

## REVOLVING LINE OF CREDIT AGREEMENT

This REVOLVING LINE OF CREDIT AGREEMENT (this "Agreement") is made and entered into as of November 30, 2022, and is by and between THE COLLEGE OF THE FLORIDA KEYS, a Florida College System institution and a political subdivision of the State of Florida pursuant to Part III, Chapter 1004, Florida Statutes, and its successors and assigns (the "Issuer"), by and through its Board of Trustees, a body corporate pursuant to Section 1001.63, Florida Statutes (the "Board"), and FIRST HORIZON BANK, a Tennessee banking corporation, and its successors and assigns, as holder(s) of the hereinafter defined Note (the "Lender").

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

### ARTICLE 1 DEFINITION OF TERMS

**Section 1.01 Definitions.** The words and terms used in capitalized form in this Agreement shall have the meanings as set forth above and the following words and terms as used in this Agreement shall have the following meanings:

"Act" means Part III, Chapter 1004, Florida Statutes, Section 1001.64(38), Florida Statutes, Section 1009(22)(6)(a), Florida Statutes, the Constitution of the State of Florida, and other applicable provisions of law.

"Advance" means a borrowing of money under the Note, pursuant to Section 5.03 hereof.

"Additional Debt" means Debt payable or secured by the Capital Improvement Fees.

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

"Annual Budget" means the budget or budgets, as amended and supplemented from time to time, prepared by the Issuer for each Fiscal Year in accordance with the laws of the State of Florida.

"Annual Debt Service" means the annual amount of principal and interest payable on the Note.

"Available Commitment Amount" shall mean the difference between the Maximum Commitment Amount and the Loan.

"Business Day" means any day except any Saturday or Sunday or day on which the Principal Office of the Lender is lawfully closed.

"Capital Improvement Fees" means the capital improvement fees imposed by the Issuer on students pursuant to Section 1009.22(6)(a), Florida Statutes.

"Costs" means, with respect to the Project, any lawful expenditure of the Issuer which meets the further requirements of this Agreement. "Costs" shall include costs of issuance of the Loan.

"Debt" means all of the following to the extent payable from or secured by a lien upon the Pledged Funds on a parity with that of the Note: (i) all obligations of the Issuer for borrowed money or evidenced by bonds, debentures, notes or other similar instruments, (ii) all obligations of the Issuer to pay the deferred purchase price of property or services, except trade accounts payable under normal trade terms and which arise in the normal course of business, and (iii) all obligations of the Issuer under capitalized leases.

"Debt Service Fund" means The College of the Florida Keys Taxable Revolving Line of Credit Note, Series 2022 Debt Service Fund established in Section 3.06 hereof.

"Event of Default" means an event of default specified in Article 6 of this Agreement.

"Final Maturity Date" means November 29, 2025, or such later date which this Agreement may be extended or renewed in the sole discretion of the Lender by written notice from the Lender to the Issuer.

"Fiscal Year" means the period commencing on July 1 of each year and ending on the succeeding June 30, or such other period of twelve consecutive months as may hereafter be designated as the fiscal year of the Issuer by general law.

"Loan" means the outstanding principal amount of the Note issued hereunder.

"Loan Documents" means this Agreement and the Note.

"Maximum Commitment Amount" means, for any day \$5,000,000, and as the same may be hereafter modified in accordance with the terms of this Agreement.

"Note" means the Issuer's Taxable Revolving Line of Credit Revenue Note, Series 2022 in the form attached hereto as Exhibit "A."

"Note Year" means, initially, beginning on the date of issuance of the Note and ending June 30, 2023, and thereafter shall mean the annual period commencing on the first day of July of each year and ending on the last day of June of the following year, provided, however, that any principal and interest coming due on July 1 of any year shall be deemed to mature or be due on the last day of the immediately preceding Note Year.

"Notice Address" means,

As to the Issuer:

The College of the Florida Keys  
5901 College Road  
Key West, Florida 33040  
Attention: Brittany P. Snyder, D.M., Executive  
Vice President and CFO

As to the Lender: First Horizon Bank  
330 Whitehead Street  
Key West, Florida 33040  
Attention: Michele White, Senior Vice President

or to such other address (or email address for electronic communications) as either party may have specified in writing to the other using the procedures specified in Section 7.06.

"Person" means an individual, corporation, partnership, association, joint stock company, joint venture, trust, limited liability company, unincorporated organization or other judicial entity.

"Pledged Funds" means all amounts on deposit in the Debt Service Fund (including all investment securities on deposit therein) and all investment earnings on any such funds.

"Principal Office" means, with respect to the Lender, the office located at 330 Whitehead Street, Key West, Florida, 33040, or such other office as the Lender may designate to the Issuer in writing.

"Project" means certain capital improvements, technology enhancements, equipping buildings, or the acquisition of improved real property for the Issuer's campuses in Monroe County, Florida.

"Project Fund" means The College of the Florida Keys Taxable Revolving Line of Credit Note, Series 2022 Project Fund established in Section 3.06 hereof.

"Resolution" means the resolution adopted by the Board on November 29, 2022 approving this Agreement and the Note.

"Revenue Fund" means the account established in accordance with 1009(22)(6)(a), Florida Statutes, into which the Capital Improvement Fees are deposited upon receipt.

"State" means the State of Florida.

**Section 1.02 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 2 REPRESENTATIONS OF ISSUER**

The Issuer represents and warrants to the Lender, which representations and warranties shall be deemed made on the date hereof, that:

**Section 2.01 Powers of Issuer.** The Issuer is a political subdivision and a Florida College System institution, duly organized and validly existing under the laws of the

State. The Board has the power under the Act to adopt the Resolution and the Issuer has the power under the Act to establish and collect the Capital Improvement Fees, to borrow the Maximum Commitment Amount provided for in this Agreement, to execute and deliver the Loan Documents, to secure this Agreement and the Note in the manner contemplated hereby and to perform and observe all the terms and conditions of the Loan Documents on its part to be performed and observed and to carry out and consummate all other transactions contemplated hereby. The Issuer may lawfully borrow funds hereunder in order to provide funds to finance the Project and to pay costs of issuance of the Loan and the Note.

**Section 2.02 Authorization of Loan.** The Issuer has full legal right, power and authority to execute and deliver the Loan Documents, to issue the Note, and to carry out and consummate all other transactions contemplated hereby, and the Issuer has complied and will comply with all provisions of applicable law in all material matters relating to such transactions. The Issuer has duly authorized the borrowing of the Maximum Commitment Amount provided for in this Agreement, the execution and delivery of this Agreement, and the issuance and delivery of the Note to the Lender, and to that end the Issuer warrants that it will, subject to the terms hereof and of the Note, take all action and 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 Note. The Note and this Agreement have been duly authorized, executed, issued and delivered to the Lender and constitute the legal, valid and binding obligations of the Issuer enforceable in accordance with their respective terms, subject to the provisions of the bankruptcy laws of the United States of America and to other applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights, heretofore or hereinafter enacted, to the extent constitutionally applicable, and provided that its enforcement may also be subject to equitable principles that may affect remedies or other equitable relief, or to the exercise of judicial discretion in appropriate cases. The Note is entitled to the benefits and security of 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 Note or the execution and delivery of or the performance by the Issuer of its obligations under this Agreement and the Note have been obtained or made and any consents, approvals, and orders to be received or filings so made are in full force and effect. NOTWITHSTANDING THE FOREGOING, HOWEVER, OR ANYTHING ELSE HEREIN OR IN THE NOTE TO THE CONTRARY, NEITHER THIS AGREEMENT NOR THE NOTE SHALL CONSTITUTE A GENERAL OBLIGATION OR A 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, BUT SHALL BE PAYABLE SOLELY FROM THE PLEDGED FUNDS IN THE MANNER AND TO THE EXTENT PROVIDED HEREIN AND IN THE RESOLUTION. THE ISSUER HAS NO TAXING POWER. No holder or owner of the Note shall ever have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the State of Florida or any political subdivision thereof or taxation in any form on any real or personal property for any purpose, including, without limitation, for the payment of debt service with respect thereto, nor shall any holder or owner of the Note be entitled to payment of such principal and interest from any other funds of the Issuer other than the Pledged Funds, all in the manner and to the extent herein, in the Note and in the Resolution provided.

**Section 2.03 Resolution.** The Resolution has been duly adopted by the Board, is in full force and effect and has not been amended, altered, repealed, rescinded or revoked in any way.

**Section 2.04 No Violation of Law or Contract.** The Issuer 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, the breach of which could result in a material and adverse impact on the financial condition of the Issuer or the ability of the Issuer to perform its obligations hereunder and under the Note. The making and performing by the Issuer of this Agreement and the Note will not violate any applicable provision of law, and will not result in a material breach of any of the terms of any agreement or instrument to which the Issuer is a party or by which the Issuer is bound, the breach of which could result in a material and adverse impact on the financial condition of the Issuer or the ability of the Issuer to perform its obligations hereunder and under the Note.

**Section 2.05 Pending or Threatened Litigation.** Except as has been disclosed to the Lender in writing, there are no actions or proceedings pending against the Issuer or affecting the Issuer or, to the knowledge of the Issuer, threatened, which, either in any case or in the aggregate, might result in any material adverse change in the collection of the Capital Improvement Fees, or which questions the validity of this Agreement or the Note or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

**Section 2.06 Security.** The Note shall be secured by and payable from amounts on deposit in the Debt Service Fund.

**Section 2.07 Capital Improvement Fees.** The Board is authorized to impose the Capital Improvement Fees in the amounts and on the basis heretofore established and the Capital Improvement Fees now in effect have been set in accordance with applicable law and within the limitations set forth in the Act.

**Section 2.08 Project.** The proceeds of the Note will be used to finance the Project, which is a permissible expenditure of Capital Improvement Fees under Section 1009.22(6)(a). Each project to be funded in whole or in part with Capital Improvement Fees, including the Project has been identified in accordance with Section 216.0158, Florida Statutes and meets the survey and construction requirements of Chapter 1013, Florida Statutes, in each case in accordance with Section 1009.22(6)(a), Florida Statutes.

**Section 2.09 Financial Statements.** The financial statements for the Issuer for the Fiscal Year ended June 30, 2022, copies of which have been furnished to the Lender, have been prepared in accordance with generally accepted accounting principles and fairly present the financial condition of the Issuer on such date and the results of its operations for the period then ended. Since such date, there has been no material adverse change in the financial condition, revenues, properties or operations of the Issuer.

**ARTICLE 3  
COVENANTS OF THE ISSUER**

**Section 3.01 Affirmative and Negative Covenants.** For so long as any of the principal amount of or interest or any redemption or prepayment premium on the Note is outstanding or any duty or obligation of the Issuer hereunder or under the Note remains unpaid or unperformed, the Issuer covenants with the Lender as follows:

(a) Use of Proceeds. Proceeds from the Note will be used only to pay the costs of the Project and to pay the costs of issuance of the Note.

(b) Maintenance of Existence. The Issuer will take all reasonable legal action within its control in order to maintain its existence until all amounts due and owing from the Issuer to the Lender under this Agreement and the Note have been paid in full.

(c) Records. The Issuer agrees that any and all records of the Issuer with respect to the Loan shall be open to inspection by the Lender or its representatives at all reasonable times and after receipt by the Issuer of reasonable notice from the Lender at the offices the Issuer.

(d) Financial Statements and Budget. The Issuer will cause an audit to be completed of its books and accounts and shall make available electronically to the Lender at no charge (a) within 270 days after the end of each Fiscal Year audited year-end financial statements of the Issuer, including a balance sheet as of the end of such Fiscal Year and related statements of revenues, expenses and changes in fund balance, certified by an independent certified public accountant to the effect that such audit has been conducted in accordance with generally accepted auditing standards and stating whether such financial statements present fairly in all material respects the financial position of the Issuer and the results of its operations and cash flows for the periods covered by the audit report, all in conformity with generally accepted accounting principles applied on a consistent basis. The Issuer shall make available electronically to the Lender at no charge its Annual Budget within 60 days after the same shall have been approved by the Board. The Issuer shall also make available to Lender such other financial information as the Lender shall reasonably request.

(e) Insurance. The Issuer shall maintain such liability, casualty and other insurance as, or shall self-insure in a manner as, is reasonable and prudent for similarly situated governmental entities of the State of Florida.

(f) Compliance with Laws. The Issuer shall comply with all applicable federal, state and local laws and regulatory requirements, the violation of which could reasonably be expected to have a material and adverse effect upon the financial condition of the Issuer or upon the ability of the Issuer to perform its obligation hereunder or under the Note. The Issuer shall comply with all Florida statutes which govern the Issuer's budgeting and financial reporting processes, including, but not limited to, maintenance of a minimum unencumbered balance in the Issuer's general fund of five percent and the requirement to notify the State Board of Education if the Issuer should fall below that

threshold. Compliance with the budgeting and financial reporting processes will be monitored using the Florida State Auditor General annual reports as well as the Issuer's annual attestation to the Florida College System as part of its regularly required operating budget.

(g) Payment of Document Taxes. In the event the Note or this Agreement should be subject to the excise tax on documents, the Issuer shall promptly upon the Lender's written demand for same pay such taxes or reimburse the Lender for any such taxes paid by it.

(h) Collection of Capital Improvement Fees. For so long as the Note is outstanding and any amounts thereunder or hereunder are unpaid, the Board will impose and collect the Capital Improvement Fees. The Board will set and impose the Capital Improvement Fees each Note Year at the per-credit hour levels necessary to provide an amount of Capital Improvement Fees sufficient to pay the Annual Debt Service on the Note for such Note Year, subject to the limitations provided in the Act. If the imposition of the Capital Improvement Fees shall be, in whole or in part, annulled, vacated or set aside by the judgment or order of any court or governmental agency, the Board will take all steps within its power to revise and re-impose the Capital Improvement Fees in the manner provided by law so that the Capital Improvement Fees may be lawfully imposed and collected in such amounts and shall be applied as provided in this Agreement, the Note and the Resolution.

(i) Additional Debt. No Additional Debt may be issued or incurred without the express written consent of the Bank.

**Section 3.02 Registration and Exchange of Note.** The ownership of the Note may only be transferred in whole, and the Issuer will transfer the ownership of the Note, upon written request of the Lender to the Issuer specifying the name, address and taxpayer identification number of the transferee, and the Issuer will keep and maintain at all times a record setting forth the identification of the owner of the Note. For every such exchange or transfer of the Note, the Issuer may make a charge sufficient to reimburse it for any tax, fee, expense or other governmental charge required to be paid with respect to such exchange or transfer. The Person in whose name the Note shall be registered shall be deemed and regarded the absolute owner thereof for all purposes, and payment of principal and interest on such Note 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 such Note to the extent of the sum or sums so paid.

**Section 3.03 Note Mutilated, Destroyed, Stolen or Lost.** In case the Note shall become mutilated, or be destroyed, stolen or lost, the Issuer shall issue and deliver a new Note, 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 Lender furnishing the Issuer proof of ownership thereof, an affidavit of lost or stolen instrument and indemnity reasonably satisfactory to the Issuer and paying such expenses as the Issuer may reasonably incur in connection therewith.

**Section 3.04 Payment of Principal and Interest; Limited Obligation.** The Issuer promises that it will timely pay the principal of and interest on and any prepayment

premium or fee on the Note, at the place, on the dates and in the manner provided therein according to the true intent and meaning hereof and of the Note, provided that the Issuer may be compelled to pay the principal of and interest on and any prepayment premium or fee with respect to the Note solely from the Pledged Funds, and nothing in the Note, this Agreement or the Resolution shall be construed as pledging any other funds or assets of the Issuer to such payment or as authorizing such payment to be made from any other source. The Issuer is not and shall not be liable for the payment of the principal of and interest on the Note and any prepayment premium or fee with respect to or for the performance of any pledge, obligation or agreement for payment undertaken by the Issuer hereunder, under the Note or under the Resolution from any property. The Lender shall not have any right to resort to legal or equitable action to require or compel the Issuer to make any payment required by the Note or this Agreement from any source other than the Pledged Funds and only to the extent and in the manner provided herein. The Loan shall not be secured by or paid from, directly or indirectly, tuition, financial aid fees, the Florida College System Program Fund, or any other operating revenues of the Issuer.

**Section 3.05 Security.** The payment of the principal of, premium, if any, and interest on the Note and all other amounts due and payable under this Agreement and the Note shall be secured by an irrevocable lien on the Pledged Funds, all in the manner and to the extent provided herein and in the Resolution. The Issuer does hereby pledge such Pledged Funds to the principal of, premium, if any, and interest on the Note and for all other payments provided for herein.

**Section 3.06 Establishment of Funds and Accounts.** The Issuer hereby establishes, or has previously established, (a) a separate account established pursuant to Section 1009(22)(6)(a), Florida Statutes which the Capital Improvement Fees are deposited upon receipt, and referred to herein as the "Revenue Fund"; (b) a fund to be known as "The College of the Florida Keys Taxable Revolving Line of Credit Note, Series 2022 Debt Service Fund" (the "Debt Service Fund"); and (c) a fund held in an account with the Lender to be known as "The College of the Florida Keys Taxable Revolving Line of Credit Note, Series 2022 Project Fund" (the "Project Fund").

Moneys in the Debt Service Fund and the Project Fund, until applied in accordance with the provisions hereof, shall be held in trust for and be subject to a lien and charge in favor of the registered owner of the Note and for the further security of such registered owner. Moneys in the Revenue Fund shall not be subject to any lien in favor of the registered owner of the Note.

**Section 3.07 Application of Note Proceeds.** The proceeds of the Note shall be deposited into the Project Fund upon receipt and shall be applied to pay the Costs of the Project, and until so applied, may be invested in investments authorized by law and meeting the Issuer's investment policy, which investments shall mature no later than the date on which the moneys therein shall be needed for Costs of the Project. Any funds on deposit in the Project Fund upon completion of the Project and determined by the Issuer not to be needed for the Project shall be transferred by the Issuer to the Debt Service Fund.

**Section 3.08 Separate Accounts.** Except as prohibited by law, the moneys required to be accounted for the funds established herein may be deposited in a single bank



account, and funds allocable to any fund or account established herein may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the moneys on deposit therein and such investments for the various purposes of such funds and accounts as herein provided.

Except as required by applicable law, the designation and establishment of any funds or accounts 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 for certain purposes and to establish certain priorities for application of such revenues as herein provided.

**Section 3.09 Flow of Funds.** The Capital Improvement Fees will be deposited upon receipt into the Revenue Fund, as required by Sections 1009.22(6), Florida Statutes. Amounts on deposit in the Revenue Fund shall be used only for the purposes permitted by Sections 1009.22(6), Florida Statutes. The Issuer hereby covenants and agrees, to the extent permitted by and in accordance with applicable law and budgetary processes, to prepare, approve and appropriate in its Annual Budget for each Fiscal Year, by amendment if necessary, and to deposit each month to the credit of the Debt Service Fund in a timely manner as needed to pay debt service on the Note, Capital Improvement Fees in an amount which is equal to the debt service with respect to the Note next coming due. Such covenant and agreement on the part of the Issuer to budget and appropriate sufficient amounts of Capital Improvement Fees shall be cumulative, and shall continue until such Capital Improvement Fees in amounts sufficient to make all required payments hereunder and under the Note as and when due, including any delinquent payments, shall have been budgeted, appropriated and actually paid into the Debt Service Account. The Issuer shall apply all moneys on deposit in the Debt Service Fund to the timely payment of the principal of, premium, if any, and interest on the Note and other amounts due and payable under this Agreement and the Note. Funds in the Debt Service Fund may be invested in investments permitted by law and meeting the requirements of the Issuer's investment policy and that mature not later than the dates that such funds will be needed for the purposes of such Fund.

**Section 3.10 Officers and Employees of the Issuer Exempt from Personal Liability.** No personal recourse under or upon any obligation, covenant or agreement of this Agreement or the Note or for any claim based hereon or thereon or otherwise in respect thereof, shall be had against any member of the Board, officer, agent or employee, as such, of the Issuer, past, present or future, it being expressly understood (a) that the obligation of the Issuer under this Agreement and under the Note is solely a corporate one, limited as provided herein, (b) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the members of the Board, officers, agents, or employees, as such, of the Issuer, or any of them, under or by reason of the obligations, covenants or agreements contained in this 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 member of the Board, officer, agent, or employee, as such, of the Issuer under or by reason of the obligations, covenants or agreements contained in this Agreement and under the Note, or implied therefrom, are waived and released as a condition of, and as a consideration for, the execution of this Agreement and the issuance of the Note on the part of the Issuer.

**Section 3.11 Business Days.** In any case where the due date of interest on or principal of the Note 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, with the same force and effect as if made on the nominal date of payment.

#### **ARTICLE 4 CONDITIONS OF LENDING**

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

**Section 4.01 Representations and Warranties.** The representations and warranties of the Issuer set forth in this Agreement and the Note are true and correct on and as of the date hereof.

**Section 4.02 No Default.** On the date of issuance of the Note, the Issuer shall be in compliance with all the terms and provisions set forth in this Agreement and the Note on its part to be observed or performed, and no Event of Default or 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.

**Section 4.03 Supporting Documents.** On or prior to the date hereof, the Lender shall have received the following supporting documents, all of which shall be satisfactory in form and substance to the Lender (such satisfaction to be evidenced by the purchase of the Note by the Lender):

- (a) The opinion of the attorney for the Issuer, regarding the due adoption, validity and enforceability of the Resolution, this Agreement and the Note, the validity and enforceability of this Agreement and the Note, and such other items as the Lender shall reasonably request;
- (b) The Note;
- (c) A certified copy of the Resolution; and
- (d) Such additional supporting documents as the Lender may reasonably request.

#### **ARTICLE 5 FUNDING THE LOAN**

**Section 5.01 The Loan.** The Lender hereby agrees to lend to the Issuer up to the Maximum Commitment Amount to provide funds for the purposes described herein upon the terms and conditions set forth in this Agreement. The Issuer agrees to repay the principal amount borrowed plus interest thereon upon the terms and conditions set forth in this Agreement and the Note.

**Section 5.02 Description and Payment Terms of the Note.** To evidence the obligation of the Issuer to repay the Loan, the Issuer shall issue and deliver to the Lender the Note in the form attached hereto as Exhibit "A." Prepayment of principal may be made only as provided in the Note and the rate of interest on the Note, including any adjustments thereto, shall be as provided in the Note.

**Section 5.03 Requisitions for Advances; Other Conditions.**

(a) Upon three (3) Business Days' written notice to the Lender, the Issuer may borrow an aggregate principal amount from time to time up to the Maximum Commitment Amount of the Note, by requesting Advances hereunder and under the Note, provided that no Advance will be made after the Final Maturity Date. Amounts advanced and repaid may be re-advanced, provided, however, at no time shall the Loan exceed the Maximum Commitment Amount. The aggregate principal amount of each Advance shall be not less than \$25,000 or in such lesser amounts equal to the Available Commitment Amount. The Issuer's obligation to pay the principal of, and interest on the Advances made hereunder shall be evidenced by the Note and the records of the Lender, updated for each Advance and each principal repayment, which shall be conclusive absent manifest error. Any request for any Advance received by the Lender after 2:00 p.m. Eastern time shall be deemed received on the next Business Day.

(b) The Lender shall not be obligated to Advance any funds unless (i) as of the date of such Advance, no Event of Default has occurred and is continuing and no event has occurred which, with the passage of time or giving of notice or both, would constitute an Event of Default (a "Default"); (ii) the Issuer delivers to the Lender a written request for such Advance, in substantially the form attached as Exhibit B hereto, executed by an Authorized Officer indicating the amount of the Advance requested, the date on which such Advance is to be made, and certifying that (A) the representations and warranties in this Agreement are true and correct on the date of such Advance, and (B) no Event of Default or any event that, upon notice or lapse of time or both, would constitute such an Event of Default has occurred and is continuing as of the date of such Advance.

(c) Upon the satisfaction of the applicable conditions set forth herein, the Lender will make the proceeds of each Advance available to the Issuer on the date specified in the applicable request for an Advance by crediting the proceeds of such Advance to Issuer's operating account with Lender by close of business of the date in immediately available funds, or in such other manner as requested in the request for the Advance and approved by the Lender.

**Section 5.04 Computation of Interest and Fees; Application of Payments.** All computations of interest and fees hereunder shall be made on the basis of a year for 360 days for the actual number of days per month. All payments made on the Note shall be applied first to interest accrued to the date of payment and next to the unpaid principal balance.

**Section 5.05 Fees.** The Issuer shall pay to the Lender on or before the date of the issuance of the Note a one-time fee of \$12,500. The Lender shall pay the fees of its counsel and the Issuer shall pay the fees of its counsel related to the issuance and delivery of this Agreement and the Note.

**ARTICLE 6**  
**EVENTS OF DEFAULT**

**Section 6.01 General.** An "Event of Default" shall be deemed to have occurred under this Agreement if:

(a) The Issuer shall fail to make any payment of the principal of, premium, if any, or interest on the Note when the same shall become due and payable, and such non-payment has not been cured within five (5) days after receiving written notice from Bank of such non-payment; or

(b) The Issuer shall default in the performance of or compliance with any term or covenant contained in this Agreement or the Note, other than a term or covenant a default in the performance of which or noncompliance with which is elsewhere specifically dealt with in this Section 6.01, which default or non-compliance shall continue and not be cured within ninety (90) days after written notice thereof to the Issuer by the Lender; or

(c) Any representation or warranty made in writing by or on behalf of the Issuer in this Agreement or the Note shall prove to have been false or incorrect in any material respect on the date made or reaffirmed; or

(d) The Issuer admits in writing its inability to pay its debts generally as they become due or files a petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or trustee for itself; or

(e) The Issuer is adjudged insolvent by a court of competent jurisdiction, or it is adjudged a bankrupt on a petition in bankruptcy filed by the Issuer, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the Issuer, a receiver or trustee of the Issuer or of the whole or any part of its property, and if the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or

(f) The Issuer shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or the State.

**Section 6.02 Effect of Event of Default.** Upon an Event of Default, the Lender may either at law or in equity, by suit, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted or contained in the Note and this Agreement, may accelerate all payments due under the Note and may enforce and compel the performance of all duties required by the Note, this Agreement or by any applicable statute to be performed by the Issuer for performance hereunder or under the Note. All payments made on the Note, after an Event of Default, shall be first applied to accrued interest then to any reasonable costs or expenses, including reasonable legal fees and expenses, that the Lender may have incurred in protecting or exercising its rights under the Loan Documents and the balance thereof shall apply to the principal sum due.

**ARTICLE 7  
MISCELLANEOUS**

**Section 7.01 No Waiver; Cumulative Remedies.** No failure or delay on the part of the Lender in exercising any right, power, remedy hereunder or under the Note shall operate as a waiver of the Lender'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 7.02 Amendments, Changes or Modifications to the Agreement.** This Agreement shall not be amended, changed or modified except in writing signed by the Lender and the Issuer. The Issuer agrees to pay all of the Lender's costs and reasonable attorneys' fees incurred in modifying and/or amending this Agreement at the Issuer's request or behest.

**Section 7.03 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 7.04 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 7.05 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 Issuer in connection herewith shall be in full force and effect from the date hereof and shall continue in effect until as long as the Note is outstanding.

**Section 7.06 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 the Notice Address.

**Section 7.07 Applicable Law; Venue.** This Agreement shall be construed pursuant to and governed by the substantive laws of the State. The Issuer and the Lender waive

any objection either might otherwise have to venue in any judicial proceeding brought in connection herewith lying in Monroe County, Florida or the applicable appellate courts.

**Section 7.08 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 Issuer shall have no rights to assign any of its rights or obligations hereunder without the prior written consent of the Lender.

**Section 7.09 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.

**Section 7.10 Attorneys Fees.** To the extent legally permissible, the Issuer and the Lender agree that in any suit, action or proceeding brought in connection with this Agreement or the Note (including any appeal(s)), the prevailing party shall be entitled to recover costs and reasonable attorneys' fees from the other party.

**Section 7.11 Entire Agreement.** Except as otherwise expressly provided, this Agreement and the Note embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof.

**Section 7.12 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 7.13 Waiver of Jury Trial.** EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE NOTE AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

[Signature page follows]

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

THE COLLEGE OF THE FLORIDA KEYS

ATTEST:

By: \_\_\_\_\_  
Name: Dr. Jonathan Gueverra  
Title: President

By: \_\_\_\_\_  
Name: Dr. Brittany Snyder  
Title: Executive Vice President

FIRST HORIZON BANK

By: \_\_\_\_\_  
Name: Michele White  
Title: Senior Vice President

EXHIBIT "A"

FORM OF NOTE

**THIS NOTE IS SUBJECT TO TRANSFER RESTRICTIONS, MORE FULLY DESCRIBED IN THE REVOLVING LINE OF CREDIT AGREEMENT REFERRED TO HEREIN, AND MAY NOT BE TRANSFERRED EXCEPT TO A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A PROMULGATED UNDER THE SECURITIES ACT OF 1933.**

**TAXABLE REVOLVING LINE OF CREDIT NOTE, SERIES 2022**

THE COLLEGE OF THE FLORIDA KEYS (the "Issuer"), a Florida College System institution and a political subdivision of the State of Florida, created and existing under the laws of the State of Florida, for value received, promises to pay, but solely from the sources hereinafter provided, to the order of First Horizon Bank or registered assigns (together with any other registered owner of this Note, hereinafter, the "Lender"), the principal sum of FIVE MILLION DOLLARS (\$5,000,000) or such lesser amount as shall have been advanced and shall be outstanding hereunder, together with interest on the principal balance outstanding at the Interest Rate (defined below), calculated based upon a year of 360 days for the actual number of days per month, such amounts to be payable as provided herein. This Taxable Revolving Line of Credit Revenue Note, Series 2022 (this "Note") is issued pursuant to the Resolution of the Board of Trustees of the Issuer adopted on November 29, 2022 (the "Resolution") and in conjunction with a Revolving Line of Credit Agreement, dated of even date herewith, between the Issuer and the Lender (the "Revolving Line of Credit Agreement") and is subject to all the terms and conditions of the Revolving Line of Credit Agreement. All terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto, or referenced, in the Revolving Line of Credit Agreement.

Principal of and interest on this Note are payable in immediately available funds constituting lawful money of the United States of America at the Principal Office or such place as the Lender may designate in writing to the Issuer, without presentment.

As used in this Note:

"Default Rate" shall mean the lesser of 18% and the maximum rate permitted by law.

"Interest Rate" means 7.50% per annum; provided, however, that the upon an Event of Default, the Interest Rate shall be the Default Rate.

The Issuer shall pay the Lender interest on the outstanding principal balance of this Note on January 2, 2023 and on the first day of each calendar month thereafter, to and including the Final Maturity Date (hereafter defined). If any date for the payment of principal or interest is not a Business Day, such payment shall be due on the next succeeding Business Day in the manner provided in the Revolving Line of Credit Agreement.



The entire unpaid principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on November 29, 2025, or such later date to which the Revolving Line of Credit Agreement may be extended or renewed in the sole discretion of the Lender by written notice from the Lender to the Issuer (the "Final Maturity Date") but in no event shall the maturity date exceed seven years from the original date of issuance or as otherwise permitted under Section 1009(22)(6)(a), Florida Statutes.

All payments by the Issuer pursuant to this Note shall apply first to accrued interest, then to other charges due the Lender, and the balance thereof shall apply to the principal sum due; provided, however, in an Event of Default, payment shall be applied in accordance with Section 6.02 of the Revolving Line of Credit Agreement.

Notwithstanding the foregoing, in no event shall the Interest Rate exceed the maximum rate permitted by applicable law.

The Issuer may prepay this Note in whole or in part on any Business Day upon (2) Business Days' prior written notice to the Lender. Such prepayment notice shall specify the amount of prepayment which is to be made.

This Note is a revolving line of credit. Principal amounts advanced and repaid under this Note may be readvanced; provided, however, the principal amount outstanding at any given time shall not exceed the Maximum Commitment Amount. To the extent that the amounts outstanding hereunder exceed the Maximum Commitment Amount such excess amount shall be immediately due and payable.

Notwithstanding anything in this Note or the Revolving Line of Credit Agreement to the contrary, upon payment or prepayment in full of this Note, the Lender shall not be required to surrender or cancel this Note until it has received all amounts due and payable hereunder and under the Revolving Line of Credit Agreement.

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

This Note is payable solely from the Pledged Funds to the extent provided in the Revolving Line of Credit Agreement and subject to the pledge of the Pledged Funds as more specifically provided in the Resolution and the Revolving Line of Credit Agreement. Notwithstanding any other provision of this Note, the Issuer is not and shall not be liable for the payment of the principal of and interest on this Note or otherwise monetarily liable in connection herewith from any property other than as provided in the Revolving Line of Credit Agreement and the Resolution.

NOTWITHSTANDING ANYTHING HEREIN OR IN THE REVOLVING LINE OF CREDIT AGREEMENT OR THE RESOLUTION TO THE CONTRARY, NEITHER THIS NOTE NOR THE REVOLVING LINE OF CREDIT AGREEMENT SHALL CONSTITUTE A GENERAL OBLIGATION OR A 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, BUT SHALL BE PAYABLE SOLELY FROM THE PLEDGED FUNDS IN

THE MANNER AND TO THE EXTENT PROVIDED HEREIN AND IN THE REVOLVING LINE OF CREDIT AGREEMENT. THE ISSUER HAS NO TAXING POWER.

All terms, conditions and provisions of the Revolving Line of Credit Agreement are by this reference thereto incorporated herein as a part of this Note.

This Note may be exchanged or transferred but only as provided in the Revolving Line of Credit Agreement.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in connection with the execution, delivery and the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Note is in full compliance with and does not exceed or violate any constitutional or statutory limitation.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Issuer has caused this Note to be executed in its name as of the date hereinafter set forth.

The date of this Note is November 30, 2022.

THE COLLEGE OF THE FLORIDA KEYS

(SEAL)

By: \_\_\_\_\_  
Title: President

ATTEST:

By: \_\_\_\_\_  
Title: Executive Vice President

EXHIBIT B

REQUISITION NO. \_\_\_\_

THE COLLEGE OF FLORIDA KEYS  
TAXABLE REVOLVING LINE OF CREDIT REVENUE NOTE, SERIES 2022  
REQUISITION FOR ADVANCES

The College of Florida Keys (the "Issuer"), pursuant to that certain Revolving Credit Agreement (the "Agreement") dated November 30, 2022 between the Issuer and First Horizon Bank (the "Lender"), does hereby make application to the Lender under the Agreement for disbursement of funds to pay a portion of the costs of the Project (all terms used herein in capitalized form having the meanings given to those terms in the Agreement) in the following manner:

Amount Requested: \$ \_\_\_\_\_

Date Advance to be made: \_\_\_\_\_

Proceeds of the Advance to be distributed as follows:

- Wire Transfer (Account Number \_\_\_\_\_, Routing Number \_\_\_\_\_)
- Check sent to \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, or such other address as attached hereto.
- Account Transfer (Account Number \_\_\_\_\_)

The identified repayment source (specific grant or other) is \_\_\_\_\_.

The status of said repayment source is \_\_\_\_\_.

All representations and statements made herein are for the benefit of the Lender and the other parties related to the issuance of the Note and may not be relied upon by third parties.

The undersigned certifies that:

- (i) No Event of Default under the Agreement has occurred and is continuing and there exists no event or condition which, with the giving of notice or the passage of time, or both, would constitute an Event of Default under the Agreement; and
- (ii) All representations and warranties of the Issuer contained in the Agreement are true and correct as of the date hereof.

Dated as of \_\_\_\_\_, 20\_\_.

THE COLLEGE OF FLORIDA KEYS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_