the singular or plural, shall be construed to include the plural or singular, respectively, whenever such construction would be appropriate.

Section 9.08. **Headings and Captions:** The headings or captions for the articles, sections, paragraphs or subdivisions of this Agreement are utilized for convenience and reference only, and shall not be considered a part hereof, and shall not limit or otherwise affect any of the terms or provisions hereof.

Section 9.09. **Counterparts:** This Agreement may be executed in any number or counterparts and each counterpart shall be deemed to be an original document for all purposes.

Section 9.10. **Attorney's Fees and Costs**: Upon the occurrence of an Event of Default, should the Bank commence legal proceedings to collect the Loan or enforce its rights and remedies under this Agreement, the Borrower shall pay all reasonable costs incurred by the Bank in such proceedings, including, but not limited to, reasonable trial and appellate attorney's fees. Provided, that the Borrower shall not be obligated to pay the Bank's attorney's fees if the Borrower prevails in such legal proceedings or if the Borrower commences and prevails in legal proceedings to enforce the Borrower's rights under this Agreement or the Promissory Note.

Section 9.11. **Severability of Invalid Provisions**: In the event any one or more of the covenants, agreements, terms or provisions set forth in this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, and provisions set forth herein shall in no way be affected, prejudiced or disturbed by such determination, nor shall such provision be invalid as to persons as to whom, or under such circumstances as to which, the application of such provision would not be deemed invalid.

Section 9.12. **Time is of the Essence**: Time shall be of the essence with respect to the performance of any act required to be performed by the Borrower under this Agreement.

Section 9.13. **Further Assurances**: The Borrower agrees to execute such further instruments and documents, consistent with this Agreement, as may be reasonably required by the Bank so as to implement, effectuate or complete the intentions of the parties as expressed in this Agreement.

Section 9.14. **Loan Documents And Funding**: All documentation pertaining to the Loan shall be in a form acceptable to Bank and Bank's counsel who shall prepare the loan documentation. It is expressly agreed and understood that the Bank shall not be obligated to fund the Loan until such time as Bank's counsel determines that all necessary documentation has been properly executed, delivered and filed, and that any and all other matters pertaining to the Loan are satisfactory to Bank.

Section 9.15. **Binding Effect; No Oral Modifications**: This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns, and is not subject to modification other than by a writing duly executed by the party or parties to be charged with such modification

Section 9.16. **No Advisory or Fiduciary Relationship**: In connection with the Borrower's delivery of the Promissory Note, and all aspects of each transaction contemplated hereunder (including in connection with any amendment, waiver or other modification hereof), the Borrower acknowledges and agrees, that: (a) (i) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, (ii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby, (iii) the Bank is not acting as a municipal advisor or financial advisor to the Borrower, and (iv) the Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act to the Borrower with respect to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank has

provided other services or is currently providing other services to the Borrower on other matters); (b) (i) the Bank is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Borrower or any other person and (ii) the Bank has no obligation to the Borrower with respect to the transactions contemplated hereby except those obligations expressly set forth herein; and (c) the Bank may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, and the Bank has no obligation to disclose any of such interests to the Borrower. The Borrower acknowledges that the Bank is accepting the Promissory Note pursuant to and in reliance upon the bank exemption and/or the institutional buyer exemption provided under the municipal advisor rules of the Securities and Exchange Commission, Rule 15Ba1-1 *et seq*, to the extent that such rules apply to the transactions contemplated hereunder.

**(SIGNATURES APPEAR ON FOLLOWING PAGE)**

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seal the date first set forth above.

Borrower:

**FORT PIERCE UTILITIES AUTHORITY OF  
THE CITY OF FORT PIERCE, FLORIDA**

(SEAL)

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Director of Utilities

ATTESTED:

\_\_\_\_\_  
Secretary

Bank:

**SEACOAST NATIONAL BANK**

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

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

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