

**RESOLUTION NO. 2020-\_\_ CRA**

**A RESOLUTION OF THE CHAIR AND BOARD OF DIRECTORS OF THE HALLANDALE BEACH COMMUNITY REDEVELOPMENT AGENCY, HALLANDALE BEACH, FLORIDA AUTHORIZING THE ISSUANCE OF A REDEVELOPMENT REVENUE NOTE SERIES 2020 IN A PRINCIPAL AMOUNT OF \$20,000,000 (THE “NOTE”) TO FINANCE THE COST OF CERTAIN PUBLIC IMPROVEMENTS CONSISTENT WITH THE COMMUNITY REDEVELOPMENT PLAN; PROVIDING THAT THE NOTE SHALL BE A LIMITED OBLIGATION OF THE AGENCY PAYABLE FROM TAX INCREMENT REVENUES AS PROVIDED HEREIN; PLEDGING SUCH TAX INCREMENT REVENUES TO SECURE PAYMENT OF THE PRINCIPAL AND INTEREST ON SAID NOTE; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER(S) OF THE NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE HALLANDALE BEACH COMMUNITY REDEVELOPMENT AGENCY AS FOLLOWS:**

**Section 1. Authority for this Resolution.** This Resolution is adopted pursuant to the Community Redevelopment Act of 1969 (Part III of Chapter 163, Florida Statutes), and other applicable provisions of law.

**Section 2. Definitions.** The following words and phrases shall have the following meanings when used herein:

“Act” means the Community Redevelopment Act of 1969 (Part III of Chapter 163, Florida Statutes) and other applicable provisions of law.

“Additional Notes” means additional debt issued hereafter payable from Pledged Revenues on a parity with the Note.

“Annual Debt Service Requirement” shall mean the principal of and interest on the 2015 Note, the Note and any Additional Notes coming due in any particular Fiscal Year.

“Chair” means the Chair of the governing board of the Issuer, or in the Chair’s absence or inability to act, such other person as may be duly authorized by the governing board of the Issuer to act on his or her behalf.

“City” means the City of Hallandale Beach, Florida,

“Code” means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto.

“CRA Clerk” means the Clerk of the Hallandale Beach Community Redevelopment Agency or any deputy clerk.

“Default Rate” means the lesser of (a) the Prime Rate plus 3%, and (b) the maximum rate permitted by applicable law.

“Determination of Taxability” means the circumstance of the interest on the Note becoming includable for federal income tax purposes in the gross income of the Owner as a consequence of any action or inaction by the Issuer. A Determination of Taxability will be deemed to have occurred upon (i) the receipt of a final decree or judgment of any federal court or the receipt by this Issuer or the Owner of an original or a copy of an Internal Revenue Service Technical Advice Memorandum, Statutory Notice of Deficiency or similar document which holds that the interest on the Note is includable in the gross income of the Owner; (ii) the issuance of any public or private ruling of the Internal Revenue Service that the interest on the Note is includable in the gross income of the Owner; or (iii) receipt by this Issuer or Owner of an opinion of counsel experienced in tax matters regarding municipal securities that the interest on the Note has become includable in the gross income of the Owner for federal income tax purposes; provided that in each case, such Determination of Taxability shall only occur if it is the result of an action or inaction by this Issuer. For all purposes of this definition, a Determination of Taxability will be deemed to occur on the date as of which the interest on the Note is deemed includable in the gross income of the Owner.

“Executive Director” means the Executive Director of the Issuer or in the Executive Director’s absence or inability to act, such other person as may be duly authorized by the governing board of the Issuer to act on his or her behalf.

“Fifth Amendment” means the Fifth Amendment to the Interlocal Agreement between the City and the Issuer dated as of July 30, 2020, amending the Interlocal Agreement dated as of September 22, 2012, as previously amended.

“Fiscal Year” means the period commencing October 1 each year and ending on September 30 each year.

“Increment Revenues” means the revenues generated from the tax increment as described in Section 163.387, Florida Statutes, received annually by the Issuer and deposited to the Trust Fund.

“Issuer” means the Hallandale Beach Community Redevelopment Agency created by Resolution No. 96-15 adopted by the City Commission of the City on September 17, 1996.

“Lender” means PNC Bank, National Association.

“Note” shall have the meaning ascribed to such term in Section 4 hereof.

“Notes” means, collectively, the 2015 Note, the 2020 Note and any Additional Notes.

“Note Counsel” means Fox Rothschild LLP or any other nationally recognized counsel experienced in matters relating to the validity of, and the exclusion from gross income for federal income tax purposes of interest on, obligations of states and their political subdivisions.

“Owner” means the Person in whose name the Note shall be registered on the books of the Issuer kept for that purpose in accordance with provisions of this Resolution.

“Person” means natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies.

“Pledged Revenues” means (i) the Increment Revenues, (ii) amounts on deposit in the 2020 Debt Service Account, and (iii) until applied in accordance with the provisions of this Resolution, the amounts on deposit in the all moneys, including investments thereof, in the funds and accounts established hereunder, including without limitation, the 2020 Debt Service Fund.

“Prime Rate” means a rate of interest equal to the announced prime commercial lending rate per annum of the Owner. The Prime Rate is a reference rate for the information and use of the Owner in establishing the actual rate to be charged to the Issuer. The Prime Rate is purely discretionary and is not necessarily the lowest or best rate charged any customer. The Prime Rate shall be adjusted from time to time without notice or demand as of the effective date of any announced change thereof.

“Project” means the costs to finance, refinance and/or reimburse the acquisition, construction and equipping of certain capital improvements, consistent with and in furtherance of the Issuer’s Redevelopment Plan, as more fully set forth on **Exhibit B**, attached hereto.

“Project Fund” means the Project Fund established with respect to the Note pursuant to Section 10 hereof.

“Redevelopment Area” means the Hallandale Beach Community Redevelopment Area established pursuant to City Resolution No. 96-15 adopted on September 17, 1996.

“Redevelopment Plan” means the Hallandale Beach Community Redevelopment Area Master Plan, as amended.

“Resolution” means this Resolution, pursuant to which the Note is authorized to be issued, including any supplemental resolution(s).

“State” means the State of Florida.

“Trust Fund” means the redevelopment trust fund established by City Ordinance No. 96-25 enacted on December 17, 1996.

“2015 Note” means the \$15,400,000 Hallandale Beach Community Redevelopment Agency Redevelopment Revenue Note, Series 2015.

“2015 Resolution” means the resolution of the Issuer adopted on \_\_\_\_\_, 2015 authorizing the issuance of the 2015 Note, as amended by a Resolution of the Issuer adopted on \_\_\_\_\_, 2020.

“2020 Debt Service Account” means the 2020 Debt Service Account in the Hallendale Beach Community Redevelopment Agency Tax Increment Revenue Fund created under the Fifth Amendment.

“2020 Debt Service Fund” means the Hallendale Beach Community Redevelopment Agency Redevelopment Revenue Note, Series 2020 Debt Service Fund established under Section 8 hereof.

**Section 3. Findings.** It is hereby ascertained, determined and declared as follows:

(A) For the benefit of the inhabitants and real property owners of the Redevelopment Area and the citizens of Hallendale Beach, the Issuer finds, determines and declares that it is necessary for the continued preservation of the health, welfare, convenience and safety of the Issuer and such inhabitants, real property owners and citizens, to construct the Project. Issuance of the Note to finance the cost of the Project satisfies a paramount public purpose. The Project constitutes an integral part of and is necessary for carrying out the Redevelopment Plan.

(B) Debt service on the Note will be payable from the Pledged Revenues, on an equal and ratable basis with the 2015 Note. The Pledged Revenues will be sufficient to pay the principal and interest on the Note herein authorized and the 2015 Note, as the same become due, and to make all deposits required by this Resolution.

(C) The Issuer, after soliciting proposals for a loan to finance the Project in accordance with the procurement process set forth in Chapter 23 of the City Code of Ordinances, has selected the Lender to purchase the Note.

(D) The Issuer has received the term sheet of the Lender pursuant to which the Lender will make a loan to the Issuer in the aggregate amount of \$20,000,000, as evidenced by the Note.

(E) Because of the characteristics of the Note, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Note, it is in the best interest of the Issuer to accept the offer of the Lender to purchase the Note at a private negotiated sale which was based upon a competitive selection process.

(F) In consideration of the purchase and acceptance of the Note authorized to be issued hereunder by those who shall be the Owner thereof from time to time, this Resolution shall constitute a contract between the Issuer and the Owner.

**Section 4. Authorization of the Note.** Subject and pursuant to the provisions of this Resolution, an obligation of the Issuer to be known as the Hallendale Beach Community Redevelopment Agency Redevelopment Revenue Note, Series 2020 in a principal amount of \$20,000,000 (the “Note”) is hereby authorized to be issued under and secured by this Resolution, for the purpose of providing funds to pay the costs of the Project, and pay the costs of issuing the Note. Prior to the issuance of the Note, the Issuer shall receive from the Lender a Lender’s Certificate, substantially in the form attached hereto as **Exhibit C**, and a Disclosure Letter containing the information required by Section 218.385, Florida Statutes, substantially in the form attached hereto as **Exhibit D**. Notice has been given in accordance with Section 163.385, Florida Statutes, at least fifteen (15) days prior to the adoption of this Resolution.

**Section 5. Description of Note.** The Note shall be dated the date of its execution and delivery, which shall be a date agreed upon by the Issuer and the Lender, subject to the following terms:

(A) **Interest Rate.** The Note shall have a fixed interest rate not to exceed \_\_\_% per annum, or such other rate as may be approved by the Owner and fixed by supplemental resolution of the Issuer, calculated on a 30/360 day basis, subject to adjustment as described in Subsection B below. Notwithstanding the foregoing, in no event shall the interest rate on the Note, on the date of issuance of the Note, exceed the maximum interest rate permitted by Section 215.84, Florida Statutes. Thereafter, notwithstanding anything herein to the contrary, the interest rate borne by the Note shall in no event exceed the maximum rate permitted by applicable law.

(B) **Adjustments of Interest Rate on the Note.** Upon the occurrence of an Event of Taxability and for as long as the Note remains outstanding, the interest rate on the Note shall be converted to the Taxable Rate and this adjustment shall survive payment of the Note until such time as the federal statute of limitations under which the interest on the Note could be declared taxable under the Code shall have expired. In addition, upon an Event of Taxability, the Issuer shall, immediately upon demand, pay to the Owner (or prior holders, if applicable) (i) an additional amount equal to the difference between (A) the amount of interest actually paid on the Note during the Taxable Period and (B) the amount of interest that would have been paid during the Taxable Period had the Note borne interest at the Taxable Rate, and (ii) an amount equal to any interest, penalties and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Owner as a result of the Event of Taxability.

(C) **Principal and Interest Payment Dates.** Interest payments on the Note shall be made semi-annually on each February 1 and August 1, beginning on August 1, 2020, or such later date as determined by the Executive Director, until payment in full of the Note and principal shall be paid annually each February 1, commencing February 1, 2021, until payment in full of the Note. The Issuer agrees to have principal and interest payments collected via ACH Direct Debit from the Debt Service Fund. The principal payment schedule for the Note shall be in the amounts as set forth in the Note.

(D) **Form of Note.** The Note shall be in substantially the form set forth in **Exhibit A** attached hereto, together with such changes accepted by the Lender and as shall be approved by the Executive Director, such approval to be conclusively evidenced by the execution thereof by the Executive Director. The Note shall be executed on behalf of the Issuer with the manual signature of the Executive Director and attested by the Clerk.

**Section 6. Registration and Exchange of the Note: Persons Treated as Owner.** The Note shall be initially registered to the Lender. So long as the Note shall remain unpaid, the CRA Clerk will keep books for the registration and transfer of the Note. The Note shall be transferable only upon such registration books.

The Person(s) in whose name the Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal and interest on the Note shall be made only to or upon the written order of the Owner. All such payments shall be valid and

effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

**Section 7. Payment of Principal and Interest; Limited Obligation.** The Issuer covenants that it will promptly pay the principal of and interest on the Note at the place, on the dates and in the manner provided therein according to the true intent and meaning hereof and thereof. The Note shall not be or constitute a general obligation or indebtedness of the Issuer or the City as a “bond” within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from the Pledged Revenues. The Issuer shall not be obligated to pay the Note or the interest thereon except from the revenues of the Issuer held for that purpose, as provided herein, and neither the faith and credit nor the taxing power of the City or of the State or of any political subdivision thereof is pledged to the payment of the principal of, or the interest on, the Note. No holder of the Note issued hereunder shall ever have the right to compel the exercise of any ad valorem taxing power to pay such Note. A holder of the Note is not entitled to payment of such Note from any other funds of the Issuer or the City except from the Pledged Revenues as described herein.

**Section 8. Debt Service Fund.**

(A) The Issuer hereby establishes the “Hallandale Beach Community Redevelopment Agency Redevelopment Revenue Note, Series of 2020 Debt Service Fund” (the “2020 Debt Service Fund”). The 2020 Debt Service Fund shall be held by the Lender so long as the Lender is the owner of the Note.

(B) Upon deposit of Increment Revenues into the 2020 Debt Service Account, the Issuer will immediately deposit such amounts into the 2020 Debt Service Fund.

(C) Upon deposit of an amount equal to the Annual Debt Service Requirement in any Fiscal Year and all prior Fiscal Years not theretofore paid and all other amounts due and owing hereunder and under the Note, no further deposits shall be made into the 2020 Debt Service Fund.

(D) Moneys on deposit in the 2020 Debt Service Fund shall be used solely to pay the principal of and interest on the Note as it becomes due and all principal of and interest on the Note for prior Fiscal Years not theretofore paid and all other amounts due and owing hereunder and under the Note.

**Section 9. Security for the Note.** The payment of the principal of and interest on the Note and all other amounts due and owing hereunder shall be secured equally and ratably by an irrevocable lien on the Pledged Revenues and the Issuer does hereby irrevocably pledge such Pledged Revenues to the payment of the principal of and interest on the Note and for all other required payments hereunder on a pari passu basis with the 2015 Note and any Additional Notes.

**Section 10. Prepayments; Make Whole Premium.** Upon at least five (5) Business Days prior written notice, the Note shall be subject to prepayment, in whole or in part, on any date at the option of the Issuer, at the Prepayment Price plus interest accrued on the amount being prepaid to the date of prepayment. Prepayment Price is payable upon an acceleration.

"Prepayment Price" means the principal amount of the Note being prepaid plus an amount equal to the present value, if positive, of the product of (a) the difference between (i) the yield, on the beginning date of the Applicable Interest Period, of a U.S. Treasury obligation with a maturity the same or substantially similar to the Applicable Interest Period minus (ii) the yield on the prepayment date, of a U.S. Treasury obligation with a maturity the same or substantially similar to the remaining maturity of the Applicable Interest Period, and (b) the principal amount to be prepaid, and (c) the number of years, including fractional years, from the prepayment date to the end of the Applicable Interest Period. The yield on any U.S. Treasury obligation shall be determined by reference to Federal Reserve Statistical Release H.15(519) "Selected Interest Rates" or if no longer published, such comparable index reasonably selected by the Owner. For purposes of making present value calculations, the yield to maturity of a similar maturity U.S. Treasury obligation on the prepayment date shall be deemed the discount rate. For purposes of determining the Prepayment Price, a separate calculation shall be made with respect to each principal payment date (and the final maturity date) with respect the portion of the Note prepaid, using the Applicable Interest Period, and the sum of such calculations shall be the Prepayment Price.

"Applicable Interest Period" means the period from the date of issuance of the Note to the final maturity date of the Note.

Any prepaid amount shall be applied in the inverse chronological order of the principal amortization.

**Section 11. Application of Proceeds of the Note; Project Fund.** At the time of delivery of the Note herein authorized, proceeds from the sale of the Note shall be used to fund the Project and associated costs of issuance (including but not limited to legal fees and expenses) in accordance with the following provisions.

(A) On the date the Note is issued, the Issuer shall pay costs of issuance associated with issuance of the Note.

(B) The Issuer hereby covenants that it will establish one fund to be known as the "Hallandale Beach Community Redevelopment Agency Redevelopment Revenue Note, Series 2020 Project Fund" (the "Project Fund"). Interest on such monies shall accrue to the benefit of the Issuer and may be used for costs of the Project or interest payments on the related Series of Note.

Proceeds from the sale of the Note herein authorized not used to pay costs of issuance of the Note shall be deposited into the Project Fund and shall be used to pay costs associated with the Project. When the Project has been completed and all construction-related costs and other costs of issuance have been paid in full, the Project Fund shall be closed and any remaining funds therein may be used by the Issuer to pay interest on the related Note. All moneys deposited in the Project Fund shall be and constitute a trust fund created for the purposes herein stated, and there is hereby created a lien upon such fund in favor of the Owner of the Note until the moneys thereof shall have been applied in accordance with this Resolution.

The funds and accounts created and established by this Resolution shall constitute trust funds for the purpose provided herein for such funds. All of such funds, except as hereinafter

provided, shall be continuously secured in the same manner as municipal deposits of funds are required to be secured by the laws of the State of Florida. Moneys on deposit to the credit of all funds and accounts created hereunder may be invested pursuant to applicable law and the Issuer's investment policy and shall mature no later than the dates on which such moneys shall be needed to make payments in the manner herein provided. The securities so purchased as an investment of funds shall be deemed at all times to be a part of the account from which the said investment was withdrawn, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, except as expressly provided in this Resolution, and any loss resulting from such investment shall likewise be charged to said fund or account.

The cash required to be accounted for in the funds and accounts established hereunder for the Note must be deposited into separate bank account and accounted for separately.

**Section 12. Tax Covenant and Compliance with Laws.** The Issuer covenants to the Owner of the Note provided for in this Resolution that the Issuer will not make any use of the proceeds of the Note, at any time during the term of the Note, which, if such use had been reasonably expected on the date the Note was issued, would have caused such Note to be an "arbitrage bond" within the meaning of the Code. The Issuer will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to ensure the exclusion of interest on the Note from the gross income of the holders thereof for purposes of federal income taxation.

The Issuer covenants to comply with the Act and all applicable state and local laws and regulations regarding the issuance of the Note, pledge of the Pledged Revenues and construction of the Project.

**Section 13. Representations and Warranties of the Issuer.** The Issuer represents and warrants as follows:

(A) **Existence.** The Issuer is a community redevelopment agency, duly created and validly existing under the laws of the State of Florida, with full legal right, power and authority to adopt this Resolution, to perform its obligations hereunder and the adoption of this Resolution on the part of the Issuer and the issuance and delivery of the Note will have been duly authorized by all necessary action on the part of the Issuer and will not violate or conflict with the Act, or any agreement, indenture or other instrument by which the Issuer or any of its material properties is bound.

(B) **Validity, Etc.** This Resolution and the Note are valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or from time to time affecting the enforcement of creditors' rights and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(C) **No Financial Material Adverse Change.** Except as noted in the financial statements or as disclosed in writing by the Issuer to the Lender, there are no actions, proceedings or investigations pending against the Issuer or affecting the Issuer (or any basis therefor known to



the Issuer) which, either in any case or in the aggregate, might result in any material adverse change in the financial condition, business, prospects, affairs or operations of the Issuer or in any of its properties or assets, or in any material impairment of the right or ability of the Issuer to carry on its operations as now conducted or proposed to be conducted, or in any material liability on the part of the Issuer and none which questions the validity of this Resolution or the Note or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

(D) **Powers of Issuer.** The Issuer has the legal power and authority to pledge the Pledged Revenues as described herein to pay debt service on the Note.

(E) **Other Debt.** The Issuer previously issued its Hallandale Beach Community Redevelopment Agency Redevelopment Revenue Note, Series 2015 in the original principal amount of \$15,400,000 (the “2015 Note”), which is secured by, among other things, a lien on the Increment Revenues, on an equal and ratable basis with the Note. As of the date of issuance of the Note, other than the 2015 Note, no other debt obligations of the Issuer are secured by the Pledged Revenues.

(F) **Debt Service Coverage.** The annual proceeds of the Increment Revenues are determined by the valuation of property located within the Redevelopment Area, and by other factors beyond the direct control of the Issuer. The Issuer nonetheless covenants, to the extent of its ability, to take such actions as may be necessary to ensure that the Increment Revenues are equal to at least 1.35 times the maximum annual debt service on all debt obligations secured by the Increment Revenues. The Issuer will not take any action which would result in the Increment Revenues being less than 1.35 times the maximum annual debt service on all debt obligations secured by the Increment Revenues. Each year, at the time of the delivery of its annual financial statements pursuant to Section 18 hereof, the Issuer will deliver a certificate of its Executive Director or other authorized officer setting forth the debt service coverage for such fiscal year.

**Section 14. Amendment.** This Resolution shall not be modified, supplemented or amended in any respect subsequent to the issuance of the Note except with the written consent of the Owner of the Note.

**Section 15. Limitation of Rights.** With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Note is intended or shall be construed to give to any Person other than the Issuer and the Owner any legal or equitable right, remedy or claim under or with respect to this Resolution or any covenants, conditions and provisions herein contained; this Resolution and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Owner, and upon adoption by the Issuer, shall be deemed a contractual obligation between the Issuer and the Owner.

**Section 16. Note Mutilated, Destroyed, Stolen or Lost.** In case the Note shall become mutilated, or be destroyed, stolen or lost, the Issuer shall issue and deliver a new Note of like tenor as the Note so mutilated, destroyed, stolen or lost, in exchange and in substitution for such mutilated Note, or in lieu of and in substitution for the Note destroyed, stolen or lost and upon the Owner furnishing the Issuer proof of ownership thereof and indemnity reasonably satisfactory to the Issuer and complying with such other reasonable regulations and conditions as the Issuer may

prescribe and paying such expenses as the Issuer may incur. The Note so surrendered shall be canceled.

**Section 17. No Impairment.** The Issuer covenants with the Owner of the Note that it will not, without the written consent of the Owner of the Note, enact any ordinance or adopt any resolution which repeals, impairs or amends in any manner adverse to the Owner the rights granted to the Owner of the Note hereunder. The pledging of the Pledged Revenues in the manner provided herein shall not be subject to repeal, modification or impairment by any subsequent ordinance, resolution or other proceedings of the Issuer. The Issuer is presently entitled to receive tax increment revenues to be deposited in the Trust Fund, and has taken all action required by law to entitle it to receive such revenues, and the Issuer will diligently enforce the obligation of any "taxing authority," as defined in Section 163.340(24), Florida Statutes, as amended, to appropriate its proportionate share of the tax increment revenues and will not take, or consent to or adversely permit, any action which will impair or adversely affect the obligation of each such taxing authority to appropriate its proportionate share of such revenues, impair or adversely affect in any manner the deposit of such revenues in the Trust Fund, or the pledge of the Pledged Revenues hereby. The Issuer shall be unconditionally and irrevocably obligated so long as the Note is outstanding to take all lawful action necessary or required in order to ensure that each such taxing authority shall appropriate its proportionate share of the tax increment revenues as now or later required by law, and to make or cause to be made any deposits of tax increment revenues or other funds required by this Resolution.

**Section 18. Budget and Financial Information.** The Issuer shall provide the Owner with a copy of the Issuer's audited financial statements within 270 days of the close of the Issuer's fiscal year. The Issuer shall also provide the Owner with a copy of the Issuer's annual budget within 30 days of the adoption by the Issuer and such other financial information regarding the Issuer as the Owner may reasonably request.

**Section 19. Determination of Taxability.** In the event and continuation of a Determination of Taxability, when an Event of Default has not occurred and is continuing, "Interest Rate" (as defined in the Note) means a per annum rate equal to the Taxable Rate, effective retroactively to the date on which the interest payable on the Note is includable for federal income tax purposes in the gross income of the Owner. "Taxable Rate" means a rate as shall be determined by the Owner of the Note absent manifest error, as shall be necessary to provide to the Owner of the Note an after-tax yield on the then outstanding principal amount of the Note equal to the after-tax yield to the Owner of the Note, if such Determination of Taxability had not occurred, from the date such interest must be included in such gross income; provided, however, such adjusted Interest Rate shall never exceed the maximum rate allowed by law.

The Issuer shall on the next interest payment date following a Determination of Taxability (or if the Note shall have matured, within 30 days after demand by the Owner) on the Note pay to the Owner an amount equal to the sum of (1) the difference between (A) the total interest that would have accrued on the Note at the Taxable Rate from the effective date of the Determination of Taxability to such next interest payment date (or maturity date), and (B) the actual interest paid by this Issuer on the Note from such effective date of the Determination of Taxability to such next

interest payment date (or maturity date), and (2) any interest, penalties, and other costs required to be paid as a result of any additional State of Florida and federal income taxes imposed upon the Owner arising as a result of such Determination of Taxability.

This provision shall survive payment of the Note until such time as the federal statute of limitations under which the interest on the Note could be declared taxable under the Code shall have expired.

**Section 20. Events of Default.** Each of the following is hereby declared an “Event of Default” with respect to the Note:

(A) Payment of the principal of or interest on the Notes, or any other payment due under the Notes, shall not be made when due; or

(B) The Issuer shall default in the due and punctual performance of any other of the material covenants, conditions, agreements and provisions contained in the Note or this Resolution and not an Event of Default under any other paragraph in this Section 20 and such default shall continue for thirty (30) consecutive days from the earlier of (x) after written notice shall have been given to the Issuer by the Owner specifying such default and requiring the same to be remedied or (y) the date the Issuer should have given notice to the Owner as provided in Section 21 hereof; provided, however, that if, in the reasonable judgment of the Owner, the Issuer shall proceed to take such curative action which, if begun and prosecuted with due diligence, cannot be completed within a period of thirty (30) days, then such period shall be increased to such extent as shall be necessary to enable the Issuer to diligently complete such curative action, but in no event exceeding sixty (60) days from the occurrence of such default; or

(C) Any representation or warranty of the Issuer contained in this Resolution or in any certificate or other closing document executed and delivered by the Issuer in connection with the issuance of the Note shall prove to have been untrue in any material respect when executed and delivered, thereby adversely impairing the security for the Note; or

(D) Any proceedings are instituted with the consent or acquiescence of the Issuer, for the purpose of effecting a compromise between the Issuer and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereinafter enacted; or

(E) The Issuer admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors, declares a financial emergency or consents to the appointment of a receiver or trustee for itself or shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof; or

(F) The Issuer is adjudged insolvent by a court of competent jurisdiction or is adjudged bankrupt on a petition of bankruptcy filed against the Issuer, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the Issuer, a receiver or trustee of the Issuer or of the whole or any part of its property and any of the aforesaid

adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or

(G) If, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Issuer or of the whole or any substantial part of its property and such custody or control shall not be terminated within sixty (60) consecutive days from the date of assumption of such custody or control.

(H) There is entered against the Issuer one or more final judgments or orders for the payment of money in an aggregate amount exceeding \$1,000,000 (to the extent not covered by independent third-party insurance), and there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(I) The provisions of the Note or this Resolution become unenforceable or otherwise unlawful; or

(J) The holder of any indebtedness of the Issuer, which is secured by the Increment Revenues on an equal and ratable basis with the Note shall declare an event of default under any such indebtedness and declare such indebtedness immediately due and payable; or

(K) The Issuer shall default in any covenant in Section 3 of the Fourth Amendment to the Interlocal Agreement dated November 16, 2015 between the Issuer and the City; or

(L) The holder of any Notes shall declare an event of default under any such Note and declare such Note immediately due and payable (whether by acceleration or tender of such Notes).

#### **Section 21. Exercise of Remedies.**

(A) Upon the occurrence and during the continuance of an Event of Default, the Owner may proceed to protect and enforce its rights under the laws of the State of Florida or under this Resolution by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Owner shall deem most effective to protect and enforce such rights.

(B) Upon and during the continuance of an Event of Default, notwithstanding anything herein to the contrary, the Interest Rate shall adjust to the Default Rate as of the date of the occurrence.

(C) In case of an Event of Default under Section 20(A) hereof, upon ten (10) days written declaration of the Owner, the entire debt then remaining unpaid under the Note may be immediately due and payable; provided, however, that if such payment due under Section 20(A) shall be paid within ten (10) days of its due date, such declaration of acceleration shall be rescinded. Notwithstanding the foregoing, if any other debt of the Issuer is accelerated as described in Section 20(J), the principal amount outstanding under the Note, together with all accrued interest thereon, and all other amounts due and owing thereunder shall be immediately payable.

**Section 22. Notice.** The Issuer shall within five (5) days after it acquires knowledge thereof, notify the Owner in writing of the happening, occurrence, or existence of any Event of Default or any event or condition which with the passage of time or giving of notice, or both, would constitute an Event of Default. Regardless of the date of receipt of such notice by the Owner, such date shall not in any way modify the date of occurrence of the actual Event of Default.

**Section 23. Fifth Amendment to Interlocal Agreement.** The execution and delivery of the Fifth Amendment is hereby authorized and approved. The Executive Director is hereby authorized to execute and the Clerk is hereby authorized to attest to, seal and deliver the Fifth Amendment in substantially the forms attached hereto as Exhibit E subject to such changes, insertions and omissions and such filling in of blanks therein as hereafter may be approved and made by the Executive Director upon the advice of Note Counsel. The execution and attestation and delivery of the Fifth Amendment, as described herein, shall be conclusive evidence of the Issuer's approval of any such determinations, changes, insertions, omissions or filling in of blanks.

**Section 24. Additional Notes.** The Issuer covenants and agrees that it will not issue any other obligations payable from or secured by the Pledged Revenues without the prior written consent of the Owner.

**Section 25. Redevelopment Area Boundaries.** The Issuer will not permit the boundaries of the current Redevelopment Area to be reduced without the prior written consent of the Owner.

**Section 26. Severability.** If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

**Section 27. Business Days.** In any case where the due date of interest on or principal of a Note is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day, provided that credit for payments made shall not be given until the payment is actually received by the Owner, except of the final maturity date for which interest shall continue to accrue until payment is made.

**Section 28. Applicable Provisions of Law.** This Resolution shall be governed by and construed in accordance with the laws of the State.

**Section 29. Rules of Interpretation.** Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

**Section 30. Captions.** The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

**Section 31. Members of the Issuer and the City Commission of the City Exempt from Personal Liability.** No recourse under or upon any obligation, covenant or agreement of this Resolution or the Note or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the Issuer or the City Commission of the City, as such, past, present or future, either directly or through the Issuer or the City, it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the members of the Issuer or the City Commission of the City, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such member of the Issuer and the City Commission of the City, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the issuance of the Note, on the part of the Issuer.

**Section 32. Authorizations.** The Chair, the Executive Director, the Issuer's Attorney, the City Manager and any member of the Issuer, and such other officials and employees of the Issuer as may be designated by the Issuer are each designated as agents of the Issuer in connection with the issuance and delivery of the Note and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents, and contracts on behalf of the Issuer that are necessary or desirable in connection with the execution and delivery of the Note, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

**Section 33. Repealer.** All ordinances or resolutions or parts thereof in conflict herewith are hereby repealed to the extent of the conflict.

**Section 34. No Third Party Beneficiaries.** Except such other persons as may be expressly described in this Resolution or in the Note, nothing in this Resolution or in the Note, expressed or implied, is intended or shall be construed to confer upon any person, other than the Issuer and the Owner, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, or of the Note, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the persons who shall from time to time be the Owner.

**Section 35. Permission to Use Information.** The Issuer agrees and consents that the Owner shall be permitted to use information related to the loan transaction in connection with marketing, press releases or other transactional announcements or updates provided to investors or trade publications, including, but not limited to, the placement of the logo or other identifying name on marketing materials or of "tombstone" advertisements in publications of its choice at its own expense.

**Section 36. Waiver of Jury Trial.** The Issuer knowingly, voluntarily, and intentionally waives any right it may have to a trial by jury, with respect to any litigation or legal proceedings based on or arising out of this Resolution or the Note, including any course of conduct, course of dealings, verbal or written statement or actions or omissions of any party which in any way relates to the Note or this Resolution.

**Section 37. Indemnity.** To the extent permitted by law, the Issuer agrees to indemnify each of the Lender, and its successors and assigns and each legal entity, if any, who controls, is controlled by or is under common control with any such entity, and each of their respective directors, officers and employees (the “Indemnified Parties”), and to defend and hold each Indemnified Party harmless from and against any and all claims, damages, losses, liabilities and expenses (including all fees and charges of internal or external counsel with whom any Indemnified Party may consult and all expenses of litigation and preparation therefor) (each, a “Claim”) which any Indemnified Party may incur or which may be asserted against any Indemnified Party by any person, entity or governmental authority (including any person or entity claiming derivatively on behalf of the Issuer), in connection with or arising out of or relating to the matters referred to in the Note or in the Resolution or the use of any advance hereunder, whether (a) arising from or incurred in connection with any breach of a representation, warranty or covenant by the Issuer, or (b) arising out of or resulting from any suit, action, claim, proceeding or governmental investigation, pending or threatened, whether based on statute, regulation or order, or tort, or contract or otherwise, before any court or governmental authority; provided, however, that the foregoing indemnity agreement shall not apply to any Claim that is determined by a court of competent jurisdiction in a final, non-appealable judgment to have been solely attributable to an Indemnified Party's gross negligence or willful misconduct. The indemnity agreement contained in this paragraph shall survive the termination of the Note, payment of any advance hereunder and the assignment of any rights hereunder. The Issuer may participate at its expense in the defense of any such action or claim.

**Section 38. Effective Date.** This Resolution shall become immediately effective upon its adoption,

PASSED AND ADOPTED by a \_\_\_\_\_ vote of the Board of the Hallandale Beach Community Redevelopment Agency, this \_\_\_th day \_\_\_\_\_, 2020.

ATTEST:

HALLANDALE BEACH COMMUNITY  
REDEVELOPMENT AGENCY

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JENORGEN M. GUILLEN, CRA  
SECRETARY

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JOY COOPER, CHAIR

APPROVED AS TO FORM:

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FOX ROTHSCHILD LLP, CRA ATTORNEY

**CERTIFICATE OF RECORDING OFFICER**

1. I am the duly appointed, qualified and acting City Clerk for the City of Hallandale Beach, Florida (the "City"), and keeper of the records thereof, including the minutes of its proceedings;

2, I am duly authorized to execute this Certificate; and

3. The copy of Resolution No. \_\_-20 attached hereto is a true, correct and compared copy of the original instrument, duly adopted by the City Commission of the City on \_\_\_\_\_, 2020 is in full force and effect and has not been modified and, to the extent required by law, has been duly signed or approved by the proper officer or officers and is on file and of record.

DATED this \_\_th day of \_\_\_\_\_, 2020.

(SEAL)

By: \_\_\_\_\_  
\_\_\_\_\_  
City Clerk