

ORDINANCE NO. 3077-17

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA AUTHORIZING A REVOLVING LINE OF CREDIT IN A PRINCIPAL AMOUNT NOT TO BE OUTSTANDING THEREUNDER AT ANY ONE TIME TO EXCEED \$8,000,000 WITH SUNTRUST BANK OR AN AFFILIATE THEREOF TO FINANCE WORKING CAPITAL NEEDS OF THE CITY'S ELECTRIC UTILITY SYSTEM AND TO PAY THE COSTS OF SUCH LINE OF CREDIT; APPROVING THE FORM OF A COMMERCIAL NOTE AND AGREEMENT TO COMMERCIAL NOTE; DELEGATING TO THE MAYOR OR CITY MANAGER THE AUTHORITY TO EXECUTE AND DELIVER THE COMMERCIAL NOTE, AGREEMENT TO COMMERCIAL NOTE AND ALL OTHER AGREEMENTS RELATED THERETO; PROVIDING OTHER DETAILS WITH RESPECT THERETO; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA (the "Issuer") that:

**Section 1. Authority for this Ordinance.** This Ordinance is adopted pursuant to the provisions of Chapter 166, Part 1, Florida Statutes; Article VIII, Section 2, Constitution of the State of Florida; and other applicable provisions of law (collectively, the "Act").

**Section 2. Definitions.** Words and phrases used herein in capitalized form and not otherwise defined herein (including, without limitation, in the preamble hereto) shall have the meanings ascribed thereto in the Loan Agreement (hereinafter defined) and, in addition, the following words and phrases shall have the following meanings:

"Authorized Signatories" means any one or more of the Mayor and the City Manager of the Issuer.

"Non-Ad Valorem Revenues" means all legally available non-ad valorem revenues of the Issuer derived from any source whatsoever, other than ad valorem taxation on real and personal property, including, without limitation, investment income, which are legally available for the payment by the Issuer of debt service on the Note (as defined herein), including, without limitation, legally available non-ad valorem revenues derived from sources subject to a prior pledge thereof for the payment of other obligations of the Issuer and available after payment of principal and interest on such other obligations, after provision has been made by the Issuer for the payment of services and programs which are for essential governmental services of the Issuer or which are legally mandated by applicable law.

**Section 3. Authorization of Transaction.** In order to obtain funds to finance working capital needs of the Issuer, the Issuer is authorized to obtain a revolving line of credit (the "Loan") and to borrow an amount not to be outstanding thereunder at any one time in excess of \$8,000,000 (the "Loan Amount") from SunTrust Bank or an affiliate thereof (the "Lender"), maturing not more than 364 days from the date of issuance and delivery thereof, pursuant to the terms of a commitment letter presented by the Lender and attached as Exhibit "A" hereto. The

proceeds of the Loan shall be used to finance working capital needs of the City's electric utility system.

Because of prevailing and anticipated market conditions and the nature of the Loan, the recent creation of the Issuer and its lack of history of collecting revenues, it is not feasible, cost effective or advantageous to enter into the Loan through a competitive sale and it is in the best interest of the Issuer to accept the terms of the Loan from the Lender in a principal amount not to be outstanding at any one time in excess of the Loan Amount, at a negotiated sale upon the terms and conditions outlined herein and in the Loan Agreement (as hereinafter defined) and as determined by the Authorized Signatory executing the Loan Agreement in accordance with the terms hereof.

Prior to its execution and delivery of the Loan Documents, as hereinafter defined, the Issuer shall have received from the Lender a disclosure statement containing the information required by Section 218.385(6), Florida Statutes, and a Truth-in-Bonding Statement pursuant to Section 218.385(3), Florida Statutes, and no further disclosure is or shall be required by the Issuer.

**Section 4. Loan Agreement and Note.** The Issuer is authorized to execute an Agreement To Commercial Note with the Lender reflecting the terms of the term sheet attached hereto as Exhibit "A" (the "Loan Agreement") in substantially the form attached hereto as Exhibit "B", to make and deliver to the Lender the Issuer's Commercial Note, including Addendum A To Note attached thereto (collectively, the "Note") in the form attached hereto as Exhibit "C". The forms and terms of the Loan Agreement and the Note (collectively, the "Loan Documents") attached hereto are hereby approved, and the Authorized Signatories are authorized to execute and deliver the same, with such changes, insertions, omissions and filling of blanks as may be approved by the Authorized Signatory, executing the same, such approval to be conclusively evidenced by the execution thereof by an Authorized Signatory.

**Section 5. Pledge.** The payment of the principal of, premium, if any, and interest under the Note and other payments due under the Loan Agreement shall be secured forthwith equally and ratably by an irrevocable lien on the Pledged Revenues (defined below), all in the manner and to the extent provided herein and in the Loan Agreement. The Issuer does hereby irrevocably pledge such Pledged Revenues to the payment of the principal of, premium, if any, and interest on the Note and other payments due under the Loan Agreement.

**Section 6. Loan Agreement and Note Not to be General Obligation or Indebtedness of the Issuer.** The Loan Agreement and Note and the obligations of the Issuer thereunder shall not be deemed to constitute general obligations or a pledge of the faith and credit of the Issuer, the State of Florida or any political subdivision thereof within the meaning of any constitutional, legislative or charter provision or limitation, but shall be payable solely from and secured by a lien upon and a pledge of (i) the Non-Ad Valorem Revenues actually budgeted and appropriated and deposited into Debt Service Fund, which is hereby created (the "Debt Service Fund"), to pay debt service payments and all other amounts due and payable on or under the Loan Agreement and the Note, and (ii) all funds on deposit in the Debt Service Fund (including any investment securities on deposit therein) and all investment earnings on any such funds (collectively, the "Pledged Revenues"), in the manner and to the extent herein and in the Loan Agreement provided. No holder or owner of the Note shall ever have the right, directly or indirectly, to



require or compel the exercise of the ad valorem taxing power of the Issuer or any other political subdivision of the State of Florida or taxation in any form on any real or personal property for any purpose, including, without limitation, for the payment of debt service with respect thereto, or to maintain or continue any activities of the Issuer which generate user service charges, regulatory fees or other non-ad valorem revenues, nor shall any holder or owner of the Note be entitled to payment of such principal and interest from any other funds of the Issuer other than the Pledged Revenues, all in the manner and to the extent herein, in the Loan Agreement and in the Note provided. The Loan Agreement and the Note and the indebtedness evidenced thereby shall not constitute a lien upon any real or personal property of the Issuer, or any part thereof, or any other tangible personal property of or in the Issuer, but shall constitute a lien only on the Pledged Revenues, all in the manner and to the extent provided herein and in the Loan Agreement.

Funds in the Debt Service Fund, until applied to the payment of debt service on the Note, may be invested in investments authorized by law and meeting the Issuer's written investment policy, which investments shall mature no later than the date on which moneys therein shall be needed to pay such debt service.

**Section 7.** Severability. If any provision of this Ordinance 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 8.** Separate Accounts. The moneys required to be accounted for in the Debt Service Fund may be deposited in a single bank or other account, and funds allocated to such account may be invested, together with other funds of the Issuer, in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of moneys on deposit therein and such investments for the various purposes of such account. The designation and establishment of the Debt Service Fund shall not be construed to require the establishment of any completely independent, self-balancing fund or account, but rather is intended solely to constitute an earmarking of certain moneys or revenues for certain purposes.

**Section 9.** Applicable Provisions of Law. This Ordinance shall be governed by and construed in accordance with the laws of the State of Florida.

**Section 10.** Authorizations. The Authorized Signatories are hereby authorized to execute and deliver on behalf of the Issuer the Loan Documents as provided hereby and the City Clerk is hereby authorized to attest any such signatures on any such documents and to affix the Issuer's seal thereto to the extent required by such documents. All officials and employees of the Issuer, including, without limitation, the Authorized Signatories, are authorized and empowered, collectively or individually, to take all other actions and steps and to execute all instruments, documents, agreements and contracts on behalf of the Issuer as they shall deem necessary or desirable in connection with the completion of the Loan and the carrying out of the intention of this Ordinance.

**Section 11.** Repealer. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of the conflict.

**Section 12.** Effective Date. This Ordinance shall take effect immediately upon its adoption.

Passed and duly adopted in public session of the City Commission of the City of Winter Park, Florida on the 8<sup>th</sup> day of May, 2017.

CITY OF WINTER PARK, FLORIDA

ATTEST:

By:   
Cynthia S. Bonham, City Clerk

By:   
Steve Leary, Mayor

**EXHIBIT "A" TO ORDINANCE**

**TERM SHEET**



## COMMITMENT LETTER

January 11, 2017

### CONFIDENTIAL

City of Winter Park, Florida  
Attn: Wes Hamil, Finance Director  
401 Park Avenue S.  
Winter Park, FL 32789

Re: One or more loans or facilities described on Annex 1 (whether one or more loans or facilities, collectively "Loan") to City of Winter Park, Florida (whether one or more collectively "Borrower")

Dear Mr. Hamil:

STI Institutional & Government, Inc., as Administrative Agent for itself and the Lenders, as defined in the Annex hereto (the "Lender") is pleased to confirm to you that, subject to the terms and conditions set forth in this letter and the terms attached hereto as Annex 1 and incorporated herein by this reference (Annex 1, together with this letter and any other supplemental annexes attached hereto and incorporated herein by this reference, this "Commitment Letter"), Lender has agreed to make the Loan to Borrower. In addition to those terms set forth in this Commitment Letter, Lender may require certain other customary terms, conditions and requirements (each in form and substance satisfactory to Lender in its sole discretion) for a credit facility of this type which may not be specifically listed in this Commitment Letter. This Commitment Letter is (i) not assignable, (ii) not intended to benefit any third party, and (iii) for Borrower's confidential use only and sent to Borrower on the condition that neither its existence nor its contents will be disclosed publicly or privately to any person or entity, except to those of Borrower's officers, employees, agents, counsel or accountants directly involved with the Loan and then only on the basis that it not be further disclosed.

The commitment evidenced by this Commitment Letter is subject to, among other requirements specified herein and in Annex 1: (i) the preparation, execution and delivery of mutually acceptable loan documentation incorporating substantially the terms and conditions set forth in this Commitment Letter (collectively the "Loan Documents"); (ii) the absence of a material adverse change in the business, condition (financial or otherwise), results of operations, properties or prospects of Borrower and/or its subsidiaries (if any) as reflected in its financial statements as of September 30, 2015; (iii) the accuracy of all representations which you have made or will make to Lender and all information that you furnish to us and your compliance with the terms of this Commitment Letter; and (iv) such other terms and conditions as Lender shall deem necessary or appropriate, as will be more fully set forth in the Loan Documents.

Evaluation of the proposed financing would require and remain conditioned on, inter alia, Lender's receipt of all documentation and information Lender may require. After reviewing these items, Lender may determine that other information and/or documentation is needed to underwrite the proposed financing.



Any offer or recommendation to enter into any "swap" or trading strategy involving a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act will only occur after Lender has received appropriate information and/or documentation from you regarding whether you are qualified to enter into a swap under applicable law. Pursuant to the requirements of the Patriot Act, Lender and its affiliates are required to obtain, verify and record information that identifies Loan obligors, which information includes the name, address, tax identification number and other information regarding obligors that will allow Lender to identify obligors in accordance with the Patriot Act, and Lender is hereby so authorized. This notice is given in accordance with the requirements of the Patriot Act and is effective for SunTrust and its affiliates.

All costs incurred by Lender in connection with the proposed financing, including but not limited to, Lender's legal fees and expenses, appraisals, searches, reports and other third party costs (collectively "**Costs**"), shall be paid and/or reimbursed by Borrower, whether or not the proposed financing closes, and your acknowledgement below authorizes Lender to order and proceed with same, and to engage legal counsel, all at your expense and in reliance on this understanding. Borrower shall be responsible for all fees and expenses including, without limitation, legal fees and expenses, incurred by Lender in enforcing its rights under this Commitment Letter. Borrower's obligation in respect of the costs and expenses referenced in this paragraph is in consideration, inter alia, for Lender's undertaking to underwrite the proposed financing and incur such Costs and shall survive the cancellation or termination of this Commitment Letter. If there are multiple parties comprising "Borrower", the defined terms shall refer to all such parties collectively, but each such party shall be jointly and severally liable under this Commitment Letter.

This Commitment Letter constitutes the entire understanding between Lender and Borrower in connection with the Loan as of the date hereof, (ii) supersedes any prior written or oral communications or understandings, and (iii) may be amended only by a writing signed by Borrower and Lender. If Lender and Borrower enter into the proposed Loan, this Commitment Letter shall not survive closing of the Loan but shall be superseded by the documents evidencing the Loan. This Commitment Letter is governed by the laws of the State of FL. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER EACH HEREBY WAIVES JURY TRIAL IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS COMMITMENT LETTER.** Neither Lender nor Borrower shall be deemed to have entered into, signed or executed binding documents evidencing the Loan by virtue of this or any other communication at any time prior to Lender's express acceptance of Loan documents prepared by Lender or its counsel and bearing Borrower's duly authorized signature.

If you are in agreement with the foregoing, please sign and return a copy of this Commitment Letter to Lender by February 15, 2017, or this Commitment Letter will be deemed withdrawn.

Notwithstanding any other provision of this Commitment Letter, Lender's commitment and undertakings as set forth herein shall not be or become effective for any purpose unless and until Lender receives such copy of this Commitment Letter duly executed by an authorized officer of the Borrower prior to 5:00 p.m. (EST), on February 15, 2017. In no event shall Lender have any obligation to make the Loan available unless the closing shall have occurred on or prior to March 15, 2017. In addition to the foregoing, this Commitment Letter may be terminated at any time by mutual agreement.

This Commitment Letter may be executed in any number of separate counterparts, each of which shall collectively and separately, constitute one agreement. A signed counterpart of this Commitment Letter transmitted via facsimile, pdf or some other electronic means shall be as fully enforceable as the counterpart containing the original signature(s). Upon acceptance by you as provided herein, this Commitment Letter shall supersede all understandings and agreements between the parties hereto in respect of the transactions contemplated hereby.

We look forward to working with you on this transaction.

Yours sincerely,

Brian Orth  
First Vice President and Relationship Manager  
STI Institutional & Government Banking, Inc.

Lender's Address:  
200 S. Orange Avenue – SOAB 6  
Orlando, FL 32801

The terms and conditions of this Commitment Letter are hereby acknowledged and agreed to this \_\_\_\_ day of \_\_\_\_\_, 2017.

BORROWER:

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

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

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



## ANNEX 1

### SUMMARY OF TERMS AND CONDITIONS

**Municipal Advisor  
Rule Disclosure:**

STI Institutional & Government, Inc. (Lender) is an institutional buyer and makes direct purchase loans to Municipal Entities and Obligated Persons as defined under the Municipal Advisor Regulation, and in this term sheet is providing information regarding the terms under which it would make such a purchase for its own account.

- (a) Lender is not recommending an action to Borrower or the issuer of the debt;
- (b) Lender is not acting as an advisor to Borrower or the issuer of the debt and does not owe a fiduciary duty pursuant to Section 15B of the Exchange Act to Borrower or the issuer of the debt with respect to the information and material contained in this communication;
- (c) Lender is acting for its own interests; and
- (d) Borrower and the issuer of the debt should discuss any information and material contained in this communication with any and all internal or external advisors and experts that the municipal entity or obligated person deems appropriate before acting on this information or material.

**Borrower:** City of Winter Park, Florida ("Borrower").

**Lender:** STI Institutional & Government, Inc. ("Lender").

**Facility:** Taxable Line of Credit.

The Loan will be a revolving line of credit.

**Loan Amount:** \$8,000,000.

**Purpose:** Proceeds from the Line of Credit will be used to finance various operational needs of the City of Winter Park's Electric Utility System.

**Maturity Date:** 364 days from the closing date.

**Interest Rate:** The rate of interest on the outstanding balance will be as follows: 30 day LIBOR + 200 bps. The note shall have an interest rate floor 3.0%.

In the event that any portion of the outstanding balance is ever termed out, based on mutually agreed upon terms between the Lender and Borrower, at that time, it will be determined if the termed out portion/loan is tax exempt/taxable and/or bank qualified, and the interest rate will be determined/set accordingly.

**Commitment Fee:** 25 bps per annum on average undrawn portion of Line of Credit paid quarterly in arrears.

**Repayments:** Interest only due monthly with the unpaid balance of principal plus accrued and unpaid interest and any other amounts owed, due and payable on the Maturity Date.

|   |   |
|---|---|
| <b>Prepayment:</b>                          | The Lender will allow prepayment in whole and in part at any time without penalty.  |
| <b>Accounts and Payments by Auto Debit:</b> | Borrower agrees to execute an agreement authorizing Lender to debit a deposit account maintained by Borrower with SunTrust Bank or bank of its choice approved by Lender for all amounts due under the Loan.  |
| <b>Security:</b>                            | <p>The Note will be secured solely by a covenant to budget and appropriate legally available non-ad valorem revenues (CB&amp;A Pledge) (collectively, the "Pledged Revenues").</p> <p>The City 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, amounts sufficient to pay principal of and interest on the Notes 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.</p> <p>The City covenants to maintain and collect non ad valorem revenues sufficient to cover essential government services plus 120% of the maximum annual debt service coming due each year on all outstanding debt. On an annual basis, the Finance Director of the City will provide to SunTrust a certificate evidencing compliance.</p> |
| <b>Representations and Warranties:</b>      | Usual and customary for Lender in transactions of this type.  |
| <b>Affirmative Covenants:</b>               | In addition to the covenants expressly set forth herein, other affirmative covenants usual and customary for Lender in transactions of this type, including without limitation: Borrower shall submit to the Lender annual audited financial statements within 270 days of fiscal year end and an annual budget within 30 days of adoption, together with any other information the Lender may reasonably request, in form satisfactory to Lender, and other additional information, reports or schedules (financial or otherwise), all as Lender may request.  |
| <b>Negative Covenants:</b>                  | Usual and customary of Lender in transactions of this type.   |

**Events of  
Default:**

Usual and customary for transactions of this type (with customary notice and cure periods), and usual and customary remedies. The default rate shall be equal to 18% or the maximum allowed rate by law.

**Anti-dilution Test:**

Testing required only when new debt secured by Non Ad Valorem Revenues is issued. The City will not issue any additional obligations secured by Non Ad Valorem Revenues unless there shall be prepared by City staff and filed with the City Clerk a report showing that for any 12 consecutive months out of the 18 months preceding the proposed date of issuance of such additional obligations, the combined maximum annual debt service requirement with respect to current and proposed non ad valorem debts does not exceed 50% of the Non Ad Valorem Revenues deposited by the city in its General Fund for such 12-month period. Upon the issuance of any additional Debt the Finance Director of the City shall provide a certificate evidencing compliance.

**Opinion of Counsel:**

- (a) Borrower shall be required to deliver a written opinion from Borrower's Counsel, in form and substance acceptable to the Lender and Lender's Counsel.
- (b) In the event of a Line of Credit balance term out, as described above under Interest Rate, EITHER:
  - 1) Non-Bank Qualified - Receipt of opinion from Note Counsel in form and substance satisfactory to the Lender, which shall include, without limitation, an opinion that the interest on the Note is excludable from gross income of the owners thereof for Federal income tax purposes OR
  - 2) Bank Qualified - Receipt of opinion from Note Counsel in form and substance satisfactory to the Lender, which shall include, without limitation, an opinion that the interest on the Note is excludable from gross income of the owners thereof for Federal income tax purposes and that the Note is a qualified tax-exempt obligation under Section 265(b) (3) of the Internal Revenue Code, will be required.

**Legal Fee Quote:**

Our proposed Lender's counsel is Michael Wiener at Holland & Knight in Lakeland, Florida. Fees for Lender's counsel will be:

- (a) \$2,000.00 if our counsel closes the transaction and prepares all documentation.
- (b) Borrower agrees to pay the agreed fees for Lender's counsel and all other reasonable fees, charges, expenses and costs in connection with the transaction.
- (c) Payment by borrower of expenses described herein shall not be contingent upon closing and legal fees on account of borrower after documentation has started are payable regardless of whether the transaction closes.
- (d) If the loan has extraordinary negotiations, unexpected issues arise or the loan does not close before the closing date set in the commitment the legal fee will be increased to reflect any extra work performed and Borrower agrees to pay such fee.



**Closing Conditions:** The closing of the Loan shall be conditioned upon satisfaction (or valid waiver) of conditions precedent usual and customary for transactions of this type, including, without limitation, the following conditions (all of the items to be delivered in form and substance satisfactory to Lender): (1) receipt and review of (a) all financial, formation and other information required by Lender on Borrower) and their constituent entities and other entities specified by Lender, including all due diligence materials to verify authority, identity and background information for regulatory purposes under applicable "know your customer" and anti-money laundering laws, as deemed necessary by Lender in its sole and absolute discretion and (b) such other information and due diligence deliveries as are requested by and acceptable to Lender, including, but not limited to, legal documentation and attorney opinion letters; (2) authorization, execution and delivery of such documentation as is standard and customary for this type of transaction or otherwise deemed necessary or appropriate by Lender, including customary increased cost, yield protection provisions, treating Basel III and Dodd Frank as changes in law in a manner similar to that proposed by the LSTA for such provisions; and (3) there shall not have occurred, in the opinion of Lender, any material adverse change in the business or financial condition of Borrower or in any other state of facts submitted to Lender in connection with the Loan, from that which existed at the time Lender initially considered the proposed Loan.

The funding of the Loan shall be subject to accuracy of representations and warranties as of the date of such Loan and no event of default or incipient default under the Loan shall have occurred and be continuing as of the date of such Loan or would result from making the Loan.

In accordance with existing Anti-Dilution test for new debt secured by a covenant to budget and appropriate, the Finance Director of the City shall provide a certificate evidencing compliance.

**Expenses and  
Indemnification:**

Borrower will pay all costs and expenses of Lender in connection with the administration and enforcement of all documentation executed in connection with the Loan including, without limitation, the fees, charges and disbursements of Lender's counsel (including in-house counsel) subject to the limitations above regarding the loan closing counsel fees.

**Governing Law and  
Jurisdiction:**

State of FL.

**This Summary of Terms and Conditions is intended as an outline of certain material terms and conditions applicable to the Loan and does not purport to describe all of the terms and conditions, representations and warranties, covenants and other provisions that could be contained in the definitive loan and collateral documentation relating to the Loan.**

**EXHIBIT "B" TO ORDINANCE**  
**FORM OF LOAN AGREEMENT**

This Agreement dated May 9, 2017 between City of Winter Park, Florida ("Borrower") and SunTrust Bank ("SunTrust") constitutes the "Agreement" referenced under "Additional Terms and Conditions" in the Commercial Note dated May 9, 2017 in the Loan Amount up to \$8,000,000 (the "Commercial Note"). The terms and conditions of this Agreement and the terms and conditions of the Note constitute the entire agreement between Borrower and SunTrust. All defined terms used herein that are not defined herein shall have the meanings ascribed to such terms in the above referenced Commercial Note.

Borrower and SunTrust hereby agree to the following terms and conditions:

#### **I. AFFIRMATIVE COVENANTS**

##### **A. Financial Information.** Borrower shall deliver the following financial information to SunTrust as indicated below:

Borrower's Annual consolidated Financial Statement that has been audited by a certified public accountant acceptable to SunTrust. Such Financial Statement shall be prepared on a GAAP (generally accepted accounting principles) basis and shall be delivered to SunTrust within two hundred and seventy days (270) after Borrower's Fiscal Year-end, commencing with the Fiscal Year ending September 30, 2016. "Financial Statement" shall include at a minimum, a balance sheet, income statement, statement of retained earnings, statement of cash flows, footnotes, appropriate supporting schedules and other information requested by SunTrust.

Borrower's annual operating budget for the following Fiscal Year shall be delivered to SunTrust within thirty (30) days of adoption each Fiscal Year, commencing with the Fiscal Year ending September 30, 2017.

Borrower shall deliver within five (5) days of such request, any additional financial information with respect to Borrower as SunTrust may reasonably request.

##### **B. Notification.** Borrower shall immediately notify SunTrust of (i) the occurrence of any event of default (or any circumstances which, with notice or the passage of time or both, would constitute an event of default) under the Note, (ii) the commencement of any action, suit, or proceeding or any other matter that could reasonably be expected to have a material adverse effect on the financial condition, operations, assets or prospects of Borrower, (iii) any event or development that could reasonably be expected to have a material adverse effect on the assets, operations or financial condition of Borrower.

##### **II. COMMITMENT FEE.** During the term of the Commercial Note, the Borrower shall pay a fee of 25 basis points (0.25%) per annum, payable quarterly in arrears, on the average portion of the available amount under the Commercial Note that was not drawn upon during such period.

#### **III. AFFIRMATIVE COVENANTS**

**Ongoing Requirement.** The City covenants and agrees to maintain and collect Non-Ad Valorem Revenues sufficient to cover two times the maximum annual debt service on debt pledging Non-Ad Valorem Revenues coming due each year on all outstanding Debt (the "Debt Service Coverage Ratio Test"), as evidenced by an annual certificate of the Finance Director that such debt service ratio has been maintained. Notwithstanding the foregoing, or any provision of the Bond Resolution or Agreement to the contrary, the Borrower has not covenanted to maintain any services or programs now maintained or provided by the Borrower, including those programs and services which generate Non-Ad Valorem Revenues.

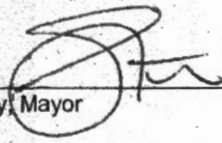
**Payment by ACH Direct Debit.** The Borrower agrees to have all debt service payments collected via ACH Direct Debit from an account with SunTrust or bank of Borrower's choice located in the continental United States.

##### **IV. CONDITION PRECEDENT TO THE MAKING OF EACH ADVANCE.** The making of each advance under the Note is subject to accuracy of representations and warranties and the further condition that no Event of Default or event which with the passing of time or the giving of notice or both would constitute an Event of Default shall exist at such time.

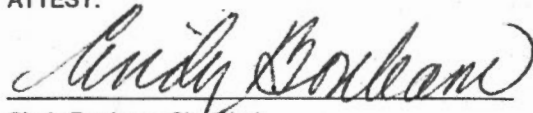


IN WITNESS WHEREOF, Borrower and SunTrust have caused this Agreement to be executed as of the date first above written.

CITY OF WINTER PARK, FLORIDA  
Borrower

By   
Steve Leary, Mayor

ATTEST:

  
Cindy Bonham, City Clerk

(Seal)

SUNTRUST BANK

By   
Brian Orth, First Vice President

#48888366\_v8

**SECTION 1**

**Definitions.** As used in this Addendum, the following terms shall have the meanings set forth below:

"Bank" shall mean SunTrust Bank and its successors and assigns.

"Borrower" shall refer to the maker of the attached note dated May 9, 2017 ("Note"). The terms of this Addendum are hereby incorporated into the Note and in the event of any conflict between the terms of the Note and the terms of this Addendum, the terms of this Addendum shall control.

"Business Day" shall mean, with respect to Interest Periods applicable to the LIBOR Rate, a day on which the Bank is open for business and on which dealings in U.S. dollar deposits are carried on in the London Inter-Bank Market.

"Interest Period" shall mean a period of one (1) month, provided that (i) the initial Interest Period may be less than one month, depending on the initial funding date and (ii) no Interest Period shall extend beyond the maturity date of the Note.

"Interest Rate Determination Date" shall mean the date the Note is initially funded and the first Business Day of each calendar month thereafter.

"LIBOR Rate" shall mean that rate per annum effective on any Interest Rate Determination Date which is equal to the quotient of:

- (i) the rate per annum equal to the offered rate for deposits in U.S. dollars for a one (1) month period, which rate appears on that page of Reuters reporting service, or such similar service as determined by the Bank, that displays ICE Benchmark Administration ("ICE") (or any successor thereto if ICE is no longer making a London Interbank Offered Rate available) interest settlement rates for deposits in U.S. Dollars, as of 11:00 A.M. (London, England time) two (2) Business Days prior to the Interest Rate Determination Date; provided, that if no such offered rate appears on such page, the rate used for such Interest Period will be the per annum rate of interest determined by the Bank to be the rate at which U.S. dollar deposits for the Interest Period, are offered to the Bank in the London Inter-Bank Market as of 11:00 A.M. (London, England time), on the day which is two (2) Business Days prior to the Interest Rate Determination Date, divided by
- (ii) a percentage equal to 1.00 *minus* the maximum reserve percentages (including any emergency, supplemental, special or other marginal reserves) expressed as a decimal (rounded upward to the next 1/100th of 1%) in effect on any day to which the Bank is subject with respect to any LIBOR loan pursuant to regulations issued by the Board of Governors of the Federal Reserve System with respect to eurocurrency funding (currently referred to as "eurocurrency liabilities" under Regulation D). This percentage will be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Prime Rate" shall mean the publicly announced prime lending rate of the Bank from time to time in effect, which rate may not be the lowest or best lending rate made available by the Bank.

**SECTION 2**

**Interest.** The Borrower shall pay interest upon the unpaid principal balance of the Note at the LIBOR Rate plus the margin provided in the Note. Interest shall be due and payable as provided in the Note and shall be calculated as described in the Note. The interest rate shall remain fixed during each month based upon the interest rate established pursuant to this Addendum on the applicable Interest Rate Determination Date.

**SECTION 3**

**Additional Costs.** In the event that any applicable law or regulation or the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof (whether or not having the force of law) (i) shall change the basis of taxation of payments to the Bank of any amounts payable by the Borrower hereunder (other than taxes imposed on the overall net income of the Bank) or (ii) shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by the Bank, or (iii) shall impose any other condition with respect to the Note, and the result of any of the foregoing is to increase the cost to the Bank of making or maintaining the Note or to reduce any amount receivable by the Bank hereunder, and the Bank determines that such increased costs or reduction in amount receivable was attributable to the LIBOR Rate basis used to establish the interest rate hereunder, then the Borrower shall from time to time, upon demand by the Bank, pay to the Bank additional amounts sufficient to compensate the Bank for such increased costs (the "Additional Costs"). A detailed statement as to the amount of such Additional Costs, prepared in good faith and submitted to the Borrower by the Bank, shall be conclusive and binding in the absence of manifest error.

#### SECTION 4

**Unavailability Of Dollar Deposits.** If the Bank determines in its sole discretion at any time (the "Determination Date") that it can no longer make, fund or maintain LIBOR based loans for any reason, including without limitation illegality, or the LIBOR Rate cannot be ascertained or does not accurately reflect the Bank's cost of funds, or the Bank would be subject to Additional Costs that cannot be recovered from the Borrower, then the Bank will notify the Borrower and thereafter will have no obligation to make, fund or maintain LIBOR based loans. Upon such Determination Date the Note will be converted to a variable rate loan based upon the Prime Rate. Thereafter the interest rate on the Note shall adjust simultaneously with any fluctuation in the Prime Rate.

CITY OF WINTER PARK, FLORIDA

By:  \_\_\_\_\_  
Steve Leary, Mayor

#48888725\_v5



**EXHIBIT "C" TO ORDINANCE**  
**FORM OF COMMERCIAL NOTE**



**Commercial Note  
Florida**

Borrower City of Winter Park, Florida Date April, 2017  
Borrower's Address 401 Park Avenue S, Winter Park, Florida 32789  
Loan Amount Eight Million Dollars (\$8,000,000)  
Account Number 0050922531 Note Number \_\_\_\_\_ Officer Brian Orth

For value received, the borrower(s) named above, whether one or more (the "Borrower" or "City"), promises to pay to the order of SunTrust Bank, a Georgia banking corporation ("SunTrust") at any of its offices, or at such place as SunTrust may in writing designate, without offset in U.S. Dollars in immediately available funds, the Loan Amount shown above, or the total of all amounts advanced under this commercial note and any modifications, renewals, extensions or replacements thereof (this "Note") if less than the full Loan Amount is advanced, plus interest and any other amounts due, upon the terms specified below.

**Note Type      Repayment Terms**

- ☒ **Revolving Closed Master Borrowing Note With Maturity Date**      This is an open end revolving line of credit. Borrower may borrow an aggregate principal amount up to the Loan Amount outstanding at any one time.
- Principal is due and payable in full on the Maturity Date, but the Borrower shall be liable for only so much of the Loan Amount as shall be equal to the total amount advanced to the Borrower by SunTrust from time to time, less all payments made by or for the Borrower and applied by SunTrust to principal. Advances under this Note shall be recorded and maintained by SunTrust in its internal records and such records shall be conclusive of the principal and interest owed by Borrower unless there is a material error in such records. Accrued interest will be payable on the 1<sup>st</sup> day of each month, with all unpaid accrued interest due and payable on the Maturity Date.

"Maturity Date" means \_\_\_\_\_, 2018, or such date to which this Note may be extended or renewed in the sole discretion of SunTrust by written notice from SunTrust to Borrower.

☒ **Additional Terms And Conditions**

This Note is governed by additional terms and conditions contained in an Agreement to Commercial Note between the Borrower and SunTrust dated April \_\_, 2017 and any modifications, renewals, extensions or replacements thereof (the "Agreement"). In the event of a conflict between any term or condition contained in this Note and in the Agreement, such term or condition of the Agreement shall control.

**Interest**

Interest will accrue on an actual / 360 day basis (calculated on the basis of a 360 day year based on actual days elapsed).

Interest shall accrue from the date of disbursement on the unpaid balance and shall continue to accrue until this Note is paid in full.

Subject to the above, interest per annum payable on this Note (the "Rate") shall be:

- ☒ Variable: This is a variable rate transaction. The interest rate is prospectively subject to increase or decrease without prior notice and is based on the following Index.
- ☒ The LIBOR Rate as defined on the attached Addendum A (the "Index").

The Rate shall equal the greater of (i) the Index plus 2% per annum or (ii) 3.00% per annum.

Adjustments to the Rate shall be effective as of the date referenced on the attached Addendum A.

**Security**

The collateral for this Note includes the following:

The payment of the principal of, premium, if any, and interest under this Note and other payments due under the Agreement shall be secured forthwith equally and ratably by an irrevocable lien and a pledge of (i) the Non-Ad Valorem Revenues (as defined below) actually budgeted and appropriated and deposited into the Debt Service Fund (as established under the Bond Ordinance, dated April \_\_, 2017, the "Bond Ordinance") and (ii) all funds on deposit in the Debt Service Fund (including any investment securities on deposit therein) and all investment earnings on any such funds (collectively, the "Pledged Revenues") all in the manner and to the extent provided in the Bond Ordinance and in the Agreement. "Non-Ad Valorem Revenues" means all legally available non-ad valorem revenues of the Borrower derived from any source whatsoever, other than ad valorem taxation on real and personal property, including, without limitation, investment income, which are legally available for the payment by the Borrower of debt service on the Note, including, without limitation, legally available non-ad valorem revenues derived from sources subject to a prior pledge thereof for the payment of other obligations of the Borrower and available after payment of principal and interest on such other obligations, after provision has been made by the Borrower for the payment of services and programs which are for essential governmental services of the Borrower or which are legally mandated by applicable law.



Notwithstanding anything herein or in the Agreement to the contrary, the Agreement and the Note and the obligations of the Borrower thereunder shall not be deemed to constitute general obligations or a pledge of the faith and credit of the Borrower, the State of Florida or any political subdivision thereof within the meaning of any constitutional, legislative or charter provision or limitation, but shall be payable solely from and secured by a lien upon and a pledge of the Pledged Revenues, in the manner and to the extent herein and in the Agreement provided. No holder or owner of the Note shall ever have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the Borrower or any other political subdivision of the State of Florida or taxation in any form on any real or personal property for any purpose, including, without limitation, for the payment of debt service with respect thereto, or to maintain or continue any activities of the Borrower which generate user service charges, regulatory fees or other non-ad valorem revenues, nor shall any holder or owner of the Note be entitled to payment of such principal and interest from any other funds of the Borrower other than the Pledged Revenues, all in the manner and to the extent provided in the Bond Ordinance, the Agreement and in the Note. The Agreement and the Note and the indebtedness evidenced thereby shall not constitute a lien upon any real or personal property of the Borrower, or any part thereof, or any other tangible personal property of or in the Borrower, but shall constitute a lien only on the Pledged Revenues, all in the manner and to the extent provided herein and in the Agreement.

All of the foregoing security referred to herein as the "Collateral" consists solely of the Non-Ad Valorem Revenues budgeted and appropriated and deposited into the Debt Service Fund and all funds on deposit in the Debt Service Fund (including any investment securities on deposit therein) on all investment earnings on any such funds.

#### **Loan Purpose And Updated Financial Information Required**

The Borrower warrants and represents that the loan evidenced by this Note is being made solely for the purpose of working capital. The Borrower agrees to provide to SunTrust updated financial information required under the Agreement, together with such additional information, reports or schedules (financial or otherwise), all as SunTrust may reasonably request from time to time request.

#### **Representations and Warranties**

This Note has been duly executed and delivered by Borrower, constitutes Borrower's valid and legally binding obligations and is enforceable in accordance with its terms against Borrower. The execution, delivery and performance of this Note and the consummation of the transaction contemplated will not, with or without the giving of notice or the lapse of time, (a) violate any material law applicable to Borrower, (b) violate any judgment, writ, injunction or order of any court or governmental body or officer applicable to Borrower, nor (c) violate or result in the breach of any material agreement to which Borrower is a party. No consent, approval, license, permit or other authorization of any third party or any other governmental body other than the City Commission of the Borrower is required for the valid and lawful execution and delivery of this Note.

The Borrower does hereby irrevocably pledge such Pledged Revenues to the payment of the principal of, premium, if any, and interest on the Note and other payments due under the Agreement.

The City 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, amounts sufficient to pay principal of and interest on the Note not being paid from other amounts as the same shall become due. Such covenant and agreement on the part of the Borrower 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. Until such monies are budgeted, appropriated and deposited in the Debt Service Fund, there shall be no lien upon or pledge of such Non-Ad Valorem Revenues. Thus, no lien upon or pledge of such budgeted Non-Ad Valorem Revenues shall be in effect until such monies are budgeted, appropriated and deposited into the Debt Service Fund as provided in the Bond Ordinance. The Borrower further acknowledges and agrees that the obligations of the Borrower to include the amounts 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 in the Bond Ordinance.

The covenant to budget and appropriate does not preclude the Borrower from pledging in the future its 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 Borrower. 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).

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 Borrower 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 Borrower or the use or application of ad valorem tax revenues in order to satisfy any payment obligations hereunder or to maintain or continue any of the activities of the Borrower which generate user service charges, regulatory fees, or any other Non-Ad Valorem Revenues. The obligations of the Borrower shall not be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the Borrower, but shall be payable solely as provided herein subject to the availability of Non-Ad Valorem Revenues after satisfaction of funding requirements for obligations having an express lien on or pledge of such revenues, payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Borrower.

#### **Anti-Dilution**

For so long as any of the principal amount of or interest on the Note is outstanding or the Borrower shall have the right to request an advance under the Note, the Borrower covenants to SunTrust that the Borrower shall not incur additional Debt unless the Borrower files a report with the City Clerk showing that for any 12 consecutive months out of the 18 months preceding the proposed date of issuance of such additional Debt, the maximum annual debt service in any Note Year resulting from the aggregate outstanding Debt of the



Borrower, including such additional Debt, does not exceed fifty percent (50%) of total Non-Ad Valorem Revenues for such period (the "Anti-Dilution Test").

For purposes of calculating the foregoing, if any Debt bears a rate of interest that is not fixed for the entire term of the Debt (excluding any provisions that adjust the interest rate upon a change in tax law or in the tax treatment of interest on the debt or upon a default), then the interest rate on such Debt shall be assumed to be the highest of (x) the average rate of actual interest borne by such Debt during the most recent complete month prior to the date of calculation, (y) for tax-exempt Debt, The Bond Buyer Revenue Bond Index last published in the month preceding the date of calculation plus one percent, or (z) for taxable Debt, the yield on a U.S. Treasury obligation with a maturity closest to but not before the maturity date of such Debt, as reported by the ICE Benchmark Administration ("IBA") rate for fixed-rate payers in the U.S. Dollar interest rate swaps on the last day of the month preceding the date of issuance of such proposed Debt, plus three percent, provided that if the Borrower shall have entered into an interest rate swap or interest rate cap or shall have taken any other action which has the effect of fixing or capping the interest rate on such Debt for the entire term thereof, then such fixed or capped rate shall be used as the applicable rate for the period of such swap or cap, and provided further that if The Bond Buyer Revenue Bond Index or the IBA is no longer available or no longer contains the necessary data, such other comparable source of comparable data as selected by the Borrower shall be utilized in the foregoing calculations.

"Debt" means as of any date and without duplication, all of the following to the extent that they are payable in whole or in part from any Non-Ad Valorem Revenues: (i) all obligations of the Borrower for borrowed money or evidenced by bonds, debentures, notes or other similar instruments; (ii) all obligations of the Borrower 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; (iii) all obligations of the Borrower as lessee under capitalized leases; and (iv) all indebtedness of other persons to the extent guaranteed by, or secured by Non-Ad Valorem Revenues of, the Borrower.

"Fiscal Year" means the period commencing on October 1 of each year and ending on the succeeding September 30, or such other period of twelve consecutive months as may hereafter be designated as the fiscal year of the Borrower.

"Note Year" means the annual period beginning on the first day of October of each year and ending on the last day of the succeeding September, with the first Note Year ending September 30, 2016; provided however, principal and interest on Debt maturing or becoming subject to redemption on October 1 of any year shall be deemed to mature or become subject to redemption on the last day of the preceding Note Year.

#### **Default, Acceleration And Setoff**

An "event of default" shall occur hereunder upon the occurrence of any one or more of the following events or conditions:

- (a) the failure by the Borrower to pay, whether by acceleration or otherwise, (i) any principal amount owed under this Note when due, or (ii) any interest or fees when due and such failure shall continue unremedied for a period of five (5) days thereafter;
- (b) the occurrence of any event of default under any other agreement executed in connection with this Note or the failure of the Borrower to perform any covenant, promise or obligation contained in this Note, such other agreement or any other agreement to which the Borrower and SunTrust are parties, provided, however that if such failure relates to a covenant other than a negative covenant or a financial covenant under this Note or any agreement executed in connection with this Note, the Borrower shall have thirty (30) days after the earlier of the date (i) the Borrower or any officer or representative of the Borrower becomes aware of such failure or (ii) notice of such failure is given to the Borrower by SunTrust before such failure shall constitute an event of default hereunder;
- (c) any representation or warranty of the Borrower contained in this Note or any other agreement with SunTrust shall prove to be incorrect in any material respect (other than any representation or warranty that is expressly qualified by a material adverse effect or other materiality, in which case such representation or warranty shall prove to be incorrect in any respect);
- (d) the failure of the Borrower to pay when due any principal, interest or other amount due under any indebtedness of the Borrower (after any applicable grace period specified in connection with such indebtedness) to any creditor other than SunTrust or any event shall occur or condition shall exist under any agreement or instrument relating to such indebtedness, if the effect of such event or condition is to accelerate, or permit the acceleration, of such indebtedness;
- (e) the Borrower shall (i) commence a voluntary case or other proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or any substantial part of the Borrower's property, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) of this section (e), (iii) apply for or consent to the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or for a substantial part of the Borrower's assets, (iv) file an answer admitting the material allegations of a petition filed against the Borrower in any such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take any action for the purpose of effecting any of the foregoing;
- (f) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or the Borrower's debts, or any substantial part of the Borrower's assets, under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or for a substantial part of the Borrower's assets, and in any such case, such proceeding or petition shall remain undismissed for a period of sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;
- (g) the entry of a judgment in excess of \$1,000,000 against the Borrower which remains unstayed, unsatisfied or unbonded for thirty (30) days following the entry of the judgment, or the issuance or service of any attachment, levy or garnishment against the Borrower or the property of the Borrower or the repossession or seizure of property of the Borrower;

- (h) any provision of any guaranty, security agreement, or other collateral documentation shall, due to any act or failure to act by the Borrower, cease to be valid and binding on, or enforceable against, the Borrower, or the Borrower shall so state in writing, or the Borrower shall terminate or seek to terminate the Borrower's obligations under such agreements;
- (i) a material adverse change in the financial condition, operations, business, or prospects of the Borrower has occurred since the date of this Note affecting the Borrower; or
- (j) the failure of the Borrower to comply with the Anti-Dilution Test or the Debt Service Coverage Ratio Test in any Fiscal Year.

SunTrust shall not be obligated to fund this Note or make any advance under this Note if at the time such funding or advance is requested there exists (i) an event of default or (ii) an event or condition which with the passage of time or giving of notice or both would result in an event of default. Upon the occurrence of an event of default, SunTrust shall, at its option, have the remedies provided herein and by any other agreement between SunTrust and the Borrower or under applicable law, including without limitation, declaring the entire outstanding principal balance, together with all interest thereon and any other amounts due under this Note, to be due and payable immediately without presentment, demand, protest, or notice of any kind, except notice required by law. Upon the occurrence of an event of default under paragraph (e) or (f) above, the entire outstanding principal balance, together with all interest thereon and any other amounts due under this Note, shall automatically become due and payable without presentment, demand, protest, or notice of any kind except notice required by law, and SunTrust's obligation to make advances under this Note shall automatically terminate without notice or further action by SunTrust. Upon the occurrence of an event of default, as of the date of such event of default, SunTrust, at its option, may charge interest on the unpaid balance of this Note at the lesser of (a) the aggregate of Prime Rate plus 8% per annum or (b) the maximum rate allowed by law (the "Default Rate") until paid in full.

"Prime Rate" shall mean the per annum rate which SunTrust announces from time to time to be its prime rate, as in effect from time to time. The prime rate is a reference or benchmark rate, is purely discretionary and does not necessarily represent the lowest or best rate charged to borrowing customers. SunTrust may make commercial loans or other loans at rates of interest at, above or below the prime rate. Each change in the prime rate shall be effective from and including the date such change is announced as being effective. The Prime Rate is subject to increase or decrease at the sole option of SunTrust.

#### **Late Charges And Other Authorized Fees And Charges**

If any portion of a payment is at least ten (10) days past due, the Borrower agrees to pay a late charge of 2.5% of the amount which is past due. Unless prohibited by applicable law, the Borrower agrees to pay the fee established by SunTrust from time to time for returned checks if a payment is made on this Note with a check and the check is dishonored for any reason after the second presentment. In addition to any other amounts owed under the terms of this Note, the Borrower agrees to pay those fees and charges disclosed in the attached Disbursements and Charges Summary which is incorporated in this Note by reference and, as permitted by applicable law, the Borrower agrees to pay the following: (a) all expenses, including, without limitation, any and all costs incurred by SunTrust related to enforcement, all court costs and out-of-pocket collection expenses, and reasonable attorneys' fees actually incurred, whether suit be brought or not, incurred in collecting this Note; (b) any expenses or costs (including reasonable attorneys' fees) incurred in defending any claim arising out of the execution of this Note or the obligations which it evidences; and (c) any other charges permitted by applicable law. The Borrower agrees to pay such amounts on demand or, at SunTrust's option, such amounts may be added to the unpaid balance of the Note and shall accrue interest at the stated Rate. All amounts due hereunder shall be payable from Non-Ad Valorem Revenues budgeted and appropriated in accordance with this Note and the Bond Ordinance.

#### **☒ Prepayment Provisions**

Principal on this Note may be paid in whole or in part at par and without penalty at any time upon two Business Days' Notice to the Bank.

"Business Days" means any day other than a Saturday, Sunday or day on which banking institutions in the State of Florida are authorized or required by law to remain closed.

#### **Waivers**

The Borrower waives presentment, demand, protest, notice of protest and notice of dishonor and waive all exemptions, whether homestead or otherwise, as to the obligations evidenced by this Note and waive any discharge or defenses based on suretyship or impairment of Collateral or of recourse to the extent permitted by law.

#### **Waiver of Jury Trial**

**THE BORROWER AND SUNTRUST HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE AND ANY OTHER DOCUMENT OR INSTRUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR SUNTRUST ENTERING INTO OR ACCEPTING THIS NOTE. FURTHER, THE BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF SUNTRUST, NOR SUNTRUST'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUNTRUST WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION.**

#### **Patriot Act Notice**

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



### **Sovereign Immunity**

The defense of sovereign immunity is not available to the City in any proceedings by the Bank to enforce any of the obligations of the City under this Commercial Note or the Agreement, except to the extent that any such proceeding seeks enforcement based on tort or similar claim and in such case such defense is available only to the extent set forth under Florida Statutes Section 768.28 or other similarly applicable provision of law, and, to the extent permitted by applicable law, the City consents to the initiation of any such proceedings in any court of competent jurisdiction and agrees not to assert the defense of sovereign immunity in any such proceedings.

### **Miscellaneous**

All amounts received by SunTrust shall be applied to expenses, late fees and interest before principal or in any other order as determined by SunTrust, in its sole discretion, as permitted by law. Any provision of this Note which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Note. No amendment, modification, termination or waiver of any provision of this Note, nor consent to any departure by the Borrower from any term of this Note, shall in any event be effective unless it is in writing and signed by an authorized officer of SunTrust, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. If the interest Rate is tied to an external index and the index becomes unavailable during the term of this loan, SunTrust may, in its sole and absolute discretion, designate a substitute index with notice to the Borrower. No failure or delay on the part of SunTrust to exercise any right, power or remedy under this Note shall be construed as a waiver of the right to exercise the same or any other right at any time. The captions of the paragraphs of this Note are for convenience only and shall not be deemed to constitute a part hereof or used in construing the intent of the parties. All representations, warranties, covenants and agreements contained herein or made in writing by Borrower in connection herewith shall survive the execution and delivery of this Note and any other agreement, document or writing relating to or arising out of any of the foregoing. All notices or communications given to Borrower pursuant to the terms of this Note shall be in writing and may be given to Borrower at Borrower's address as stated below or at the top of this Note unless Borrower notifies SunTrust in writing of a different address. Unless otherwise specifically provided herein to the contrary, such written notices and communications shall be delivered by hand or overnight courier service, or mailed by first class mail, postage prepaid, addressed to the Borrower at the address referred to herein. Any written notice delivered by hand or by overnight courier service shall be deemed given or received upon receipt. Any written notice delivered by U.S. Mail shall be deemed given or received on the third (3rd) business day after being deposited in the U.S. Mail. Notwithstanding any provision of this Note or any loan document executed in connection with this Note to the contrary, the Borrower and SunTrust intend that no provision of this Note or any loan document executed in connection with this Note be interpreted, construed, applied, or enforced in a way that will permit or require the payment or collection of interest in excess of the highest rate of interest permitted to be paid or collected by the laws of the jurisdiction indicated below, or federal law if federal law preempts the law of such jurisdiction with respect to this transaction (the "Maximum Permitted Rate"). If, however, any such provision is so interpreted, construed, applied, or enforced, Borrower and SunTrust intend (a) that such provision automatically shall be deemed revised so as to require payment only of interest at the Maximum Permitted Rate; and (b) if interest payments in excess of the Maximum Permitted Rate have been received, that the amount of such excess shall be deemed credited retroactively in reduction of the then-outstanding principal amount of this obligation, together with interest at the Maximum Permitted Rate. In connection with all calculations to determine the Maximum Permitted Rate, the Borrower and SunTrust intend that all charges be excluded to the extent they are properly excludable under the usury laws of such jurisdiction or the United States, as they from time to time are determined to apply to this obligation; and (b) that all charges that may be spread in the manner provided by statute of the jurisdiction indicated or any similar law, be so spread.

### **Liability, Successors And Assigns And Choice Of Law**

This Note shall apply to and bind each of the Borrower's successors and permitted assigns and shall inure to the benefit of SunTrust, its successors and assigns. Notwithstanding the foregoing, Borrower shall not assign Borrower's rights or obligations under this Note without SunTrust's prior written consent. This Note shall be governed by applicable federal law and the internal laws of the state of Florida. The Borrower agrees that certain material events and occurrences relating to this Note bear a reasonable relationship to the laws of Florida and the validity, terms, performance and enforcement of this 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 this Note, SunTrust and Borrower consent to the exclusive jurisdiction and venue of any court of proper jurisdiction located in Orange County, Florida.

### **Documentary and Intangible Taxes**

In the event that any intangible tax or documentary stamp tax is due from SunTrust to any state or other governmental agency or authority because of the execution or holding of this Note, the Borrower shall, upon demand, reimburse SunTrust for any such tax paid.

Documentary Stamp Tax Statement: Exempt from Documentary Stamp Taxes under Section 201.24, Florida Statutes.

### **Transfer of Loan**

SunTrust may, at any time, sell, transfer or assign the Note, the related security instrument and any related loan documents, and any or all servicing rights with respect thereto or grant participations therein (the "Loan"). SunTrust may forward to each purchaser, transferee, assignee, servicer or participant in such Loan (collectively, the "Participant") and each prospective Participant, all documents and information which SunTrust now has or may hereafter acquire relating to the Borrower, any loan to Borrower, whether furnished by Borrower, or otherwise, as SunTrust determines necessary or desirable.

By signing below under seal, the Borrower agrees to the terms of this Note and the disbursement of proceeds as described in the Disbursements and Charges Summary form provided in connection with this transaction.

CITY OF WINTER PARK, FLORIDA  
Borrower

ATTEST:

By \_\_\_\_\_  
Steve Leary, Mayor

\_\_\_\_\_  
Cindy Bonham, City Clerk

(Seal)

Borrower's Billing Address, if different from address indicated at the top of this Note:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#48877835\_v5