



**AGENDA  
CITY OF LAKE WORTH BEACH  
REGULAR CITY COMMISSION MEETING  
BY TELECONFERENCE  
TUESDAY, JUNE 2, 2020 - 6:00 PM  
(ADDITIONS/DELETIONS/REORDERING)**

**Additions:**

**The following item has been added to the agenda:**

**CONSENT AGENDA:**

F. Revised Second Amendment to Retail Lease with Mulligans Lake Worth Acquisition, LLC

**NEW BUSINESS:**

Item D. Attached is the Resolution for this item.

**Deletion:**

**The following item has been deleted from the agenda:**

**UNFINISHED BUSINESS:**

A. Amendments to the Casino tenant's leases addressing the COVID-19 closures

**THIS ITEM HAS BEEN POSTPONED UNTIL THE JUNE 16, 2020 REGULAR CITY COMMISSION MEETING TO GIVE STAFF MORE TIME TO FINALIZE THE AMENDMENTS**

# EXECUTIVE BRIEF REGULAR MEETING

**AGENDA DATE:** June 2, 2020

**DEPARTMENT:** City Manager

**TITLE:**

Revised Second Amendment to Retail Lease with Mulligans Lake Worth Acquisition, LLC.

**SUMMARY:**

The Revised Second Amendment to the Retail Lease with Mulligans Lake Worth Acquisition, LLC (“Mulligans”) includes revisions made after the City Commission’s May 19, 2020 approval of the same.

**BACKGROUND AND JUSTIFICATION:**

On May 19, 2020, the City Commission approved the Second Amendment to the lease with Mulligans and the assignee NUSTART LLC. After the approval, the Mulligans and NUSTART LLC closed on their assignment which necessitated changes to the approved Second Amendment. The changes are:

- The assignee is changed to NUSTART LTD, a limited partnership managed by NUSTART LLC (which are both registered with the State);
- The d/b/a entity is changed to Viva la Playa (which is registered with the State); and,
- The Security Deposit due date is changed to thirty (30) days after the Second Amendment is fully executed in order to provide Mr. Lipton sufficient time to obtain a Letter of Credit for the same.

All other terms and conditions remain the same as approved on May 19, 2020. Both Mulligans and NUSTART LTD have signed the attached revised Second Amendment. Mulligans has also submitted a check to the City for payment of rents for April, May and June 2020, and upon confirmation that the same has cleared the bank, the City will release Mulligans and its Letter of Credit from the lease.

**MOTION:**

Move to approve / not approve the Revised Second Amendment to Retail Lease with Mulligans Lake Worth Acquisition, LLC.

**ATTACHMENT(S):**

Fiscal Impact Analysis n/a  
Revised Second Amendment

## SECOND AMENDMENT TO RETAIL LEASE

**THIS SECOND AMENDMENT TO RETAIL LEASE** ("Second Amendment") is made effective on the \_\_\_ day of \_\_\_\_\_, 2020, by and between the CITY OF LAKE WORTH BEACH, a Florida Municipal Corporation ("Landlord") and MULLIGANS LAKE WORTH ACQUISITIONS, LLC, a Delaware Corporation registered to do business in the State of Florida ("Tenant/Assignor") and NUSTART, LTD., a Florida limited partnership, d/b/a Viva la Playa ("Tenant/Assignee") (collectively Landlord, Tenant/Assignor and Tenant/Assignee are referred to as the "Parties").

### RECITALS

**WHEREAS**, on March 19, 2012, the Landlord and the Tenant/Assignor's predecessor entered a retail lease for Units #7 and #8 at the Lake Worth Beach Municipal Casino Building ("Lease"); and

**WHEREAS**, on January 19, 2016, the Landlord and the Tenant/Assignor's predecessor entered that First Amendment to the Lease allowing Tenant/Assignor's predecessor to assign the Lease to Tenant/Assignor; and

**WHEREAS**, in April 2020, Tenant/Assignee's manager, Lee Lipton, contacted the Landlord about an assignment of the Lease to the Tenant/Assignee for the purposes of renovating the premises for the operation of a Mexican restaurant; and

**WHEREAS**, Tenant/Assignee has committed to invest approximately \$150,000 into the premises; and

**WHEREAS**, as specifically set forth in this Second Amendment, the Parties desire to amend the Lease to consent to and address the assignment to Tenant/Assignee and related matters; and,

**WHEREAS**, the City Commission finds amending the Lease as set forth herein serves a valid public purpose.

**NOW THEREFORE**, in consideration of the promises and mutual covenants contained in the Lease and this Second Amendment, and for other good and valuable consideration, the receipt of which the Parties expressly acknowledge, the Parties agree to amend the Lease as follows:

1. **Recitals and Definitions:** The foregoing recitals are hereby incorporated into this Second Amendment as true and correct statements of the Parties and form part of the consideration for this Second Amendment. All material terms as utilized in this Second Amendment are as defined in the Lease.
2. **No Default:** The Parties agree that the Lease remains in full force and effect, that there are no defaults or disagreements with regard to the terms and conditions set forth in the Lease. As of the Effective Date, **Tenant/Assignor has paid all Rent that is due to the Landlord for the months of March, April, and May 2020.**
3. **Assignment and Release.** Subject to the Landlord's receipt of all Rent due for the month of June by no later than June 1, 2020, the Parties agree to and the Landlord consents to the assignment of the Lease to the Tenant/Assignee, NUSTART, LTD. d/b/a Viva la Playa and Landlord releases Tenant/Assignor (including George Hart) from the Lease. If the Landlord fails to receive all Rent due for the month of June by June 1, 2020, this Second Amendment shall be deemed null and void and the Tenant/Assignor (including George Hart) shall remain liable for all Tenant obligations under the Lease.

4. **Waiver of Right of Termination and Assignment Payment.** Sections 6.1 of the Lease authorizes the Landlord to terminate the Lease upon notice of a requested assignment and Section 6.2 requires the Tenant/Assignor to pay the Landlord any amount received from Tenant/Assignee for the assignment of the Lease in excess of the Rent then being paid by the Tenant/Assignor to the Landlord. Solely for the purposes of this Second Amendment, the Landlord waives its right of termination under Section 6.1 of the Lease and waives its right to any payment that may be due from the Tenant/Assignor under Section 6.2.
5. **Amended Sections.** The following specific amendments are made to the Lease (with the Tenant/Assignee recognized as the "Tenant"):
- a. **Landlord.** Subsection 1.1 is deleted and amended in full to reflect the new name of the Landlord as, "CITY OF LAKE WORTH BEACH, a municipal corporation under the laws of the State of Florida."
  - b. **Tenant.** Subsection 1.2 is deleted and amended in full to reflect the new name of the Tenant as, "NUSTART, LTD."
  - c. **Tenant's Trade Name.** Subsection 1.3 is deleted and amended in full to reflect the new trade name (fictitious name) of Tenant as, "Viva la Playa".
  - d. **Permitted Use of the Premises.** Subsection 1.8 is deleted and amended in full to reflect the new permitted use as, "Tenant is leasing the subject property for use as a Mexican-themed Family Restaurant and Bar for on and off-premises consumption, and for no other purpose whatsoever. Restaurant shall be allowed to have a full service bar during all hours of operation serving beer, wine, spirits, and other alcoholic beverages with its SRX or COP license."
  - e. **Commencement Date.** Subsection 1.9, is deleted and amended in full to reflect the Commencement Date as, "The Commencement Date is the Effective Date of the Second Amendment to this Lease."
  - f. **Rental Concessions.** Subsection 1.10, is deleted and amended in full to reflect the Rental Concessions as, "Tenant shall not pay Rent during Tenant's renovation period with the maximum renovation period ending September 30, 2020 ("Free Rent Period"). If Tenant opens for business prior to September 30, 2020, Tenant shall start paying Rent, on a pro rata basis as of the date of opening."
  - g. **Rent Commencement Date.** Subsection 1.12 is deleted and amended in full to reflect the Rent Commencement Date as, "Except for the Rent to be paid as set forth in the Second Amendment for June 2020, all Rent shall be due from Tenant upon the earlier of the expiration of the Free Rent Period or when Tenant opens for business."
  - h. **Lease Term.** Subsection 1.13 is deleted and amended in full to reflect the Lease Term as, "A term commencing on the Rent Commencement Date and continuing for one hundred and twenty (120) months (plus any partial calendar month in which the Rent Commencement Date falls), as extended or sooner terminated under the terms of this Lease. If the Rent Commencement Date falls on a day other than the first day of a month, the first month of the Lease Term shall commence on the first day of the calendar month immediately following the Rent Commencement Date and the pro rata portion of the Rent shall be paid by the Tenant for the partial month. Following the initial one hundred and twenty (120) month base term, two (2) options for renewal are provided for five (5) years each. After the first sixty (60) months of the initial base term of one hundred and twenty



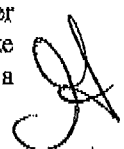
(120) months (plus any partial calendar month in which the Rent Commencement Date falls), Tenant shall have the right to terminate the Lease upon 12 months written notice to Landlord.”

- i. **Renewal Option Rates.** Subsection 1.14 is deleted and amended in full to reflect the Renewal Option Rates as, “Both five (5) year renewal options shall be based on a Base Rent increase of 3.5% per year.”
- j. **Base Rent.** Subsection 1.15 is deleted and amended in full to reflect the Base Rent as set forth in Exhibit “1”, which is attached hereto and incorporated herein. Base Rent as shown in Exhibit “1” does not include applicable tax which Tenant must pay to Landlord.
- k. **Security Deposit.** Subsection 1.17 is deleted and amended in full to reflect the Security Deposit as, “The Security Deposit shall be due within thirty (30) days after the execution of this Second Amendment to the Lease. **The Security Deposit shall cover the first two months of Base Rent and shall be in the amount of \$31,820.22.** The Security Deposit may be provided in the form of a Letter of Credit generally in the form attached to the Lease, Exhibit “L”. The Security Deposit or Letter of Credit shall be kept in force and effect for the first sixty (60) months of the initial one hundred and twenty (120) month base term. If the Tenant timely pays all Rent due under the Lease, the Landlord shall return the Security Deposit or Letter of Credit and no further Security Deposit shall be required of Tenant for the remainder of the Lease.”
- l. **First Month’s Rent.** Subsection 1.18 is deleted and amended in full to reflect the First Month’s Rent as, “\$26,420.78 to be paid to the Landlord upon the Rent Commencement Date by Tenant.

Base Rent:	\$15,910.11
CAM:	\$ 5,314.50
Patio Rental:	\$ 2,753.95
Employee Parking:	\$ 760.00
Tax:	\$ 1,682.22
<b>Total:</b>	<b>\$26,420.78</b>

- m. **Tenant’s Notice Address.** Subsection 1.19 is deleted and amended in full to reflect the Tenant’s Notice Address as, “NUSTART, LTD, Attn: Lee Lipton, Manager, 10 S. Ocean Blvd., Lake Worth Beach, FL 33460.”
- n. **Landlord’s Notice Address.** Subsection 1.20 is deleted and amended in full to reflect Landlord’s Notice Address as, “c/o City Manager, City of Lake Worth Beach, 7 N, Dixie Highway, Lake Worth Beach, FL 33460.”
- o. **Landlord and Tenant Broker.** Subsections 1.21 and 1.22 and Section 24 are deleted as the Parties have not utilized a broker for this Second Amendment.
- p. **Guarantor.** Subsection 1.23 and Exhibit “C” are deleted as the Tenant will be providing a security deposit as set forth above.
- q. **Rent.** Section 4 regarding the Rent is amended by adding the following Subsections:

“4.1 **COVID-19 Deferral.** If on the Rent Commencement Date, and each month thereafter until **no later than December 31, 2020 (midnight)**, Tenant is limited in its ability to utilize its existing indoor occupancy due to COVID-19 based restrictions mandated by a



governmental entity, the Landlord agrees to abate and defer Tenant's Base Rent as follows: 50 percent of all Base Rent will be abated ("Abated Rent") and 50 percent of all Base Rent will be deferred ("Deferred Rent"). The Abated Rent amount shall not be paid by Tenant and not collected by Landlord. Tenant shall have one (1) year from the Date of Reopening (as defined below) to pay the Deferred Rent to Landlord. If Tenant fails to pay the Deferred Rent within one (1) year from the Date of Reopening (as defined below), the Landlord, in addition to all other rights and remedies under this Lease and under applicable law, shall have the right to declare all Rent due under the then existing Lease term, including the Deferred Rent plus interest, as immediately due and payable. Failure to pay the Deferred Rent shall also be considered a Monetary Default under section 7 of the Lease. The Deferred Rent shall accrue interest from the Date of Reopening (as defined below) until paid in full at the rate set forth in section 55.03, Florida Statutes, regarding interest on judgments.

4.2 If on **January 1, 2021 until no later than March 31, 2021 (midnight)**, Tenant is limited in its ability to utilize its existing indoor occupancy due to COVID-19 based restrictions mandated by a governmental entity, the Landlord agrees to defer the Tenant's Base Rent consistent with the restrictions in place on the Tenant's indoor occupancy (the "Additional Deferred Rent"). By way of example only, if on January 1, 2021, Tenant is limited to only utilizing 25 percent of its indoor occupancy due to COVID-19 restrictions mandated by a governmental entity, 75 percent of Tenant's Base Rent shall be deferred and Tenant shall be required to pay the Landlord 25 percent of its Base Rent. Tenant shall have one (1) year from the Date of Reopening (as defined below) to re-pay the Additional Deferred Rent. If Tenant fails to pay the Additional Deferred Rent within one (1) year from the Date of Reopening (as defined below), the Landlord, in addition to all other rights and remedies under this Lease and under applicable law, shall have the right to declare all Rent due under the then existing Lease term, including the Additional Deferred Rent plus interest, immediately due and payable. Failure to pay the Additional Deferred Rent shall also be considered a Monetary Default under section 8 of the Lease. The Additional Deferred Rent shall accrue interest from the Date of Reopening (as defined below) until paid in full at the rate set forth in section 55.03, Florida Statutes, regarding interest on judgments.

4.3 As of the Date of Reopening (as defined below), Tenant shall resume payment of all Rent due under the Lease without any abatement or deferral.

4.4 For Subsections 4.1, 4.2 and 4.3 above, the "Date of Reopening" is defined as the earlier of the following dates: (1) the date that all governmental restrictions related to COVID-19 are released and Tenant is allowed to utilize 100 percent of its indoor occupancy; or, (2) **April 1, 2021.**"

- r. **Common Area Maintenance Costs (CAM).** Subsection 5.3 is amended by deletion of the second to last sentence of Subsection 5.3; specifically, the following sentence is deleted, "CAM shall not exceed \$7 per square foot for the first year".
- s. **Insurance.** Subsection 7.1, regarding the Tenant's insurance is amended for commercial general liability insurance, including contractual liability, on an occurrence basis, on the then most current Insurance Services Office ("ISO") form by deleting the combined single limits "of \$3 million per occurrence" and adding in a combined single limits "of \$1 million per occurrence / \$2 million aggregate". No other changes to the Tenant's insurance requirements shall be made. Within thirty (30) days of the Commencement Date, the Tenant shall provide the Landlord with certificates of insurance as required in the Lease.

- t. **Grease Traps.** Subsection 15.6 is deleted and amended in full to clarify the current operation of Grease Traps at the Project: "Landlord and/or a prior tenant has installed grease trap and other equipment necessary to maintain the Tenant's restaurant in a clean and sanitary manner and free from insects, rodents, vermin, and other pests. No discharge of grease or grease laden water or other materials or food stuffs shall be introduced by Tenant into the waste water disposal or drainage systems serving the Project; however, if such discharge occurs, in addition to all other rights and remedies under this Lease, Tenant shall be responsible for all costs and expenses (including any fines or penalties imposed by governmental authorities) which may be assessed against Landlord or Landlord may incur. Tenant shall contract with a licensed and qualified vendor for the regular maintenance and pumping of the grease trap and proper disposal of the same. Tenant shall provide a copy of the grease trap contract to the Landlord upon the Rent Commencement Date. In the event Tenant fails to have the grease trap regularly and properly maintained and/or pumped, the Landlord shall be entitled to utilize Tenant's contracted vendor (or another vendor of Landlord's choice) to timely and properly maintain and/or pump the grease trap. Tenant shall be responsible for all costs incurred for the maintenance and pumping of the grease trap. Tenant shall also be responsible for all costs and expense to repair the grease trap if the grease trap is damaged by the negligence of the Tenant, its employees, or its contracted vendor."
- u. **Impossibility of Performance.** Under Section 28 of the Lease, payment of Rent is not excused in the event of an "Unavoidable Delay" as defined therein. In light of COVID-19 restrictions and impacts on the Tenant, the Landlord and Tenant agree to add the following provision under Section 28:

"Notwithstanding the foregoing, if on April 1, 2021 or thereafter, governmental restrictions are imposed due to an infectious disease which restrictions limit the Tenant's use of its existing indoor occupancy, Tenant's payment of Base Rent shall be deferred consistent with the extent that the governmental regulations restrict Tenant's existing indoor occupancy ("I.D. Deferred Rent"). By way of example only, if governmental restrictions due to an infectious disease limits Tenant's existing indoor occupancy to 25 percent of Tenant's existing indoor occupancy, 75 percent of Tenant's Base Rent shall be deferred until the I.D. Date of Reopening (as defined below) and Tenant shall be required to pay the Landlord 25 percent of its Base Rent. During the period of time in which Tenant's Base Rent is deferred under this provision, Tenant shall not be entitled to any abatement of the Rent under this Lease or otherwise. Tenant shall have one (1) year from the I.D. Date of Reopening (as defined below) to pay the I.D. Deferred Rent to the Landlord. If Tenant fails to pay the I.D. Deferred Rent within one (1) year from the I.D. Date of Reopening (as defined below), the Landlord, in addition to all other rights and remedies under this Lease and under applicable law, shall have the right to declare all Rent due under the then existing Lease term, including the I.D. Deferred Rent plus interest, as immediately due and payable. Failure to pay the I.D. Deferred Rent shall also be considered a Monetary Default under section 7 of the Lease. The I.D. Deferred Rent shall accrue interest from the I.D. Date of Reopening (as defined below) until paid in full at the rate set forth in section 55.03, Florida Statutes, regarding interest on judgments. As of the I.D. Date of Reopening (as defined below), Tenant shall resume payment of all Rent due under the Lease without abatement or deferral under any provision of the Lease or otherwise. For this provision regarding I.D. Deferred Rent, the "I.D. Date of Reopening" is defined as the earlier of the following dates: (1) the date that all governmental restrictions on Tenant's indoor capacity related to the infectious disease are released; or, (2) one year from the date the governmental restrictions were put in place (even if governmental restrictions are still in place). If new governmental restrictions are mandated during the one (1) year of Tenant's repayment of the I.D. Deferred Rent due to a new infectious disease, the Tenant's

repayment of the I.D. Deferred Rent shall not be abated or deferred. However, this provision will apply to the new infectious disease and will allow for the deferral of the Tenant's Base Rent then accruing consistent with the extent of the new mandated governmental restrictions on Tenant's indoor occupancy."

- v. **Financial Reporting.** Section 29 is amended to remove the reference to "Mulligans" and insert "Tenant's".
  - w. **Exhibit "E", Tenant Improvements.** Exhibit "E", entitled, "Tenant Improvements" is amended as follows:
    - i. The Landlord's Work provision in subsection 1 is deleted in full.
    - ii. The Tenant's Work in Subsection 2 is amended by replacing the first two full sentences as follows: "Tenant shall, but is not required to, at its sole cost and expense, perform all work necessary or desirable for Tenant's occupancy of the Premises (the "Tenant's Work or Improvements"). **Within thirty (30) days of the Commencement Date**, Tenant shall furnish to Landlord, for Landlord's written approval, two complete permit sets (final construction drawings) of plans and specifications for the Tenant's Work (the "Plans")."
    - iii. The Tenant Delays provision in Subsection 4 is deleted in full.
    - iv. The Changes provision in Subsection 5 is deleted in full.
    - v. Exhibit "E-1" regarding the Landlord's Work Schedule is deleted in full.
  - x. **Exhibit "K", Prohibited/Restricted Uses.** Exhibit "K", entitled "Prohibited/Restricted Uses" is amended to add the following: "Other Restricted Uses: The Tenant is prohibited from selling pizza. The Tenant is encouraged to be mindful of the other Project tenants and the products they sell so as not to unnecessarily compete with the other tenants."
  - y. **Exhibit "H", Special Requirements.** Exhibit "H", entitled "Special Requirements" is amended to remove all references to "Mulligans" and insert "Tenant".
  - z. **Lease and all Exhibits.** Except as otherwise specifically addressed in this Second Amendment, throughout the Lease and all Exhibits, the reference to "Mulligans" is deleted and "Tenant" is inserted.
6. **Right of First Refusal.** Tenant/Assignee has expressed an interest in the vacant commercial space of approximately 5,000 sq. ft. directly above the Premises in the Building (the "Vacant Space"). In consideration of this Second Amendment and the Landlord and Tenant/Assignee existing relationship, the Landlord grants the Tenant/Assignee a six (6) month right of first refusal to expand into or otherwise use the Vacant Space. The six (6) month right of first refusal shall run from the Rent Commencement Date and expire six (6) months thereafter. If the Landlord receives an offer from a third party to use the Vacant Space during the pendency of said six (6) months, Landlord shall provide notice of the offer to Tenant/Assignee and Tenant/Assignee shall have fifteen (15) days to activate its right of first refusal or decline. If the Tenant/Assignee fails to respond to the Landlord's notice, it will be assumed that Tenant/Assignee declined to activate its right of first refusal. If Tenant/Assignee seeks to activate its right of first refusal during the aforementioned six (6) months or upon notice of a third party offer from the Landlord, this Lease shall be amended to include the Vacant Space as part of Tenant/Assignee's total square footage at the then applicable rate for all Rent under this Lease including all applicable tax. Tenant/Assignee and Landlord may further negotiate additional terms and conditions for the Tenant/Assignee's assumption of the Vacant Space.



7. **Agreement Unchanged.** Except as amended herein, all other provisions of the Lease shall remain in full force and effect.
8. **Controlling Documents.** To the extent that there exists a conflict between this Second Amendment and the Lease, the terms and conditions of this Second Amendment shall prevail. Whenever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between the provisions of the various documents.
9. **Entire Agreement.** The Parties agree that the Lease (as amended) and this Second Amendment represent the entire agreement between the Parties and supersede all other negotiations, representations, or agreements, either written or verbal.
10. **Counterparts.** Each party may sign one copy of this Second Amendment and together, whether by signed original or facsimiled or e-mailed copy, the signed copies shall constitute one, fully executed Second Amendment.
11. **Effective Date.** This Second Amendment shall not be binding upon the Parties until approved by Tenant/Assignor, Tenant/Assignee and the City Commission of the City of Lake Worth Beach. The Effective Date of this Second Amendment shall be the date this Second Amendment is approved and fully executed by the Landlord.

**IN WITNESS WHEREOF**, the Parties have caused this Second Amendment to the Lease (with Mulligan's Lake Worth Acquisition, LLC) to be executed by their duly authorized representatives on the date(s) set forth below.

**CITY OF LAKE WORTH BEACH, FLORIDA**

**Witness:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Pam Triolo, Mayor

**ATTEST:**

**Date:** \_\_\_\_\_

\_\_\_\_\_  
Deborah M. Andrea, CMC, City Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL  
SUFFICIENCY

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Bruce T. Miller, Financial Services Director

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**SIGNATURE PAGE FOR TENANT/ASSIGNOR AND TENANT/ASSIGNEE FOLLOWS**



Witnesses:

By: Mary Hart  
Print Name: MARY HART

By: Ann Ferguson  
Print Name: Ann Ferguson

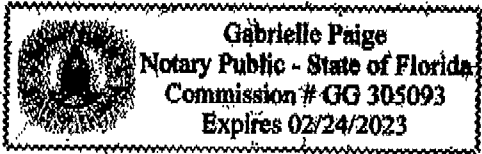
TENANT/ASSIGNOR:  
MULLIGANS LAKE WORTH ACQUISITION,  
LLC

By: George Hart  
George Hart,  
Managing Member

[Corporate Seal]

STATE OF FLORIDA)  
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this 29 day of May, 2020, by George Hart as the owner (title) of \_\_\_\_\_, and who is personally known to me or who has produced the following FL DL as identification.



Notary Public  
Gabrielle Paige  
Print name: Gabrielle Paige  
My commission expires: 02/24/2023

Witnesses:

By: Joel P. Koepfel  
Print Name: JOEL P. KOEPFEL

By: Lisa J. Sandoval  
Print Name: Lisa J. Sandoval

TENANT/ASSIGNEE:  
NUSTART, LTD. d/b/a Viva la Playa

By: NUSTART, LLC  
By: Lee Lipton  
Lee Lipton,  
Manager

[Corporate Seal]

STATE OF FLORIDA)  
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this 29 day of May, 2020, by Lee Lipton, as the Manager of NUSTART, LLC, a Florida limited liability company, General Partner of NUSTART, LTD., a Florida limited partnership, who  is personally known to me or  who has produced the following \_\_\_\_\_ as identification.



LISA J. SANDOVAL  
Commission # GG 335011  
Expires May 19, 2023  
Bonded thru Budget Notary Services

Notary Public  
Lisa J. Sandoval  
Print name: Lisa J. Sandoval  
My commission expires: May 19, 2023

**EXHIBIT "1"**  
**Section 1.15 Base Rent**

<u>Period</u>	<u>Rate P/S/F Per Annum</u>	<u>Monthly Base Rent</u>	<u>Period Base Rent</u>
1 <sup>st</sup> year	\$38.169	\$15,910.11	\$190,921.34
2 <sup>nd</sup> year	\$39.505	\$16,467.00	\$197,604.01
3 <sup>rd</sup> year	\$40.887	\$17,043.06	\$204,516.77
4 <sup>th</sup> year	\$42.318	\$17,639.55	\$211,674.63
5 <sup>th</sup> year	\$43.799	\$18,256.88	\$219,082.59
6 <sup>th</sup> year	\$45.330	\$18,895.06	\$226,740.66
7 <sup>th</sup> year	\$46.917	\$19,556.57	\$234,678.83
8 <sup>th</sup> year	\$48.559	\$20,241.01	\$242,892.11
9 <sup>th</sup> year	\$50.259	\$20,949.63	\$251,395.51
10 <sup>th</sup> year	\$52.018	\$21,682.84	\$260,194.03



# EXECUTIVE BRIEF REGULAR MEETING

**AGENDA DATE:** June 2, 2020

**DEPARTMENT:** Financial Services

## **TITLE:**

Resolution No 20-2020 - authorizing issuance of Non-Ad Valorem Revenue Bonds Series 2020A and Taxable Series 2020B Bond to fund cash flow deficits related to the COVID-19 pandemic

## **SUMMARY:**

Authorization to issue \$20,000,000 in aggregate principal amount of City of Lake Worth Beach Non-Ad Valorem Revenue Bonds, Series 2020A and Taxable Series 2020B to provide funds for the purpose of financing the acquisition of certain capital improvements in and for the City and financing certain costs of the City.

## **BACKGROUND AND JUSTIFICATION:**

As the result of the Covid-19/Corona Virus pandemic, the City has, and is expected to continue experiencing significant decreased revenue collections. Additionally, there is no certainty to the depth or duration of the impact, or how many cycles the City may experience as a result of the pandemic. Therefore, to mitigate potential working capital shortages, the City needs to be in a position to access an available funding source if/or when needed. It is expected that these funds will cover both operating and capital budget expenditures, including funding to initiate capital projects waiting on issuing other debt series.

Generally speaking, impacted revenue sources can be characterized as either timing differences, or lost revenue. For example, although the percentage of utility payments may be low as compared to historical experience, it is anticipated that these receivables will be collected over time. As such, the recognition of these revenues result in timing differences. On the other-hand, the late fees and penalties associated with these late payments are not expected to be collected, therefore these revenue streams are categorized as lost revenue.

It is important to understand that all funds do not share the same revenue streams and are therefore subject to varying degrees of timing versus lost revenue pressure. Based on to date analysis, it is estimated that the City's total monthly revenue impact is approximately \$950,000; \$585,000 timing and the remaining \$365,000 lost revenue. If there is a prolonged shut-down, it is expected that the monthly impact will increase as it becomes increasingly difficult for customers to stay current. It is also important to understand that when, what time of year, a shut-down occurs this too will impact revenue collections. For example, beach and golf course revenues will be impacted greater during peak season versus non-peak months.

In order to maximize the use of funds the City is considering a taxable component of the working capital debt. Since interest rates are low, there is not a significant difference between the taxable and non-taxable interest rate so the annual debt service would not be materially impacted. However; taxable bonds allow for a broader use of funds thereby avoiding potential IRS compliance issues. Under consideration are different debt structures which will depend on final loan approvals and underwriting constraints, but at currently it is expected that the bond will

have a ten to twelve-year maturity with a balloon payment and semi-annual interest payments with no pre-payment penalties thereby allowing the City to pay the loan off prior to term if able.

Dependent on the borrowing process, the principle being considered is between \$10 to \$20 million thereby providing opportunity to fund capital projects. The annual debt service, interest payment, for each \$10 million at 3% is \$300,000, which will be allocated between each fund based on its use of proceeds. Additionally, I would recommend creating a sinking fund if the debt is structured with a balloon payment. This would equal \$1 million per year, also allocated by fund.

The ordinance was approved unanimously at the Special City Commission Meeting on May 21, 2020.

**MOTION:**

Move to approve/disapprove Resolution 20-2020 - authorizing issuance of Non-Ad Valorem Revenue Bonds Series 2020A and Taxable Series 2020B Bond to fund cash flow deficits.

**ATTACHMENT(S):**

Fiscal Impact Analysis  
Resolution 20-2020

## FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Sinking Fund	\$0	\$0	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00
Operating Expenditures	\$ 150,000.00	\$ 300,000.00	\$ 300,000.00	\$ 300,000.00	\$ 300,000.00
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Net Fiscal Impact	\$ 150,000.00	\$ 300,000.00	\$1,300,000.00	\$1,300,000.00	\$1,300,000.00
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

### B. Recommended Sources of Funds/Summary of Fiscal Impact:

Account Number	Account Description	Project Number	FY20 Budget	Current Balance	Agenda Expenditure	Balance
	Non-Ad Valorem Revenue					

### C. Department Fiscal Review:

Bruce Miller, Financial Services Director

**CITY OF LAKE WORTH BEACH, FLORIDA**

**NON-AD VALOREM REVENUE BONDS  
SERIES 2020A AND TAXABLE SERIES 2020B  
BOND RESOLUTION**

**ADOPTED JUNE 2, 2020**

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**RESOLUTION NO. 20-2020**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA AUTHORIZING THE ISSUANCE OF NOT EXCEEDING \$20,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF CITY OF LAKE WORTH BEACH, FLORIDA NON-AD VALOREM REVENUE BONDS, SERIES 2020A AND TAXABLE SERIES 2020B, TO PROVIDE FUNDS FOR THE PURPOSE OF FINANCING THE ACQUISITION OF CERTAIN CAPITAL IMPROVEMENTS IN AND FOR THE CITY AND FINANCING CERTAIN COSTS OF THE CITY; COVENANTING TO BUDGET AND APPROPRIATE CERTAIN LEGALLY AVAILABLE NON-AD VALOREM REVENUES TO PAY DEBT SERVICE ON THE BONDS; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF THE BONDS; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE BONDS; AND PROVIDING FOR AN EFFECTIVE DATE FOR THIS RESOLUTION.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA:**

**ARTICLE I  
GENERAL**

**SECTION 1.01. DEFINITIONS.** When used in this Resolution, the following terms shall have the following meanings, unless the context clearly otherwise requires:

“**Act**” shall mean Chapter 166, Parts I and II, Florida Statutes, the City Charter of the City, an Ordinance of the City enacted June 2, 2020 with respect to indebtedness, and other applicable provisions of law.

“**Amortization Installments**” shall mean an amount designated as such pursuant to the provisions of this Resolution and established with respect to Term Bonds.

“**Annual Audit**” shall mean the annual audit prepared pursuant to the requirements of Section 5.03 hereof.

“**Annual Budget**” shall mean the annual budget prepared pursuant to the requirements of Section 5.02 hereof.

“**Annual Debt Service**” shall mean the aggregate amount of Debt Service on the Bonds for each applicable Fiscal Year.

**“Authorized Issuer Officer”** shall mean any person authorized by resolution of the Issuer to perform such act or sign such document.

**“Bond Counsel”** shall mean Nabors, Giblin & Nickerson, P.A. or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America.

**“Bond Insurance Policy”** shall mean the insurance policy, if any, issued by the Insurer guaranteeing the scheduled payment of principal of and interest on the Bonds when due.

**“Bondholder”** or **“Holder”** or **“holder”** or any similar term, when used with reference to a Bond or Bonds, shall mean any person who shall be the registered owner of any Outstanding Bond or Bonds as provided in the registration books of the Issuer.

**“Bonds”** shall mean the Series 2020A Bonds and Taxable Series 2020B Bonds.

**“City Clerk”** shall mean the City Clerk of the City, or such other person as may be duly authorized to act on his or her behalf.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended, and the regulations and rules thereunder in effect or proposed.

**“Cost”** or **“Costs”** shall mean, in connection with proceeds of the Series 2020A Bonds (1) the Issuer's cost of physical construction; (2) costs of acquisition by or for the Issuer of the Project; (3) costs of land and interests therein and the cost of the Issuer incidental to such acquisition; (4) the cost of any indemnity and surety bonds and premiums for insurance during construction; (5) all interest due to be paid on the Bonds and other obligations relating to the Project during, and if advisable by the Issuer, for up to one (1) year after the end of, the construction period of such Project; (6) engineering, legal and other consultant fees and expenses; (7) costs and expenses of the financing incurred during, and if advisable by the Issuer, for up to one (1) year after the end of, the construction period for such Project, including audits, fees and expenses of any Paying Agent, Registrar, or depository; (8) payments, when due (whether at the maturity of principal or the due date of interest or upon redemption) on any indebtedness of the Issuer (other than the Bonds) incurred for such Project; (9) costs of machinery or equipment required by the Issuer for the commencement of operation of such Project; (10) any other costs properly attributable to such Project, as determined by generally accepted accounting principles, and shall include reimbursement to the Issuer for any such items of Cost heretofore paid by the Issuer, subject to the restrictions hereof. Any Supplemental Resolution may provide for additional items to be included in the aforesaid Costs. **“Cost”** or **“Costs”**, in connection with the Taxable Series 2020B Bonds, shall mean the City's costs of operations of City government, including the payment of employee salaries and benefits and any reserves therefor, necessary to ensure the continued operations of essential City services, as well as the refinancing of capital projects previously undertaken by the City.

**“Counterparty”** shall mean the entity entering into a Hedge Agreement with the Issuer. Counterparty would also include any guarantor of such entity's obligations under such Hedge Agreement.

**“Debt”** means at any date (without duplication) all of the following to the extent that they are secured by or payable in whole or in part from any Non-Ad Valorem Revenues: (A) all obligations of the Issuer for borrowed money or evidenced by bonds, debentures, notes or other similar instruments; (B) all obligations of the Issuer to pay the deferred purchase price of property or services, except trade accounts payable under normal trade terms and which arise in the ordinary course of business; (C) all obligations of the Issuer as lessee under capitalized leases; and (D) all indebtedness of other Persons to the extent guaranteed by, or secured by, Non-Ad Valorem Revenues of the Issuer; provided, however, if with respect to any obligation contemplated in (A), (B), or (C) above, the Issuer has covenanted to budget and appropriate sufficient Non-Ad Valorem Revenues to satisfy such obligation but has not secured such obligation with a lien on or pledge of any Non-Ad Valorem Revenues then, and with respect to any obligation contemplated in (D) above, such obligation shall not be considered “Debt” for purposes of this Resolution unless the Issuer has actually used Non-Ad Valorem Revenues to satisfy such obligation during the immediately preceding Fiscal Year or reasonably expects to use Non-Ad Valorem Revenues to satisfy such obligation in the current or immediately succeeding Fiscal Year. After an obligation is considered “Debt” as a result of the proviso set forth in the immediately preceding sentence, it shall continue to be considered “Debt” until the Issuer has not used any Non-Ad Valorem Revenues to satisfy such obligation for two consecutive Fiscal Years.

**“Debt Service”** shall mean, at any time, the aggregate amount in the then applicable period of time of (1) interest required to be paid on the Outstanding Bonds during such period of time, except to the extent that such interest is to be paid from Bond proceeds for such purpose, (2) principal of Outstanding Serial Bonds maturing in such period of time, and (3) the Amortization Installments with respect to Outstanding Term Bonds maturing in such period of time. For purposes of this definition, (A) if the Bonds have 25% or more of the aggregate principal amount coming due in any one year, Debt Service shall be determined on the Bonds during such period of time as if the principal of and interest on such Bonds were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of 25 years, and (B) with respect to debt service on any Bonds which are subject to a Qualified Hedge Agreement, interest on such Bonds during the term of such Qualified Hedge Agreement shall be deemed to be the Hedge Payments coming due during such period of time.

**“Federal Securities”** shall mean non-callable direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of Treasury) or non-callable obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

**“Fiscal Year”** shall mean the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be prescribed by law.

**“Fitch”** shall mean Fitch, Inc., its successors and assigns.

**“Governing Body”** shall mean the City Commission of the City of Lake Worth Beach, Florida or its successor in function.

**“Hedge Agreement”** shall mean an agreement in writing between the Issuer and the Counterparty pursuant to which (1) the Issuer agrees to pay to the Counterparty an amount, either at one time or periodically, which may, but is not required to, be determined by reference to the amount of interest (which may be at a fixed or variable rate) payable on debt (or a notional amount) specified in such agreement during the period specified in such agreement and (2) the Counterparty agrees to pay to the Issuer an amount, either at one time or periodically, which may, but is not required to, be determined by reference to the amount of interest (which may be at a fixed or variable rate) payable on debt (or a notional amount) specified in such agreement during the period specified in such agreement.

**“Hedge Payments”** shall mean any amounts payable by the Issuer on the debt or the related notional amount under a Qualified Hedge Agreement; excluding, however, any payments due as a penalty or by virtue of termination of a Qualified Hedge Agreement or any obligation of the Issuer to provide collateral.

**“Insurer”** shall mean the municipal bond insurer, if any, designated by Supplemental Resolution of the Issuer.

**“Interest Date”** or **“Interest Payment Date”** shall be such dates as established by Supplemental Resolution.

**“Issuer”** or **“City”** shall mean the City of Lake Worth Beach, Florida.

**“Maximum Annual Debt Service”** shall mean the largest aggregate amount of the Annual Debt Service coming due in any Fiscal Year in which Bonds are Outstanding.

**“Mayor”** shall mean the Mayor of the City of Lake Worth Beach, Florida, and such other person as may be duly authorized to act on his or her behalf.

**“Moody's Investors Service”** or **“Moody's”** shall mean Moody's Investors Service, and any assigns and successors thereto.

**“Non-Ad Valorem Revenues”** shall mean total revenues of the Issuer from any source whatsoever, other than revenues generated from ad valorem taxation on real or personal property, and which are legally available to make the payments required herein, after application as necessary for the payment of services and programs which are for essential public purposes affecting the health, safety and welfare of inhabitants of the City or are otherwise mandated by law.

**“Outstanding,”** when used with reference to Bonds and as of any particular date, shall describe all Bonds theretofore and thereupon being authenticated and delivered except (1) any Bond in lieu of which other Bond or Bonds have been issued under Section 2.06 hereof to replace

lost, mutilated or destroyed Bonds, (2) any Bond surrendered by the Holder thereof in exchange for other Bond or Bonds under Sections 2.05 and 2.07 hereof, (3) Bonds deemed to have been paid pursuant to Section 8.01 hereof and (4) Bonds cancelled after purchase in the open market or because of payment at or redemption prior to maturity.

**“Paying Agent”** shall mean any paying agent for Bonds appointed by or pursuant to resolution or Supplemental Resolution and its successor or assigns, and any other Person which may at any time be substituted in its place pursuant to this Resolution.

**“Person”** shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, governmental entity or other legal entity.

**“Prerefunded Obligations”** shall mean any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (1) which are (A) not callable prior to maturity or (B) as to which irrevocable instructions have been given to the fiduciary for such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (2) which are fully secured as to principal, redemption premium, if any, and interest by a fund held by a fiduciary consisting only of cash or Federal Securities, secured in substantially the manner set forth in Section 8.01 hereof, which fund may be applied only to the payment of such principal of, redemption premium, if any, and interest on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as the case may be, (3) as to which the principal of and interest on the Federal Securities which have been deposited in such fund along with any cash on deposit in such fund are sufficient, as verified by an independent certified public accountant or other expert in such matters, to pay principal of, redemption premium, if any, and interest on the bonds or other obligations on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in clause (1) above and are not available to satisfy any other claims, including those against the fiduciary holding the same, and (4) which are rated in the highest rating category (without regard to gradations, such as “+” or “-” or “1, 2 or 3” of such categories) of one of the Rating Agencies.

**“Project”** shall mean collectively, the Series 2020A Project and the Taxable Series 2020B Project.

**“Qualified Hedge Agreement”** shall mean a Hedge Agreement with respect to which the Issuer has received written notice from at least two of the Rating Agencies that the rating of the Counterparty is not less than “A.”

**“Rating Agencies”** shall mean Moody's, S&P, Fitch or such other nationally recognized rating agency as shall maintain a rating on any Series of Bonds.

**“Redemption Price”** shall mean, with respect to any Bond or portion thereof, the principal amount or portion thereof, plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or this Resolution.

**“Refunding Securities”** shall mean Federal Securities and, to the extent approved in writing by the Insurer, if any, Prerefunded Obligations.

**“Registrar”** shall mean any registrar for the Bonds appointed by or pursuant to Supplemental Resolution and its successors and assigns, and any other Person which may at any time be substituted in its place pursuant to this Resolution.

**“Reserve Fund”** shall mean the fund established pursuant to Section 4.06.

**“Reserve Fund Insurance Policy”** shall have the meaning set forth in Section 4.06 hereof.

**“Reserve Fund Letter of Credit”** shall have the meaning set forth in Section 4.06 hereof.

**“Reserve Fund Requirement”** shall mean, unless otherwise established by Supplemental Resolution, an amount equal to the lesser of (1) the Maximum Annual Debt Service on the Bonds, (2) 125% of the average annual Debt Service on the Bonds, (3) 10% of the proceeds of the Bonds.

**“Resolution”** shall mean this Resolution, as the same may from time to time be amended, modified or supplemented by Supplemental Resolution.

**“Serial Bonds”** shall mean all of the Bonds other than the Term Bonds.

**“Series 2020A Bonds”** shall mean the City’s Non-Ad Valorem Revenue Bonds, Series 2020A.

**“Series 2020A Project”** shall mean the payment of Costs related to capital improvements in and for the City, as established by resolution of the Governing Body.

**“Standard and Poor's Ratings Group”** or **“S&P”** shall mean S&P Global Ratings, and any assigns and successors thereto.

**“State”** shall mean the State of Florida.

**“Supplemental Resolution”** shall mean any resolution of the Issuer amending or supplementing this Resolution enacted and becoming effective in accordance with the terms of Sections 7.01, 7.02 and 7.03 hereof.

**“Taxable Series 2020B Bonds”** shall mean the City’s Taxable Non-Ad Valorem Revenue Bonds, Series 2020B.

**“Taxable Series 2020B Project”** shall mean the payment of Costs related to the continued operation of essential City services or the establishment of reserves in connection therewith, for which City revenues are otherwise insufficient due to the financial impact of the COVID-19 pandemic, and shall also include the refinancing of certain capital projects of the City as established by resolution of the Governing Body.

**“Term Bonds”** shall mean those Bonds which shall be designated as Term Bonds hereby.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof,” and any similar terms, shall refer to this Resolution; the term “heretofore” shall mean before the date of adoption of this Resolution; and the term “hereafter” shall mean after the date of adoption of this Resolution.

Words importing the masculine gender include every other gender.

Words importing the singular number include the plural number, and vice versa.

**SECTION 1.02. AUTHORITY FOR RESOLUTION.** This Resolution is adopted pursuant to the provisions of the Act. The Issuer has ascertained and hereby determines that adoption of this Resolution is necessary to carry out the powers, purposes and duties expressly provided in the Act, that each and every matter and thing as to which provision is made herein is necessary in order to carry out and effectuate the purposes of the Issuer in accordance with the Act and to carry out and effectuate the plan and purpose of the Act, and that the powers of the Issuer herein exercised are in each case exercised in accordance with the provisions of the Act and in furtherance of the purposes of the Issuer.

**SECTION 1.03. RESOLUTION TO CONSTITUTE CONTRACT.** In consideration of the purchase and acceptance of any or all of the Bonds by those who shall hold the same from time to time, the provisions of this Resolution shall be a part of the contract of the Issuer with the Holders of the Bonds, and shall be deemed to be and shall constitute a contract between the Issuer, the Holders from time to time of the Bonds and the Insurer, if any. The pledge made in the Resolution and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Issuer shall be for the equal benefit, protection and security of the Holders of any and all of said Bonds and the Insurer, but only in accordance with the terms hereof. All of the Bonds, regardless of the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof except as expressly provided in or pursuant to this Resolution.

**SECTION 1.04. FINDINGS.** It is hereby ascertained, determined and declared that:

(A) The Issuer has deemed it in the best interest of its citizens to acquire and construct the improvements and pay the Costs consisting of the Project.

(B) The Issuer deems it to be in its best interest to issue the Bonds for the principal purpose of financing the Project, as determined pursuant to the provisions herein.

(C) The Bonds shall be secured solely by a covenant of the Issuer, subject to certain conditions set forth herein, to budget and appropriate from Non-Ad Valorem Revenues amounts sufficient to pay the principal of and interest on the Bonds, when due.

(D) The principal of and interest on the Bonds to be issued pursuant to this Resolution, and all other payments provided for in this Resolution will be paid solely from Non-Ad Valorem Revenues in accordance with the terms hereof; and the ad valorem taxing power of the Issuer will never be necessary or authorized to pay the principal of and interest on the Bonds to be issued



pursuant to this Resolution, or to make any other payments provided for in this Resolution, and the Bonds shall not constitute a lien upon any property whatsoever of or in the Issuer.

**SECTION 1.05. AUTHORIZATION OF THE PROJECT.** The acquisition and implementation of the Project is hereby authorized.

**ARTICLE II**  
**AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS**

**SECTION 2.01. AUTHORIZATION AND DESCRIPTION OF BONDS.** This Resolution creates an issue of Bonds of the Issuer to be designated as the “City of Lake Worth Beach, Florida Non-Ad Valorem Revenue Bonds, Series 2020A and Taxable Non-Ad Valorem Revenue Bonds, Series 2020B,” issued in the aggregate principal amount of not exceeding \$20,000,000. The Mayor is authorized to modify the series designation of such Bonds, in her discretion, prior to the issuance thereof, and to determine the aggregate principal amount of each series of the Bonds. The Bonds are issued for the principal purposes of financing the Project and paying certain costs of issuance incurred with respect to the Bonds. The Mayor is also authorized and directed to determine whether the Bonds shall be insured by a Bond Insurance Policy or whether the Bonds will be issued uninsured.

The Bonds shall be dated as of their date of delivery (or such other date as the Mayor may determine), shall be numbered consecutively from one upward in order of maturity preceded by the letter “R”, shall be issued in the form of fully registered Bonds in denominations of \$5,000 and any integral multiple thereof, shall be initially in book-entry only form of registration, shall bear interest from their date of delivery (or such other date as the Mayor may determine), payable semi-annually on each Interest Date, as established by Supplemental Resolution. The Bonds shall bear interest computed on the basis of a 360-day year consisting of twelve 30-day months.

The Bonds shall bear interest at such rates and yields and, shall mature as established by Supplemental Resolution.

The principal of, or Redemption Price, if applicable, on the Bonds are payable upon presentation and surrender of the Bonds at the office of the Paying Agent. Interest payable on any Bond on any Interest Date will be paid by check or draft of the Paying Agent to the Holder in whose name such Bond shall be registered at the close of business on the date which shall be the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Date, or at the request of such Holder, by bank wire transfer for the account of such Holder. All payments of principal of, or Redemption Price, if applicable, and interest on the Bonds 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.

**SECTION 2.02. APPLICATION OF BOND PROCEEDS.** The proceeds derived from the sale of the Bonds, including premium, if any, shall be applied by the Issuer as follows:

(A) If the Mayor determines that the Bonds will be insured by a Bond Insurance Policy in accordance with Section 2.01 hereof, a sufficient amount of the Bond proceeds will be applied to the payment of the premium for the Bond Insurance Policy.

(B) A sufficient amount of Bond proceeds necessary to pay costs and expenses relating to the issuance of the Bonds shall be used for such purpose.

(C) A sufficient amount of Bond proceeds to provide for the Reserve Fund Requirement, if any, including the purchase of a Reserve Fund Insurance Policy or Reserve Fund Letter of Credit, shall be deposited or applied for such purposes.

(D) The remaining Bond proceeds shall be deposited into the Project Fund and used to pay the costs of the Project.

**SECTION 2.03. EXECUTION OF BONDS.** The Bonds shall be executed in the name of the Issuer with the manual or facsimile signature of the Mayor and the official seal of the Issuer shall be imprinted thereon, attested with the manual or facsimile signature of the City Clerk. In case any one or more of the officers who shall have signed or sealed any of the Bonds or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bond may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of such Bond shall hold the proper office of the Issuer, although at the date of such Bond such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such offices at any time after the date of the adoption of this Resolution, notwithstanding that either or both shall have ceased to hold such office at the time the Bonds shall be actually sold and delivered.

**SECTION 2.04. AUTHENTICATION.** No Bond shall be secured hereunder or entitled to the benefit hereof or shall be valid or obligatory for any purpose unless there shall be manually endorsed on such Bond a certificate of authentication by the Registrar or such other entity as may be approved by the Issuer for such purpose. Such certificate on any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Resolution. The form of such certificate shall be substantially in the form provided in Section 2.09 hereof.

**SECTION 2.05. TEMPORARY BONDS.** Until definitive Bonds are prepared, the Issuer may execute, in the same manner as is provided in Section 2.03, and deliver, upon authentication by the Registrar pursuant to Section 2.04 hereof, in lieu of definitive Bonds, but subject to the same provisions, limitations and conditions as the definitive Bonds, except as to the denominations thereof, one or more temporary Bonds substantially of the tenor of the definitive Bonds in lieu of which such temporary Bond or Bonds are issued, in denominations authorized by the Issuer by subsequent resolution and with such omissions, insertions and variations as may be appropriate to temporary Bonds. The Issuer, at its own expense, shall prepare and execute definitive Bonds, which shall be authenticated by the Registrar. Upon the surrender of such temporary Bonds for exchange, the Registrar, without charge to the Holder thereof, shall deliver in exchange therefor definitive Bonds, of the same aggregate principal amount and maturity as the temporary Bonds surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefits and security as definitive Bonds issued pursuant to this Resolution. All temporary Bonds surrendered in exchange for another temporary Bond or Bonds or for a definitive Bond or Bonds shall be forthwith cancelled by the Registrar.

**SECTION 2.06. BONDS MUTILATED, DESTROYED, STOLEN OR LOST.** In case any Bond shall become mutilated, or be destroyed, stolen or lost, the Issuer may, in its discretion, issue and deliver, and the Registrar shall authenticate, a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder furnishing the Issuer and the Registrar proof of his ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe, and paying such expenses as the Issuer and the Registrar may incur. All Bonds so surrendered shall be cancelled by the Registrar. If any of the Bonds shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same or cause the Bond to be paid, upon being indemnified as aforesaid, and if such Bonds be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Bonds issued pursuant to this Section 2.06 shall constitute original, additional contractual obligations on the part of the Issuer whether or not the lost, stolen or destroyed Bond be at any time found by anyone, and such duplicate Bond shall be entitled to equal and proportionate benefits and rights to the same extent as all other Bonds issued hereunder.

**SECTION 2.07. INTERCHANGEABILITY, NEGOTIABILITY AND TRANSFER.** Bonds, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing, may, at the option of the Holder thereof, be exchanged for an equal aggregate principal amount of registered Bonds of the same maturity of any other authorized denominations.

The Bonds issued under this Resolution shall be and have all the qualities and incidents of negotiable instruments under the law merchant and the Uniform Commercial Code of the State of Florida, subject to the provisions for registration and transfer contained in this Resolution and in the Bonds. So long as any of the Bonds shall remain Outstanding, the Issuer shall maintain and keep, at the office of the Registrar, books for the registration and transfer of the Bonds.

Each Bond shall be transferable only upon the books of the Issuer, at the office of the Registrar, under such reasonable regulations as the Issuer may prescribe, by the Holder thereof in person or by his attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar duly executed and guaranteed by the Holder or his duly authorized attorney. Upon the transfer of any such Bond, the Issuer shall issue, and cause to be authenticated, in the name of the transferee a new Bond or Bonds of the same aggregate principal amount and maturity as the surrendered Bond. The Issuer, the Registrar and any Paying Agent or fiduciary of the Issuer may deem and treat the Person in whose name any Outstanding Bond shall be registered upon the books of the Issuer as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price, if applicable, and interest on such Bond and for all other purposes, and all such payments so made to any such Holder or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Registrar nor any Paying Agent or other fiduciary of the Issuer shall be affected by any notice to the contrary.

The Registrar, in any case where it is not also the Paying Agent in respect to any Bonds, forthwith (A) following the fifteenth day prior to an Interest Date for the Bonds; (B) following the fifteenth day next preceding the date of first mailing of notice of redemption of any Bonds; and (C) at any other time as reasonably requested by the Paying Agent of such Bonds, shall certify and furnish to such Paying Agent the names, addresses and holdings of Bondholders and any other relevant information reflected in the registration books. Any Paying Agent of any fully registered Bond shall effect payment of interest on such Bonds by mailing a check to the Holder entitled thereto or may, in lieu thereof, upon the request and expense of such Holder, transmit such payment by bank wire transfer for the account of such Holder.

In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, the Issuer shall execute and deliver Bonds and the Registrar shall authenticate such Bonds in accordance with the provisions of this Resolution. Execution of Bonds by the Mayor and City Clerk for purposes of exchanging, replacing or transferring Bonds may occur at the time of the original delivery of the Bonds. All Bonds surrendered in any such exchanges or transfers shall be held by the Registrar in safekeeping until directed by the Issuer to be cancelled by the Registrar. For every such exchange or transfer of Bonds, the Issuer or the Registrar may make a charge sufficient to reimburse it for any tax, fee, expense or other governmental charge required to be paid with respect to such exchange or transfer. The Issuer and the Registrar shall not be obligated to make any such exchange or transfer of Bonds during the 15 days next preceding an Interest Date on the Bonds, or, in the case of any proposed redemption of Bonds, then, for the Bonds subject to redemption, during the 15 days next preceding the date of the first mailing of notice of such redemption and continuing until such redemption date.

**SECTION 2.08. FULL BOOK ENTRY FOR BONDS.** Notwithstanding the provisions set forth in Section 2.07 hereof, the Bonds shall be initially issued in the form of a separate single certificated fully registered bond certificate for each of the maturities of the Bonds. Upon initial issuance, the ownership of each such Bond shall be registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”). All of the Outstanding Bonds shall be registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of DTC. As long as the Bonds shall be registered in the name of Cede & Co., all payments of principal on the Bonds shall be made by the Paying Agent by check or draft or by bank wire transfer to Cede & Co., as Holder of the Bonds, upon presentation of the Bonds to be paid, to the Paying Agent.

With respect to the Bonds registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of DTC, the Issuer, the Registrar and the Paying Agent shall have no responsibility or obligation to any direct or indirect participant in the DTC book-entry program (the “Participants”). Without limiting the immediately preceding sentence, the Issuer, the Registrar and the Paying Agent shall have no responsibility or obligation with respect to (A) the accuracy of the records of DTC, Cede & Co. or any Participant with respect to any ownership interest on the Bonds, (B) the delivery to any Participant or any other Person other than a Bondholder, as shown in the registration books kept by the Registrar, of any notice with respect to the Bonds, including any notice of redemption, or (C) the payment to any Participant or any other Person, other than a Bondholder, as shown in the registration books kept by the Registrar, of any

amount with respect to principal of, redemption premium, if any, or interest on the Bonds. The Issuer, the Registrar and the Paying Agent shall treat and consider the Person in whose name each Bond is registered in the registration books kept by the Registrar as the Holder and absolute owner of such Bond for the purpose of payment of principal, redemption premium, if any, and interest with respect to such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Paying Agent shall pay all principal of, redemption premium, if any, and interest on the Bonds only to or upon the order of the respective Holders, as shown in the registration books kept by the Registrar, or their respective attorneys duly authorized in writing, as provided herein, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to payment of principal, redemption premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No Person other than a Holder, as shown in the registration books kept by the Registrar, shall receive a certificated Bond evidencing the obligation of the Issuer to make payments of principal, redemption premium, if any, and interest pursuant to the provisions of this Resolution. Upon delivery by DTC to the Issuer of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in Section 2.07 with respect to transfers during the 15 days next preceding an Interest Date or mailing of notice of redemption, the words "Cede & Co." shall refer to such new nominee of DTC; and upon receipt of such notice, the Issuer shall promptly deliver a copy of the same to the Registrar and the Paying Agent.

Upon (A) receipt by the Issuer of written notice from DTC (i) to the effect that a continuation of the requirement that all of the Outstanding Bonds be registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of DTC, is not in the best interest of the beneficial owners of the Bonds or (ii) to the effect that DTC is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of DTC hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, or (B) determination by the Issuer that such book-entry only system is burdensome or undesirable to the Issuer and compliance by the Issuer of all applicable policies and procedures of DTC regarding discontinuance of the book entry registration system, the Bonds shall no longer be restricted to being registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of DTC, but may be registered in whatever name or names Holders shall designate, in accordance with the provisions of this Resolution. In such event, the Issuer shall issue, and the Registrar shall authenticate, transfer and exchange the Bonds of like principal amount and maturity, in denominations of \$5,000 or any integral multiple thereof to the Holders thereof. The foregoing notwithstanding, until such time as participation in the book-entry only system is discontinued, the provisions set forth in the Blanket Letter of Representations previously executed by the Issuer and delivered to DTC shall apply to the payment of principal of and interest on the Bonds.

**SECTION 2.09. FORM OF BONDS.** The text of the Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and/or desirable and approved by the Mayor prior to the issuance thereof (which necessity and/or desirability and approval shall be presumed by such officer's execution of the Bonds and the Issuer's delivery of the Bonds to the purchaser or purchasers thereof):



**UNITED STATES OF AMERICA  
STATE OF FLORIDA  
CITY OF LAKE WORTH BEACH, FLORIDA  
NON-AD VALOREM REVENUE BONDS,  
[SERIES 2020A] [TAXABLE SERIES 2020B]**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP Number</u>
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Registered Holder:

Principal Amount:

**KNOW ALL MEN BY THESE PRESENTS**, that the City of Lake Worth Beach, Florida, a municipal corporation and public body corporate and politic of the State of Florida (the “Issuer”), for value received, hereby promises to pay, solely from Non-Ad Valorem Revenues hereinafter described, to the Registered Holder identified above, or registered assigns as hereinafter provided, on the Maturity Date identified above, the Principal Amount identified above and to pay interest on such Principal Amount from the Date of Original Issue identified above or from the most recent interest payment date to which interest has been paid at the Interest Rate per annum identified above on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_ until such Principal Amount shall have been paid, except as the provisions hereinafter set forth with respect to redemption prior to maturity may be or become applicable hereto.

Such Principal Amount and interest and the premium, if any, on this Bond are payable in any coin or currency of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts. Such Principal Amount and the premium, if any, on this Bond, are payable at the designated corporate trust office of \_\_\_\_\_, as Paying Agent. Payment of each installment of interest shall be made to the person in whose name this Bond shall be registered on the registration books of the Issuer maintained by \_\_\_\_\_, as Registrar, at the close of business on the date which shall be the fifteenth day (whether or not a business day) next preceding each interest payment date and shall be paid by a check of such Paying Agent mailed to such Registered Holder at the address appearing on such registration books or, at the request of such Registered Holder, by bank wire transfer for the account of such Holder. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months.



This Bond is one of an authorized issue of Bonds in the aggregate principal amount of \$\_\_\_\_\_ (the “Bonds”) of like date, tenor and effect, except as to maturity date, interest rate, denomination and number, issued under the authority of and in full compliance with the Constitution and laws of the State of Florida, particularly Chapter 166, Part II, Florida Statutes, and other applicable provisions of law (the “Act”), and a resolution duly adopted by the City Commission of the Issuer on June 2, 2020, as the same may be amended and supplemented (the “Resolution”), and is subject to all the terms and conditions of the Resolution. The Bonds are being issued simultaneously with the Issuer’s \$\_\_\_\_\_ [Taxable] Non-Ad Valorem Revenue Bonds, Series 2020[A] [B], which are secured on the same basis as the Bonds. The Bonds are being issued to finance [certain capital improvements] [the payment of operating costs] in and for the Issuer.

Pursuant to the Resolution, the Issuer has covenanted to appropriate in its annual budget, by amendment, if necessary, such amounts of Non-Ad Valorem Revenues (as defined in the Resolution) which are not otherwise pledged, restricted or encumbered, as shall be necessary to pay the principal of and interest on the Bonds when due and all required payments to the Reserve Fund established under the Resolution. Such covenant to appropriate Non-Ad Valorem Revenues is not a pledge by the Issuer of such Non-Ad Valorem Revenues and is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds or other debt instruments) and also to the payment of services and programs which are for essential public purposes affecting the health, safety and welfare of the inhabitants of the Issuer or which are legally mandated by applicable law.

IT IS EXPRESSLY AGREED BY THE REGISTERED HOLDER OF THIS BOND THAT THE FULL FAITH AND CREDIT OF THE ISSUER, THE STATE OF FLORIDA, OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF, ARE NOT PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS BOND, AND THAT SUCH HOLDER SHALL NEVER HAVE THE RIGHT TO REQUIRE OR COMPEL THE EXERCISE OF ANY TAXING POWER OF THE ISSUER, THE STATE OF FLORIDA, OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF TO THE PAYMENT OF SUCH PRINCIPAL, PREMIUM, IF ANY, AND INTEREST. THIS BOND AND THE OBLIGATION EVIDENCED HEREBY SHALL NOT CONSTITUTE A LIEN UPON ANY PROPERTY OF THE ISSUER, BUT SHALL BE PAYABLE SOLELY FROM THE AMOUNTS BUDGETED AND APPROPRIATED BY THE ISSUER AS DESCRIBED ABOVE AND AS PROVIDED IN THE RESOLUTION.

The Issuer has established a book-entry system of registration for the Bonds. Except as specifically provided otherwise in the Resolution, an agent will hold this Bond on behalf of the beneficial owner thereof. By acceptance of a confirmation of purchase, delivery or transfer, the beneficial owner of this Bond shall be deemed to have agreed to such arrangement.

This Bond is transferable in accordance with the terms of the Resolution only upon the books of the Issuer kept for that purpose at the designated corporate trust office of the Registrar by the Registered Holder hereof in person or by his attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar

duly executed by the Registered Holder or his attorney duly authorized in writing, and thereupon a new Bond or Bonds in the same aggregate principal amount shall be issued to the transferee in exchange therefor, and upon the payment of the charges, if any, therein prescribed. The Bonds are issuable in the form of fully registered Bonds in the denomination of \$5,000 and any integral multiple thereof, not exceeding the aggregate principal amount of the Bonds. The Issuer, the Registrar and any Paying Agent may treat the Registered Holder of this Bond as the absolute owner hereof for all purposes, whether or not this Bond shall be overdue, and shall not be affected by any notice to the contrary. The Issuer shall not be obligated to make any exchange or transfer of the Bonds during the 15 days next preceding an interest payment date or, in the case of any proposed redemption of the Bonds, then, for the Bonds subject to such redemption, during the 15 days next preceding the date of the first mailing of notice of such redemption.

(INSERT REDEMPTION PROVISIONS)

Redemption of this Bond under the preceding paragraphs shall be made as provided in the Resolution upon notice given by first class mail sent at least 30 days prior to the redemption date to the Registered Holder hereof at the address shown on the registration books maintained by the Registrar; provided, however, that failure to mail notice to the Registered Holder hereof, or any defect therein, shall not affect the validity of the proceedings for redemption of other Bonds as to which no such failure or defect has occurred. In the event that less than the full principal amount hereof shall have been called for redemption, the Registered Holder hereof shall surrender this Bond in exchange for one or more Bonds in an aggregate principal amount equal to the unredeemed portion of principal, as provided in the Resolution.

As long as the book-entry only system is used for determining beneficial ownership of the Bonds, notice of redemption will only be sent to Cede & Co. Cede & Co. will be responsible for notifying the DTC Participants, who will in turn be responsible for notifying the beneficial owners of the Bonds. Any failure of Cede & Co. to notify any DTC Participant, or of any DTC Participant to notify the beneficial owner of any such notice, will not affect the validity of the redemption of the Bonds.

Reference to the Resolution and any and all resolutions supplemental thereto and modifications and amendments thereof and to the Act is made for a description of the pledge and covenants securing this Bond, the nature, manner and extent of enforcement of such pledge and covenants, and the rights, duties, immunities and obligations of the Issuer.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond, exist, have happened and have been performed, in regular and due form and time as required by the laws and Constitution of the State of Florida applicable thereto, and that the issuance of the Bonds does not violate any constitutional or statutory limitations or provisions.

Neither the Mayor nor the members of the City Commission of the Issuer nor any person executing this Bond shall be liable personally hereon or be subject to any personal liability or accountability by reason of the issuance hereof.

This Bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Registrar.

**IN WITNESS WHEREOF**, the City of Lake Worth Beach, Florida has issued this Bond and has caused the same to be executed by the manual or facsimile signature of its Mayor and by the manual or facsimile signature of its City Clerk, and its official seal or a facsimile thereof to be affixed or reproduced hereon, all as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**CITY OF LAKE WORTH BEACH, FLORIDA**

(SEAL)

\_\_\_\_\_  
Pam Triolo, Mayor

\_\_\_\_\_  
Deborah M. Andrea, CMC, City Clerk

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds of the Issue described in the within-mentioned Resolution.

DATE OF AUTHENTICATION:

\_\_\_\_\_, 2020

\_\_\_\_\_, Registrar

By: \_\_\_\_\_  
Authorized Officer

Unless this certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by the authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

**ASSIGNMENT**

**FOR VALUE RECEIVED**, the undersigned sells, assigns and transfers unto

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Insert Social Security or Other Identifying Number of Assignee

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(Name and Address of Assignee)

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the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, as attorneys to register the transfer of the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed:

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**NOTICE:** Signature must be guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program (STAMP) or similar program.

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**NOTICE:** The signature to this assignment must correspond with the name of the Registered Holder as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever and the Social Security or other identifying number of such assignee must be supplied.

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

TEN COM -- as tenants in common

TEN ENT -- as tenants by the entireties

JT TEN -- as joint tenants with right of  
survivorship and not as tenants  
in common

UNIF TRANS MIN ACT -- \_\_\_\_\_  
(Cust.)

Custodian \_\_\_\_\_

under Uniform Transfers to Minors Act \_\_\_\_\_  
(State)

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



**ARTICLE III  
REDEMPTION OF BONDS**

**SECTION 3.01. PRIVILEGE OF REDEMPTION.** (A) The terms of this Article III shall apply to redemption of Bonds.

(B) The Bonds shall be subject to such optional and mandatory sinking fund redemption provisions as are established by Supplemental Resolution.

**SECTION 3.02. SELECTION OF BONDS TO BE REDEEMED.** The Bonds shall be redeemed only in the principal amount of \$5,000 each and integral multiples thereof. The Issuer shall, at least 45 days prior to the redemption date (unless a shorter time period shall be satisfactory to the Registrar), notify the Registrar of such redemption date and of the principal amount of Bonds to be redeemed. For purposes of any redemption of less than all of the Outstanding Bonds of a single maturity, the particular Bonds or portions of Bonds to be redeemed shall be selected not more than 45 days and not less than 35 days prior to the redemption date by the Registrar from the Outstanding Bonds of the maturity or maturities designated by the Issuer by such method as the Registrar shall deem fair and appropriate and which may provide for the selection for redemption of Bonds or portions of Bonds in principal amounts of \$5,000 and integral multiples thereof.

If less than all of the Outstanding Bonds of a single maturity are to be redeemed, the Registrar shall promptly notify the Issuer and Paying Agent (if the Registrar is not the Paying Agent for such Bonds) in writing of the Bonds or portions of Bonds selected for redemption and, in the case of any Bond selected for partial redemption, the principal amount thereof to be redeemed.

**SECTION 3.03. NOTICE OF REDEMPTION.** Notice of such redemption, which shall specify the Bond or Bonds (or portions thereof) to be redeemed and the date and place for redemption, shall be given by the Registrar on behalf of the Issuer, and (A) shall be filed with the Paying Agent of such Bonds, and (B) shall be mailed first class, postage prepaid, not less than 30 days nor more than 45 days prior to the redemption date to all Holders of Bonds to be redeemed at their addresses as they appear on the registration books kept by the Registrar as of the date of mailing of such notice. Failure to mail such notice to the Holders of the Bonds to be redeemed, or any defect therein, shall not affect the proceedings for redemption of Bonds as to which no such failure or defect has occurred. Such notice shall also be mailed to the Insurer, if any, of such redeemed Bonds. Failure of any Holder to receive any notice mailed as herein provided shall not affect the proceedings for redemption of such Holder's Bonds.

Each notice of redemption shall state: (1) the CUSIP numbers and any other distinguishing number or letter of all Bonds being redeemed, (2) the original issue date of such Bonds, (3) the maturity date and rate of interest borne by each Bond being redeemed, (4) the redemption date, (5) the Redemption Price, (6) the date on which such notice is mailed, (7) if less than all Outstanding Bonds are to be redeemed, the certificate number (and, in the case of a partial redemption of any Bond, the principal amount) of each Bond to be redeemed, (8) that on such redemption date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the principal thereof in the case of Bonds to be

redeemed in part only, together with interest accrued thereon to the redemption date, and that from and after such date interest thereon shall cease to accrue and be payable, (9) that the Bonds to be redeemed, whether as a whole or in part, are to be surrendered for payment of the Redemption Price at the designated office of the Registrar at an address specified, (10) the name and telephone number of a person designated by the Registrar to be responsible for such redemption, (11) unless sufficient funds have been set aside by the Issuer for such purpose prior to the mailing of the notice of redemption, that such redemption is conditioned upon the deposit of sufficient funds for such purpose on or prior to the date set for redemption, and (12) any other conditions that must be satisfied prior to such redemption.

The Issuer may provide that a redemption will be contingent upon the occurrence of certain conditions and that if such conditions do not occur the notice of redemption will be rescinded, provided notice of rescission shall be mailed in the manner described above to all affected Bondholders not later than three business days prior to the date of redemption.

**SECTION 3.04. REDEMPTION OF PORTIONS OF BONDS.** Any Bond which is to be redeemed only in part shall be surrendered at any place of payment specified in the notice of redemption (with due endorsement by, or written instrument of transfer in form satisfactory to the Registrar duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Issuer shall execute and the Registrar shall authenticate and deliver to the Holder of such Bond, without service charge, a new Bond or Bonds, of any authorized denomination, as requested by such Holder in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bonds so surrendered.

**SECTION 3.05. PAYMENT OF REDEEMED BONDS.** Notice of redemption having been given substantially as aforesaid, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Issuer shall default in the payment of the Redemption Price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar and/or Paying Agent at the appropriate Redemption Price, plus accrued interest. All Bonds which have been redeemed shall be cancelled and destroyed by the Registrar and shall not be reissued.

**ARTICLE IV**  
**SECURITY; FUNDS; COVENANTS OF THE ISSUERS**

**SECTION 4.01. BONDS NOT TO BE INDEBTEDNESS OF ISSUER.** The Bonds shall not be or constitute general obligations or indebtedness of the Issuer as “bonds” within the meaning of any constitutional or statutory provision, but shall be special obligations of the Issuer, payable solely from amounts budgeted and appropriated by the Issuer from Non-Ad Valorem Revenues in accordance with Section 4.02 hereof. No Holder of any Bond shall ever have the right to compel the exercise of any ad valorem taxing power to pay such Bond, or be entitled to payment of such Bond from any moneys of the Issuer except from the Non-Ad Valorem Revenues in the manner and to the extent provided herein.

**SECTION 4.02. COVENANT TO BUDGET AND APPROPRIATE; PAYMENT OF BONDS.** The Issuer covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues amounts sufficient to (A) pay principal of and interest on the Bonds when due, and (B) to make payments with respect to the Reserve Fund required by Section 4.06 hereof. Such covenant and agreement on the part of the Issuer 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 Issuer, the Issuer does not covenant to maintain any services or programs, now provided or maintained by the Issuer, which generate Non-Ad Valorem Revenues.

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 Issuer from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Issuer to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Bondholders a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the Issuer. Such covenant to appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). 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 Bonds, in the manner described herein, Non-Ad Valorem Revenues and placing on the Issuer 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 payment of services and programs which are for essential public purposes affecting the health, safety and welfare of the inhabitants of the Issuer or which are legally mandated by applicable law.

The Issuer covenants and agrees to transfer to the Paying Agent for the Bonds, solely from funds budgeted and appropriated as described in this Section 4.02, at least one business day prior to the date designated for payment of any principal of or interest on the Bonds, sufficient moneys to pay such principal or interest. The Registrar and Paying Agent shall utilize such moneys for payment of the principal and interest on the Bonds when due.

**SECTION 4.03. PROJECT FUND.** The Issuer covenants and agrees to establish a separate fund, to be known as the “City of Lake Worth Beach, Florida Non-Ad Valorem Revenue Bonds, Series 2020A and Taxable Series 2020B Project Fund,” which shall be used only for payment of the Costs of the Project. The Issuer will establish within the Project Fund a “Series 2020A Account” and a “Taxable Series 2020B Account”. Moneys in the Project Fund, until applied in payment of any item of the Cost of the Project in the manner hereinafter provided, shall be held in trust by the Issuer and shall be subject to a lien and charge in favor of the Holders of the Bonds and for the further security of such Holders. There shall be paid into the Project Fund the amounts required to be so paid by the provisions of this Resolution or a Supplemental Resolution.

The Issuer covenants that the acquisition, construction, installation and payment, as applicable, of the Project will be completed without delay and in accordance with sound engineering practices. The Issuer shall make disbursements or payments from the Series 2020A Account of the Project Fund to pay the Cost of the Series 2020A Project upon the filing with the City Clerk of documents and/or certificates signed by an Authorized Issuer Officer, stating with respect to each disbursement or payment to be made: (1) the item number of the payment, (2) the name and address of the Person to whom payment is due, (3) the amount to be paid, (4) the purpose, by general classification, for which payment is to be made, and (5) that (A) each obligation, item of cost or expense mentioned therein has been properly incurred, is in payment of a part of the Cost of the 2020A Project and is a proper charge against the Project Fund and has not been the basis of any previous disbursement or payment, or (B) each obligation, item of cost or expense mentioned therein has been paid by the Issuer, is a reimbursement of a part of the Cost of the Series 2020A Project, is a proper charge against the account of the Project Fund from which payment is to be made, has not been theretofore reimbursed to the Issuer or otherwise been the basis of any previous disbursement or payment and the Issuer is entitled to reimbursement thereof. The Issuer shall make disbursements from the Taxable Series 2020B Account of the Project Fund to pay the Costs of the Taxable Series 2020B Project upon the request of the City Manager and certification that such Costs are necessary to maintain essential services of the City or to establish reserves therefor, or to refinance the cost of other capital projects of the City. The City Clerk shall retain all such documents and/or certificates of the Authorized Issuer Officer for seven (7) years from the dates of such documents and/or certificates. The City Clerk shall make available the documents and/or certificates at all reasonable times for inspection by any Holder of any of the Bonds or the agent or representative of any Holder of any of the Bonds.

Notwithstanding any of the other provisions of this Section 4.03, to the extent that other moneys are not available therefor, amounts in the Project Fund shall be applied to the payment of principal and interest on Bonds when due.

The date of completion of the Project shall be determined by the Authorized Issuer Officer, who shall certify such fact in writing to the Governing Body. Promptly after the date of the completion of the Project, and after paying or making provisions for the payment of all unpaid items of the Cost of such Project, the Issuer shall deposit any balance of moneys remaining in the Project Fund in such other fund or account established hereunder or for such other purposes as shall be determined by the Governing Body, provided the Issuer has received an opinion of Bond Counsel to the effect that such transfer shall not adversely affect the exclusion of interest on the Series 2020A Bonds from gross income for purposes of federal income taxation.

**SECTION 4.04. RESERVED.**

**SECTION 4.05. ANTI-DILUTION TEST.** During such time as any Bonds are Outstanding hereunder, the Issuer agrees and covenants with the Bondholders and the Insurer that, prior to the issuance of any additional Debt of the Issuer secured by or payable from Non-Ad Valorem Revenues, Non-Ad Valorem Revenues shall cover projected Maximum Annual Debt Service on the Bonds and maximum annual debt service on such Debt by at least 1.5x. The calculation required above shall be determined using the average of actual revenues for the prior two Fiscal Years based on the Issuer's Annual Audits.

For the purposes of the covenants contained in this Section 4.05, maximum annual debt service on Debt means, with respect to Debt that bears interest at a fixed interest rate, the actual maximum annual debt service, and, with respect to Debt which bears interest at a variable interest rate, maximum annual debt service on such Debt shall be determined assuming that interest accrues on such Debt at the current "Bond Buyer Revenue Bond Index" as published in *The Bond Buyer* no more than two weeks prior to any such calculation; provided, however, if any Debt, whether bearing interest at a fixed or variable interest rate, constitutes Balloon Indebtedness, as defined in the immediately following sentence, maximum annual debt service on such Debt shall be determined assuming such Debt is amortized over 10 years on an approximately level debt service basis. For purposes of the foregoing sentence, "Balloon Indebtedness" means Debt, 25% or more of the original principal of which matures during any one Fiscal Year. In addition, with respect to debt service on any Debt which is subject to a Qualified Hedge Agreement, interest on such Debt during the term of such Qualified Hedge Agreement shall be deemed to be the Hedge Payments coming due during such period of time.

**SECTION 4.06. RESERVE FUND.** The Issuer hereby establishes a separate fund to be entitled "City of Lake Worth Beach, Florida Non-Ad Valorem Revenue Bonds, Series 2020A and Taxable Series 2020B Reserve Fund", which shall be held in trust by the Issuer and applied in the manner provided herein solely for the payment of maturing principal of, Redemption Price, if applicable (provided that the Reserve Fund may only be applied to the payment of redemption price if all Bonds will be redeemed), or interest or Amortization Installments on the Bonds.

There shall be deposited to the Reserve Fund from Non-Ad Valorem Revenues such sum, if any, as will be necessary to immediately restore any funds on deposit therein to an amount equal to the Reserve Fund Requirement, including the reinstatement of any Reserve Fund Insurance Policy or Reserve Fund Letter of Credit on deposit therein; provided, in no event shall the amount deposited in the Reserve Fund be less than one twelfth (1/12) of the amount which would enable the Issuer to restore the funds on deposit therein to an amount equal to the Reserve Fund Requirement in one (1) year from the date of such shortfall. On or prior to each principal and interest payment date for the Bonds, moneys in the Reserve Fund shall be applied by the Issuer to the payment of the principal of, or Redemption Price, if applicable, and interest on the Bonds to the extent Non-Ad Valorem Revenues budgeted and appropriated are insufficient therefor. Whenever there shall be surplus moneys in the Reserve Fund by reason of a decrease in the Reserve Fund Requirement or due to a deposit of a Reserve Fund Letter of Credit or Reserve Fund Insurance Policy, such surplus moneys shall be used by the Issuer, unless otherwise authorized by an opinion of Bond Counsel, to pay Debt Service on the Bonds.

Upon the issuance of the Bonds under the terms, limitations and conditions as herein provided, the Issuer shall fund the Reserve Fund in an amount at least equal to the Reserve Fund Requirement. Such required amount shall be paid in full from the proceeds of such Bonds or other sources, on the date of delivery of such Bonds.

Notwithstanding the foregoing provisions, in lieu of the required deposits into the Reserve Fund, the Issuer may cause to be deposited into such Fund a Reserve Fund Insurance Policy and/or Reserve Fund Letter of Credit for the benefit of the Bondholders in an amount equal to the difference between the Reserve Fund Requirement and the sums then on deposit therein, if any. Such Reserve Fund Insurance Policy and/or Reserve Fund Letter of Credit shall be payable to the Paying Agent for such Bonds (upon the giving of notice as required thereunder) on any interest payment or redemption date on which a deficiency exists which cannot be cured by Non-Ad Valorem Revenues available for such purpose. The issuer providing such Reserve Fund Insurance Policy and/or Reserve Fund Letter of Credit shall either be (a) an insurer licensed to issue an insurance policy guaranteeing the timely payment of debt service on the Bonds, whose municipal bond insurance policies insuring the payment, when due, of the principal of and interest on municipal bond issues results in such issues being rated in one of the top three rating categories (without regard to gradations) by S&P, or (b) a commercial bank the bonds payable or guaranteed by which have been assigned a rating of not less than "AA" by S&P. In addition, such Reserve Fund Insurance Policy and/or Reserve Fund Letter of Credit shall be for a term of not less than twelve (12) months (or, if the Bonds will mature in full within twelve months, such term shall end not earlier than the final maturity of the Bonds). Any Reserve Fund Letter of Credit shall be payable in one or more draws upon presentation by the beneficiary of a sight draft accompanied by its certificate that it then holds insufficient funds to make a required payment of principal or interest on the Bonds. The draws shall be payable within two days of presentation of the sight draft. The Reserve Fund Letter of Credit shall be for a term of not less than three years and shall be subject to an "evergreening" feature so as to provide the Issuer with at least 30 months notice of termination. The issuer of the Reserve Fund Letter of Credit shall be required to notify the Issuer and the Paying Agent, not later than 30 months prior to the stated expiration date of the Reserve Fund Letter of Credit, as to whether such expiration date shall be extended, and if so, shall indicate the new expiration date.

Cash on deposit in the Reserve Fund shall be used (or investments purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing on a Reserve Fund Letter of Credit or Reserve Fund Insurance Policy. If and to the extent a Reserve Fund Letter of Credit and Reserve Fund Insurance Policy are deposited into the Reserve Fund, drawings thereunder and repayments of costs associated therewith shall be made on a pro rata basis, calculated by reference to the maximum amounts available thereunder.

The right of the issuer of a Reserve Fund Letter of Credit to payment or reimbursement of its fees and expenses shall be senior to cash replenishment of the Reserve Fund. The Reserve Fund Letter of Credit or Reserve Fund Insurance Policy shall provide for a revolving feature under which the amount available thereunder will be reinstated to the extent of any reimbursement of draws or claims paid, plus interest and expenses. If the revolving feature is suspended or terminated for any reason other than nonpayment of amounts due to such provider, the right of the issuer of the Reserve Fund Letter of Credit or Reserve Fund Insurance Policy to reimbursement will be subordinated to cash replenishment of the Reserve Fund to an amount equal to the difference

between the full original amount available under the Reserve Fund Letter of Credit or Reserve Fund Insurance Policy and the amount then available for further draws or claims.

If fifteen (15) days prior to an interest payment or redemption date, the Issuer shall determine that a deficiency exists in the amount of moneys available to pay in accordance with the terms hereof interest and/or principal due on the Bonds on such date, the Issuer shall immediately notify (i) the issuer of the applicable Reserve Fund Insurance Policy and/or the issuer of the Reserve Fund Letter of Credit, (ii) the Insurer, if any, of the Bonds, of the amount of such deficiency and the date on which such payment is due, and (iii) take or cause the Paying Agent to take whatever action may be required to effectuate a disbursement under said Reserve Fund Insurance Policy and/or Reserve Fund Letter of Credit in order to fund such deficiency.

If a disbursement is made from a Reserve Fund Insurance Policy and/or Reserve Fund Letter of Credit provided pursuant to this Section 4.06, the Issuer shall reinstate the maximum limits of such Reserve Fund Insurance Policy and/or Reserve Fund Letter of Credit following such disbursement from Non-Ad Valorem Revenues, by depositing funds in the amount of the disbursement made under such instrument with the issuer thereof, together with interest thereon to the date of reimbursement at the rate set forth in such Reserve Fund Insurance Policy or agreement relating thereto or such Reserve Fund Letter of Credit, but in no case greater than the maximum rate of interest permitted by law. In addition, the Issuer shall, solely from Non-Ad Valorem Revenues, reimburse the issuer of the Reserve Fund Insurance Policy and/or the issuer of the Reserve Fund Letter of Credit for all reasonable expenses incurred by such issuer in connection with the Reserve Fund Insurance Policy or the Reserve Fund Letter of Credit, as the case may be.

## **ARTICLE V COVENANTS**

**SECTION 5.01. GENERAL.** The Issuer hereby makes the following covenants, in addition to all other covenants in this Resolution, with each and every successive Holder of any of the Bonds so long as any of said Bonds remain Outstanding.

**SECTION 5.02. ANNUAL BUDGET.** The Issuer shall annually prepare and adopt, prior to the beginning of each Fiscal Year, an Annual Budget in accordance with applicable law.

If for any reason the Issuer shall not have adopted the Annual Budget before the first day of any Fiscal Year, the preliminary budget for such year shall be deemed to be in effect for such Fiscal Year until the Annual Budget for such Fiscal Year is adopted.

The Issuer shall provide the Annual Budget to any Holder or Holders of Bonds upon written request. The Issuer shall be permitted to make a reasonable charge for furnishing such information to such Holder or Holders.

**SECTION 5.03. ANNUAL AUDIT.** The Issuer shall, immediately after the close of each Fiscal Year, cause the books, records and accounts relating to the Issuer to be properly audited by a recognized independent firm of certified public accountants, and shall require such accountants to complete their report of such Annual Audit in accordance with applicable law. Each Annual Audit shall be in conformity with generally accepted accounting principles as applied to governmental entities.

The Issuer shall provide the Annual Audit to any Holder or Holders of Bonds upon written request. The Issuer shall be permitted to make a reasonable charge for furnishing such information to such Holder or Holders.

**SECTION 5.04. FEDERAL INCOME TAXATION COVENANTS.** The Issuer covenants with the Holders of the Series 2020A Bonds that it shall not use the proceeds of the Series 2020A Bonds in any manner which would cause the interest on such Series 2020A Bonds to be or become included in gross income for purposes of federal income taxation.

The Issuer covenants with the Holders of the Series 2020A Bonds that neither the Issuer nor any Person under its control or direction will make any use of the proceeds of the Series 2020A Bonds (or amounts deemed to be proceeds under the Code) in any manner which would cause the Series 2020A Bonds to be “arbitrage bonds” within the meaning of the Code, and neither the Issuer nor any other Person shall do any act or fail to do any act which would cause the interest on the Series 2020A Bonds to become subject to inclusion within gross income for purposes of federal income taxation.

The Issuer hereby covenants with the Holders of the Series 2020A Bonds that it will comply with all provisions of the Code necessary to maintain the exclusion from gross income of interest on the Series 2020A Bonds for purposes of federal income taxation, including, in particular, the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code.





**ARTICLE VI  
DEFAULTS AND REMEDIES**

**SECTION 6.01. EVENTS OF DEFAULT.** The following events shall each constitute an “Event of Default”:

(A) Default shall be made in the payment of the principal of, Amortization Installment, redemption premium, if any, or interest on any Bond when due. In determining whether a payment default has occurred, no effect shall be given to payment made under the Bond Insurance Policy, if any.

(B) There shall occur the dissolution or liquidation of the Issuer, or the filing by the Issuer of a voluntary petition in bankruptcy, or the commission by the Issuer of any act of bankruptcy, or adjudication of the Issuer as a bankrupt, or assignment by the Issuer for the benefit of its creditors, or appointment of a receiver for the Issuer, or the entry by the Issuer into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Issuer in any proceeding for its reorganization instituted under the provisions of the Federal Bankruptcy Act, as amended, or under any similar act in any jurisdiction which may now be in effect or hereafter enacted.

(C) The Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Resolution on the part of the Issuer to be performed, and such default shall continue for a period of 30 days after written notice of such default shall have been received from the Holders of not less than 25% of the aggregate principal amount of Bonds Outstanding. Notwithstanding the foregoing, the Issuer shall not be deemed to be in default hereunder if such default can be cured within a reasonable period of time and if the Issuer in good faith institutes appropriate curative action and diligently pursues such action until default has been corrected; provided, however, no such curative action shall exceed 60 days without the prior written consent of the Insurer, if any.

**SECTION 6.02. REMEDIES.** Any Holder of Bonds issued under the provisions of this Resolution or any trustee or receiver acting for such Bondholders may either at law or in equity, by suit, action, mandamus or other proceedings 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, and may enforce and compel the performance of all duties required by this Resolution or by any applicable statutes to be performed by the Issuer or by any officer thereof; provided, however, that no Holder, trustee or receiver shall have the right to declare the Bonds immediately due and payable.

The Holder or Holders of Bonds in an aggregate principal amount of not less than 25% of the Bonds then Outstanding may by a duly executed certificate in writing appoint a trustee for Holders of Bonds issued pursuant to this Resolution with authority to represent such Bondholders in any legal proceedings for the enforcement and protection of the rights of such Bondholders, and such certificate shall be executed by such Bondholders or their duly authorized attorneys or representatives, and shall be filed in the office of the City Clerk. Notice of such appointment, together with evidence of the requisite signatures of the Holders of not less than 25% in aggregate principal amount of Bonds Outstanding and the trust instrument under which the trustee shall have

agreed to serve, shall be filed with the Issuer and the trustee and notice of such appointment shall be given to all Holders of Bonds in the same manner as notices of redemption are given hereunder. After the appointment of the first trustee hereunder, no further trustees may be appointed; however, the Holders of a majority in aggregate principal amount of all the Bonds then Outstanding may remove the trustee initially appointed and appoint a successor and subsequent successors at any time.

**SECTION 6.03. DIRECTIONS TO TRUSTEE AS TO REMEDIAL PROCEEDINGS.** The Holders of a majority in principal amount of the Bonds then Outstanding (or the Insurer, if any, insuring any then Outstanding Bonds so long as such Insurer is not in payment default under its Bond Insurance Policy) have the right, by an instrument or concurrent instruments in writing executed and delivered to the trustee, to direct the method and place of conducting all remedial proceedings to be taken by the trustee hereunder with respect to the Bonds owned by such Holders or insured by the Insurer, if any, provided that such direction shall not be otherwise than in accordance with law or the provisions hereof, and that the trustee shall have the right to decline to follow any direction which in the opinion of the trustee would be unjustly prejudicial to Holders of Bonds not parties to such direction.

**SECTION 6.04. REMEDIES CUMULATIVE.** No remedy herein conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**SECTION 6.05. WAIVER OF DEFAULT.** No delay or omission of any Bondholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by Section 6.02 to the Bondholders may be exercised from time to time, and as often as may be deemed expedient.

**SECTION 6.06. APPLICATION OF MONEYS AFTER DEFAULT.** If an Event of Default shall happen and shall not have been remedied, the Issuer or a trustee or receiver appointed for the purpose shall apply all moneys received from the Issuer for payment of the Bonds as follows and in the following order:

(A) To the payment of the reasonable and proper charges, expenses and liabilities of the trustee or receiver and Registrar hereunder;

(B) To the payment of the interest and principal or Redemption Price, if applicable, then due on the Bonds, as follows:

(1) Unless the principal of all the Bonds shall have become due and payable, all such moneys shall be applied:

FIRST: to the payment to the Persons entitled thereto of all installments of interest then due, in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on

such installment, to the Persons entitled thereto, without any discrimination or preference;

SECOND: to the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due at maturity or upon mandatory redemption prior to maturity (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of Section 8.01 of this Resolution), in the order of their due dates, with interest upon such Bonds from the respective dates upon which they became due, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment first of such interest, ratably according to the amount of such interest due on such date, and then to the payment of such principal, ratably according to the amount of such principal due on such date, to the Persons entitled thereto without any discrimination or preference; and

THIRD: to the payment of the Redemption Price of any Bonds called for optional redemption pursuant to the provisions of this Resolution.

(2) If the principal of all the Bonds shall have become due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, with interest thereon as aforesaid, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or preference.

(C) To the payment of all amounts owed to the Insurer not covered by (A) or (B) above.

**SECTION 6.07. CONTROL BY INSURER.** If the Bonds are insured by the Bond Insurance Policy, to the extent the Insurer makes any payment of principal of or interest on Bonds in accordance with the Bond Insurance Policy, such Insurer shall become subrogated to the rights of the recipients of such payments in accordance with the terms of the Bond Insurance Policy. Upon the occurrence and continuance of an Event of Default, the Insurer, if it shall not be in payment default under the Bond Insurance Policy, shall be deemed to be the sole owner of such Bonds for purposes of (A) directing and controlling the enforcement of all rights and remedies with respect to the Bonds, including any waiver of an Event of Default and removal of any trustee, and (B) exercising any voting right or privilege or giving any consent or direction or taking any other action that the Holders of such Bonds are entitled to take pursuant to this Article VI. No provision expressly recognizing or granting rights in or to the Insurer shall be modified without the consent of the Insurer. The Insurer's rights under this Section 6.07 shall be suspended during any period in which the Insurer is in default in its payment obligations under the Bond Insurance Policy (except to the extent of amounts previously paid by the Insurer and due and owing to it) and shall be of no force or effect if the Bond Insurance Policy is no longer in effect or if the Insurer asserts that the Bond Insurance Policy is not in effect or if the Insurer waives such rights in writing. The rights granted to the Insurer under this Section 6.07 are granted in consideration of the Insurer issuing the Bond Insurance Policy. The Issuer shall provide the Insurer immediate notice of any

Event of Default described in Section 6.01(A) hereof and notice of any other Event of Default occurring hereunder within 30 days of the occurrence thereof. The Insurer hereunder shall be considered a third-party beneficiary to the Resolution with respect to the Bonds.

**ARTICLE VII  
SUPPLEMENTAL RESOLUTIONS**

**SECTION 7.01. SUPPLEMENTAL RESOLUTION WITHOUT BONDHOLDERS' CONSENT.** The Issuer, from time to time and at any time, may adopt such Supplemental Resolutions without the consent of the Bondholders (which Supplemental Resolution shall thereafter form a part hereof) for any of the following purposes:

(A) To cure any ambiguity or formal defect or omission or to correct any inconsistent provisions in this Resolution or to clarify any matters or questions arising hereunder.

(B) To grant to or confer upon the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders.

(C) To add to the conditions, limitations and restrictions on the issuance of Bonds under the provisions of this Resolution other conditions, limitations and restrictions thereafter to be observed.

(D) To add to the covenants and agreements of the Issuer in this Resolution other covenants and agreements thereafter to be observed by the Issuer or to surrender any right or power herein reserved to or conferred upon the Issuer.

(E) To specify and determine the matters and things referred to in Section 2.01 hereof and also any other matters and things relative to such Bonds which are not contrary to or inconsistent with this Resolution as theretofore in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first delivery of the Bonds.

(F) To make any other change that, in the reasonable opinion of the Issuer, would not materially adversely affect the interests of the Holders of the Bonds. In making such determination, the Issuer shall not take into consideration the Bond Insurance Policy, if any.

**SECTION 7.02. SUPPLEMENTAL RESOLUTION WITH BONDHOLDERS' AND INSURER'S CONSENT.** Subject to the terms and provisions contained in this Section 7.02 and Sections 7.01 and 7.03 hereof, the Holder or Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Resolution to the contrary notwithstanding, to consent to and approve the adoption of such Supplemental Resolutions hereto as shall be deemed necessary or desirable by the Issuer for the purpose of supplementing, modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Resolution; provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any specified maturity remain Outstanding, the consent of the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section 7.02. Any Supplemental Resolution which is adopted in accordance with the provisions of this Section 7.02 shall also require the written consent of the Insurer, if any, of Bonds which are Outstanding at the time such Supplemental Resolution shall take effect. No Supplemental Resolution may be approved or adopted which shall permit or require, without the consent of all affected Bondholders, (A) an extension of the maturity of the

principal of or the payment of the interest on any Bond issued hereunder, (B) reduction in the principal amount of any Bond or the Redemption Price or the rate of interest thereon, (C) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (D) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Resolution. Nothing herein contained, however, shall be construed as making necessary the approval by Bondholders or the Insurer of the adoption of any Supplemental Resolution as authorized in Section 7.01 hereof.

If at any time the Issuer shall determine that it is necessary or desirable to adopt any Supplemental Resolution pursuant to this Section 7.02, the City Clerk shall cause the Registrar to give notice of the proposed adoption of such Supplemental Resolution and the form of consent to such adoption to be mailed, postage prepaid, to all Bondholders at their addresses as they appear on the registration books. Such notice shall briefly set forth the nature of the proposed Supplemental Resolution and shall state that copies thereof are on file at the offices of the City Clerk and the Registrar for inspection by all Bondholders. The Issuer shall not, however, be subject to any liability to any Bondholder by reason of its failure to cause the notice required by this Section 7.02 to be mailed, and any such failure shall not affect the validity of such Supplemental Resolution when consented to and approved as provided in this Section 7.02.

Whenever the Issuer shall deliver to the City Clerk an instrument or instruments in writing purporting to be executed by the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed Supplemental Resolution described in such notice and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the Issuer may adopt such Supplemental Resolution in substantially such form, without liability or responsibility to any Holder of any Bond, whether or not such Holder shall have consented thereto.

If the Holders of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such Supplemental Resolution shall have consented to and approved the adoption thereof as herein provided, no Holder of any Bond shall have any right to object to the adoption of such Supplemental Resolution, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Issuer from adopting the same or from taking any action pursuant to the provisions thereof.

Upon the adoption of any Supplemental Resolution pursuant to the provisions of this Section 7.02, this Resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Resolution of the Issuer and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced in all respects under the provisions of this Resolution as so modified and amended.

**SECTION 7.03. AMENDMENT WITH CONSENT OF INSURER ONLY.** For purposes of amending this Resolution pursuant to Section 7.02 hereof, the Insurer, if any, of Bonds shall be considered the Holder of such Bonds which it has insured. The consent of the Holders of such Bonds shall not be required if the Insurer of such Bonds shall consent to the amendment as provided by this Section 7.03. Prior to adoption of any amendment made pursuant to this Section

7.03, notice of such amendment shall be delivered to the Rating Agencies then rating the Bonds. Upon filing with the City Clerk of evidence of such consent the Insurer as aforesaid, the Issuer may adopt such Supplemental Resolution. After the adoption by the Issuer of such Supplemental Resolution, notice thereof shall be mailed in the same manner as notices of an amendment under Section 7.02 hereof.



## **ARTICLE VIII DEFEASANCE**

**SECTION 8.01. DEFEASANCE.** If the Issuer shall pay or cause to be paid or there shall otherwise be paid to the Holders of any Bonds, the principal and interest or Redemption Price due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, all covenants, agreements and other obligations of the Issuer to the holders of such Bonds shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Paying Agent shall pay over or deliver to the Issuer all money or securities held by it pursuant to this Resolution which are not required for payment or redemption of any Bonds not theretofore surrendered for such payment or redemption.

Any Bonds or interest installments appertaining thereto shall be deemed to have been paid within the meaning of this Section 8.01 if (i) in case any such Bonds are to be redeemed prior to the maturity thereof, there shall have been taken all action necessary to call such Bonds for redemption and notice of such redemption shall have been duly given or provision shall have been made for the giving of such notice, and (ii) there shall have been deposited in irrevocable trust with a banking institution or trust company by or on behalf of the Issuer either moneys in an amount which shall be sufficient, or Refunding Securities verified by an independent certified public accountant to be in such amount that the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with such banking institution or trust company at the same time shall be sufficient, to pay the principal of, Redemption Price, if applicable and interest due and to become due on said Bonds on and prior to the redemption date or maturity date thereof, as the case may be. Except as hereafter provided, neither the Refunding Securities nor any moneys so deposited with such banking institution or trust company nor any moneys received by such bank or trust company on account of principal of or interest on said Refunding Securities shall be withdrawn or used for any purpose other than, and all such moneys shall be held in trust for and be applied to, the payment, when due, of the principal of or Redemption Price of the Bonds for the payment of which they were deposited and the interest accruing thereon to the date of redemption or maturity, as the case may be; provided, however, the Issuer may substitute new Refunding Securities and moneys for the deposited Refunding Securities and moneys if the new Refunding Securities and moneys are sufficient to pay the principal of and interest on or Redemption Price, if applicable, of the refunded Bonds.

The Issuer shall cause the Registrar to post a continuing disclosure filing that the deposit required by this Section 8.01 of moneys or Refunding Securities has been made and said Bonds are deemed to be paid in accordance with the provisions of this Section 8.01 and stating such maturity date upon which moneys are to be available for the payment of the principal of and interest on or redemption price of said Bonds. Failure to provide said posting shall not affect the Bonds being deemed to have been paid in accordance with the provisions of this Section 8.01.

Nothing herein shall be deemed to require the Issuer to call any of the Outstanding Bonds for redemption prior to maturity pursuant to any applicable optional redemption provisions, or to impair the discretion of the Issuer in determining whether to exercise any such option for early redemption.

Notwithstanding anything herein to the contrary, in the event that the principal of or interest due on the Bonds shall be paid by the Insurer, such Bonds shall remain Outstanding, shall not be defeased or otherwise satisfied and shall not be considered paid by the Issuer, and all covenants, agreements and other obligations of the Issuer to the Bondholders shall continue to exist and the Insurer shall be subrogated to the rights of such Bondholders.

**ARTICLE IX  
MISCELLANEOUS**

**SECTION 9.01. SALE OF BONDS.** The Bonds shall be issued and sold at public or private sale at one time or in installments from time to time and at such price or prices as shall be consistent with the provisions of the Act, the requirements of this Resolution and other applicable provisions of law.

**SECTION 9.02. SEVERABILITY OF INVALID PROVISIONS.** If any one or more of the covenants, agreements or provisions of this Resolution shall 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 separable from the remaining covenants, agreements and provisions of this Resolution and shall in no way affect the validity of any of the other covenants, agreements or provisions hereof or of the Bonds issued hereunder.

**SECTION 9.03. VALIDATION AUTHORIZED.** To the extent deemed necessary by Bond Counsel or desirable by the City Attorney, Bond Counsel is authorized to institute appropriate proceedings for validation of the Bonds herein authorized pursuant to Chapter 75, Florida Statutes.

**SECTION 9.04. REPEAL OF INCONSISTENT RESOLUTIONS.** All ordinances, resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

**SECTION 9.05. EFFECTIVE DATE.** This resolution shall become effective immediately upon its passage and adoption.

The passage of this resolution was moved by \_\_\_\_\_, seconded by \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo  
Vice Mayor Andy Amoroso  
Commissioner Scott Maxwell  
Commissioner Omari Hardy  
Commissioner Herman Robinson

The Mayor thereupon declared this resolution duly passed on the \_\_\_\_ day of June, 2020.

**CITY OF LAKE WORTH BEACH, FLORIDA**

\_\_\_\_\_  
Pam Triolo, Mayor

ATTEST:

\_\_\_\_\_  
Deborah M. Andrea, CMC, City Clerk