

## MEMORANDUM

Agenda Item No. 11(A)(2)

**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

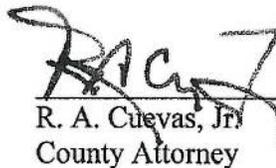
**DATE:** December 17, 2013

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Resolution approving issuance of  
Miami-Dade County Industrial  
Development Authority  
Industrial Development  
Refunding Revenue Bonds (BAC  
Funding Corporation Project) in  
amount not to exceed  
\$16,555,000.00 to refund bonds  
issued to finance capital project  
for benefit of BAC Funding  
Corporation for purposes of  
Section 147(f) of Internal  
Revenue Code of 1986, as  
Amended  
Resolution No. R-1063-13

The sponsoring Commissioner has requested that this resolution become effective upon the earlier of: (1) ten (10) days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson.

  
\_\_\_\_\_  
R. A. Cuevas, Jr.  
County Attorney

RAC/smm



# MEMORANDUM

(Revised)

**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**DATE:** December 17, 2013

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 11(A)(2)

Please note any items checked.

- "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
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

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

Agenda Item No. 11(A)(2)  
12-17-13

RESOLUTION NO. R-1063-13

RESOLUTION APPROVING ISSUANCE OF MIAMI-DADE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY INDUSTRIAL DEVELOPMENT REFUNDING REVENUE BONDS (BAC FUNDING CORPORATION PROJECT) IN AMOUNT NOT TO EXCEED \$16,555,000.00 TO REFUND BONDS ISSUED TO FINANCE CAPITAL PROJECT FOR BENEFIT OF BAC FUNDING CORPORATION FOR PURPOSES OF SECTION 147(F) OF INTERNAL REVENUE CODE OF 1986, AS AMENDED; APPROVING USE OF INTEREST SAVINGS; APPROVING FORM OF RELATED REFUNDING AGREEMENT BETWEEN BAC AND COUNTY WITH RESPECT TO SUCH INTEREST SAVINGS; AND AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO FINALIZE, EXECUTE AND DELIVER REFUNDING AGREEMENT AND CERTAIN SUPPLEMENTS OR AMENDMENTS TO CERTAIN RELATED FINANCING DOCUMENTS WITHIN CERTAIN PARAMETERS

**WHEREAS**, the Miami-Dade County Industrial Development Authority (the "Authority") previously issued its Industrial Development Revenue Bonds (BAC Funding Corporation Project), Series 2000A in the amount of \$21,570,000.00 which mature on October 1, 2030 (the "Prior Bonds") and its Taxable Industrial Development Revenue Bonds (BAC Funding Corporation Project), Series 2000B in the amount of \$205,000.00, which have been paid in full, on behalf of BAC Funding Corporation, a Florida not-for-profit corporation ("BAC") to finance the cost of constructing and equipping an approximate 200,000 square foot office building located adjacent to the Dr. Martin Luther King, Jr. Plaza Metrorail Station at the corner of NW 62<sup>nd</sup> Street and NW 25<sup>th</sup> Avenue in the City of Miami, on land leased from Miami-Dade County (the "Facility"); and

**WHEREAS**, pursuant to Resolution No. 830-99 adopted on July 13, 1999 by the Board of County Commissioners (the "Board"), the County previously entered into an Installment Sale Agreement dated as of October 1, 2000 (the "Installment Sale Agreement") with BAC pursuant to

which the County utilizes substantially all of the office space in the Facility and in exchange for such use, the County (i) makes a monthly payment which is equal to the principal and interest on the Prior Bonds which BAC has assigned to the bond trustee; (ii) pays monthly the actual cost of operating and maintaining the Facility; and (iii) makes a monthly payment pursuant to the Installment Sale Agreement to the bond trustee for disbursement to BAC for its small minority owned business loan program (the "Loan Program"); and

**WHEREAS**, pursuant to Ordinance No. 00-116 enacted by the Board on September 19, 2000, the County entered into a Guaranty Agreement dated as of October 1, 2000 (the "Guaranty") as additional security for the Bonds pursuant to which the County agreed to appropriate annually from legally available non-ad valorem revenues of the County sufficient funds to pay any shortfall in debt service on the Prior Bonds; and

**WHEREAS**, BAC has requested that the Authority issue its Industrial Development Refunding Revenue Bonds (BAC Funding Corporation Project) in an amount not to exceed \$16,555,000 (the "Bonds") with a maturity equal to the Prior Bonds and at a lower interest rate, the proceeds of which will be used (together with funds of the Company) to (i) refinance and refund the Prior Bonds; and (ii) pay costs of issuing the Bonds; and

**WHEREAS**, the refunding of the Prior Bonds will achieve an interest cost savings (the "Savings Amount") which BAC proposes and requests be used to retrofit the Facility in order to achieve energy savings to the County (the "Retrofit") estimated to be between \$80,000 and \$100,000 annually (this will be finalized when a professional energy audit is complete which will recommend energy retrofit improvements, provide final energy cost savings and LEED Certification for the Retrofit) and when the Retrofit is completed, to supplement the funds available from the County for BAC's Loan Program; and

**WHEREAS**, in order to take advantage of lower interest rates and to fund the Retrofit to achieve an annual energy savings to the County as soon as possible, the projected debt service schedule on attached Exhibit A for the new Bonds is structured so that a substantial portion of the Savings Amount (projected to be \$1,426,649.00) is available in the first two years with a small reduction in debt service annually which adds up to approximately \$160,000 over the remaining fifteen years of the Bonds; and

**WHEREAS**, BAC has requested that the County enter into an agreement with BAC regarding the use and disbursement of the Savings Amount which will be paid by the County to the Trustee for deposit in two special accounts, one for the Retrofit and one for BAC's Loan Program (the "Refunding Agreement"); and

**WHEREAS**, the Authority intends to issue the Bonds as described in the report prepared by the Executive Director of the Authority and attached to this Resolution as Exhibit B, subject to approval by this Board of such issuance and final approval by the Authority of the financing documents (the "Financing Documents") for the Bonds; and

**WHEREAS**, on Monday, November 25, 2013 the Authority held a public hearing, notice of which was published on Monday, November 11, 2013 in the Miami Herald in the form attached to this Resolution as Exhibit C, for the purpose of giving all interested persons an opportunity to express their views in connection with the issuance of the Bonds, as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and such public hearing disclosed no reason why the Bonds should not be issued; and

**WHEREAS**, since the refinancing of the Prior Bonds will inure to the benefit of the citizens of Miami-Dade County, this Board desires to approve the issuance of the Bonds for the purpose of complying with Section 147(f) of the Code; and

**WHEREAS**, the final Financing Documents shall be in form and substance similar to the documentation and covenants utilized for the Refunded Bonds, including the Installment Sale Agreement and the Guaranty, approved by the Board as modified, supplemented and amended pursuant to Section 3 of this Resolution,

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

**Section 1.** The recitals set forth above are incorporated in this Resolution.

**Section 2.** The issuance of Bonds by the Miami-Dade County Industrial Development Authority in an aggregate principal amount not to exceed \$16,555,000 is approved for the purpose of Section 147(f) of the Code and to refund the Prior Bonds.

**Section 3.** This Board authorizes the County Mayor or County Mayor's designee (the "County Mayor") to (i) finalize the terms of any supplements or amendments to the Installment Sale Agreement, the Guaranty, the Tri-Party Agreement dated as of October 1, 2000, and the Ground Lease Agreement dated as of October 1, 2000, (collectively, the "County's 2000 Bond Documents") as required for the issuance of the Bonds in accordance with the term sheet from TD Bank, the purchaser of the Bonds, attached to this Resolution as Exhibit D and the Refunding Agreement, after consultation with the Office of the County Attorney; (ii) to execute such amendments and supplements in final form after execution by the Company; and (iii) to exercise the provisions contained in this Resolution and any related agreements. The authorized supplements or amendments to the County's 2000 Bond Documents shall be undertaken in order to enable the refunding of the Prior Bonds and to best secure the Bonds. The County's obligations pursuant to the County's 2000 Bond Documents and the Guaranty remain in full force and effect with respect to the Bonds with such supplements or amendments approved by the County Mayor in accordance with this Section.

**Section 4.** The payment by the County of the Savings Amount in the first two years after the Bonds are issued is approved for the purpose of first retrofitting the Facility to achieve an energy savings and when completed, funding BAC's small minority business loan program with the balance of the Savings Amount.

**Section 5.** The Refunding Agreement is approved in substantially the form attached to this Resolution as Exhibit E. The County Mayor is authorized to finalize the Refunding Agreement pursuant to the terms of this Resolution after consultation with the County Attorney and to execute and deliver it on behalf of the County.

**Section 6.** The Bonds and the interest on the Bonds shall not constitute a debt, liability or general obligation of the Authority, the County or of the State of Florida or of any political subdivision thereof, but shall be payable solely from the revenues or other moneys specifically provided by BAC for the payment of the Bonds and neither the faith and credit nor any taxing power of the County or of the State of Florida or of any political subdivision thereof is pledged to the payment of the principal or interest on the Bonds.

The Prime Sponsor of the foregoing resolution is Commissioner Audrey M. Edmonson.

It was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Lynda Bell** and upon being put to a vote, the vote was as follows:

|                      |                         |                      |     |
|----------------------|-------------------------|----------------------|-----|
|                      | Rebeca Sosa, Chairwoman | aye                  |     |
|                      | Lynda Bell, Vice Chair  | aye                  |     |
| Bruno A. Barreiro    | aye                     | Esteban L. Bovo, Jr. | aye |
| Jose "Pepe" Diaz     | aye                     | Audrey M. Edmonson   | aye |
| Sally A. Heyman      | aye                     | Barbara J. Jordan    | aye |
| Jean Monestime       | aye                     | Dennis C. Moss       | aye |
| Sen. Javier D. Souto | aye                     | Xavier L. Suarez     | aye |
| Juan C. Zapata       | aye                     |                      |     |

The Chairperson thereupon declared the resolution duly passed and adopted this 17<sup>th</sup> day of December, 2013. This resolution shall become effective upon the earlier of (1) ten (10) days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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



HARVEY RUVIN, CLERK

**Christopher Agrippa**

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

Approved by County Attorney as  
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "GTH", is written over a horizontal line.

Gerald T. Heffernan



## Exhibit A Projected Debt Service Schedule

| BAC<br>New |                  | Interest                                | Principal         | Payment | BAC<br>Proposed |                  | Interest                                | Principal         | Payment | Debt Service<br>Differential |  |
|------------|------------------|---|-------------------|---------|-----------------|------------------|---|-------------------|---------|------------------------------|--|
|            |                  | (Principal Par Amount of: \$16,555,000) |                   |         |                 |                  | (Principal Par Amount of: \$16,555,000) |                   |         |                              |  |
| 10/1/2014  | 868,506          | 615,000                                 | 1,483,506         | 5.13%   | 10/1/2014       | 653,923          | 100,000                                 | 753,923           | 3.95%   | 729,584                      |  |
| 10/1/2015  | 836,988          | 650,000                                 | 1,486,988         | 5.13%   | 10/1/2015       | 649,973          | 100,000                                 | 749,973           | 3.95%   | 737,015                      |  |
| 10/1/2016  | 803,675          | 680,000                                 | 1,483,675         | 5.25%   | 10/1/2016       | 646,023          | 816,000                                 | 1,462,023         | 3.95%   | 21,653                       |  |
| 10/1/2017  | 767,975          | 715,000                                 | 1,482,975         | 5.25%   | 10/1/2017       | 621,691          | 848,000                                 | 1,469,691         | 3.95%   | 13,285                       |  |
| 10/1/2018  | 730,437          | 755,000                                 | 1,485,437         | 5.25%   | 10/1/2018       | 588,195          | 884,500                                 | 1,472,685         | 3.95%   | 12,743                       |  |
| 10/1/2019  | 690,800          | 795,000                                 | 1,486,800         | 5.25%   | 10/1/2019       | 553,257          | 920,500                                 | 1,473,757         | 3.95%   | 12,043                       |  |
| 10/1/2020  | 649,063          | 835,000                                 | 1,484,063         | 5.25%   | 10/1/2020       | 516,897          | 955,480                                 | 1,473,377         | 3.95%   | 11,686                       |  |
| 10/1/2021  | 605,225          | 880,000                                 | 1,486,225         | 5.38%   | 10/1/2021       | 479,155          | 994,500                                 | 1,473,655         | 3.95%   | 11,569                       |  |
| 10/1/2022  | 557,925          | 925,000                                 | 1,482,925         | 5.38%   | 10/1/2022       | 439,873          | 1,032,000                               | 1,471,873         | 3.95%   | 11,052                       |  |
| 10/1/2023  | 508,206          | 975,000                                 | 1,483,206         | 5.38%   | 10/1/2023       | 399,108          | 1,074,000                               | 1,473,108         | 3.95%   | 10,087                       |  |
| 10/1/2024  | 456,800          | 1,030,000                               | 1,465,800         | 5.38%   | 10/1/2024       | 356,686          | 1,119,000                               | 1,475,686         | 3.95%   | 10,114                       |  |
| 10/1/2025  | 400,438          | 1,085,000                               | 1,485,438         | 5.38%   | 10/1/2025       | 312,485          | 1,163,500                               | 1,475,985         | 3.95%   | 9,482                        |  |
| 10/1/2026  | 342,119          | 1,145,000                               | 1,487,119         | 5.38%   | 10/1/2026       | 266,527          | 1,212,000                               | 1,476,527         | 3.95%   | 8,582                        |  |
| 10/1/2027  | 280,575          | 1,205,000                               | 1,485,575         | 5.38%   | 10/1/2027       | 218,653          | 1,258,500                               | 1,477,153         | 3.95%   | 8,422                        |  |
| 10/1/2028  | 215,805          | 1,270,000                               | 1,485,805         | 5.38%   | 10/1/2028       | 166,942          | 1,309,000                               | 1,477,942         | 3.95%   | 7,894                        |  |
| 10/1/2029  | 147,544          | 1,335,000                               | 1,482,544         | 5.38%   | 10/1/2029       | 117,237          | 1,358,000                               | 1,476,237         | 3.95%   | 7,307                        |  |
| 10/1/2030  | 75,788           | 1,410,000                               | 1,485,788         | 5.38%   | 10/1/2030       | 63,586           | 1,410,000                               | 1,473,616         | 3.95%   | 12,172                       |  |
|            | <b>8,936,668</b> | <b>16,905,000</b>                       | <b>25,241,868</b> |         |                 | <b>7,052,219</b> | <b>16,555,000</b>                       | <b>23,607,219</b> |         | <b>1,634,649</b>             |  |

\* Per Amortization from OS (Page 30)

16,555,000

Allocation For Issuance Costs From Bond \$ 250,000

NPV @ 3.31%  
\$1,523,132

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**Exhibit B**  
**Industrial Development Authority**  
**Executive Director's Report**

**BAC FUNDING CORPORATION**

**THE CORPORATION**

BAC Funding Corporation (formally known as Business Assistance Center, Inc.) is a Florida not-for-profit corporation located at 6600 NW 27<sup>th</sup> Avenue, unincorporated Miami-Dade County. BAC was formed in 1982 through the collaborative efforts of private corporations, private individuals and foundations to be a beacon of light for the South Florida African-American community after the devastation of the 1980 Liberty City Riots. In addition to its operations, BAC is the operating agent for BAC Funding Consortium, Inc., a multi-bank community development corporation and BAC Urban Initiatives, Inc., an urban development entity.

The mission and purpose of the BAC is targeted to foster economic development in the African-American business community in Miami-Dade County with a specific emphasis on job creation and creation of African-American owned businesses. In accordance with its by-laws, BAC is committed to the creation and long range development of a successful African American entrepreneur and business class in South Florida. Although race and access to capital continue as the primary challenges in the targeted development, BAC's thirty-one (31) years of operating history reflects its prominent, successful, and on-going essential role in the use of its capital for the stabilization, growth and expansion of existing businesses; job development and the creation of new business enterprises; development of skills training and educational programs in the Miami-Dade African-American business community.

**THE PROJECT**

In October 2000, the Industrial Development Authority issued its Industrial Development Revenue Bonds in the amount of \$21,775,000 to assist BAC and facilitate the construction of an approximate 200,000 sq. ft., five (5) story office building ("MLK Office Building") located adjacent to the Dr/ Martin Luther King, Jr. Plaza Metrorail Station at the corner of NW 25th Avenue and NW 62nd Street that is substantially leased to Miami-Dade County's Solid Waste and Correction's Department. BAC is requesting that the Authority issue its Revenue Refunding Bonds in an amount not to exceed \$16,555,000 to refund the existing \$16,305,000 balance of the Series 2000A Bonds. The refunding will achieve a present value savings of approximately \$ 1.6 million generated through the reduction in the interest rate of the prior bonds from 5.35% to

3.95%. BAC plans to structure the refinancing to realize the savings within the first two (2) years after the refunding by restructuring the bond payments to allow for two (2) years of interest only amortization with Miami-Dade's lease payments remaining the same. Further, the year 2030 maturity of the retired 2000A bonds will not be extended by the refunding, as the Refunding bonds will match the current 2030 maturity date.

BAC plans to have Miami-Dade's payments remain in place as currently scheduled for the existing higher debt service. Instead of paying principal on the Bonds in 2014 and 2015 (the "County Contribution"), the funds will be used as follows: BAC will utilize approximately \$800,000 of the County Contribution to retrofit/replace the air conditioning system, replace the cooling tower and replace light fixtures which will enable the building to comply with LEED certification standards and use the approximate \$800,000 balance of the County Contribution to strengthen BAC's capital position to provide lending and investment products and services for African American business development and expansion. Through its traditional loan programs, BAC provides lines of credit and term loans to support procurement opportunities in the public and private sector. Through its equity program, BAC invests in business acquisitions, real estate and franchise opportunities.

**FINANCIAL SUFFICIENCY**

BAC Funding Corporation has provided audited financial statements for the fiscal years ended December 31, 2012, 2011 and 2010.

A review of the submitted financial and related information indicates:

| <b><u>SOURCE OF FUNDS</u></b> |                            | <b><u>USE OF FUNDS</u></b>   |                            |
|-------------------------------|----------------------------|------------------------------|----------------------------|
| Bond Issue Proceeds*          | \$16,555,000               | Refund of Series 2000A Bonds | \$ 16,305,000              |
|                               |                            | Bond Issuance Expenses       | 250,000                    |
|                               | <b><u>\$16,555,000</u></b> |                              | <b><u>\$16,555,000</u></b> |
| <b>TOTAL</b>                  | <b><u>\$16,555,000</u></b> | <b>TOTAL</b>                 | <b><u>\$16,555,000</u></b> |

Information relative to the proposed financial structure includes:

- Financial Structure:                      Lease purchase contract with Miami-Dade County. At the end of the lease term ownership of the building reverts to the County.
- Marketing:                                      Private Placement with Bank.

## LEGAL

Facilities for not-for-profit corporations are eligible for financing with tax-exempt IDBs provided the project is for governmental or charitable (501(c)(3)) purposes. Bonds issued for the benefit of a not-for-profit corporations are also exempt from the requirement of being included under the state bond volume cap.

## ECONOMIC IMPACT

BAC reports that the refinancing of the Series 2000A Bonds will allow capital improvements to be made to the MLK Transit Station Building that supports Miami Dade County's Energy Efficiency Conservation Strategy on a building Miami-Dade County is purchasing in installment payments. The strategy aims at improving energy efficiency, reducing energy use and creating green jobs locally for minority contractors and construction laborers as well as being in line with the State of Florida's Go-Green Initiative.

In addition, capitalization of BAC loan programs will have a significant impact on BAC's capacity to meet the capital needs of African-American businesses attempting to seize opportunities in the substantial present and upcoming projects in South Florida, including though not limited to: Airport - \$700 million; Port - \$2 billion; Water & Sewer - \$4.5 billion and CRA - \$350 million and, most importantly, create jobs in the African American business community.

**Exhibit C**  
**Form of Public Notice**

The Miami-Dade County Industrial Development Authority (the "Authority") has been requested by BAC Funding Corporation, a Florida not-for-profit corporation (the "Borrower"), to issue its Industrial Development Refunding Revenue Bonds (BAC Funding Corporation Project), Series 2013 in an aggregate principal amount not to exceed \$16,555,000 (the "Series 2013 Bonds").

The proceeds of the Series 2013 Bonds may be used, together with funds provided by the Borrower, to: (i) refinance and refund the Authority's Industrial Development Revenue Bonds (BAC Funding Corporation Project), Series 2000A, which funds were used to finance the construction and equipping of an approximate 200,000 square foot office building located adjacent to the Martin Luther King Metrorail Station at the corner of NW 62nd Street and NW 25th Avenue in the City of Miami, on land leased from Miami-Dade County (the "County"); and (ii) pay certain bond issuance costs (the "Series 2013 Project"). The building is subject to a lease-purchase from the Borrower by Miami-Dade County.

The Series 2013 Bonds shall not be a debt, liability or obligation of the Authority nor of the State of Florida, nor of any political subdivision thereof, as the Series 2013 Bonds will not create a general obligation or a pledge of the faith and credit or the taxing power of the County, the State of Florida or any political subdivision thereof, within the meaning of any constitutional, statutory or other limitation of indebtedness. The Series 2013 Bonds shall be payable solely from payments derived from the operation of the facilities or the security instruments therefore, including a non-ad valorem limited guaranty of the County.

Please take note that the Executive Director of the Authority will hold a public hearing on the Series 2013 Project, the nature and location and associated issues regarding the Series 2013 Bonds at the Brickell BayView Centre, 80 SW 8th Street, Suite 2801, Miami, Florida, on **Monday, November 25, 2013** commencing at **11:00 a.m.** or shortly thereafter, at which time any person may be heard regarding the proposed issuance of the Series 2013 Bonds and the Series 2013 Project. The Authority will submit a transcript of the statements made at the hearing to the Board of County Commissioners, Miami-Dade County, Florida, which must approve or disapprove the issuance of the Series 2013 Bonds.

**Exhibit D**  
**TD Bank's Term Sheet**

**TERMS AND CONDITIONS OF CREDIT ACCOMMODATION**  
**NOVEMBER 18, 2013**

**BAC FUNDING CORPORATION**

THIS IS A STATEMENT OF TERMS AND CONDITIONS AND NOT A COMMITMENT TO LEND

A. PROPOSED BANK LOAN'S TERMS & STRUCTURE:

|                                     |   |
|-------------------------------------|---|
| <b><u>BORROWER:</u></b>             | BAC Funding Corporation   |
| <b><u>GUARANTOR:</u></b>            | Miami-Dade County   |
| <b><u>ISSUER:</u></b>               | Miami-Dade County Industrial Development Authority  |
| <b><u>BANK:</u></b>                 | TD Bank, NA   |
| <b><u>TRUSTEE/PAYING AGENT:</u></b> | TD Bank, NA   |
| <b><u>FACILITY AMOUNT:</u></b>      | Up to \$16,555,000  |
| <b><u>FACILITY TYPE:</u></b>        | Non Bank Qualified Tax Exempt Term Loan   |
| <b><u>PURPOSE OF FACILITY:</u></b>  | The funds will be used to refinance the Borrower's Industrial Development Authority Revenue Bonds Series 2000A, and pay for the Facility's issuance costs ("the Project").  |
| <b><u>MATURITY DATE:</u></b>        | October 1 <sup>st</sup> , 2020  |
| <b><u>INTEREST RATE:</u></b>        | Indicative Non Bank Qualified Tax Exempt Fixed Rate as of October 31, 2013:<br><br>17-year term: 3.95%  |
|                                     | The Bank will also make available the option to lock-in the above quoted loan rate for the Borrower through the expected transaction closing (on or before December 31, 2013), which is subject to the Borrower executing the Bank's Rate Lock Agreement upon approval of the transaction by Miami-Dade County. |
| <b><u>REPAYMENT TERMS:</u></b>      | Annual principal payments will be due the 1 <sup>st</sup> of October every year commencing on October 1 <sup>st</sup> , 2014, interest shall be payable monthly commencing on February 1 <sup>st</sup> ,  |

2014 using a 30/360-day count. (See Proposed Attached Amortization Schedule).

**DEFAULT RATE OF INTEREST:**

The "default rate of interest" shall be four (4) percentage points in excess of the rate of interest charged prior to the occurrence of the event of default.

**LATE CHARGES:**

If any payment due the Bank is more than fifteen (15) days overdue, a late charge of six percent (6%) of the overdue payment shall be assessed.

**PREPAYMENT PREMIUM:**

At the time of any full or prepayment, a fee equal to the greater of (i) 1.00% of the principal balance being prepared multiplied by the "Remaining Term," as hereinafter defined, in years of (ii) a "Yield Maintenance Fee" in an amount computed as follows:

The current cost of funds, specifically the bond equivalent yield for United States Treasury securities (bills on a discounted basis shall be converted to a bond equivalent yield) with a maturity date closest to the "Remaining Term", shall be subtracted from the Note rate, or default rate if applicable. If the result is zero or a negative number, there shall be no Yield Maintenance Fee due and payable. If the result is a positive number, then the resulting percentage shall be multiplied by the scheduled outstanding principal balance for each remaining monthly period of the "Remaining Term." Each resulting amount shall be divided by 360 and multiplied by the number of days in the monthly period. Said amounts shall be reduced to present values calculated by using the above reference current costs of funds divided by 12. The resulting sum of present values shall be the yield maintenance fee due to the Bank upon prepayment of the principal of the loan plus any accrued interest due as of the prepayment date.

"Remaining Term" as used herein shall mean the shorter of (i) the remaining term of this Note, or (ii) the remaining term of the then current fixed interest rate period.

**B. FEES AND EXPENSES.**

Bank Upfront (One-Time) Loan Fee: 25 basis points of Facility Amount. Bank shall pay for the cost of Real Property Search or Title Opinion associated with the transaction as may be required by Bank.

The Borrower is responsible for Bank Counsel Fees for the review of the loan documentation which will be prepared by the Bond Counsel. Bank Counsel Fees shall not to exceed \$25,000.

**C. SECURITY.**

Pursuant to the Loan Agreement for this Facility, the Guarantor shall covenant and agree to budget and appropriate in its annual budget, by amendment if required, to pay when due from Non Ad Valorem revenues of the County or other legally available funds all periodic Loan Payment as required under the Loan Agreement.

"Non Ad Valorem Revenues" shall be defined in the Loan Agreement to mean all legally available revenues and taxes of the County derived from any source whatsoever other than ad valorem taxation on real and personal property, which are legally available for Loan Payments.

Bank shall assume the existing leasehold mortgage under the Series 2000A Bonds as an Abundance of Caution and therefore shall not require an appraisal or title insurance policy. Only a Real Property Search or Title Opinion will be required.

Assignment of Rents & Leases associated with the Project (If Applicable).

D. **LEGAL OPINIONS.** Prior to closing, there shall be delivered to the Bank an opinion of Bond Counsel acceptable to the Bank covering matters customary for a transaction of this type and nature and which shall, without limitation, opine that: (1) the Borrower, Guarantor, and Issuer are duly formed; (2) all loan documents have been validly authorized and executed by and on behalf of the Borrower, Issuer, and Guarantor if any; (3) all loan documents are valid, binding, enforceable in accordance with their terms and do not violate any legal requirements, including without limitation, organizational documents, laws and material agreements.

E. **FINANCIAL REPORTING.**

The GUARANTOR SHALL FURNISH OR MAKE ACCESSIBLE TO BANK ON LINE THE FOLLOWING FINANCIAL REPORTS:

| <u>TYPE OF REPORTS</u>         | <u>FREQUENCY</u> | <u>DUE DATE</u>                       |
|--------------------------------|------------------|---------------------------------------|
| FINANCIAL STATEMENTS – AUDITED | ANNUALLY         | 210 days after end of fiscal year.    |
| APPROVED BUDGET                | ANNUALLY         | 30 days after completion and approval |

THE BORROWER SHALL FURNISH THE FOLLOWING FINANCIAL REPORTS FOR THE BORROWER:

| <u>TYPE OF REPORTS</u>                     | <u>FREQUENCY</u> | <u>DUE DATE</u>                    |
|--|------------------|------------------------------------|
| FINANCIAL STATEMENTS - MANAGEMENT PREPARED | ANNUALLY         | 120 days after end of fiscal year. |
| FINANCIAL STATEMENTS – AUDITED             | ANNUALLY         | 270 days after end of fiscal year. |

In addition, the Borrower shall furnish other reporting as shall be required in the Loan Documents.

F. **FINANCIAL COVENANTS: ADDITIONAL BONDS / ANTI DILUTION TEST**

Same as Ad Bonds Test and Anti Dilution Test currently in place for Guarantor's debt obligations that are backed by a Covenant to Budget & Appropriate.

G. OTHER CONDITIONS.

- No adverse material change in the Borrower's and Guarantor's financial condition prior to closing.
- Installment payments from Miami-Dade County to be made directly to Trustee/Paying Agent.
- Assignment of rights to Debt Service portion of the Installment Payments made by Guarantor Trustee/Paying Agent with periodic loan payments to be settled via the Paying Agent/Trustee who shall remit payment to the Bank.
- Downgrade of Guarantor's Public Debt Rating below Investment Grade (BBB- or Baa3) by either S&P or Moody's shall be considered an Event of Default under the Loan Agreement.
- Standard gross up language pertaining only to change of taxability status of Facility.
- Borrower to maintain some level of depository relationship with the Bank during the term of the Loan.
- Other standard terms & conditions of facilities of this type.

**Exhibit E**  
**Refunding Agreement**

**THIS REFUNDING AGREEMENT** ("Agreement") is entered into as of \_\_\_\_\_, 2013, by **BAC FUNDING CORPORATION**, a Florida not-for-profit corporation ("BAC") and **MIAMI-DADE COUNTY, FLORIDA**, a political subdivision of the State of Florida ("County").

**WHEREAS**, pursuant to a Trust Indenture dated as of October 1, 2000 (the "Indenture") between the Miami-Dade County Industrial Development Authority (the "Authority") and First Union National Bank, which is now [ \_\_\_\_\_ ], as Trustee (the "Trustee"), the Authority issued its Industrial Development Revenue Bonds (BAC Funding Corporation Project) Series 2000A and its Taxable Industrial Development Revenue Bonds (BAC Funding Corporation Project) Series 2000B in an aggregate principal amount of \$21,775,000 (the "Prior Bonds"), and pursuant to the Authority Loan Agreement dated as of October 1, 2000 between the Authority and BAC, the Authority lent the proceeds of the Bonds to BAC to finance construction and equipping of an approximate 200,000 square foot office building located adjacent to the Dr. Martin Luther King, Jr. Plaza Metrorail Station at the corner of NW 62<sup>nd</sup> Street and NW 25<sup>th</sup> Avenue in the City of Miami, on land leased from the County (the "Facility"); and

**WHEREAS**, pursuant to Resolution No. 830-99 adopted on July 13, 1999 by the Board of County Commissioners (the "Board"), the County previously entered into an Installment Sale Agreement dated as of October 1, 2000 (the "Installment Sale Agreement") with BAC pursuant to which the County utilizes substantially all of the office space in the Facility and in exchange for such use, the County (i) makes a monthly payment to the Trustee on behalf of BAC which is equal to the principal and interest on the Prior Bonds; (ii) pays monthly the actual cost of operating and maintaining the Facility; and (iii) makes a monthly payment to the Trustee for distribution to BAC to be used for its small minority owned business loan program ("Loan Program"); and

**WHEREAS**, BAC has requested that the Authority issue its Industrial Development Refunding Revenue Bonds (BAC Funding Corporation Project) in an amount not to exceed \$16,555,000 (the "Bonds") with a maturity equal to the Prior Bonds and at a lower interest rate, the proceeds of which will be used (together with funds of BAC) to (i) refinance and refund the Prior Bonds; and (ii) pay costs of issuing the Bonds; and

**WHEREAS**, the refunding of the Prior Bonds will achieve the monthly interest cost savings set forth on Exhibit A to this Agreement (the "Savings Amount") which BAC will use (i) to retrofit the Facility in order to achieve energy savings to the County estimated to be between \$80,000 and \$100,000 annually (this will be finalized when a professional energy audit is complete which will recommend energy retrofit improvements, provide final energy cost savings

and LEED Certification for the Retrofit) and (ii) to supplement the funds available from the County for its Loan Program; and

**WHEREAS**, BAC and the County wish to agree on the terms and conditions of the disbursement of the Savings Amount; and

**WHEREAS**, pursuant to Resolution No. R- adopted by the Board on December 17, 2013, the County Mayor or the County Mayor's designee is authorized to finalize this Agreement and to execute and deliver it on behalf of the County,

**NOW, THEREFORE**, in consideration of the covenants and conditions set for in this Agreement, BAC and County agree as follows:

**SECTION 1. DEFINITIONS.** Words and terms that are defined in the Trust Indenture shall have the same meanings ascribed to them when used in this Agreement unless the context or use clearly indicates a different meaning or intent.

**SECTION 2. PAYMENT OF SAVINGS AMOUNT.** The County shall make a payment to the Trustee of the Savings Amount in the monthly amounts set forth in Exhibit A for the first two years after the Bonds are issued. It is agreed that the County shall continue to pay the reduced debt service for those two years pursuant to Article 11 (a)(ii) of the Installment Sale Agreement.

Commencing in the third year after the Bonds are issued, the County shall make the monthly payments to the Trustee in the amounts set forth in Exhibit A which shall constitute the County's payment pursuant to Article 11 (a)(ii) of the Installment Sale Agreement.

**SECTION 3. USE OF SAVINGS AMOUNT.**

3.1 **Facility Retrofit.** The monthly Savings Amount shall be used first for the Facility Retrofit which will achieve preliminarily an estimated annual energy savings of \$80,000 to \$100,000 (this will be finalized when a professional energy audit is complete which will recommend energy retrofit improvements, provide final energy cost savings and LEED Certification for the Retrofit) standards which will accrue to the benefit of the County through lower operation and maintenance costs. The Retrofit is estimated to cost \$820,000 and shall be the sole responsibility of BAC. The capital improvements include the installation of LED lighting and upgrades to, and replacement of, HVAC equipment to make it more energy efficient. The final list of capital improvements shall be approved by the County Mayor provided they are consistent with an energy audit to be provided by BAC to the County which demonstrates an energy savings (the "Energy Audit") prior to the disbursement of any portion of the Savings Amount. In the event the final cost of the Retrofit exceeds the Savings Amount, BAC shall be

responsible for such additional cost, provided, however, if the cost of the Retrofit is less than the estimated \$820,000, the savings shall be available to BAC to fund its Loan Program.

3.2 **BAC's Loan Program.** Upon delivery of a certificate to the Trustee executed by BAC and the County that the Retrofit has been completed or there are sufficient funds held by the Trustee to complete the Retrofit (the "Completion Certificate"), the monthly Savings Amount shall be available to BAC to fund its Loan Program.

#### **SECTION 4. DISBURSMENT OF SAVINGS AMOUNT.**

4.1 **Retrofit Account.** A Retrofit Account shall be established and held by the Trustee, Until the Trustee receives the Completion Certificate, all Savings Amount payments received from the County shall be deposited in the Retrofit Account. The County and BAC shall provide the Trustee with a form of requisition acceptable to them. Each requisition shall be executed by the County and BAC.

BAC shall comply with all State of Florida (the "State") and County regulations applicable to the Retrofit, including the posting of a Payment and Performance Bond, if required.

4.2 **BAC's Loan Program Account.** Upon the receipt of a Completion Certificate, all Savings Amount payments received from the County shall be deposited in BAC's Loan Program Account and disbursed at the direction of BAC.

4.3 **Energy Audit.** Notwithstanding the foregoing, the County and BAC agree that the Savings Amount shall not be disbursed from the Retrofit Account and the Loan Program Account by the Trustee until it has received confirmation in writing from the County that the County has received an acceptable Energy Audit.

**SECTION 5. TERM.** This Agreement shall terminate when the Bonds or any bonds issued to Refund the Bonds are no longer outstanding.

**SECTION 6. 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 7. BINDING EFFECT.** This Agreement shall inure to the benefit of, and shall be binding upon, the County and BAC and their respective successors, administrators, executors and assigns.

**SECTION 8. SEVERABILITY.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of its other provisions.

**SECTION 9. GOVERNING LAW.** This Agreement shall be governed by the laws of the State.

**IN WITNESS WHEREOF,** BAC and County have each caused this Agreement to be executed by their duly authorized officers, effective as of the date set forth in the first paragraph.

(Corporate Seal)

**BAC FUNDING CORPORATION**

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

Attest:

By: \_\_\_\_\_  
Secretary-Treasurer

(Seal)

**MIAMI-DADE COUNTY**

By: \_\_\_\_\_  
County Mayor

Attest:

By: \_\_\_\_\_  
(Deputy) Clerk

Approved As to Form  
and Legal Sufficiency:

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