

LOAN AGREEMENT

This LOAN AGREEMENT (this "Agreement") is made and entered into as of _____, 2015, and is by and between the Town of Cutler Bay, Florida, a Florida municipal corporation, and its successors and assigns (the "Town"), and TD Bank, N.A., a national banking association, and its successors and assigns as holder of the hereinafter defined Notes (the "Bank");

WHEREAS, the Town is duly created and existing pursuant to the Florida Constitution and by virtue of the laws of the State of Florida ("State"); and

WHEREAS, on June 14, 2010, pursuant to Ordinance No. 10-06 adopted by the Town Council (the "Council") on June 14, 2010 and Resolution No. 10-28 adopted by the Council on May 26, 2010 (collectively, the "Note Ordinance"), the Town issued its Promissory Notes, Series 2010A, Series 2010B, Series 2010C, Series 2010D and Series 2010E (collectively, the "Prior Notes") and entered into a loan agreement with the Bank in order to provide for the acquisition of vacant land and the acquisition and renovation of the Town Hall (the "Project"); and

WHEREAS, on September 20, 2012, pursuant to Resolution No. 12-46 adopted by the Council on September 10, 2012, the Town and the Bank entered into an Amendment to Loan Agreement in order to restructure the amortization schedules for the Series 2010B, Series 2010C and Series 2010E Notes; and

WHEREAS, pursuant to Ordinance No. 15-__ adopted by the Council on _____, 2015 and Resolution No. 15-__ adopted by the Council on _____, 2015, the Town authorized the issuance of Notes (hereinafter defined) for the purpose of refunding the Prior Notes and paying costs of issuance of the Notes; and

WHEREAS, the Town hereby determines that it is desirable and in the best interest of the Town to enter into this Agreement whereby the Town will borrow funds (the "Loan") from the Bank to be used to refund the Prior Notes and pay costs of issuance of the Notes; and

WHEREAS, the obligation of the Town to repay such Loan shall be evidenced by the delivery of its \$_____ Sales Tax Revenue Refunding Note, Series 2015A (the "Series 2015A Note") and its \$_____ Taxable Sales Tax Revenue Refunding Note, Series 2015B (the "Series 2015B Note" and collectively with the Series 2015A Note, the "Notes") to the Bank in the principal amount of the Loan; and

WHEREAS, the Notes shall be issued pursuant to the terms and provisions of the Note Ordinance and this Agreement; and

WHEREAS, the execution and delivery of this Agreement have been duly authorized by the Note Ordinance.

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, DO HEREBY AGREE as follows:

ARTICLE I

DEFINITION OF TERMS

Section 1.1 Definitions. The words and terms used in this Agreement shall have the meanings as set forth in the Note Ordinance and in the recitals above, unless otherwise defined herein. Unless the context shall otherwise require, the following words and terms as used in this Agreement shall have the following meanings:

“Act” means Part II of Chapter 166, Florida Statutes, as amended, the Charter of the Town, and other applicable provisions of law.

“Agreement” means this Loan Agreement and any and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

“Annual Debt Service Requirement” means for a given Fiscal Year the amount required to pay the principal and interest coming due on the Notes during that Fiscal Year.

“Bond Counsel” means counsel experienced in matters relating to the validity of, and the exclusion from gross income for federal income tax purposes of interest on, obligations of states and their political subdivisions.

“Business Day” means any day which is not a Saturday, Sunday or legal holiday or other day on which the Bank is authorized or required to close.

“Clerk” means the Clerk or any Deputy Clerk of the Town.

“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.

“Dated Date” means the date of issuance of the Notes.

“Default Rate” means six percentage points (6.0%) in excess of the rate otherwise borne by the Notes immediately prior to the occurrence of an Event of Default.

“Event of Default” shall mean an event of default specified in Article VIII of this Agreement.

“Fiscal Year” means the period commencing on October 1 of each year and ending on the succeeding September 30, or such other consecutive 12-month period as may be hereafter designated as the fiscal year of the Town pursuant to general law.

“Governing Body” means the Council, or its successor in function.

“Holder” means the registered owner (or its authorized representatives) of the Notes from time to time, initially the Bank.

“Loan” means the loan being made pursuant to this Agreement in an amount equal to the aggregate outstanding principal amount of the Notes issued hereunder.

“Loan Documents” means this Agreement, the Notes, the Note Ordinance and all other documents, agreements, certificates, schedules, notes, statements, and opinions, however described, referenced herein or executed or delivered pursuant hereto or in connection with or arising with the Loan or the transaction contemplated by this Agreement.

“Manager” means the Town Manager and such other person as may be authorized to act on his or her behalf.

“Mayor” means the Mayor of the Town and such other person as may be authorized to act on his or her behalf.

“Note Payment Date” means each March 15, June 15, September 15 and December 15, commencing September 15, 2015.

“Person” means natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies.

“Pledged Revenues” means the proceeds of the local government half-cent sales tax distributed to the Town from the Local Government Half-Cent Sales Tax Clearing Trust Fund, as defined and described in Part VI, Chapter 218, Florida Statutes, as amended.

“Prior Tax-Exempt Notes” means the Prior Notes designated as Series 2010A, Series 2010C and Series 2010D.

“State” means the State of Florida.

“Tax Certificate” means the Tax Certificate executed and delivered by the Town on the date hereof.

Section 1.2 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. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

Section 1.3 Titles and Headings. The titles and headings of the articles and sections of this Agreement 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 OF TOWN

The Town represents and warrants to the Bank that:

Section 2.1 Powers of Town. The Town is duly organized and validly existing as a municipal corporation under the laws of the State. The Town has the power to borrow the amount provided for in this Agreement, to execute and deliver the Loan Documents, to secure the Notes in the manner contemplated hereby, and to perform and observe all the terms and conditions of the Notes and this Agreement on its part to be performed and observed. The Town may lawfully issue the Notes in order to refund the Prior Notes and pay costs of issuance of the Notes.

Section 2.2 Authorization of Loan. The Town has, had or will have, as the case may be, full legal right, power, and authority to enact the Note Ordinance and to execute and deliver this Agreement, to issue and deliver the Notes to the Bank, and to carry out and consummate all other transactions contemplated hereby and by the Loan Documents, and the Town has complied and will comply with all provisions of applicable law in all material matters relating to such transactions. The Town, by the Note Ordinance, has duly authorized the borrowing of the amount provided for in this Agreement, the execution and delivery of this Agreement, and the making and delivery of the Notes to the Bank, and to that end the Town warrants that it will take all action and will do all things which it is authorized by law to take and to do in order to fulfill all covenants on its part to be performed and to provide for and to assure payment of the Notes. The Town has duly enacted the Note Ordinance and authorized the execution, delivery, and performance of the Notes and this Agreement and the taking of any and all other such action as may be required on the part of the Town to carry out, give effect to and consummate the transactions contemplated by the Loan Documents. The Notes have been duly authorized, executed, issued and delivered to the Bank and constitute legal, valid and binding obligations of the Town enforceable in accordance with their terms and the terms of the Note Ordinance, and are entitled to the benefits and security of the Note Ordinance and this Agreement. All approvals, consents, and orders of and filings with any governmental authority or agency which would constitute a condition precedent to the issuance of the Notes or the execution and delivery of or the performance by the Town of its obligations under the Loan Documents have been obtained or made and any consents, approvals, and orders to be received or filings so made are in full force and effect.

Section 2.3 Agreements. The making and performing by the Town of this Agreement will not violate any provision of the Act, or any ordinance or resolution of the Town, or any regulation, order or decree of any court, and will not result in a breach of any of the terms of any agreement or instrument to which the Town is a party or by which the Town is bound. The Loan Documents constitute legal, valid and binding obligations of the Town enforceable in accordance with their respective terms.

Section 2.4 Litigation, Etc. There are no actions or proceedings pending against the Town or affecting the Town or, to the knowledge of the Town, threatened, which, either in any

case or in the aggregate, might result in any material adverse change in the financial condition of the Town, or which question the validity of this Agreement, the Prior Notes, the Notes or any of the other Loan Documents or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby. The Town is not in default in any material respect under any agreement or other instrument to which it is a party or by which it may be bound.

Section 2.5 Financial Information. The financial information regarding the Town furnished to the Bank by the Town in connection with the Loan is complete and accurate, and there has been no material and adverse change in the financial condition of the Town from that presented in such information.

ARTICLE III

COVENANTS OF THE TOWN

Section 3.1 Affirmative Covenants. Subject to the Note Ordinance, the Town covenants, for so long as any of the principal amount of or interest on the Notes is outstanding and unpaid or any duty or obligation of the Town hereunder or under any of the other Loan Documents remains unpaid or unperformed, as follows:

(a) **Use of Proceeds.** The Town represents and warrants that the proceeds from the Prior Notes were used only to finance the Project. The Town represents and warrants that, as of the date of issuance of the Notes, and upon the refunding of the Prior Notes, there are no other notes, bonds or obligations of the Town secured by the Pledged Revenues.

(b) **Notice of Defaults.** The Town shall within five (5) days after it acquires knowledge thereof, notify the Bank in writing upon the happening, occurrence, or existence of any Event of Default, and 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 Town of all relevant facts and the action being taken or proposed to be taken by the Town with respect thereto.

(c) **Records.** The Town agrees that any and all records of the Town shall be open to inspection by the Bank or its representatives at all reasonable times at the offices of the Town.

(d) **Maintain Existence.** The Town shall do all things lawfully within its power to maintain its existence as a municipal corporation of the State, and shall not voluntarily dissolve.

(e) **Notice of Liabilities.** The Town shall promptly inform the Bank 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 Town.

(f) **Insurance.** The Town shall maintain such liability, casualty and other insurance as is reasonable and prudent for similarly situated municipal corporations of the State and shall upon the request of the Bank, provide evidence of such coverage to the Bank.

(g) **Comply with Laws.** The Town is in compliance with and shall comply with all applicable federal, state and local laws and regulatory requirements.

(h) **Taxes.** The Town is a tax exempt municipal corporation under the laws of the State of Florida; however, in the event the Notes, this Agreement or any other Loan Document should be subject to the excise tax on documents or the intangible personal property tax, or any similar tax, of the State of Florida, the Town shall pay such taxes or reimburse the Bank for any such taxes paid by it.

(i) **Investments.** The Town shall invest only in obligations permitted by Section 218.415, Florida Statutes.

(j) **Pledged Revenues.** For so long as the Notes are outstanding, the Town shall take all necessary steps to qualify to continue to receive the Pledged Revenues as provided for in Part VI, Chapter 218, Florida Statutes, as amended.

Section 3.2 Bank Fees and Expenses. The Town hereby agrees to the fees of counsel to the Bank in connection with the issuance of the Notes in the amount of \$7,500.00, said amount to be due and payable upon the issuance of the Notes.

Section 3.3 Registration and Exchange of Notes; Persons Treated as Holders. So long as the Notes shall remain unpaid, the Town will keep books for the registration and transfer of the Notes. The Notes shall be transferable only upon such registration books. The Town will transfer the registration of a Note upon written request of the Bank specifying the name, address and taxpayer identification number of the transferee, and as otherwise provided in the Notes.

With the prior written consent of the Town, each Note may be sold or transferred only to a Permitted Lender, in whole, in a denomination of not less than \$100,000 (even in whole). A “Permitted Lender” means any bank, trust company, savings institution or insurance company that is engaged as a regular part of its business in making loans and is authorized to do business in the State of Florida. A Note may not be sold or transferred to any kind of trust under any circumstances.

The Person in whose name the Notes shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal and interest on the Notes shall be made only to or upon the written order of such Person. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Notes to the extent of the sum or sums so paid.

Section 3.4 Payment of Principal and Interest. The Town promises that it will promptly pay the principal of and interest on the Notes at the place, on the dates and in the manner provided therein according to the true intent and meaning hereof and thereof, provided that the principal of and interest on the Notes is secured solely as provided in Section 3.5 hereof, and nothing in the Notes or in this Agreement shall be construed as pledging any other funds or assets of the Town to such payment or authorizing such payment to be made from any other source. Any payment of principal or interest required to be made hereunder that is not paid within fifteen (15) days of when due shall be subject to a late charge of six percent (6%) of the overdue payment.

The Notes shall not be or constitute a general obligation or indebtedness of the Town within the meaning of the Constitution of the State of Florida, but shall be payable solely from and secured in the manner and to the extent provided in Section 3.5. 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 such Notes or the interest thereon, nor shall any Holder be entitled to payment of such principal and interest from any other funds of the Town other than the Pledged Revenues, all in the manner and to the extent herein provided.

Section 3.5 Pledge of Revenues. The Town hereby pledges, assigns and grants a security interest to the Holder in the Pledged Revenues in order to secure the principal of and interest on the Notes. The Town represents and warrants to the Holder that from and after the redemption of the Prior Notes on the date hereof (the “Redemption Date”), there will be no other obligations of the Town currently outstanding secured by the Pledged Revenues, and that therefore the security interest granted in the preceding sentence will be a first lien security interest from and after the Redemption Date.

Section 3.6 Prepayment. The Notes may be prepaid as set forth in the forms of Notes attached hereto as Exhibits “A” and “B”.

Section 3.7 Business Days. In any case where the due date of interest on or principal of the Notes is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day, provided that credit for payments made shall not be given until the payment is actually received by the Bank.

Section 3.8 Officers and Employees of the Town Exempt from Personal Liability. No recourse under or upon any obligation, covenant or agreement of this Agreement or the Notes or for any claim based thereon or otherwise in respect thereof, shall be had against the Mayor or any member of the Council, or any officer, agent or employee, as such, of the Town past, present or future, it being expressly understood (a) that the obligation of the Town under this Agreement and the Notes is solely a corporate one, (b) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the Council, or the officers, agents, or employees, as such, of the Town, or any of them, under or by reason of the obligations, covenants or agreements contained in this Loan Agreement or implied therefrom, and (c) that any and all such personal liability of, and any and all such rights and claims against, every such Council member, and every officer, agent, or employee, as such, of the Town under or by reason of the obligations, covenants or agreements contained in this Loan Agreement, or implied therefrom, are waived and released as a condition of, and as a consideration for, the execution of this Loan Agreement and the issuance of the Notes on the part of the Town.

Section 3.9 Notes Mutilated, Destroyed, Stolen or Lost. In case any Note shall become mutilated, or be destroyed, stolen or lost, the Town shall issue and deliver a new Note of like tenor as the Note so mutilated, destroyed, stolen or lost, in exchange and in substitution for such mutilated Note, or in lieu of and in substitution for the Note destroyed, stolen or lost and upon the Holder furnishing the Town proof of ownership thereof and indemnity reasonably satisfactory to the Town and complying with such other reasonable regulations and conditions as the Town may prescribe and paying such expenses as the Town may incur. The Note so surrendered shall be canceled.

Section 3.10 Section 265 Designation of Series 2015A Note. The reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii) of Section 265(b)(3)(C) of the Code) which have been or will be issued by the Town and any subordinate entities or entities issuing obligations on behalf of the Town within the meaning of Section 265(b)(3) of the Code during calendar year 2015 does not exceed \$10,000,000. The Town hereby designates the Series 2015A Note as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3)(B)(i) of the Code. The Town hereby covenants and agrees not to take any action or to fail to take any action if such action or failure would cause the Series 2015A Note to no longer be a “qualified tax-exempt obligation.”

Section 3.11 Tax Representations, Warranties and Covenants of the Town. Notwithstanding anything herein to the contrary, the Town hereby covenants and represents that it has taken and caused to be taken and shall make and take and cause to be made and taken all actions that may be required of it for the interest on the Prior Tax-Exempt Notes and the Series 2015A Note to be and remain excluded from the gross income of the Holder for federal income tax purposes, and that to the best of its knowledge it has not taken or permitted to be taken on its behalf, and covenants that to the best of its ability and within its control, it shall not make or take, or permit to be made or taken on its behalf, any action which, if made or taken, would adversely affect such exclusion under the provisions of the Code.

The Town acknowledges that the continued exclusion of interest on the Prior Tax-Exempt Notes and the Series 2015A Note from gross income for federal income tax purposes depends, in part, upon compliance with the arbitrage limitations imposed by Sections 103(b)(2) and 148 of the Code. The Town hereby acknowledges responsibility to take all reasonable actions necessary to comply with these requirements. The Town hereby represents, agrees and covenants that it has not permitted, with respect to the Prior Tax-Exempt Notes, and shall not permit, with respect to the Series 2015A Note, at any time or times, any of the proceeds of the Prior Tax-Exempt Notes or the Series 2015A Note or other funds of the Town to be intentionally used, directly or indirectly, to acquire or to replace funds which were used directly or indirectly to acquire any higher yielding investments (as defined in Section 148 of the Code), the acquisition of which would cause the Prior Tax-Exempt Notes or the Series 2015A Note to be arbitrage bonds for purposes of Sections 103(b)(2) and 148 of the Code. The Town further agrees and covenants that it shall do and perform all acts and things necessary in order to assure that the requirements of Sections 103(b)(2) and 148 of the Code are met.

Specifically, without intending to limit in any way the generality of the foregoing, the Town covenants and agrees:

(a) to pay to the United States of America at the times required pursuant to Section 148(f) of the Code, the excess of the amount earned on all non-purpose investments (as defined in Section 148(f)(6) of the Code) (other than investments attributed to an excess described in this sentence) over the amount which would have been earned if such non-purpose investments were invested at a rate equal to the yield on the Series 2015A Note, plus any income attributable to such excess (the “Rebate Amount”);

(b) to maintain and retain all records pertaining to and to be responsible for making or causing to be made all determinations and calculations of the Rebate Amount and required payments of the Rebate Amount as shall be necessary to comply with the Code; and

(c) to comply with all representations and restrictions contained in any Tax Certificate executed by the Town in connection with the Series 2015A Note.

The Town understands that the foregoing covenants impose continuing obligations on it to comply with the requirements of Section 103 and Part IV of Subchapter B of Chapter 1 of the Code so long as such requirements are applicable.

Section 3.12 Additional Tax Covenants of the Town. For so long as the Series 2015A Note remains outstanding, the Town hereby covenants as follows:

(a) It will comply with, and timely make or cause to be made all filings required by, all effective rules, rulings or regulations promulgated by the Department of the Treasury or the Internal Revenue Service;

(b) It has not and will not use, invest, direct or permit the investment of the proceeds of the Prior Tax-Exempt Notes or the Series 2015A Note or any investment earnings thereon in a manner that will result in the Prior Tax-Exempt Notes or the Series 2015A Note becoming “private activity bonds” within the meaning of Sections 141 and 145 of the Code;

(c) It has not and will not use or permit to be used more than ten percent (10%) of the proceeds of the Prior Tax-Exempt Notes or the Series 2015A Note (including the amounts used to pay costs associated with issuing the Prior Tax-Exempt Notes or the Series 2015A Note), including all investment income earned on such proceeds directly or indirectly, in any trade or business carried on by any person who is not the Town or a state or political subdivision or instrumentality thereof as those terms are used in Section 103 of the Code (an “Exempt Person”);

(d) It has not and will not use or permit the use of any portion of the proceeds of the Prior Tax-Exempt Notes or the Series 2015A Note, including all investment income earned on such proceeds, directly or indirectly, to make or finance loans to persons who are not Exempt Persons;

(e) It has not entered into, and will not enter into, any arrangement with any person or organization (other than an Exempt Person) which provides for such person or organization to manage, operate, or provide services with respect to more than 10% of the property financed with the proceeds of the Prior Tax-Exempt Notes or the Series 2015A Note (a “Service Contract”), unless the guidelines set forth in Revenue Procedure 97-13 (or the guidelines set forth in Revenue Procedure 93-19, to the extent applicable, or any new, revised or additional guidelines applicable to Service Contracts) (the “Guidelines”), are satisfied, except to the extent it obtains a private letter ruling from the Internal Revenue Service or an opinion of nationally recognized Bond Counsel which allows for a variation from the Guidelines;

(f) It has not and will not cause the Prior Tax-Exempt Notes or the Series 2015A Note to be treated as “federally guaranteed” for purposes of Section 149 of the Code, as

may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to “federally guaranteed” obligations described in Section 149 of the Code. For purposes of this paragraph, the Prior Tax-Exempt Notes or the Series 2015A Note shall be treated as “federally guaranteed” if (i) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (ii) 5% or more of the proceeds of the Prior Tax-Exempt Notes or the Series 2015A Note was or will be (A) used in making loans the payment of principal or interest with respect to which is to be guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (B) invested directly or indirectly in federally insured deposits or accounts, and (iii) such guarantee is not described in Section 149(b)(3) of the Code; and

(g) It will comply with the information reporting requirements of Section 149(e)(2) of the Code.

The terms “debt service,” “gross proceeds,” “net proceeds,” “proceeds,” and “yield” have the meanings assigned to them for purposes of Section 148 of the Code.

ARTICLE IV

CONDITIONS OF LENDING

Section 4.1 Conditions of Lending. The obligations of the Bank to lend hereunder are subject to the following conditions precedent:

(a) **Representations and Warranties.** The representations and warranties set forth in the Loan Documents are and shall be true and correct to the best of the Town’s knowledge on and as of the date hereof.

(b) **No Default.** On the date hereof the Town shall be in compliance with all the terms and provisions set forth in the Loan 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) **Supporting Documents.** On or prior to the date hereof, 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 purchase of the Notes by the Bank):

(i) The opinion of the Town Attorney regarding the due authorization, execution, delivery, validity and enforceability of this Agreement and the Notes, the Town’s power to incur the debt evidenced by the Notes and the due enactment of the Note Ordinance;

(ii) The opinion of Bond Counsel to the effect that (A) the interest on the Series 2015A Note is excluded from gross income for federal income tax purposes, (B) the interest on the Series 2015A Note is not an item of tax preference under Section

57 of the Code and (C) the Series 2015A Note is a qualified tax-exempt obligation under Section 265(b)(3) of the Code;

- (iii) The fully executed Tax Certificate;
- (iv) A copy of a completed and executed form 8038-G to be filed with the Internal Revenue Service;
- (v) A certified copy of the Note Ordinance;
- (vi) A certificate or certificates of the Town relating to (i) the Note Ordinance authorizing the execution, delivery and performance of the Town with respect to the Notes, (ii) incumbency and specimen signatures of officers, and (iii) such other matters as the Bank may reasonably require;
- (vii) A certificate of the Town certifying that there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, public board or body pending, or, to the best knowledge of the Town, threatened against or affecting the Town wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Note Ordinance or (ii) the tax-exempt status of the interest portion of the Series 2015A Note; and
- (viii) Such additional supporting documents as the Bank may reasonably request.

(d) **No Adverse Changes.** On or prior to the date hereof, there shall have been no material adverse changes in the financial condition of the Town from that reflected in its audited financial statements for its Fiscal Year ended September 30, 2013.

ARTICLE V

THE LOAN; TOWN'S OBLIGATION; DESCRIPTION AND PAYMENT TERMS

Section 5.1 The Loan. The Bank hereby agrees to loan to the Town the aggregate amount of \$_____ to be evidenced by the Notes, to provide funds to refund the Prior Notes and pay costs of issuance of the Notes, upon the terms and conditions set forth in the Note Ordinance and in this Agreement. The Town agrees to repay the principal amount borrowed plus interest thereon, upon the terms and conditions set forth in the Loan Documents.

Section 5.2 Description and Payment Terms of the Notes. To evidence the Loan, the Town shall issue and deliver to the Bank the Notes in the forms attached hereto as Exhibits "A" and "B".

ARTICLE VI

CREATION AND USE OF FUNDS AND ACCOUNTS

Section 6.1 Note Fund. There is hereby created a fund, entitled “Town of Cutler Bay, Florida, Sales Tax Revenue Refunding Notes, Series 2015 Note Fund” (the “Note Fund”). There shall be deposited into the Note Fund on each Note Payment Date sufficient amounts of Pledged Revenues as specified in Section 3.5 hereof which, together with the amounts already on deposit therein, will enable the Town to pay the principal of and interest coming due on the Notes on each Note Payment Date. Moneys in the Note Fund shall be applied on each Note Payment Date to the payment of principal of and interest on the Notes coming due on each such date in the manner specified in Section 7.3 hereof.

Section 6.2 Funds. Each of the funds and accounts herein established and created shall constitute trust funds for the purposes provided herein for such funds and accounts respectively. The money in such funds and accounts shall be continuously secured in the same manner as deposits of Town funds are authorized to be secured by the laws of the State of Florida.

The designation and establishment of the funds and accounts in and by this Agreement shall not be construed to require the establishment of any completely independent, self-balancing funds, as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues and assets of the Town for the purposes herein provided and to establish certain priorities for application of such revenues and assets.

Section 6.3 Rebate Fund and Rebate Covenants. There is hereby created and established a fund to be held by the Town, designated the “Town of Cutler Bay Sales Tax Revenue Refunding Note, Series 2015A Rebate Fund” (the “Rebate Fund”). The Rebate Fund shall be held by the Town separate and apart from all other funds and accounts held by the Town under this Agreement and from all other moneys of the Town.

Notwithstanding anything in this Agreement to the contrary, the Town shall transfer to the Rebate Fund the amounts required to be transferred in order to comply with the Tax Certificate or the Rebate Covenants, if any, attached as an Exhibit to the Tax Certificate to be delivered by the Town on the date of delivery of the Series 2015A Notes (the “Rebate Covenants”), when such amounts are so required to be transferred. The Town shall make or cause to be made payments from the Rebate Fund of amounts required to be deposited therein to the United States of America in the amounts and at the times required by the Rebate Covenants. The Town covenants for the benefit of the Holder of the Series 2015A Note that it will comply with the Rebate Covenants. The Rebate Fund, together with all moneys and securities from time to time held therein and all investment earnings derived therefrom, shall be excluded from the pledge and lien of this Agreement. The Town shall not be required to comply with the requirements of this Section 6.3 in the event that the Town obtains an opinion of Bond Counsel that (i) such compliance is not required in order to maintain the federal income tax exemption of

interest on the Series 2015A Note and/or (ii) compliance with some other requirement is necessary to maintain the federal income tax exemption of interest on the Series 2015A Note.

ARTICLE VII

SPECIAL COVENANTS

Section 7.1 Financial Statements. The Town shall, upon receipt by the Town or within two hundred ten (210) days of each Fiscal Year end, whichever is sooner, provide the Holder with a printed copy of its Annual Financial Statement, and a certificate of its Manager or Finance Director in form and substance satisfactory to the Holder evidencing compliance with the covenant set forth in Section 7.2 below. The Town shall also provide to the Holder, within sixty (60) days of its adoption, its current year operating budget, and, upon request, any other financial information reasonably requested by the Holder.

Section 7.2 Coverage Requirement.

(a) The Town shall, in each fiscal year while the Notes are outstanding, maintain the ratio of Pledged Revenues to the annual debt service on the Notes and any other obligations of the Town secured by Pledged Revenues of at least equal to 1.50 to 1.00. Calculations of Pledged Revenues will be based on information derived from for the most recently ended fiscal years of the Town for which audited financial statements are available. If requested by the Bank, the Town shall provide a certificate showing compliance with this Section 7.2 and attach all supporting documentation.

(b) In the event that the coverage ratio required in paragraph (a) above falls below 1.00 to 1.00, the Town shall be obligated to provide to the Holder, within six (6) months of the date of such occurrence, a pledge of additional revenue as security for the Notes, satisfactory to the Holder in its reasonable discretion, that will enable the Town to be in immediate compliance with paragraph (a) above. During such six month period, the Holder shall not have the right to declare the entire outstanding balance due on the Notes to be immediately due and payable as result of the coverage ratio falling below 1.00 to 1.00, so long as no Event of Default under Section 8.1(a) has occurred. If the Town fails to provide such additional security within such six (6) month period, then the failure to do so will constitute an Event of Default hereunder that gives the Holder the right to declare the entire outstanding balance due on the Notes to be immediately due and payable.

Section 7.3 Additional Debt. The Town shall not issue additional debt secured by a lien on the Pledged Revenues that is senior to the lien on the Pledged Revenues securing the Notes. The Town covenants and agrees that it will not issue additional debt obligations secured by the Pledged Revenues on a parity with the Notes (“Additional Debt”) unless (a) no event of default hereunder or under the Notes shall have occurred and be continuing and (b) on the date of issuance of such Additional Debt the Debt Service Coverage Ratio is at least 1.50 to 1.

For purposes of this Section 7.3:

(1) “Maximum Annual Debt Service” shall mean the maximum amount of principal and interest required in the then current or any future Fiscal Year to pay all Debt Obligations;

(2) “Debt Obligations” shall mean debt service on all debt obligations of the Town, including the Notes and the Additional Debt, which are secured by the Pledged Revenues; and

(3) “Debt Service Coverage Ratio” shall mean the ratio of (i) the amount of Pledged Revenues during any twelve (12) consecutive months within the twenty-four (24) months immediately preceding the issuance of the Additional Debt, to (ii) the Maximum Annual Debt Service.

Similar terminology used in Section 7.4 shall not apply to this Section 7.3.

Calculations of Pledged Revenues will be based on information derived from for the most recently ended fiscal years of the Town for which audited financial statements are available. For purposes of calculating Maximum Annual Debt Service, the interest rate to be assumed for indebtedness bearing interest at a variable rate shall be equal to (i) the average rate of interest paid by the Town with respect to such indebtedness during the twelve (12) months preceding the date of calculation, and (ii) with respect to Additional Debt to be issued as variable rate indebtedness, the initial interest rate applicable to such Additional Debt.

Section 7.4 Charter Restrictions on Debt.

The Town shall comply with the following restrictions currently set forth in the Town Charter:

The total Debt of the Town, including amounts authorized but still not drawn down under existing loan agreements and other contractual arrangements with banks and other financial institutions, underwriters, brokers and/or intermediaries, shall not exceed the greater of:

(1) three percent (3%) of the total assessed value of all property within the Town, as certified by the Miami-Dade County Property Appraiser for the current fiscal year; or

(2) that amount which would cause annual Debt Service to equal fifteen percent (15%) of General Fund expenditures for the previous fiscal year;

provided, however, that if in the future the Town Charter is amended to permit total Debt to exceed the amounts set forth above, then the total Debt of the Town permitted hereunder shall be deemed to be such greater amount consistent with the Charter.

For purposes of this Section 7.4, the following terms shall have the meaning ascribed to them below. Similar terminology used in Section 7.3 shall not apply to this Section 7.4.

(a) “Debt” shall mean any obligation of the Town to repay borrowed money however evidenced since the date of its incorporation regardless of tenor or term for which it was originally contracted or subsequently converted through refinancing or novation, except (i) any obligation required to be repaid in less than a year and which was incurred solely for emergency relief of natural disasters, or (ii) that portion of any obligation for operations which are financed

and operated in an independent, self-liquidating manner and recovered entirely through currently collected user fees and charges.

(b) “Debt Service” shall include, without limitation thereto, scheduled interest payments, repayments of principal and all financial fees arising from Debt or from the underlying contractual obligations, whether as originally incurred or subsequently deferred or otherwise renegotiated.

(c) “General Fund” shall mean any and all revenues of the Town, from whatever source derived, except those revenues derived from special assessments, user fees and charges and designated as a separate fund to finance goods and services to the public.

Section 7.5 Parity Covenant. The Town covenants and agrees that if the Town grants to any lender or holder of any indebtedness secured by the Pledged Revenues on a parity with the Notes (i) any right related to the Pledged Revenues or (ii) any event of default or remedy, that is not already contained in this Agreement, such right, event of default or remedy shall be deemed to apply hereunder as if expressly set forth herein.

Section 7.6 Depository Accounts. The Town agrees that within 90 days of the date hereof, the Town will move its primary operating accounts to the Bank.

Section 7.7 Auto Debit. At all times while this Agreement is in effect, loan payments from the Town shall be set up on auto debit, which will automatically transfer payments of principal of and interest on the Notes held by the Bank from a pre-designated account of the Town to the Bank on each Note Payment Date.

ARTICLE VIII

EVENTS OF DEFAULT

Section 8.1 General. An “Event of Default” shall be deemed to have occurred under this Agreement if:

(a) The Town shall fail to make any payment of the principal of or interest on the Notes when due; or

(b) The Town shall (a) admit in writing its inability to pay its debts generally as they become due, (b) file (or have filed against it and not dismissed within 90 days) a petition in bankruptcy or take advantage of any insolvency act, (c) make an assignment for the general benefit of creditors, (d) consent to the appointment of a receiver for itself or for the whole or any substantial part of its property, or (e) be adjudicated a bankrupt; or

(c) Except as otherwise provided in Section 7.2 (b), the Town shall default in the due and punctual performance of any of its covenants, conditions, agreements and provisions contained herein or in the Notes (other than as set forth in (a) above), and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Town by the Holder of the Notes; provided that such default shall not be an Event of Default if the Town within such 30 day period commences and

carries out with due diligence to completion (although not necessarily within such thirty (30) day period) such action as is necessary to cure the same.; or

(d) A default occurs under any other debt obligation of the Town secured by the Pledged Revenues.

Section 8.2 Effect of Event of Default. If an Event of Default shall have occurred and be continuing, the Holder may proceed to protect and enforce its rights hereunder by a suit, action or special proceeding in equity or at law, by mandamus or otherwise, either for the specific performance of any covenant or agreement contained herein or for enforcement of any proper legal or equitable remedy as such Holder shall deem most effectual to protect and enforce the rights aforesaid. While an Event of Default shall have occurred and be continuing, the Notes shall bear interest at the Default Rate.

In addition, the Holder may declare the entire outstanding balance due on the Notes to be immediately due and payable, and in any such acceleration the Town shall also be obligated to pay all costs of collection and enforcement thereof, including such reasonable attorneys' fees as may be incurred on appeal, only in the following circumstances:

(a) Upon the occurrence of an Event of Default described in Section 8.1(a) and the continuance thereof for a period of thirty (30) days; or

(b) Under the circumstances described in Section 7.2(b).

No remedy herein conferred upon or reserved to the Holder is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

No delay or omission of a Holder to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default, or an acquiescence therein; and every power and remedy given by this article may be exercised from time to time, and as often as may be deemed expeditious by a Holder.

ARTICLE IX

MISCELLANEOUS

Section 9.1 No Waiver; Cumulative Remedies. No failure or delay on the part of the Bank or the Town in exercising any right, power, remedy hereunder, or under the Notes or other Loan Documents, shall operate as a waiver of the Town's or Bank's rights, powers and remedies hereunder, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power or remedy hereunder or thereunder. The remedies herein and therein provided are cumulative and not exclusive of any remedies provided by law or in equity.

Section 9.2 Amendments, Changes or Modifications to the Agreement. This Agreement shall not be amended, changed or modified except by written instrument between the

Bank and the Town. The Town agrees to pay all of the Bank's costs and reasonable attorneys' fees incurred in modifying and/or amending this Agreement at the Town's request or behest.

Section 9.3 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 9.4 Severability. If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any other provisions or sections hereof, and this Agreement shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced, as if such illegal or invalid clause, provision or section had not been contained herein.

Section 9.5 Term of Agreement. Except as otherwise specified in this Agreement, this Agreement and all representations, warranties, covenants and agreements contained herein or made in writing by the Town in connection herewith shall be in full force and effect from the date hereof and shall continue in effect until as long as the Notes is outstanding.

Section 9.6 Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic telephone line facsimile transmission or other similar electronic or digital transmission method (provided customary evidence of receipt is obtained); the day after it is sent, if sent by overnight common carrier service; and five days after it is sent, if mailed, certified mail, return receipt requested, postage prepaid. In each case notice shall be sent to:

If to the Town: Rafael Casals, Town Manager
Town of Cutler Bay
10720 Caribbean Blvd. Suite 105
Cutler Bay, Florida 33189

With a copy to: Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, FL 33134
Attn: Mitchell Bierman, Esq.

If to the Bank: TD Bank, N.A.
255 Alhambra Circle, 2nd Floor
Coral Gables, FL 33134
Attn: Florida Middle Market

or to such other address as either party may have specified in writing to the other using the procedures specified above in this Section 9.6.

Section 9.7 Applicable Law. This Agreement, and each of the Loan Documents and transactions contemplated herein, shall be construed pursuant to and governed by the substantive laws of the State.

Section 9.8 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the successors in interest and permitted assigns of the parties. The Town shall have no rights to assign any of their rights or obligations hereunder without the prior written consent of the Bank.

Section 9.9 Conflict. In the event any conflict arises between the terms of this Agreement and the terms of any other Loan Document, the terms of this Agreement shall govern in all instances of such conflict.

Section 9.10 No Third Party Beneficiaries. It is the intent and agreement of the parties hereto that this Agreement is solely for the benefit of the parties hereto and no person not a party hereto shall have any rights or privileges hereunder, except as may be permitted otherwise under Section 9.8.

Section 9.11 Entire Agreement. Except as otherwise expressly provided, this Agreement and the other Loan Documents embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof.

Section 9.12 Further Assurances. The parties to this Agreement will execute and deliver, or cause to be executed and delivered, such additional or further documents, agreements or instruments and shall cooperate with one another in all respects for the purpose of carrying out the transactions contemplated by this Agreement.

Section 9.14 Waiver of Jury Trial. THE TOWN AND THE BANK IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CONTROVERSY OR CLAIM BETWEEN THEM, WHETHER ARISING IN CONTRACT, TORT OR BY STATUTE, THAT ARISES OUT OF OR RELATES TO THIS AGREEMENT, THE BONDS OR THE BOND RESOLUTION. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE TOWN AND THE BANK TO ENTER INTO THIS AGREEMENT.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective between them as of the date of first set forth above.

TOWN OF CUTLER BAY, FLORIDA

[SEAL]

By: _____
Rafael Casals, Town Manager

ATTEST:

By: _____
Jacqueline Wilson, Interim Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE SOLE USE
OF THE TOWN OF CUTLER BAY:

By: _____
Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

TD BANK, N.A.

By: _____
Delle Joseph
Senior Vice President

EXHIBIT "A"

FORM OF SERIES 2015A NOTE

No. R-1

\$ _____

**UNITED STATES OF AMERICA
STATE OF FLORIDA
TOWN OF CUTLER BAY
SALES TAX REVENUE REFUNDING NOTE, SERIES 2015A**

Interest Rate

Maturity Date

Dated Date

2.50%

June 15, 2030

_____, 2015

Holder: TD Bank, N.A.

Principal Amount: _____ Dollars (\$_____)

KNOW ALL MEN BY THESE PRESENTS, that the Town of Cutler Bay, Florida (the "Town"), for value received, hereby promises to pay to the Holder shown above, or registered assigns (the "Bank"), from the sources hereinafter mentioned, the Principal Amount specified above plus interest at the Interest Rate specified herein. Subject to the rights of prior prepayment described in this Note, this Note shall mature on the Maturity Date specified above. Payments due hereunder shall be made no later than 2:00 p.m., Eastern time, on the date due, free and clear of any defenses, set-offs, counterclaims, or withholding or deductions for taxes. Any payment required to be made hereunder that is not paid within fifteen (15) days of when due shall be subject to a late charge of six percent (6%) of the overdue payment.

This Note is issued under authority of and in full compliance with the Constitution and laws of the State of Florida, including particularly Part II of Chapter 166, Florida Statutes, as amended, the Charter of the Town, Ordinance No. 15-__ duly enacted by the Town Council of the Town (the "Council") on _____, 2015 and Resolution No. 15-__ adopted by the Council on _____, 2015 (collectively, the "Note Ordinance"), and a Loan Agreement, dated as of the Dated Date, between the Town and the Bank (the "Loan Agreement") and is subject to all the terms and conditions of the Loan Agreement. All terms, conditions and provisions of the Loan Agreement are by this reference thereto incorporated herein as a part of this Note. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

This Note is issued for the purpose of refunding the Town's Promissory Notes, Series 2010A, Series 2010C and Series 2010D, and paying costs of issuance of this Note.

This Note is issued on a parity basis with the Town's \$_____ Taxable Sales Tax Revenue Refunding Note, Series 2015B, being issued simultaneously herewith.

The principal on this Note shall be due and payable on March 15, June 15, September 15 and December 15 of each year (each, a "Note Payment Date"), beginning September 15, 2015, through and the Maturity Date, in the amounts set forth on the payment schedule attached hereto.

Subject to adjustment as provided below, this Note shall bear interest on the outstanding principal balance from its Dated Date at the Interest Rate specified above. Interest on this Note shall be due and payable on each Note Payment Date beginning on September 15, 2015 until the Maturity Date. The entire unpaid principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on the Maturity Date. All payments by the Town pursuant to this Note shall apply first to accrued interest, then to other charges due the Bank, and the balance thereof shall apply to the principal sum due.

During the period in which an Event of Default shall have occurred or be continuing hereunder or under the Loan Agreement, this Note shall bear interest at a rate of six percent (6%) in excess of the rate otherwise borne by this Note immediately prior to the occurrence of such Event of Default.

The Town to the extent permitted by law hereby waives presentment, demand, protest and notice of dishonor.

Interest on this Note shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

The principal of and interest on this Note are payable in lawful money of the United States of America by wire transfer or by certified check delivered on or prior to the date due to the registered Holder or his legal representative at the address of the Holder as it appears on the registration books of the Town. Notwithstanding the foregoing, payments from the Town shall be set up on auto debit, which will automatically transfer payments of principal of and interest on this Note during the period held by the Bank from a pre-designated account of the Town to the Bank on each Note Payment Date.

Adjustment of Interest Rate For Full Taxability. Upon a Determination of Taxability, the rate of interest on this Note shall be adjusted upward to 3.57% per annum (the "Taxable Rate"), retroactive as of the date of the Determination of Taxability event. In addition to the payments of principal and interest on this Note required to be paid pursuant to the terms of the Loan Agreement and this Note, the Town hereby agrees to pay to the Holder the Additional Amount upon demand. "Additional Amount" means (i) the difference between (a) interest on this Note for the period commencing on the date on which the interest on this Note ceased to be excludable from gross income for federal income tax purposes and ending on the earlier of the date this Note ceased to be outstanding or such adjustment is no longer applicable to this Note (the "Taxable Period") at a rate per annum equal to the Taxable Rate, and (b) the aggregate amount of interest paid on this Note for the Taxable Period under the provisions of this Note without considering the Determination of Taxability, plus (ii) any penalties and interest paid or payable by such Holder to the Internal Revenue Service by reason of such Determination of Taxability. A "Determination of Taxability" shall mean a final decree or judgment of any Federal court or a

final action of the Internal Revenue Service or of the United States Treasury Department determining that interest paid or payable on this Note is or was includable in the gross income of the Holder of this Note for Federal income tax purposes; provided, that no such decree, judgment, or action will be considered final for this purpose, however, unless the Town has been given written notice thereof and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of the Holder, and until the conclusion of any appellate review, if sought.

Adjustment of Interest Rate for Loss of Bank Qualified Status. So long as no Determination of Taxability shall have occurred, upon the occurrence of a Loss of BQ Status (as defined below), and for as long as this Note remains outstanding, the interest rate on this Note shall be converted to the Adjusted BQ Rate (as defined below). In addition, upon a Loss of BQ Status, the Town shall pay to the Holder (i) an additional amount equal to the difference between (A) the amount of interest actually paid on this Note during the period of time from the date of issuance of this Note to the next succeeding Interest Payment Date, and (B) the amount of interest that would have been paid during the period in clause (A) had this Note borne interest at the Adjusted BQ Rate, and (ii) an amount equal to any penalties and interest paid or payable by such Holder to the Internal Revenue Service by reason of such as a result of the Loss of BQ Status.

As used in the preceding paragraph:

“Adjusted BQ Rate” shall mean, upon a Loss of BQ Status, the interest rate per annum that shall provide the Holder with the same after tax yield that the Holder would have otherwise received had the Loss of BQ Status not occurred, taking into account the increased taxable income of the Holder as a result of such Loss of BQ Status. The Holder shall provide the Town with a written statement explaining the calculation of the Adjusted BQ Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the Town; and

“Loss of BQ Status” shall mean a determination by the Holder that this Note is not a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code (or any successor provision).

A certificate of the Holder as to any such additional amount or amounts, in the absence of manifest error, shall be final and conclusive. In determining such amount, the Holder may use any reasonable averaging and attribution methods.

Notwithstanding the foregoing, in no event shall the interest rate payable on this Note in any year exceed the maximum rate permitted by law.

Upon written notice to the Holder given by the Town at least five (5) Business Days prior to the date fixed for prepayment, the Town shall be entitled to prepay this Note prior to maturity in whole or in part at any time at a price of par plus accrued interest to the date of prepayment. Any partial prepayments shall be applied to installments of principal in inverse order of maturity and shall not postpone any due dates of, or relieve the amounts of, any scheduled installment payments due hereunder.

In the Loan Agreement, the Town has pledged, assigned and granted a security interest to the Holder in the Pledged Revenues (as defined in the Loan Agreement) in order to secure the principal of and interest on this Note.

Reference is hereby made to the Loan Agreement for the provisions, among others, relating to the terms, lien and security of this Note, the custody and application of the proceeds of this Note, the rights and remedies of the Holder of this Note, and the extent of and limitations on the Town's rights, duties and obligations, to all of which provisions the Holder hereof for himself and his successors in interest assents by acceptance of this Note.

THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE A GENERAL DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN, OR A DEBT OR PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL, LEGISLATIVE OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE HOLDER OF THIS NOTE THAT SUCH HOLDER SHALL NEVER HAVE THE RIGHT, DIRECTLY OR INDIRECTLY, TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE TOWN OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF FLORIDA OR TAXATION IN ANY FORM ON ANY REAL OR PERSONAL PROPERTY FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS NOTE OR FOR THE PAYMENT OF ANY OTHER AMOUNTS PROVIDED FOR IN THE LOAN AGREEMENT.

It is further agreed between the Town and the Holder of this Note that neither the members of the Governing Body of the Town nor its officers, agents and/or employees nor any person executing this Note shall be liable personally on this Note by reason of its issuance.

The original registered Holder, and each successive registered Holder of this Note shall be conclusively deemed to have agreed and consented to the following terms and conditions:

1. The Town shall keep books for the registration of this Note and for the registration of transfers of this Note as provided in the Loan Agreement. This Note may be transferred or exchanged upon the registration books kept by the Town, upon delivery to the Town, together with written instructions as to the details of the transfer or exchange, of this Note in form satisfactory to the Town and with guaranty of signatures satisfactory to the Town, along with the social security number or federal employer identification number of any transferee. With the prior written consent of the Town, this Note may be sold or transferred only to a Permitted Lender, in whole, in a denomination of not less than \$100,000 (even in whole). A "Permitted Lender" means any bank, trust company, savings institution or insurance company that is engaged as a regular part of its business in making loans and is authorized to do business in the State of Florida. This Note may not be sold or transferred to any kind of trust under any circumstances.

2. The Town may deem and treat the person in whose name this Note shall be registered upon the books of the Town as the absolute Holder of this Note, whether this Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on this Note as they become due, and for all other purposes. All such payments so

made to any such Holder or upon his order shall be valid and effectual to satisfy and discharge the liability upon this Note to the extent of the sum or sums so paid.

3. In all cases in which the privilege of exchanging this Note or transferring this Note is exercised, the Town shall execute and deliver a Note in accordance with the provisions hereof and of the Loan Agreement. There shall be no charge for any such exchange or transfer of this Note, but the Town may require payment of a sum sufficient to pay any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. The Town shall not be required to transfer or exchange this Note for a period of fifteen (15) days next preceding an interest payment date on this Note.

4. If the principal of and interest on this Note been paid in full, either at or prior to maturity, the Holder shall delivered this Note to the Town when such full payment is made, and thereupon this Note shall be cancelled. In case a portion but not all of an this Note shall be prepaid pursuant to mandatory prepayment provisions, such Note shall not be surrendered in exchange for a new Note, but the Town shall make a notation indicating the remaining outstanding principal of this Note upon the registration books. This Note as so redesignated shall have the remaining principal as provided on such registration books and shall be deemed to have been issued in the denomination of the outstanding principal balance, which shall be an authorized denomination.

It is hereby certified and recited that all acts, conditions and things required to happen, to exist and to be performed precedent to and for the issuance of this Note have happened, do exist and have been performed in due time, form and manner as required by the Constitution and the laws of the State of Florida applicable thereto.

IN WITNESS WHEREOF, the Town of Cutler Bay, Florida has caused this Note to be executed in its name by the manual signature of its Town Manager, and attested by the manual signature of its Clerk and its corporate seal or a facsimile thereof affixed hereto, all as of this ____ day of _____, 2015.

TOWN OF CUTLER BAY, FLORIDA

[SEAL]

By: _____
Rafael Casals, Town Manager

ATTEST:

By: _____
Jacqueline Wilson, Interim Town Clerk

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Note in the books kept by the Town for the registration thereof, with full power of substitution in the premises.

Date: _____

SOCIAL SECURITY NUMBER OR
FEDERAL IDENTIFICATION
NUMBER OF ASSIGNEE

NOTICE: The signature of this assignment must correspond with the name as it appears upon the within Note in every particulate, or any change whatever.

[Form of Abbreviations]

The following abbreviations, when used in the inscription on the face of the within Note, shall be construed as though they were written out in full according to the applicable laws or regulations.

- TEN COM - as tenants in common
- TEN ENT - as tenants by the entireties
- JT TEN - as joint tenants with the right of survivorship and not as tenants in common
- UNIFORM TRANS MIN ACT - _____ Custodian for _____(Cust.) (Minor) under Uniform Transfers to Minors Act of _____ (State).

Additional abbreviations may also be used though not in the above list.

Name and address of assignee for payment and notice purposes

Notice: _____

Payment: _____

Date: _____

Assignee: _____

By: _____

Title: _____

AMORTIZATION SCHEDULE FOR SERIES 2015A NOTE

EXHIBIT "B"

FORM OF SERIES 2015B NOTE

No. R-1

\$ _____

**UNITED STATES OF AMERICA
STATE OF FLORIDA
TOWN OF CUTLER BAY
TAXABLE SALES TAX REVENUE REFUNDING NOTE, SERIES 2015B**

Interest Rate

Maturity Date

Dated Date

2.80%

June 15, 2025

_____, 2015

Holder: TD Bank, N.A.

Principal Amount: _____ Dollars (\$_____)

KNOW ALL MEN BY THESE PRESENTS, that the Town of Cutler Bay, Florida (the "Town"), for value received, hereby promises to pay to the Holder shown above, or registered assigns (the "Bank"), from the sources hereinafter mentioned, the Principal Amount specified above plus interest at the Interest Rate specified herein. Subject to the rights of prior prepayment described in this Note, this Note shall mature on the Maturity Date specified above. Payments due hereunder shall be made no later than 2:00 p.m., Eastern time, on the date due, free and clear of any defenses, set-offs, counterclaims, or withholding or deductions for taxes. Any payment required to be made hereunder that is not paid within fifteen (15) days of when due shall be subject to a late charge of six percent (6%) of the overdue payment.

This Note is issued under authority of and in full compliance with the Constitution and laws of the State of Florida, including particularly Part II of Chapter 166, Florida Statutes, as amended, the Charter of the Town, Ordinance No. 15-__ duly enacted by the Town Council of the Town (the "Council") on _____, 2015 and Resolution No. 15-__ adopted by the Council on _____, 2015 (collectively, the "Note Ordinance"), and a Loan Agreement, dated as of the Dated Date, between the Town and the Bank (the "Loan Agreement") and is subject to all the terms and conditions of the Loan Agreement. All terms, conditions and provisions of the Loan Agreement are by this reference thereto incorporated herein as a part of this Note. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

This Note is issued for the purpose of refunding the Town's Promissory Notes, Series 2010B and Series 2010E, and paying costs of issuance of this Note.

This Note is issued on a parity basis with the Town's \$_____ Sales Tax Revenue Refunding Note, Series 2015A, being issued simultaneously herewith.

The principal on this Note shall be due and payable on March 15, June 15, September 15 and December 15 of each year (each, a "Note Payment Date"), beginning September 15, 2015, through and the Maturity Date, in the amounts set forth on the payment schedule attached hereto.

Subject to adjustment as provided below, this Note shall bear interest on the outstanding principal balance from its Dated Date at the Interest Rate specified above. Interest on this Note shall be due and payable on each Note Payment Date beginning on September 15, 2015 until the Maturity Date. The entire unpaid principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on the Maturity Date. All payments by the Town pursuant to this Note shall apply first to accrued interest, then to other charges due the Bank, and the balance thereof shall apply to the principal sum due.

During the period in which an Event of Default shall have occurred or be continuing hereunder or under the Loan Agreement, this Note shall bear interest at a rate of six percent (6%) in excess of the rate otherwise borne by this Note immediately prior to the occurrence of such Event of Default.

The Town to the extent permitted by law hereby waives presentment, demand, protest and notice of dishonor.

Interest on this Note shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

The principal of and interest on this Note are payable in lawful money of the United States of America by wire transfer or by certified check delivered on or prior to the date due to the registered Holder or his legal representative at the address of the Holder as it appears on the registration books of the Town. Notwithstanding the foregoing, payments from the Town shall be set up on auto debit, which will automatically transfer payments of principal of and interest on this Note during the period held by the Bank from a pre-designated account of the Town to the Bank on each Note Payment.

Notwithstanding the foregoing, in no event shall the interest rate payable on this Note in any year exceed the maximum rate permitted by law.

Upon written notice to the Holder given by the Town at least five (5) Business Days prior to the date fixed for prepayment, the Town shall be entitled to prepay this Note prior to maturity in whole or in part at any time at a price of par plus accrued interest to the date of prepayment. Any partial prepayments shall be applied to installments of principal in inverse order of maturity and shall not postpone any due dates of, or relieve the amounts of, any scheduled installment payments due hereunder.

Any partial prepayments shall be applied to installments of principal in inverse order of maturity and shall not postpone any due dates of, or relieve the amounts of, any scheduled installment payments due hereunder.

In the Loan Agreement, the Town has pledged, assigned and granted a security interest to the Holder in the Pledged Revenues (as defined in the Loan Agreement) in order to secure the principal of and interest on this Note.

Reference is hereby made to the Loan Agreement for the provisions, among others, relating to the terms, lien and security of this Note, the custody and application of the proceeds of this Note, the rights and remedies of the Holder of this Note, and the extent of and limitations on the Town's rights, duties and obligations, to all of which provisions the Holder hereof for himself and his successors in interest assents by acceptance of this Note.

THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE A GENERAL DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN, OR A DEBT OR PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL, LEGISLATIVE OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE HOLDER OF THIS NOTE THAT SUCH HOLDER SHALL NEVER HAVE THE RIGHT, DIRECTLY OR INDIRECTLY, TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE TOWN OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF FLORIDA OR TAXATION IN ANY FORM ON ANY REAL OR PERSONAL PROPERTY FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS NOTE OR FOR THE PAYMENT OF ANY OTHER AMOUNTS PROVIDED FOR IN THE LOAN AGREEMENT.

It is further agreed between the Town and the Holder of this Note that neither the members of the Governing Body of the Town nor its officers, agents and/or employees nor any person executing this Note shall be liable personally on this Note by reason of its issuance.

The original registered Holder, and each successive registered Holder of this Note shall be conclusively deemed to have agreed and consented to the following terms and conditions:

1. The Town shall keep books for the registration of this Note and for the registration of transfers of this Note as provided in the Loan Agreement. This Note may be transferred or exchanged upon the registration books kept by the Town, upon delivery to the Town, together with written instructions as to the details of the transfer or exchange, of this Note in form satisfactory to the Town and with guaranty of signatures satisfactory to the Town, along with the social security number or federal employer identification number of any transferee. With the prior written consent of the Town, this Note may be sold or transferred only to a Permitted Lender, in whole, in a denomination of not less than \$100,000 (even in whole). A "Permitted Lender" means any bank, trust company, savings institution or insurance company that is engaged as a regular part of its business in making loans and is authorized to do business in the State of Florida. This Note may not be sold or transferred to any kind of trust under any circumstances.

2. The Town may deem and treat the person in whose name this Note shall be registered upon the books of the Town as the absolute Holder of this Note, whether this Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on this Note as they become due, and for all other purposes. All such payments so

made to any such Holder or upon his order shall be valid and effectual to satisfy and discharge the liability upon this Note to the extent of the sum or sums so paid.

3. In all cases in which the privilege of exchanging this Note or transferring this Note is exercised, the Town shall execute and deliver a Note in accordance with the provisions hereof and of the Loan Agreement. There shall be no charge for any such exchange or transfer of this Note, but the Town may require payment of a sum sufficient to pay any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. The Town shall not be required to transfer or exchange this Note for a period of fifteen (15) days next preceding an interest payment date on this Note.

4. If the principal of and interest on this Note been paid in full, either at or prior to maturity, the Holder shall delivered this Note to the Town when such full payment is made, and thereupon this Note shall be cancelled. In case a portion but not all of an this Note shall be prepaid pursuant to mandatory prepayment provisions, such Note shall not be surrendered in exchange for a new Note, but the Town shall make a notation indicating the remaining outstanding principal of this Note upon the registration books. This Note as so redesignated shall have the remaining principal as provided on such registration books and shall be deemed to have been issued in the denomination of the outstanding principal balance, which shall be an authorized denomination.

It is hereby certified and recited that all acts, conditions and things required to happen, to exist and to be performed precedent to and for the issuance of this Note have happened, do exist and have been performed in due time, form and manner as required by the Constitution and the laws of the State of Florida applicable thereto.

IN WITNESS WHEREOF, the Town of Cutler Bay, Florida has caused this Note to be executed in its name by the manual signature of its Town Manager, and attested by the manual signature of its Clerk and its corporate seal or a facsimile thereof affixed hereto, all as of this ____ day of _____, 2015.

TOWN OF CUTLER BAY, FLORIDA

[SEAL]

By: _____
Rafael Casals, Town Manager

ATTEST:

By: _____
Jacqueline Wilson, Interim Town Clerk

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Note in the books kept by the Town for the registration thereof, with full power of substitution in the premises.

Date: _____

SOCIAL SECURITY NUMBER OR
FEDERAL IDENTIFICATION
NUMBER OF ASSIGNEE

NOTICE: The signature of this assignment must correspond with the name as it appears upon the within Note in every particulate, or any change whatever.

[Form of Abbreviations]

The following abbreviations, when used in the inscription on the face of the within Note, shall be construed as though they were written out in full according to the applicable laws or regulations.

- TEN COM - as tenants in common
- TEN ENT - as tenants by the entireties
- JT TEN - as joint tenants with the right of survivorship and not as tenants in common
- UNIFORM TRANS MIN ACT - _____ Custodian for _____(Cust.) (Minor) under Uniform Transfers to Minors Act of _____ (State).

Additional abbreviations may also be used though not in the above list.

Name and address of assignee for payment and notice purposes

Notice: _____

Payment: _____

Date: _____

Assignee: _____

By: _____

Title: _____

AMORTIZATION SCHEDULE FOR SERIES 2015B NOTE