

**RESOLUTION NO. 2018- 053**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AUTHORIZING A NEW EMERGENCY LINE OF CREDIT NOTE IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$10,000,000, TO PROVIDE FINANCING TO MEET RECOVERY COSTS RELATING TO A DECLARED STATE OF EMERGENCY AFFECTING THE TOWN AND COSTS RELATED THERETO; COVENANTING TO REPAY SUCH NOTE FROM REIMBURSEMENTS RECEIVED BY THE TOWN FROM FEMA AND THE STATE OF FLORIDA, AND COVENANTING TO BUDGET AND APPROPRIATE FUNDS, FROM LEGALLY AVAILABLE NON-AD VALOREM REVENUES; AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT, LOAN NOTE AND SUCH OTHER LOAN DOCUMENTS DEEMED NECESSARY; TO REPAY SUCH NOTE; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**WHEREAS**, the Town has an existing Emergency Line of Credit ("LOC") with Centennial Bank ("CB") (f/k/a Community Bank of Broward) in the maximum principal amount of \$4,500,000.00, and which matures on June 30, 2018; and

**WHEREAS**, the Town Council has determined that it is appropriate and necessary to obtain a new LOC to pay off the outstanding interest and principal due on the CB LOC and to provide financing to meet recovery costs relating to a declared state of emergency; and

**WHEREAS**, TD Bank, N.A. submitted Commitment Letters to the Town dated March 20<sup>th</sup>, 2018 to provide for a new LOC, which is attached hereto and made a part hereof and marked Exhibit "A" (the "Commitment Letters"); and

**WHEREAS**, the Town desires to approve a new lower interest index LOC with TD Bank, N.A. in the amount of \$10,000,000 and upon the terms set forth in this Resolution.

**NOW, THEREFORE BE IT RESOLVED** by the Town Council of the Town of Southwest Ranches, Florida:

**SECTION 1. ADOPTION OF RECITALS.** The above-referenced recitals are true and correct, and are incorporated herein by reference.

**SECTION 2. DEFINITIONS.** As used herein, unless the context otherwise requires:

"Act" means, as applicable, Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the Town of Southwest Ranches, Florida, and other applicable provisions of law.

"Bank" means TD Bank, N.A., the initial purchaser of the Note, and its successors and assigns.

"Code" means the Internal Revenue Code of 1986, as amended, including the applicable regulations of the Department of the Treasury (including applicable final regulations, temporary regulations and proposed regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings) and applicable court decisions.

"Costs of the Project" means with respect to the Project, all items of cost authorized by the Act, including the costs of issuance of the Note.

"Dated Date" means the date of issuance of the renewal Note.

"Disaster" means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by Broward County, the Town, the Governor of the State, or the President of the United States.

"Draw Period" means date beginning on the effective date of the line of Credit Agreement and expiring on Date of Maturity.

"FEMA" means the Federal Emergency Management Agency.

"FEMA Proceeds" means all amounts received by the Town from FEMA for Costs of the Project.

"Governing Body" means the Town Council of the Town, or its successor in function.

"Legally Available Non-Ad Valorem Revenues" means all revenues of the Town derived from any source whatsoever, other than ad valorem taxation on real and personal property, which are legally available to make the payments of principal and interest on the Note, but only after provision has been made by the Town for payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Town, or which are legally mandated by applicable law.

"Maturity Date" means five (5) years with a Bank call option on the 3<sup>rd</sup> anniversary of loan date.

"Mayor" means the Mayor of the Town or, in the Mayor's absence, the Vice-Mayor, or such other persons as may be duly authorized to act on the Mayor's behalf.

"Note" means the Town's Emergency Line of Credit Note, authorized to be issued by the Town in the aggregate principal amount not to exceed **\$10,000,000**.

"Noteholder" or "Holder" means the registered owner (or its authorized representative) of the Note.

"Pledged Revenues" means the FEMA Proceeds and the State Proceeds.

"Project" means expenditures for extraordinary, nonrecurring items the Town desires or needs to undertake subsequent to and as a result of a Disaster, and costs related thereto.

"Renewal" means at least one (1) year prior to maturity date via a Bank Letter at the Banks sole discretion with identical terms and conditions and to be constructed as a modification to the current LOC .

"Resolution" means this Resolution, as same may from time to time be amended, modified or supplemented.

"State" means the State of Florida

"State Proceeds" means all amounts received by the Town from the State Department of Emergency Management or any other agency or division thereof for Costs of the Project.

"Town" means the Town of Southwest Ranches, a Florida municipal corporation, or its successor.

"Town Administrator" means the Town Administrator or other chief executive officer of the Town.

"Town Clerk" means the Town Clerk or any Deputy Town Clerk.

"Town Financial Administrator" means the Town Financial Administrator or other chief financial officer of the Town.

**SECTION 3. AUTHORITY FOR RESOLUTION.** This Resolution is enacted pursuant to the provisions of the Act. The Town has ascertained and hereby determined that enactment of this Resolution is necessary to carry out the powers, purposes and duties expressly provided in the Act, that each and every matter and thing as to which provision is made herein is necessary in order to carry out and effectuate the purposes of the Town in accordance with the Act and to carry out and effectuate the plan and purpose of the Act, and that the powers of the Town herein exercised are in each case exercised in accordance with the provisions of the Act and in furtherance of the purposes of the Town.

**SECTION 4. RESOLUTION TO CONSTITUTE CONTRACT.** In consideration of the purchase and acceptance of the Note by those who shall hold the same from time to time, the provisions of this Resolution shall be a part of the contract of the Town with the Holder, and shall be deemed to be and shall constitute a contract between the Town and the Holder from time to time of the Note. The pledge made in this Resolution and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Town shall be for the benefit, protection and security of the Holder of the Note in accordance with the terms hereof.

**SECTION 5. LINE OF CREDIT AGREEMENT.** The Mayor and the Town Administrator or Town Financial Administrator are hereby authorized to execute and deliver a Line of Credit Agreement on behalf of the Town, and the Town Clerk is authorized to place the Town's seal thereon and attest thereto, the form and content of which shall be approved by the Town Administrator or Town Financial Administrator and Town Attorney as they may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Town.

**SECTION 6. AUTHORITY FOR ISSUANCE OF NOTE.** Subject and pursuant to the provisions hereof and of the Line of Credit Agreement, a note to be known as "Town of Southwest Ranches, Florida, Emergency Line of Credit Series 2018 Note" is hereby authorized to be issued in an aggregate principal amount not to exceed **Ten Million Dollars (\$10,000,000)** for the purpose of financing the Costs of the Project.

**SECTION 7. DESCRIPTION OF NOTE.** The Note shall be issued in one (1) typewritten certificate, shall be dated the Dated Date thereof and shall mature not later than the Maturity Date. Draws will be permitted to be made on the Note from time to time in accordance with the Line of Credit Agreement, up to the maximum principal amount of **\$10,000,000**. The Note shall bear interest, based on the principal amount outstanding from time to time, at the rate set forth in the Line of Credit Agreement, which such rate to be adjusted as set forth therein. The outstanding principal of and unpaid and accrued interest on the Note shall be payable on the Maturity Date or earlier redemption. No prepayment penalty during the term of the facility.

**SECTION 8. PLEDGE OF PLEDGED REVENUES; COVENANT TO BUDGET AND APPROPRIATE.** The Note shall be secured by, and the Town hereby grants to the Holders, a lien on and pledge of all the Pledged Revenues, as more particularly set forth in the Line of Credit Agreement. To the extent the Pledged Revenues are not sufficient to repay the Note when due, the Town covenants to budget and appropriate Legally Available Non-Ad Valorem Revenues in such amount as may be necessary to repay the Note when due, as more particularly set forth in the Line of Credit Agreement.

**SECTION 9. NOTE NOT TO BE GENERAL INDEBTEDNESS OF THE TOWN.**

The Note shall not be or constitute a general obligation or indebtedness of the Town within the meaning of the Constitution of Florida, but shall be payable from and secured solely by the Town's pledge of the Pledged Revenues and by the covenant of the Town to budget and appropriate Legally Available Non-Ad Valorem Revenues, in the manner and to the extent herein, in the Line of Credit Agreement and in the Note provided. No Holder shall ever have the right to compel the exercise of the ad valorem taxing power of the Town or taxation in any form on any real or personal property to pay the Note or the interest thereon, nor shall any Holder be entitled to payment of such principal and interest from any funds of the Town other than the Pledged Revenues or Legally Available Non-Ad Valorem Revenues, all in the manner and to the extent herein, in the Line of Credit Agreement and in the Note provided. The Holders shall have no lien upon any real or tangible personal property of the Town.

**SECTION 10. AWARD OF NOTE BY NEGOTIATED SALE.** Because of the nature of the Note, the maturity of the Note and the prevailing market conditions, the negotiated sale of the Note to the Bank in substantial accordance with the Commitment Letters, which letter is attached hereto as Exhibit "A", is hereby found to be in the best interests of the Town; provided, however, that the provisions of this Resolution and the Line of Credit Agreement shall control to the extent of any conflict with the Commitment Letter.

**SECTION 11. BANK QUALIFIED ISSUE.** The Town hereby designates the Note to be a "qualified tax-exempt obligation" within the meaning of Section 265(b) of the Code unless, as to the calendar year in which the Note is issued, the Town cannot reasonably anticipate on the date of issuance of the Note that the amount of tax-exempt obligations (other than obligations not taken into account for purposes of determining the Town's status as a "qualified small issuer") will not exceed the maximum amount permitted under Section 265(b) of the Code for such calendar year.

**SECTION 12. MODIFICATION, AMENDMENT OR SUPPLEMENT.** This Resolution may be modified, amended or supplemented by the Town from time to time prior to the Town entering into the Line of Credit Agreement. Thereafter, no modification, amendment or supplement of this Resolution, or of any resolution amendatory hereof or supplemental hereto, may be made without the consent in writing of the Holder.

**SECTION 13. GENERAL AUTHORITY.** The Governing Body hereby authorizes the Mayor, Town Administrator or Town Financial Administrator, Town Attorney and Town Clerk to execute such other documents as may be necessary to effect the borrowing contemplated by this Resolution.

**SECTION 14. SAVINGS CLAUSE.** If any section, paragraph, sentence, clause or phrase of this Resolution shall, for any reason, be held to be invalid or unenforceable, such decision shall not affect the validity of the remaining sections, paragraphs, sentences, clauses or phrase of this Resolution.

**SECTION 15. CONFLICTS.** All resolutions or parts thereof which conflict herewith are, to the extent of such conflict, superseded and repealed.

**SECTION 16. EFFECTIVE DATE.** This Resolution shall be effective immediately upon its adoption.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 26<sup>th</sup> day of April, 2018 on a motion by C/m Breithaupt and seconded by V/m Fisikelli.

McKay	<u>Yes</u>	Ayes	<u>4</u>
Fisikelli	<u>Yes</u>	Nays	<u>0</u>
Breitkreuz	<u>Yes</u>	Absent	<u>1</u>
Jablonski	<u>Yes</u>	Abstaining	<u>0</u>
Schroeder	<u>Absent</u>		

ATTEST:

Russell Muñiz  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Doug McKay  
Doug McKay, Mayor

Approved as to Form and Correctness:

Keith Poliakoff  
Keith Poliakoff, J.D., Town Attorney

**TD BANK, N.A. ("BANK")**  
**TERMS AND CONDITIONS OF CREDIT ACCOMMODATION DATED**  
**MARCH 20TH, 2018 – (\$10MM EXPOSURE)**

**THIS IS A STATEMENT OF PRELIMINARY TERMS AND CONDITIONS AND NOT A COMMITMENT TO LEND. ALL CREDIT ACCOMMODATIONS ARE SUBJECT TO FORMAL CREDIT UNDERWRITING AND APPROVAL.**

1. Loan.

- (a) Borrower(s): Town of Southwest Ranches, Florida
- (b) Guarantor: N/A
- (c) Facility: Taxable Or Tax Exempt Facility (the "Emergency Line of Facility")
- (d) Purpose: Credit Facility to be used for **qualified expenses** related to natural disasters such as hurricanes and other emergencies. Proceeds under this Facility can also be used to repay the balance outstanding under the Town's existing Emergency Line of Credit Facility with Centennial Bank.

This Facility shall replace the Town's existing Emergency Line of Credit Facility with Centennial Bank

- (e) Amount: **Up to \$10,000,000 ("Series 2016 Note")**
- (f) Collateral: The payment of the principal of and interest on the Facility shall be secured by a pledge of Town to budget & appropriate from the Non-Ad valorem revenues, by amendment if required, for the ongoing debt service payment under the Loan (Pledged Revenues).
- (g) Maturity: Five (5) years with a Bank Call Option on the 3<sup>rd</sup> anniversary of Loan Closing Date.  
  
Facility can be renewed at maturity via a Bank Letter at the Bank's sole discretion, at least one (1) year prior to maturity.
- (h) Repayment Terms: "Interest-Only" to be paid quarterly during term of Emergency Facility. Periodic principal repayments that coincide with Borrower's receipt of reimbursement payments by FEMA and/or other State Agencies will be required. Otherwise, all unpaid principal shall be due at maturity.

**Bank Call Option:** Credit Facility will be subject to a Bank Call Option on the 3<sup>rd</sup> anniversary of Facility Closing Date whereby Bank can put back Note on Borrower at the Bank's sole discretion under a 180-day Bank Advance Notice.

(i) Interest Rate:

**INDICATIVE FLOATING RATE**

**Taxable Rate:** Indicative Floating Rate for the Credit Facility Term duration is (1-Month LIBOR + 1.75%) for an "All-In" Rate of **3.34%**; OR (WSJ Prime – 1.25%) "All-In" Rate of **3.25%** depending on Borrower's preference.

**Tax Exempt Rate(s):**

**Bank Qualified--** Indicative Floating Rate for the Credit Facility Term duration is 80.25% of (1-Month LIBOR + 1.75%) for an "All-In" Rate of **2.68%**; OR 80.25% (WSJ Prime – 1.25%) "All-In" Rate of **2.61%** depending on Borrower's preference.

**Non-Bank Qualified –** Indicative Floating Rate for the Credit Facility Term duration is 81.50% of (1-Month LIBOR + 1.75%) for an "All-In" Rate of **2.72%**; OR 81.50% of (WSJ Prime – 1.25%) "All-In" Rate of **2.65%** depending on Borrower's preference.

(j) Prepayment Premium:

**No prepayment penalty during the Term of the Facility.**

(k) Default Rate of Interest:

The "default rate of interest" shall be six (6) percentage points in excess of the prime rate of interest upon the occurrence of the event of default.

(l) Late Charges:

If any payment due the Bank is more than fifteen (15) days overdue, a late charge of six percent (6%) of the overdue payment shall be assessed.

(m) Event of Default:

Events of default will include but not be limited to the following:

- a. Breach of representation or warranties
- b. Violation of covenants
- c. Bankruptcy or insolvency.
- d. Final non-appealable judgement against the Town in the amount of \$10,000,000
- e. Payment default



2. Fees and Expenses:

The Borrower shall pay to the Bank on demand any and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred or paid by the Bank in connection with the loan. The Town's legal counsel will provide documentation associated with this transaction. Documentation will be subject to the review and approval of the Lender and the Lender's counsel. The Town agrees to pay all legal fees and expenses of the lender associated with the review and closing of this transaction, which costs may be paid with proceeds of the Loan.

Bank Loan Fee: One-Time Credit Facility Set Up Fee of \$25,000.

During the second year of Facility and annually thereafter, Credit Facility will be subject to an annual maintenance fee of \$4,000 which shall be waived by Bank whenever average annual outstanding balance amounts to at least 20% of Facility Amount.

3. Legal Opinions:

Prior to closing, there shall be delivered to the Bank an opinion of Borrower Counsel acceptable to the Bank covering matters customary for a transaction of this type and nature and which shall, without limitation, opine that: (1) the Borrower is duly formed; (2) all loan documents have been validly authorized and executed by and on behalf of the Borrower, if any; (3) all loan documents are valid, binding, enforceable in accordance with their terms and do not violate any legal requirements, including without limitation, organizational documents, laws and material agreements; and (4) and an opinion of Bond Counsel that the Credit Facility is Bank Qualified or Non-Bank Qualified Tax-Exempt (if applicable).

4. Financial Reporting:

a) Borrower(s) shall furnish the following financial reports:

<u>Type of Report(s)</u>	<u>Frequency</u>	<u>Due Date</u>
Audited Financial Statements	Annually	Within 210 days after the end of the Town's fiscal year
Annual Budget	Annually	Within 60 days after its adoption

b) The Bank reserves the right to request additional financial information (i.e. notices from FEMA on pending reimbursement claims) to supplement or verify certain financial assumptions or verify the creditworthiness of the Borrower.

5. Other Conditions:

- a. No Material Adverse Change to the Borrower prior to closing.
- b. Borrower agrees to have all loan payments be settled via auto debit through a TD Bank Account.
- c. Borrower agrees to an initial one-time advance of at least \$2,000,000 within the first 90 days of Facility Closing date to refund the Town's for FEMA reimbursable emergency expenses incurred in relation to Hurricane Irma. Such expenses should be reflected as part of active pending claims reimbursement application(s) with FEMA and other Federal and State Agencies.
- d. Borrower agrees to provide any supporting document that may be required so Bank can qualify the Facility as a Community Loan extended to support the Town's needs in times of emergency.
- e. Borrower and Bank to agree as to what type of supporting document will need to be presented by Borrower as part of Requisition Advance Request under the Facility.

- f. Borrower shall comply with all laws applicable to its operations.
- g. Borrower covenants and agrees that documents will include language stipulating that the Loan Facility and all existing and future debt secured by the Pledged Revenues of the Town will be on parity with no preference given to any particular issuance.
- h. The implementation of certain terms, conditions, covenants or other non-material changes to the proposed Credit Accommodation required as part of the Bank's formal credit approval shall be deemed an approval in substantially the form outlined in this proposed Credit Accommodation.
- i. All legal matters and documentation to be executed in connection with the contemplated proposed Credit Accommodation shall be satisfactory in form and substance to the Bank and counsel to the Bank.
- j. The Bank shall not be required to enter into the proposed Credit Accommodation until the completion of all due diligence inquiries, receipt of approvals from all requisite parties and the execution and receipt of all necessary documentation reasonably acceptable to the Bank and its counsel. Furthermore, certain assumptions are made for this proposal which, if altered, could affect the overall credit approval and or terms of the proposed Credit Accommodation.
- k. All other standard terms & conditions including acceleration rights during an event of default.
- l. Patriot Act Notice. Lender is subject to the requirements of USA Patriot Act (Title III of Pub. L. 107-56) (signed into law October 26, 2001)) (the "Act"), and hereby notifies the Borrower and Guarantor (if any) that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower and Guarantor, which information includes the names and address of the Borrower and Guarantor and other information that will allow Lender to identify the Borrower and Guarantor in accordance with the Act.