

First Amendment to Interlocal Cooperation Agreement dated June 24, 1996 by and among Miami-Dade County, the City of Miami and the Community Redevelopment Agency for the Omni District

This First Amendment to Interlocal Cooperation Agreement ("First Amendment") is made and entered into this 31 day of ~~December~~ 2007 by and among Miami-Dade County, a political subdivision of the State of Florida (the "County"), the City of Miami, a municipal corporation of the State of Florida (the "City") and the Community Redevelopment Agency for the OMNI district, a public body corporate and politic (the "CRA").

WITNESSETH

WHEREAS, pursuant to Resolution No. R-280-96 adopted by the Board of County Commissioners of Miami-Dade County (the "Board") on March 19, 1996, the Board approved the terms and execution of an Interlocal Cooperation Agreement by and among the County, the City and the CRA (the "Interlocal"), which Interlocal was dated June 24, 1996 and contained provisions for the CRA to make certain payments to the County for the purpose of paying debt service on the Performing Arts Center Bonds; and

WHEREAS, the Interlocal obligates the CRA to pay the first \$1.43 million of tax increment fund revenues collected each year to the County for the payment of the County Debt Service Payment, which obligation ceases when the Performing Arts Center Bonds are no longer outstanding; and

WHEREAS, construction costs for the Performing Arts Center have escalated and exceeded the estimated budget at the time of the original Interlocal; and

WHEREAS, the County has issued additional Performing Arts Center Bonds and has borrowed funds pursuant to one or more loan agreements ("Loans") for the purpose of funding such higher construction costs of the Performing Arts Center; and

WHEREAS, the County, the City, and the CRA recognize that the Performing Arts Center has been an enormous catalyst and remains such in attracting significant development and private investment to the City's Omni district; and

WHEREAS, the catalytic impact of the Performing Arts Center to the Omni district has contributed to the substantial growth of the Omni district's tax roll which will provide resources for important future projects; and

WHEREAS, the County, the City, and the CRA desire to provide additional tax increment revenues from the CRA for the purpose of paying debt service on all outstanding Performing Arts Center Bonds and Loans and to fund other CRA projects; and

WHEREAS, the County, the City, and the CRA agree that the First Amendment

to the Omni Community Redevelopment Plan, as supplemented by Addendum II, was approved by the Board on April 8, 1997; therefore, the term of the Omni District shall expire on September 30, 2027; and

WHEREAS, the County, the City, and the CRA acknowledge their interest and the benefits of further extending the life and expanding the boundaries of the Omni district to, among other things, include infrastructure, the Port Tunnel and Museum Park projects; and

WHEREAS, the County, the City, and the CRA acknowledge that, in order to expand the boundaries of the Omni District, it will be necessary to prepare and adopt a finding of necessity for the expanded area and amend the Community Redevelopment Plan for the Omni district (the "Plan"); and

WHEREAS, the County, the City and the CRA acknowledge that the steps and corresponding period of time necessary to expand the boundary of the Omni district vary and agree to cooperate, act expeditiously and in good faith in implementing the steps,

NOW THEREFORE, THE COUNTY, THE CITY AND THE CRA AGREE AS FOLLOWS:

- I. The recitations set forth above are true and correct and adopted as part of this First Amendment.
- II. All terms in capitalized form, unless otherwise defined in this First Amendment, shall have the same meaning as ascribed to them in the Interlocal.
- III. The Interlocal dated June 24, 1996, attached and made a part of this First Amendment is amended in the following respects:
 - A. Article II, Section C, Project Financing, Subsection 1. is amended and restated to read as follows:

The CRA shall administer and manage the Fund as required by law and develop and promulgate rules, regulations and criteria whereby the Fund may be promptly and effectively administered, including the establishment and the maintenance of books and records and adoption of procedures whereby the COUNTY may, expeditiously and without undue delay, utilize such funds in accordance with the COUNTY approved budget for the Performing Arts Center, and whereby the CRA may, expeditiously and without undue delay, utilize the funds other than those dedicated to the County for the purpose of paying debt service on the Performing Arts Center Bonds and/or Loans, in accordance with the COUNTY approved budget for those aspects of the PROJECT not related to the Performing Arts Center. In furtherance of such expeditious utilization of funds for the

County's payment of debt service on the Performing Arts Center Bonds and/or Loans, the CRA shall remit to the COUNTY (a) on March 31, 2008 and every March 31st thereafter ending on March 31, 2012, the first \$1.43 million of Increment Revenue (as such term is defined in this paragraph) plus an amount equal to thirty-five percent (35%) of the amount by which the Increment Revenue from the Omni Community Redevelopment Area exceeds \$1.43 million; and (b) commencing March 31, 2013 and every March 31 thereafter until March 31, 2027, an amount equal to the greater of \$1.43 million or thirty-five percent (35%) of the Increment Revenue from the Omni Community Redevelopment Area; provided, however, the amounts to be remitted by the CRA as calculated in accordance with subsections (a) and (b) shall not exceed \$25 million in any fiscal year. "Increment Revenue" means all the Increment revenue (as such term is defined in Section 163.340(22) and calculated using ninety-five percent (95%) in the calculation pursuant to Section 163.387(1), Florida Statutes (2006)) from the Omni District (including any expanded boundaries). Exhibit A to this Amendment contains examples of the operation of this clause. The amounts to be remitted by the CRA in accordance with this Section shall be used for the purpose of paying debt service on all Performing Arts Center Bonds and/or any Loans (the "County Debt Service Payment"). The CRA's last payment to the County of the amounts set forth above shall occur on March 31, 2027. The parties agree that the term of the Omni District and the CRA shall expire on September 30, 2027 and all remaining funds on deposit in the Fund shall be remitted to the applicable taxing authorities as provided in the Act. If the County sells any additional Performing Arts Center Bonds or incurs any additional Loans with regard to the Performing Arts Center, the COUNTY shall ensure that all documentation relating to such Bonds or Loans shall limit the liability of the CRA to the amounts due from the CRA to the County as provided in this Agreement.

The CRA shall be annually compensated for all administrative services rendered with respect to any and all aspects of the PROJECT subject to availability of revenue in the Fund. Such administrative expenses payable out of the Fund shall be capped at an amount not to exceed twenty percent (20%) of the annual budget approved by the COUNTY.

C. Article II, Section C, Project Financing, Subsection 4. is amended and restated to read as follows:

The CRA may issue bonds and/or incur indebtedness required to finance the PROJECT provided such bonds and/or indebtedness is subordinate to all Performing Arts Center Bonds and/or Loans; provided, however, such subordinate bonds and/or indebtedness shall mature not later than September 30, 2027. The subordination of bonds and/or indebtedness issued by the CRA referred to in the preceding sentence shall relate to the

amount of Increment Revenue reserved for the COUNTY pursuant to the provisions of Article II, Section C, subsection 1 above. Prior to the issuance of any bonds or the incurrence of any indebtedness, the COUNTY shall review and approve all related documents and agreements. The CRA shall not withhold the payment to the County of the amount of Increment Revenue reserved for the COUNTY pursuant to the provisions of Article II, Section C, subsection 1 above for any reason, notwithstanding any other activities, actions, claims, or causes of action related to the PROJECT.

D.

Add Article VI titled **Other Provisions** to read as follows:

A. Amendment to Plan.

- (a) The City and the CRA agree to generate a Finding of Necessity study to substantiate the expansion of the boundaries of the Omni district to include a geographic area, which will include Bicentennial Park and Watson Island. If the City and the CRA each adopt a resolution, supported by data and analysis, which makes a legislative finding that the conditions in the area meet the criteria described in Section 163.340(7) or (8), the City and the CRA agree to provide the County with the adopted Finding of Necessity study and resolutions for the Board's review and consideration, as set forth in Section 163.355, Florida Statutes.
- (b) After making the legislative findings and adopting the Finding of Necessity study, the City and the CRA agree to prepare and consider a resolution that approves, after a public hearing, an amendment to the Plan, which amendment shall (i) extend the life of the CRA to March 31, 2030; and (ii) expand the boundaries of the Omni District; and (iii) to add the Port Tunnel and the Museum Park as projects eligible for tax increment financing. If the City and the CRA each adopt a resolution that approves the amendment to the Plan and that recommends to the County their approval of the amendment to the Plan, they agree to provide the County with the adopted amendment for review and consideration by the Board of County Commissioners (the "Board") after a public hearing, as set forth in Section 163.361, Florida Statutes.
- (c) Upon receipt of the adopted Finding of Necessity and amendment to the Plan the County agrees to review, comment, prepare and recommend for the Board's consideration the Finding of Necessity and amended Redevelopment Plan. The CRA shall report such proposed modification to the boundaries of the redevelopment area to each taxing authority in writing or by oral presentation, or both, as required by Section 163.361(3)(a), Florida Statutes. The City and the CRA agree that, in accordance with the provisions of Section 163.361, Florida Statutes, the Board shall only consider

approval of the Finding of Necessity and the amended Plan after the CRA has complied with the provisions of Section 163.361(3)(a), Florida Statutes.

(d) The City and the CRA understand that the process of reviewing the amended Redevelopment Plan will entail mutual cooperation from the County, City and CRA, and that delays in the review process may delay when the Board consider the items.

- B. **Limitations on Approvals.** The City, the CRA and the County agree that the approval of this Agreement by the parties does not constitute approval of those matters in the Finding of Necessity and the amendment to the Plan which require approval by the CRA, the City Commission and the Board. Therefore, the parties agree that as a matter of their sovereign power and legislative authority if the CRA, the City Commission and/or the Board do not approve a resolution adopting the finding of necessity and/or the amendment to the Plan, the failure to approve such resolution or amendment to the Plan shall not be deemed an event of default under this Agreement and the parties shall not be liable to each other.
- C. **Annual Budget.** The County agrees to waive any claims it may have to approve the annual budget for the Omni District for fiscal years prior to the fiscal year commencing October 1, 2008.
- D. **Waiver of Administrative Fee.** The County agrees to waive the 1.5% administrative fee chargeable to the Omni District.

IV. In all other respects, the Interlocal Cooperation Agreement is ratified and confirmed.

V. In the event of any conflict between the Interlocal Agreement and this First Amendment, the terms of the First Amendment shall control.

VI. The City, the CRA and the County agree that the CRA's funding commitment to the County for County Debt Service Payment, as set forth in Section III. A. of this First Amendment, shall be void unless a binding Baseball Stadium Agreement between the County, the City and the Florida Marlins is executed, containing the following provisions:

- A. The total baseball stadium cost will not exceed \$515 million;
- B. The Florida Marlin's contribution to the stadium cost shall not be less than \$155 million;
- C. The Florida Marlins will not request more than 6,000 parking spaces at the new Orange Bowl site.
- D. The Florida Marlins, the City and the County shall act in good faith and will be reasonable in negotiating the aforementioned Baseball Stadium Agreement.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be

executed in their names by their duly authorized officers, all as of the day and year first above written.

City of Miami, a municipal corporation of the State of Florida

Miami-Dade County, a political subdivision of the State of Florida

By: *[Signature]* on behalf of
Pedro G. Hernandez
City Manager

By: *[Signature]*
George Burgess
City Manager

ATTEST:

By: *[Signature]* By: _____
Priscilla A. Thompson, Deputy Clerk
City Clerk
IN Priscilla A. Thompson

Approved as to form and correctness:

Approved as to form and legal sufficiency:

By: *[Signature]*
Jorge L. Fernández, *[initials]*
City Attorney

By: *[Signature]*
County Attorney

Omni Redevelopment District Community Redevelopment Agency, of the City of Miami, a public agency and body corporate created pursuant to Section 163.356, Florida Statutes ("CRA")

By: *[Signature]*
James H. Villacorta,
Executive Director

ATTEST:

By: *[Signature]*
Priscilla A. Thompson
Clerk of the Board
IN Priscilla A. Thompson

Approved as to form and legal sufficiency:

By: *[Signature]* *[initials]*
Jorge L. Fernandez
CRA General Counsel

EXHIBIT "A" TO
First Amendment to Interlocal Cooperation Agreement dated June 24,
1996 by and among Miami-Dade County, the City of Miami and the
Community Redevelopment Agency for the Omni District

EXAMPLE 1

Assume:

- i. Payment is due March 31, 2008.
- ii. Increment Revenue is equal to \$12,000,000.

Then:

The CRA shall remit to the County the total of:

- (a) \$1,430,000; plus
- (b) 35% multiplied by (\$12,000,000 minus \$1,430,000) or 35% multiplied by \$10,570,000 (which is an amount equal to \$3,699,500).

Therefore the amount the CRA shall remit to the County on March 31, 2008 is equal to \$1,430,000 plus \$3,699,500 or \$5,129,500.

EXAMPLE 2

Assume:

- (1) Payment is due March 31, 2012.
- (2) Increment Revenue is equal to \$15,000,000.

Then:

The CRA shall remit to the County the greater of:

- (1) \$1,430,000; or
- (2) 35% multiplied by \$15,000,000 (which is an amount equal to \$5,250,000).

Therefore, the amount the CRA shall remit to the County on March 31, 2012 is equal to \$5,250,000.