

**LOAN AGREEMENT**

**between**

**CITY OF HALLANDALE BEACH, FLORIDA**

**and**

**[TD BANK, N.A.]**

**Dated \_\_\_\_\_, 2012**

**Relating to**

**\$ \_\_\_\_\_  
REVENUE NOTES, SERIES 2012**

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## LOAN AGREEMENT

This **LOAN AGREEMENT** is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the **CITY OF HALLANDALE, FLORIDA** (the "City), and **[TD BANK, N.A.]** (the "Bank").

### WITNESSETH:

**WHEREAS**, the City has determined that it is necessary of the health, safety and welfare of the City and in the best interest of its inhabitants to acquire certain vehicles and issue the Series 2012 Notes (as hereinafter defined) to acquire certain vehicles.

**WHEREAS**, the City requested proposals from various lending institutions to provide the City with a term loan to finance the Equipment (as hereinafter defined);

**WHEREAS** the Bank has agreed to lend the City an aggregate principal amount of \$\_\_\_\_\_;

**WHEREAS**, the City Commissioners on \_\_\_\_\_, 2012, selected the proposal of the Bank; and

**WHEREAS**, pursuant to the Resolution, the City has determined that it is in the best interest of the health, safety and welfare of the City and the inhabitants thereof that the City pledge the Pledged Revenues to secure the obligations of the City to repay the principal of and interest on the Series 2012 Notes when due;

**WHEREAS**, the obligation of the City to repay principal of and interest on the Series 2012 Notes will not constitute a general obligation or indebtedness of the City within the meaning of any provision of the Constitution or laws of the State, but shall be and is hereby declared to be a special, limited obligation of the City, secured solely by the Pledged Revenues;

**WHEREAS**, the City is not authorized to levy taxes on any property of or in the City to pay the principal of or interest on the Series 2012 Notes or to make any other payments provided for herein; and

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

**SECTION 1. DEFINITIONS.** Capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Resolution. As used herein, the following terms shall have the following meanings, unless the text otherwise expressly requires:

"Act" means Chapter 166, Part II, Florida Statutes, as amended, the Ordinance and other applicable provisions of law.

["Bank" means TD Bank, N.A., a national bank, with offices located at 5900 North Andrews Avenue, Ft. Lauderdale, Florida 33309.]

"Bond Counsel" means Bryant Miller Olive P. A., or any other attorney at law or a firm of attorneys, designated by the Commission, of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on bonds issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America selected by the City.

"Business Day" means any day of the year other than a day on which the Bank or the City are lawfully closed for business.

"Clerk" means the City Clerk or, in the Clerk's absence, any Deputy City Clerk duly authorized to execute documents or take other action, as the case may be, on the Clerk's behalf.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commission" means the City Commission of City, or such other person as may be duly authorized to act on the Commission's behalf.

"Debt Service" means all principal of, interest on and other amounts coming due on the Series 2012 Notes.

"Default Rate" means the Interest Rate plus four percent (4.00%); provided, however, that the Default Rate shall not exceed the Maximum Rate.

"Default" means an Event of Default as defined and described in Section 15 hereof.

"Disbursement Date" means \_\_\_\_\_, 2012 or such other date on which proceeds of the Loan are disbursed to the City.

"Equipment" means the acquisition of certain vehicles.

"Essential Services Expenditures" means the general government and public safety expenditures of the City.

"Fiscal Year" means the period from each October 1 to the succeeding September 30.

"Interest Payment Date" means each April 1 and October 1, commencing October 1, 2013 and continuing until and including the Maturity Date.

"Interest Rate" means the rate per annum born by the Series 2012 Notes, which shall be a fixed rate of interest equal to \_\_\_%, calculated on the basis of a 360-day year consisting of twelve (12) thirty (30) day months, and subject to adjustment as provided in the Series 2012 Notes.

"Loan Agreement" means this agreement between the Bank and the City setting forth the terms and details of the Loan.

"Loan" means the advance of moneys from the Bank to the City pursuant to the Loan Agreement.

"Maturity Date" means October 1, 2019.

"Maximum Rate" means the maximum rate of interest permitted for non-rated, governmental bonds as set forth in Section 215.84(3), Florida Statutes, as may be amended from time to time.

"Non-Ad Valorem Revenues" means all revenues of the City derived from any source whatsoever, other than ad valorem taxation on real and personal property, which are legally available to make the payments required herein.

"Ordinance" means Ordinance No. \_\_\_\_\_ enacted by the City on \_\_\_\_\_, 2012, authorizing the Series 2012 Notes.

"Paying Agent" means the Clerk.

"Payment Date" means collectively, Principal Payment Dates, Interest Payment Dates and the Maturity Date.

"Person" or words importing persons, means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities, and natural persons.

"Pledged Revenues" means those Non-Ad Valorem Revenues budgeted, appropriated and deposited by the City in each Fiscal Year in accordance with the Resolution, and all revenues, together with interest earnings thereon, held in the funds and accounts created pursuant to the Resolution.

"Principal Amount" means \_\_\_\_\_ and 0/00 Dollars (\$\_\_\_\_\_).

"Principal Payment Date" means October 1, 2013 and each October 1 thereafter until and including the Maturity Date.

"Proposal" means the commitment submitted to the City by the Bank, dated November 1, 2012, and accepted and approved by the Resolution.

"Register" means the books maintained by the Registrar in which are recorded the name and address of the Registered Owner of the Series 2012 Notes.

"Registered Owner" means the person in whose name the ownership of the Series 2012 Notes is registered on the books maintained by the Registrar. The initial Registered Owner for the Series 2012 Notes shall be the Bank.

"Registrar" means the Person maintaining the Register. The Registrar shall initially be the Clerk.

"Regulations" means the Income Tax Regulations promulgated by the Internal Revenue Service under Sections 103 and 141 through 150 of the Code.

"Resolution" means Resolution No. \_\_\_\_\_ adopted by the City on \_\_\_\_\_, 2012, accepting the Bank's proposal to provide the Loan to the City to finance the Equipment, and all resolutions amendatory thereof and supplemental thereto.

"Series 2012 Notes" means the City of Hallandale Beach, Florida Revenue Notes, Series 2012, which shall be in substantially the form attached as Exhibit A hereto.

"State" means the State of Florida.

**SECTION 2. INTERPRETATION.** Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Loan Agreement and all the terms and provisions hereof (a) have been negotiated between the City and the Bank; (b) shall not be construed strictly in favor of or against either party hereto; and (c) shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

**SECTION 3. THE LOAN.**

A. Loan. The Bank hereby makes and the City hereby accepts the Loan, upon the terms and conditions set forth herein.

B. Disbursement of Proceeds. Proceeds of the Loan shall be made available by the Bank to the City by deposit of the principal amount thereof to or for the order of the City by 12:00 p.m., Eastern Time, on the Disbursement Date in immediately available funds.

**SECTION 4. DESCRIPTION OF SERIES 2012 NOTES; PAYMENT OF THE SERIES 2012 NOTES.** The obligation of the City to repay the Loan shall be evidenced by the Series 2012 Notes. The Series 2012 Notes shall be dated as of the date of delivery thereof; shall mature on the Maturity Date; and shall be in registered form.

Interest and Principal Payments. The Series 2012 Notes shall bear interest from the Date of Delivery until payment of the entire outstanding principal amount due thereon. The Interest Rate on the Series 2012 Notes shall be a fixed rate of interest equal to \_\_\_% per annum as may be adjusted in accordance with Schedule 1 to the Series 2012 Notes. Interest on the Series 2012 Notes shall be calculated using a 360-day year consisting of twelve 30-day months.

Interest on the Series 2012 Notes shall be paid semiannually on each Interest Payment Date. The principal amount of the Series 2012 Notes will be due and payable on each Principal Payment Date. The amount of principal and interest, without taking into account any adjustment required by the provisions of Schedule 1 to the Series 2012 Notes, [shall be the amount indicated on Schedule 2 to the Series 2012 Notes.]

The Series 2012 Notes shall bear interest at the Interest Rate; provided, however, that if any principal or interest on the Series 2012 Notes is not paid when due, from the date three (3) days after such default, the Series 2012 Notes and any amount so in default shall bear interest at the Default Rate until such default is cured. Further, if any principal or interest on the Series 2012 Notes is not paid within fifteen (15) days of the Payment Date, a late charge of six percent (6%) shall be assessed. Anything provided herein or in the Series 2012 Notes to the contrary notwithstanding, in no event shall the Series 2012 Notes bear interest in excess of the Maximum Rate.

Prepayment. [The Series 2012 Notes may be prepaid at the option of the City in whole or in part, at any time, together with a prepayment penalty equal to the greater of (i) one percent

(1%) of the principal balance being prepaid multiplied by the "Remaining Term" as defined below, in years, or (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 Interest Rate, or the 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 Series 2012 Notes 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 the Series 2012 Notes, or (ii) the remaining term of the then current fixed Interest Rate period.]

**SECTION 5. APPLICATION OF PROCEEDS.** . The proceeds derived from the sale of the Series 2012 Notes shall be applied by the City or by the Bank on the City's behalf, simultaneously with the delivery of the Series 2012 Notes to the Bank as follows:

(a) \$\_\_\_\_\_ of the proceeds of the Series 2012 Notes shall be retained by the City and used to pay the costs and expenses incurred in connection with the issuance of the Series 2012 Notes; and

(b) \$\_\_\_\_\_ of the proceeds of the Series 2012 Notes shall be held by the City for the purchase of the Equipment.

**SECTION 6. EXECUTION OF SERIES 2012 NOTES.** The Series 2012 Notes shall be executed in the name of the City by the Mayor and attested by the Clerk, and its corporate seal or a facsimile thereof shall be affixed thereto or reproduced thereon. The Series 2012 Notes may be signed and sealed on behalf of the City by any person who at the actual time of the execution of such Series 2012 Notes shall hold the appropriate office in the City, although at the date thereof the person may not have been so authorized. The Series 2012 Notes may be executed by the facsimile signatures of the Mayor and/or Clerk, provided that at least one of the foregoing signatures must be a manual signature.

**SECTION 7. REGISTRATION AND TRANSFER OF SERIES 2012 NOTES.** The Series 2012 Notes shall be and shall have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code-Investment Securities Laws of the State of Florida, and each Registered Owner, in accepting the Series 2012 Notes, shall be conclusively deemed to have agreed that such Series 2012 Notes shall be and have all of the qualities and incidents of negotiable instruments thereunder.

There shall be a Registrar, initially the Clerk, who shall be responsible for maintaining the Register. The person in whose name ownership of the Series 2012 Notes is shown on the Register shall be deemed the Registered Owner thereof by the City and the Registrar, who may treat the Registered Owner as the absolute owner of the Series 2012 Notes for all purposes, whether or not the Series 2012 Notes shall be overdue, and any notice to the contrary shall not be binding upon the City or the Registrar.

Ownership of the Series 2012 Notes may be transferred only upon the Register. Upon surrender to the Registrar for transfer or exchange of the Series 2012 Notes accompanied by an assignment or written authorization for exchange, whichever is applicable, duly executed by the Registered Owner or its attorney duly authorized in writing, the Registrar shall deliver in the name of the Registered Owner or the transferee or transferees, as the case may be, a new fully registered Series 2012 Notes of the same amount, maturity and interest rate as the Series 2012 Notes surrendered.

The Series 2012 Notes presented for transfer, exchange, redemption or payment (if so required by the City or the Registrar) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the City or the Registrar, duly executed by the Registered Owner or by his duly authorized attorney.

The City and the Registrar may charge the Registered Owner a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such exchange or transfer following the delivery of such Series 2012 Notes. The Registrar or the City may also require payment from the Registered Owner or his transferee, as the case may be, of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new Series 2012 Notes shall be delivered.

The new Series 2012 Notes delivered upon any transfer or exchange shall be a valid obligation of the City, evidencing the same debt as the Series 2012 Notes surrendered, shall be secured under this Loan Agreement, and shall be entitled to all of the security and benefits hereof to the same extent as the Series 2012 Notes surrendered.

Whenever the Series 2012 Notes shall be delivered to the Registrar for cancellation, upon payment of the principal amount thereof, or for replacement, transfer or exchange, such Series 2012 Notes shall be cancelled and destroyed by the Registrar, and counterparts of a certificate of destruction evidencing such destruction shall be furnished to the City.

**SECTION 8. SERIES 2012 NOTES MUTILATED, DESTROYED, STOLEN OR LOST.**

In case the Series 2012 Notes shall be mutilated, or be destroyed, stolen or lost, upon the Registered Owner furnishing the Registrar satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur, the Registrar shall issue and deliver a new Series 2012 Notes of like tenor as the Series 2012 Notes so mutilated, destroyed, stolen or lost, in lieu of or substitution for the Series 2012 Notes, if any, destroyed, stolen or lost, or in exchange and substitution for such mutilated Series 2012 Notes, upon surrender of such mutilated Series 2012 Notes, if any, to the Registrar and the cancellation thereof; provided however, if the Series 2012 Notes shall have matured or be about to mature, instead of issuing a substitute Series 2012 Notes, the City may pay the same, upon being indemnified as aforesaid, and if such Series 2012 Notes be lost, stolen or destroyed, without surrender thereof. Any Series 2012 Notes surrendered under the terms of this Section 8 shall be cancelled by the Registrar.

Any such new Series 2012 Notes issued pursuant to this section shall constitute an original, additional contractual obligation on the part of the City whether or not, as to the new Series 2012 Notes, the lost, stolen or destroyed Series 2012 Notes be at any time found by anyone, and such new Series 2012 Notes shall be entitled to equal and proportionate benefits



and rights as to security for payment to the same extent as the Series 2012 Notes originally issued hereunder.

**SECTION 9. FORM OF SERIES 2012 NOTES.** The Series 2012 Notes shall be in substantially the form of Exhibit A hereto, with such variations, omissions and insertions as may be necessary, desirable and authorized or permitted by this Loan Agreement.

**SECTION 10. SECURITY FOR SERIES 2012 NOTES.** The Series 2012 Notes is an obligation of the City secured solely by the Pledged Revenues, and is payable from the Pledged Revenues, in the manner and to the extent described herein. The Series 2012 Notes will not constitute a general debt, liability or obligation of the City or the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory provision. Neither the faith and credit nor the taxing power of the City or of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of or interest on the Series 2012 Notes and neither the Registered Owner nor any other party shall ever have the right to compel any exercise of any ad valorem taxing power of the City or of the State of Florida or any political subdivision thereof, directly or indirectly to enforce such payment. The Series 2012 Notes shall not constitute a lien upon any property of the City except upon the Pledged Revenues in the manner and to the extent described herein.

Subject to the provisions of the paragraph below, the City covenants and agrees to appropriate in its annual budget, by amendment, if required, and to pay when due under this Loan Agreement as promptly as money becomes available for deposit directly into the Debt Service Fund, amounts of Non-Ad Valorem Revenues of the City sufficient to satisfy the payment as required under this Loan Agreement. Such covenant is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into. Such covenant and agreement on the part of the City to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all required payments, including delinquent payments, shall have been budgeted, appropriated and actually deposited into the Debt Service Fund. The City further acknowledges and agrees that the Ordinance, Resolution and Loan Agreement shall be deemed to be entered into for the benefit of the Bank and that the obligations of the City to include the amount of any deficiency in the payments in each of its annual budgets and to pay such deficiencies from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein. Notwithstanding the foregoing or any provision of this Loan Agreement to the contrary, the City does not covenant to maintain any services or programs now maintained by the City which generate Non-Ad Valorem Revenues or to maintain the charges it presently collects for any such services or programs.

Anything in this Loan Agreement to the contrary notwithstanding, it is understood and agreed that all obligations of the City hereunder shall be payable only from Non-Ad Valorem Revenues budgeted and appropriated as provided for hereunder and nothing herein shall be deemed to pledge ad valorem taxation revenues or to permit or constitute a mortgage or lien upon any assets or property owned by the City and the Bank or any other person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the City. The obligations hereunder do not constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision or limitation, and neither the Bank or any other person shall have the right to compel the exercise of the ad valorem taxing power of the

City or taxation of any real or personal property therein for the payment by the City of its obligations hereunder. Except to the extent expressly set forth in this Loan Agreement, this Loan Agreement and the obligations of the City hereunder shall not be construed as a limitation on the ability of the City to pledge or covenant to pledge said Non-Ad Valorem Revenues or any revenues or taxes of the City for other legally permissible purposes. Notwithstanding any provisions of this Loan Agreement or the Series 2012 Notes to the contrary, the City shall never be obligated to maintain or continue any of the activities of the City which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues or the rates for such services or regulatory fees. Neither this Loan Agreement nor the obligations of the City hereunder shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the City, but shall be payable solely as provided in Section 2.02(a) hereof and is subject in all respects to the provisions of Section 166.241, Florida Statutes, and is subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the City.

The Bank and the City understand that the amounts available to be budgeted and appropriated to make payments hereunder is subject to the obligation of the City to provide essential services; however, such obligation is cumulative and would carry over from Fiscal Year to Fiscal Year.

**SECTION 11. COVENANTS OF THE CITY.** Until the principal of and interest on the Series 2012 Notes shall have been paid in full or until provision for payment of the Series 2012 Notes shall have been made in accordance with the provisions of this Loan Agreement, the City covenants with the Registered Owner of the Series 2012 Notes as follows:

A. Payments. The City hereby establishes a fund to be known as the Series 2012 Debt Service Fund (the "Debt Service Fund") for the payment of Debt Service on the Series 2012 Notes. The Debt Service Fund shall be maintained through the Maturity Date from which the Registered Owner may deduct on each Payment Date via ACH Direct Debit the amount of principal and interest then due on the Series 2012 Notes and all other amounts due and owing on the Series 2012 Notes when such amounts are due, or payment may be made in such other place or manner as the Registered Owner may designate to the City in writing.

B. Financial Statements. Not later than the earlier of 210 days following the end of each fiscal year, the City will provide the Bank a copy of the City's Comprehensive Annual Financial Report and such financial or public information as the Bank may reasonably request. Not later than the earlier of 30 days after completion and approval, the City will provide the Bank a copy of the City's Approved Budget and such financial or public information as the Bank may reasonably request.

C. Tax Compliance. Neither the City, nor any third party over whom the City has control, will make any use of, or permit an omission of use, of the proceeds of the Series 2012 Notes at any time during the term of the Series 2012 Notes which would cause the Series 2012 Notes to be (a) a "private activity bond" within the meaning of Section 103(b)(1) of the Code or (b) an "arbitrage bond" within the meaning of Section 103(b)(2) of the Code. The City covenants throughout the term of the Series 2012 Notes to comply with the requirements of the Code and the Regulations, as amended from time to time, and to take all actions, and to not permit the omission of any actions, necessary to maintain the exclusion from gross income for purposes of the Code of interest on the Series 2012 Notes.

The City makes each of the representations, warranties and covenants contained in the Tax Certificate delivered with respect to the Series 2012 Notes. By this reference, all terms, conditions, and covenants in said Tax Certificate are incorporated in and made a part of this Loan Agreement.

D. Agreement to Pay Certain Expenses. The City shall pay fees of the Bank's counsel for legal review of the documentation pertaining to the Loan. Such fees shall not exceed \$4,000.

E. Anti-Dilution Test. During such time as the Series 2012 Notes are outstanding hereunder a certificate setting forth the calculations of the financial ratios provided below and certifying that it is in compliance with the following: Non-Ad Valorem Revenues less the Essential Services Expenditures is at least 1.50x the annual debt service on all debt secured by or payable from Non-Ad Valorem Revenues.

F. Additional Bonds Test. During such time as the Series 2012 Notes are outstanding hereunder, the City agrees that it shall not issue debt which is secured by its Non-Ad Valorem Revenues, unless it shall deliver to the Bank a certificate stating that the Non-Ad Valorem Revenues less the Essential Services Expenditures is at least 1.50x the maximum annual debt service on all debt secured by or payable from Non-Ad Valorem Revenues, including the proposed debt to be issued.

**SECTION 12. REPRESENTATIONS AND WARRANTIES.** The City represents and warrants to the Bank that:

A. Organization. The City is a municipal corporation, Florida, duly organized and existing under the laws of the State of Florida.

B. Authorization of Loan Agreement and Related Documents. The City has the power and has taken all necessary action to authorize the execution and delivery of and the performance by the City of its obligations under, the Series 2012 Notes, this Loan Agreement and all documents executed in connection with the transaction contemplated by this Loan Agreement, in accordance with their respective terms. This Loan Agreement and the Series 2012 Notes have been duly executed and delivered by the City and are valid and binding obligations of the City, enforceable against the City in accordance with their respective terms, except to the extent that such enforcement may be limited by laws regarding bankruptcy, insolvency, reorganization or moratorium applicable to the City or by general principles of equity regarding the availability of specific performance.

C. Compliance with Section 215.84, Florida Statutes. The City represents, warrants and covenants that the Interest Rate on the Series 2012 Notes, as currently calculated in accordance with Section 215.84, Florida Statutes, in compliance with the provisions of such statute.

D. No Litigation. There is no action, suit, proceeding, or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the City, threatened against or affecting the City, or, to the best of the knowledge of the City, any basis therefore, wherein an unfavorable decision, ruling, or finding would restrain or enjoin the issuance of the Series 2012 Notes or which in any way would adversely affect the validity of the Series 2012 Notes, the Ordinance, the Resolution, this Loan Agreement or any other

agreement or instrument to which the City is a party and which is used or contemplated for use in connection with the issuance of the Series 2012 Notes.

E. Compliance with Laws and Approvals. The City has complied with all open meeting laws, all public bidding laws, and all other state and federal laws applicable to the City's performance of the transactions contemplated by the Series 2012 Notes, the Ordinance, the Resolution, and this Loan Agreement and has obtained all approvals necessary for the execution, delivery, and performance of such transactions.

**SECTION 13. CONDITIONS PRECEDENT.** The obligation of the Bank to make the Loan is subject to the satisfaction of each of the following conditions precedent on or before the Disbursement Date:

A. Action. The Bank shall have received copies of the Ordinance and the Resolution certified as complete and correct as of the closing date, together with an executed Loan Agreement, the executed Series 2012 Notes, and the customary closing certificates.

B. Incumbency of Officers. The Bank shall have received an incumbency certificate of the City in respect of each of the officers who is authorized to sign this Loan Agreement and the related financing documents on behalf of the City.

C. Opinion of Counsel to the City. The Bank shall have received a written opinion of the City Attorney addressing matters relating to (1) the corporate existence of the City; (2) the due enactment of the Ordinance and the adoption of the Resolution; (3) the due authorization and execution of this Loan Agreement and the Series 2012 Notes and the related financing documents; and (4) the absence of litigation against the City relating to (a) its existence or powers, and (b) the proceedings for the authorization and issuance of the Series 2012 Notes, in form and substance satisfactory to the Bank.

D. Opinion of Bond Counsel. The Bank shall have received from Bond Counsel a letter authorizing the Bank to rely on the approving opinion of Bond Counsel delivered to the City in respect to the Series 2012 Notes to the same extent as if such opinion were addressed to the Bank. The opinion, in form and substance satisfactory to the Bank, shall, at a minimum, address (i) the enforceability of the Ordinance, Resolution and the Loan Agreement, and (ii) the status of interest on the Series 2012 Notes being excluded from gross income for federal income tax purposes under the provisions of Section 103 of the Code.

E. Representations and Warranties; No Default. The representations and warranties made by the City herein shall be true and correct in all material respects on and as of the Disbursement Date, as if made on and as of such date; no Default shall have occurred and be continuing as of the Disbursement Date or will result from the consummation of the Loan; and the Bank shall have received a certificate from the City to the foregoing effect.

F. Other Documents. The Bank shall have received such other documents, certificates and opinions as the Bank or its counsel shall have reasonably requested.

**SECTION 14. NOTICES.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered, delivered by telecopier, mailed by registered or certified mail, postage prepaid, or delivered by courier service to the parties at the following addresses:

City: City of Hallandale Beach, Florida  
400 South Federal Highway  
Hallandale Beach, Florida 33309  
Attention: Finance Director

Bank: [TD Bank, N.A.  
5900 North Andrews Avenue, 2nd Floor  
Ft. Lauderdale, Florida 33309  
Attention: Marcel A. Summermatter, Vice-President]

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Communication via telecopier shall be confirmed by delivery by hand, mail, or courier, as specified above, of an original promptly after such communication by telecopier.

**SECTION 15. EVENTS OF DEFAULT DEFINED.** The following shall be "Events of Default" under this Loan Agreement, and the terms "Default" and "Events of Default" shall mean (except where the context clearly indicates otherwise), any one or more of the following events:

A. failure by the City to make any payment of principal of or interest on the Series 2012 Notes, within three (3) days of the applicable Payment Date.

B. failure by the City to observe and perform any other covenant, condition or agreement on its part to be observed or performed under this Loan Agreement for a period of fifteen (15) days after written notice of such failure shall have been delivered to the City by the Bank, unless the Bank shall agree in writing to an extension of such time prior to its expiration;

C. the making of any warranty, representation or other statement by the City or by an officer or agent of the City in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement which is false or misleading in any material adverse respect;

D. the City shall default in connection with any obligation for borrowed money or other credit in excess of \$10,000 with any creditor other than the Registered Owner, which default entitles such creditor to accelerate the maturity thereof and is not cured within thirty (30) days;

E. the filing of a petition against the City under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, if an order for relief is entered under such petition or such petition is not dismissed within sixty (60) days of such filing;

F. the filing by the City of a voluntary petition in bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or the consent by the City to the filing of any petition against it under such law; or

G. the admission by the City of its insolvency or bankruptcy or its inability to pay its debts as they become due or that it is generally not paying its debts as such debts become

due, or the City's becoming insolvent or bankrupt or making an assignment for the benefit of creditors, or the appointment by court order of a custodian (including without limitation a receiver, liquidator or trustee) of the City or any of its property taking possession thereof and such order remaining in effect or such possession continuing for more than sixty (60) days.

**SECTION 16. REMEDIES.** The Registered Owner may sue to protect and enforce any and all rights, including the right to specific performance, existing under the laws of the State of Florida or of the United States of America, or granted and contained in this Loan Agreement, and to enforce and compel the performance of all duties required by this Loan Agreement or by any applicable laws to be performed by the City, the Commission or by any officer thereof, and may take all steps to enforce this Loan Agreement to the full extent permitted or authorized by the laws of the State of Florida or the United States of America.

**SECTION 17. WAIVER OF JURY TRIAL.** To the extent permitted by applicable law, each of the City and the Bank, knowingly, voluntarily and intentionally waives any right each may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with this Loan Agreement, the Series 2012 Notes or any agreement contemplated to be executed in connection with this Loan Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party with respect hereto. This provision is a material inducement to the Bank to enter into this Loan Agreement.

**SECTION 18. NO RECOURSE.** No recourse shall be had for the payment of the principal of and interest on the Series 2012 Notes or for any claim based on the Series 2012 Notes or on this Loan Agreement, against any present or former member or officer of the Commission or any person executing the Series 2012 Notes.

**SECTION 19. PAYMENTS DUE ON SATURDAYS, SUNDAYS AND HOLIDAYS.** In any case where the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Loan Agreement, shall be other than a Business Day, then such payment or performance shall be made on the succeeding Business Day with the same force and effect as if done on the nominal date provided in this Loan Agreement, provided that interest on any monetary obligation hereunder shall accrue at the applicable rate to and including the date of such payment.

**SECTION 20. AMENDMENTS, CHANGES AND MODIFICATIONS.** This Loan Agreement may be amended only in writing signed by both parties hereto.

**SECTION 21. BINDING EFFECT.** To the extent provided herein, this Loan Agreement shall be binding upon the City and the Bank and shall inure to the benefit of the City and the Bank and their respective successors and assigns.

**SECTION 22. SEVERABILITY.** In the event any court of competent jurisdiction shall hold any provision of this Loan Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 23. EXECUTION IN COUNTERPARTS.** This Loan 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 24. APPLICABLE LAW.** This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have duly executed this Loan Agreement as of the date first above written.

**CITY OF HALLANDALE BEACH,  
FLORIDA**

(SEAL)

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

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM AND  
CORRECTNESS:

By: \_\_\_\_\_  
City Attorney



*[Signature page to Loan Agreement]*

**TD BANK, N.A.**

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

Name: Marcel A. Summermatter

Title: Vice-President

**EXHIBIT A**

ANY OWNER SHALL, PRIOR TO BECOMING A REGISTERED OWNER, EXECUTE A PURCHASER'S CERTIFICATE IN THE FORM ATTACHED TO THE RESOLUTION (HEREIN DEFINED) CERTIFYING, AMONG OTHER THINGS, THAT SUCH REGISTERED OWNER IS AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED, AND REGULATION D THEREUNDER.

**FORM OF NOTE**

No. R-1

\$ \_\_\_\_\_

**STATE OF FLORIDA  
COUNTY OF BROWARD  
CITY OF HALLANDALE BEACH  
REVENUE NOTES, SERIES 2012**

RATE OF INTEREST

MATURITY DATE

DATE OF ISSUE

\_\_\_\_%

October 1, 2019

\_\_\_\_\_, 2012

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_  
AND 0/00 DOLLARS

The City of Hallandale Beach, Florida (the "City"), for value received, hereby promises to pay to the Registered Owner designated above, or registered assigns, solely from the special funds hereinafter mentioned, on the Maturity Date specified above, the Principal Amount shown above, upon presentation and surrender hereof at the office of the City Clerk as Registrar and Paying Agent, and to pay solely from such funds, interest thereon from the date of this Note or from the most recent Interest Payment Date to which interest has been paid, whichever is applicable, until payment of such Principal Amount, at the Rate of Interest per annum set forth above, subject to adjustment as provided in Schedule 1 attached hereto and in the Loan Agreement, such interest being payable on October 1, 2013, and thereafter on April 1 and October 1 of each year by check or draft mailed on or before the Interest Payment Date, to the Registered Owner at his address as it appears, at 5:00 P.M. Eastern Time on the fifteenth day of the month preceding the applicable Interest Payment Date, on the registration books of the City kept by the Registrar; provided, that such payment shall, at the written request of such Registered Owner be by wire transfer, direct debit or other medium acceptable to the City and to such Registered Owner. The principal of, premium, if any, and interest on this Note are payable in lawful money of the United States of America.

This Note is issued to finance the cost of certain vehicles ("Equipment") and to pay for the costs of issuance thereof under the authority of and in full compliance with the Constitution and Statutes of the State of Florida, including particularly Chapter 166, Laws of Florida, and other applicable provisions of law, Ordinance No. \_\_\_\_ enacted on \_\_\_\_\_, 2012 (the "Ordinance"), as supplemented by Resolution No. \_\_\_\_ duly adopted by the City

Commission on \_\_\_\_\_, 2012 (the "Resolution") and the Loan Agreement dated \_\_\_\_\_, 2012 between the City and \_\_\_\_\_ (the "Loan Agreement"), and is subject to all the terms and conditions of said Resolution and Loan Agreement. Capitalized terms not otherwise defined herein shall have the meaning specified in the Resolution and the Loan Agreement.

This Note is payable from and secured by a covenant to budget and appropriate sufficient Non-Ad Valorem Revenues, all as described in the Resolution.

This Note does not constitute a general obligation or indebtedness of the City within the meaning of the State constitution, and it is expressly agreed by the Registered Owner of this Note that such Registered Owner shall never have the right to require or compel the exercise of the ad valorem taxing power of the City or the taxation of any property of or in the City for the payment of the principal of and interest on this Note or for the making of any sinking fund reserve or other payments provided for in the Resolution and Loan Agreement.

It is further agreed between the City and the Registered Owner of this Note, that this Note and the obligation evidenced hereby shall not constitute a lien upon the Equipment or any part thereof, or on any other property of or in the City, but shall constitute a lien only on the Pledged Revenues, in the manner provided in the Resolution and Loan Agreement.

The Note is issued as a single fully registered note. This Note is transferable at the office of the Registrar, by the Registered Owner or by a person legally empowered to do so, upon presentation and surrender hereof to the Registrar, together with a request for exchange or an assignment signed by the Registered Owner or by a person legally empowered to do so, in a form satisfactory to the Registrar, all subject to the terms, limitations and conditions provided in the Resolution. No charge will be made for transfer or exchange, but the City or the Registrar may require payment of an amount sufficient to cover any tax or other governmental charge payable in connection therewith. The City and the Registrar may deem and treat the Registered Owner as the absolute owner of this Note for the purpose of receiving payment of or on account of principal or interest and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

The City has entered into certain covenants with the Registered Owner of the Note for the terms of which reference is made to the Resolution and the Loan Agreement.

Reference is made to the Resolution and the Loan Agreement for a more complete description of the provisions, among others, with respect to the nature and extent of the security for the Note, the rights, duties and obligations of the City, the Registrar and the Registered Owner, and the terms and conditions upon which the Notes are issued and secured. The Registered Owner of this Note, by acceptance hereof, assents to all of the provisions of the Ordinance, the Resolution and Loan Agreement.

[This Note may be prepaid in whole or in part, at any time, together with a prepayment penalty equal to the greater of (i) one percent (1%) of the principal balance being prepaid multiplied by the "Remaining Term" as defined below, in years, or (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 Interest Rate, or the 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 Series 2012 Notes 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 the Series 2012 Notes, or (ii) the remaining term of the then current fixed Interest Rate period. Notwithstanding anything herein to the contrary, this Note may be prepaid in whole or in part, at any time, without prepayment penalty provided the prepayment is made with proceeds of the Pledged Revenues.]

This Note is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code-Investment Securities Laws of the State of Florida, and the Registered Owner and each successive Registered Owner of this Note, shall be conclusively deemed by his acceptance hereof to have agreed that this Note shall be and have all the qualities and incidents of negotiable instruments under the laws of the State of Florida.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Note, exist, have happened and have been performed in regular and due form and time as required by the laws and Constitution of the State of Florida applicable thereto, and that the issuance of this Note, and of the issue of Notes of which this Note is one, does not violate any constitutional or statutory limitation.

This Note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance and the Resolution until the Certificate of Authentication hereon shall have been executed by the Registrar.

**IN WITNESS WHEREOF**, the City of Hallandale Beach, Florida has issued this Note and has caused the same to be executed by its Mayor, either manually or with her/his facsimile signature, and the corporate seal of said City or a facsimile thereof to be affixed hereto or imprinted or reproduced hereon and attested by the manual or facsimile signature of the Clerk, all as of the Date of Issue above.

(SEAL)

**CITY OF HALLANDALE BEACH,  
FLORIDA**

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

ATTEST:

By: \_\_\_\_\_  
City Clerk

**REGISTRAR'S CERTIFICATE OF AUTHENTICATION**

This Note is one of the Notes of the issue described in the within-mentioned Resolution.

By \_\_\_\_\_  
City Clerk, as Registrar

Date of Authentication: \_\_\_\_\_

The following abbreviations, when used in the inscription on the face of the within note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common  
TEN ENT - as tenants by the entireties  
JT TEN - as joint tenants with right  
of survivorship and not of  
tenants in common

UNIF GIF MIN ACT - \_\_\_\_\_  
(Cust.)  
Custodian for \_\_\_\_\_  
(Minor)

Additional abbreviations may also be used although not listed above.

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### ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers to \_\_\_\_\_

(Please insert Social Security or other Identifying Number of Assignee)

the within Note and does hereby irrevocably constitute and appoint the Note Trustee as his agent to transfer the Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed:

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within note in every particular, without alteration or enlargement or change whatever.

\_\_\_\_\_  
NOTICE: Signature must be guaranteed by in institution which is a participant in the Securities Transfer Agent Medallion Program (STAMP) or similar program.

\_\_\_\_\_  
(Authorized Officer)

## SCHEDULE 1

### ADJUSTMENTS TO INTEREST RATE IN CERTAIN EVENTS

#### Definitions.

For purposes of this Schedule 1, the following definitions shall apply. Capitalized terms used and not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

"Prime Rate" shall mean a rate of interest equal to the announced prime commercial lending rate per annum of the Bank. The Prime Rate is a reference rate for the information and use of the Bank in establishing the actual rate to be charged to the City. The Prime Rate is purely discretionary and is not necessarily the lowest or best rate charged any customer. The Prime Rate shall be adjusted from time to time without notice or demand as of the effective date of any announced change thereof.

"Taxable Rate" means a rate equal to the Prime Rate times that percentage which after the Determination of Taxability will result in the same after-tax yield to the Registered Owner of the Series 2012 Notes as before said Determination of Taxability.

#### Adjustment of Interest Rate for Full Taxability.

In the event a Determination of Taxability shall have occurred, the rate of interest on the Series 2012 Notes shall be increased to the Taxable Rate, effective retroactively to the date on which the interest payable on the Series 2012 Notes is includable for federal income tax purposes in the gross income of the Registered Owner thereof. In addition, the Registered Owner of the Series 2012 Notes or any former Registered Owners of the Series 2012 Notes, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America by the Registered Owner or former Registered Owners of the Series 2012 Notes as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the City within sixty (60) days following the Determination of Taxability and demand by the Registered Owner. A "Determination of Taxability" shall mean (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on the Series 2012 Notes is includable for federal income tax purposes in the gross income of the Registered Owner thereof, which notice or notification is not contested by either the City or any Registered Owner of the Series 2012 Notes, or (ii) a determination by a court of competent jurisdiction that the interest payable on the Series 2012 Notes is includable for federal income tax purposes in the gross income of the Registered Owner thereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the City to the effect that interest on the Series 2012 Notes is includable for federal income tax purposes in the gross income of the Registered Owner thereof.

#### Adjustment of Interest Rate for Partial Taxability.

In the event that interest on the Series 2012 Notes during any period becomes partially taxable as a result of a Determination of Taxability applicable to less than all of the Series 2012 Notes, then the interest rate on the Series 2012 Notes shall be increased during such period by an amount equal to:  $(A-B) \times C$  where:



- (A) "A" equals the Taxable Rate (expressed as a percentage);
- (B) "B" equals the interest rate on the Series 2012 Notes (expressed as a percentage); and
- (C) "C" equals the portion of the Series 2012 Notes the interest on which has become taxable as the result of such tax change (expressed as a decimal).

In addition, the Registered Owner of the Series 2012 Notes or any former Registered Owner of the Series 2012 Notes, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Registered Owner or former Registered Owners of the Series 2012 Notes as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the City within sixty (60) days following the Determination of Taxability and demand by the Registered Owner.

SCHEDULE 2

CITY OF HALLANDALE BEACH, FLORIDA  
REVENUE NOTES, SERIES 2012

AMORTIZATION SCHEDULE

<u>Date</u>	<u>Payment</u>	<u>Interest</u>	<u>Principal</u>
10/1/2013			
4/1/2014			
10/1/2014			
4/1/2015			
10/1/2015			
4/1/2016			
10/1/2016			
4/1/2017			
10/1/2017			
4/1/2018			
10/1/2018			
4/1/2019			
10/1/2019			
<b>Totals:</b>			