# RESOLUTION NO. 2016- 120

**RESOLUTION OF THE TOWNSHIP OF OCEAN, IN THE COUNTY OF OCEAN, NEW JERSEY, DETERMINING THE FORM AND OTHER DETAILS OF ITS "NOTE RELATING TO THE CONSTRUCTION FINANCING 2016 TRUST LOAN PROGRAM OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST", TO BE ISSUED IN THE PRINCIPAL AMOUNT OF UP TO $1,500,000, AND PROVIDING FOR THE ISSUANCE AND SALE OF SUCH NOTE TO THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST, AND AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH NOTE BY THE TOWNSHIP OF OCEAN IN FAVOR OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST, ALL PURSUANT TO THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST CONSTRUCTION FINANCING 2016 TRUST LOAN PROGRAM FOR THE PEBBLE BEACH AREA WATER MAIN REPLACEMENT PROJECT**

**WHEREAS**, in accordance with the provisions of Resolution No. 2015-89, adopted on February 12, 2015, and Bond Ordinance No. 2015-12, adopted on September 10, 2015, the Township of Ocean, in the County of Ocean, State of New Jersey (the "**Township**") authorized the filing of an application with the New Jersey Department of Environmental Protection ("**DEP**") and the New Jersey Environmental Infrastructure Trust (the "**Trust**") for the financing of a drinking water project involving the removal and replacement of approximately 6,000 linear feet of existing water mains and appurtenant structures and street restoration along Maplewood Road, Teaneck Road, Englewood Avenue, Dune Lane, Stillwater Road and Harborage Place in the Pebble Beach area of the Township (the "**Pebble Beach Water Main Project**") under the 2016 New Jersey Environmental Infrastructure Trust Financing Program; and

**WHEREAS**, the Township desires to temporarily finance the Pebble Beach Water Main Project with the proceeds of a short-term construction loan in an aggregate principal amount of up to One Million Five Hundred Thousand Dollars ($1,500,000) to be made by the Trust (the "**Construction Loan**") to the Township pursuant to the New Jersey Environmental Infrastructure Trust Construction Financing Program (the "**Construction Financing Program**"); and

**WHEREAS,** in order to (i) evidence and secure the repayment obligation of the Township to the Trust with respect to the Construction Loan and (ii) satisfy the requirements of the Construction Financing Program, it is the desire of the Township to issue and sell to the Trust the "Note Relating to the Construction Financing Program of the New Jersey Environmental Infrastructure Trust" in an aggregate principal amount of up to One Million Five Hundred Thousand Dollars ($1,500,000) (the "**Note**"); and

**WHEREAS,** it is the desire of the Township to authorize, execute, attest and deliver the Note to the Trust pursuant to the terms of the Local Bond Law of the State of New Jersey, constituting Chapter 2 of Title 40A of the Revised Statutes of the State of New Jersey (the "Local Bond Law"), and other applicable law; and

**WHEREAS**, Section 28 of the Local Bond Law allows for the sale of the Note to the Trust, without any public offering, and N.J.S.A. 58:11B-9 allows for the sale of the Note to the Trust without any public offering, all under the terms and conditions set forth herein.

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of the Township as follows:

**Section 1.** In accordance with Section 28 of the Local Bond Law and N.J.S.A. 58:11B-9, the Township hereby authorizes the issuance, sale and award of the Note in accordance with the provisions hereof. The obligation represented by the Note has been appropriated and authorized by the following Bond Ordinance and Resolutions: **Bond Ordinance No. 2015-12** of the Borrower finally adopted on September 10, 2015, entitled "BOND ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000.00), AGGREGATE PRINCIPAL AMOUNT, GENERAL OBLIGATION BONDS OR NOTES OF THE TOWNSHIP OF OCEAN, COUNTY OF OCEAN, NEW JERSEY FOR THE CONSTRUCTION OF CERTAIN CLEAN WATER AND DRINKING WATER PROJECTS WITHIN THE TOWNSHIP OF OCEAN, OCEAN COUNTY, NEW JERSEY"; **Resolution No. 2015-89** adopted by Borrower on February 12, 2015, entitled "A RESOLUTION AUTHORIZING THE SUBMISSION OF APPLICATIONS FOR FINANCING UNDER THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST 2015 FINANCING PROGRAM FOR THE PEBBLE BEACH AREA WATER AND SEWER IMPROVEMENTS"; **Resolution No. 2015-270** adopted by Borrower on August 13, 2015, entitled "RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE LOCAL FINANCE BOARD PURSUANT TO N.J.S.A. 40A:2-26, 40A:2-11(c) and 58:11B-9(a) FOR FINANCING UNDER THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST 2016 FINANCING PROGRAM FOR THE REMOVAL AND REPLACEMENT OF WATER MAINS AND RELATED WATER SYSTEM IMPROVEMENTS IN THE PEBBLE BEACH AREA OF THE TOWNSHIP OF OCEAN, COUNTY OF OCEAN, STATE OF NEW JERSEY"; and **Resolution No. 2016-___,** adopted on January __, 2016, AUTHORIZING THE FILING OF AN APPLICATION FOR A CONSTRUCTION LOAN FROM THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST UNDER THE CONSTRUCTION FINANCING PROGRAM AND AUTHORIZING THE ISSUANCE OF A CONSTRUCTION LOAN NOTE IN CONNECTION THEREWITH FOR THE PEBBLE BEACH AREA WATER MAIN REPLACEMENT PROJECT", at which meetings a quorum was present and acted throughout, all pursuant to the terms of the Local Bond Law and other applicable law.

**Section 2.** The Mayor, Township Clerk, Township Administrator or Chief Financial Officer of the Township (the "**Authorizing Officers**") are hereby authorized to determine, in accordance with the Local Bond Law and pursuant to the terms and

conditions hereof, (i) the final principal amount of the Note (subject to the maximum limitation set forth in Section 4(a) hereof), and (ii) the dated date of the Note.

**Section 3.** Any determination made by the Authorized Officers pursuant to the terms hereof shall be conclusively evidenced by the execution and attestation of the Note by the parties authorized pursuant to Section 4(h) hereof.

**Section 4.** The Township hereby determines that certain terms of the Note shall be as follows:

(a) the principal amount of the Note to be issued shall be an amount up to $1,500,000;
(b) the maturity of the Note shall be determined by the Trust;
(c) the interest rate of the Note shall be determined by the Trust;
(d) the purchase price for the Note shall be par;
(e) the Note shall be subject to prepayment prior to its stated maturity in accordance with the terms and conditions of the Note;
(f) the Note shall be issued in a single denomination and shall be numbered "CFP-16-__";
(g) the Note shall be issued in fully registered form and shall be payable to the registered owner thereof as to both principal and interest in lawful money of the United States of America; and
(h) the Note shall be executed by the manual or facsimile signatures of the Mayor and the Chief Financial Officer under official seal or facsimile thereof affixed, printed, engraved or reproduced thereon and attested by the manual signature of the Township Clerk.

**Section 5.** The Note shall be substantially in the form attached hereto as Exhibit A.

**Section 6.** The law firm of Fleishman Daniels Law Offices, LLC, is hereby authorized to arrange for the printing of the Note, which law firm may authorize McCarter & English, LLP, bond counsel to the Trust for the Construction Financing Program, to arrange for same.

**Section 7.** The Authorized Officers of the Township are hereby further severally authorized to (i) execute and deliver, and the Township Clerk is hereby further authorized to attest to such execution and to affix the corporate seal of the Township to, any document, instrument or closing certificate deemed necessary, desirable or convenient by the Authorized Officers of the Township after consultation with counsel and any advisors to the Township and after further consultation with the Trust and its representatives, agents, counsel and advisors, to be executed in connection the issuance and sale of the Note and the participation of the Township in the Construction Financing Program, which determination shall be conclusively evidenced by the execution of each such certificate or other document by the party authorized hereunder to execute such certificate or other

document, and (ii) perform such other actions as the Authorized Officers deem necessary, desirable or convenient in relation to the execution and delivery of the Note and the participation of the Township in the Construction Financing Program.

**Section 8.** This resolution shall take effect immediately.

**Section 9.** Upon the adoption hereof, the Township Clerk shall forward certified copies of this resolution to Fleishman Daniels Law Offices, LLC, bond counsel to the Township, David Zimmer, Executive Director of the Trust, and Richard T. Nolan, Esq., McCarter & English, LLP, bond counsel to the Trust.

APPROVED: January 14, 2016

_____
Dennis Tredy, Mayor

**CERTIFICATION**

I, Diane B. Ambrosio, Township Clerk, do hereby certify that the foregoing is a correct and true copy of the Resolution adopted by the Township Committee of the Township of Ocean at its Regular Business Meeting held on the 14th day of January, 2016.

_____
Diane B. Ambrosio
Township Clerk

**EXHIBIT A**

# FORM OF NOTE
# DO NOT EXECUTE

**TOWNSHIP OF OCEAN (OCEAN COUNTY)**
**NOTE**
**RELATING TO:**
**THE CONSTRUCTION FINANCING PROGRAM**
**OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**

**$_____** **_____, 201_**
**CFP-16-__**

**FOR VALUE RECEIVED, TOWNSHIP OF OCEAN, IN THE COUNTY OF OCEAN**, a municipal corporation duly created and validly existing pursuant to the laws of the State (as hereinafter defined), and its successors and assigns (the "Borrower"), hereby promises to pay to the order of the **NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**, a public body corporate and politic with corporate succession, duly created and validly existing under and by virtue of the Act (as hereinafter defined) (the "Trust"), the Principal (as hereinafter defined), together with all unpaid accrued Interest (as hereinafter defined), fees, late charges and other sums due hereunder, if any, in lawful money of the United States of America, on the Maturity Date (as hereinafter defined) or the date of any optional prepayment or acceleration in accordance with the provisions of this note (this "Note").

**SECTION 1. Definitions.** As used in this Note, unless the context requires otherwise, the following terms shall have the following meanings:

**"Act"** means the "New Jersey Environmental Infrastructure Trust Act", constituting Chapter 334 of the Pamphlet Laws of 1985 of the State (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same may from time to time be amended and supplemented.

**"Administrative Fee"** means a fee of up to four-tenths of one percent (.40%) of that portion of the Principal identified in clause (i) of the definition thereof (as set forth in this Section 1), or such lesser amount, if any, as the Trust may determine from time to time.

**"Anticipated Financing Program"** means the financing program of the Trust, pursuant to which the Trust will issue its Trust Bonds for the purpose of financing, on a long term basis, the Project and other projects of certain qualifying borrowers.

**"Anticipated Long Term Loan"** means the long term loan made by the Trust to the Borrower from the proceeds of its Trust Bonds, as part of the Anticipated Financing Program.

**"Authorized Officer"** means any person authorized by the Borrower or the Trust, as the case may be, to perform any act or execute any document relating to the Loan or this Note.

**"Code"** means the Internal Revenue Code of 1986, as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder, any successor code thereto and any administrative or judicial interpretations thereof.

**"Cost"** means those costs that are allocable to the Project, as shall be determined on a project-specific basis in accordance with the Regulations, as the same may be amended by subsequent eligible costs as evidenced by a certificate of an Authorized Officer of the Trust.

**"Environmental Infrastructure Facilities"** means Wastewater Treatment Facilities, Stormwater Management Facilities or Water Supply Facilities (as such terms are defined in the Regulations).

**"Environmental Infrastructure System"** means the Environmental Infrastructure Facilities of the Borrower, including the Project, for which the Borrower is receiving the Loan.

**"Event of Default"** means any occurrence or event specified in Section 6 hereof.

**"Fund Portion"** means, on any date, an amount equal to seventy-five percent (75%) of the Principal of the Loan on such date, which Fund Portion is expected to be refinanced on the Maturity Date from proceeds of a loan to be made to the Borrower by the State, acting by and through the New Jersey Department of Environmental Protection.

**"Interest"** means the interest charged on the outstanding Principal of the Loan at a rate of (a) with respect to the Trust Portion of the Principal, ____%, and (b) with respect to the Fund Portion of the Principal, 0.00%, and payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan, on the date of such optional prepayment or acceleration, as the case may be.

**"Loan"** means the loan of the Principal, made by the Trust to the Borrower to finance or refinance a portion of the Cost of the Project, as evidenced by this Note.

**"Loan Disbursement Requisition"** means the requisition, to be executed by an Authorized Officer of the Borrower and approved by the New Jersey Department of Environmental Protection, in a form to be determined by the Trust and the New Jersey Department of Environmental Protection.

**"Maturity Date"** means _____ __, 201_, or such earlier or later date to be determined by the Trust in its sole discretion, which date shall be determined by the Trust to be the date of the closing for the Anticipated Financing Program.

**"Principal"** means the principal amount of the Loan, at any time being the lesser of (i) _____ Dollars ($_____), or (ii) the aggregate

outstanding amount as shall actually be disbursed to the Borrower by the Trust pursuant to one or more Loan Disbursement Requisitions, which Principal shall be payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan, on the date of such optional prepayment or acceleration, as the case may be.

**"Project"** means the Environmental Infrastructure Facilities of the Borrower which constitutes a project for which the Trust is making the Loan to the Borrower.

**"Regulations"** means the rules and regulations, as applicable, now or hereafter promulgated pursuant to N.J.A.C. 7:22-3 *et seq.*, 7:22-4 *et seq.*, 7:22-5 *et seq.*, 7:22-6 *et seq.*, 7:22-7 *et seq.*, 7:22-8 *et seq.*, 7:22-9 *et seq.* and 7:22-10 *et seq.*, as the same may from time to time be amended and supplemented.

**"State"** means the State of New Jersey.

**"Trust Bonds"** means the revenue bonds of the Trust to be issued, as part of the Anticipated Financing Program.

**"Trust Portion"** means, on any date, an amount equal to twenty-five percent (25%) of the Principal of the Loan on such date, which Trust Portion is expected to be refinanced on the Maturity Date from proceeds of a loan to be made to the Borrower by the Trust.

**SECTION 2. Representations of the Borrower.** The Borrower represents and warrants to the Trust:

(a) Organization. The Borrower: (i) is a municipal corporation duly created and validly existing under and pursuant to the Constitution and laws of the State; (ii) has full legal right and authority to execute, attest and deliver this Note, to sell this Note to the Trust, and to perform its obligations hereunder, and (iii) has duly authorized, approved and consented to all necessary action to be taken by the Borrower for: (A) the issuance of this Note, the sale thereof to the Trust and the due performance of its obligations hereunder and (B) the execution, delivery and due performance of all certificates and other instruments that may be required to be executed, delivered and performed by the Borrower in order to carry out and give effect to this Note.

(b) Authority. This Note has been duly authorized by the Borrower and duly executed, attested and delivered by Authorized Officers of the Borrower. This Note has been duly sold by the Borrower to the Trust and duly issued by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as the enforcement thereof may be affected by bankruptcy, insolvency or other laws or the application by a court of legal or equitable principles affecting creditors' rights.

(c) Pending Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower that, if adversely determined, would adversely affect (i) the condition (financial or otherwise) of the Borrower, (ii) the ability of the Borrower to satisfy all of its Loan repayment obligations hereunder, (iii) the authorization,

execution, attestation or delivery of this Note, (iv) the issuance of this Note and the sale thereof to the Trust, and (v) the Borrower's ability otherwise to observe and perform its duties, covenants, obligations and agreements under this Note.

(d) Compliance with Existing Laws and Agreements; Governmental Consent. (i) The due authorization, execution, attestation and delivery of this Note by the Borrower and the sale of this Note to the Trust, (ii) the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, including, without limitation, the repayment of the Loan and all other amount due hereunder, and (iii) the undertaking and completion of the Project, will not (A) other than the lien, charge or encumbrance created by this Note and by any other outstanding debt obligations of the Borrower that are at parity with this Note as to lien on, and source and security for payment thereon from, the general tax revenues of the Borrower, result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Borrower pursuant to, (B) result in any breach of any of the terms, conditions or provisions of, or (C) constitute a default under, any existing ordinance or resolution, outstanding debt or lease obligation, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument to which the Borrower is a party or by which the Borrower, its Environmental Infrastructure System or any of its properties or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, injunctions, judgments, decrees, rules, regulations or existing orders of any court or governmental or administrative agency, authority or person to which the Borrower, its Environmental Infrastructure System or its properties or operations are subject. The Borrower has obtained all permits and approvals required to date by any governmental body or officer for the authorization, execution, attestation and delivery of this Note, for the sale of this Note to the Trust, for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Note, and for the undertaking and completion of the Project.

(e) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the representations of the Borrower set forth in this Section 2.

**SECTION 3. Covenants of the Borrower.**

(a) Participation in the Anticipated Financing Program. The Borrower covenants and agrees that it shall undertake and complete in a timely manner all conditions precedent identified by the Trust relating to (i) the participation by the Borrower in the Anticipated Financing Program and (ii) the qualification by the Borrower for receipt of the Anticipated Long Term Loan.

(b) Full Faith and Credit Pledge. To secure the repayment obligation of the Borrower with respect to this Note, and all other amounts due under this Note, the Borrower unconditionally and irrevocably pledges its full faith and credit and covenants to exercise its unlimited taxing powers for the punctual payment of any and all obligations and amounts due under this Note. The Borrower acknowledges that, to assure the continued operation and solvency of the Trust, the Trust may, pursuant to and in accordance with Section 12a of the Act,

require that if the Borrower fails or is unable to pay promptly to the Trust in full any Loan repayments, any Interest or any other amounts due pursuant to this Note, an amount sufficient to satisfy such deficiency shall be paid by the State Treasurer to the Trust from State-aid otherwise payable to the Borrower.

(c) Disposition of Environmental Infrastructure System. The Borrower covenants and agrees that it shall not sell, lease, abandon or otherwise dispose of all or substantially all of its Environmental Infrastructure System without the express written consent of the Trust, which consent may or may not be granted by the Trust in its sole discretion.

(d) Financing With Tax Exempt Bonds. The Borrower acknowledges, covenants and agrees that it is the intention of the Borrower to finance the Project on a long term basis with proceeds of Trust Bonds now or hereinafter issued, the interest on which is excluded from gross income for purposes of federal income taxation pursuant to Section 103(a) of the Code ("tax exempt bonds"). In furtherance of such long term financing with tax exempt bonds, the Borrower covenants that, except to the extent expressly permitted in writing by the Trust, the Borrower will not take any action or permit any action to be taken which would result in any of the proceeds of the Loan being used (directly or indirectly) (i) in any "private business use" within the meaning of Section 151(b)(6) of the Code, (ii) to make or finance loans to persons other than the Borrower, or (iii) to acquire any "nongovernmental output property" within the meaning of Section 151(d)(2) of the Code. In addition, the Borrower covenants and agrees that no portion of the Project will be investment property, within the meaning of Section 158(b) of the Code. The Borrower covenants and agrees that any Costs of the Borrower's Project to be paid or reimbursed with proceeds of the Loan will result in the expenditure of proceeds under Treasury Regulations §1.158-6(d) and Treasury Regulations §1.150-2.

(e) Operation and Maintenance of Environmental Infrastructure System. The Borrower covenants and agrees that it shall maintain its Environmental Infrastructure System in good repair, working order and operating condition, and make all necessary and proper repairs and improvements with respect thereto.

(f) Records and Accounts; Inspections. The Borrower covenants and agrees that it shall keep accurate records and accounts for its Environmental Infrastructure System (the "System Records"), separate and distinct from its other records and accounts (the "General Records"), which shall be audited annually by an independent registered municipal accountant and shall be made available for inspection by the Trust upon prior written notice. The Borrower shall permit the Trust to inspect the Environmental Infrastructure System.

(g) Insurance. The Borrower covenants and agrees that it shall maintain insurance policies providing against risk of direct physical loss, damage or destruction of its Environmental Infrastructure System, in an amount that will satisfy all applicable regulatory requirements. The Borrower covenants and agrees that it shall include, or cause to be included, the Trust as an additional "named insured" on any certificate of liability insurance procured by the Borrower and by any contractor or subcontractor for the Project.

(h) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the covenants of the Borrower set forth in this Section 3.

**SECTION 4. Disbursement of the Loan Proceeds; Amounts Payable; Prepayment; and Late Fee.** The Trust shall effectuate the Loan to the Borrower by making one or more disbursements to the Borrower promptly after receipt by the Trust of a Loan Disbursement Requisition, each such disbursement and the date thereof to be recorded by an Authorized Officer of the Trust on the table attached as Exhibit A hereto. The latest date upon which the Borrower may submit to the Trust a Loan Disbursement Requisition is the business day immediately preceding the date fixed by the Trust for the sale of its bonds in connection with the Anticipated Financing Program. On the Maturity Date, the Borrower shall repay the Loan to the Trust in an amount equal to: (i) the Principal; (ii) the Interest; (iii) the Administrative Fee, if any; and (iv) any other amounts due and owing pursuant to the provisions of this Note. Any earnings accrued on the undrawn Trust Portion of the Principal of the Loan shall be credited against the Borrower's repayment obligations hereunder. The Borrower may prepay the Loan the Loan obligations hereunder, in whole or in part, upon receipt of the prior written consent of an Authorized Officer of the Trust. Each payment made to the Trust shall be applied to the payment of, first, the Interest then due and payable, second, the Principal, third, the Administrative Fee, if obligations hereunder, in whole or in part, upon receipt of the prior written consent of an any, fourth, any late charges, and, finally, any other amount due pursuant to the provisions of this Note. In the event that the repayment obligation set forth in this Note is received by the Trust later than the Maturity Date, a late fee shall be payable to the Trust in an amount equal to the greater of twelve percent (12%) per annum or the prime rate as published in the Wall Street Journal on the Maturity Date plus one half of one percent per annum on such late payment from the Maturity Date to the date it is actually paid; provided, however, that any late payment charges incurred hereunder shall not exceed the maximum interest rate permitted by law.

**SECTION 5. Unconditional Obligations.** The direct, general obligation of the Borrower to make the Loan repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner whatsoever while any Loan repayments, or any other payments due hereunder, remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or Environmental Infrastructure System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Trust to perform and observe any agreement or any duty, liability or obligation arising out of this Note, or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might have against the Trust or any other party; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

**SECTION 6. Events of Default.** The following events shall constitute an "Event of Default" hereunder: (i) failure by the Borrower to pay, when due, any and all of its Loan repayment obligations hereunder, and any other payment obligations due hereunder; (ii) failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed pursuant to the terms of this Note; (iii) any representation made by the Borrower contained in this Note or in any instrument furnished in compliance with or with reference to this Note is false or misleading in any material respect; and (iv) a petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Note or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal, or the Borrower shall become insolvent or bankrupt or shall make an assignment for the benefit of its creditors, or a custodian of the Borrower or any of its property shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

**SECTION 7. Remedies upon Event of Default.** Whenever an Event of Default shall have occurred and be continuing pursuant to the terms hereof, the Borrower hereby acknowledges and agrees to the rights of the Trust to take any action permitted or required at law or in equity to collect the amounts then due and thereafter to become due hereunder or to enforce the observance and performance of any duty, covenant, obligation or agreement of the Borrower hereunder. If an Event of Default shall have occurred, the Borrower hereby acknowledges and agrees that the Trust shall have the right to declare all Loan repayments and all other amounts due hereunder to be due and payable immediately without further notice or demand. The Borrower hereby acknowledges and agrees that no remedy herein is intended to be exclusive, and every remedy shall be cumulative and in addition to every other remedy given under this Note or now or hereafter existing at law or in equity. The Borrower hereby further acknowledges and agrees that no delay or omission by the Trust to exercise any remedy or right accruing upon any Event of Default shall impair any such remedy or right or shall be construed to be a waiver thereof, but any such remedy or right may be exercised as often as may be deemed expedient. The Borrower hereby agrees that upon demand it shall pay to the Trust the reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred in the collection of Loan repayments or any sum due hereunder or in the enforcement of the observation or performance of any obligations or agreements of the Borrower upon an Event of Default. Any moneys collected by the Trust pursuant to this Section 7 shall be applied first to pay any attorneys' fees or other fees and expenses owed by the Borrower.

**SECTION 8. Certain Miscellaneous Provisions.** The Borrower hereby acknowledges and agrees as follows: (a) all notices hereunder shall be deemed given when hand delivered or when mailed by registered or certified mail, postage prepaid, to the Borrower at the following address: Township of Ocean, 50 Railroad Avenue, Waretown, New Jersey 08758, Attention: Diane Ambrosio, Township Clerk; and to the Trust at the following address: New Jersey Environmental Infrastructure Trust, P.O. Box 440, Trenton, New Jersey 08625, Attention: Executive Director; (b) this Note shall be binding upon the Borrower and its successors and assigns; (c) in the event any provision of this Note is held illegal, invalid or unenforceable by any

court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof; (d) the obligations of the Borrower pursuant to the terms of this Note may not be assigned by the Borrower for any reason, unless the Trust shall have approved said assignment in writing; (e) this Note may not be amended, supplemented or modified without the prior written consent of the Trust; (f) this Note shall be governed by and construed in accordance with the laws of the State; (g) the Borrower shall, at the request of the Trust, execute and deliver such further instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Note; and (h) whenever the Borrower is required to obtain the determination, approval or consent of the Trust pursuant to the terms hereof, such determination, approval or consent may be either granted or withheld by the Trust in its sole and absolute discretion.

[The remainder of this page has been left blank intentionally.]

**IN WITNESS WHEREOF**, the Borrower has caused this Note to be duly executed, sealed and delivered on the date first above written.

**TOWNSHIP OF OCEAN, in the COUNTY OF OCEAN, NEW JERSEY**

**[SEAL]**

**ATTEST:**

draft

**By:**_____
**Dennis Tredy**
**Mayor**

draft

draft

_____
**Diane B. Ambrosio**
**Clerk**

**By:** _____

**Chief Financial Officer**

# EXHIBIT A

## Loan Disbursements

| Date of Loan Disbursement | Amount of Loan Disbursement |
|---|---|
| | |
| | |
| | |
| | |
| | |
| | |
| | |