

INTERLOCAL AGREEMENT FOR OCEANSIDE PARKING GARAGE

THIS INTERLOCAL AGREEMENT (“Agreement”), is made and entered into this _____ day of _____ 2021, by and between the

CITY OF POMPANO BEACH, a municipal corporation organized under the laws of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060 (“CITY”)

and

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, a body politic and corporate of the State of Florida and a community redevelopment agency created pursuant to Chapter 163, Part III Florida Statutes, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060 (“CRA”).

WHEREAS, the City Commission of the CITY has, pursuant to Part III, Chapter 163, Florida Statutes (“Redevelopment Act”) created a community redevelopment agency (the “CRA”) for the public purpose of carrying out redevelopment in community redevelopment areas located in the CITY; and

WHEREAS, the CITY owns property in an area of the CITY designated as the “East Pompano Beach District Area” (the “East CRA District”) on which it intends to construct and equip and thereafter operate a parking garage (the “Oceanside Garage”) to be located at 109 N. Ocean Boulevard, Pompano Beach (the “Garage Site”); and

WHEREAS, the CITY plans to enter into a guaranteed maximum price contract (the “GMP Contract”) with an unaffiliated master developer (the “Master Developer”) which will provide for the Master Developer to construct and equip the Oceanside Garage on the Garage Site, as well as construct and equip a roadway and related facilities, including parking spaces and utilities, near the Garage Site (collectively, the “Oceanside Project”); and

WHEREAS, the Master Developer will also construct and/or lease to third parties certain private components (i.e. hotel, conference center, club deck, retail improvements etc.) on the Garage Site (the “Private Components”); and

WHEREAS, the CITY anticipates that it will cause to be issued Certificates of Participation (the “COPs”) in calendar year 2021 to fund all or a portion of the cost of the construction and equipping of the Oceanside Project; and

WHEREAS, the COPs will represent an undivided proportionate interest in certain lease payments to be made by the CITY to the Pompano Beach Finance Corporation (the “Corporation”)

on an annual basis (the “Basic Lease Payments”) pursuant to a written lease purchase agreement between the CITY and the Corporation (the “Lease Agreement”); and

WHEREAS, the CITY’s obligation to make Basic Lease Payments is subject to annual appropriation by the CITY; and

WHEREAS, under certain circumstances set forth in the Lease Agreement, including upon the City’s failure to budget and appropriate amounts necessary to make Basic Lease Payments coming due in any fiscal year (each, a “Fiscal Year”) of the CITY, the CITY will be required to relinquish possession of the parking component of the Oceanside Garage to the Corporation or its assignee for the benefit of the holders of the COPs and the Lease Agreement may be terminated; and

WHEREAS, adequate parking is vital to the success of the CRA’s redevelopment of the East CRA District; and

WHEREAS, the CITY’s construction, equipping and operation of the Oceanside Garage will further the redevelopment goals of the CRA and relieve the CRA of the responsibility for such construction, equipping and operation; and

WHEREAS, the Oceanside Project serves a paramount public purpose and will foster economic growth and the business development of the City, foster tourism, and serve other public purposes, and any private benefit that may accrue therefrom is incidental to such purposes; and

WHEREAS, Section 163.370(2)(c)(3.) of the Redevelopment Act authorizes the installation, construction, and reconstruction of parking garages by the CRA; and

WHEREAS, Section 163.370(2)(e)(6.) of the Redevelopment Act authorizes the CRA to enter into any contracts necessary to effectuate the purposes of the Act; and

WHEREAS, Section 163.387(6)(c)(5) and 163.387(6)(c)(9) of the Redevelopment Act authorize payment from the Redevelopment Trust Fund by the CRA to the CITY to defray costs incurred by the CITY in connection with the construction and equipping of the Oceanside Garage, including financing costs related thereto, and other expenses necessary to carry out the powers granted under Section 163.370 of the Act with respect to the Oceanside Garage and the CITY and the CRA desire to provide herein for the terms and conditions upon which such contribution will be made by the CRA (as more fully described herein, the “CRA Contribution”); and

WHEREAS, the CRA previously issued its bonds in 2013 (“CRA Bonds”) and pledged tax increment revenues deposited in the Redevelopment Trust Fund related to the East CRA District (the “Pledged Revenues”) to pay the debt service on such CRA Bonds; and

WHEREAS, pursuant to the master resolution, as amended and supplemented, that governs the CRA Bonds (the “Bond Resolution”), the CRA and the CITY acknowledge that any obligation of the CRA to make the CRA Contribution to the CITY is expressly subordinate to the CRA’s payment obligations regarding the CRA Bonds and to certain other matters, as more fully provided for herein.

NOW, THEREFORE, in consideration of the mutual promises and conditions contained in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, the CITY and CRA agree as follows:

**ARTICLE 1
RECITALS INCORPORATED**

The recitals set forth in the “Whereas” clauses above are hereby accepted by the parties and incorporated into this Agreement.

**ARTICLE 2
CITY’S OBLIGATIONS**

The CITY’S obligations are as follows:

1. Use its best efforts to cause the COPs to be issued to pay for all or a portion of the cost of constructing and equipping the Oceanside Project; provided however that failure of the CITY to cause the COPs to be issued shall not be an event of default hereunder.
2. Assuming the COPs are issued, design, permit, construct and equip the Oceanside Garage in accordance with the GMP Contract.
3. Once construction of the Oceanside Garage is complete, operate the parking component of the Oceanside Garage and pay all expenses associated therewith, subject to the terms and conditions of the Lease Agreement, including the CITY’s right to determine, on an annual basis, whether to budget and appropriate amounts necessary to pay Basic Lease Payments coming due in the ensuing Fiscal Year.
4. Include the amount, if any, annually budgeted and appropriated by the CRA in a Fiscal Year of the CRA Contribution within the total amounts, if any, budgeted and appropriated by the CITY in such Fiscal Year to pay Basic Lease Payments and keep adequate records evidencing the foregoing.
5. Notify the CRA in the event the CITY does not budget appropriate amounts necessary to pay Basic Lease Payments coming due in any Fiscal Year, which notice shall be provided in writing within ten (10 days) after the CITY’s approval of a final budget for the applicable Fiscal Year.

**ARTICLE 3
CRA’S OBLIGATIONS**

The CRA’S obligations are as follows:

1. Commencing with Fiscal Year 2021, contribute to the CITY, as part of the CRA Contribution for such Fiscal Year, the fixed amount of \$650,000 (such amount to be transferred to the CITY on or before February 1 of each Fiscal Year), subject to the provisions of subsection 4. below.
2. Commencing with the first Fiscal Year in which new tax increment revenue (“TIF”), if any, is generated by the Private Components and deposited to the

Redevelopment Trust Fund for the East District CRA, contribute to the CITY, as part of the CRA Contribution for such Fiscal Year, an amount equal to 50% of such TIF (such amount to be transferred to the CITY on or before February 1 of each Fiscal Year), subject to the provisions of subsection 4. below.

3. Cooperate with the CITY to enable the CITY to make reasonable projections as to the dollar amount that will comprise the CRA Contribution in each Fiscal Year and the timing for receipt of same, in order to enable the City to formulate a budget that takes into account the CRA Contribution when determining the total amount, if any, available in each Fiscal Year to be budgeted and appropriated to make Basic Lease Payments.
4. The CRA's obligation to make the CRA Contribution to the CITY in any Fiscal Year is subject to the following:
 - (a) Such obligation is expressly made junior and subordinate in all respects as to the lien on, and source of and security for payment from, the Pledged Revenues in favor of the CRA Bonds pursuant to the Bond Resolution; and
 - (b) Such obligation is expressly made subject to the ability of the CRA to use funds that would otherwise be available to make the CRA Contribution in any Fiscal Year to instead satisfy superior obligations of the CRA in addition to the debt service and other payments coming due on the CRA Bonds, including priorities established by the CRA's community redevelopment plan, in lieu of making the CRA Contribution, all or in part, in such Fiscal Year.
 - (c) Such obligation is expressly made subject to the Lease Agreement being in full force and effect at the time any CRA Contribution is to be made or the CITY evidencing to the reasonable satisfaction of the CRA that the CRA Contribution payable to the CITY hereunder can be applied by the CITY to defray capital costs of the Oceanside Garage other than Basic Lease Payments.

ARTICLE 4 PLEDGE OF COOPERATION

The parties recognize it will be necessary for both CITY and CRA staff to work closely and coordinate with each other in order to effectuate the intent of this Agreement. Therefore, each party pledges said cooperation.

ARTICLE 5 TERM

This Agreement shall take effect as provided in Article 18 of this Agreement and shall continue until the COPs are no longer outstanding under the trust indenture pursuant to which they are issued or the expiration of the East CRA District on December 31, 2031 whichever occurs first (the "Term"). If, prior to the end of the Term, the City decides to extend the term of the CRA as a City-established CRA without contribution from the appropriate taxing authorities, and to the extent sufficient revenues are received attributable to the East CRA District and not otherwise encumbered by the CRA Bonds as described in Article 3 above, then the CRA and the CITY will enter into modifications to this Agreement as needed to extend the Term and to provide for the

CRA Contribution, as same may then be modified, to continue to be made to the CITY in connection with the Oceanside Garage.

If the Term of this Agreement extends beyond a single Fiscal Year of the CITY and CRA, the continuation of this Agreement beyond the end of any Fiscal Year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 163, Florida Statutes and other applicable law for CRA and Chapter 166, Florida Statutes and other applicable law for CITY.

Notwithstanding the foregoing, or anything to the contrary herein, the Term of this Agreement shall automatically terminate in the event the COPs are not issued by December 31, 2021.

ARTICLE 6 GOVERNMENTAL IMMUNITY AND INDEMNIFICATION

The parties are political subdivisions of the State of Florida. Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. Both parties are state agencies or political subdivisions as defined in Chapter 768.28, Florida Statutes, and agree to be fully responsible for the acts and omissions of its respective officials, agents and employees to the extent permitted by law. This provision shall survive the termination or expiration of this Agreement.

Because the CRA is contributing to the cost of the construction and equipping of the Oceanside Garage, the CITY shall, to the extent permitted by law, at all times indemnify, hold harmless, and defend the CRA from any and all claims, suits, actions, damages or causes of action arising during the term of this Agreement by reason of the activities(s) to be performed at the Oceanside Garage, including costs, reasonable attorneys' fees and expenses incurred in or by reason of the defense of any such claim, suit or action, and the investigation thereof.

The CITY acknowledges and agrees that the CRA would not enter into this Agreement but for the foregoing indemnification and that the CRA's entering into this Agreement shall constitute good and valuable consideration for this indemnification.

ARTICLE 7 INSURANCE

The CITY shall maintain such liability insurance as may be required for the construction and operation of the parking component of the Oceanside Garage in accordance with the risk management requirements for the garage and such insurance shall name the CRA as an additional insured during the Term.

ARTICLE 8 INDEPENDENT CONTRACTOR

The CITY and the CRA are separate legal entities and for purposes of this Agreement, each is an independent contractor under this Agreement. Services provided by each party pursuant to this Agreement shall be subject to the supervision of that party. In providing such services, each party, its respective officers, employees, or agents are not authorized to and shall not act as officers,

employees or agents of the other party. Neither party extends to the other party or its respective agents any authority of any kind to bind it in any respect whatsoever.

ARTICLE 9 ASSIGNMENT

This Agreement, or any interest therein is not assignable and both the CITY and CRA agree not to assign, transfer, merge or otherwise convey any of their respective interest, right, or obligation under this Agreement, in whole or in part, to any other person, corporation or entity without the prior written consent of the other party.

ARTICLE 10 AMENDMENTS

Both parties agree that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by both parties.

ARTICLE 11 NOTICE

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it has been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective addresses for giving of notice.

For CRA:

Executive Director
Pompano Beach CRA
P.O. Box Drawer 1300
Pompano Beach, FL 33061

For CITY:

City Manager
City of Pompano Beach
100 W. Atlantic Blvd.
Pompano Beach, FL 33060

With a copy to:

CRA Attorney
Pompano Beach CRA
100 W. Atlantic Blvd.
Pompano Beach, FL 33060

With a copy to:

City Attorney
City of Pompano Beach
P. O. Box 2083
Pompano Beach, FL 33061

ARTICLE 12 BINDING AUTHORITY

Each person signing this Agreement warrants that he or she has full legal authority to execute this Agreement on behalf of either party and to bind and obligate such party with respect to all provisions contained in this Agreement.

ARTICLE 13 SEVERABILITY

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason or any existing or subsequently enacted legislation, the remaining parts of provisions of this Agreement shall remain in full force and effect.

ARTICLE 14 GOVERNING LAW

This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida. By entering into this Agreement, CITY and CRA hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement.

ARTICLE 15 ADHERENCE TO LAW

Both parties shall adhere to all applicable federal, state and local laws and ordinances including, but not limited to, all laws governing their relationship with their employees such as worker's compensation, unemployment compensation and minimum wage requirements.

ARTICLE 16 ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the parties and supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein. The parties agree there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained herein. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

ARTICLE 17 INTERPRETATION

This Agreement shall be interpreted as if drafted by both parties hereto equally.

ARTICLE 18 FILING AND EFFECTIVE DATE

This Agreement is an interlocal cooperation agreement entered into pursuant to Section 163.01, Florida Statutes. It shall become effective upon being filed with the Clerk of the Circuit

Court of Broward County, Florida, pursuant to Section 163.01(11), Florida Statutes. The CITY shall be responsible for filing this Agreement with the Clerk of the Circuit Court of Broward County and shall pay for all such recording fees associated with same.

ARTICLE 19 PUBLIC RECORDS

Both parties are public agencies subject to Chapter 119, Florida Statutes. Both shall comply with Florida Public Records Law, as amended.

ARTICLE 20 AUDIT RIGHT AND RETENTION OF RECORDS

Each party shall have the right to audit the books, records, and accounts of the other party that are related to this Agreement. CITY and CRA shall keep such books, records and accounts as may be necessary in order to record complete and correct entries related to this Agreement. CITY and CRA shall preserve and, upon request, make available, at reasonable times for examination and audit by the other party, all financial records, supporting documents and any other records pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time.

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IN WITNESS WHEREOF, the parties have set their hands and seals the date and year first above written.

“CITY”:

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND
CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020 by REX HARDIN as Mayor, GREGORY P. HARRISON, as City Manager and ASCELETA HAMMOND, as City Clerk of the City of Pompano Beach, who are personally known to me.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or
Stamped)

Commission Number

Signed, Sealed and Witnessed
In the Presence of:

**POMPANO BEACH COMMUNITY
REDEVELOPMENT AGENCY**

By: _____

Rex Hardin, Chairman

Print Name: _____

ATTEST:

Print Name: _____

Marsha Carmichael, Secretary

EXECUTIVE DIRECTOR:

Print Name: _____

By: _____

Gregory P. Harrison

Approved as to Form:

Claudia M. McKenna, CRA Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2021 by REX HARDIN as Chair, GREGORY P. HARRISON, as Executive Director and MARSHA CARMICHAEL, as Secretary of the Pompano Beach Community Redevelopment Agency, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number