

ORDINANCE NO. 2022-02

AN ORDINANCE OF VILLAGE OF EL PORTAL, FLORIDA, AUTHORIZING THE ISSUANCE OF A CAPITAL IMPROVEMENT REFUNDING REVENUE NOTE, SERIES 2022 OF THE ISSUER IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$700,000 TO REFUND THE ISSUER'S LINE OF CREDIT; 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 refinance the Issuer's not to exceed \$1,250,000 Grant Proceeds Note, Series 2018 (Line of Credit) (the "Refunded Obligation"), the proceeds of which were used for 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; and

WHEREAS, it is determined to be in the best interest of the Issuer to issue its not to exceed \$700,000 Capital Improvement Refunding Revenue Note, Series 2022 (the "Note") secured by a Financing Agreement between the Issuer and Synovus Bank (the "Financing Agreement") in substantially the form attached hereto as Exhibit A, to provide the funds for such refinancing; 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 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 by 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 Synovus Bank (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 February 23, 2022 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, Capital Improvement Refunding Revenue Note, Series 2022" is hereby authorized to be issued under and secured by this Ordinance and the Financing Agreement in the principal amount of not to exceed \$700,000, for the purposes of (i) refinancing the Refunded Obligation; and (ii) paying the transaction costs associated with the Note.

SECTION 4. AUTHORIZATION OF THE REFUNDING. The refunding of the Refunded Obligation 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 \$700,000. 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 from and secured solely by 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 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 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 2022 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.

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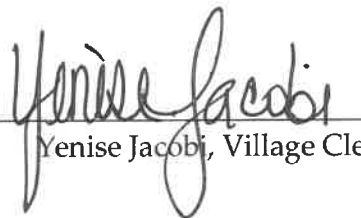
ENACTED by the Village Council of the Village of El Portal, Florida this ___ day of April, 2022.

PASSED, FIRST READING this 29 day of March, 2022.

PASSED, SECOND READING this 12 day of April, 2022.


Village of El Portal, Florida

By: 
Omarr C. Nickerson, Mayor

ATTEST: 
Yenise Jacobi, Village Clerk

Approved as to form and legal sufficiency:

Greenspoon Marder, LLP
Village Attorneys

By: 
Joseph S. Geller, Esq.

RECORD OF COMMISSION VOTE: 1st Reading

mot: Councilperson Martin 2nd: Councilperson: Lightfoot-Ward

- Councilperson Lightfoot-Ward: (Yes) ___ (No)
- Councilperson Martin: (Yes) ___ (No)
- Councilperson Perla: (Yes) ___ (No)
- Vice Mayor Urbom: (Yes) ___ (No)
- Mayor Nickerson: (Yes) ___ (No)

RECORD OF COMMISSION VOTE: 2nd Reading

mot: Martin and: Perla

- Councilperson Lightfoot-Ward: (Yes) ___ (No)
- Councilperson Martin: (Yes) ___ (No)
- Councilperson Perla: (Yes) ___ (No)
- Vice Mayor Urbom: (Yes) ___ (No)
- Mayor Nickerson: (Yes) ___ (No)

EXHIBIT A

FORM OF FINANCING AGREEMENT

EXHIBIT B

FORM OF BANK'S CERTIFICATE

This is to certify that Synovus Bank (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 Capital Improvement Refunding Revenue Note, Series 2022 (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 Joseph S. Geller of Greenspoon Marder LLP ("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 April _____, 2022, by and between the Issuer and the Bank (the "Financing Agreement").

We are aware that investment in the Note involves various risks, that the Note is payable from and secured solely by 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

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 Capital Improvement Refunding Revenue Note, Series 2022 (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 refinance the Refunded Obligation (as defined in Financing Agreement).

Unless earlier redeemed, the Note is expected to be repaid by February 23, 2023; at a fixed rate of 6.26%, 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 April __, 2022, between the Issuer and the undersigned

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 April ____, 2022.

SYNOVUS BANK

By: _____
Name: _____
Title: _____

(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:

Synovus Bank
1148 Broadway
Columbus, GA 31901

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Bank this _____ day of _____, 2022.

SYNOVUS BANK

By: _____

Name: _____

Title: _____

EXHIBIT D
PROPOSAL



SYNOVUS

Government Banking Solutions

February 23, 2022

Christia E. Alou
Village Manager
Village of El Portal
500 NE 87 Street
El Portal, FL 33138

RE: \$700,000 Interest Only Term Facility

Synovus Bank ("Bank") is pleased to consider the Direct Purchase of the Note as described below and issued by the Village of El Portal, Florida (the "Village"), the basic terms and conditions of which are set forth below. This proposal is subject to the satisfactory completion of the Bank's customary due diligence, underwriting and receipt of credit approval. This letter is not a commitment to lend.

- Borrower:** Village of El Portal, Florida (the "Village")
- Facility:** Bank Qualified, Tax Exempt Note
- Amount:** \$700,000 (not to exceed)
- Purpose:** The Village will use the proceeds to refund the existing Line of Credit and to pay the cost of issuance.
- Collateral:** Secured by pledge of reimbursable FEMA funds from 2017 Hurricane Irma recovery and all legally available revenues.
- Term:** The term of the Note shall not exceed 12 months from the date of closing, fully amortizing with a final stated maturity of February 23, 2023.
- Interest Rate:** The interest rate will be fixed at 6.26 percent.
- Repayment:** Interest only payments on the outstanding principal will be due and payable monthly on the first of each month with principal due at maturity. Upon receipt of the FEMA funds, the Village shall use the proceeds to pay down and/or pay-off the outstanding principal. Interest calculations will be based upon a 360-day year consisting of twelve 30-day months.
- Fees:** The Borrower agrees to the legal fees and expenses of the lender associated with the review and closing of this transaction, which costs is not expected to exceed \$3,500. The Bank's legal counsel for the proposed transaction will be Greenspoon Marder LLP.
- Covenants:** For so long as any of the principal amount of or interest on the proposed Note is outstanding or any duty or obligation of the Village contemplated under the proposed Note remains unpaid or unperformed, the Village covenants to the Bank as follows:

3. any representation or warranty made in writing by or on behalf of the Village in any Note Document shall prove to have been false or incorrect in any material respect on the date made or reaffirmed; or
4. the Village admits in writing its inability to pay its debts generally as they become due or files a petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or trustee for itself; or
5. the Village is adjudged insolvent by a court of competent jurisdiction, or it is adjudged bankrupt on a petition in bankruptcy filed by or against the Village, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the Village, a receiver or trustee of the Village or of the whole or any part of its property, and if the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within 90 days from the date of entry thereof; or
6. the Village shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or the State of Florida; or
7. failure by the Village promptly to remove any execution, garnishment or attachment of such consequence as will materially impair its ability to carry out its obligations.

Default Rate: The “default rate of interest” shall be the lesser of five percentage points in excess of the Bank’s Prime Rate of interest or the maximum interest rate allowed by law, charged at the time of the event of default.

Interest Rate Adjustments:

In the event the interest on the Note becomes subject to federal income tax in any period due to actions or inactions of the Village, the interest rate will convert to the taxable rate during that period. The taxable rate will be calculated by dividing the tax-exempt rate by 1 minus the maximum federal tax rate at the time the Note becomes taxable. In addition, the District shall make the Bank whole for any interest, penalties, and additions to tax suffered by the Bank.

If the Note shall be determined not to be a “Bank Qualified Obligation”, the interest rate shall increase to the rate that shall provide the Bank with the same after tax yield that the Bank would have otherwise received had such determination not occurred, taking into account the increased taxable income of the Bank as a result.

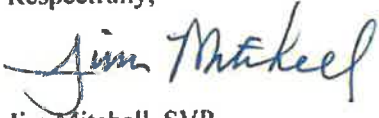
Conditions of Lending:

The obligations of the Bank to lend hereunder are subject to the following conditions precedent:

- a) Documents are and shall be true and correct to the best of the Village’s knowledge at the time of closing.
- b) On the closing date the Village shall be in compliance with all the terms and provisions set forth in the documents on its part to be observed or performed, and no Event of Default nor any event that, upon notice or lapse of time or both, would constitute such an Event of Default, shall have occurred and be continuing at such time.
- c) On or prior to the closing date, the Bank shall have received the following supporting documents, all of which shall be satisfactory in form and substance to the Bank (such satisfaction to be evidenced by the acceptance of the Notes by the Bank): (i) the opinion of Note counsel to the Village, regarding the due authorization, execution, delivery, validity and enforceability of the Agreement

Synovus Bank, ("Bank") appreciates the opportunity to submit this Proposal and looks forward to your favorable response. Please understand that this letter is not a formal commitment to extend credit by the Lender, or any of its affiliates, but is merely intended for discussion purposes only in order to provide you with the basic terms and conditions of our proposal, which are outlined above. The terms and conditions outlined in this Proposal are in effect for 30 days from the date of this letter. If you have any questions or need additional information, please do not hesitate to contact me at the numbers below.

Respectfully,



Jim Mitchell, SVP
Sr. Director, Government Banking Solutions
Synovus Bank
2325 Vanderbilt Beach Road
Naples, FL 34109
(239) 552-1819
(239) 552-1821 Fax
jimmitchell@synovus.com

Agreed to and accepted this ____ day of _____, 2021.

BORROWER: Village of El Portal, Florida

Signature: _____

Name: _____

Title: _____