

## **FIFTH AMENDMENT TO INTERLOCAL AGREEMENT**

THIS FIFTH AMENDMENT TO INTERLOCAL AGREEMENT (the "Fifth Amendment") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the CITY OF HALLANDALE BEACH, FLORIDA, a Florida municipal corporation (the "City") and the HALLANDALE BEACH COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic (the "CRA") (the City and CRA are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties").

### **RECITALS**

1. The Parties entered into that certain Interlocal Agreement dated September 22, 2012 (as amended, the "Interlocal Agreement") regarding the implementation of capital improvements projects funded by the CRA.

2. On May 19, 2014, the City and CRA entered into a First Amendment to Interlocal Agreement ("First Amendment") to provide for Project Management Services regarding the Parks Master Plan.

3. On August 5, 2015, the City and CRA entered into a Second Amendment to Interlocal Agreement ("Second Amendment") which set forth the provisions by which the CRA secured financing for implementation of the O.B. Johnson Park project (the "2015 Project"), and the City was to utilize General Fund dollars in an amount not to exceed \$933,000 for interim financing of the 2015 Project.

4. On October 19, 2015, the City and CRA entered into a Third Amendment to Interlocal Agreement ("Third Amendment") pursuant to which the CRA secured financing for implementation of the 2015 Project and the City was to utilize General Fund dollars in an amount not to exceed \$2,952,740 for interim financing of the 2015 Project.

5. By adoption of CRA Resolution No. 2015-29 CRA on November 16, 2015 (the "2015 Note Resolution"), the CRA authorized issuance of the CRA's Redevelopment Revenue Note, Series 2015 (the "Series 2015 Note") which was purchased by STI Institutional & Government, Inc. (together with its successors and assigns, the "2015 Lender");

6. As a condition to the 2015 Lender's purchase of the Series 2015 Note, on November 16, 2015, the City and CRA entered into a Fourth Amendment to Interlocal Agreement (the "Fourth Amendment") pursuant to which the City pledged its revenues levied and collected by the City on the public service tax levied on the sale of water service, under the authority of Section 166.231, Florida Statutes and Ordinance No. 89-28 ("Ordinance No. 89-28") duly enacted by the City Commission of the City on September 29, 1989 (the "Water Public Service Tax Revenues") to payment of the Series 2015 Note.

7. City Ordinance No. 2015-15 ("Ordinance No. 2015-15") enacted on November 4, 2015, authorized the pledge of the Water Public Service Tax Revenues to payment of the Series 2015 Note and execution of the Fourth Amendment providing the terms and conditions of such pledge.

8. By adoption of CRA Resolution No. \_\_\_\_ on July \_\_, 2020 (the "2020 Note Resolution" and together with the 2015 Note Resolution, the "Note Resolutions"), the CRA authorized issuance of the CRA's Redevelopment Revenue Note, Series 2020 (the "Series 2020 Note" and together with the Series 2015 Note, the "Notes") to be purchased by PNC Bank, National Association (together with its successors and assigns, the "2020 Lender" and together with the 2015 Lender, the "Lenders") and such Series 2020 Note shall be secured solely by a pledge of Increment Revenues (as defined herein) on parity with the Series 2015 Note and authorized the execution of this Fifth Amendment;

9. As a condition to the purchase of the Series 2020 Note by the 2020 Lender, the City and the CRA are entering into this Fifth Amendment to reflect that the Notes will be on a parity with respect to pledge of Increment Revenues.

9. The 2015 Lender has given its consent to the City and the CRA entering into this Fifth Amendment.

10. The City and CRA agree and acknowledge that these amendments are in the best interests of the CRA, the City and its citizenry.

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, the Parties hereby agree as follows:

**Section 1: Incorporation of Recitals.** The above set forth recitals are hereby incorporated into the terms of this Fifth Amendment.

**Section 2: Definitions.** Capitalized terms not otherwise defined herein shall have the meaning as set forth in the Note Resolutions.

"Additional Notes" means additional indebtedness issued after the Series 2020 Note and secured by a lien on the Increment Revenues.

"Annual Debt Service Requirement" shall mean the aggregate amount of principal of and interest on the Notes coming due in any particular Fiscal Year.

"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 CRA and deposited to the Trust Fund.

"Notes" means collectively, the Series 2015 Note, the Series 2020 Note and any Additional Notes.

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

**Section 3: Amendments to Fourth Amendment.** Section 3 of the Fourth Amendment is hereby amended and restated in its entirety with the following (double underlining indicates additions and ~~strike through~~ indicates deletions):

**Section 3. Creation of Increment Revenue Fund; Deposit of Increment Revenues; Pledge of Water Public Service Tax Revenues.**

(A) There is hereby created the "Hallandale Beach Community Redevelopment Agency Tax Increment Revenue Bond Fund" which shall be held by the CRA (the "Increment Revenue Fund") and therein a "2015 Debt Service Account" and a "2020 Debt Service Account" is created. The payment of the principal of and interest on the Notes and all other amounts secured thereby shall be secured equally and ratably by an irrevocable lien on the Increment Revenues and the CRA does hereby irrevocably pledge such Increment Revenues to the payment of the principal of and interest on the Notes and for all other required payments under the Note Resolutions. The Increment Revenue Fund and the accounts therein shall not be subject to set-off by the depository institution at which such fund and accounts are held except ratably for the benefit of all holders of the Notes.

Moneys in the Increment Revenue Fund shall be subject to a lien and charge in favor of the holders of the Notes and for the further security of such holders; provided that moneys in the separate subaccounts in the Increment Revenue Fund shall secure only the obligations of the series designated to be secured thereby. The 2015 Debt Service Account shall secure only the Series 2015 Note and the 2020 Debt Service Account shall secure only the Series 2020 Note.

(B) The Increment Revenues shall be deposited immediately upon receipt into the Increment Revenue Fund.

(C) Interest and principal payments on the Series 2015 Note are due on February 1 of each year, commencing February 1, 2016. Interest on the Series 2020 Note is due on February 1 and August 1 of each year, commencing [August 1, 2020] and principal payments on the Series 2020 Note is due on February 1 of each year, commencing February 1, 2021.

(D) On or before January 1 of each year, commencing on January 1, 2016, or on the date the payment of the Series 2015 Note shall declared immediately due and payable in accordance with the 2015 Note Resolution (the "Notice Date"), the CRA shall determine whether the Increment Revenues on deposit in the Increment Revenue Fund

~~Debt Service Fund~~ are sufficient to pay ~~the interest and principal due on the Note~~ Annual Debt Service Requirement on the immediately following February 1 and August 1 payment dates (or the date such accelerated payment(s) shall be due) and all other amounts then due and owing, including, without limitation, the outstanding principal and accrued interest thereon if the Notes shall have been declared immediately due and payable (collectively, the "Payment Obligation"). By no later than the Notice Date, the CRA shall notify the City and the Lenders (and such other holders of the Notes) in writing if there is not a sufficient amount of Increment Revenues on deposit in the Increment Revenue Fund ~~Debt Service Fund~~ to pay the Payment Obligation and the amount of such Deficiency (as hereinafter defined). Deficiency shall mean for purposes of this Interlocal Agreement the difference between the amount on deposit in the Increment Revenue Fund ~~Debt Service Fund~~ and the Payment Obligation. After receipt of such notice, not later than ten (10) Business Days, the City shall provide the CRA with Water Public Service Tax Revenues in an amount equal to the Deficiency with respect to the Series 2015 Note (the "2015 Note Deficiency"); provided, however, if by January 15 the City shall not have deposited into the 2015 Debt Service Account ~~Debt Service Fund~~ Water Public Service Tax Revenues in the amount of the 2015 Note Deficiency, the City shall on the first day of each month thereafter deposit Water Public Service Tax Revenues into the 2015 Debt Service Account ~~Fund~~ until the amount on deposit in the 2015 Debt Service Account ~~Fund~~ shall equal the Payment Obligation with respect to the Series 2015 Note. Amounts of Water Public Service Tax Revenues deposited into the 2015 Debt Service Account to cure a 2015 Note Deficiency, once such Deficiency has been cured shall continue to be deposited into the 2015 Debt Service Account and an equal amount of Increment Revenues shall be removed from the 2015 Debt Service Account and deposited into the 2020 Debt Service Account and such other accounts created in the Increment Revenue Fund until the Deficiency in all such accounts shall be cured. A failure of the CRA to provide the notice required in this Section to the City shall not relieve the City of its obligations hereunder to fund the amounts provided for herein. The CRA shall immediately upon receipt deposit the Water Public Service Tax Revenues to the 2015 Debt Service Account ~~Fund~~ to be applied to the payment of the Series 2015 Note on the applicable payment dates.

(E) (i) Upon receipt of Increment Revenues deposited in the Increment Revenue Fund, the CRA shall deposit into the 2015 Debt Service Account, the 2020 Debt Service Account and such other accounts created Increment Revenue Fund securing Notes, amounts which together with other amounts deposited therein will be sufficient to pay the Annual Debt Service Requirement for the then current Fiscal Year and all prior Fiscal Years not theretofore paid on the Notes and all other amounts due and owing on the Notes are on deposit therein and all other deposits required under the Note Resolutions (and resolutions applicable to the Notes), taking into accounts amounts on deposit in the 2015 Debt Service Account and the 2020 Debt Service Account.

In the event that the Increment Revenues on deposit in the Increment Revenue Fund are insufficient to make the required deposits into the accounts in the Debt Service Fund to pay the Annual Debt Service Requirement and other amounts due and owing, after taking into account amounts on deposit in the accounts created under the Increment Revenue Fund securing the Notes the CRA or there shall have occurred an event of default under the applicable resolutions authorizing the Notes the CRA or a trustee or receiver appointed for the purpose shall apply all Increment Revenues as follows and in the following order:

(X) Unless the principal of all the Notes shall have become due and payable, all such moneys shall be applied (1) to the payment of all installments of interest then due, in the order of the maturity of the installments of such interest, to the persons entitled thereto, ratably, without any discrimination or preference, and (2) to the payment of all installments principal then due, by maturity, or upon mandatory redemption, in order of their due dates, to the persons entitled thereto, ratably, without discrimination or preference.

(Y) If the principal of all the Notes 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 Note, 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 Note over any other Note, ratably, according to the amounts due, respectively, for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

(Z) After the payments are made in accordance with (X) or (Z) to the payment of any other amounts due and owing under the Notes.

(ii) After making the deposits required pursuant to subsections (i) above, amounts available in the Increment Revenue Fund shall be redeposited into the Trust Fund and may be used and applied by the Agency for any lawful purpose of the CRA.

(C) Moneys on deposit in the Increment Revenue Fund and the accounts therein ~~Debt Service Fund~~ shall be withdrawn solely for the purpose of paying principal and interest on the Notes and any other payments required by the respective Note Resolutions and resolutions authorizing Additional Notes. Deposits required pursuant to this Section shall be cumulative and the amount of any deficiency in any year shall be added to the amount otherwise required to be deposited in the years thereafter until such time as all such deficiencies have been cured.

(E) The City hereby pledges the Water Public Service Tax Revenues to the payment of the Series 2015 Note. Such obligation and pledge shall continue for so long

as any amounts remain due and owing under the Series 2015 Note and the 2015 Note Resolution.

(F) The City shall not pledge the Water Public Service Tax Revenues to the payment of any debt obligation other than the Note without the prior written consent of the 2015 Lender of the Series 2015 Note.

(G) The pledging of the Water Public Service Tax 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 City and the City shall not modify Ordinance No. 89-28, to decrease the rate of the taxes imposed thereby or to amend or modify in a manner that would materially adversely affect the amount of the Water Public Service Tax Revenues without the prior consent of the 2015 Lender. The City shall exercise all legally available remedies to enforce such collections now or hereafter available under Florida law. The City will not take any action which will impair or adversely affect its right to receive Water Public Service Tax Revenues, as herein pledged, or impair or adversely affect in any manner the pledge of the Water Public Service Tax Revenues made herein.

(H) No other indebtedness of the City is secured by a pledge of the Water Public Service Tax Revenues.

(I) For good and valuable consideration, receipt of which is hereby acknowledged, the City ratifies, confirms and reaffirms its obligations under the Interlocal Agreement and Ordinance No. 2015-15, including its obligations to apply Water Public Service Tax Revenues as described herein and therein and agrees that it is bound and obligated by the terms of the Interlocal Agreement notwithstanding the issuance of the Series 2020 Note.

**Section 4: No General Obligation or Pledge of Full Faith and Credit.** The parties hereto acknowledge that neither the Notes nor the obligation to deposit Water Public Service Tax Revenues into the Debt Service Account related to the Series 2015 Note as contemplated hereunder constitute a general obligation of the City or the CRA within the meaning of any constitutional, statutory, or charter provision or limitation or a pledge of the City's or CRA's full faith and credit, but that the Notes shall be payable solely from Increment Revenues and, with respect to the Series 2015 Note, the Water Public Service Tax Revenues.

**Section 5: Conflicts.** Except as expressly modified herein by this Fifth Amendment, the provisions of the Interlocal Agreement, First Amendment, Second Amendment, Third Amendment and Fourth Amendment to the Interlocal Agreement remain unmodified and in full force and effect and are hereby ratified by the Parties. In the event of any conflict between the terms and provisions of this Fifth Amendment and the terms and provisions of the Interlocal Agreement, the terms and provisions of this Fifth Amendment shall control.

**Section 6: Modification.** No modification or amendment of the terms hereof shall be valid unless in writing, and executed by the parties hereto and consented in writing by the Lenders.

**Section 7: Counterparts.** This Fifth Amendment may be executed in counterparts, each of which shall be valid and regarded as an original and all of which shall constitute one and the same document.

**Section 8: No Third Party Beneficiaries.** This Fifth Amendment is for the sole benefit of the parties hereto and the Lenders; and there are no other third party beneficiaries of this Fifth Amendment. This Interlocal Agreement shall inure to the benefit of and shall be binding upon the City and the CRA and their respective successors and assigns. In consideration of the purchase and acceptance of any or all of the Note by those who shall hold the same from time to time, the provisions of this Interlocal Agreement shall be deemed to be and shall constitute a contract between the City and the Holders from time to time of the Notes. The provisions, covenants and agreements herein set forth to be performed by or on behalf of the City shall be for the equal benefit, protection and security of the Lenders.

**Section 9: Filing.** A copy of this Fifth Amendment shall be filed for record with the Clerk of the Circuit Court in Broward County, Florida.

**Section 10: Effective Date.** It is agreed that this Fifth Amendment shall be filed by the City with the Clerk of the Circuit Court of Broward County, Florida all in accordance with the Interlocal Act, and that this Fifth Amendment shall not become effective until so filed.

**Section 11: Obligation Absolute.** The obligation of the City to make the payments due hereunder and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional in all events except as otherwise expressly provided in this Interlocal Agreement and applicable provisions of law. Notwithstanding any dispute between the CRA and the City but subject to the foregoing, the City shall make all payments due hereunder when due and shall not withhold any such payments or any other amounts pending final resolution of such dispute nor shall the City assert any right of setoff or counterclaim against its obligation to make such payments required under Interlocal Agreement, including, without limitation for payments owed the City under Section 3.2 of the Interlocal Agreement. The City hereby subordinates its right to receive payment under Section 3.2 of the Interlocal Agreement to the CRA's payment obligations under the Notes and the Note Resolutions.

**Section 12: Events of Default Defined.** The following shall be "Events of Default" under this Fifth Amendment and the terms "Event of Default" and "Default" shall mean (except where the context clearly indicates otherwise), whenever they are used in this Fifth Amendment, any one or more of the following events:

- (a) Failure by the City to timely pay any payment to be paid under this Fifth

Amendment on the date on which it is due and payable;

(b) Failure by the City to observe and perform any material covenant, condition or agreement on its part to be observed or performed under this Fifth Amendment;

(c) Any provision of this Fifth Amendment material to the performance of the obligations of the City under this Fifth Amendment shall at any time for any reason cease to be valid and binding on the City or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the City or the City shall deny that it has any or further liability or obligation under this Fifth Amendment; and

(d) Any act of bankruptcy is filed against the City and is not dismissed within 60 days of such filing.

**Section 13: Notice of Default.** The City agrees to give the CRA prompt written notice if any petition, assignment, appointment or possession referred to in Sections 12(c) and 12(d) hereof is filed by or against the City or of the occurrence of any other event or condition which constitutes a Default or an Event of Default, or with the passage of time or the giving of notice would constitute an Event of Default, immediately upon becoming aware of the existence thereof.

**Section 14: Remedies on Default.** Whenever any Event of Default referred to in Section 12 hereof shall have happened and be continuing, the Lender may take whatever action at law or in equity, by mandamus or otherwise, may appear necessary or desirable to collect amounts then due hereunder or to enforce any other of its or their rights hereunder, including, without limitation, requiring the deposit of the Water Public Service Tax Revenues into a fund or account established or to be established under the Note Resolution.

**Section 15: Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by first class mail, registered or certified mail, postage prepaid, to the parties at the following address:

City: City of Halladale Beach  
400 S. Federal Highway  
Hallandale Beach, FL 33009

CRA: City of Hallandale Beach  
Community Redevelopment Agency  
400 S. Federal Highway  
Hallandale Beach, FL 33009

Series 2015 Lender: STI Institutional & Government, Inc.  
515 E. Las Olas Boulevard 7th Floor  
Mail Code FL-Fort Lauderdale-1073  
Fort Lauderdale, FL 33301



Series 2020 Lender: PNC Bank, National Association  
16740 San Carlos Blvd.  
Fort Meyers, Florida 33908

**Section 16: Non-Business Day.** If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Interlocal Agreement, shall be other than on a Business Day such payments shall be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Interlocal Agreement.

**Section 17: Public Agencies.** At all times prior to and during the term of this Interlocal Agreement, the City and CRA shall constitute "public agencies" as that term is defined in section 163.01 (3)(b), Florida Statutes (the "Interlocal Act"), and each of the City and this CRA have in common the power and authority to separately issue obligations like the Note in order to provide financing of the Project.

**Section 18: Waiver of Jury Trial.** The City and the CRA hereby knowingly, voluntarily, intentionally, and irrevocably waive, to the fullest extent permitted by applicable law, the right either of them may have to a trial by jury in respect to any litigation, whether in contract or tort, at law or in equity, based hereon or arising out of, under or in connection with this Fifth Amendment, the Notes and any other document or instrument contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto.

**Section 19: Applicable Law.** The Interlocal Agreement shall be governed by the laws of the State of Florida.

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IN WITNESS WHEREOF, the City and the CRA hereto have caused this Fifth Amendment to be executed as of the date first above written.

CITY:

CRA:

CITY OF HALLANDALE BEACH

HALLANDALE BEACH COMMUNITY  
REDEVELOPMENT AGENCY

By:\_\_\_\_\_

Greg Chavarria  
City Manager

By:\_\_\_\_\_

Jeremy Earle  
Executive Director

ATTEST:

ATTEST:

By:\_\_\_\_\_

Jenorgen M Guillen, CMC  
City Clerk

By:\_\_\_\_\_

Jenorgen M Guillen, CMC  
HBCRA Clerk

Approved as to form and legal sufficiency:

Approved as to form and legal sufficiency:

By:\_\_\_\_\_

Jennifer Marino, City Attorney

By:\_\_\_\_\_

\_\_\_\_\_  
HBCRA Attorney

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