

VILLAGE OF EL PORTAL, FLORIDA

ORDINANCE NO. 2020-11

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF EL PORTAL, FLORIDA, APPROVING THE EXECUTION AND DELIVERY OF AMENDED AND RESTATED FINANCING AGREEMENT; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of El Portal, Florida Village Council (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 previously issued 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") 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, the Issuer entered into the Amendment to Financing Agreement between the Issuer and Synovus Bank, successor by merger with Florida Community Bank, N.A., dated August 15, 2019 to extend the maturity of the Note and change the interest rate; and

WHEREAS, the Issuer has received a proposal from Synovus Bank (the "Bank") to extend the maturity of the Note; 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 upon the terms and conditions set forth in the Amended and Restated Financing Agreement (the "Amended and Restated Agreement") and in the commitment dated May 5, 2020 submitted by the Bank, a copy of which is attached hereto as Exhibit B (the "Proposal").

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE 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. APPROVAL OF THE AMENDED AND RESTATED 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 the Amended and Restated Agreement, 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 4. 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 Amended and Restated 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 Amended and Restated Agreement and they are hereby authorized to execute and deliver all documents which shall be required by Note Counsel or the Bank to amend the documents. All actions taken to date by the officers, attorneys and any other agents and employees of the Issuer in furtherance of the issuance of the Note are hereby approved, confirmed and ratified.

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SECTION 5. EFFECTIVE DATE. This Ordinance shall be effective immediately upon passage on second reading.

ENACTED by the Village Council of the Village of El Portal, Florida this 28 day of July, 2020.

PASSED, FIRST READING this 23 day of June, 2020.

PASSED, SECOND READING this 28 day of July, 2020.

Village of El Portal, Florida

By:


Claudia Cubillos, Mayor

ATTEST:


Yenise Jacobi, Village Clerk

Approved as to form and legal sufficiency:
Interim Village Attorney

Law Office of Norman C. Powell

By: 
Norman C. Powell, Esq.

RECORD OF COMMISSION VOTE: 1st Reading

Councilperson Pirela : (Yes) ___ (No)
Councilperson Urbom: (Yes) ___ (No)
Councilperson Roman: (Yes) ___ (No)
Vice Mayor Nickerson.: (Yes) ___ (No)
Mayor Cubillos: (Yes) ___ (No)

RECORD OF COMMISSION VOTE: 2nd Reading

Councilperson Pirela : (Yes) ___ (No)
Councilperson Urbom: (Yes) ___ (No)
Councilperson Roman: (Yes) ___ (No)
Vice Mayor Nickerson.: (Yes) ___ (No)
Mayor Cubillos: (Yes) ___ (No)



I, Yenise Jacobi, Village Clerk of the Village of El Portal, Miami-Dade County, Florida, do hereby certify that this is a true and correct copy of Ordinance No.: 2020-11 adopted on July 28, 2020, as shown in the Official Records of the Village of El Portal, Miami-Dade County, Florida. Given under my hand and seal, this 28 day of July, 2020.


Yenise Jacobi
Village Clerk

EXHIBIT A

FORM OF AMENDED AND RESTATED FINANCING AGREEMENT

EXHIBIT B
PROPOSAL

AMENDED AND RESTATED FINANCING AGREEMENT

By and Between

VILLAGE OF EL PORTAL, FLORIDA

and

SYNOVUS BANK

Dated July __, 2020

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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.

"Agreement" shall mean this Amended and Restated 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.

"Bank" shall mean Synovus Bank 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 _____, 2020 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.

"Default Rate" means 8.00% per annum.

"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.

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

"Ordinance" shall mean collectively, Ordinance No. 2018-05 related to the Note which was enacted by the Village Council of the Issuer on July 31, 2018, Ordinance No. 2019-03 enacted by the Village Council of the Issuer on August 13, 2019 and Ordinance No. 2020-_____ enacted by the Village Council of the Issuer on July ____, 2020.

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

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

"Registrar" shall mean the Finance Director.

"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:

concerning the Issuer as it has needed in order to fairly evaluate the merits and risks of making the Loan 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.

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Section 3.07. 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 hereinabove 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 3.09. 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.

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 Loan.

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 herein. The Note will not constitute a general obligation or indebtedness of the Issuer as a "bond" (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.

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

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 6.04. 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:
Synovus Bank
1148 Broadway
Columbus, Georgia 31901
Attention: Loan Operations
E-mail: pubfunds@synovus.com

With a copy to:
Synovus Bank

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 6.10. Incorporation by Reference. All recitals appearing at the beginning of this Agreement are hereby incorporated herein by reference.

Section 6.11. No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereunder (including in connection with any amendment, waiver or other modification hereof), the Issuer acknowledges and agrees, that: (a) (i) the Issuer has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, (ii) the Issuer is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby, (iii) the Bank is not acting as a municipal advisor or financial advisor to the Issuer, and (iv) the Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act to the Issuer with respect to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank has provided other services or is currently providing other services to the Issuer on other matters); (b) (i) the Bank is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Issuer or any other person and (ii) the Bank has no obligation to the Issuer, with respect to the transactions contemplated hereby except those obligations expressly set forth herein; and (c) the Bank may be engaged in a broad range of transactions that involve interests that differ from those of the Issuer, and the Bank has no obligation to disclose any of such interests to the Issuer. This Agreement is entered into pursuant to and in reliance upon the bank exemption and/or the institutional buyer exemption provided under the municipal advisor rules of the Securities and Exchange Commission, Rule 15Ba1-1 et seq, to the extent that such rules apply to the transactions contemplated hereunder.

Section 6.12. Marketing. The Issuer acknowledges and agrees that the Bank shall be permitted to use information related to this Agreement in connection with marketing, press releases or other transactional announcements or updates provided to investors or trade publications, including, but not limited to, the placement of the logo of the Bank or other identifying name on marketing materials or of "tombstone" advertisements in publications of Bank's choice at Bank's expense.

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SYNOVUS BANK

By: _____

Rafael Borrero

Vice President

[Signature Page to Amended and Restated Financing Agreement]

in the Amended and Restated Financing Agreement. If the holder enforces this Note upon default, the maker shall reimburse the holder for all reasonable costs and expenses incurred by the holder in collection, including reasonable attorneys' fees and expenses. This Note shall be construed under and governed by the laws of the State of Florida.

This Note, including the interest hereon, is payable solely from the sources set forth in the Amended and Restated Financing Agreement; and this Note shall not be deemed to constitute an obligation of the State of Florida, or any political subdivision thereof, and neither the State nor any of its political subdivisions, other than the Issuer, shall be liable hereon. Reference is made to the Amended and Restated Financing Agreement and such Ordinance for the provisions relating to the source of security for this Note and the duties and obligations of the Issuer.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed precedent to and in the incurring of the indebtedness evidenced by this Note and issuance of this Note exist, have happened, and have been performed in due time, form and manner as required by the Constitution and laws of the State of Florida, including the Act.

Made and executed on the day and year first above written.

VILLAGE OF EL PORTAL, FLORIDA

[SEAL]

Attest:

By: _____
Mayor

By: _____
Village Clerk