

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE PROVIDING FOR THE
ISSUANCE BY THE OF CITY OF MYRTLE
BEACH, SOUTH CAROLINA OF A REVENUE
NOTE, IN THE PRINCIPAL AMOUNT OF NOT
EXCEEDING \$10,000,000; PRESCRIBING
THE FORM AND DETAILS OF SUCH NOTE;
AND OTHER MATTERS RELATING THERETO.

NOW THEREFORE, be it ordained by the City Council of the City of Myrtle Beach (the
“City Council”), the governing body of the City of Myrtle Beach, South Carolina (the “City”), as
follows:

Section 1. Definitions.

(a) Except as provided in subsection (b) below, all terms which are defined in Section
1.1 of the hereinafter defined Senior Bond Ordinance and in Section 2 of the hereinafter defined
Parking System Ordinance shall have the same meanings in this ordinance (the “Note
Ordinance”) as such terms are prescribed to have in the Senior Bond Ordinance and Parking
System Ordinance.

(b) As used in this Note Ordinance, unless the context shall otherwise require, the
following terms shall have the following respective meanings:

“Act” shall mean Title 31, Chapter 6, Code of Laws of South Carolina 1976, as amended
(being the Tax Increment Finance Law), and all other statutory authorizations, now or hereinafter
enacted, authorizing and enabling the City to provide for the issuance of the Note.

“Authorized Officers” shall mean the Mayor, City Manager and Chief Financial Officer of
the City and any other person or persons as the City Manager may designate as an Authorized
Officer.

“Date of Delivery” shall have the meaning given such term in Section 2.03(a) hereof.

“Disposition Proceeds” shall mean the amount realized by the City from the sale or
disposition of any Redevelopment Project up to, but not exceeding, the amounts advanced by the
Lender under the Loan Agreement to defray the cost of such Redevelopment Project.

“Disposition Proceeds Account” shall mean the account of that name created pursuant to
Section 12 hereof.

“Facilities” shall mean the Off-Street Parking Facilities and On-Street Parking Facilities.

“Interest Payment Date” shall mean, with respect to the Note, _____ 1, _____ 1,
_____ 1 and _____ 1 of each year commencing _____ 1, 2021.

“Loan” shall mean the loan from the Lender to the City in the outstanding amount from
time to time of not exceeding \$10,000,000 to be evidenced by the Note.

1
2 “Loan Agreement” shall mean the Loan Agreement evidencing the Loan to be dated the
3 date of its execution and delivery between the Lender and the City.
4

5 “Maturity Date” shall mean _____ 1, [2030][2031].
6

7 “Note” shall mean the not exceeding \$10,000,000 Promissory Note of the City of Myrtle
8 Beach, South Carolina, in the form attached as Exhibit A hereto.
9

10 “Note Payment Fund” shall mean the fund by that name established pursuant to Section
11 12 of this Note Ordinance.
12

13 “Off-Street Parking Facilities” shall mean the existing off-street motor vehicular parking
14 facilities of all sorts of the City, including, but not limited to, garages, parking lots, buildings and
15 ramps, including the parking facilities to be constructed with the proceeds of Bonds, the Note and
16 other Tax Increment Obligations, and all other Off-Street Parking facilities as may from time to
17 time be constructed or purchased by the City, and which the City Council declares by ordinance
18 to be part of the Off-Street Parking facilities, and will include any system which is combined with
19 or consolidated into the Facilities pursuant to law; but excluding any Facilities which are
20 abandoned, sold, traded or leased as permitted under the Parking Ordinance; provided, further,
21 that for the avoidance of doubt, the Off-Street Parking Facilities do not include any improvements
22 or other structures (“Structures”) which may be attached adjacent to or above Off-Street Parking
23 Facilities which are not used for the primary purpose of parking vehicles or, if such Structures are
24 to be so used, are determined by ordinance of the City Council not to be part of the Facilities, and
25 do not include any air rights or other rights which may be granted by the City to develop or
26 construct any Structures. Off-Street Parking Facilities shall not include the off-street motor
27 vehicular parking facilities located on the former Myrtle Beach Airforce Base unless City Council
28 by ordinance otherwise determines.
29

30 “On-Street Parking Facilities” shall mean any system of parking meters, curb-line or other,
31 of the City, regulating the parking of motor vehicles on any street within the corporate limits of
32 the City requiring the payment of a charge for the right to make use of any portion of any street
33 set apart for motor vehicle parking, as the same may from time to time exist.
34

35 “Parking and Tax Increment Account” shall mean the account of that name created
36 pursuant to Section 12 hereof.
37

38 “Parking Ordinance” shall mean Ordinance No. 2020-47 enacted December __, 2020,
39 entitled “AN ORDINANCE OF THE CITY OF MYRTLE BEACH, SOUTH CAROLINA PROVIDING FOR
40 THE CREATION OF A PARKING SYSTEM; AND OTHER MATTERS RELATED THERETO,” as the same
41 may be amended or supplemented from time to time.

42 “Parking System” shall mean the City’s Off-Street Parking Facilities and the On-Street
43 Parking Facilities, which the City has designated as a “system” within the meaning of such term
44 in Section 6-21-40 of the Revenue Bond Act.
45

46 “Redevelopment Plan” shall have the meaning given such term in the Senior Bond
47 Ordinance.
48

1 “Redevelopment Project” or “Redevelopment Projects” shall mean the projects
2 described in the Redevelopment Plan and all other “redevelopment projects” within the
3 Redevelopment Project Area under the Redevelopment Act.
4

5 “Redevelopment Project Area” shall mean the area designated as such pursuant to the
6 Senior Bond Ordinance, presently being the approximately 300 acres of land within the
7 corporate limits of the City, bounded by 6th Avenue South to the south, the Atlantic Ocean to
8 the east, 16th Avenue North to the north, and Highway 17 Business (Kings Highway) to the west.
9

10 “Revenues” shall mean (i) the Net Revenues of the System, (ii) the Tax Revenues on deposit
11 in the Capital Projects Fund created under the Senior Bond Ordinance which are available for the
12 payment of the Junior Bonds pursuant to the Senior Bond Ordinance, and (iii) the Disposition
13 Proceeds.
14

15 “Senior Bond Ordinance” shall have the meaning given that term in Section 1.02 hereof.

16 “Senior Bonds” shall mean the Series 2017B Bonds and any additional bonds or
17 obligations issued on a parity therewith pursuant to the Senior Bond Ordinance.

18 “Senior Trustee” shall mean The Bank of New York Mellon Trust Company, N.A.
19

20 “Series 2017B Bonds” shall mean the City’s \$7,245,000 original principal amount Limited
21 Obligation Refunding Bonds (Tax Increment Pledge), Series 2017B, issued pursuant to the Senior
22 Bond Ordinance.

23 Section 2. Certain Findings and Determinations.

24 The City hereby finds and determines:

25 (a) The City is an incorporated municipality located in Horry County, and as such
26 possesses all powers granted to municipalities by Article X, Section 14, of the Constitution of
27 the State of South Carolina, 1895, as amended (the “Constitution”) and general laws of this
28 State.

29 (b) Pursuant to Section 5-5-10, Code of Laws of South Carolina 1976, as amended,
30 the City has selected the Council-Manager form of government and is governed by a City Council
31 comprising a Mayor and six council members which constitute the governing body of the City.

32 (c) The Constitution provides that the General Assembly may authorize by general
33 law that indebtedness for the purpose of redevelopment within incorporated municipalities
34 may be incurred, and that the debt service of such indebtedness be provided from the added
35 increments of tax revenues to result from the redevelopment project.

36 (d) Pursuant to the Act, the governing bodies of the incorporated municipalities of
37 this State are vested with all powers consistent with the Constitution of this State that are
38 necessary, useful, and desirable to enable them to accomplish redevelopment in areas which
39 are or threatened to become blighted. Incorporated municipalities are further authorized to
40 issue bonds under the Act to finance a “redevelopment project” as defined in the Act.

41 (e) The Act authorizes the City to establish a “redevelopment project area” (as
42 defined in the Act) and to adopt a redevelopment plan (as defined in the Act) for the purpose

1 of providing for the financing of municipally-owned buildings, improvements, including street
2 improvements, water, sewer and storm drainage facilities, parking facilities and recreational
3 facilities through the issuance of obligations payable from the amount of taxes attributable to
4 the increase in the assessed valuation of real property in the redevelopment project area
5 following the establishment of such redevelopment project area.

6 (f) The City has heretofore determined that there existed within the Redevelopment
7 Project Area certain areas which were, or were threatened to become, blighted, in which areas
8 development and redevelopment would be encouraged through the City's undertaking of certain
9 municipal projects, and has approved the Redevelopment Plan for the Redevelopment Project
10 Area.

11 (g) The City determined to avail itself of the authorizations of the Act in order to
12 provide financing for the Redevelopment Projects as described in the Redevelopment Plan.

13 (h) The Redevelopment Plan sets forth the factual and economic bases of the City's
14 plan to establish the Redevelopment Project Area and to finance, within such area, various City
15 owned infrastructure projects through the issuance of obligations pursuant to the Act and from
16 other revenue sources.

17 (i) The City Council has made general provision for the issuance by the City of
18 obligations under the Act through the means of an ordinance enacted August 11, 2009, entitled
19 "AUTHORIZING THE ISSUANCE AND SALE OF NOT EXCEEDING \$12,000,000 LIMITED OBLIGATION
20 BONDS, SERIES 2009, OF THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, FOR THE PURPOSE OF
21 PROVIDING A PORTION OF THE COST OF CERTAIN REDEVELOPMENT PROJECTS TO BE
22 UNDERTAKEN PURSUANT TO THE OCEANFRONT REDEVELOPMENT PROJECT AREA TAX INCREMENT
23 FINANCING PLAN; FIXING THE FORM AND DETAILS OF THE BONDS; LIMITING THE PAYMENT OF
24 THE BONDS FROM THE SOURCES PROVIDED HEREIN; PROVIDING FOR THE DISPOSITION OF THE
25 PROCEEDS THEREOF; PROVIDING FOR THE TERMS AND CONDITIONS UNDER WHICH ADDITIONAL
26 BONDS MAY BE ISSUED; AND OTHER MATTERS RELATING THERETO" (the "Original Senior Bond
27 Ordinance").

28 (j) The Senior Bond Ordinance has been supplemented by an Ordinance enacted by
29 City Council on August 22, 2017, entitled "A SUPPLEMENTAL ORDINANCE PROVIDING FOR THE
30 ISSUANCE AND SALE OF CITY OF MYRTLE BEACH, SOUTH CAROLINA, LIMITED OBLIGATION
31 REFUNDING BONDS (TAX INCREMENT PLEDGE), SERIES 2017B, IN THE AGGREGATE PRINCIPAL
32 AMOUNT OF NOT EXCEEDING \$9,000,000; PRESCRIBING THE FORM AND DETAILS OF SUCH BONDS;
33 AND OTHER MATTERS RELATING THERETO" (the "First Supplemental Senior Bond Ordinance").

34 (k) The Senior Bond Ordinance has been amended by an Ordinance enacted by City
35 Council on December __, 2020, entitled "AN ORDINANCE AMENDING ORDINANCE NO. 2009-52
36 RELATING TO OBLIGATIONS ISSUABLE FOR REDEVELOPMENT PROJECTS BENEFITTING THE
37 OCEANFRONT REDEVELOPMENT PROJECT AREA; PROVIDING FOR THE ADDITION OF NEW AREAS
38 TO THE REDEVELOPMENT PROJECT AREA DESCRIBED THEREIN AND PROVIDING FOR THE DEPOSIT
39 OF INCREMENTAL REVENUES FROM THE ADDED REDEVELOPMENT PROJECT AREA TO THE SPECIAL
40 TAX ALLOCATION FUND CREATED THEREUNDER" (the "First Amendment to Original Senior Bond
41 Ordinance"; the Original Senior Bond Ordinance, as supplemented by the First Supplemental
42 Senior Bond Ordinance and from time to time hereafter, and as amended by the First
43 Amendment to Original Senior Bond Ordinance, and from time to time hereafter, being referred
44 to herein as the "Senior Bond Ordinance").

1 (l) In order to assist in the implementation of the Redevelopment Plan, the City has
2 heretofore issued, and intends to issue from time to time, Senior Bonds pursuant to the Senior
3 Bond Ordinance.

4 (m) The Senior Bond Ordinance also permits the City to issue Junior Bonds secured
5 by a pledge of funds in or to be deposited to the Special Tax Allocation Fund, junior and
6 subordinate in all respects to the pledge securing the Senior Lien bonds.

7 (n) Pursuant to the powers vested in it pursuant to the Constitution and laws of the
8 State of South Carolina, the City owns and operates the Off-Street Parking Facilities, as well as
9 the On-Street Parking Facilities.

10 (o) Section 5-29-40, Code of Laws of South Carolina 1976, as amended, provides that
11 any municipality shall be permitted to make provision for the contribution, establishment
12 maintenance and improvement of Off-Street Parking Facilities and to finance or refinance the
13 cost of such construction, establishment, maintenance and improvement through the issuance
14 of bonds pursuant to Sections 6-21-10 through 6-21-570, Code of Laws of South Carolina 1976,
15 as amended, and as the same may be hereafter amended (the "Revenue Bond Act") and Sections
16 6-17-10 through 6-17-320, Code of Laws of South Carolina 1976, as amended, and as the same
17 may hereafter be amended (the "Refunding Revenue Bond Act").

18 (p) Section 6-21-40 of the Revenue Bond Act defines "system" for purposes of the
19 Revenue Bond Act to include all of the projects and undertakings referred to in Section 6-21-
20 50 of the Revenue Bond Act. The projects and undertakings set forth in Section 6-21-50 of the
21 Revenue Bond Act include the purchase and construction of parking buildings, parking lots and
22 other public buildings and structures in furtherance thereof.

23 (q) The City has designated the Facilities as a "system" within the meaning of such
24 term in Section 6-21-40 of the Revenue Bond Act (such system defined herein as the "Parking
25 System").

26 (r) Section 31-6-110 of the Act provides, in part, that if obligations are issued under
27 the Act to finance the extension or expansion of a "system" as defined in Section 6-21-40 of
28 the Revenue Bond Act in a redevelopment project area created under the Act, all or a portion
29 of the revenues of the system, whether or not located entirely within the redevelopment
30 project area, including the revenues of any redevelopment project therein, may be pledged to
31 secure the obligations issued under the Act.

32 (s) The Redevelopment Projects include parking improvements to include the
33 construction of four parking facilities expected to be located within the City at 4th Avenue, 7th
34 Avenue, Withers Drive and Joe White, each of which will constitute an extension or expansion
35 of the Parking System.

36 (t) The Redevelopment Plan contemplates the issuance of not exceeding \$89 million
37 of bonds or other obligations under the Act to finance certain of the redevelopment projects
38 described therein.

39 (u) It is provided in and by the Senior Bond Ordinance that there may be issued one
40 or more series of Junior Bonds to secure funds to defray eligible Redevelopment Project Costs
41 under the Act.

1 (v) The City desires to make provision for the issuance of Junior Bonds to be
2 additionally payable from and secured by a pledge of and lien on the Net Revenues of the
3 Parking System.

4 (w) The City has received a commitment from the Lender by which the Lender has
5 agreed to enter into the Loan Agreement and provide to the City a revolving credit facility
6 under which the City may have outstanding a principal amount of indebtedness not exceeding
7 \$10,000,000.

8 (x) Advances by the Lender are to be loaned pursuant to the Loan Agreement, a copy
9 of which was presented to the meeting of City Council at which this Note Ordinance received
10 final reading and which was filed with the minutes of City Council, and hereby incorporated by
11 reference the obligations of the City under the Loan Agreement are to be evidenced and secured
12 by the Note. Each advance under the Note will constitute an “obligation” as defined in the
13 Act. Pursuant to the Loan Agreement the City will agree to use the proceeds of the Note only
14 to pay eligible Redevelopment Project Costs relating to the Redevelopment Projects, and the
15 City will agree to pay to the Lender such amounts as shall be required to provide for the
16 payment of all amounts due with respect to the repayment of the Note.

17 (y) The City Council is enacting this Note Ordinance in order to:

18 (i) confirm the establishment of the Facilities as a “system” under Section
19 6-21-40 of the Revenue Bond Act;

20 (ii) authorize the execution and delivery on behalf of the City of the Loan
21 Agreement and the Note and the undertakings and agreements of the City therein set
22 forth;

23 (iii) evidence the approval of the Redevelopment Projects, the Note and the
24 Loan by the City and authorize the expenditure of the proceeds of the Loan to defray
25 the costs of the Redevelopment Projects and for such other purposes permitted under
26 the Loan Agreement; and

27 (iv) authorize the execution and delivery by, and on behalf of, the City of
28 such other agreements and certificates and the taking of such other action by the City
29 and its officers as shall be necessary or desirable in connection with the financing of the
30 Redevelopment Projects in order to carry out the intent of this Note Ordinance.

31 (z) The Revenues pledged under this Note Ordinance are not encumbered by any
32 lien and charge thereon or pledge thereof, other than the lien and charge on and pledge of the
33 Tax Revenues created by the Senior Bond Ordinance for payment and security of the Senior
34 Bonds, and the lien, charge and pledge of this Note Ordinance for payment and security of the
35 Note.

36 (aa) The Note is being used for the purposes of (i) defraying eligible Redevelopment
37 Project costs of the Redevelopment Projects.

38 (bb) It is necessary and in the best interest of the City to undertake the
39 Redevelopment Projects and to issue the Note in the principal amount of not exceeding
40 \$10,000,000, in accordance with the Act for the purposes set forth above.

1 Section 3. Principal Amount; Designation. There are hereby authorized
2 “obligations” as defined under the Act to be incurred from time to time in the aggregate
3 principal amount of [\$20,000,000]. Pursuant to the provisions of this Note Ordinance, a Note of
4 the City entitled to the benefits, protection and security of the provisions of this Note
5 Ordinance is hereby authorized in the limited aggregate principal amount outstanding from
6 time to time of not exceeding \$10,000,000. Provided the outstanding principal amount of the
7 Note outstanding at any time does not exceed \$10,000,000, the City may borrow, repay and
8 reborrow under the Note at any time in the manner provided in the Loan Agreement. The Note
9 so authorized shall be designated “City of Myrtle Beach, South Carolina Revenue Note (Parking
10 Revenue and Tax Increment Pledge), Series 202_,” or such other designation as may be
11 determined by the City Manager, and shall constitute Junior Bonds under the Senior Bond
12 Ordinance. The Note shall be in substantially the form set forth in Exhibit “A” hereto. Each
13 borrowing and reborrowing under the Note shall constitute a separate “obligation” under the
14 Act.

15 Section 4. Purposes. The Note is authorized for the purpose of evidencing the
16 Obligations and providing for the source of payment and security for such obligations.

17 Section 5. Date of Delivery; Interest Rate; Maturity; Redemption and Sale.

18 (a) The Note shall be its date of delivery (the “Date of Delivery”), and the Note shall
19 mature on the Maturity Date and bear interest payable on each Interest Payment Date, at the
20 rates per annum set forth in the Credit Agreement.

21 (b) The Note shall be delivered to the Lender pursuant to the Credit Agreement.

22 Section 6. Payment of Interest.

23 The Note shall bear interest on the outstanding principal amount thereof from the later
24 of (i) the Date of Delivery, or (ii) the date to which interest has last been paid; provided that
25 if the City shall fail to pay interest on the Note on _____ 1, 2021, then the Note shall bear
26 interest from the Date of Delivery.

27 The Note shall be issued in fully-registered form, as a single note in the name of the
28 Purchaser. The City shall keep books of registry for the Note.

29
30 Section 7. Authorization of the Redevelopment Projects. There is hereby approved
31 and authorized the undertaking such of the Redevelopment Projects as may be determined by
32 the Authorized Officers, or any one of them, acting alone, and the application of the Loan
33 proceeds to defray the cost of such Redevelopment Projects and for such other purposes as is
34 provided in the Loan Agreement.
35

1 Section 8. Approval of Loan Agreement and the Note. The Loan Agreement in
2 substantially the form presented to City Council at this meeting, a copy of which was filed with
3 the City Clerk, and the Note in the form attached as Exhibit A, with such changes as the
4 executing officers shall approve (their execution to be conclusive evidence of such approval),
5 are hereby approved and the execution and delivery of the Loan Agreement and the Note, on
6 behalf of the City, are hereby authorized and directed. The Loan Agreement and the Note shall
7 be executed on behalf of the City by the Mayor or Mayor Pro Tempore and attested by the Clerk
8 of the City under a manual or facsimile of the seal of the City which shall be impressed,
9 imprinted or reproduced thereon. The City Council hereby authorizes the incurrence of total
10 indebtedness under the Note outstanding from time to time in a principal amount not to exceed
11 \$10,000,000. The outstanding principal amount, the dates and the repayment schedule of the
12 Note may be adjusted pursuant to the terms of the Loan Agreement.
13

14 Section 9. Repayment of Loan by the City. The City Council hereby authorizes the
15 repayment of the Loan by the City to the Lender from the Revenues pursuant to and in
16 accordance with the provisions of the Loan Agreement and the Note.
17

18 Section 10. Payment of the Note. The Note, together with the interest thereon, shall
19 be payable, in such coin or currency of the United States of America which at the time of such
20 payment is legal tender for public and private debts, solely from the Revenues in accordance
21 with the provisions of this Note Ordinance. The Note is a special obligation of the City payable
22 solely from, and secured by a pledge of and lien upon, the Revenues.
23

24 As permitted by Section 31-6-10 of the Act, the City designates the Disposition Proceeds
25 for the purpose of securing the principal of the Note. All Disposition Proceeds shall be deposited
26 to the Disposition Proceeds Account and applied as provided in Section 13 hereof.
27

28 The Note does not constitute an indebtedness of the City within any State Constitutional
29 provisions (other than Article X, Section 14, Paragraph 10 of the South Carolina Constitution
30 authorizing obligations payable solely from special sources not involving revenues from any tax
31 or license) or statutory limitation and shall never constitute nor give rise to a pecuniary liability
32 of the City or a charge against its general credit or taxing power. The full faith, credit and
33 taxing powers of the City are not pledged to the payment of the principal of and interest on
34 the Note.
35

36 Section 11. Authentication of the Note. The Note shall not be valid or become
37 obligatory for any purpose unless there shall have been endorsed thereon a certificate of
38 authentication. The Note shall bear a certificate of authentication manually executed by the
39 City Clerk, on behalf of the City, as registrar, in substantially the form set forth herein.

40 Section 12. Creation of Funds and Accounts. The following are the Funds created and
41 established by this Note Ordinance:
42

43 (a) a Revenue Fund, together with a Parking and Tax Increment Account and a
44 Disposition Proceeds Account therein, to be held by the City;
45

46 (b) a Note Payment Fund to be held by the Lender.
47

48 The Funds hereby created (a) shall be funded, and disbursements therefrom shall be made,
49 at the times and in the amounts, and amounts therein may be invested, all as is provided in the

1 Loan Agreement and the Note, and (b) shall remain in existence for so long a time as any sum
2 remains due and payable by way of principal of and interest on the Note. Any Revenues and other
3 moneys remaining after application as provided herein and in the Loan Agreement may be applied
4 by the City, from time to time, for such lawful purposes as it may determine to be in the best
5 interest of the City.
6

7 The establishment and continuation of the Revenue Fund in and by this Note Ordinance
8 shall not be construed to require the establishment of any completely independent, self-
9 balancing funds as such term is commonly defined and used in governmental accounting, but
10 rather is intended solely to constitute an earmarking of the amounts to be credited or deposited
11 therein for certain purposes and to establish certain priorities for application of such amounts
12 as provided herein and in the Loan Agreement. The moneys required to be accounted for in
13 the Revenue Fund may be deposited in a general bank account, together with other moneys of
14 the City, provided that adequate accounting records are maintained to reflect and control the
15 restricted allocation of the moneys in and deposited therein for the various purposes of such
16 funds as provided in this Note Ordinance and the Loan Agreement.
17

18 Section 13. Deposits to and Application of Revenue Fund and Note Payment Fund.
19

20 (a) On or before the fifth day prior to an Interest Payment Date, the City shall
21 deposit or cause to be deposited to the Parking and Tax Increment Account, pursuant to Section
22 4 of the Parking Ordinance, Net Revenues in an amount equal to the interest coming due on the
23 Note by such Interest Payment Date; and to the extent necessary and on deposit in the Capital
24 Projects Fund created under the Senior Bond Ordinance, Tax Revenues, in amounts sufficient
25 to make payment of the interest coming due on the Note on such Interest Payment Date. Such
26 amounts deposited to the Parking and Tax Increment Account shall be deposited to the Note
27 Payment Fund on the Interest Payment Date.
28

29 (b) On or before the fifth day prior to a Maturity Date, the City shall deposit or cause
30 to be deposited to the Parking and Tax Increment Account, pursuant to Section 4 of the Parking
31 Ordinance, Net Revenues in an amount equal to the outstanding principal coming due on the
32 Note on such Maturity Date; and to the extent necessary on deposit in the Capital Projects Fund
33 created under the Senior Bond Ordinance, Tax Revenues, in amounts sufficient to make
34 payment of the outstanding principal coming due on the Note on such Maturity Date. Such
35 amounts deposited to the Parking and Tax Increment Account shall be deposited to the Note
36 Payment Fund on the Maturity Date.
37

38 (c) The City shall deposit or cause to be deposited to the Disposition Proceeds
39 Account, all Disposition Proceeds received by the City and shall apply such Disposition Proceeds
40 at such time as is required under the Loan Agreement to the payment of the outstanding
41 principal of the Note.
42

43 (d) The City will give such directions to the Senior Trustee as may be necessary to
44 cause the transfer of amounts available in the Capital Projects Fund to the Parking and Tax
45 Increment Account required pursuant to subparagraphs (a) and (b) of this Section 13.
46

47 Section 14. Filings with Central Repository. In compliance with Section 11-1-85 of the
48 Code of Laws of South Carolina 1976, as amended, the City covenants that it will file or cause
49 to be filed with a central repository for availability in the secondary bond market when

1 requested: (a) a copy of the annual audit of the City within 30 days of the City's receipt thereof;
2 and (b) within 30 days of the occurrence thereof, relevant information of an event which, in
3 the opinion of the City, adversely affects more than five percent of the Revenues of the System
4 or the City's tax base. The City also shall file or cause to be filed with the Lender the same
5 information filed with the central repository in accordance with the preceding sentence.
6

7 Section 15. Benefits of Ordinance Limited to the City; the Lender. With the exception
8 of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied
9 from this Note Ordinance, the Loan Agreement or the Note is intended or should be construed to
10 confer upon or give to any person other than the City and Lender as the holder of the Note, any
11 legal or equitable right, remedy or claim under or by reason of or in respect to this Note Ordinance
12 or any covenant, condition, stipulation, promise, agreement or provision herein contained. This
13 Note Ordinance and all of the covenants, conditions, stipulations, promises, agreements and
14 provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit
15 of the City and the holder from time to time of the Note as herein and therein provided.
16

17 Section 16. Note Ordinance Binding Upon Successors or Assigns of the City. All the
18 terms, provisions, conditions, covenants, warranties and agreements contained in this Note
19 Ordinance shall be binding upon the successors and assigns of the City and shall inure to the benefit
20 of the Lender, its successors and assigns, as the holder of the Note.
21

22 Section 17. No Personal Liability. No recourse shall be had for the enforcement of any
23 obligation, covenant, promise or agreement of the City contained in this Note Ordinance, the Loan
24 Agreement or the Note, against any past, present or future City Council member or officer or
25 employee of the City, as such, in his or her individual capacity, either directly or through the City,
26 whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of
27 any assessment or penalty or otherwise. It is expressly agreed and understood that this Note
28 Ordinance, the Loan Agreement and the Note are solely corporate obligations, and that no
29 personal liability whatsoever shall attach to, or be incurred by, any past, present or future City
30 Council member or officer or employee of the City as such, either directly or by reason of any of
31 the obligations, covenants, promises, or agreements entered into between the City or the holder
32 of the Note or to be implied therefrom as being supplemental hereto or thereto. All personal
33 liability of that character against every such City Council member or officer or employee of the
34 City is, by the enactment of this Note Ordinance and the execution of the Loan Agreement and
35 the Note, and as a condition of, and as a part of the consideration for, the enactment of this Note
36 Ordinance and the execution of the Loan Agreement and the Note, expressly waived and released.
37 The immunity of City Council members or officers and employees of the City under the provisions
38 contained in this Section 17 shall survive the termination of this Note Ordinance.
39

40 Section 18. Partial Invalidity. If any one or more of the covenants or agreements or
41 portions thereof provided in this Note Ordinance on the part of the City to be performed should
42 be determined by a court of competent jurisdiction to be contrary to law, then such covenant or
43 covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable
44 from the remaining covenants and agreements and portions thereof provided in this Note
45 Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of
46 this Note Ordinance, the Loan Agreement or of the Note, but the holder of the Note shall retain
47 all the rights and benefits accorded to it hereunder and under any applicable provisions of law.
48

49 If any provisions of this Note Ordinance shall be held or deemed to be or shall, in fact, be
50 inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or

1 jurisdictions or in all jurisdictions, or in all cases because of conflicts with any constitution or
2 statute or rule of public policy, or for any other reason, such circumstances shall not have the
3 effect of rendering the provision in question inoperative or unenforceable or invalid in any other
4 case or circumstance, or of rendering any other provision or provisions herein contained
5 inoperative or unenforceable or invalid to any extent whatever.

6
7 Section 19. Law and Place of Enforcement of Ordinance. This Note Ordinance shall be
8 construed and interpreted in accordance with the laws of the State and all suits and actions arising
9 out of this Note Ordinance shall be instituted in a court of competent jurisdiction in the State.

10
11 Section 20. Effect of Article and Section Headings and Table of Contents. The headings
12 or titles of the several Sections hereof, and any table of contents appended hereto or to copies
13 hereof, shall be solely for convenience of reference and shall not affect the meaning, construction,
14 interpretation or effect of this Note Ordinance.

15
16 Section 21. Repeal of Inconsistent Ordinances. All ordinances and resolutions of the
17 City, and any part of any ordinance or resolution, inconsistent with this Note Ordinance are hereby
18 repealed to the extent of such inconsistency.

19
20 Section 22. Notices. All notices, certificates, or other communications hereunder or
21 under this Note Ordinance shall be sufficiently given and shall be deemed given when mailed by
22 registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

23
24 If to the City:

25
26 City of Myrtle Beach
27 Attn: City Manager
28 921 Oak Street
29 Myrtle Beach, South Carolina 29577

30
31 If to the Lender:

32
33 _____
34 _____
35 _____

36
37 The City and the Noteholder, may, by notice given to the other parties, designate any
38 further or different addresses to which subsequent notices, certificates or other communications
39 shall be sent.

40
41 Section 23. Other Instruments and Actions. In order to implement the Loan pursuant
42 to the Loan Agreement and the Note and to give full effect to the intent and meaning of this
43 Note Ordinance and the agreements and actions herein authorized, the Mayor, Mayor Pro
44 Tempore, City Manager, Chief Financial Officer, Clerk of the City and City Attorney are hereby
45 authorized to execute and deliver such certificates, showings, instruments and agreements and
46 to take such further action as the City shall deem necessary or desirable.

47
48 Section 24. Further Actions. The Mayor, Mayor Pro Tempore, City Manager, Chief
49 Financial Officer, Clerk of the City and City Attorney are hereby authorized and directed to
50 take any and all such further actions as shall be deemed necessary or desirable in order to

1 effectuate issuance of the Note pursuant to the Loan Agreement and to carry out the intentions
2 of this Note Ordinance.

3
4 Section 25. Ordinance a Contract. This Note Ordinance shall be a contract between
5 the City and the Lender, and shall be enforceable as such against the City.

6
7 Section 26. Effectiveness of Ordinance; Codification. This Note Ordinance shall be in
8 full force and effect from and after its enactment as provided by law. This Note Ordinance
9 shall be forthwith codified in the Code of City Ordinances in the manner required by law and
10 shall be indexed under the general heading “Note Issue-Not Exceeding \$10,000,000 principal
11 amount Promissory Note, Parking Revenues and Tax Increment Pledge” and shall be made
12 available for public inspection at the office of the Clerk of the City.

13
14 *[Signature page to follow]*

15

1 Enacted this ____ day of December 2020.

2

3

CITY OF MYRTLE BEACH, SOUTH CAROLINA

4

5

6

By: _____

7

ATTEST:

Mayor

8

9

10 _____ (Seal)

11 City Clerk

12

13 First Reading: December 1, 2020

14 Second Reading: _____, 2020

1
2
3

EXHIBIT A
PROMISSORY NOTE FORM