

EXHIBIT A

LOAN AGREEMENT

BETWEEN

TOWN OF PALM BEACH, FLORIDA

AND

CENTERSTATE BANK, N.A.

Dated: March __, 2020

This **LOAN AGREEMENT** (the “Agreement”) is made and entered into on March_, 2020, by and between the Town of Palm Beach, Florida, a municipal corporation in the State of Florida, and its successors and assigns (the “Town”), and CenterState Bank, N.A. a national banking association and its successors and assigns (the “Financial Institution”);

WITNESSETH:

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, the “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 has determined there is a need to make certain improvements to the Town’s Marina as more fully described in Exhibit B hereto (collectively, the “Project”); and

WHEREAS, the Financial Institution has agreed to make a loan to the Town in the amount of \$31,000,000 to be used by the Town to pay all or a portion of the cost of the Project and costs of issuance of the Series 2020 Bond, as described below,

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

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

ARTICLE I

DEFINITION OF TERMS

SECTION 1.01. Definitions. The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings in this Article I specified, unless the context clearly otherwise requires.

“Act” shall mean the Florida Constitution, Chapter 166 of the Florida Statutes, as amended and supplemented and the Charter of the Town, as amended and supplemented, and other applicable provisions of the law.

“Agreement” shall mean this Loan Agreement, dated March ___, 2020, between the Town and the Financial Institution and any and all modifications, alterations, amendment and supplements hereto made in accordance with the provisions hereof.

“Bond Counsel” shall mean Locke Lord LLP.

“Bondholder” shall mean the Financial Institution or any subsequent holder of the Series 2020 Bond.

“Bond Resolution” shall mean Resolution No. ___-2020, adopted by the Town Council of the Town on February 11, 2020, which among other things authorized the issuance of the Series 2020 Bond pursuant to this Agreement to finance the cost of the Project and costs of issuance.

“Clerk” shall mean the Acting Town Clerk, including any deputy clerk.

“Code” shall mean the Internal Revenue Code of 1986, the applicable Treasury Regulations promulgated thereunder and any administrative or individual interpretations of the same published in a form on which the Town may rely as a matter of law.

“Default Rate” shall mean the Interest Rate, plus 3.00% per annum.

“Financial Institution” shall mean CenterState Bank, N.A. and its successors and assigns.

“Interest Payment Date” shall mean each January 1 and July 1, commencing on July 1, 2020.

“Interest Rate” shall mean 2.39% per annum, subject to adjustment upon a Determination of Taxability in the manner and to the extent described the Series 2020 Bond.

“Loan” shall mean the outstanding \$31,000,000 principal amount of the Series 2020 Bond issued hereunder.

“Maturity Date” shall mean January 1, 2040.

“Non-Ad Valorem Revenues” 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.

“Payment Date” shall mean with respect to principal of and interest on the Series 2020 Bond, each Interest Payment Date, Principal Payment Date, the Maturity Date, or any date the principal of the Series 2020 Bond is optionally prepaid in whole or in part.

“Pledged Revenues” shall mean (a) the Town Moneys, (b) the proceeds of the Series 2020 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 Series 2020 Bond.

“Principal Payment Date” shall mean each January 1, commencing on January 1, 2022 to and including the Maturity Date.

“Project” shall mean the acquisition, construction and equipping of certain improvements to the Town’s Marina as described in Exhibit B hereto.

“Series 2020 Bond” shall mean the Town’s Public Improvement Revenue Bond, Series 2020.

“Town” shall mean the Town of Palm Beach, Florida, a municipal corporation in the State of Florida.

“Town Moneys” shall mean the moneys budgeted and appropriated by the Town and set aside in the General Fund pursuant to Section 2.04 hereof for purposes of paying debt service on the Series 2020 Bond, from Non-Ad Valorem Revenues pursuant to the Town’s covenant to budget and appropriate such Non-Ad Valorem Revenues.

SECTION 1.02. Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. Any capitalized terms used in this Agreement not herein defined shall have the meanings ascribed to such terms in the Bond Resolution.

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

SECTION 1.03. 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 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.

(End of Article I)

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND COVENANTS

SECTION 2.01. Representations by the Town. The Town represents and warrants that:

(1) The Town is a municipal corporation in the State of Florida validly existing under the laws of the State of Florida (the “State”), including the Act. Pursuant to the Bond Resolution, the Town has authorized the issuance of the Series 2020 Bond and the execution and delivery of this Agreement, and the performance by the Town of all of its obligations hereunder and under the Series 2020 Bond, and the Town has the power and authority to execute and deliver this Agreement. This Agreement and the Series 2020 Bond have been duly executed and delivered by the Town and each constitutes the legal, valid and binding obligation of the Town, enforceable against the Town in accordance with their respective terms, subject to bankruptcy laws and other laws affecting creditor’s rights and the exercise of judicial discretion.

(2) The Town has complied with all of the provisions of the constitution and laws of the State, including the Act, and has full power and authority to enter into and consummate all transactions contemplated by this Agreement or under the Series 2020 Bond, and to perform all of its obligations hereunder and the transactions contemplated hereby do not conflict with the terms of any statute, order, rule, regulation, judgment, decree, agreement, instrument or commitment to which the Town is a party or by which the Town is bound.

(3) There are no actions, suits or proceedings pending or, to the knowledge of the Town, threatened against or affecting the Town or involving the validity or enforceability of this Agreement, the Bond Resolution or the Series 2020 Bond, or the authority of the Town to impose and collect its Non-Ad Valorem Revenues, at law or in equity, or before or by any governmental authority, except actions, suits and proceedings that are fully covered by insurance or that, if adversely determined, would not materially impair the ability of the Town to perform the Town’s obligations under this Agreement or under the Series 2020 Bond or which would have a material adverse effect on the Town (financial or otherwise).

(4) The financial information furnished to Financial Institution in connection with this Agreement is complete and accurate, and Town has no known undisclosed direct or contingent liability.

(5) The Town has not incurred any debts, liabilities, or obligations and has not committed itself to incur any debts, liabilities, or obligations other than those disclosed in writing to Financial Institution in connection with the Loan hereunder or shown on the financial statements submitted to Financial Institution.

(6) The Town will furnish to Financial Institution within 270 days after the close of each Fiscal Year an annual audited financial statement of the Town certified by an independent certified public accountant.

(7) The Town shall provide the Financial Institution with its annual budget within sixty (60) days of its adoption upon request of the Financial Institution, and the Town shall provide the Financial Institution with the right to inspect or receive copies of other financial reports, information, accounts, statements, documents upon reasonable prior notice.

SECTION 2.02. General Representations, Warranties and Covenants of the Financial Institution. The Financial Institution hereby represents, warrants and agrees that it is a national banking association authorized to execute and deliver this Agreement and to perform its obligations hereunder, and such execution and delivery will not constitute a violation of its charter, articles of association or bylaws. Pursuant to the terms and provisions of this Agreement, the Financial Institution agrees to loan to the Town up to \$31,000,000 for the purpose of financing all or a portion of the Project and paying related costs of issuance.

SECTION 2.03. Tax Covenant. In order to maintain the exclusion from gross income for purposes of Federal income taxation of interest on the Series 2020 Bond, the Town shall comply with each necessary requirement of and not permit any omission under the Code to maintain the exclusion of interest on the Series 2020 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 Series 2020 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 Series 2020 Bond pursuant to Section 148(f) of the Code.

Notwithstanding any other provision of the Bond Resolution to the contrary, so long as necessary in order to maintain the exclusion from gross income of interest on the Series 2020 Bond for Federal income tax purposes, the covenants contained in this Section shall survive the payment of the Series 2020 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 Series 2020 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 Series 2020 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 Series 2020 Bond for any period that the Series 2020 Bond is held by a “substantial user” of the facilities financed or refinanced by the Series 2020 Bond or by a related person within the meaning of Section 147(a) of the Code. It is understood that interest on the Series 2020 Bond is a specific preference item for purposes of the federal alternative minimum tax imposed on individuals.

SECTION 2.04. 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 Series 2020 Bond when due and all other amounts owing under this Agreement, all in

accordance with the provisions of this 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.

The Town agrees that its covenant and agreement to budget and appropriate Non-Ad Valorem Revenues shall be deemed entered into for the benefit of the Bondholder and this obligation may be enforced by a court of competent jurisdiction. However, such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Town from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Town to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Bondholder a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of such Town. However, the covenant to budget and appropriate for the purposes and in the manner stated herein shall have the effect of making available for the payment of the Series 2020 Bond, in the manner described herein, Non-Ad Valorem Revenues, and placing on the Town a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of Section 166.241(3), Florida Statutes, which provides, in part, that the governing body of each municipality make appropriations for each fiscal year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Town or which are legally mandated by applicable law. Further, the Town agrees to abide by its covenant described in Section 2.05 herein.

SECTION 2.05. Additional Debt Secured by a Covenant to Budget and Appropriate from Non-Ad Valorem Revenues. The Town covenants that in each fiscal year while the Series 2020 Bond is outstanding, the total Non-Self-Supporting Debt Service (as defined below) due in any fiscal year of the Town will not exceed 50% of Non-Ad Valorem Revenues of the Town. In addition, the Town covenants and agrees that it will not incur any indebtedness payable from or supported by a pledge of the Non-Ad Valorem Revenues unless the Town can show that following the incurrence of such additional indebtedness, (i) the total amount of Non-Ad Valorem Revenues (based on the most recent fiscal year) will be greater than 2.00 times the then Maximum Debt Service, and (ii) the total amount of Non-Ad Valorem Revenues in each fiscal year in which the Series 2020 Bond is outstanding (based on reasonable projections of the Town) will be greater than 2.00 times the Non-Self-Supporting Debt in each such fiscal year.

For purposes of determining compliance with the foregoing test, the term “Non-Ad Valorem Revenues” means 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 Non-Self-Supporting Debt, excluding Project Grant Moneys (as defined below), non-ad valorem special assessments which are exclusively pledged to the payment of obligations secured by the special assessments (“Special Assessment Obligations”), and Direct Payments, regardless of whether a particular source of Non-Ad Valorem Revenues has been

pledged to any specific Non-Self-Supporting Debt or may not otherwise be available to pay debt service on any specific Non-Self-Supporting Debt. It should be noted that pursuant to applicable Florida law certain components of Non-Ad Valorem Revenues may not be legally available to pay debt service on the Series 2020 Bond.

“Direct Payments” means any direct payments, grants or other subsidies received from the federal government or the State of Florida relative to debt service on debt obligations.

“Project Grant Moneys” means any federal, State of Florida, county or other grant moneys relating to the capital projects financed by the Series 2020 Bond that are legally available to pay principal and/or interest on the Series 2020 Bond, but does not include Direct Payments.

“Non-Self-Supporting Debt” means debt service on debt obligations of the Town other than debt obligations relating to an enterprise fund or general obligation bonds of the Town or Special Assessment Obligations. In addition, for purposes of the foregoing (i) “Non-Self-Supporting Debt Service” means the debt service on Non-Self-Supporting Debt, and (ii) “Maximum Debt Service” means, at any time, the maximum amount required in the then current or any future fiscal year to pay (a) all Non-Self-Supporting Debt, and (b) the proposed indebtedness of the Town (i) which will be payable from Non-Ad Valorem Revenues or (ii) for which the Non-Ad Valorem Revenues will be pledged.

The foregoing notwithstanding, in the event any debt obligations are additionally secured by non-ad valorem special assessments, debt service on such debt obligations shall be calculated net of the amount of non-ad valorem special assessments collected during the prior fiscal year provided that at least 90% of the non-ad valorem special assessments imposed in the prior fiscal year are collected, and in such event such non-ad valorem special assessments are not included in the calculation of Non-Ad Valorem Revenues. If less than 90% of the non-ad valorem special assessments imposed in the prior fiscal year are collected, the debt service on the debt obligations additionally secured by non-ad valorem special assessments will be included as Non-Self-Supporting Debt Service, but the Town will be permitted to treat the non-ad valorem special assessments that were collected as Non-Ad Valorem Revenues for purposes of the foregoing tests.

In the case of debt obligations bearing interest at a variable rate (“Variable Rate Bonds”), interest on such Variable Rate Bonds shall be assumed to be the greater of (A) one hundred ten percent (110%) of the average interest rate on such Variable Rate Bonds during the twenty-four (24) months ending with the month preceding the date of calculation or such shorter period that such Variable Rate Bonds shall have been outstanding; and (B) the actual rate of interest on such Variable Rate Bonds on the date of calculation; provided that if a series of Variable Rate Bonds had not been outstanding prior to the date of calculation, the amount set forth in clause (A) above shall be calculated as though such Variable Rate Bonds had been outstanding for the twenty-four (24) month period by using (i) one hundred ten percent (110%) of the average of the Securities and Financial Markets Association (SIFMA) Municipal Swap Index for the twenty-four (24) months ending with the month preceding the date of calculation, and (ii) if the Variable Rate Bonds are bonds the interest on which is includable in the gross income of the holders thereof for federal income tax purposes, the 1-month LIBOR interest rate.

SECTION 2.06. [Reserved].

SECTION 2.07. Payment Covenant. The Town covenants that it shall duly and punctually pay from Pledged Revenues the principal of the Series 2020 Bond, the interest thereon at the Interest Rate on the Payment Dates and any other amounts set forth under this Agreement or in the Series 2020 Bond in the place and in the manner provided herein and in the Series 2020 Bond according to the true intent and meaning thereof.

(End of Article II)

ARTICLE III
TOWN'S OBLIGATION, DESCRIPTION,
PAYMENT TERMS, OPTIONAL PREPAYMENT

SECTION 3.01. Series 2020 Bond Not to be Indebtedness of the Town or State. THE SERIES 2020 BOND, WHEN DELIVERED BY THE TOWN PURSUANT TO THE TERMS OF THIS AGREEMENT, 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 AS HEREIN PROVIDED. NO BONDHOLDER 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 SERIES 2020 BOND OR THE INTEREST THEREON.

The Series 2020 Bond is payable as to both principal, redemption premium, if any, and interest, from a lien on and pledge of Pledged Revenues. There are hereby pledged for the payment of the principal of, premium, if any, and interest on the Series 2020 Bond, the Pledged Revenues.

The covenant to appropriate Non-Ad Valorem Revenues is not a pledge by the Town of such Non-Ad Valorem Revenues until appropriated in the Town's budget as Town Moneys but is subject in all respects to the payment of obligations secured by a pledge of Non-Ad Valorem Revenues of the Town heretofore or hereafter entered into, including the payment of debt service on bonds or other debt obligations.

SECTION 3.02. Description and Payment Terms of the Series 2020 Bond.

(a) The Town shall, pursuant to authority granted under the Bond Resolution, issue and deliver the Series 2020 Bond to the Financial Institution as Bondholder. The Series 2020 Bond shall be designated as "Town of Palm Beach, Florida Public Improvement Revenue Bond, Series 2020" with such other designation as the Town deems appropriate and the outstanding principal amount of such Series 2020 Bond shall not exceed Thirty-One Million Dollars (\$31,000,000). The Series 2020 Bond shall be in the form attached hereto as Exhibit A.

(b) The Series 2020 Bond shall be dated its date of delivery and bear interest from its date at the rate set forth therein.

(c) The Series 2020 Bond shall be subject to prepayment in the manner set forth in the Series 2020 Bond.

(d) The Series 2020 Bond shall be initially registered in the name of the Financial Institution. For so long as the Series 2020 Bond remains unpaid, the Town will keep books and records for the registration and transfer of the Series 2020 Bond. The Series 2020 Bond shall be transferable only upon such registration books in any denominations equal to the principal amount thereof. The person or entity in whose name a Series 2020 Bond shall be registered shall be deemed the registered Bondholder and the absolute owner thereof for all purposes, and the payment of principal and interest on such Series 2020 Bond shall be made only to the

Bondholder. The Financial Institution or any subsequent Bondholder shall be entitled to transfer, sell or assign the Series 2020 Bond in amount equal to the outstanding principal amount thereof, so long as such sale or transfer is in accordance with all applicable federal and State securities rules, laws, and regulations.

(End of Article III)

ARTICLE IV

CONDITIONS FOR LOAN

The Financial Institution shall not be obligated to make the Loan under this Agreement unless at the date specified for the making thereof the Town delivers to the Financial Institution:

(a) A certificate of the Finance Director of the Town, dated as of the date of such Loan, to the effect that no Event of Default (as defined in Article V of this Agreement) or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred.

(b) An Opinion of Bond Counsel regarding the due authorization, execution, delivery, validity and enforceability of the Agreement and the Series 2020 Bond and the due adoption of the Bond Resolution (enforceability of such instruments may be subject to standard bankruptcy exceptions and the like), the exclusion of interest on the Series 2020 Bond from gross income for Federal income tax purposes; provided, however, that no opinion will be expressed as to the federal income tax status of interest on the Series 2020 Bond for any period that the Series 2020 Bond is held by a “substantial user” of the facilities financed or refinanced by the Series 2020 Bond or by a related person within the meaning of Section 147(a) of the Code, interest on the Series 2020 Bond is a specific preference item for purposes of the federal individual alternative minimum taxes and the interest thereon are exempt from taxation under the existing laws of the State of Florida, except as to estate taxes imposed by Chapter 220, Florida Statutes, on interest, income or profits on debt obligations owned by corporations as defined therein; and

(c) An opinion of Bond Counsel that the Series 2020 Bond is not subject to the registration requirements under the Securities Act of 1933 and this Agreement is exempt from qualification under the Trust Indenture Act of 1939; and

(d) Fully executed Series 2020 Bond, dated the date of the Loan; and

(e) An executed Tax Certificate and Internal Revenue Service form 8038.

(f) On or before the execution of this Agreement, the Town shall have caused to be delivered to the Financial Institution the following items in form and substance acceptable to the Financial Institution:

(i) Opinion of Counsel to Town regarding the due authorization, execution, delivery, validity and enforceability of this Agreement and the Series 2020 Bond and the due adoption of the Bond Resolution (enforceability may be subject to standard bankruptcy exceptions and the like) together with such other opinions reasonably requested by the Financial Institution; and

(ii) A certified copy of the Bond Resolution of the Town approving the form of this Agreement, and authorizing the issuance of the Series 2020 Bond in the outstanding principal amount of not exceeding \$31,000,000 to finance the cost of all or a portion of Project and related costs of issuance; and

(iii) Such additional certificates, instruments and all other closing documents as the Financial Institution, or its Counsel or Bond Counsel, or Counsel to the Town, may deem necessary or appropriate.

(g) Upon satisfaction of the conditions set forth in paragraphs (a)-(f) above, the Town may borrow up to \$31,000,000 from the Financial Institution. The Town shall apply the proceeds to pay the costs of the Project which shall include but not limited to:

(i) the costs of architectural and engineering services related to the Project, including, without limitation, the costs of preparation of studies, surveys, reports, tests, plans and specifications;

(ii) the costs of legal, accounting, marketing and other special services related to the Project;

(iii) costs and fees incurred in connection with the issuance of the Series 2020 Bond subject to the requirements of the Code and the Tax Certificate;

(iv) fees and charges incurred in connection with applications to federal, state and local governmental agencies for any requisite approval or permits regarding the acquisition of the Project;

(v) costs incurred in connection with the acquisition of the Project, including any necessary rights-of-way, easements or other interests in real or personal property;

(vi) other costs and expenses relating to the Project which are included which are incurred for the purpose of providing for the "Project," and other facilities functionally related and subordinate thereto.

(End of Article IV)

ARTICLE V

EVENTS OF DEFAULT

An "Event of Default" shall be deemed to have occurred under this Agreement if:

- (a) Failure by the Town to pay the principal of and interest on the Series 2020 Bond when it becomes due and payable at maturity or upon redemption; or
- (b) Failure to pay such other amounts due hereunder or under the Series 2020 Bond other than in paragraph (a) and such failure shall continue for more than ten (10) days; or
- (c) Any representation or warranty of the Town contained in this Agreement or any certificate provide to the Bondholder in connection with the transactions contemplated hereunder shall prove to be untrue in any material respect when made; or
- (d) The Town shall default in the performance of or compliance with any material term or covenant contained in this Agreement and not otherwise addressed in this Article, which default or noncompliance shall continue and not be cured within (30) days after the earlier of (i) written notice thereof to the Town by the Bondholder or (ii) when notice was required to have been provided to the Bondholder pursuant to Section 6.05 hereof, or, in each case, such longer period as may be reasonably necessary to cure such default, as long as the Town initiates curative action that is approved by the Bondholder within such 30-day period and diligently prosecutes such action until the cure has been achieved but not to exceed 60 days (a maximum of 90 days to cure); or
- (e) A petition is filed against the Town under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and an order for relief is entered or such petition is not dismissed within sixty (60) days of such filing; or
- (f) The Town files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under such law; or
- (g) The Town admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including without limitation a receiver, liquidator or trustee) of the Town or any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than 60 days.

Upon the occurrence of an Event of Default the Financial Institution may pursue any available remedy at law or in equity or by statute, including any applicable law or statute of the United States of America or of the State, to enforce the payment of principal of and interest on the Series 2020 Bond then outstanding or the obligations of the Town thereunder.

Any amount due under this Agreement or the Series 2020 Bond not paid when due shall bear interest at the Default Rate. Additionally, failure to make the payments required by subparagraph (a) or (b) of this Article V within ten (10) days after the due date thereof may, at the option of the Financial Institution be subject to a five percent (5%) late payment fee based on the amount of the payment due.

Notwithstanding any provision in this Agreement to the contrary, in no event shall the interest contracted for, charged or received in connection with this Agreement or the Series 2020 Bond (including any other costs or considerations that constitute interest under the laws of the State of Florida which are contracted for, charged or received) exceed the maximum rate of nonusurious interest allowed under the State of Florida as presently in effect and to the extent an increase is allowable by such laws, but in no event shall any amount ever be paid or payable by the Town greater than the amount contracted for herein.

(End of Article V)

ARTICLE VI

MISCELLANEOUS

SECTION 6.01. Amendments, Changes or Modifications to the Agreement. This Agreement shall not be amended, changed or modified without the prior written consent of the Financial Institution and the Town. The Town agrees to pay all of the Financial Institution's costs and reasonable attorney fees incurred in modifying and/or amending this Agreement at Town's request or behest and enforcing this Agreement.

SECTION 6.02. 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 6.03. Severability. If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such provisions or sections 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 6.04. Term of Agreement. This Agreement shall be in full force and effect from the date hereof and shall continue in effect as long as the Series 2020 Bond is outstanding or any amounts owing under this Agreement (except for provisions stated to survive the expiration of the terms hereof).

SECTION 6.05. Notice of Changes in Fact. Promptly after the Town becomes aware of the same, the Town will notify the Financial Institution of (i) any change in any material fact or circumstance represented or warranted by the Town in this Agreement or in connection with the issuance of the Series 2020 Bond, and (ii) any default or event which, with notice or lapse of time or both, could become an Event of Default or default under this Agreement, the Bond Resolution or the Series 2020 Bond specifying in each case the nature thereof and what action the Town has taken, is taking, and/or proposes to take with respect thereto.

SECTION 6.06. Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally or sent registered or certified mail, postage prepaid, to the Town, Town of Palm Beach, Florida, 360 South County Road, Palm Beach, Florida, Attention: Director of Finance, and to the Financial Institution, CenterState Bank, N.A., 200 E. Las Olas Boulevard, Suite 1750, Fort Lauderdale, Florida 33301, Attention: Government Relationship Manager, or at such other address as shall be furnished in writing by any such party to the other, and shall be deemed to have been given as of the date so delivered or deposited in the United States mail.

SECTION 6.07. Payments Due on Sundays and Holidays. If any date on which a payment is to be made is a Saturday, Sunday, legal holiday or day on which banking institutions are authorized by law to remain closed in the jurisdiction in which the payment is to be made, then such payment, notice or other action shall be made on the next succeeding day not a Saturday, Sunday,

legal holiday or day on which such banking institutions are authorized by law to remain closed, and no interest shall accrue for the period after such nominal date.

SECTION 6.08. Applicable Law and Venue. The substantive laws of the State of Florida shall govern this Agreement. In this regard, the parties hereto agree not to object to the jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida or the United States District Court for the Southern District of Florida over any action resulting from this Agreement, and not to object to venue of either of said courts.

SECTION 6.09. Waiver of Jury Trial. To the extent permitted by applicable law, each of the Town and the Financial Institution, knowingly, voluntarily and intentionally waives any right each may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with this Agreement, the Series 2020 Bond or any agreement contemplated to be executed in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party with respect hereto. This provision is a material inducement to the Financial Institution to enter into this Agreement.

SECTION 6.10. Incorporation by Reference. All of the terms and obligations of the Series 2020 Bond, Bond Resolution and other applicable closing certificate and documents are hereby incorporated herein by reference as if said Bond Resolution was fully set forth in this Agreement.

SECTION 6.11. No Third Party Beneficiaries. The terms and provisions of this Agreement shall inure exclusively to the benefit of the Town, the Bondholder, their successors and assigns and no other person shall have any rights hereunder.

(End of Article VI)

[Remainder of page left blank intentionally]

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the Date of Execution set forth below.

TOWN OF PALM BEACH, FLORIDA

SEAL

By: _____
Mayor

Date of Execution: _____

ATTEST:

By: _____
Acting Town Clerk

CENTERSTATE BANK, N.A.

By: _____
Name:
Title:

EXHIBIT A
TO AGREEMENT

***THE TRANSFER AND ASSIGNMENT OF THIS BOND IS RESTRICTED PURSUANT TO
THE PROVISIONS OF SECTION 3.02(d) OF THE HEREIN DESCRIBED AGREEMENT***

No. R-1

UNITED STATES OF AMERICA
STATE OF FLORIDA
TOWN OF PALM BEACH
Public Improvement Revenue Bond
Series 2020

<u>Principal Sum</u>	<u>Date of Issuance</u>	<u>Maturity Date</u>	<u>Interest Rate</u>
\$31,000,000	_____, 2020	January 1, 2040	2.39% ¹

KNOW ALL MEN BY THESE PRESENTS, that the TOWN OF PALM BEACH, FLORIDA (the “Town”), for value received, hereby promises to pay, solely from the Pledged Revenues described in the within mentioned Bond Resolution, to the order of CenterState Bank, N.A. or its assigns (the “Payee”), at 200 East Las Olas Boulevard, Suite 1750, Fort Lauderdale, Florida 33301, or at such other place as the Payee may from time to time designate in writing, the Principal Sum stated above advanced pursuant to that certain Loan Agreement by and between Payee and the Town, dated March __, 2020 (the “Agreement”), together with interest on the principal balance outstanding at the Interest Rate stated above, so long as any amount under this Bond remains outstanding.

The principal hereof shall be paid in installments due on January 1, 2022 and on each January 1 thereafter in the amounts and years as set forth in the following table.

Due Date (January 1)	Principal Payment Due	Due Date (January 1)	Principal Payment Due

¹ Subject to adjustment as set forth herein.

On January 1, 2040, the Town will pay the Payee all remaining unpaid principal hereof and all accrued and unpaid interest thereon, including any other amounts due hereunder or under the Agreement.

The interest hereon shall be payable in arrears on each January 1 and July 1, commencing on July 1, 2020, and on the date on which the final payment of principal due hereon is paid. Interest hereon shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

The principal hereof may be prepaid at any time and from time to time, in whole or in part, upon the Town providing the Payee with at least three business days' prior written notice setting for the date and amount of the prepayment, at the following prepayment prices, expressed as a percentage of the principal amount thereof to be prepaid, plus accrued interest:

**Period during which
Bond is prepaid
(Both dates inclusive)**

Prepayment Price

March __, 2020 to March __, 2024
March __, 2024 and thereafter

101%
100

Any amount due under this Bond not paid when due shall bear interest at the Default Rate.

Additionally, in the event that any principal of and/or interest on this Bond is not paid within ten (10) days after the due date thereof or failure to pay such other amounts due the Agreement or under this Bond and such failure shall continue for more than ten (10) days, such payment may at the option of the Payee be subject to a late fee of 5% based on the amount of the payment due.

Upon the occurrence of a Determination of Taxability of the Bond, the Town agrees to pay to the Payee a rate of interest from the effective date of such Determination of Taxability equal to the quotient of the current Interest Rate over 0.79%.

“Determination of Taxability” shall mean the circumstance of the interest on this Bond being includable for federal income tax purposes in the gross income of the Payee hereof, as a result of any action or inaction of the Town. A Determination of Taxability shall be evidenced by either (a) the issuance of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency which holds that any interest payable hereon is includable in the gross income of the Payee; (b) the issuance of any public or private ruling or other lawful and final action of the Internal Revenue Service that any interest borne hereby is includable in the gross income of the Payee or (c) the rendering of a final decree or judgment of a court of competent jurisdiction that any interest hereon is includable in the gross income of the Payee; provided, no Determination of Taxability shall be deemed to occur unless the Town has been given, to the extent permitted by law, an opportunity to participate in and seek, at the Town’s own expense, a final administrative determination by the Internal Revenue Service or determination by a court of competent jurisdiction (from which no further right of appeal exists) as to the occurrence of such Determination of Taxability. A Determination of Taxability will be deemed to occur on the first date as of which the interest borne hereby is includable in the gross income of the Payee.

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, and such event shall not be considered a Determination of Taxability. It is understood that interest on the Bond is a specific preference item for purposes of the federal alternative minimum tax imposed on individuals.

Principal and interest being 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 Payee hereof by check mailed to the Payee at the address designated in writing by the Payee for purposes of payment or by bank wire or bank transfer as such Payee may specify in writing to the Town or otherwise as the Town and Payee may agree.

This Bond is authorized to be issued in the outstanding aggregate principal amount of \$31,000,000 under the authority of and in full compliance with the Constitution and statutes of the State of Florida, including, particularly, Chapter 166, Florida Statutes, as amended and supplemented, and other applicable provisions of law, and a resolution duly adopted by the Town on the 11th day of February, 2020, as such resolution may be amended and supplemented from time to time, and is subject to all terms and conditions of said resolution (the “Bond Resolution”). Any term used in this Bond and not otherwise defined shall have the meaning ascribed to such term in the Bond Resolution or the Agreement, as the case may be.

Notwithstanding any provision in this Bond to the contrary, in no event shall the interest contracted for, charged or received in connection with this Bond (including any other costs or considerations that constitute interest under the laws of the State of Florida which are contracted for, charged or received) exceed the maximum rate of nonusurious interest allowed under the State of Florida as presently in effect and to the extent an increase is allowable by such laws, but in no event shall any amount ever be paid or payable by the Town greater than the amount contracted for herein.

All payments made by the Town hereon shall apply first to other charges due the Payee, then to accrued interest and the balance thereof shall apply to the principal amount then due on this Bond.

THE BOND, WHEN DELIVERED BY THE TOWN PURSUANT TO THE TERMS OF THE AGREEMENT, 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 FROM PLEDGED REVENUES, AS PROVIDED IN THE AGREEMENT. NO BONDHOLDER 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.

The Bond has all the qualities and incidents of a negotiable instrument under Article 8 of the Uniform Commercial Code, the State of Florida, Chapter 678, Florida Statutes. This Bond

may be transferred or exchanged by the Bondholder hereof, but only upon the registration books maintained by the Town and in the manner provided in the 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 the execution, delivery and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Bond is in full compliance with and does not exceed or violate any constitutional or statutory limitation. It is further certified that all of the representations, warranties, and covenants made and set forth in the Bond Resolution and the Agreement and in the ancillary and closing documents relevant to this Bond are remade and incorporated fully by reference herein.

The Town hereby waives presentment, demand, protest and notice of dishonor.

IN WITNESS WHEREOF, the Town has caused this Bond to be signed by the Mayor, either manually or with facsimile signature, and the seal of the Town to be affixed hereto or imprinted or reproduced hereon, and attested by the Clerk of the Town, either manually or with facsimile signature, and this Bond to be dated the Date of Issuance set forth above.

(SEAL)

TOWN OF PALM BEACH, FLORIDA

ATTEST:

By: _____
Acting Town Clerk

By: _____
Title: Mayor

FORM OF CERTIFICATE OF AUTHENTICATION

Date of Authentication:

This Bond is delivered pursuant to the within mentioned Bond Resolution.

DIRECTOR OF FINANCE,
As Registrar

By: _____
Authorized Officer

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

(please print or typewrite name, address and tax identification number of assignee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

_____ Attorney to transfer
the within Bond on the books kept for registration thereof, with full power of substitution in the
premises.

EXHIBIT B

PROJECT

The Project includes the demolition of three fixed concrete docks and three existing buildings, dredging, construction and installation of new floating concrete docks totaling approximately 85,575 square feet, construction and upgrading the upland utility system and the installation of utilities at each slip, Wi-Fi and security camera system, construction of three new buildings with two located over water requiring the installation of a concrete pile and pad, the lowering of the elevation of the existing bulkhead cap and installation of a new cantilevered bulkhead installed seaward of the existing bulkhead, the resurfacing of three parking lots, landscaping and revisions to the irrigation system and all facilities functionally related and subordinate thereto.