



## MEMORANDUM

Not On  
Agenda Item No. 7(K)(1)(C)

**TO:** Honorable Chairperson Barbara Carey-Shuler, Ed.D. and Members Board of County Commissioners

**DATE:** April 27, 2004

**FROM:** George M. Burgess  
County Manager

**SUBJECT:** Approval of Interlocal Agreement among The City of Miami, Miami-Dade County and Midtown Miami Community Development District for the Midtown Miami Project

### RECOMMENDATION

It is recommended that the Board of County Commissioners adopt the attached resolution that approves the form, execution and delivery of an Interlocal Agreement among the City of Miami ("City"), Miami-Dade County ("County") and Midtown Miami Community Development District ("CDD") (collectively, the "Parties") for the Midtown Miami project previously approved by this Board for Section 108 funding. The Interlocal Agreement sets forth the understanding between the Parties with respect to the financial contributions by the City and the County to the District to be used to pay debt service on District bonds issued to fund the costs of certain public infrastructure improvements. The County and City will make Economic Incentive Payments and/or Tax Increment payments to the District in an amount that will not exceed the debt service on the bonds. The aggregate principal amount of the District bonds is estimated to be \$76,620,000.

### BACKGROUND

The "Midtown Miami" project entails the three (3) often-utilized elements of economic development; residential, office, and commercial. The 56-acre site is located in the Wynwood/Buena Vista neighborhood and is in close proximity to Little Haiti, Overtown, Allapattah, Design District, and the Biscayne Boulevard corridor. It is anticipated that the initial development in the first phase will be \$340 million. The development is a mixed-use project being developed by Biscayne Development Partners LLC ("Biscayne"). The primary development components to be constructed in six incremental phases include a retail shopping center, apartment buildings, an office building, a hotel, and eight condominium towers for an aggregate construction value of over \$1.2 billion (see supplemental information attachment 2). Biscayne expects to sell a portion of the land to Developers Diversified Realty Corporation ("DDR") or an affiliate, which is expected to develop the retail shopping center called "Shops at Midtown." The Board of County Commissioners (the "Board") endorsed the project when it approved Ordinance No. 04-42 which authorized the County Manager to apply for a US HUD Section 108 Loan Guarantee in the amount of \$20.6 million to fund a portion of the infrastructure improvements.

## **FINANCING PLAN**

The total construction cost of the infrastructure is estimated to be \$77,535,000. The infrastructure consists of roadways, water and sewer improvements, drainage and irrigation, streetscape and landscape and public plazas. Included in the infrastructure development is a public parking garage with an estimated cost of \$45 million. The Section 108 Loan Guarantee will finance up to \$20.6 million of the construction costs. In the event the Section 108 Loan is not secured, the District will issue bonds to fund the \$20.6 million. The Section 108 Loan will be secured by special assessments to be assessed to the property owners in the District (“Special Assessments”). A portion of the construction costs shall also be funded from public grants such as EDA (\$2 million), FDOT (\$2.5 million), South Florida Regional Planning Council loan (\$800,000), and County loan (BEDI) funds (\$400,000).

The remaining construction costs, estimated to be \$51,204,000, will be funded from bond proceeds. The CDD will issue bonds in an aggregate principal amount estimated to be \$76,620,000 (“Bonds”). In addition to the construction costs, the principal amount of the Bonds includes three years of capitalized interest, a debt service reserve fund, underwriter’s discount and costs of issuance. The Bonds will be structured so there are no principal payments in the first three years and interest will be paid from capitalized interest of approximately \$17,000,000. Total debt service on the Bonds is estimated to be \$169,000,000 over approximately 30 years. The actual principal amount of the Bonds will be determined after they are priced and sold. Although the Bonds will be secured by Special Assessments on parity with the Section 108 Loan, the District intends to pay the debt service on the Bonds from payments received from the City and the County, which are described in more detail in the section on the Interlocal Agreement below. The County and the City are not responsible for any other costs or expenses of any kind with respect to the CDD project or the Bonds other than debt service on the Bonds issued in an aggregate principal not to exceed \$76,620,000. The CDD will assess all parcels on the site the full amount necessary to cover the debt service on Section 108 loan and for any deficiencies between the debt service on the Bonds and the payments received from the City and the County. Special Assessments will be determined based on a number of factors including size, location, and use. Once value is determined for each parcel, an assessment will be assessed against the parcel equivalent to its benefit.

## **INTERLOCAL AGREEMENT**

The County, the City and the CDD will execute an Interlocal Agreement in substantially the form attached as Exhibit “A” to the resolution. Its purpose is to set forth the obligations of the CDD to provide financing for the Project and the conditions under which the County and City shall make payments to the CDD (“Economic Incentive Payments”) including the method in which the amounts shall be calculated and the sources from which the County and City may make such payments.

The County and City shall make Economic Incentive Payments to the District annually based on completed development components (see exhibit to interlocal) in an amount that does not exceed the debt service on the Bonds for that year, provided the obligation to make Economic Incentive

Payments is not extinguished as described below. The City's share is approximately 60% of debt service on the Bonds ("City Share") and the County's share is approximately 40% of the debt service on the Bonds ("County Share"). The actual amount due in any year shall be determined in accordance with the Schedule attached to the Interlocal Agreement. In the event that the completed development units do not generate sufficient revenues from the County's Share and the City's Share, the CDD will be responsible for the deficiency. The City and County have covenanted in the Interlocal Agreement to budget and appropriate from non ad valorem revenues sufficient funds to meet their obligations to make Economic Incentive Payments.

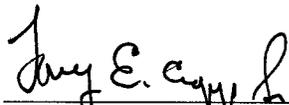
The Interlocal also provides that under certain circumstances the obligation to pay the City's Share and the County's Share shall be extinguished and replaced by payments of tax increment revenues from a community redevelopment agency (a "CRA") established by the County with respect to the CDD. In the event that a community redevelopment district is established by June 30, 2005, the obligation to make Economic Incentive Payments shall be extinguished if the CRA becomes a party to the Interlocal Agreement and the tax increment revenues to be deposited in the Redevelopment Trust Fund are set at a level equal to the amount necessary to pay the debt service on the Bonds. Once established, the CRA will only be required to pay tax increment revenues to the District in an amount sufficient to meet debt service on the Bonds. Any tax increment revenues not needed to meet the debt service on the Bonds in any year shall be refunded to the City and the County on a pro-rata basis. The CRA will be established either by the County or the City upon such terms and conditions that are approved by subsequent action of the Board.

In the event a community redevelopment district is not established by June 30, 2005, the obligation of the County and City to make Economic Incentive Payments shall be extinguished if (i) the County and the City are current on all Economic Incentive Payments due under this Agreement; (ii) the Interlocal Agreement is amended to add the CRA as a party; (iii) the County and City agree that the percentage of tax increment revenues to be contributed to the Redevelopment Trust Fund by the County and the City in each calendar year be the lesser of (a) 95% (the maximum percentage authorized by Section 163.387 of the Redevelopment Act), or (b) a percentage less than the maximum percentage but sufficient to enable the CRA to pay to the District in each calendar year Tax Increment Revenues equal to the debt service on the Bonds in each such year for the remaining term of the Bonds; and (iv) the Financial Advisor selected by the Parties certifies in writing to the District and the Trustee for the Bonds that funds on deposit in the Redevelopment Trust Fund in the current calendar year are equal to the Maximum Annual Debt Service (level debt service) on the Bonds. If prior to the release of the Economic Incentive Payment, the amount of Tax Increment Revenues contributed to the District in any year is less than the debt service on the Bonds for that year, the County's Share and the City's Share of the Economic Incentive Payments together shall equal the difference between the debt service on the Bonds for that year and the Tax Increment Revenues received by the District in that year, provided, such Economic Incentive Payments shall only be related to those Completed Development Components that were completed prior to the establishment of the CRA.

The City of Miami Commission must also approve the ILA. A draft of the City Resolution is attached (Attachment 1).

**FISCAL IMPACT ANALYSIS**

Over the 30-year term of the CDD bond, the maximum debt service in any calendar year is projected at \$6,000,000, of which the County's 40% share is approximately \$2,400,000. The County's share of the first year's (2008) payment is estimated at \$1,284,000. Incremental revenues to the County from ad valorem taxes on the development components are projected to increase from the first year (2008) estimate of \$2,165,000 to over \$14,000,000 million in year 2037, while the County's share of debt service will remain at approximately \$2,400,000 per year. The approximate percentage of incremental ad valorem tax revenues that the debt service, or maximum incentive payment, or future Tax Increment Financing payment represents over the life of the Bond is 24%. This assumes that development components of the project are constructed according to the established schedule. In the event that the development components are delayed, or not constructed at all, the County's economic incentive payments, which would otherwise equal the County's share of the debt service, would be reduced, and any shortfall to repay the debt will be assessed to the property owners. After the CRA is formed, any development components not completed on schedule, or any decline in taxable value of completed development components may result in the reduced CRA incremental revenues and in the event that these revenues are insufficient to repay the debt, the property owners would be assessed for any shortfalls. The County is protected in the event that components are not constructed and in a possible scenario of sharp property value and ad valorem tax revenue declines, in that County payments cannot exceed County revenues from this project.

  
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Assistant County Manager



# MEMORANDUM

(Revised)

**TO:** Hon. Chairperson Barbara Carey-Shuler, Ed.D.  
and Members, Board of County Commissioners

**DATE:** April 27, 2004

**FROM:** Robert A. Ginsburg  
County Attorney

Not On  
**SUBJECT:** Agenda Item No. 7(K)(1)(C)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Not On  
Agenda Item No. 7(K)(1)(C)  
4-27-04

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING FORM OF INTERLOCAL AGREEMENT AMONG THE CITY OF MIAMI, MIAMI-DADE COUNTY AND MIDTOWN MIAMI COMMUNITY DEVELOPMENT DISTRICT FOR THE MIDTOWN MIAMI PROJECT; AND AUTHORIZING COUNTY MANAGER TO EXECUTE AND DELIVER INTERLOCAL AGREEMENT

WHEREAS, this Board previously created the Midtown Miami Community Development District, a local unit of special purpose government (the "District") established pursuant to Section 1.01(A)(21) of the County's Home Rule Charter and Chapter 190, Florida Statutes, as amended, (the "Act), pursuant to Ordinance No. 03-271 enacted by the Board on December 16, 2003; and

WHEREAS, the District has requested, among other things, for economic assistance from the County and The City of Miami (the "City") with respect to certain infrastructure improvements that constitute a public purpose with respect to the Midtown Miami Project previously endorsed by this Board; and

WHEREAS, it is in the best interest of the County and the City to provide assistance since the Midtown Miami Project is expected to stimulate economic development and growth within the City and the County benefiting their citizens and to generate significant revenues for the City and the County, including without limitation, increased ad valorem tax revenue, sales tax revenue, gas tax revenue, tourist or convention development tax revenue and other fees and charges related to the Development; and

WHEREAS, Section 163, Part 1, Florida Statutes (the “Act”) provides a means by which the City, the County and the District may exercise their respective powers, privileges, and authority which they may have separately, but which pursuant to this Agreement and the Act they may exercise collectively; and

WHEREAS, Section 163.01(5)(f) of the Act provides that an interlocal agreement may contain a method or formula for equitably providing for and allocating and financing capital and operating costs for capital projects and for the payment of debt service, including establishment of reserves on bonds, on the basis of the amount of benefits received or conferred by each participating government; and

WHEREAS, the County, City and District wish to enter into an interlocal agreement (the “Interlocal Agreement”) to set forth the financial responsibilities of each with respect to the design, acquisition and construction of certain roadways (within and outside the boundaries of the District), water and sewer facilities, a stormwater management system, streetscape and landscape, and parking garages as more fully described in the Interlocal Agreement (the “Infrastructure”) in connection with the Midtown Miami Project; and

WHEREAS, without financial assistance from the County and the City with respect to the Infrastructure, the Midtown Miami Project cannot be built; and

WHEREAS, the District intends to finance a portion of the costs of the Infrastructure from the proceeds of one or more series of bonds as set forth in more detail in the Interlocal Agreement and in the County Manager’s Memorandum which accompanied this Resolution; and

WHEREAS, this Board by this reference incorporates the County Manager's Memorandum in this Resolution; and

WHEREAS, the District is authorized to levy special assessments against the property in the District to pay debt service on the Bonds (the "Special Assessments"); and

WHEREAS, in order to equitably apportion the burden of the costs of the Midtown Project, the County and City desire to make annual payments to the District either in the form of economic incentive payments to be derived from non-ad valorem revenues of each or from tax increment revenues as more fully described in the Interlocal Agreement and the County Manager's Memorandum; and

WHEREAS, the acquisition, construction, equipping and financing of the Project constitutes a public purpose in accordance with Section 166.021, Florida Statutes, and Section 125.045, Florida Statutes, and is in the best interest of all of the parties and their respective residents and citizens; and

WHEREAS, the Board wishes to approve the form of the Interlocal Agreement and to authorize the County Manager to execute and deliver it,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The preceding recitals are incorporated in this Resolution by this reference.

Section 2. The Board approves the Interlocal Agreement among the City of Miami, the County and the District in substantially the form set forth in Exhibit "A" to this Resolution.

Section 3. The County Manager is authorized to finalize the Interlocal Agreement after consultation with the Office of the County Attorney and to execute and deliver it on behalf of the County with such delivery constituting final approval by this Board.

Section 4. Since time is of the essence with respect to the timing of a bond validation by the District and the need to commence construction, the provisions of Resolution No. 377-04 pertaining to the effective date of County contracts is waived with respect to the Interlocal Agreement.

The foregoing resolution was offered by Commissioner who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson  
Katy Sorenson, Vice-Chairperson

Bruno A. Barreiro  
Betty T. Ferguson  
Joe A. Martinez  
Dennis C. Moss  
Natacha Seijas  
Sen. Javier D. Souto

Jose "Pepe" Diaz  
Sally A. Heyman  
Jimmy L. Morales  
Dorrin D. Rolle  
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 27th day of April, 2004. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Gerald T. Heffernan

**INTERLOCAL AGREEMENT**

**AMONG**

**THE CITY OF MIAMI, FLORIDA**

**AND**

**MIAMI-DADE COUNTY, FLORIDA**

**AND**

**MIDTOWN MIAMI COMMUNITY DEVELOPMENT DISTRICT**

**DATED           , 2004**

## INTERLOCAL AGREEMENT

**THIS INTERLOCAL AGREEMENT** (the "Agreement") is made and executed this \_\_\_ day of April, 2004 among The City of Miami, Florida, a municipal corporation (the "City"), Miami-Dade County, Florida, a political subdivision of the State of Florida (the "County"), and the Midtown Miami Community Development District (the "District"), a local unit of special purpose government established pursuant to Section 1.01(A)(21) of the County's Home Rule Charter (the "Charter") and Chapter 190, Florida Statutes, as amended, known as the Uniform Community Development District Act of 1980 (the "Act").

### W I T N E S S E T H:

**WHEREAS**, it is the purpose and intent of this Agreement to permit and authorize the City, the County and the District to make the most efficient use of their respective powers, resources, authority and capabilities by enabling them to cooperate on the basis of mutual advantage and to achieve the results provided for in this Agreement pursuant to Section 163.01, Florida Statutes, known as the Florida Interlocal Cooperation Act of 1969 (the "Cooperation Act"); and

**WHEREAS**, it is the purpose of the Cooperation Act to provide a means by which the City, the County and the District may exercise their respective powers, privileges, and authority which they may have separately, but which pursuant to this Agreement and the Cooperation Act they may exercise collectively; and

**WHEREAS**, Section 163.01(5)(f) of the Cooperation Act provides that an interlocal agreement may contain a method or formula for equitably providing for and allocating and financing capital and operating costs for capital projects and for the payment of debt service, including establishment of reserves on bonds, on the basis of the amount of benefits received or conferred by each participating government; and

**WHEREAS**, all of the lands contained within the boundaries of the District are located entirely within the boundaries of the City; and

**WHEREAS**, the Miami City Commission adopted Resolution No. R-03-135 on November 13, 2003 which supported the petition submitted to the County by Biscayne Development Partners for the creation of the District; and

**WHEREAS**, the District was created by the County pursuant to Ordinance No. 03-271 adopted by the Board of County Commissioners of the County on December 16, 2003 and effective on December 26, 2003, for the purpose of delivering certain community development services and facilities within and outside the boundaries of the District; and

**WHEREAS**, the District has decided to undertake the design, acquisition and construction of certain roadways (within and outside the boundaries of the District), streetcar tracks, stations, and corresponding power and traffic control system, water and sewer facilities, a

stormwater management system, streetscape and landscape, and parking garages pursuant to the Act as more fully described in Exhibit A – Part 1 attached to this Agreement (the "Project"); and

**WHEREAS**, in connection with the design, acquisition and construction of the Project, Biscayne Development Partners LLC, a Florida limited liability company and current owner of all the lands within the boundaries of the District, or one or more of its affiliates, expects to develop a portion of a mixed-use development within the boundaries of the District to be known as Midtown Miami (the "Development") and expects to sell a portion of the lands within the District to Developers Diversified Realty Corporation, an Ohio corporation, or one or more of its affiliates , which is expected to develop the remaining portion of the Development (Biscayne Development Partners LLC and Developers Diversified Realty being collectively referred to as the "Developer"); and

**WHEREAS**, without construction of the Project the Development cannot be built; and

**WHEREAS**, upon completion, the Development is expected to contain a retail shopping center, residential condominium units with retail areas, an office tower with retail areas, rental apartments, a hotel, an entertainment facility which will include retail areas and a spa, and parking facilities; and

**WHEREAS**, the Development is expected to stimulate economic development and growth within the City and the County benefiting their citizens and to generate significant revenues for the City and the County, including without limitation, increased ad valorem tax revenue, sales tax revenue, gas tax revenue, tourist or convention development tax revenue and other fees and charges related to the Development; and

**WHEREAS**, in light of these significant material benefits to be received and enjoyed by the County and the City and their respective residents and the fiscal benefit anticipated to be received by the County and the City as a result of the development of the Development, and in consideration for the performance by the District of its obligations described in this Agreement, the County and the City have agreed to participate in the development of the Project by making annual Economic Incentive Payments (defined herein) to the District to help defray a portion of the costs of the Project and as an additional source of security for the Bonds (defined herein), all in accordance with the terms of this Agreement; and

**WHEREAS**, pursuant to Chapter 163, Part III, Florida Statutes, as amended (the "Redevelopment Act"), the City and the County desire to cause the Community Redevelopment Agency (defined herein) to establish the Community Redevelopment District (defined herein) to develop and carry out a community redevelopment plan to remove slum and blight and provide affordable housing within the boundaries of the Community Redevelopment District; and

**WHEREAS**, the Redevelopment Act transfers redevelopment powers to counties with home rule charters such as the County, which is authorized to delegate certain of those powers to a municipality such as the City; and

**WHEREAS**, in the event that the Community Redevelopment District is established, the County and the City shall cause the Community Redevelopment Agency to contribute Tax Increment Revenues (defined herein) to the District, and the County and the City shall reduce the amount of Economic Incentive Payments to be paid to the District in proportion to the amount of Tax Increment Revenues paid to the District and shall , under certain circumstances, terminate their obligations to pay Economic Incentive Payments entirely, all in accordance with Article III of this Agreement; and

**WHEREAS**, the District intends to finance a portion of the costs of the Project as set forth in more detail in Exhibit A – Part 2 (the “Parking Garage Project”) from the proceeds of one or more series of Bonds and a portion of the costs of the Project as set forth in more detail in Exhibit A – Part 3 (the “General Infrastructure Project”) from the proceeds of the County Loan (defined herein); and

**WHEREAS**, the District intends to secure payment of the County Loan through the levy of non-ad valorem special assessments (the “Special Assessments”) and to secure payment of the Bonds through Special Assessments, Economic Incentive Payments and Tax Increment Revenues received under this Agreement, as provided in the Indenture and the Loan Documents; and

**WHEREAS**, the parties have executed this Agreement for the purpose of setting forth (i) the obligations of the District in providing the Project; (ii) the conditions under which the County and the City shall be required to make Economic Incentive Payments to the District; (iii) the conditions under which the County and the City shall cause the Community Redevelopment Agency to pay Tax Increment Revenues to the District; (iv) the amounts to be paid by the County and the City and the sources from which the County and the City may, and may not, make such payments; (v) the obligation of the City and the County to cause the Community Redevelopment Agency to establish the Community Redevelopment District; and (vi) other specific provisions relating to the payment of funds by the County and the City to the District; and

**WHEREAS**, in order to equitably apportion the burden of the costs of the Parking Garage Project, the District shall use the Economic Incentive Payments received from the City and the County and the Tax Increment Revenues received from the Community Redevelopment Agency to reduce the amount of Special Assessments actually collected on each parcel of land specially benefited by the Parking Garage Project in proportion to the amount of Economic Incentive Payments and/or Tax Increment Revenues generated by each such benefited parcel, all in accordance with the terms and conditions of the Indenture (defined herein ) and the Special Assessment proceedings of the District; and

**WHEREAS**, the acquisition, construction, equipping and financing of the Project constitutes a public purpose in accordance with Section 166.021, Florida Statutes, and Section 125.045, Florida Statutes, and is in the best interests of all of the parties and their respective residents and citizens;

**NOW THEREFORE**, for and in consideration of the mutual premises set forth above and the covenants, obligations, duties and benefits set forth in this Agreement, the District, the City and the County agree as follows:

## **ARTICLE I DEFINITIONS**

**Section 1.1 Definitions.** In addition to terms defined within the text of this Agreement and in the Indenture, the capitalized terms set forth below shall have the following meanings, unless the context requires a different meaning:

“Annual Debt Service” shall mean level payments of principal and interest on the Bonds annually.

“Bonds” shall mean the Midtown Miami Community Development District Special Assessment Bonds issued initially in one or more series pursuant to the provisions of the Indenture to finance the Parking Garage Project and Section 3.5, and any additional bonds subsequently issued to refund all or a portion of the Bonds, provided such additional bonds comply with Section 3.5.

“Certificate of Occupancy” shall mean a certificate of occupancy issued by the City pursuant to Section 106.1 of the Florida Building Code.

“Community Redevelopment Agency” shall mean a community redevelopment agency established by the City pursuant to the Redevelopment Act, with such powers delegated to it by the County pursuant to the Redevelopment Act.

“Community Redevelopment District” shall mean the community redevelopment district established by the County and the City pursuant to the Redevelopment Act that has the same boundaries as the District and from which Tax Increment Revenues shall be derived.

“Completed Development Component” shall mean a Development Component with respect to which a Certificate of Occupancy has been issued.

“County Loan” shall mean the loan by the County to the District derived from the proceeds of the Section 108 Loan and secured by a pledge of Special Assessments in accordance with the Loan Documents.

“Development Component” shall mean each of the components of the Development described in Schedule 1 to this Agreement.

“Economic Incentive Payment” shall mean annual payments to be made by the City and the County, respectively, from legally available Non-Ad Valorem Revenues, with respect to all Completed Development Components in accordance with Article III of this Agreement.

“Financial Advisor” shall mean an independent financial advisor engaged by the District, the City and the County for the purpose of delivering the certification in Section 3.4.1

(B)(4), provided, however, that the fees and expenses of the financial advisor shall be paid by the District.

**“Fiscal Year”** shall mean October 1 through September 30 of each year.

**“General Infrastructure Project Bonds”** shall mean one or more series of bonds issued under the Indenture to finance the General Infrastructure Project to which neither Economic Incentive Payments or Tax Increment Revenues shall be pledged, and any additional bonds issued to refund all or a portion of the General Infrastructure Project Bonds or to complete the General Infrastructure Project.

**“Indenture”** shall mean the Master Trust Indenture, as amended and supplemented from time to time, to be entered into by and between the District and Wachovia Bank, National Association, as Trustee, in connection with the issuance of the Bonds and the General Infrastructure Project Bonds, if any.

**“Loan Documents”** shall mean the note, loan agreement and other related documents with respect to the County Loan.

**“Maximum Annual Debt Service”** shall mean, as of any particular date of calculation, the greatest amount of aggregate Annual Debt Service for the then current or any future bond year.

**“Non-Ad Valorem Revenues”** shall mean, with respect to the City and the County, as applicable, all revenues of the City and the County derived from any source whatsoever, other than ad valorem taxation on real or personal property, which is legally available to make the Economic Incentive Payments required herein, but only after provision has been made by the City or the County to pay for services and programs which are necessary for essential public purposes affecting the health, welfare and safety of the inhabitants of the City or the County or which are legally mandated by applicable law.

**“Redevelopment Trust Fund”** shall mean the redevelopment trust fund to be established pursuant to Section 163.387 of the Redevelopment Act in which all Tax Increment Revenues shall be deposited by the Community Redevelopment Agency.

**“Section 108 Loan”** shall mean a loan by the U.S. Department of Housing and Urban Development to the County under Section 108 of the Housing and Community Development Act of 1974 for approximately \$20,600,000.

**“Tax Increment Revenues”** shall mean the tax increment revenues generated within the Community Redevelopment District and deposited in the Redevelopment Trust Fund pursuant to the Redevelopment Act.

**ARTICLE II**  
**REPRESENTATIONS; FINDINGS**

**Section 2.1** The County represents and warrants as follows:

2.1.1 The County is duly organized and validly existing as a political subdivision of the State of Florida.

2.1.2 The County has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations under this Agreement.

2.1.3 The County has duly authorized the execution and delivery of this Agreement, and assuming its due authorization, execution and delivery by the City and the District, this Agreement constitutes a valid and legally binding obligation of the County, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

**Section 2.2** The City represents and warrants as follows:

2.2.1 The City is duly organized and validly existing as municipal corporation under the laws of the State of Florida.

2.2.2 The City has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations under this Agreement.

2.2.3 The City has duly authorized the execution and delivery of this Agreement, and assuming its due authorization, execution and delivery by the County and the District, this Agreement constitutes a valid and legally binding obligation of the City, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

**Section 2.3** The District represents and warrants as follows:

2.3.1 The District is duly organized and validly existing as a local unit of special purpose government under the Act and the Charter and as an independent special district under Chapter 189, Florida Statutes.

2.3.2 The District has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations under this Agreement and to issue the Bonds and the General Infrastructure Project Bonds, if any, pursuant to the Act.

2.3.3 The District has duly authorized the execution and delivery of this Agreement, and assuming its due authorization, execution and delivery by the County and the City, this Agreement constitutes a valid and legally binding obligation of the District, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

**Section 2.4** The City and the County agree as follows:

2.4.1 The County and City shall take all action necessary to cause the Community Redevelopment Agency to establish the Community Redevelopment District as soon as practicable, and to amend this Agreement to include the Community Redevelopment Agency as a party, if necessary.

2.4.2 The County and the City shall cause the annual budget for the Community Redevelopment Agency to require the Community Redevelopment Agency to pay Tax Increment Revenues from the Community Redevelopment District to the District annually in accordance with Article III of this Agreement. Excess Tax Increment Revenues shall be retained by the Community Redevelopment Agency in the Redevelopment Trust Fund and refunded to the City and the County at the end of each year on a pro-rata basis in accordance with the annual budget and the Redevelopment Act.

2.4.3 The County and the City shall cause the Community Redevelopment District and the Community Redevelopment Agency to remain in existence and the Tax Increment Revenues to remain unencumbered (except as contemplated by this Agreement) for so long as the Bonds are outstanding under the Indenture.

2.4.4 The County and the City shall enter into such agreements, and cause the Community Redevelopment Agency to enter into such agreements, and provide such annual information, and cause the Community Redevelopment Agency to provide such annual information, as shall be necessary to comply with Securities and Exchange Commission Rule 15c2-12 with respect to the Bonds. The County and the City shall provide, and cause the Community Redevelopment Agency to provide, information to the District necessary for inclusion in the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum relating to the Bonds, and shall execute such closing certificates at the time of issuance of the Bonds as shall be reasonably requested by the District and the underwriter of the Bonds as to the accuracy of the information provided by each for inclusion therein.

**Section 2.5** The District agrees as follows:

2.5.1 The Indenture shall provide that the holders of the Bonds will be on a parity with the County Loan and the General Infrastructure Project Bonds, if any, with respect to the Special Assessments. The District shall not pledge, permit a lien to be filed against or encumber in any manner the Special Assessments, other than as provided in this Agreement, the Indenture and the Loan Documents.

2.5.2 The District approves the establishment of a Community Redevelopment District and related Agency by the County and the City to fund the Tax Increment Revenues and agrees to amend this Agreement to add the Community Redevelopment Agency as a party, if necessary.

2.5.3. The District shall not dissolve or expand or contract its boundaries for so long as the County Loan is outstanding under the Loan Documents and the Bonds are outstanding under the Indenture.

2.5.4. The District shall include a provision in any documents regarding the Bonds that any change in the composition of the Developer other than the addition or deletion of affiliates shall be subject to the approval of the City and County which approval shall not be unreasonably withheld.

**Section 2.6** It is found and declared that:

2.6.1 Expending public funds to finance the design, acquisition and construction of the Project is in the best interests of the City, the County and the District and their respective citizens and residents.

2.6.2 Expending public funds to finance the design, acquisition and construction of the Project will serve the valid and important public purpose of economic development and redevelopment by improving the local infrastructure of the City and the County and facilitating the development of the Development.

2.6.3 The construction of the Project and the development of the Development will serve the valid and important public purpose of protecting the health and welfare of the citizens of the City, the County and the District by fostering economic growth within the District and eliminating blight by attracting, creating and retaining retail and commercial business enterprises and residential development in the City and the County.

2.6.4 Development of the Project and the Development will result in designation of the lands within the District as a “brownfield site” and remediation of environmental hazards.

**ARTICLE III  
FINANCING PLAN**

**Section 3.1 Generally.**

3.1.1 Pursuant to the terms of the Indenture, the District shall issue the Bonds to pay a portion of the costs of the Project, and shall levy Special Assessments pursuant to the Act and Chapter 170, Florida Statutes, to the extent and in the amount necessary to pay any outstanding debt service on the Bonds, the County Loan and the General Infrastructure Project Bonds, if any. For each bond year, the District shall evidence and certify to the tax collector or cause the property appraiser to certify to the tax collector for collection pursuant to Chapter 197, Florida Statutes, or any successor statutes, as applicable, an amount equal to the Special Assessments

levied by the District less the amount of Economic Incentive Payments and Tax Increment Revenues received by the District and available for payment in such bond year. In accordance with Section 3.2.3 below, the amount of Economic Incentive Payments to be paid by the County and the City each year shall be reduced by the amount of Tax Increment Revenues paid by the Community Redevelopment Agency in such year, and in the event the conditions set forth in Section 3.4 below are satisfied, the obligations of the County and the City to contribute Economic Incentive Payments shall be released.

3.1.2 In the event that the County Loan is not provided to the District, the District shall issue the General Infrastructure Project Bonds to finance the costs of the General Infrastructure Project. The General Infrastructure Project Bonds shall be secured by Special Assessments on a parity with the Bonds.

3.1.3 The County and City are not responsible for any other costs or expenses of any kind with respect to the Parking Garage Project other than debt service on the Bonds as expressly provided for in this Agreement.

3.1.4 In the event Economic Incentive Payments and/or Tax Increment Revenues are insufficient to meet the Annual Debt Service on the Bonds, the District shall be responsible for the deficiency.

### **Section 3.2 Economic Incentive Payments.**

3.2.1 Subject to Subsection 3.2.4 and Section 3.4 below, the City and the County shall each pay the Economic Incentive Payments to the District in the amounts set forth in Schedule I, as adjusted to account for the final principal amount of, and interest on, the Bonds, for each Completed Development Component, provided that such Economic Incentive Payments annually and in the aggregate do not exceed the outstanding debt service requirements on the Bonds. The Economic Incentive Payments corresponding to each Completed Development Component as set forth in Schedule I shall become payable to the District annually as described in Subsection 3.2.2 below, commencing in the calendar year following the calendar year in which a Certificate of Occupancy has been issued for each such Completed Development Component, and continuing each and every year thereafter through the term of this Agreement, subject to reduction in accordance with Subsection 3.2.3 and elimination pursuant to Subsection 3.4. .

3.2.2 No later than January 31<sup>st</sup> of each year during the term of this Agreement, the District shall submit a progress report (the "Progress Report") to the City, the County and the Community Redevelopment Agency setting forth the Completed Development Components, if any, as of January 1 of that year. For each Completed Development Component identified in such Progress Report, the City shall verify that a Certificate of Occupancy was issued for each. No later than December 31<sup>st</sup> of that same year, the City and the County shall pay to the District, subject to reduction in accordance with Subsection 3.2.3 below, the Economic Incentive Payments set forth in Schedule I due for each Completed Development Component described in the Progress Report, as well as for all Completed Development Components described in all prior Progress Reports. The District shall use the Economic Incentive Payments received from the City and the County solely to pay any outstanding debt service on the Bonds.

3.2.3 In the event that the Community Redevelopment District is established on or before June 30, 2005 and the conditions set forth in Section 3.4.1 (A) are satisfied, the obligation of the County and City to make Economic Incentive Payments shall be extinguished.

In the event that the Community Redevelopment District is established after June 30, 2005 and Tax Increment Revenues are paid to the District pursuant to Section 3.3 below, the County and the City shall not be required to make any Economic Incentive Payments to the District in any year in which the Tax Increment Revenues contributed to the District is at least equal to the debt service due on the Bonds for that year.

If the amount of Tax Increment Revenues contributed to the District in any year is less than the debt service on the Bonds for that year and the Economic Incentive Payments have not been released pursuant to Section 3.4, , the County and the City shall make Economic Incentive Payments to the District in an amount equal to the difference between the debt service on the Bonds for that year and the Tax Increment Revenues received by the District in that year, provided, such Economic Incentive Payments shall only be related to the Completed Development Components that were completed prior to the establishment of the CRA.

Section 3.2.4. As a precondition to the obligation of the County and the City to pay Economic Incentive Payments under this Section 3.2, the County shall have received approval from the U.S. Department of Housing and Urban Development for the Section 108 Loan, or the District or the Developer shall have made alternate arrangements satisfactory to the County and the City to finance the General Infrastructure Project, which may include, without limitation, a loan from a third party lender or the issuance of General Infrastructure Project Bonds, notes, bond anticipation notes or other indebtedness under the Indenture secured by Special Assessments on a parity basis with the Bonds.

### **Section 3.3 Tax Increment Revenues.**

3.3.1 The City and the County desire to establish the Community Redevelopment District and to cause the Community Redevelopment Agency to contribute Tax Increment Revenues to the District from the Redevelopment Trust Fund annually in an amount not to exceed debt service on the Bonds. The County and the City shall cause the Community Redevelopment Agency to include such Tax Increment Revenue payments in the Community Redevelopment Agency's annual budget, and to require that such Tax Increment Revenues received by the Community Redevelopment Agency by January 1 of each year be transferred to the District no later than January 15 of the same year.

3.3.2 In the event that the amount of Tax Increment Revenues deposited in the Redevelopment Trust Fund are insufficient to pay debt service on the Bonds and the obligations of the City and the County to contribute Economic Incentive Payments have not been extinguished pursuant to Section 3.4, all of the Tax Increment Revenues on deposit in the Redevelopment Trust Fund shall be contributed to the District and the County and the City shall provide Economic Incentive Payments to the District in an amount necessary to satisfy such deficiency in accordance with Section 3.2 above.

3.3.3 Any Tax Increment Revenues on deposit in the Redevelopment Trust Fund in any calendar year in excess of the amounts due and transferred to the District under this Agreement in such year shall be refunded to the County and the City in accordance with the Redevelopment Act.

3.3.4 In no event shall the aggregate amount of payments of Tax Increment Revenues contributed to the District exceed the aggregate debt service requirement on the Bonds. The obligation to transfer Tax Increment Revenues shall cease when the Bonds are no longer outstanding.

**Section 3.4 Release of Economic Incentive Payment Obligations.**

3.4.1 The obligations of the County and City to contribute Economic Incentive Payments to the District pursuant to Section 3.2 above shall be extinguished and replaced by the Community Redevelopment Agency's obligation to contribute Tax Increment Revenues pursuant to Section 3.3 above, if:

(A) In the event that the Community Redevelopment District and the Redevelopment Trust Fund are established no later than June 30, 2005, each of the following conditions is satisfied:

(1) this Agreement is amended to add the Community Redevelopment Agency as a party; and

(2) the County and City agree that the percentage of tax increment revenues to be contributed to the Redevelopment Trust Fund by the County and the City in each calendar year while the Bonds are outstanding, shall be equal to the lesser of (i) the maximum percentage authorized by Section 163.387 of the Redevelopment Act which currently is 95% ("Maximum Percentage"), or (ii) a percentage less than the Maximum Percentage but sufficient to enable the Community Redevelopment Agency to pay to the District in each calendar year Tax Increment Revenues equal to the debt service on the Bonds in each such year for the remaining term of the Bonds; or

(B) In the event that the Community Redevelopment District and the Redevelopment Trust Fund are established after June 30, 2005, each of the following conditions is satisfied:

(1) the County and the City are current on all Economic Incentive Payments due under this Agreement;

(2) this Agreement is amended to add the Community Redevelopment Agency as a party;

(3) the County and City agree that the percentage of tax increment revenues to be contributed to the Redevelopment Trust Fund by the County and the City in each

calendar year while the Bonds are outstanding, shall be equal to the lesser of (i) the maximum percentage authorized by Section 163.387 of the Redevelopment Act which is currently 95% ("Maximum Percentage"), or (ii) a percentage less than the Maximum Percentage but sufficient to enable the Community Redevelopment Agency to pay to the District in each calendar year Tax Increment Revenues equal to the debt service on the Bonds in each such year for the remaining term of the Bonds; and

(4) the Financial Advisor certifies in writing to the District and the Trustee for the Bonds, that funds on deposit in the Redevelopment Trust Fund in the current calendar year are sufficient to enable the Community Redevelopment Agency to pay to the District Tax Increment Revenues equal to the Maximum Annual Debt Service on the Bonds.

Upon satisfaction of the conditions under paragraph (A) or (B) above, the County's and the City's obligations to contribute Economic Incentive Payments under this Agreement shall terminate.

### **Section 3.5 Issuance of Bonds.**

3.5.1 The District may issue Bonds in one or more series to pay the capital costs of the Parking Garage Project in an amount not to exceed \$51,406,800, the estimated cost of the Bond Project to be financed through the issuance of the Bonds, plus all costs and expenses related to the issuance of the Bonds in accordance with Exhibit B. The District may also issue the Infrastructure Project Bonds to finance the cost of the General Infrastructure Project and all related costs and expenses none of which shall be the responsibility of the County or the City in the event that the County Loan is not provided to the District.

3.5.2 The District may issue additional refunding Bonds provided the maturity on the refunding Bonds does not exceed the maturity on the refunded Bonds and the aggregate debt service on the refunding Bonds is equal to, or less than, the debt service on the refunded Bonds.

3.5.3 The District shall not issue any additional Bonds other than the Bonds authorized in this Subsection without the prior approval of the County and the City.

## **ARTICLE IV COVENANT TO BUDGET AND APPROPRIATE**

**Section 4.1.** The City and the County each covenant and agree to appropriate in their respective annual budgets, by amendment, if necessary, from Non-Ad Valorem Revenues lawfully available in each Fiscal Year, amounts sufficient to pay the Economic Incentive Payments when due pursuant to this Agreement, provided, that such Economic Incentive Payments shall not exceed the debt service on the Bonds in any Fiscal Year, less the amount of Tax Increment Revenues paid to the District in such year. Such covenant and agreement on the part of the City and the County to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent Economic Incentive Payments pursuant to this

Agreement remain unpaid, and shall continue until such Economic Incentive Payments are paid, provided, however, such covenant and agreement shall terminate once the obligations of the County and the City to make Economic Incentive Payments are extinguished pursuant to Section 3.4. Notwithstanding the foregoing covenant of the City and the County, the City and the County do not covenant to maintain any services or programs, now provided or maintained by either the City or the County, which generate Non-Ad Valorem Revenues.

**Section 4.2.** Such covenant to budget and appropriate does not create any lien upon or pledge of Non-Ad Valorem Revenues, nor does it preclude the County or the City from pledging in the future their Non-Ad Valorem Revenues, nor does it require the City or the County to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the District a prior claim on the Non-Ad Valorem Revenues of the City and the County as opposed to claims of general creditors of the City or the County. Such covenant of the City and the County to appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of any obligations secured by a pledge of Non-Ad Valorem Revenues prior to or subsequent to the date of this Agreement (including the payment of debt service on bonds and other debt instruments). However, the covenant to budget and appropriate in the City's and the County's general annual budget for the purposes and in the manner stated in this Agreement shall have the effect of making available in the manner described in this Agreement, Non-Ad Valorem Revenues and placing on the City and the County a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet their respective obligations of making the Economic Incentive Payments, to the extent required by this Agreement, subject, however, in all respects to the restrictions of Section 166.241, Florida Statutes, and Section 129.07, Florida Statutes, which provide, in part, that the governing body of each such municipality and county, respectively, make appropriations for each Fiscal Year which, in any one fiscal year, shall not exceed the amount to be received from taxation or other revenue sources, and subject further, to payments for services and programs which are essential public purposes affecting the health, welfare and safety of the inhabitants of the County and the City or which are legally mandated by applicable law.

**Section 4.3.** The Bonds shall not constitute a general obligation of the City, the County or the District within the meaning of any constitutional or statutory provision or limitation or a pledge of the City's, the County's or the District's full faith and credit, but shall be secured by and payable as to principal, premium, if any, and interest solely from the "Pledged Revenues" as defined in the Indenture, including primarily the Special Assessments, the Economic Incentive Payments and the Tax Increment Revenues in the manner described in the Indenture.

## ARTICLE V PUBLIC INFRASTRUCTURE IMPROVEMENTS

**Section 5.1. Roadways and Traffic Signals.** As part of the Project, and pursuant to the Act, the District shall fund and construct new roadways and subject to the approval of the City and County, related transportation infrastructure including streetcar tracks, stations and corresponding power and traffic control systems, within the boundaries of the District and fund and improve certain existing roadways outside the boundaries of the District. In particular, the District shall fund and construct certain new roadways within the boundaries of the District. They are East Coast Avenue (NE 35<sup>th</sup> Street to NE 30<sup>th</sup> Street); NE 36<sup>th</sup> Street (East Coast

Avenue to North Miami Avenue); Midtown Boulevard (NE 36<sup>th</sup> Street to NE 29<sup>th</sup> Street); NE 32<sup>nd</sup> Street (East Coast Avenue to North Miami Avenue); NE 34<sup>th</sup> Street (East Coast Avenue to North Miami Avenue); NE 31<sup>st</sup> Street (Midtown Boulevard to North Miami Avenue); Buena Vista Avenue (NE 36<sup>th</sup> Street to NE 32<sup>nd</sup> Street); NE 35<sup>th</sup> Street (East Coast Avenue to Midtown Boulevard); NE 30<sup>th</sup> Street (East Coast Avenue to Midtown Boulevard) (collectively, the “New Roadways”). Except for East Coast Avenue, which shall be owned and maintained by the District, the New Roadways and related transportation infrastructure including streetcar tracks, stations and corresponding power and traffic control systems shall be constructed within public rights of way.

The District shall also fund and improve certain roadways, which are located outside the boundaries of the District. They are NE 29<sup>th</sup> Street (between East Coast Avenue and North Miami Avenue) and NE 34<sup>th</sup> Street (between the District’s eastern boundary line and NE 2<sup>nd</sup> Avenue) both of which are owned and operated by the City (the “Improved City Roadways”); and North Miami Avenue (between NE 29<sup>th</sup> Avenue and NE 36<sup>th</sup> Street) and NE 2<sup>nd</sup> Avenue (approximately 50’ north and south of the intersection), both of which are owned and operated by the County (the “Improved County Roadways”). The improvements to the Improved County Roadways and the Improved City Roadways shall be within public rights of way of the County and the City, respectively. See Exhibit C prepared by the District’s Consulting Engineer for a more complete description of the roadway improvements.

The District shall also fund and construct three new traffic signals at North Miami Avenue & NE 34<sup>th</sup> Street; NE 2<sup>nd</sup> Avenue and NE 34<sup>th</sup> Street; and Buena Vista Avenue and NE 36<sup>th</sup> Street.

The District shall be responsible for the costs of enhanced maintenance for the roadway improvements pursuant to a subsequent agreement to be entered into by the City and the District. In addition, all restoration of non –standard roadway improvements that are required with typical maintenance of standard improvements and utility installation to be addressed by the City and the County will be the sole responsibility of the District.

The District shall agree to fund the costs of enhanced maintenance for the roadway improvements pursuant to a subsequent agreement to be entered into by the City and the District.

**Section 5.3. Public Spaces.** As part of the Project, and pursuant to the Act, the District shall also fund and construct public spaces, which will be owned and maintained by the District. The spaces are generally described as three public squares on the east edge of Midtown Boulevard located at the intersections of contiguous development parcels; one public space located on the west side of Buena Vista Avenue between NE 32<sup>nd</sup> Street and NE 34<sup>th</sup> Street; one public space with a fountain located in the block abutting NE 36<sup>th</sup> Street between Buena Vista Avenue and Midtown Boulevard; and two or three linear parks along the west side of Midtown Boulevard. The public spaces may consist of landscaping, fountains, benches, transportation infrastructure including streetcar tracks, stations and corresponding power and traffic control systems, parking, decorative lighting, pavers and other appurtenances.

**ARTICLE VI  
GENERAL PROVISIONS**

**Section 6.1** Term of Agreement. The term of this Agreement shall expire on the date that the Bonds and the General Infrastructure Project Bonds, if any, are no longer outstanding under the Indenture and the County Loan has been satisfied (the “Term”). The obligation of the City and the County to make Economic Incentive Payments and the obligation of the Community Redevelopment Agency to make transfers of Tax Increment Revenues shall cease on the date the Bonds are no longer outstanding under the Indenture, even if such date is earlier than the end of the Term, provided, however, that the obligations of the County and the City to make Economic Incentive Payments may cease earlier pursuant to Section 3.4.

**Section 6.2.** Execution In Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 6.3.** Limitation on Governmental Liability. Nothing in this Agreement shall be deemed a waiver of immunity limits of liability of either the City, the County or the District beyond any statutory limited waiver of immunity or limits of liability contained in Section 768.28, Florida Statutes, as amended, or other statute. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

No covenant, stipulation, obligation or agreement contained in this Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the governing body or agent or employee of the County, the City or the District in its, his or their individual capacity, and neither the members of the governing body of the County, the City or the District nor any official executing this Agreement shall be liable personally or shall be subject to any accountability for reason of the execution by the County, the City or the District of this Agreement or any related act.

**Section 6.4.** Default. Each of the parties shall give the other parties written notice of any default under this Agreement and shall allow the defaulting party 30 days from the date of its receipt of such notice within which to cure any such default or, if it cannot be cured within the 30 days, to commence and thereafter diligently pursue to completion good faith efforts to effect such cure and to thereafter notify the other parties of the actual cure of any such default.

**Section 6.5.** Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows.

If to the City:	The City of Miami, Florida 3500 Pan American Drive Miami, Florida 33133 Attention: City Manager
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With Copy to: City Attorney's Office  
The City of Miami, Florida  
444 S.W. 2<sup>nd</sup> Avenue, Suite 945  
Miami, Florida 33130  
Attention: City Attorney

If to the County: Miami-Dade County, Florida  
Stephen P. Clark Center  
111 N.W. 1<sup>st</sup> Street, Suite 2910  
Miami, Florida 33128  
Attention: County Manager

With a Copy to: Office of the County Attorney  
Miami-Dade County, Florida  
Stephen P. Clark Center  
111 N.W. 1<sup>st</sup> Street, Suite 2810  
Miami, Florida 33128  
Attention: County Attorney

If to the District: Midtown Miami Community Development District  
c/o Severn Trent Services Inc.  
210 N. University Drive, Suite 802  
Coral Springs, Florida 33071  
Attention: District Manager

With a Copy to: Billing, Cochran, Heath, Lyles, Mauro &  
Anderson, P.A.  
888 S.E. 3<sup>rd</sup> Avenue, Suite 301  
Fort Lauderdale, Florida 33316  
Attn: Dennis Lyles

**Section 6.6.** Assignment or Transfer. Except with respect to the District's pledge of Economic Incentive Payments and Tax Increment Revenues to the Trustee under the Indenture to secure the Bonds, a party may not assign or transfer its rights or obligations under this Agreement to another unit of local government, political subdivision or agency of the State of Florida without the prior written consent of the other party or to a private party or entity.

**Section 6.7.** Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the City, the County, the District, and their respective successors.

**Section 6.8.** Amendment and Waivers. Any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed to by the District, the City Manager and the County Manager, provided, however, any amendment or waiver that is material or results in a substantive change in the County or City's obligations shall be subject to the approval of the County Commission or the City Commission, as the case may be. »

**Section 6.9.** Filing. After approval of this Agreement by the respective governing bodies of the City, the County, and the District and its execution by the duly qualified and authorized officers of each of the parties, the District shall cause this Agreement to be filed with the Clerk of the Circuit Court of Miami-Dade County, Florida, in accordance with the requirements of Section 163.01(11), Florida Statutes.

**Section 6.10.** Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the State of Florida. In any action, in equity or law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the County.

**Section 6.11.** Severability. If any part of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable part shall be deemed severable and the remaining parts of this Agreement shall continue in full force and effect provided that the rights and obligations of the parties are not materially prejudiced and the intentions of the parties can continue to be effected.

**Section 6.12.** Entire Agreement. This instrument and all the attached exhibits and schedules constitute the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.

(The balance of this page intentionally left blank)

**IN WITNESS WHEREOF**, the City, the County, and the District have each caused this Agreement to be executed and delivered as of the date indicated above:

(SEAL)

MIAMI-DADE COUNTY, FLORIDA

\_\_\_\_\_  
County Manager

ATTEST:

\_\_\_\_\_  
County Clerk

(SEAL)

THE CITY OF MIAMI, FLORIDA

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM AND  
CORRECTNESS:

\_\_\_\_\_  
City Attorney

(SEAL)

MIDTOWN MIAMI COMMUNITY  
DEVELOPMENT DISTRICT

\_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Secretary, Board of Supervisors

Schedule I  
Economic Incentive Payments  
Payments based on 100% of Phase for which a Certificate of Completion has been issued

Development Components By Phases

Phase I Components (2008)	Sq.Ft./Units	Devp. Unit	E. I. Payment Per Devp. Unit At 100% Phase Completion	E.I. Payment Per C.O.'d Devp.Component	Debt Service
Retail	640,000.00	640.00		1,114,293.35	\$ 3,368,166.00
Office	150,000.00	150.00		261,162.50	
Rest./Bar In Office	24,000.00	24.00		41,786.00	
Apartments	454.00	454.00		790,451.85	
Parking & Plaza	2,914.00	328.52		571,986.12	
Condo Tower #1	338.00	338.00		588,486.18	
Rest./Bar Condo #1	18,500.00	18.50		32,210.04	
<b>Total Phase I</b>		1,934.52	1,741.08	3,368,166.00	
<b>Phase II Components (2009)</b>					
Hotel	350.00	350.00		770,075.47	\$ 5,929,632.00
Spa	35,000.00	35.00		77,007.55	
Condo Tower #2	357.00	357.00		785,476.98	
Rest./Bar Condo #2	18,500.00	18.50		40,703.99	
<b>Total Phase II</b>		760.50			
<b>Cumulative Phase II</b>		2,695.02	2,200.22	5,929,632.00	
<b>Phase III Components (2010)</b>					
Condo Tower #3	357.00	357.00		614,202.88	\$ 5,928,732.00
Retail on Condo #3	34,750.00	34.75		59,785.85	
Condo Tower #4	357.00	357.00		614,202.88	
Rest./Bar Condo #4	2,250.00	2.25		3,871.03	
<b>Total Phase III</b>		751.00			
<b>Cumulative. Phase III</b>		3,446.02	1,720.46	5,928,732.00	
<b>Phase IV Components (2011)</b>					
Condo Tower #5	357.00	357.00		553,842.42	\$ 5,928,632.00
Retail on Condo #5	18,500.00	18.50		28,700.52	
<b>Total Phase IV</b>		375.50			
<b>Cumulative. Phase IV</b>		3,821.52	1,551.38	5,928,632.00	
<b>Phase V Components (2012)</b>					
Condo Tower #6	357.00	357.00		462,923.22	\$ 5,928,982.00
Rest./Bar Condo #6	18,500.00	18.50		23,989.02	
Condo Tower #7	357.00	357.00		462,923.22	
Rest./Bar Condo #7	18,326.00	18.33		23,763.39	
<b>Total Phase V</b>		750.83			
<b>Cumulative. Phase V</b>		4,572.35	1,296.70	5,928,982.00	
<b>Phase VI Components (2013)</b>					
Condo Tower #8	357.00	357.00		427,823.72	\$ 5,929,432.00
Retail on Condo #8	18,500.00	18.50		22,170.14	
<b>Total Phase VI</b>		375.50			
<b>Cumulative Phase VI</b>		4,947.85	1,198.39	5,929,432.00	
<b>Total of E.I. Payments During Construction</b>					<b>\$ 33,013,576.00</b>

Year	100% Build-out	E.I. Payment per		Total E.I. Payment per yr.
		Devp. Unit	Devp.Component	
2014		4947.85	1,197.42	\$ 5,924,632.00
2015		4947.85	1,198.42	5,929,582.00
2016		4947.85	1,198.14	5,928,232.00
2017		4947.85	1,197.61	5,925,582.00
2018		4947.85	1,197.75	5,926,282.00
2019		4947.85	1,197.42	5,924,632.00
2020		4947.85	1,197.55	5,925,282.00
2021		4947.85	1,198.00	5,927,532.00
2022		4947.85	1,197.63	5,925,682.00
2023		4947.85	1,198.38	5,929,382.00
2024		4947.85	1,198.01	5,927,582.00
2025		4947.85	1,197.48	5,924,932.00
2026		4947.85	1,197.64	5,925,732.00
2027		4947.85	1,198.28	5,928,932.00
2028		4947.85	1,198.19	5,928,482.00
2029		4947.85	1,198.23	5,928,682.00
2030		4947.85	1,198.19	5,928,482.00
2031		4947.85	1,197.86	5,926,832.00
2032		4947.85	1,198.03	5,927,682.00
2033		4947.85	1,197.42	5,924,632.00
2034		4947.85	1,197.82	5,926,632.00
2035		4947.85	1,197.88	5,926,932.00
2036		4947.85	1,197.31	5,924,132.00 (249,868.00)
Total of E.I. Payments During Construction				\$ 33,013,576.00
Total E.I. Payment for Term				\$ 169,080,194.00

Assumptions & Sources

1. Source for Development Components, Size and Value were obtained from March 24, 2004 Development Components, Schedule and Values. (Briggs & Fishkind), ERUs have been renamed Development Units, Total Just Value has been renamed Cost of Improvements.
2. Office/Hotel/Spa Land value was split 50/50 and incorporated to the cost of improvements for the Office and Hotel.
3. Debt Service has been updated to reflect April 12, 2004 revisions by BOA.
4. Payment per C.O. Devp. Unit assumes 100% completion for each phase.
5. Methodology for ERU developed by Dr. Fishkind did not include ERUs for the parking garage and plaza. We estimated the Devp. (ERU) units for that component using the following analysis: Total cost of development for Retail, Anchor Tenant & Retailers FF&E / by Sq. Ft. of Retail to arrive at cost per sq. ft. multiplied by # of sq. ft in ERU (1000). Total cost of Parking & Plaza / number of parking spaces to arrive at a cost per parking unit. Divided cost Retail ERU by cost of parking unit, obtaining the resulting 8.87 parking units to 1 Retail unit.

## EXHIBIT A

### Part 1

The following table lists the components and the estimated cost of the Project:

<u>Component</u>	<u>Estimated Cost</u>
Roadways	\$5,597,737
Water/Sewer	2,290,822
Drainage	2,791,286
Streetscape/Landscape	6,387,668
Irrigation	510,013
Plaza #P1	3,617,019
Overall Improvements	5,136,166
Parking Garages	45,337,889
Midblock Plaza & Misc. Public Improvements	<u>5,866,130</u>
<b>Total</b>	<b><u>\$77,534,730</u></b>

### Part 2

The following table lists the components and the estimated cost of the Parking Garage Project:

<u>Component</u>	<u>Estimated Cost</u>
Parking Garages	\$45,337,889
Midblock Plaza & Misc. Public Improvements	<u>5,866,130</u>
<b>Total</b>	<b><u>\$51,204,019</u></b>

### Part 3

The following table lists the components and the estimated cost of the General Infrastructure Project:

<u>Component</u>	<u>Estimated Cost</u>
Roadways	\$5,597,737
Water/Sewer	2,290,822
Drainage	2,791,286
Streetscape/Landscape	6,387,668
Irrigation	510,013
Plaza #P1	3,617,019
Overall Improvements	<u>5,136,166</u>
<b>Total</b>	<b><u>\$26,330,711*</u></b>

\* The District expects to finance a portion of the General Infrastructure Project with certain grant monies contributed by various governmental entities.

## **EXHIBIT B**

### **Roadway Improvements**

**Roadway Improvements.** All roads will be designed and constructed in accordance with all applicable jurisdictional agency standards. (i.e. Miami-Dade County, City of Miami or Florida Department of Transportation (FDOT). Roadway construction will include sub-grade base, curbing, sidewalks, signage and striping. Roadway lighting will be constructed along the roads within the District.

#### **Roadways outside the Boundary of the District (Off-site)**

**N. Miami Ave.** The improvements consist of reconstructing approximately 1,350 ft. of existing, 4-lane urban roadway. The proposed center medians will be located between NE 32 street and NE 34 street. There will be sections of on-road, municipal parallel parking on the East side of the right-of-way located: between NE 32<sup>th</sup> St. and NE 35<sup>st</sup> St. with a clearance of approximately 50 ft. from each respective intersection. There will be dedicated left turn lanes where feasible from NE 29<sup>th</sup> street to NE 36<sup>th</sup> street.

**NE 36<sup>th</sup> St.** This is a state road. The improvements consist of reconstructing approximately 2,100 ft. of existing, 4-lane urban roadway. The proposed center medians will be located between where feasible.

**NE 29<sup>th</sup> St. (West of R/R).** The improvements consist of reconstructing approximately 800 ft. of existing, 4-lane urban roadway. Where feasible there will be municipal parallel parking on both sides of the road.

#### **Roadways inside the Boundary of the District (On-site)**

**Buena Vista Ave.** The improvements consist of constructing approximately 1400 ft. of new 2-lane, urban roadway. The road, which runs from NE 32<sup>nd</sup> St. to NE 36<sup>th</sup> St., will have on-road, municipal parallel parking on both its East and West sides. The parallel parking on both sides will run on the entirety of the street, but will provide approximately 50-100 ft. of clearance as

needed at the intersections: North side of NE 32<sup>nd</sup> St., both the north and south sides of NE 34 St. and the South side of NE 36<sup>th</sup> St., respectively.

**Midtown Blvd.** The improvements consist of constructing approximately 2,450 ft. of new 2-lane, urban roadway from NE 29<sup>th</sup> St. to NE 36<sup>th</sup> St. The roadway will have on-road, municipal parallel parking on both its east and west sides excluding approximately 50-100 ft. of clearance as needed on both sides of each of the respective intersections as needed: NE 29<sup>th</sup> St. (North side only), NE 31<sup>st</sup> St., NE 32<sup>nd</sup> St., NE 34<sup>th</sup> St. and NE 36<sup>th</sup> St. (South side only).

**East Coast Ave.** The improvements consist of constructing approximately 1,800 ft. of 2-lane urban, roadway from NE 30<sup>th</sup> St. to NE 35<sup>th</sup> St. The roadway will include on-road, private/loading parallel parking on the West side only. The parallel parking will run along the entire length of the avenue, and will provide approximately 50-100 ft. of clearance as needed on both sides of each respective street as needed: NE 30<sup>th</sup> St. (North side only), NE 32<sup>nd</sup> St., NE 34<sup>th</sup> St. and NE 35<sup>th</sup> St. (South side only).

**NE 30<sup>th</sup> St.** The improvements will consist of constructing approximately 350 ft. of urban, 2-lane roadway from NE 1<sup>st</sup> Pl. to E. Coast Ave. The roadway will include on-road, municipal parallel parking on both its north and south sides, providing approximately 75-100 ft. of clearance as needed at each of the respective intersections: NE 1<sup>st</sup> Pl and E. Coast Ave.

**NE 31<sup>st</sup> St.** The improvements will consist of constructing approximately 600 ft. of urban, 2-lane roadway from N. Miami Ave. to NE 1<sup>st</sup> Pl. The roadway will include on-road, municipal parallel parking on both its north and south sides, providing approximately 50-100 ft. of clearance as needed at each of the respective intersections: N. Miami Ave. and NE 1<sup>st</sup> Pl.

**NE 35<sup>th</sup> St.** The improvements will consist of constructing approximately 375 ft. of urban, 2-lane roadway from NE 1<sup>st</sup> Pl. to E. Coast Ave. The roadway will include on-road, municipal parallel parking on both its north and south sides, providing approximately 75 ft. of clearance at each of the respective intersections: NE 1<sup>st</sup> Pl and E. Coast Ave.

**NE 32<sup>nd</sup> St.** The improvements will consist of constructing approximately 1,050 ft. of urban, 2-lane roadway from N. Miami Ave. to E. Coast Ave. The roadway will include on-road,

municipal parallel parking on both its north and south sides, providing approximately 50-100 ft. of clearance as needed at each of the respective intersections: East side of N. Miami Ave., East and West sides of Market St. and NE 1<sup>st</sup> Pl., and West side of E. Coast Ave.

**NE 34<sup>th</sup> St.** The improvements will consist of constructing approximately 1,175 ft. of urban, 2-lane roadway from N. Miami Ave. to E. Coast Ave. The roadway will include on-road, municipal parallel parking on both its north and south sides along its length, providing approximately 50-100 ft. of clearance as needed at each of the respective intersections: East side of N. Miami Ave., East and West sides of Market St. and NE 1<sup>st</sup> Pl., and West side of E. Coast Ave. In the center of the right-of-way there will be medians along the length of the roadway, providing approximately 50-75 ft. of clearance as needed at each of the respective intersections: East side of N. Miami Ave., East and West sides of Market St. and NE 1<sup>st</sup> Pl., and West side of E. Coast Ave.

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