

**CITY OF SANIBEL  
RESOLUTION 23-008**

**A RESOLUTION AUTHORIZING THE ISSUANCE OF ITS CITY OF SANIBEL, FLORIDA TAXABLE LINE OF CREDIT NOTE, SERIES 2023, IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$20,000,000 TO REIMBURSE AND FUND DISASTER RELATED RECOVERY PROJECTS; PROVIDING THAT THE NOTE SHALL BE A LIMITED OBLIGATION OF THE CITY SECURED BY AND PAYABLE FROM NON-AD VALOREM REVENUES BUDGETED, APPROPRIATED AND DEPOSITED AS PROVIDED HEREIN; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANIBEL, LEE COUNTY, FLORIDA:**

**SECTION 1: AUTHORITY FOR THIS RESOLUTION.** This Resolution is adopted pursuant to Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Part II, Florida Statutes, the municipal charter of the Issuer and other applicable provisions of law (collectively, the "Act").

**SECTION 2: DEFINITIONS.** The following words and phrases shall have the following meanings when used herein:

*"Ad Valorem Revenues"* means all revenues of the Issuer derived from the levy and collection of ad valorem taxes that are allocated to and accounted for in the General Fund.

*"Adjusted General Government and Public Safety Expenditures"* means (i) General Government and Public Safety Expenditures, less (ii) General Government and Public Safety Expenditures which are paid from Ad Valorem Revenues.

*"Available Non-Ad Valorem Revenues"* means Non-Ad Valorem Revenues less Adjusted General Government and Public Safety Expenditures. The amount of the Available Non-Ad Valorem Revenues for the fiscal year ended September 30, 2022 is shown on Exhibit E hereto.

*"Business Day"* shall mean (a) with respect to Daily Simple SOFR, for the limited purpose of determining Daily Simple SOFR (but, for the avoidance of doubt, not for the determination of Interest Payment Dates, or for any purpose other than determining Daily Simple SOFR), any day that commercial banks in New York, New York are required by law to be open for business and that is a U.S. Government Securities Business Day, (b) with respect to Term SOFR, for purposes of all notices, determinations and payments (including Interest Payment Dates) in connection therewith, any day that commercial banks in New York, New York are required by law to be open for business and that is a U.S. Government Securities Business Day, and (c) for all other purposes (including, without limitation, the determination of Interest Payment Dates in respect of Daily Simple SOFR), any day on which commercial banks in New York, New York or Cincinnati, Ohio are required by law to be open for business; *provided* that, notwithstanding anything to the contrary in this definition of "Business Day", at any time during which a Rate Management Agreement (as such term is defined in the Note) is then in effect with respect to all or a portion of the Note, then the definitions of "Business Day" and "Banking Day", as applicable, pursuant to such Rate Management Agreement shall govern with respect to all applicable notices and determinations in connection with such portion of the Note subject to such Rate Management

Agreement. Periods of days referred to herein and in the Note will be counted in calendar days unless Business Days are expressly prescribed.

*"Chief Financial Officer"* means the Chief Financial Officer of the Issuer or the Deputy City Manager/Chief Financial Officer of the Issuer, as the case may be, or such other person as may be duly authorized by the City Manager of the Issuer to act on his or her behalf.

*"City Attorney"* means the City Attorney or assistant City Attorney of the Issuer, or any special counsel appointed by the City Council of the Issuer.

*"City Manager"* means the City Manager of the Issuer, or deputy, interim or acting City Manager of the Issuer.

*"Clerk"* means the City Clerk or assistant City Clerk of the Issuer, or such other person as may be duly authorized by the City Council of the Issuer to act on his or her behalf.

*"General Fund"* means the "General Fund" of the Issuer as described and identified in the Comprehensive Annual Financial Report of the Issuer.

*"General Government and Public Safety Expenditures"* means general governmental and public safety services provided by the Issuer in the General Fund, the expenditures for which are currently set forth as the line items entitled "General Government," and "Public Safety" on the Statement of Revenues Expenditures and Changes in Fund Balances, Governmental Funds, in the Issuer's Comprehensive Annual Financial Report for the Fiscal Year ended September 30, 2022, and any equivalent line items in any future financial statements of the Issuer.

*"Issuer"* means the City of Sanibel, Florida.

*"Lender"* shall mean Fifth Third Bank, National Association, and its successors and assigns.

*"Maturity Date"* means the date so defined in the delivered Note which date is not later than three years from the Note issue date.

*"Maximum Principal Amount"* shall mean Twenty Million Dollars (\$20,000,000).

*"Mayor"* means the Mayor of the Issuer, or in his or her absence or inability to act, the Vice Mayor of the Issuer or such other person as may be duly authorized by the City Council to act on his or her behalf.

*"Non-Ad Valorem Revenues"* means all revenues of the Issuer other than Ad Valorem Revenues, and which are lawfully available to be used to pay debt service on the Note.

*"Note"* means the Note of the Issuer authorized by Section 4 hereof.

*"Owner" or "Owners"* means the Person or Persons in whose name or names the Note shall be registered on the books of the Issuer kept for that purpose in accordance with provisions of this Resolution.

*"Person"* means natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies.

*"Pledged Revenues"* means the Non-Ad Valorem Revenues budgeted, appropriated and deposited as provided herein.

*"Principal Office"* means, with respect to the Lender, the office located at 1221 Brickell Avenue, Suite 1660, Miami, Florida 33131, or such other office as the Lender or future Owners may designate to the Issuer in writing.

*"Project"* means disaster related recovery projects related to Hurricane Ian and/or other natural disasters, including debris clean-up and other operating expenses related thereto.

*"Requisition"* means a written request for disbursement from the Maximum Principal Amount of the Note signed by the Chief Financial Officer in the form attached hereto as Exhibit D.

*"Resolution"* means this Resolution, pursuant to which the Note is authorized to be issued, including any Supplemental Resolution(s).

*"State"* means the State of Florida.

### **SECTION 3: FINDINGS.**

(A) For the benefit of its citizens, the Issuer finds, determines, and declares that it is necessary for the continued preservation of the health, welfare, convenience and safety of the Issuer and its citizens to undertake the Project. Issuance of the Note to finance the Project satisfies a public purpose.

(B) The Issuer is authorized pursuant to the Act generally, and pursuant to Section 166.111, Florida Statutes in particular, to issue bonds or notes to finance the undertaking of any capital or other project.

(C) The City Council of the Issuer finds and determines that any operating expenses associated with the Project is the undertaking of an "other project" as contemplated by the Act.

(D) Debt service on the Note will be secured by the Issuer's covenant to budget and appropriate Non-Ad Valorem Revenues and by a pledge of the Pledged Revenues as provided herein.

(E) Debt service on the Note and all other payments hereunder shall be payable solely from moneys deposited in the manner and to the extent provided herein. The Issuer shall never be required to levy ad valorem taxes or use the proceeds thereof to pay debt service on the Note or to make any other payments to be made hereunder or to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or any other Non-Ad Valorem Revenues. The Note shall not constitute a lien on any property owned by or situated within the limits of the Issuer other than the Pledged Revenues.

(F) It is estimated that the Non-Ad Valorem Revenues will be available after satisfying funding requirements for obligations having an express lien on or pledge thereof and after satisfying funding requirements for essential governmental services of the Issuer, in amounts sufficient to provide for the payment of the principal of and interest on Note and all other payment obligations hereunder.

(G) The Issuer, after soliciting proposals in response to a request for loan proposals distributed by the Issuer on November 29, 2022 and receiving multiple responses complying with the structure described in such request, has selected the Lender to purchase the Note.

(H) Debt service on the Issuer's Capital Improvement Revenue Note, Series 2020 is also secured by a covenant to budget and appropriate legally available non-ad valorem revenues of the Issuer, in the manner and to the extent described in that certain Loan Agreement dated

June 1, 2020 by and among the Issuer, Sterling National Bank and the Florida Municipal Loan Council.

**SECTION 4: AUTHORIZATION OF NOTE.** Subject and pursuant to the provisions of this Resolution, an obligation of the Issuer to be known as City of Sanibel, Florida Taxable Line of Credit Note, Series 2023 is hereby authorized to be issued under and secured by this Resolution, in the principal amount of not to exceed \$20,000,000 for the purpose of providing funds to finance the Project and pay the costs of issuing the Note.

Because of the draw-down and variable interest rate characteristics of the Note and prevailing market conditions, it is in the best interest of the Issuer to accept the offer of the Lender to purchase the Note at a private negotiated sale. Prior to the issuance of the Note, the Issuer shall receive from the Lender a Lender's Certificate, the form of which is attached hereto as Exhibit B and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit C.

In consideration of the purchase and acceptance of the Note authorized to be issued hereunder by those who shall be the Owner thereof from time to time, this Resolution shall constitute a contract between the Issuer and the Lender and any subsequent Owner.

**SECTION 5: DESCRIPTION OF THE NOTE.** The Note shall be dated the date of its execution and delivery, which shall be a date agreed upon by the Issuer and the Lender, subject to the following terms:

(A) **Form of the Note.** The Note is to be in substantially the form set forth in Exhibit A attached hereto, together with such non-material changes as shall be approved by the Mayor and the City Manager, such approval to be conclusively evidenced by the execution thereof by the Mayor and the City Manager.

(B) **Interest Rate.** The Note shall bear interest at a variable rate as described in the Note, the form of which is attached hereto as Exhibit A (subject to adjustment upon the occurrence of certain events as provided in the Note).

(C) **Principal and Interest Payment Dates.** The entire drawn but unpaid principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on the Maturity Date. Interest on the Note shall be paid monthly on the first Business Day of each month, commencing April 1, 2023.

(D) **Prepayment of the Note.** The Note shall be subject to prepayment as described in the Note. No presentment or delivery shall be required for prepayment or principal installments payments on the Note.

(E) **Amount of the Note.** The outstanding principal of the Note shall be increased by the amount advanced by the Owner upon each Requisition, provided, however, the principal amount available to be drawn on the Note shall not exceed the Maximum Principal Amount. Unless an Event of Default has occurred and not been cured, amounts advanced (each an "Advance") under the Note shall be made upon receipt of a Requisition no more often than once per month, unless the Owner in its sole discretion agrees to more advances, and in minimum amounts of \$100,000 and any increment of \$0.01 in excess thereof, unless the Owner in its sole discretion agrees to a different amount, and provided that the initial advance and the final advance hereunder may be for any amount. The Owner shall make each Advance to the Issuer in immediately available funds by deposit into such account or accounts as shall be specified in the Requisition. An amount that has been advanced under the Note and then repaid shall not be again advanced under the Note. No Advance can be made after February 1, 2025.

(F) **Security for the Note.** The Note shall be secured by a pledge of the Pledged Revenues, which is hereby pledged to the repayment of the Note.

**SECTION 6: EXECUTION; REGISTRATION AND EXCHANGE OF NOTE; PERSONS TREATED AS OWNERS.** The Note shall be signed by the Mayor and the City Manager, shall be attested by the Clerk, and shall be approved as to form and correctness by the City Attorney. The official seal of the City shall be imprinted on the Note. In case any one or more of the officers who shall have signed or sealed the Note or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Note so signed and sealed has been actually sold and delivered, the Note may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed the Note had not ceased to hold such office. The Note may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of the Note shall hold the proper office of the Issuer, although, at the date of the Note, such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such offices at any time after the date of the adoption of this Resolution, notwithstanding that either or both shall have ceased to hold such office at the time the Note shall be actually sold and delivered.

The Note is initially registered to the Lender. So long as the Note shall remain unpaid, the Issuer will keep books for the registration and transfer of the Note. The Note is issued in a single denomination equal to the principal amount due under the Note and may not be transferred except in whole. Further, the Registered Owner may assign a portion of the Note and the payments thereunder through the syndication of the Note represented hereby to another institutional "accredited investor", within the meaning of Chapter 517, Florida Statutes, and the rules of the Florida Department of Financial Services promulgated thereunder, and within the meaning of Rule 501(a) of Regulation D under the Securities Act of 1933, as amended.

The Person in whose name the Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal and interest on the Note shall be made only to or upon the written order of the Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note to the extent of the sum or sums so paid.

**SECTION 7: PAYMENT OF PRINCIPAL AND INTEREST; LIMITED OBLIGATION.** The Issuer promises that it will promptly pay the principal of and interest on the Note at the place, on the dates and in the manner provided therein according to the true intent and meaning hereof and thereof. The Note shall not be or constitute a general obligation or indebtedness of the Issuer as a "bond" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable from and secured solely by the Pledged Revenues in accordance with the terms hereof. No holder of the Note issued hereunder shall ever have the right to compel the exercise of any ad valorem taxing power or taxation of any real or personal property thereon or the use or application of ad valorem tax revenues to pay the Note, or be entitled to payment of the Note from any funds of the Issuer except from the Pledged Revenues as described herein.

**SECTION 8: COVENANT TO BUDGET AND APPROPRIATE.** (A) Subject to the next paragraph, the Issuer covenants and agrees and has a positive and affirmative duty to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues, and to deposit into the Debt Service Fund hereinafter created, amounts sufficient to pay principal of and interest on the Note and all other payments due hereunder not being paid from other amounts as the same shall become due. Such covenant and agreement on the part of the Issuer to budget, appropriate and deposit such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated, deposited and actually paid. No lien upon or pledge of such budgeted Non-Ad

Valorem Revenues shall be in effect until such monies are budgeted, appropriated and deposited as provided herein. The Issuer further acknowledges and agrees that the obligations of the Issuer to include the amount of such amendments in each of its annual budgets and to pay such amounts from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein.

Until such monies are budgeted, appropriated and deposited as provided herein, such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor, except as provided in Section 15 hereof, does it preclude the Issuer from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Issuer to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the holder of the Note a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the Issuer. Such covenant to budget and appropriate Non-Ad Valorem Revenues is subject in all respects to the prior payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). Anything in this Resolution to the contrary notwithstanding, it is understood and agreed that all obligations of the Issuer hereunder shall be payable from the portion of Non-Ad Valorem Revenues budgeted, appropriated and deposited as provided for herein and nothing herein shall be deemed to pledge ad valorem tax power or ad valorem taxing revenues or to permit or constitute a mortgage or lien upon any assets owned by the Issuer and no holder of the Note nor any other Person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer or the use or application of ad valorem tax revenues in order to satisfy any payment obligations hereunder. The obligation of the Issuer to budget, appropriate, deposit and make payments hereunder from its Non-Ad Valorem Revenues is subject to the availability of Non-Ad Valorem Revenues after the satisfaction of the funding requirements for obligations having an express lien on or pledge of such revenues and the funding requirements for essential governmental services of the Issuer. Notwithstanding any provisions of this Resolution or the Note to the contrary, the Issuer shall never be obligated to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. Until such monies are budgeted, appropriated and deposited as provided herein, neither this Resolution nor the obligations of the Issuer hereunder shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the Issuer, but shall be payable solely as provided herein and is subject to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Issuer and is further subject to the provisions of Section 166.241, Florida Statutes insofar as there are not sufficient Non-Ad Valorem Revenues in the General Fund to comply with such covenant after the satisfaction of the funding requirements for obligations having an express lien on or pledge of such revenues and the funding requirements for essential governmental services of the Issuer.

There is hereby created and established the "City of Sanibel, Florida Taxable Line of Credit Note, Series 2023 Debt Service Fund," which fund shall be a trust fund of the Issuer, which shall be held solely for the benefit of the holder of the Note. The Debt Service Fund shall be deemed to be held in trust for the purposes provided herein for such Debt Service Fund. The money in such Debt Service Fund shall be continuously secured in the same manner as state and municipal deposits are authorized to be secured by the laws of the State of Florida. The designation and establishment of the Debt Service Fund in and by this Resolution shall not be construed to require the establishment of a completely independent, self-balancing fund as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues and assets of the Issuer for certain purposes and to establish certain priorities for application of such revenues and assets as herein provided. The Issuer may at any time and from time to time appoint one or more depositaries to hold, for the benefit of the Owner of the Note, the Debt Service Fund established hereby. Such depository or depositaries shall perform at the direction of the Issuer the duties of the Issuer in depositing, transferring and disbursing moneys to and from such Debt Service Fund as herein set forth, and

all records of such depository in performing such duties shall be open at all reasonable times to inspection by the Issuer and its agent and employees. Any such depository shall be a bank or trust company duly authorized to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and having a combined capital, surplus and undivided profits aggregating not less than fifty million dollars (\$50,000,000).

(B) Until applied in accordance with this Resolution, the Non-Ad Valorem Revenues of the Issuer on deposit in the Debt Service Fund and other amounts on deposit from time to time in the funds and accounts established herein, plus any earnings thereon, shall be pledged to the repayment of the Note.

**SECTION 9: AMENDMENT.** This Resolution shall not be modified or amended in any respect subsequent to the issuance of the Note except with the written consent of all of the Owners of the Note.

**SECTION 10: LIMITATION OF RIGHTS.** With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Note is intended or shall be construed to give to any Person other than the Issuer and the Owner any legal or equitable right, remedy or claim under or with respect to this Resolution or any covenants, conditions and provisions herein contained; this Resolution and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Owner.

**SECTION 11: NOTE MUTILATED, DESTROYED, STOLEN OR LOST.** In case the Note shall become mutilated, or be destroyed, stolen or lost, the Issuer shall issue and deliver a new Note of like tenor as the Note so mutilated, destroyed, stolen or lost, in exchange and in substitution for the mutilated Note, or in lieu of and in substitution for the Note destroyed, stolen or lost and upon the Owner furnishing the Issuer proof of ownership thereof and indemnity reasonably satisfactory to the Issuer and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur. The Note so surrendered shall be canceled.

**SECTION 12: IMPAIRMENT OF CONTRACT.** The Issuer covenants with the Owner of the Note that it will not, without the written consent of the Owner of the Note, enact any ordinance or adopt any resolution which repeals, impairs or amends in any manner adverse to the Owner the rights granted to the Owner of the Note hereunder.

**SECTION 13: BUDGET AND FINANCIAL INFORMATION; OTHER COVENANTS.**

(A) At no cost to the Owner, while the Note remains outstanding, the Issuer shall provide the Owner such information it may reasonably request. At no cost to the Owner, while the Note remains outstanding, the Issuer shall provide the Owner of the Note with a copy of its annual budget within 60 days of the commencement of each fiscal year of the Issuer. At no cost to the Owner, while the Note remains outstanding, the Issuer shall provide the Owner of the Note with annual financial statements for each fiscal year of the Issuer when available and in no event later than 270 days after the close of such fiscal year, prepared in accordance with applicable law and generally accepted accounting principles and audited by an independent certified public accountant and accompanied by an audit opinion of such accountant without qualification. All accounting terms not specifically defined or specified herein shall have the meanings attributed to such terms under generally accepted accounting principles as in effect from time to time, consistently applied.

(B) While the Note remains outstanding, the Issuer agrees that (i) any and all records of the Issuer shall be open to inspection by the Owner or its representatives at all reasonable times at the office of the Issuer, (ii) the Issuer shall maintain such liability, casualty, and other

insurance as is reasonable and prudent for a similarly situated city and shall upon request of the Owner provide evidence of such coverage to the Owner, (iii) the Issuer is in compliance and shall comply with all applicable federal, state, and local laws and regulatory requirements, (iv) books and records of the Issuer shall be kept in which complete and correct entries shall be made in accordance with generally accepted accounting principles, (v) the Issuer will take all reasonable legal action within its control in order to maintain its existence as a municipality of the State, and will not voluntarily dissolve, and (vi) the Issuer shall promptly inform the Owner in writing of any actual or potential contingent liabilities or pending or threatened litigation that could reasonably be expected to have a material adverse effect upon the financial condition of the Issuer or upon the ability of the Issuer to perform its obligations hereunder or under the Note.

(C) During such time as the Note is outstanding hereunder, the Issuer agrees and covenants with the Owner that, it shall deliver to the Owner an annual certificate showing the ratio of Available Non-Ad Valorem Revenues divided by Maximum Annual Debt Service. The annual certificate will be provided at the time of submission of its annual audited financial statements and the calculation shall be as of the last day of the prior Fiscal Year. The calculation required by this Section 13(C) shall be determined using the average of actual receipts for the prior two Fiscal Years based on the Audit. The results of the calculation for the annual certificate shall not create an event of default under any circumstances.

**SECTION 14: EVENTS OF DEFAULT; REMEDIES OF OWNER OF THE NOTE.** The following shall constitute Events of Default:

(i) if the Issuer fails to pay any payment of principal of or interest on the Note as the same becomes due and payable; or

(ii) if the Issuer defaults in the performance or observance of any covenant or agreement contained in this Resolution or the Note (other than set forth in (i) above and other than set forth in Section 13(C) hereof) and fails to cure the same within thirty (30) days after (a) notice thereof to the Issuer by the Owner or (b) the Owner is notified of such noncompliance or should have been notified, pursuant to this Section, whichever is earlier; or

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

(iv) the Issuer 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

(v) the Issuer 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 Issuer, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the Issuer, a receiver or trustee of the Issuer 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 60 days from the date of entry thereof; or

(vi) the Issuer 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

(vii) failure by the Issuer promptly to remove any execution, garnishment or attachment of such consequence as will materially impair the Issuer's ability to carry out its obligations hereunder.



The Issuer shall within ten (10) days after it acquires knowledge thereof, notify the Owner in writing at its Principal Office of any (a) change in any material fact or circumstance represented or warranted by the Issuer in this Resolution or in connection with the issuance of the Note; (b) upon the happening, occurrence, or existence of any Event of Default, and (c) 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 Owner, with such written notice, a detailed statement by a responsible officer of the Issuer of all relevant facts and the action being taken or proposed to be taken by the Issuer with respect thereto. Regardless of the date of receipt of such notice by the Owner, such date shall not in any way modify the date of occurrence of the actual Event of Default.

Upon the occurrence and during the continuation of any Event of Default, the Owner of the Note may, in addition to any other remedies set forth in this Resolution or the Note, either at law or in equity, by suit, action, mandamus or other proceeding in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted or contained in this Resolution, and may enforce and compel the performance of all duties required by this Resolution, or by any applicable statutes to be performed by the Issuer or by any officer thereof; provided, however, that acceleration of amounts due under the Note shall never be permitted as a remedy.

**SECTION 15: ANTI-DILUTION TEST.** No additional indebtedness payable from or secured by Non-Ad Valorem Revenues shall be issued by the Issuer unless the Available Non-Ad Valorem Revenues for the most recently audited fiscal year equals at least 150% of the Maximum Annual Debt Service on all Debt. On or before the date of issuance of any such additional indebtedness pursuant to the requirements of this section, the Chief Financial Officer shall provide the Lender with a signed certification of compliance with this section 15 that includes a calculation, substantially in the format attached hereto as Exhibit E, showing the Available Non-Ad Valorem Revenues, and the satisfaction of the coverage requirements of the prior sentence.

In the event any additional obligations are issued for the purpose of refunding any Debt then outstanding, the conditions of this section shall not apply, provided that the issuance of such additional obligations shall result in a reduction of the aggregate debt service on the applicable debt.

"Debt" means at any date (without duplication) all of the following to the extent that they are secured by or payable in whole or in part from any Non-Ad Valorem Revenues (A) all obligations of the Issuer for borrowed money or evidenced by bonds, debentures, notes or other similar instruments; (B) all obligations of the Issuer to pay the deferred purchase price of property or services, except trade accounts payable under normal trade terms and which arise in the ordinary course of business; (C) all obligations of the Issuer as lessee under capitalized leases; (D) all indebtedness of other Persons to the extent guaranteed by, or secured by, Non-Ad Valorem Revenues of the Issuer; and (E) any obligation of the Issuer for borrowed money where the security provided by the Non-Ad Valorem Revenues is not the primary security for the obligation or is a backup pledge for the obligation; provided, however, that with respect to any obligation contemplated in (D) or (E) above, such obligation shall not be considered "Debt" for purposes of the Resolution unless the Issuer has actually used Non-Ad Valorem Revenues to satisfy such obligation during the immediately preceding fiscal year or reasonably expects to use Non-Ad Valorem Revenues to satisfy such obligation in the current or immediately succeeding fiscal year. After an obligation is considered "Debt" as a result of the proviso set forth in the immediately preceding sentence, it shall continue to be considered "Debt" until the Issuer has not used any Non-Ad Valorem Revenues to satisfy such obligation for two consecutive fiscal years.

"Debt Service" means, at any time, the aggregate amount in the then applicable period of time of (1) interest required to be paid on the applicable Debt during such period of time, except to the extent that such interest is to be paid from proceeds of the Debt for such purpose, (2) principal of outstanding Debt maturing in such period of time, and (3) the amortization installments

with respect to outstanding term bonds or amortization payments with respect to other Debt maturing in such period of time.

"Maximum Annual Debt Service" means the maximum annual Debt Service on a consolidated basis of all Debt payable from Non-Ad Valorem Revenues then outstanding and the planned additional Debt to be issued for the then-current or any subsequent fiscal year. For purposes of the foregoing (a) if said Debt has 25% or more of the aggregate principal amount coming due in any one year, Debt Service shall be determined on the Debt during such period of time as if the principal of and interest on such Debt were being paid in substantially equal annual amounts over a period of 25 years; and (b) for the purpose of determining Debt Service as described above, the interest rate on variable rate tax-exempt Debt and taxable Debt shall be deemed to be 120% and 145%, respectively, of the average of the SIFMA Index over a two year period of time ending on the date immediately prior to the sale of such additional obligation.

"SIFMA Index" means the Securities Industry and Financial Markets Association Municipal Swap Index, or if that index is no longer published a successor or similar index of short-term high-grade tax-exempt indebtedness.

## **SECTION 16: COVENANTS AND REPRESENTATIONS.**

(A) **No Advisory or Fiduciary Relationship.** In connection with all aspects of each transaction contemplated hereunder (including in connection with any amendment, waiver or other modification hereof or of any other documents related hereto), the Issuer acknowledges and agrees, that: (a) (i) it has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, (ii) it is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby in the Note, (iii) the Lender is not acting as a municipal advisor or financial advisor to the Issuer and (v) the Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act to the Issuer with respect to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Lender has provided other services or is currently providing other services to the Issuer on other matters); (b) (i) the Lender is and has been acting solely as a principal in an arm's length commercial lending transaction and has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Issuer, or any other person and (ii) the Lender has no obligation to the Issuer, with respect to the transactions contemplated hereby except those obligations expressly set forth herein; (c) notwithstanding anything herein to the contrary, it is the intention of the Issuer and the Lender that this Resolution and the Note represent a commercial loan transaction not involving the issuance and sale of a municipal security, and that any bond, note or other debt instrument that may be delivered to the Lender is delivered solely to evidence the repayment obligations of the Issuer under this Resolution and the Note; and (d) the Lender may be engaged in a broad range of transactions that involve interests that differ from those of the Issuer, and the Lender has no obligation to disclose any of such interests to the Issuer. To the fullest extent permitted by law, the Issuer hereby waives and releases any claims that it may have against the Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby. If the Issuer would like a municipal advisor in this transaction that has legal fiduciary duties to the Issuer, the Issuer is free to engage a municipal advisor to serve in that capacity. The transactions contemplated herein and the Note are delivered, 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.

(B) **Permission to Use Information.** Issuer agrees and consents that Owner shall be permitted to use information related to this Resolution and the Note in connection with marketing, press releases or other transactional announcements or updates provided to investors or trade publications, including, but not limited to, the placement of the logo or other identifying

name on marketing materials or of "tombstone" advertisements in publications of its choice at its own expense.

(C) **Patriot Act Notice.** The Owner hereby notifies the Issuer that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 signed into law October 26, 2001), the Owner may be required to obtain, verify and record information that identifies the Issuer, which information includes the name and address of the Issuer and other information that will allow the Owner to identify the Issuer in accordance with the Act.

(D) **Documentary and Intangible Taxes.** In the event that any intangible tax or documentary stamp tax is due from the Owner to any state or other governmental agency or authority because of the execution or holding of the Note, the Issuer shall, upon demand, reimburse the Owner for any such tax paid.

(E) **Applicable Law and Venue.** The Note shall be governed by applicable federal law and the internal laws of the state of Florida. The Issuer agrees that certain material events and occurrences relating to the Note bear a reasonable relationship to the laws of Florida and the validity, terms, performance and enforcement of the Note shall be governed by the internal laws of Florida which are applicable to agreements which are negotiated, executed, delivered and performed solely in Florida. Unless applicable law provides otherwise, in the event of any legal proceeding arising out of or related to the Note, the Issuer consents to the jurisdiction and venue of any court located in the state of Florida.

(F) **Automatic Debit Agreement.** The Issuer agrees to execute an agreement authorizing the Lender to debit the Debt Service Fund for all amounts due to the Lender under the Note. Such deposit account shall be maintained by the Issuer with the Lender or other financial institution selected by the Issuer with the Lender's approval which approval shall not be unreasonably withheld.

**SECTION 17: SEVERABILITY.** If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

**SECTION 18: BUSINESS DAYS.** In any case where the due date of interest on or principal of the Note is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day, provided that credit for payments made shall not be given until the payment is actually received by the Owner.

**SECTION 19: WAIVER OF JURY TRIAL.**

THE OWNER, BY ACCEPTANCE OF THE NOTE, AND THE ISSUER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS RESOLUTION, THE NOTE OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF EITHER PARTY.

**SECTION 20: RULES OF INTERPRETATION.** Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinafter," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

**SECTION 21: CAPTIONS.** The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

**SECTION 22: CITY COUNCIL MEMBERS OF THE ISSUER EXEMPT FROM PERSONAL LIABILITY.** No recourse under or upon any obligation, covenant or agreement of this Resolution or the Note or for any claim based thereon or otherwise in respect thereof, shall be had against any City Council Members, as such, of the Issuer, past, present or future, either directly or through the Issuer it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the City Council Members of the Issuer, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such City Council Members of the Issuer, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the issuance of the Note, on the part of the Issuer.

**SECTION 23: AUTHORIZATIONS.** The Mayor and any member of the City Council, the City Manager, the City Attorney, the Clerk, the Chief Financial Officer and such other officials and employees of the Issuer as may be designated by the Issuer are each designated as agents of the Issuer in connection with the issuance and delivery of the Note and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents, and contracts on behalf of the Issuer that are necessary or desirable in connection with the execution and delivery of the Note, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

**SECTION 24: REPEALER.** All resolutions or parts thereof in conflict with the provisions hereof are to the extent of such conflict superseded and repealed.

**SECTION 25: EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption.

**PASSED IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA THIS 7TH DAY OF FEBRUARY 2023.**

Attest:

\_\_\_\_\_  
Scotty Lynn Kelly, City Clerk

\_\_\_\_\_  
Holly D. Smith, Mayor

Approved as to form and legality:

\_\_\_\_\_  
John D. Agnew, City Attorney

Date filed with City Clerk: \_\_\_\_\_

Vote of Council Members:

Smith	_____
Johnson	_____
Crater	_____
Henshaw	_____
Miller	_____

**EXHIBIT A****[FORM OF NOTE]**

ANY OWNER SHALL, PRIOR TO BECOMING A HOLDER, EXECUTE A PURCHASER'S CERTIFICATE IN THE FORM ATTACHED TO THE RESOLUTION (HEREIN DEFINED) CERTIFYING, AMONG OTHER THINGS, THAT SUCH HOLDER IS AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED, AND REGULATION D THEREUNDER.

February 9, 2023

Not to exceed \$20,000,000

Interest Rate: monthly adjustable

CITY OF SANIBEL, FLORIDA  
TAXABLE LINE OF CREDIT NOTE, SERIES 2023

Maturity Date: February 1, 2026

KNOW ALL MEN BY THESE PRESENTS that the City of Sanibel, Florida (the "Issuer"), 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 Lender or its successor or registered assigns outstanding at any time (hereinafter, the "Owner"), the principal amount drawn hereunder of not to exceed \$20,000,000 together with interest at the Interest Rate (hereinafter defined). The Issuer shall pay interest upon the drawn but unpaid principal balance of this Note at the Interest Rate, subject to adjustment as provided herein. Interest shall be calculated on a 30/360 day basis. This Note shall have a final maturity date of February 1, 2026.

The outstanding principal of this Note shall be increased by the amount advanced by the Owner upon each Requisition, provided, however, the principal amount available to be drawn on the Note shall not exceed the Maximum Principal Amount.

**INTEREST RATE AND ADJUSTMENTS TO INTEREST RATE; OTHER PAYMENTS**

(A) **Additional Defined Terms.** In addition to the terms defined elsewhere in this Note, the following terms shall have the following meanings when used in this Note:

**"Adjusted Index Rate"** shall mean the Index Rate plus the Applicable Margin.

**"Advance"** shall mean any amount disbursed by Lender to Issuer, which comprises the Resolution and the repayment thereof is evidenced by this Note.

**"Applicable Margin"** shall mean three quarters of one percent (0.75%) per annum.

**"Business Day"** shall mean (a) with respect to Daily Simple SOFR, for the limited purpose of determining Daily Simple SOFR (but, for the avoidance of doubt, not for the determination of Interest Payment Dates, or for any purpose other than determining Daily Simple SOFR), any day that commercial banks in New York, New York are required by law to be open for business and that is a U.S. Government Securities Business Day, (b) with respect to Term SOFR, for purposes of all notices, determinations and payments (including Interest Payment Dates) in connection

therewith, any day that commercial banks in New York, New York are required by law to be open for business and that is a U.S. Government Securities Business Day, and (c) for all other purposes (including, without limitation, the determination of Interest Payment Dates in respect of Daily Simple SOFR), any day on which commercial banks in New York, New York or Cincinnati, Ohio are required by law to be open for business; *provided* that, notwithstanding anything to the contrary in this definition of "Business Day", at any time during which a Rate Management Agreement is then in effect with respect to all or a portion of this Note, then the definitions of "Business Day" and "Banking Day", as applicable, pursuant to such Rate Management Agreement shall govern with respect to all applicable notices and determinations in connection with such portion of this Note subject to such Rate Management Agreement. Periods of days referred to in the Resolution and herein will be counted in calendar days unless Business Days are expressly prescribed.

**"Conforming Changes"** shall mean, with respect to the use, administration of, or any conventions associated with the Index Rate, the Prime Index, or any proposed Successor Rate, as applicable, any changes to the terms of this Note related to the timing, frequency, and methodology of determining rates and making payments of interest, including changes to the definition of Business Day, lookback periods or observation shift, prepayments, and borrowing notices, and other technical, administrative, or operational matters, as may be appropriate, in the discretion of Lender, to reflect the adoption and implementation of such applicable rate and to permit the administration thereof by Lender in an operationally feasible manner and, to the extent feasible, consistent with market practice.

**"Daily Simple SOFR"** shall mean a rate based on SOFR with interest accruing on a simple daily basis in arrears with a methodology and conventions selected by Lender.

**"Dollars"** or **"\$"** shall mean dollars in the lawful currency of the United States of America.

**"Governmental Authority"** shall mean any nation or government, any state or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**"Index Floor"** shall mean zero percent (0%).

**"Index Rate"** shall mean the greater of (i) the Index Floor and (ii) Term SOFR. Each determination by Lender of the Index Rate shall be conclusive and binding in the absence of manifest error.

**"Index Rate Loan"** shall mean any Advances that accrue interest by reference to the Index Rate and the other terms of this Note.

**"Interest Payment Date"** shall mean, all as determined by Lender in accordance with the Resolution and this Note and Lender's loan systems and procedures periodically in effect (and subject to the terms of any Billpayer Service, as applicable), the first calendar day of each month; provided that, if the first calendar day of a particular month is not a Business Day, then the Interest Payment Date occurring in that particular month shall be the next succeeding Business Day (unless the next succeeding Business Day falls in a new month, in which case the Interest Payment Date occurring in that particular month shall be the immediately preceding Business Day).

**"Interest Rate"** shall mean, as applicable, the Adjusted Index Rate or other alternative rate implemented pursuant to the terms of this Note, plus any adjustment.

**"Law"** and **"Laws"** shall mean any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, guidances, guidelines, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions, whether now or hereafter in effect.

**"Lender"** shall mean Fifth Third Bank, National Association, and its successors and assigns.

**"Prime Index"** shall have the meaning set forth in Section (E)(i).

**"Prime Rate"** shall mean, for any day, the rate which that Lender publicly announces, publishes or designates from time to time as its index rate or prime rate, or any successor rate thereto, in effect at its principal office. Such rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Lender may make commercial loans or other loans at rates of interest at, above or below its index rate or prime rate. Each determination by Lender of the Prime Rate shall be binding and conclusive in the absence of manifest error. Any change in the Prime Rate shall be effective for purposes of this Note on the date of such change without notice to Issuer.

**"SOFR"** shall mean, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on its website currently at <http://newyorkfed.org> (or any successor source identified by the SOFR administrator from time to time) at approximately 2:30 p.m. (New York City time) on the immediately succeeding Business Day.

**"Spread Adjustment"** shall mean a mathematical or other adjustment to an alternate benchmark rate selected pursuant to Section (E) of this Note and such adjustment may be positive, negative, or zero subject to the specific Spread Adjustments set forth in Section (E).

**"Successor Rate"** shall mean any successor rate (including the Spread Adjustment, if any) determined pursuant to Section (E)(ii).

**"Term SOFR"** shall mean the forward-looking SOFR rate administered by CME Group, Inc. (or other successor administrator) and published on the applicable Bloomberg LP screen page (or such other commercially available source providing such quotations as may be selected by Lender) relating to quotations for one month, fixed by the administrator two Business Days prior to such date of determination (provided, however, that if the Term SOFR rate is not published for such Business Day, then the Term SOFR rate shall be determined by reference to the immediately preceding Business Day on which such rate is published), rounded upwards, if necessary, to the next 1/8<sup>th</sup> of 1% and adjusted for reserves if Lender is required to maintain reserves with respect to the relevant Advances, all as determined by Lender in accordance with this Note and Lender's loan systems and procedures periodically in effect.

**"U.S. Government Securities Business Day"** shall mean any day other than a Saturday, Sunday, or 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.



(B) **Interest Accrual.**

(i) Interest on this Note shall accrue on the outstanding principal balance of this Note commencing on the date of the initial disbursement under the Resolution until this Note has been fully paid and satisfied in cash.

(ii) Interest shall be calculated based on a 30/360 basis.

(C) **Interest Rate Provisions.**

(i) Subject to the terms hereof, the outstanding principal balance of this Note shall bear interest at a rate per annum equal to the Adjusted Index Rate. Each determination of the Interest Rate by Lender shall be conclusive and binding on Issuer in the absence of manifest error.

(ii) The Adjusted Index Rate: (a) shall initially be determined as of the date of the initial Advance, and (b) shall adjust automatically on each Interest Payment Date thereafter. Any change in the Adjusted Index Rate resulting from a change in the Index Rate shall become effective as of each such Interest Payment Date in accordance with this Note and Lender's loan systems and procedures periodically in effect. Lender shall not be required to notify Issuer of any adjustment in the Index Rate; however, Issuer may request a quote of the prevailing Index Rate on any Business Day.

(iii) All as determined by Lender in accordance with the Resolution and this Note and Lender's loan systems and procedures periodically in effect, interest shall be paid in arrears on each Interest Payment Date. Lender may estimate the amount of interest that Issuer will owe on Issuer's periodic statements and Lender may adjust the amount of interest owed on each subsequent statement provided to Issuer to reflect any differential between the estimated amount of interest shown on Issuer's preceding statement and the actual amount of interest determined to have been due by Lender on the preceding Interest Payment Date. Issuer agrees to pay the amount shown due on the Interest Payment Date on each of Issuer's periodic statements on each Interest Payment Date.

(D) **Prepayments.** Upon ten (10) Business Days prior notice to the Lender, the Note is prepayable without penalty or premium on any Interest Payment Date at the option of the Issuer.

(E) **Replacement of the Index Rate.**

(i) **Temporary Replacement of the Index Rate.** In the event that Lender shall determine either: (a) the Index Rate is unavailable or unreliable, or (b) the making or funding of Index Rate Loans has become illegal or impracticable; then, in any such case, Lender shall promptly provide notice of such determination to Issuer (which shall be conclusive and binding on Issuer absent manifest error), and, until Lender determines that the circumstances giving rise to such suspension no longer exist, in which event Lender shall so notify Issuer, then (x) Lender's obligations in respect of the Index Rate shall be suspended forthwith, (y) Issuer's right to utilize Index Rate pricing as set forth in this Note shall be suspended forthwith, and (z) amounts outstanding hereunder and any additional Advances shall, on and after such date, bear interest at a rate per annum equal to the Prime Rate plus or minus a Spread Adjustment (the Prime Rate plus or minus such Spread

Adjustment together referred to as the "Prime Index"), plus the Applicable Margin; provided that, if the Prime Index would be less than the Index Floor, the Prime Index will be deemed to be the Index Floor for the purposes of this Note and the Resolution.

(ii) **Permanent Replacement of the Index Rate.**

(a) Notwithstanding anything to the contrary herein or in the Resolution, if Lender determines (which determination shall be conclusive and binding on Issuer absent manifest error) that any of the circumstances described in Section (E)(i)(a)-(c) has occurred and is unlikely to be temporary or the administrator of the Index Rate or a Governmental Authority having or purporting to have jurisdiction over Lender has made a public statement identifying a specific date (the "**Scheduled Unavailability Date**") after which the Index Rate will no longer be representative or made available or used for determining the interest rate of loans or otherwise cease or no longer be in compliance or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Benchmarks, and there is no successor administrator satisfactory to Lender, then on a date and time determined by Lender, but no later than the Scheduled Unavailability Date, the Index Rate will be replaced hereunder and under the Resolution with Daily Simple SOFR.

(b) Notwithstanding anything to the contrary herein, if Lender determines that the Successor Rate designated in Section (E)(ii)(a), above, is not available or administratively feasible, or if any of the circumstances described in Section (E)(i)(a)-(c) with regard to the Index Rate has occurred with respect to a Successor Rate then in effect, Lender may replace the Index Rate or any then current Successor Rate in accordance with this Section (E)(ii) with another alternative benchmark rate and a Spread Adjustment, giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities and any recommendations of a relevant Governmental Authority, and which Spread Adjustment or method for calculating such Spread Adjustment shall be published on an information service as selected by Lender from time to time in its reasonable discretion.

(c) Any such alternative benchmark rate and Spread Adjustment determined under Section (E)(ii)(b) shall, together, constitute a Successor Rate hereunder. Any such Successor Rate shall become effective on the date set forth in a written notice provided by Lender to Issuer, and, for the avoidance of doubt, from and after such date, (I) each Advance and all outstanding amounts hereunder shall bear interest at the Successor Rate plus the Applicable Margin, and (II) all references herein and in the Resolution to "Index Rate" shall mean and refer to the Successor Rate.

(d) For the avoidance of doubt, if the Successor Rate would be less than the Index Floor, the Successor Rate will be deemed to be the Index Floor for the purposes of this Note and the Resolution. Further, if the interest rate to be replaced is rounded upwards to the next 1/8<sup>th</sup> of 1% under the terms of this Note or the Resolution, the Successor Rate shall also be rounded up to the next 1/8<sup>th</sup>.

(e) If the Successor Rate is based on Daily Simple SOFR, interest shall be due and payable on a monthly basis.

(f) Lender does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, or any other matter related to the Index Rate or any Successor Rate, including the selection of such rate, any related Spread Adjustment, or any Conforming Changes, or whether the composition or characteristics of any Successor Rate and Spread Adjustment or Conforming Changes will be similar to, or produce the same value or economic equivalence of, the initial Index Rate.

(g) Notwithstanding anything to the contrary contained herein, if, after the Closing Date, Issuer enters into a Rate Management Agreement with respect to all or part of an Advance and the floating interest rate under the Rate Management Agreement is Daily Simple SOFR, Lender may replace the Index Rate hereunder with Daily Simple SOFR and a Spread Adjustment without consent of any other party hereto; provided further that, if subsequent thereto, Lender and Issuer amend such Rate Management Agreement to include, or terminate such Rate Management Agreement and enter into a new Rate Management Agreement with, a floating interest rate thereunder of the original Index Rate, then Lender may further replace Daily Simple SOFR hereunder with the original Index Rate (and a Spread Adjustment, if applicable) hereunder without consent of any other party hereto; and, in either such event, (A) such rate shall be a Successor Rate hereunder, and (B) Lender shall provide written notice thereof to Issuer.

(F) **Rounding, Index Floor and Rate Management Agreement.** Notwithstanding anything to the contrary contained in this Note, at any time during which a Rate Management Agreement is then in effect with respect to all or a portion of this Note bearing interest based upon the Index Rate or any temporary or permanent replacement for the Index Rate pursuant to Section (E), the provision that rounds up the Index Rate to the next 1/8<sup>th</sup> of 1% shall be disregarded and no longer of any force and effect with respect to such portion of this Note that is subject to such Rate Management Agreement.

(G) **Illegality.** Notwithstanding any other provisions hereof, if any Law shall make it unlawful for Lender to make, fund or maintain Index Rate Loans, Lender shall promptly give notice of such circumstances to Issuer. In such an event, (i) the commitment of Lender to make or continue Index Rate Loans shall be immediately suspended and (ii) all amounts outstanding hereunder and any additional Advances shall bear interest at a rate equal to the Prime Index plus the Applicable Margin; provided, however, that if the Prime Index would be less than the Index Floor, the Prime Index will be deemed to be the Index Floor for the purposes of this Note and the Resolution.

(H) **Conforming Changes.** In connection with the use, implementation, or administration of the Index Rate, including any temporary or permanent replacement for the Index Rate, Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in the Resolution, any such Conforming Changes will become effective without any further action or consent of any other party to this Note or the Resolution. Lender will promptly notify Issuer of the effectiveness of any Conforming Changes in connection with the implementation, use or administration of the Index Rate, or any temporary or permanent replacement of the Index Rate.

Principal of and interest on this Note is payable in lawful money of the United States of America at such place as the Owner may designate to the Issuer in writing. No presentment or delivery shall be required for prepayment or principal installment payments on the Note.

A final payment in the amount of the entire unpaid principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on the Maturity Date.

THIS NOTE DOES NOT CONSTITUTE A GENERAL INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE HOLDER OF THIS NOTE THAT SUCH OWNER SHALL NEVER HAVE THE RIGHT TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE ISSUER OR TAXATION OF ANY REAL OR PERSONAL PROPERTY THEREIN OR USE OR APPLICATION OF AD VALOREM TAX REVENUES OF THE ISSUER FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS NOTE OR THE MAKING OF ANY OTHER PAYMENTS PROVIDED FOR IN THE RESOLUTION.

This Note is issued pursuant to Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Chapter II, Florida Statutes, the municipal charter of the Issuer and a resolution duly adopted by the Issuer on February 7, 2023, as from time to time amended and supplemented (herein referred to as the "Resolution"), and is subject to all the terms and conditions of the Resolution. All terms, conditions and provisions of the Resolution are by this reference thereto incorporated herein as a part of this Note. Payment of this Note is secured by a covenant to budget, appropriate and deposit Non-Ad Valorem Revenues of the Issuer, as provided for in the Resolution. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

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.

This Note may be exchanged or transferred by the Owner hereof but only upon the registration books maintained by the Issuer and in the manner provided in the Resolution; provided, however, this Note may only be transferred in whole.

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.

The City shall not be required to exchange or register any transfer of this Note after this Bond has been selected for prepayment.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, said City of Sanibel, Florida, by resolution duly adopted by its City Council, has caused this Note to bear the manual signatures of its Mayor, the Deputy City Manager/Chief Financial Officer and the City Clerk, to be executed by the manual signature of its City Attorney to evidence his approval of this Bond as to form and correctness, and a facsimile of the official seal of the City to be imprinted hereon, all as of the 9th day of February, 2023.

CITY OF SANIBEL, FLORIDA

(SEAL)

By: \_\_\_\_\_  
Holly D. Smith, Mayor

By: \_\_\_\_\_  
Steven C. Chaipel, Deputy City Manager/  
Chief Financial Officer

ATTEST:

APPROVED AS TO FORM AND  
CORRECTNESS:

\_\_\_\_\_  
Scotty Lynn Kelly, City Clerk

\_\_\_\_\_  
John D. Agnew, City Attorney

**EXHIBIT B****FORM OF LENDER'S CERTIFICATE**

This is to certify that Fifth Third Bank, National Association (the "Lender") has not required the City of Sanibel, Florida (the "Issuer") to deliver any offering document and has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the Issuer in connection with the issuance of the not to exceed \$20,000,000 City of Sanibel, Florida Taxable Line of Credit Note, Series 2023, dated February 9, 2023 (the "Note"), and no inference should be drawn that the Lender, in the acceptance of the Note, is relying on Note Counsel or Issuer's Counsel as to any such matters other than the legal opinions rendered by Note Counsel, Bryant Miller Olive P.A. and by Issuer's Counsel, John D. Agnew, Esq., respectively. Any capitalized undefined terms used herein not otherwise defined shall have the meanings set forth in a resolution adopted by the City Council of the Issuer on February 7, 2023 (the "Resolution").

We are aware that investment in the Note involves various risks, that the Note is not a general obligation of the Issuer or payable from ad valorem tax revenues, and that the payment of the Note is secured solely from the sources described in the Resolution (the "Note Security").

We have made such independent investigation of the Note Security as we, in the exercise of sound business judgment, consider to be appropriate under the circumstances. In making our investment decision, we have relied upon the accuracy of information which has been provided to us by the Issuer.

We have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of our investment in the Note and can bear the economic risk of our investment in the Note.

We understand that the Note is issued in a single denomination equal to the principal amount due under the Note and may not be transferred except as provided in the Note.

We acknowledge and understand that the Issuer has determined that the Resolution is not required to be qualified under the Trust Indenture Act of 1939, as amended, and that the Note is not required to be registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, Section 517.051(1), Florida Statutes, and/or Section 517.061(7), Florida Statutes, and that the Issuer has further determined that neither the Issuer, Note Counsel nor Issuer's Counsel shall have any obligation to effect any such registration or qualification.

We are not acting as a broker or other intermediary, and are purchasing the Note as an investment for our own account and not with a present view to a resale or other distribution to the public.

We are a bank, trust company, savings institution, insurance company, dealer, investment company, pension or profit-sharing trust, or qualified institutional buyer as contemplated by Section 517.061(7), Florida Statutes. We are not purchasing the Note for direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes.

DATED this 9<sup>th</sup> day of February, 2023.

FIFTH THIRD BANK, NATIONAL ASSOCIATION

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

Name: Percy R. Aguila Jr.

Title: Senior Vice President

**EXHIBIT C****FORM OF DISCLOSURE LETTER**

The undersigned, as lender, proposes to negotiate with the City of Sanibel, Florida (the "Issuer") for the private purchase of its \$20,000,000 Taxable Line of Credit Note, Series 2023 (the "Note"). Prior to the award of the Note, the following information is hereby furnished to the Issuer:

1. Set forth is an itemized list of the nature and estimated amounts of expenses to be incurred for services rendered to us (the "Lender") in connection with the issuance of the Note (such fees and expenses to be paid by the Issuer):

Liebler, Gonzalez & Portuondo  
Lender Counsel Fee – \$ 10,000

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Lender in connection with the issuance of the Note to any person not regularly employed or retained by the Lender (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Lender, as set forth in paragraph (1) above.

(b) No person has entered into an understanding with the Lender, or to the knowledge of the Lender, with the Issuer, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Issuer and the Lender or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Note.

3. The amount of the underwriting spread expected to be realized by the Lender is \$0.

4. The management fee to be charged by the Lender is \$0. However, a commitment fee of \$20,000 will be charged by the Lender on the date hereof.

5. Truth-in-Bonding Statement:

The Note is being issued primarily to finance the cost of the Project (as defined in the hereinafter defined Resolution) and pay the costs of issuing the Note.

Unless earlier prepaid, the Note is expected to be repaid on February 1, 2026. Assuming that the initial interest rate of \_\_\_\_% was in place until the maturity of the Note and assuming that the entire authorized draw amount of \$20,000,000 was drawn on the date hereof and remained unpaid until maturity, total interest paid over the life of the Note would equal approximately \$\_\_\_\_\_.

The Note will be payable and secured solely by a covenant to budget and appropriate from Non-Ad Valorem Revenues sufficient to make such payments, appropriated and deposited as described in a resolution of the Issuer adopted on February 7, 2023 (the "Resolution"). See the Resolution for a definition of Non-Ad Valorem Revenues. Based on the above assumptions, issuance of the Note is estimated to result in an annual maximum of approximately \$\_\_\_\_\_ revenues of the Issuer not being available to finance the services of the Issuer during the life of the Note, not including the repayment of the principal drawn.



6. The name and address of the Lender is as follows:

Fifth Third Bank, National Association  
1221 Brickell Avenue, Suite 1660  
Miami, Florida 33131

This letter is for informational purposes only and shall not affect or control the actual terms and conditions of the Note.

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Statement on behalf of the Lender this 9<sup>th</sup> day of February, 2023.

FIFTH THIRD BANK, NATIONAL  
ASSOCIATION

By: \_\_\_\_\_  
Name: Percy R. Aguila Jr.  
Title: Senior Vice President

**EXHIBIT D**

**FORM OF REQUISITION**

CITY OF SANIBEL, FLORIDA  
TAXABLE LINE OF CREDIT NOTE, SERIES 2023

**REQUISITION FOR PAYMENT**

Amount Requested: \$ \_\_\_\_\_

Remaining Available Credit after this Advance: \$ \_\_\_\_\_

1. The Issuer hereby certifies that proceeds from this Requisition have been or will be used for lawful purposes for the Project (as defined in Resolution No. 23-\_\_\_\_\_ of the City of Sanibel, Florida, adopted on February 7, 2023 (the "Resolution")) and has not been the basis of any previous disbursement;

2. The Issuer hereby certifies that no Event of Default (as defined in the Resolution), or event that with the giving of notice or the passage of time would constitute an Event of Default, exists.

3. The Issuer hereby instructs the Lender to fund an Advance (as defined in the Resolution) in the amount of \$ \_\_\_\_\_ and wire the money pursuant to the following instructions:

Lender:

ABA:

Account Name:

Account #:

Re: Taxable Line of Credit Note, Series 2023

Attn. Chief Financial Officer

Dated this \_\_\_\_\_ day of February, 2023.

CITY OF SANIBEL, FLORIDA

By: \_\_\_\_\_  
Deputy City Manager/  
Chief Financial Officer

**EXHIBIT E****Available Non-Ad Valorem Revenues for Fiscal Year Ended September 30, 2022  
(Unaudited)**

	<u>General Fund</u>	<u>Non-Ad Valorem</u>
Revenue		
s		
Taxes		
Property	\$10,211,054.00	
Gas	-	
Business Tax Receipts	316,191.00	\$316,191.00
Communications Services	495,722.00	495,722.00
Casualty, Insurance Premium	95,005.00	95,005.00
Permits Fees, Special Assessments	1,016,284.00	1,016,284.00
Intergovernmental Revenues	4,820,830.00	4,820,830.00
Charges for Services	3,158,954.00	3,158,954.00
Fines and Forfeitures	261,562.00	261,562.00
Other Revenues	<u>(253,521.00)</u>	<u>(253,521.00)</u>
	\$20,122,081.00	\$9,911,027.00
Expenditures		
General Government	\$6,443,248.00	
Public Safety	<u>5,597,897.00</u>	
	\$12,041,145.00	
	<u>\$(10,211,054.00)</u>	
Ad Valorem Funds Portion of Expenditures	)	
Remaining Expenditures	\$1,830,091.00	
Non-Ad Valorem	<u>\$9,911,027.00</u>	
Remaining Non-Ad Valorem Revenues (Non-Ad minus Remaining Expenditures)	\$8,080,936.00	