Special Council Meeting
Tuesday, July 17, 2018
Agenda
6:30 PM

Statement of Decorum

Any person making a racial or slanderous remark or who becomes boisterous while addressing the Village Council, Staff, etc. shall be barred from the audience by the presiding officer. No profanity, shouting, heckling, verbal outbursts or disruptive behavior in support of or opposition to a speaker or his/her remarks is permitted. No signs or placards shall be allowed in the Village Hall. Person exiting the Village Hall shall do so quietly.

"Pursuant to Florida Statutes, Chapter 286.0105: If a person decided to appeal any decision made by the Board, Agency or Committee with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based."

A. CALL TO ORDER.........................Mayor Claudia V. Cubillos, Presiding
B. SILENT MEDITATION & PLEDGE........Salute American Flag in Unison
C. ROLL CALL...............................Yenise Jacobi, Village Clerk
D. APPROVAL OF AGENDA
E. ACKNOWLEDGMENT OF VISITORS AND/OR SPECIAL PRESENTATIONS:
F. GOOD AND WELFARE
(Note: This section of the agenda is reserved in the spirit of a representative democracy "of, by, and for the people" and is specifically provided as a mechanism for the input and solutions on matters of concern of Villagers. We request that comments be limited to 3 MINUTES PER PERSON, and that speakers and the audience maintain proper decorum at-large.
The speaker should keep to only issues on the agenda.)

G. AGENDA ITEM:
H. RESOLUTIONS / ORDINANCES:
H1. ORDINANCE No. 2018-05

LINE OF CREDIT

1st Reading

AN ORDINANCE OF VILLAGE OF EL PORTAL, FLORIDA, AUTHORIZING THE ISSUANCE OF A GRANT PROCEEDS NOTE, SERIES 2018 (LINE OF CREDIT) OF THE ISSUER IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED $1,250,000 TO FINANCE CERTAIN CLEANUP COSTS RESULTING FROM HURRICANE IRMA; PROVIDING THAT THE NOTE SHALL BE PAYABLE FROM PLEDGED REVENUES; AUTHORIZING AND DELEGATING TO THE MAYOR OR VILLAGE MANAGER THE SALE OF THE NOTE TO THE BANK PURSUANT TO THE TERMS AND CONDITIONS OF A FINANCING AGREEMENT WITH THE BANK; APPROVING THE EXECUTION AND DELIVERY OF SAID FINANCING AGREEMENT; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; MAKING SUCH DETERMINATIONS AS ARE REQUIRED TO AFFORD SUCH NOTE "BANK QUALIFIED" STATUS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

I. UNFINISHED BUSINESS AND GENERAL ORDERS:

J. NEW BUSINESS:

K. GOOD AND WELFARE
(Note: This section of the agenda is reserved in the spirit of a representative democracy “of, by, and for the people” and is specifically provided as a mechanism for the input and solutions on matters of concern of Villagers. We request that comments be limited to 3 MINUTES PER PERSON, and that speakers and the audience maintain proper decorum at-large. The speaker should keep to only issues on the agenda.)

L. ADJOURNMENT:
Mayor & Councilpersons

In accordance with the American With Disabilities Act of 1990, all persons with disabilities and who need special accommodations to participate in this meeting due to that disability should contact the Village Clerk’s Office at (305) 795-7880 no later than two (2) business days prior to such proceeding.
ORDINANCE NO. 2018-05

AN ORDINANCE OF VILLAGE OF EL PORTAL, FLORIDA, AUTHORIZING THE ISSUANCE OF A GRANT PROCEEDS NOTE, SERIES 2018 (LINE OF CREDIT) OF THE ISSUER IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED $1,250,000 TO FINANCE CERTAIN CLEANUP COSTS RESULTING FROM HURRICANE IRMA; PROVIDING THAT THE NOTE SHALL BE PAYABLE FROM PLEDGED REVENUES; AUTHORIZING AND DELEGATING TO THE MAYOR OR VILLAGE MANAGER THE SALE OF THE NOTE TO THE BANK PURSUANT TO THE TERMS AND CONDITIONS OF A FINANCING AGREEMENT WITH THE BANK; APPROVING THE EXECUTION AND DELIVERY OF SAID FINANCING AGREEMENT; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; MAKING SUCH DETERMINATIONS AS ARE REQUIRED TO AFFORD SUCH NOTE "BANK QUALIFIED" STATUS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of El Portal, Florida (the "Issuer") is a municipal corporation duly created and existing pursuant to the Constitution and laws of the State of Florida; and

WHEREAS, the Issuer determined that it is necessary and desirable and in the best interest of the inhabitants of the Issuer to finance for the Issuer the costs and expenses associated with the clean-up and reconstructive efforts related to the aftermath of hurricane Irma, including but not limited to debris removal (the "Project"); and

WHEREAS, it is determined to be in the best interest of the Issuer to issue its not to exceed $1,250,000 Grant Proceeds Note, Series 2018 (Line of Credit) (the "Note") secured by a Financing Agreement between the Issuer and Florida Community Bank, N.A. (the "Financing Agreement") in substantially the form attached hereto as Exhibit A, to finance the Project; and

WHEREAS, debt service on the Note will be secured by Pledged Revenues, as defined in the Financing Agreement; and

WHEREAS, the Pledged Revenues shall be sufficient to pay all principal of and interest and prepayment premium, if any, on the Note, as the same becomes due, and to make all deposits or payments required by this Ordinance and the Financing Agreement; and
WHEREAS, 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 under this Ordinance or the Financing Agreement. The Note shall not constitute a lien on any property owned or situated within the limits of the Issuer. The Pledged Revenues, as such term is defined in the Financing Agreement, are being pledged for the repayment of the Note; and

WHEREAS, the Issuer has received a proposal from the Florida Community Bank, N.A. (the “Bank”) and it is hereby found, determined and declared that a negotiated sale of the Note to the Bank, is in the best interest of the Issuer because a bank loan and consequent impact of duration of maturity of the Note will save the Issuer considerable time and expense as compared to selling the Note in a public sale; and

WHEREAS, it is hereby ascertained, determined and declared that it is in the best interest of the Issuer to authorize the Mayor or Village Manager to accept the offer from the Bank to purchase the Note at a negotiated sale upon the terms and conditions set forth in this Ordinance, the Financing Agreement and in the loan commitment dated May 1, 2018 submitted by the Bank for the purchase of the Note, a copy of which is attached hereto as Exhibit D (the “Proposal”); and

WHEREAS, the Bank will provide to the Issuer, prior to the sale of the Note, a disclosure statement regarding the Note containing the information required by Section 218.385(6), Florida Statutes, in substantially the form attached hereto as Exhibit C.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF EL PORTAL, FLORIDA, AS FOLLOWS:

SECTION 1. RECITALS. The foregoing recitals are true and correct and are incorporated herein by this reference.

SECTION 2. AUTHORITY. This Ordinance is enacted pursuant to the Florida Constitution; Chapter 166, Florida Statutes; the Charter of the Issuer; and other applicable provisions of law.

SECTION 3. AUTHORIZATION OF THE NOTE. Subject and pursuant to the provisions of this Ordinance, an obligation of the Issuer to be known as “Village of El Portal, Florida, Grant Proceeds Note, Series 2018 (Line of Credit)” is hereby authorized to be issued under and secured by this Ordinance and the Financing Agreement in the principal amount of not to exceed $1,250,000, for the purposes of (i) financing the cost of the Project; and (ii) paying the transaction costs associated with the Note.

SECTION 4. AUTHORIZATION OF THE PROJECT. The financing of the Project is hereby approved.
SECTION 5. SALE OF THE NOTE. Because of the characteristics of the Note, prevailing market conditions, the ability of the Issuer to access direct purchase with the Bank and for the Issuer to receive the benefits of lower interest rates and issuance costs, it is hereby determined that it is in the best interest of the Issuer to accept the offer of the Bank to purchase the Note at a private negotiated sale pursuant to the terms of the Proposal. Prior to the issuance of the Note, the Issuer shall receive from the Bank a Bank’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.

SECTION 6. DESCRIPTION OF NOTE. The amount of the Note shall not exceed $1,250,000. The Note shall be made as a tax-exempt borrowing, which shall include costs of issuance incurred by the Issuer and shall bear interest and shall be repayable according to the terms and conditions set forth in the Financing Agreement with such changes, insertions and omissions as may be approved by the Mayor or Village Manager.

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 Florida Constitution, but shall be payable solely from the Pledged Revenues in accordance with the terms of this Ordinance and the Financing Agreement. 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 in the Financing Agreement.

SECTION 7. APPROVAL OF FINANCING AGREEMENT. The Mayor or Village Manager, as attested by the Village Clerk and approved as to form and correctness by the Village Attorney, or any other appropriate officers of the Issuer, are hereby authorized and directed to execute and deliver a Financing Agreement to evidence the Note, to be entered into by and between the Issuer and the Bank in substantially the form attached hereto as Exhibit A with such changes, insertions and omissions as may be approved by the Mayor or Village Manager, the execution thereof being conclusive evidence of such approval.

SECTION 8. BANK QUALIFICATION. The Issuer hereby designates the Series 2018 Note as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code. The Issuer and any subordinate entities of the Issuer and any issuer of “tax-exempt” debt that issues “on behalf of” the Issuer do not reasonably expect during the calendar year 2018 to issue more than $10,000,000 of “tax-exempt” obligations including such Note, exclusive of any private activity bonds as defined in Section 141(a) of the Code (other than qualified 501(c)(3) bonds as defined in Section 145 of the Code) and exclusive of bonds issued to currently refund any existing tax-exempt obligations.
SECTION 9. OTHER INSTRUMENTS. The Mayor, the Village Clerk, the Village Manager, the Village Attorney and other officers, attorneys and other agents and employees of the Issuer are hereby authorized to perform all acts and things required of them by this Ordinance and the Financing Agreement or desirable or consistent with the requirements hereof for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Note, this Ordinance and the Financing Agreement and they are hereby authorized to execute and deliver all documents which shall be required by Note Counsel or the Bank to effectuate the sale of the Note. All action taken to date by the officers, attorneys and any other agents and employees of the Issuer in furtherance of the issuance of the Note is hereby approved, confirmed and ratified.

SECTION 10. ADDITIONAL INFORMATION. The Note and Financing Agreement shall not be executed and delivered unless and until the Issuer has received all information required by Section 218.385, Florida Statutes.

SECTION 11. EFFECTIVE DATE. This Ordinance shall be effective immediately upon passage on second reading.


VILLAGE OF EL PORTAL, FLORIDA

By: ____________________________
    Mayor

ATTEST

______________________________
Village Clerk

Approved as to form and legal sufficiency
Interim Village Attorney:

By: ____________________________
    Norman C. Powell, Esq.
EXHIBIT A

FORM OF FINANCING AGREEMENT
EXHIBIT B

FORM OF BANK'S CERTIFICATE

This is to certify that Florida Community Bank, N.A. (the "Bank") has not required the Village of El Portal, 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 $_______ Village of El Portal, Florida Grant Proceeds Note, Series 2018 (Line of Credit) (the "Note"), and no inference should be drawn that the Bank, in the acceptance of said Note, is relying on Bryant Miller Olive P.A. ("Note Counsel") or Norman C. Powell, Esq. ("Issuer's Counsel") as to any such matters other than the legal opinions rendered by Note Counsel or Issuer's Counsel. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in the Financing Agreement, dated as of _____, 2018, by and among the Issuer and the Bank (the “Financing Agreement”).

We are aware that investment in the Note involves various risks, that the Note is is secured solely from the Pledged Revenues as described in the Financing Agreement (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 acknowledge and understand that the Financing Agreement is not being qualified under the Trust Indenture Act of 1939, as amended (the “1939 Act”), and is not being 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 neither Note Counsel nor the Issuer's Counsel shall have any obligation to effect any such registration or qualification.

The Note has been purchased for the account of the Bank for investment purposes only and not with a present view to the distribution, transfer or resale thereof. The Bank currently intends to hold and book the Note as a loan in its loan portfolio; the Bank acknowledges that the use of the word "Note" in the name of the debt instrument is not intended to indicate that the instrument is or is not a security within the meaning of the Securities Act of 1933. The Bank currently intends to hold such Note for its own account and for an indefinite period of time and does not intend to dispose of all or any portion of such Note. The Bank hereby covenants that if
the Bank subsequently decides to distribute or resell the Note, it shall comply in all respects with all securities laws then applicable with respect to any such distribution or resale. We understand that the Note may not be transferred in a denomination less than the par amount outstanding at the time of transfer and without the filing of an investor letter from the new purchaser.

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 the 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 ____ day of ______, 2018.

FLORIDA COMMUNITY BANK, N.A.

By: __________________________
Name: _________________________
Title: _________________________
EXHIBIT C

FORM OF DISCLOSURE LETTER

The undersigned, as Bank, has negotiated with the Village of El Portal, Florida (the "Issuer") for the private purchase of its Grant Proceeds Note, Series 2018 (Line of Credit) (the "Note") in the principal amount of $__________. 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 "Bank") in connection with the issuance of the Note (such fees and expenses to be paid by the Issuer):

   Bank Counsel Fees – $__________

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

   (b) No person has entered into an understanding with the Bank, or to the knowledge of the Bank, 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 Bank 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 Bank is $0.00.

4. The management fee to be charged by the Bank is $0.00.

5. Truth-in-Bonding Statement:

   The Note is being issued primarily to finance for the Issuer the costs and expenses associated with the clean-up and reconstructive efforts related to the aftermath of hurricane Irma, including but not limited to debris removal (the "Project").

   Unless earlier redeemed, the Note is expected to be repaid by _____ 1, 2019; at an assumed rate of ____%, total interest paid over the life of the Note is estimated to be $__________.

   The Note will be payable solely from the Pledged Revenues, as such term is defined in
the Financing Agreement, dated as of July __, 2018, between the Issuer and the undersigned (the “Financing Agreement”). Issuance of the Note is estimated to result in an annual average of approximately $_______ of Pledged Revenues of the Issuer not being available to finance other projects of the Issuer during the life of the Note.

7. The name and address of the Bank is as follows:

Florida Community Bank, N.A.
369 N. New York Avenue
Winter Park, FL 32789

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Bank this _____ day of ____, 2018.

FLORIDA COMMUNITY BANK, N.A.

By: ________________________________
Name: ______________________________
Title: ______________________________
FINANCING AGREEMENT

By and Between

VILLAGE OF EL PORTAL, FLORIDA

and

FLORIDA COMMUNITY BANK, N.A.

Dated July ___, 2018
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(The Table of Contents for this Financing Agreement is for convenience of reference only and is not intended to define, limit or describe the scope or intent of any provisions of this Financing Agreement.)

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FINANCING AGREEMENT

THIS FINANCING AGREEMENT (the "Agreement"), made and entered into this _____ day of July, 2018 by and between the VILLAGE OF EL PORTAL, FLORIDA (the "Issuer"), a municipal corporation in the State of Florida and its successors and assigns, and FLORIDA COMMUNITY BANK, N.A., a national banking association authorized to do business in Florida, and its successors and assigns (the "Bank").

WITNESETH:

WHEREAS, capitalized terms used in these recitals and not otherwise defined shall have the meanings specified in Article I of this Agreement; and

WHEREAS, the Issuer, pursuant to the provisions of the Florida Constitution, Chapter 166, Florida Statutes, as amended, the municipal charter of the Issuer and any other applicable provisions of law (all of the foregoing, collectively, the "Act"), and Ordinance No. _____ enacted by the Village Council of the Issuer on July ____, 2018 (the "Ordinance"), is authorized to incur debt to finance the costs and expenses associated with the clean-up and reconstructive efforts, including, but not limited to debris removal related to the aftermath of hurricane Irma (the "Project"); and

WHEREAS, the Issuer is willing to pledge for the repayment of such debt the Pledged Revenues; and

WHEREAS, the Bank has agreed to make an advance to the Issuer in the form of a revolving line of credit pursuant to which one or more draws may be made from time to time (the "Advance") to provide financing for the costs of the Project (as defined herein); and

WHEREAS, the Bank has proposed the financing evidenced by this Agreement in accordance with the commitment of the Bank dated May 1, 2018 (the "Commitment"); and

WHEREAS, the Issuer has accepted the Commitment; and the Bank is willing to purchase the Note, but only upon the terms and conditions set forth in this Agreement; and

WHEREAS, the Note shall evidence and secure the Issuer’s obligation to repay any and all draws made under the Advance and any other amounts due and owing by the Issuer to the Bank.

NOW, THEREFORE, the parties hereto agree as follows:
ARTICLE I

DEFINITION OF TERMS

Section 1.01. Definitions. Capitalized terms used in this Agreement shall have the followings meanings:

"Act" shall have the meaning assigned to that term in the recitals hereof.

"Advance" and "Advances" means any advance or advances made by the Bank to the Issuer pursuant to a Notice of Advance issued under this Agreement.

"Agreement" shall mean this Financing Agreement and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

"Authorized Officer" or "Authorized Officers" shall mean the Mayor, the Village Manager, the Finance Director or any officer or employee of the Issuer authorized to perform specific acts or duties hereunder by resolution duly adopted by the Village Council.

"Available Commitment" shall mean, at any date, the Commitment of the Bank less the aggregate principal amount of Advances outstanding on the date of calculation.

"Bank" shall mean Florida Community Bank, N.A., and its successors and assigns.

"Bond Counsel" shall mean Bryant Miller Olive P.A., Miami, Florida, or any other attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions.

"Business Day" shall mean any day other than a Saturday, a Sunday, or a day on which the payment office of the Bank is lawfully closed.

"Closing Date" means July _____, 2018 or such later date as may be agreed upon in writing by the Issuer and the Bank.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the applicable rules and regulations promulgated thereunder.

"Commitment" shall mean One Million Two Hundred Fifty Thousand Dollars ($1,250,000), as the amount of the commitment of the Bank to make Advances evidenced by the Note and this Agreement.

"Default Rate" means the lesser of the (i) Prime Rate plus 500 basis points and (ii) maximum rate of interest permitted by law.
"Event of Default" shall mean an Event of Default as defined in Section 5.01 of this Agreement.

"Fiscal Year" shall mean the twelve month period commencing October 1 of each year and ending on the succeeding September 30, or such other twelve month period as the Issuer may designate as its "fiscal year" as permitted by law.

"Grant Proceeds" shall mean the reimbursement proceeds received by the Issuer from any federal or state governmental agencies related to Hurricane Irma, including but not limited to, the Federal Emergency Management Agency.

"Issuer" shall mean the Village of El Portal, Florida, a municipal corporation.

"LIBOR" shall mean rate for U.S. dollar deposits of that many months maturity as reported on Telerate page 3750 as of 11:00 a.m., London time, on the second London business day before the relevant interest period begins (or if not so reported, then as determined by the Bank from another recognized bank or interbank quotation).

"Maturity Date" shall mean the date on which all principal and all unpaid interest accrued on the Note shall be due and payable in full, which date shall be, if not sooner due to prepayment, the date which is 364 days from the Closing Date (July ____, 2019), unless the Stated Expiration Date is extended pursuant to Section 3.08 hereof, in which case the "Maturity Date" shall become the newly established Stated Expiration Date.

"Mayor" shall mean the Mayor of the Issuer, or in his or her absence, the Vice Mayor of the Issuer, or such other person as may be duly authorized by the Issuer to act on his or her behalf.

"Note" means the Revolving Credit Note in the form of Appendix A referred to in Section 3.03 hereof and issued pursuant to the provisions hereof and of the Ordinance.

"Note Rate" shall mean a rate per annum equal to 2.01% plus the one month LIBOR rate, as the same may vary from time to time, but the Note Rate shall never be less than 3.91%; provided, however, that upon the occurrence of an Event of Default the Note Rate shall immediately and automatically become the Default Rate until such Event of Default is cured.

"Notice of Advance" means a notice given by the Issuer pursuant to Section 3.02 in the form of Appendix B.

"Noteholder" shall mean the Bank as the initial holder of the Note and any subsequent registered holder of the Note.

"Ordinance" shall mean Ordinance No. ______ related to the Note which was enacted by the Village Council of the Issuer on July _____, 2018, which, among other things, authorized
and confirmed the borrowing of the line of credit and execution and delivery of this Agreement and the issuance of the Note.

"Pledged Revenues" shall mean Grant Proceeds and ad valorem revenues of the Issuer.

"Prime Rate" shall mean the rate published from time to time in The Wall Street Journal as the "U.S. Prime Rate" or, in the event The Wall Street Journal ceases to be published, goes on strike, is otherwise not published or ceases publication of "U.S. Prime Rate," the base, reference or other rate then designated by the Bank, in its sole discretion, for general commercial loan reference. The U.S. Prime Rate is not necessarily the lowest or best rate of interest offered by the Bank to any borrower or class of borrower.

"Project" shall have the meaning assigned to that term in the recitals hereof.

"Registrar" shall mean the Finance Director.

"Stated Expiration Date" means July ____, 2019, unless extended pursuant to Section 3.08 hereof.

"Village Manager" shall mean the Village Manager of the Issuer, or any interim, acting or assistant Village Manager of the Issuer.

"Village Attorney" shall mean the Village Attorney of the Issuer, or any assistant or deputy Village Attorney.

Section 1.02. Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. Any capitalized terms used in this Agreement not herein defined shall have the meaning ascribed to such terms in the Ordinance. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

Section 1.03. Titles and Headings. The titles and headings of the Articles and Sections of this Agreement, which have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.
ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Section 2.01. Representations and Warranties of Issuer. The Issuer represents and warrants to the Bank as follows:

(a) Existence. The Issuer is a municipal corporation of the State of Florida, duly created and validly existing under the laws of the State of Florida. The making, execution and performance of this Agreement on the part of the Issuer and the issuance and delivery of the Note have been duly authorized by all necessary action on the part of the Issuer and will not violate or conflict with the Act, or any agreement, indenture or other instrument by which the Issuer or any of its material properties are bound.

(b) Validity, Etc. This Agreement and the Note are and will be valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the enforcement of creditors' rights and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(c) Powers of Issuer. The Issuer has the legal power and authority to pledge the Pledged Revenues to repayment of the Note in the manner and to the extent described herein.

(e) Accuracy of Information. The Bank's commitment to enter into this Agreement, as expressed in the Commitment, is based on the accuracy and the Issuer's representations and warranties including those related the Grant Proceeds. Nothing furnished to the Bank includes and false or misleading statements.

Section 2.02. Representations and Warranties of Bank. The Bank represents and warrants to the Issuer as follows:

(a) Existence. The Bank is a national banking association, with full power to enter into this Agreement, to perform its obligations hereunder and to make the Advance. The performance of this Agreement on the part of the Bank and the making of the Advance has been duly authorized by all necessary action on the part of the Bank and will not violate or conflict with applicable law or any material agreement, indenture or other instrument by which the Bank or any of its material properties is bound.

(b) Validity. This Agreement is a valid and binding obligation of the Bank enforceable against the Bank in accordance with its terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the
enforcement of creditors' rights (including creditors' rights as the same relate to banks) and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(c) **Knowledge and Experience.** The Bank (i) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of making the Advances and investing in the Note; (ii) has received and reviewed such financial information concerning the Issuer as it has needed in order to fairly evaluate the merits and risks of making the Advances and investing in the Note; and (iii) is purchasing the Note as an investment for its own account and not with a view toward resale to the public. The Bank will not transfer the Note except to an "accredited investor" as such term is defined in Regulation D to the Securities Act of 1933, as amended.

**ARTICLE III**

**REVOLVING CREDIT**

**Section 3.01. Commitment to Lend; Use of Advance Proceeds.** The Bank agrees, on the terms and conditions set forth in this Agreement, to lend to the Issuer from time to time amounts not to exceed the Available Commitment on the date such Advance is to be made and not to exceed in the aggregate at any one time outstanding the amount of the Commitment, to be used by the Issuer to pay costs of the Project. The Issuer agrees to reimburse the Bank for the full amount of any Advances in accordance with this Agreement.

**Section 3.02. Method of Advances.** If, on any Business Day, the Bank receives at the location specified for the delivery of a Notice of Advance specified pursuant to Section 6.05, a Notice of Advance from an Authorized Officer of the Issuer, and if the conditions hereof to funding a requested Advance have been satisfied, the Bank will fund the Advance on the later of the Business Day requested by the Issuer or the Business Day following the Bank's determination that the conditions have been satisfied. Each Notice of Advance shall specify the following information:

(i) the aggregate amount of the requested Advance;

(ii) the requested Borrowing Date, which shall be at least 1 Business Day prior to the date funds are requested, and time of funding; and

(iii) the wire instruction for where the proceeds of the proposed Advance should be transferred.

**Section 3.03. Revolving Credit Note.** The Advances made by the Bank shall be evidenced by the Note, payable to the order of the Bank. Amounts may be advanced under the Note, repaid by the Issuer to the Bank and then advanced again, so long as no more than
$1,250,000 in principal shall be outstanding at any time, so that the Note shall constitute a revolving line of credit note.

Section 3.04. Interest

(a) Each Advance shall bear interest on the outstanding principal amount thereof, for each day from and including the date such Advance is made until it is paid in full, at a rate per annum equal to the Note Rate.

(b) The Issuer agrees to pay to the Bank interest on each Advance on the first day of each month commencing August 1, 2018 until the Maturity Date, unless earlier repaid. In the event the Closing Date is any other day other than the first day of a calendar month, interest shall be pro-rated and paid on the basis of a 30-day month.

Section 3.05. Principal.

(a) Optional Prepayment. The Issuer may prepay the Advance, without penalty or premium, in whole or in part at any time, or from time to time.

(b) Mandatory Repayment. The Issuer shall prepay the Advance upon receipt of Grant Proceeds and on the Maturity Date.

Section 3.06. General Provisions as to Payments. The Issuer shall make each payment of principal and interest on the Advance to the Bank, when due, in federal or other immediately available funds. All payments by the Issuer to the Bank hereunder shall be nonrefundable and made in lawful currency of the United States. If any payment hereunder is due on a day that is not a Business Day, then such payment shall be due on the immediately succeeding Business Day, and, in the case of the computation of the interest hereunder, such extension of time shall be included in the computation of the payment due hereunder through the date payment is received.

Section 3.07. Computation of Interest. Interest on the Advances shall be computed on the basis of a 30-day month and a 360-day year.

Section 3.08. Request by the Issuer for Extension of Term of Agreement. Not later than 90 days prior to the Stated Expiration Date, the Issuer may by written notice to the Bank request (i) that the Stated Expiration Date be extended by specifying the requested extension date or (ii) the conversion of the line of credit to a term loan by specifying the proposed security and proposed maturity date for the loan. Failure of the Bank to provide a written response to the Issuer within 30 days after receipt of such request shall be deemed a rejection by the Bank of such request. If the Stated Expiration Date is extended, the Issuer shall, except as otherwise agreed to in writing by the Bank, be deemed to have made the representations and warranties contained herein on and as of the date on which the Stated Expiration Date is so extended.
[The Bank’s decision of whether to agree to extend the Stated Expiration Date or to convert the Note to a term loan shall be in the Bank’s sole discretion, shall be subject to such additional terms and conditions as the Bank may impose, and may further be subject to such fees as the Bank may determine to charge.]

Section 3.09. Compliance with Section 215.84, Florida Statutes. The Issuer represents, warrants, and covenants that the Note Rate is in compliance with Section 215.84, Florida Statutes.

Section 3.10. Registration of Transfer; Assignment of Rights of Bank. The Issuer shall keep at the office of the Finance Director in the Issuer’s records the registration of the Note and the registration of transfers of the Note as provided in this Agreement. Subject to the restriction set forth in the fourth paragraph of this Section, the transfer of the Note may be registered only upon the books kept for the registration of the Note and registration of transfer thereof upon surrender thereof to the Issuer together with an assignment duly executed by the Bank or its attorney or legal representative in the form of the assignment set forth on the form of the Note attached as Appendix A to this Agreement; provided, however, that the Note may be transferred only in whole and not in part. In the case of any such registration of transfer, the Issuer shall execute and deliver in exchange for the applicable Note a new Note registered in the name of the transferee. In all cases in which the Note shall be transferred hereunder, the Issuer shall execute and deliver at the earliest practicable time a new Note in accordance with the provisions of this Agreement. The Issuer may make a charge for every such registration of transfer of the Note sufficient to reimburse it for any tax or other governmental charges (other than charges of the Issuer which shall not be assessed) required to be paid with respect to such registration of transfer, but no other charge shall be made for registering the transfer hereinafore granted. The Note shall be issued in fully registered form and shall be payable in any coin or currency of the United States.

The registration of transfer of the Note on the registration books of the Issuer shall be deemed to effect a transfer of the rights and obligations of the Bank under this Agreement to the transferee. Thereafter, such transferee shall be deemed to be the Bank under this Agreement and shall be bound by all provisions of this Agreement that are binding upon the Bank. The Issuer and the transferor shall execute and record such instruments and take such other actions as the Issuer and such transferee may reasonably request in order to confirm that such transferee has succeeded to the capacity of Bank under this Agreement and the Note.

In the event the Note is mutilated, lost, stolen, or destroyed, the Issuer shall execute a new Note of like date and denomination as that mutilated, lost, stolen or destroyed, provided that, in the case of any mutilated Note, such mutilated Note shall first be surrendered to the Issuer, and in the case of any lost, stolen, or destroyed Note, there first shall be furnished to the Issuer evidence of such loss, theft or destruction together with an indemnity satisfactory to it.
Notwithstanding anything herein to the contrary, no transfer shall be permitted absent the Issuer’s (and the Bank’s) receipt of a certificate in form and substance similar to the one attached to the Ordinance.

Section 3.11. Ownership of the Note. The person in whose name the Note is registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the Note shall be made only to the registered owner thereof or such owner’s legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note, and interest thereon, to the extent of the sum or sums so paid.

Section 3.12. Use of Proceeds of Note Permitted Under Applicable Law. The Issuer represents, warrants and covenants that the proceeds of the Note will be used solely to finance the Project and to pay the costs of issuance related thereto, and that such use is permitted by applicable law.

Section 3.13. Authentication. Only if the Note shall have endorsed thereon a certificate of authentication substantially in the form set forth in Appendix A, duly executed by the manual signature of the Registrar and authenticating agent, shall it be entitled to any benefit or security under this Agreement. The Note shall not be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly adopted by the Registrar and such certificate of the Registrar upon any such Note shall be conclusive evidence that such Note has been duly authenticated and delivered under this Agreement.
ARTICLE IV

COVENANTS OF THE ISSUER

Section 4.01. Performance of Covenants. The Issuer covenants that it will perform faithfully at all times its covenants, undertakings and agreements contained in this Agreement and the Note or in any proceedings of the Issuer relating to the Advance.

Section 4.02. Payment of Note.

(a) The Issuer covenants that it will promptly pay the principal of and interest on the Note at the place, on the dates and in the manner provided herein and in the Note, in accordance with the terms thereof.

(b) The Note will be a special obligation of the Issuer secured by the Pledged Revenues, in the manner and to the extent described in Section 4.02(a) hereof. The Note will not constitute a general debt, liability or obligation of the Issuer (except to the extent provided herein) or the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory provision. Neither the faith and credit nor the taxing power of the Issuer (except to the extent provided herein) or of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of or interest on the Note, and the Noteholder shall never have the right to compel any exercise of any ad valorem taxing power of the Issuer or of the State of Florida or any political subdivision thereof, directly or indirectly to enforce such payment.

Section 4.03. Tax Covenant. The Issuer covenants to the purchasers of the Note provided for in this Agreement that the Issuer will not make any use of the proceeds of the Note at any time during the term of such Note which, if such use had been reasonably expected on the date the Note was issued, would have caused such Note to be an "arbitrage bond" within the meaning of the Code. The Issuer will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to ensure the exclusion of interest on the Note from the gross income of the holders thereof for purposes of federal income taxation.

Section 4.04. Budget and Other Financial Information. The Issuer shall provide the Noteholder with a copy of the Issuer's financial statements audited by a firm of independent certified public accountants and accompanied by an audit opinion of such accountants without qualification within 270 days after the end of the Fiscal Year. In addition, the Issuer shall provide a copy of its annual budget within 60 days after adoption.
Section 4.05. Compliance with Laws and Regulations. The Issuer is compliance and shall maintain compliance with all federal, state and local laws and regulations regarding the acquisition and maintenance of the Project.

Section 4.06. Insurance. The Issuer shall maintain such liability, casualty, and other insurance as is reasonable and prudent for a similarly situated municipality and shall upon request of the Bank, provide evidence of such coverage to the Bank.

Section 4.07. Application of Proceeds of Note; General Fund. At the time of delivery of the Note herein authorized, proceeds from the sale of the Note shall be deposited into the General Fund of the Issuer and used to finance the Project.

Section 4.08. Records. 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. The Issuer agrees that any and all records of the Issuer related to the Note shall be open to inspection by the Bank or its representatives at all reasonable times at the office of the Issuer.

Section 4.09. Notice of Liabilities. The Issuer shall promptly inform the Bank in writing of any actual or potential contingent liabilities or pending or threatened litigation of any amount that could reasonably be expected to have a material and adverse effect upon the financial condition of the Issuer or upon the ability of the Issuer to perform its obligation under the Note.

Section 4.10. Existence. The Issuer will take all reasonable legal action within its control in order to maintain its existence as a municipality and shall not voluntarily dissolve.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Events of Default. Each of the following is hereby declared an "Event of Default:"

(a) payment of the interest on or principal of the Note shall not be made when the same shall become due and payable; or

(b) default in the performance or observance of any covenant or agreement contained in this Financing Agreement or the Note (other than set forth in (a) above) and fails to cure the same within thirty (30) days after (1) notice thereof to the Issuer by the Bank or (2) the Bank is notified of such noncompliance or should have been notified, whichever is earlier; or
(c) filing of a petition by or against the Issuer relating to bankruptcy, reorganization, arrangement or readjustment of debt of the Issuer or for any other relief relating to the Issuer under the United States Bankruptcy Code, as amended, or any other insolvency act or law now or hereafter existing, or the involuntary appointment of a receiver or trustee for the Issuer, and the continuance of any such event for 90 days undismissed or undischarged; or

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

(e) failure of the Issuer to promptly remove an execution, garnishment or attachment of such consequence as will materially impair its ability to carry out its obligations under the Note.

Section 5.02. Notices of Default. The Issuer shall within ten (10) days after it acquires knowledge thereof, notify the Bank in writing (a) upon the happening, occurrence, or existence of any Event of Default that the Bank is not otherwise aware of, and (b) any event or condition which with the passage of time or giving of notice, or both, would constitute an Event of Default, and shall provide the Bank, with such written notice, a detailed statement by a responsible officer of the Issuer of all the relevant facts and the action being taken or proposed to be taken by the Issuer with respect thereto.

Section 5.03. Exercise of Remedies. Upon the occurrence and during the continuance of an Event of Default, the Noteholder may proceed to protect and enforce its rights under the laws of the State of Florida or under this Agreement by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Noteholder shall deem most effective to protect and enforce such rights. Without limiting the generality of the foregoing, the Noteholder shall have the right to bring a mandamus action to require the Issuer to perform its obligations under Article IV of this Agreement.

In addition, (i) during the continuance of any Event of Default the interest rate borne by the Note shall be the Default Rate (unless waived by the Bank) and (ii) if any payment due to the Bank hereunder or under the Note is not paid within fifteen days after the due date, the Issuer will on demand pay the Bank a fee in the amount of 6% of the late payment amount.
ARTICLE VI
MISCELLANEOUS PROVISIONS

Section 6.01. Covenants of Issuer, Etc.; Successors. All of the covenants, stipulations, obligations and agreements contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the Issuer to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time, and upon any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Section 6.02. Term of Agreement. This Agreement shall be in full force and effect from the date hereof until the Note and all other sums payable to the Bank hereunder have been paid in full and shall survive the termination of this Agreement in relation to those provisions that deal with retroactive cost increases for the Bank in relation to the tax exempt status of the Note.

Section 6.03. Amendments and Supplements. This Agreement may be amended or supplemented from time to time only by a writing duly executed by each of the Issuer and the Noteholder.

Section 6.05. Notices. Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the Issuer or the Bank, shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if and when sent by certified mail, return receipt requested:

(a) As to the Issuer:
Village of El Portal, Florida
500 NE 87th Street
El Portal, Florida 33138
Attention: Village Manager

(b) As to the Bank:
Florida Community Bank, N.A.
2500 Weston Road, #300
Weston, FL 33331
Attention Rafael Borrero
E-mail: pubfunds@fcb1923.com

Either party may, by notice sent to the other, designate a different or additional address to which notices under this Agreement are to be sent.
Section 6.06. Benefits Exclusive. Except as herein otherwise provided, nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the Issuer and the Noteholder, any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof, this Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the Issuer and the Noteholder.

Section 6.08. Severability. In case any one or more of the provisions of this Agreement, any amendment or supplement hereto or of the Note shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, any amendment or supplement hereto or the Note, but this Agreement, any amendment or supplement hereto and the Note shall be construed and enforced at the time as if such illegal or invalid provisions had not been contained therein, nor shall such illegality or invalidity or any application thereof affect any legal and valid application thereof from time to time. In case any covenant, stipulation, obligation or agreement contained in the Note or in this Agreement shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation, or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Issuer to the full extent from time to time permitted by law.

Section 6.09. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 6.10. Applicable Law. This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Florida.

Section 6.11. No Personal Liability. Notwithstanding anything to the contrary contained herein or in the Note, or in any other instrument or document executed by or on behalf of the Issuer in connection herewith, no stipulation, covenant, agreement or obligation of any present or future member of the Village Council, officer, employee or agent of the Issuer, officer, employee or agent of a successor to the Issuer, in any such person’s individual capacity, and no such person, in his or her individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of or interest on the Note or for any claim based thereon or on any such stipulation, covenant, agreement or obligation, against any such person, in his or her individual capacity, either directly or through the Issuer or any successor to the Issuer, under any rule or law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise and all such liability of any such person, in his or her individual capacity, is hereby expressly waived and released.
Section 6.12. Incorporation by Reference. All of the terms and obligations of this Agreement and the Appendices hereto are hereby incorporated herein by reference as if all of the foregoing were fully set forth in this Agreement. All recitals appearing at the beginning of this Agreement are hereby incorporated herein by reference.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first set forth herein.

VILLAGE OF EL PORTAL, FLORIDA

By: ____________________________
Name:  
Title:  Mayor

(SEAL)

ATTEST:

By: ____________________________
Name:  
Title:  Village Clerk