

RESOLUTION NO. 08-2020

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA (THE “TOWN”), APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING AND APPROVING THE ISSUANCE OF A BOND BY THE TOWN IN CONNECTION WITH SAID LOAN AGREEMENT RELATIVE TO THE FINANCING OF ALL OR A PORTION OF THE TOWN’S MARINA PROJECT AND PAYING COSTS OF ISSUANCE OF THE BOND; APPROVING THE ISSUANCE OF THE BOND AND RELATED PLAN OF FINANCING WITHIN THE MEANING OF SECTION 147(f) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED AND RELATED U.S. TREASURY REGULATIONS; AUTHORIZING THE PROPER OFFICIALS OF THE TOWN TO DO ALL OTHER THINGS DEEMED NECESSARY OR ADVISABLE IN CONNECTION WITH THE LOAN AGREEMENT AND SAID BOND; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Palm Beach, Florida (the “Town”), pursuant to the provisions of the Florida Constitution; the Town Charter of the Town as amended and supplemented; Chapter 166, Florida Statutes, as amended and supplemented; and other applicable provisions of law (collectively, “Act”) is authorized to borrow money, contract loans and issue bonds, notes or other obligations or evidences of indebtedness of any type or character to finance or refinance the undertaking of any capital or other project for purposes permitted under Florida law; and

WHEREAS, the Town Council of the Town (the “Town Council”) deems it to be in the best interest of the Town to make certain improvements to the Town Marina (the “Marina Project”) as more fully described in Exhibit B to the herein defined Loan Agreement; and

WHEREAS, the Town previously circulated its Request for Proposals No. 2020-06 dated December 16, 2019 seeking proposals from financial institutions to provide a fixed rate, non-bank qualified term loan to finance all or a portion of the Marina Project; and

WHEREAS, CenterState Bank, N.A. (the “Financial Institution”) has agreed to make a loan to the Town in an amount of not exceeding \$31,000,000 to be used by the Town to finance all or a portion of the cost of the Marina Project and paying costs of issuance of the Bond, as described below; and

WHEREAS, the Financial Institution’s commitment to provide a loan to the Town is conditioned upon the Town agreeing to secure its obligations under the Bond (as defined herein) with a pledge of Pledged Revenues (as defined herein) to pay principal of, redemption premium, if any, and interest on the Bond issued under the Loan Agreement; and

WHEREAS, the Town deems it to be in its best interest to enter into a loan agreement with the Financial Institution, the form of which is attached hereto as Exhibit A (the "Loan Agreement"), for the purpose of setting forth the terms and provisions by which the Financial Institution will permit the Town to borrow not exceeding \$31,000,000 in aggregate principal amount; and

WHEREAS, the form of the Bond, the terms and the rights, security and remedies of the holder of the Bond shall be as prescribed in the Loan Agreement; and

WHEREAS, in accordance with applicable U.S. Treasury Regulations a public meeting (the "TEFRA public hearing") was held to give the public an opportunity to express their views with respect to the proposed issuance of the Bond and related plan of financing upon published notice to that effect; and

WHEREAS, notice of the TEFRA public hearing was published in *The Palm Beach Post* on February 2, 2020 and the Town has this day held the TEFRA public hearing in accordance with applicable U.S. Treasury Regulations and the Internal Revenue Code of 1986, as amended (the "Code").

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, AS FOLLOWS:

SECTION 1. Definitions. Any term not otherwise defined in this Resolution shall have the meaning ascribed to such term in the Loan Agreement.

SECTION 2. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of the Act.

SECTION 3. Resolution Constitutes Contract. In consideration of the acceptance of the Bond authorized to be issued hereunder and under the Loan Agreement by those who shall hold the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the Town and such Bondholder and the covenants and agreements herein set forth to be performed by said Town shall be for the equal benefit, protection and security of the Bondholder.

SECTION 4. The Loan Agreement. The Loan Agreement, in substantially the form submitted to this meeting, be and the same is hereby approved. The Mayor or the Town Council President is hereby authorized and directed to execute, and the Acting Town Clerk, or any Deputy Town Clerk to attest, the Loan Agreement and to deliver the same to the Financial Institution substantially in the form presented to this meeting, but with such changes, insertions and omissions (upon advice of the Town Attorney and Bond Counsel) as shall be approved by the Mayor or Town Council President (such approval to be conclusively evidenced by the execution and delivery thereof), and the Acting Town Clerk, or any Deputy Town Clerk is hereby authorized and directed to affix and attest the seal of the Town thereto. Additionally, the execution and delivery of the Loan Agreement shall be subject to delivery by the Financial Institution of a truth-in-bonding statement and disclosure statement as required by Section 218.385 of the Florida Statutes.

SECTION 5. Authorization of the Bond. Subject and pursuant to the provisions of this Resolution and the Loan Agreement, an obligation of the Town, to be known as “Town of Palm Beach, Florida Public Improvement Revenue Bond, Series 2020” (with such other designation as the Town shall deem appropriate at the time of execution and delivery thereof, the “Bond”) is hereby authorized to be issued in aggregate principal amount of not exceeding THIRTY-ONE MILLION DOLLARS (\$31,000,000) for the purpose of financing all or a portion of the cost of the Marina Project and paying costs of issuance.

SECTION 6. Description of the Bond. The text of the Bond shall be substantially in the form attached as Exhibit A to the Loan Agreement, with such omissions, insertions and variations as may be necessary and desirable. The Bond shall be in typewritten form and shall be dated the date of its delivery and bear interest from its date at the rate or rates set forth in the Bond.

All payments of principal of and interest on the Bond shall be payable in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts and shall be made to the Bondholder thereof by check mailed to the Bondholder at the address designated in writing by the Bondholder for purposes of payment or by bank wire or bank transfer as such Bondholder may specify in writing to the Town or otherwise as the Town and such Bondholder may agree.

SECTION 7. Execution of the Bond. The Bond shall be executed in the name of the Town by the manual or facsimile signature of the Mayor (or in the absence of the Mayor, the Town Council President) and the official seal shall be affixed thereto, or imprinted or reproduced thereon, and attested by the manual or facsimile signature of the Acting Town Clerk (or in the absence of the Acting Town Clerk, any Deputy Town Clerk). In case any one or more of the officers, who shall have signed or sealed the Bond, shall cease to be such officer of the Town, as the case may be, before the Bond so signed and sealed shall have been actually delivered, such Bond may nevertheless be delivered as herein provided and may be issued as if the person who signed or sealed such Bond had not ceased to hold such office. Any Bond may be signed and sealed on behalf of the Town by such person who at the actual time of the execution of such Bond shall hold the proper office, although at the date the Bond shall actually be delivered, such person may not have held such office or may not have been so authorized.

SECTION 8. Application of Bond Proceeds. Proceeds of the Bond shall be used for purposes of financing all or a portion of the cost of the Marina Project and paying costs of issuance.

SECTION 9. Approval of the Issuance of the Bond and Related Plan of Financing. The issuance of the Bond and related plan of financing by the Town are hereby approved pursuant to Section 147(f) of the Code and applicable U.S. Treasury Regulations.

SECTION 10. Tax Covenant. In order to maintain the exclusion from gross income for purposes of Federal income taxation of interest on the Bond, the Town shall comply with each requirement of the Code necessary to maintain the exclusion of interest on the Bond from gross income for Federal income tax purposes. In furtherance of the covenant contained in the preceding sentence, the Town agrees to continually comply with the provisions of the Tax

Certificate to be executed by the Town, at the time the Bond is issued, as such certificate may be amended from time to time, as a source of guidance for achieving compliance with the Code (herein referred to as the "Tax Certificate").

The Town shall make any and all payments required to be made to the United States Department of the Treasury in connection with the Bond pursuant to Section 148(f) of the Code.

Notwithstanding any other provision of this Resolution to the contrary, so long as necessary in order to maintain the exclusion from gross income of interest on the Bond for Federal income tax purposes, the covenants contained in this Section shall survive the payment of the Bond and the interest thereon, including any payment or defeasance thereof.

The Town shall not use or permit the use of any of the proceeds of the Bond, or any other funds of the Town, directly or indirectly, to acquire any securities, obligations or other investment property, and shall not take or permit to be taken any other action or actions, which would cause any Bond to be an "arbitrage bond" as defined in Section 148 of the Code.

The foregoing notwithstanding, the Town makes no representation as to the federal income tax status of interest on the Bond for any period that the Bond is held by a "substantial user" of the facilities financed or refinanced by the Bond or by a related person within the meaning of Section 147(a) of the Code. It is understood that interest on the Bond is a specific preference item for purposes of the federal alternative minimum tax imposed on individuals.

SECTION 11. Town's Pledge of Pledged Revenues For the Repayment of the Bond. In consideration of making a loan, the Financial Institution has requested that the Town pledge the Pledged Revenues to pay the principal of, redemption premium, if any, and interest on the Bond. The Town hereby pledges the Pledged Revenues, in amounts sufficient to pay the principal of, redemption premium, if any, and interest on the Bond, as the same become due.

For the purposes hereof:

"Non-Ad Valorem Revenues" shall mean shall mean all legally available revenues of the Town derived from any source whatever other than ad valorem taxation on real and personal property, which are legally available for payment by the Town of debt service on the Series 2020 Bond, after payment of the principal of and interest on any other obligations of the Town hereafter issued which have a prior pledge on any source of the Non-Ad Valorem Revenues, but including appropriable fund balances within all funds over which the Town Council of the Town has full and complete discretion to appropriate the resources therein and which are legally available for payment of debt service by the Town.

"Pledged Revenues" shall mean: (a) the Town Moneys, (b) the proceeds of the Bond pending the application thereof, including investment earnings thereon, and (c) any other additional moneys the Town may elect by subsequent proceedings of the Town to encumber for the payment of the principal of, redemption premium, if any, and interest on the Bond.

"Town Moneys" shall mean the moneys budgeted and appropriated by the Town and set aside in the General Fund for purposes of paying debt service on the Bond from Non-Ad Valorem Revenues for the purposes of repayment of the Bond, pursuant to Section 12 hereof.

SUCH PLEDGE OF THE PLEDGED REVENUES IN CONNECTION WITH THE BOND SHALL NOT BE OR CONSTITUTE AN INDEBTEDNESS OF THE TOWN OR THE STATE OF FLORIDA, WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER LIMITATIONS OF INDEBTEDNESS, BUT SHALL BE PAYABLE SOLELY IN THE MANNER AND TO THE EXTENT SET FORTH IN THIS RESOLUTION AND THE LOAN AGREEMENT. NO HOLDER OF A BOND SHALL EVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE TOWN OR PALM BEACH COUNTY, FLORIDA, OR TAXATION IN ANY FORM ON ANY PROPERTY THEREIN TO PAY THE BOND OR THE INTEREST THEREON.

SECTION 12. Covenant To Budget And Appropriate. The Town covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues, amounts sufficient to pay the principal of, redemption price, if applicable, and interest on the Bond when due, whether at maturity or by mandatory sinking fund redemption and all other amounts owing under the Loan Agreement, all in accordance with the provisions of this Resolution and the Loan Agreement. Such covenant and agreement on the part of the Town to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Town, the Town does not covenant to maintain any services or programs, now provided or maintained by the Town, which generate Non-Ad Valorem Revenues.

SECTION 13. Modification or Amendment. No modification or amendment of this Resolution or of any resolution amendatory thereof or supplemental thereto, may be made without the consent in writing of the Financial Institution.

SECTION 14. Additional Authorization. That the Mayor, the Acting Town Clerk, and any other proper official of the Town, be and each of them is hereby authorized and directed to execute and deliver any and all documents and instruments, and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution and the Loan Agreement.

SECTION 15. Remedies of Bondholder. Should the Town default in its obligations created by this Resolution, the Bond or the Loan Agreement the Financial Institution, may, in addition to any remedy set forth in this Resolution, the Bond or the Loan Agreement, either at law or in equity, by suit, action, mandamus or other proceeding in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State of Florida, or granted and contained in this Resolution, the Bond or the Loan Agreement, and may enforce and compel the performance of all duties required by this Resolution, the Bond, the Loan Agreement, or by any applicable statutes to be performed by the Town or by any officer thereof.

SECTION 16. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions of this Resolution should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants,

agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions, and shall in no way affect the validity of any of the other provisions of this Resolution.

SECTION 17. Negotiated Sale Authorized. Pursuant to Section 218.385 of the Florida Statutes, as amended, the Town hereby determines that the offering of the Bond pursuant to a negotiated sale to the Financial Institution as contemplated by the Loan Agreement rather than a public sale by competitive bid is in the best interests of the Town in light of the complex nature of the security for the Bond and rapidly changing market conditions in the financial markets.

SECTION 18. Effective Date. This Resolution shall take effect upon its passage in the manner provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 11th day of February, 2020.

Gail L. Coniglio, Mayor

ATTEST:

Patricia Gayle-Gordon, Acting Town Clerk

Exhibit A
Loan Agreement