

**REVOLVING PROMISSORY NOTE**

Not to Exceed \$4,000,000.00

January \_\_, 2023

**FOR VALUE RECEIVED, 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 ("**Borrower**"), hereby promises to pay to the order of **SEACOAST NATIONAL BANK**, a national banking association (together with any and all of its successors and assigns and/or any other or future holder of this Note, "**Lender**"), in immediately available funds in lawful money of the United States of America, at P.O. Box 9012, Stuart, FL 34995, Attn: Commercial Loan Department, **the principal sum of FOUR MILLION and No/100 Dollars (\$4,000,000.00)** (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Revolving Promissory Note (this "**Note**") from day to day outstanding as hereinafter provided.

**THIS NOTE EVIDENCES A TAXABLE REVOLVING LOAN. SUBJECT TO THE TERMS AND CONDITIONS OF THIS NOTE AND THE LOAN AGREEMENT (AS HEREINAFTER DEFINED), BORROWER MAY BORROW, REPAY AND REBORROW THE PRINCIPAL SUMS DUE UNDER THIS NOTE FROM TIME TO TIME, AND THIS NOTE SHALL REMAIN IN EFFECT AND EVIDENCE SUCH ADVANCES AND RE-ADVANCES HEREUNDER; PROVIDED, HOWEVER, THAT THE AGGREGATE PRINCIPAL AMOUNT OUTSTANDING HEREUNDER AT ANY ONE TIME SHALL NOT EXCEED \$4,000,000.00.**

**Section 1. Payment Schedule and Maturity Date.**

Prior to maturity, accrued and unpaid interest shall be due and payable in arrears on the [REDACTED] ([REDACTED]) day of each month commencing on February [REDACTED], 2023. The entire principal balance of this Note then unpaid, together with all accrued and unpaid interest and all other amounts payable hereunder and under the other "Loan Documents" (as hereinafter defined), shall be due and payable in full on January [REDACTED], 2024 (the "**Maturity Date**"), the final maturity of this Note.

**Section 2. Security; Loan Documents.** The security for this Note includes a Taxable Revolving Loan Agreement between Borrower and Lender of even date herewith (as the same may from time to time be amended, restated, modified or supplemented, the "**Loan Agreement**"), pledging and granting a lien in favor of the Lender in the Electric and Natural Gas Power Cost Adjustments (as defined in the Loan Agreement), in the manner and to the extent provided in the Loan Agreement (the "**Pledged Revenues**"). This Note, the Loan Agreement and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "**Loan**"), as the same may from time to time be amended, restated, modified or supplemented, are herein sometimes called individually a "**Loan Document**" and together the "**Loan Documents.**"

### Section 3. Interest Rate.

#### INTEREST ON THIS NOTE IS NOT EXCLUDABLE FROM GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES.

(a) Adjusted One Month Term SOFR Rate. Interest on the outstanding principal balance of, and all other sums owing under this Note, which are not past due shall accrue and be payable at a rate which is equal to the Adjusted One Month Term SOFR Rate as determined by Lender prior to the commencement of each Interest Period. Interest shall be computed for the actual number of days which have elapsed, on the basis of a 360-day year.

(b) Alternative Rate. If Lender determines that no adequate basis exists for determining the One Month Term SOFR Rate, the One Month Term SOFR Rate is no longer available or reliable (whether by the issuance of a public statement by the Term SOFR Administrator or any relevant governmental body or otherwise), or that applicable Law or regulation or compliance therewith by Lender prohibits or restricts or makes impossible the charging of interest based on the One Month Term SOFR Rate, whether temporary, permanently, or indefinitely (a “Replacement Event”), then Lender may, in its sole discretion, establish a new index to replace the One Month Term SOFR Rate. Upon a Replacement Event, this Note shall be amended such that the One Month Term SOFR Rate shall be replaced with a replacement benchmark rate or index as determined by Lender, in Lender's sole discretion, which may be adjusted by Lender to include an additional spread or margin (which may be a positive or negative value, or zero) (as so adjusted, the “Replacement Index”), such that when the original spread or margin (over the One Month Term SOFR Rate) used in determining the original rate of interest under this Note is added to the Replacement Index, the new rate of interest pursuant to this Note will be substantially equivalent to the original rate of interest pursuant to this Note in effect for periods prior to the Replacement Event, all as determined by Lender. In determining the Replacement Index, Lender may take into consideration any then-prevailing market convention for selecting a replacement benchmark rate and accompanying spread or margin for the Replacement Index. The replacement of the One Month Term SOFR Rate with the Replacement Index shall be operative immediately upon the Replacement Event without any action or consent of Borrower. Lender will notify Borrower in writing (a “Transition Notice”) setting forth the Replacement Index, the new applicable rate, the date of the Replacement Event, and the manner in which the applicable rate will be periodically reset (based on such time periods as Lender determines in Lender’s discretion) based upon changes in the Replacement Index.

In addition, if the Lender determines that the One Month Term SOFR Rate is no longer representative (whether by the issuance of a public statement by the Term SOFR Administrator or any relevant governmental body or otherwise) or the One Month Term SOFR Rate does not adequately and fairly reflect the cost to Lender of funding the loan to Borrower as evidenced by this Note, the Lender must give not less than thirty (30) days’ notice with sufficient detail to reasonably explain its determination to the Borrower, including an exact calculation with full supporting information of the Replacement Index and the spread or margin proposed to be added thereto or subtracted therefrom. Borrower shall have fifteen (15) days to respond or comment on Lender’s notice of the same and Lender shall use reasonable efforts to address or incorporate the comments or response of Borrower in its ultimate action, including, without limitation, recalculating the spread or margin to be added to or subtracted from the Replacement Index.

(c) **Past Due Rate.** If any amount payable by Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), such amount shall thereafter bear interest at the Past Due Rate (as defined below) to the fullest extent permitted by applicable Law. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable on demand, at a fluctuating rate per annum (the "**Past Due Rate**") equal to the lesser of: (i) fifteen (15%) percent per annum; or (ii) the highest non-usurious rate permitted under applicable law.

(d) **Additional Defined Terms.** In addition to other terms defined herein, as used herein the following terms shall have the meanings indicated, unless the context otherwise requires:

**"Adjusted One Month Term SOFR Rate"** for each Interest Period, a simple rate per annum equal to the sum of the Term SOFR Margin plus the One Month Term SOFR Rate; provided that, if such Adjusted One Month Term SOFR Rate would be less than the Floor Rate, such Adjusted One Month Term SOFR Rate will be deemed to be the Floor Rate for the purposes of this Note and the other Loan Documents

**"Floor Rate"** means the interest rate of 2.25% per annum.

**"Interest Period"** means the period commencing on the date the initial funds are disbursed under this Note and ending on the date one (1) month thereafter and thereafter commencing on the last day of the preceding Interest Period and ending on the date one month thereafter, provided each Interest Period must commence on a Business Day.

**"Laws"** means all constitutions, treaties, statutes, laws, ordinances, regulations, rules, orders, writs, injunctions, or decrees of the United States of America, any state or commonwealth, any municipality, any foreign country, any territory or possession, or any Tribunal.

**"One Month Term SOFR Rate"** means, with respect to each Interest Period, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "**Term SOFR Determination Day**") that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and an alternative rate to has not been implemented by Lender pursuant to subparagraph (b) above with respect to the One Month Term SOFR Rate, then the One Month Term SOFR Rate will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding Business Day is not more than three (3) Business Days prior to such Term SOFR Determination Day. Notwithstanding the foregoing, if at any time the One Month Term SOFR Rate or the Replacement Index (as defined in Section 3(b) above, whichever is then applicable, is less than zero, then during such time the One Month Term SOFR Rate or the Replacement Index, as applicable, shall be deemed to be zero for purposes of the applicable rate. The foregoing provision shall not in any way alter, modify, replace or otherwise

affect any minimum interest rate (howsoever described) otherwise applicable to or provided for in this Note or any related Loan Document.

“**SOFR**” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Lender in its sole discretion

“**Term SOFR Margin**” means fifty (50) basis points.

“**Term SOFR Reference Rate**” shall mean the forward-looking term rate based on SOFR.

“**Tribunal**” means any state, commonwealth, federal, foreign, territorial or other court or governmental department, commission, board, bureau, district, authority, agency, central bank, or instrumentality, or any arbitration authority.

“**U.S. Government Securities Business Day**” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

**Section 4. Prepayment.** Borrower may prepay the principal balance of this Note, in full or in part at any time from time to time, without fee, premium or penalty, provided that: (a) Lender shall have actually received from Borrower prior written notice of (i) Borrower's intent to prepay, (ii) the amount of principal which will be prepaid (the “**Prepaid Principal**”), and (iii) the date on which the prepayment will be made; (b) each prepayment shall be in the amount of \$1,000 or a larger integral multiple of \$1,000 (unless the prepayment retires the outstanding balance of this Note in full); and (c) each prepayment shall be in the amount of 100% of the Prepaid Principal, plus accrued unpaid interest thereon to the date of prepayment, plus any other sums which have become due to Lender under the Loan Documents on or before the date of prepayment but have not been paid.

**Section 5. Late Charges.** If Borrower shall fail to make any payment under the terms of this Note (other than the payment due at maturity) within ten (10) days after the date such payment is due, Borrower shall pay to Lender on demand a late charge equal to five percent (5%) of the amount of such payment. Such ten (10) day period shall not be construed as in any way extending the due date of any payment. The late charge is imposed for the purpose of defraying the expenses of Lender incident to handling such delinquent payment. This charge shall be in addition to, and not in lieu of, any other amount that Lender may be entitled to receive or action that Lender may be authorized to take as a result of such late payment.

**Section 6. Certain Provisions Regarding Payments.** All payments made under this Note shall be applied, to the extent thereof, to late charges, to accrued but unpaid interest, to unpaid

principal, and to any other sums due and unpaid to Lender under the Loan Documents, in such manner and order as Lender may elect in its sole discretion, any instructions from Borrower or anyone else to the contrary notwithstanding. Remittances shall be made without offset, demand, counterclaim, deduction, or recoupment (each of which is hereby waived) and shall be accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due on any indebtedness shall be deemed an acceptance on account only, notwithstanding any notation on or accompanying such partial payment to the contrary, and shall not in any way: (a) waive or excuse the existence of an "Event of Default" (as defined below); (b) waive, impair or extinguish any right or remedy available to Lender hereunder or under the other Loan Documents; or (c) waive the requirement of punctual payment and performance or constitute a novation in any respect. Payments received after 4:00 p.m. shall be deemed to be received on, and shall be posted as of, the following Business Day. Whenever any payment under this Note or any other Loan Document falls due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day.

**Section 7. Events of Default.** Reference is hereby made to the Loan Agreement for the rights and remedies of the Lender upon the occurrence of an Event of Default, as defined therein.

**Section 8. Costs and Expenses of Enforcement.** Borrower agrees to pay to Lender on demand all reasonable costs and expenses incurred by Lender in seeking to collect this Note or to enforce any of Lender's rights and remedies under the Loan Documents, including court costs and reasonable attorneys' fees and expenses, whether or not suit is filed hereon, or whether in connection with bankruptcy, insolvency or appeal.

**Section 9. Service of Process.** Borrower hereby consents to process being served in any suit, action, or proceeding instituted in connection with this Note by (a) the mailing of a copy thereof by certified mail, postage prepaid, return receipt requested, to Borrower and (b) serving a copy thereof upon the Chairman or his or her designee, the agent hereby designated and appointed by Borrower as Borrower's agent for service of process. Borrower irrevocably agrees that such service shall be deemed to be service of process upon Borrower in any such suit, action, or proceeding. Nothing in this Note shall affect the right of Lender to serve process in any manner otherwise permitted by law and nothing in this Note will limit the right of Lender otherwise to bring proceedings against Borrower in the courts of any jurisdiction or jurisdictions, subject to any provision or agreement for arbitration or dispute resolution set forth in the Loan Agreement.

**Section 10. Successors and Assigns.** The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents. By acceptance of this Note, Lender agrees not to assign the Loan except in whole and only to a Permitted Lender. "Permitted Lender" means any affiliate of the Lender, any bank, trust company, savings institution, insurance company or "qualified institutional buyer" under Rule 144A promulgated under the Securities Act of 1933, or any "accredited investor" (as defined in Rule 501 of Regulation D under the Securities Act of 1933, as amended). Any assignee of the Lender or the Borrower (if permitted by the Loan Documents) shall be bound by all of the terms of the Loan Documents.

**Section 11. General Provisions.** Time is of the essence with respect to Borrower's obligations under this Note, subject to any cure periods provided. Borrower hereby: (a) waives demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), in collecting this Note or enforcing any of the security herefor; (b) agrees that, except as required in the Loan Documents, Lender shall not be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (c) consents to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof; (d) submits (and waives all rights to object) to non-exclusive jurisdiction of any state or federal court sitting in the state and county in which payment of this Note is to be made for the enforcement of any and all obligations under this Note and the other Loan Documents; (e) agrees that their liability under this Note shall not be affected or impaired by any determination that the pledging of the Pledged Revenues is invalid; and (f) subordinates to the Loan and the Loan Documents any and all rights against Borrower and any security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. This Note and its validity, enforcement and interpretation shall be governed by the laws of the State of Florida (without regard to any principles of conflicts of laws) and applicable United States federal law. Whenever a time of day is referred to herein, unless otherwise specified such time shall be the local time of the place where payment of this Note is to be made. Except as otherwise provided herein, the term "**Business Day**" shall mean a day on which Lender is open for the conduct of substantially all of its banking business at its office in the city in which this Note is payable (excluding Saturdays and Sundays). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement. The words "include" and "including" shall be interpreted as if followed by the words "without limitation."

**Section 12. Notices.** Any notice, request, or demand to or upon Borrower or Lender shall be deemed to have been properly given or made when delivered in accordance with the terms of the Loan Agreement regarding notices.

**Section 13. No Usury.** It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. If applicable state or federal law should at any time be judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Lender's exercise of the option to accelerate the Maturity Date, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of this Note and all other

indebtedness secured by the Loan Agreement, and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use or forbearance of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan (the "**Maximum Rate**") for so long as the Loan is outstanding.

**Section 14. Note Not Debt of City of Fort Pierce or Borrower:** The Borrower has no taxing power. Neither this 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. The Lender 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 this 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 in the Loan Agreement. Neither this 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 in the Loan Agreement, or any property of or located within the boundaries of the City.

**Section 15. Additional Provisions.**

**(a) THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

**(b) THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.**

**(c) BORROWER AND LENDER, BY ACCEPTANCE OF THIS NOTE, WAIVE TRIAL BY JURY IN RESPECT OF ANY DISPUTE AND ANY ACTION ON DISPUTE RELATING HERETO. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER AND LENDER, AND BORROWER AND LENDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE**

**REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

**(END OF PAGE/SIGNATURE PAGE TO FOLLOW)**

**IN WITNESS WHEREOF**, Borrower has duly executed this Note under seal as of the date first above written.

**BORROWER:**

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

(SEAL)

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Chairman

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Director of Utilities

ATTESTED:

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Secretary