

**FIRST AMENDED AND RESTATED FIFTH AMENDMENT  
TO  
LAND DISPOSITION, DEVELOPMENT AND MANAGEMENT AGREEMENT  
(DEVELOPMENT AGREEMENT)**

THIS FIRST AMENDED AND RESTATED FIFTH AMENDMENT to the Development Agreement ("First Amended and Restated Fifth Amendment") is entered into this 15<sup>th</sup> day of October, 2013 by and between:

**CITY OF FORT LAUDERDALE**, a Florida municipal corporation whose Post Office address is P.O. Drawer 14250, Fort Lauderdale, Florida 33302-4250 ("City")

and

**MILTON JONES DEVELOPMENT CORPORATION**, a Florida corporation, 9 NW 4th Avenue, Suite A, Dania Beach, FL 33004 ("Developer/Assignor")

and

**VILLAGE OF THE ARTS, LTD**, a Florida limited partnership, 9 N.W. 4<sup>th</sup> Avenue, Suite A, Dania Beach, FL 33004 ("Developer/Assignee")

and

**MILTON L. JONES, JR.** and **BARBARA H. JONES**, ("Principals"), whose address is 9 N.W. 4<sup>th</sup> Avenue, Suite A, Dania Beach, FL 33004

**R E C I T A L S**

A. All defined terms herein shall have the same meaning as in the Land Disposition, Development and Management Agreement dated February 5, 2008 ("Development Agreement"), unless otherwise defined herein.

B. On February 5, 2008, City and Developer/Assignor entered into a Development Agreement for the conveyance, development and management of Property described therein.

C. On June 1, 2010, City and Developer/Assignor entered into a First Amendment to the Development Agreement, which, among other matters permitted the Property to be developed in two Phases, Phase I Project and Phase II Project.

D. On October 25, 2011, pursuant to the terms of the Development Agreement, CITY conveyed Phase I Project by Quit Claim Deed to MJDC AOA, LLC, a Florida limited liability company, subject to a Declaration of Restrictive Covenants.

E. Phase II Project under the First Amendment was to be developed as a Mixed Use Development on Parcel No. 2, consisting of a five (5) story structure with ground floor retail uses of no less than 7,500 square feet, pool and pool deck area, health club, club room, administrative offices, 103 residential units and a five level parking garage with 232 parking spaces (of which 14 spaces shall be on street parking on N.W. 5<sup>th</sup> Court), including 7 handicap parking spaces.

F. On June 7, 2011, pursuant to Article 19 of the Development Agreement Developer/Assignor secured from the City conditional consent of an Assignment of Rights and Assumption of Obligations under Development Agreement and Consent for Phase II Project ("Original Assignment and Assumption") to Developer/Assignee, such approval being subject to a condition subsequent that in the event the Developer/Assignee fails to demonstrate on or before June 30, 2012 sufficient Financial Capacity and a Firm Financing Commitment when combined with an award of tax credits for the development of Phase II Project, then the conditional consent automatically, without further action, becomes null and void and no further force and effect.

G. On February 7, 2012, City, Developer/Assignor, Developer/Assignee and Principals entered into a Fifth Amendment to the Development Agreement ("Original Fifth Amendment") for the purpose of making the Development Agreement a Qualified Contract as defined in the 2011 Universal Application Instructions.

H. On February 7, 2012, simultaneous with the Original Fifth Amendment, Developer/Assignor and Developer/Assignee entered into the First Amended and Restated Assignment Of Rights And Assumption Of Obligations Under Development Agreement and Conditional Consent with the City's conditional consent the purpose of which was to (i) correct a scrivener's error in the Original Assignment and Assumption; and (ii) extend the conditional consent of the City in which the Developer/Assignee can demonstrate sufficient Financial Capacity and a Firm Financing Commitment combined with an award of tax credits for the development of Phase II Project to December 31, 2012.

I. As of February 7, 2012, Developer/Assignee has not demonstrated sufficient Financial Capacity for the development of Phase II Project and therefore both Developer/Assignor and Developer/Assignee have an equitable interest under the Development Agreement as to the Phase II Project.

J. On December 6, 2011, Developer/Assignee applied for tax credits to the Florida Housing Finance Corporation ("FHFC")

K. FHFC has issued the Scoring Summary Report on Phase II Project.

L. Phase II Project did not meet threshold on the Scoring Summary Report of FHFC for Evidence of Site Control as defined in the 2011 Universal Application Instructions because the Development Agreement does not specifically state that Developer/Assignee's remedy for default on the part of the City, as Seller includes or is specific performance.

M. One of the ways to provide Evidence of Site Control is a "Qualified Contract" which among other things requires that the Buyer's remedy for default on the part of the seller includes or is specific performance.

N. Developer/Assignor and Developer/Assignee desire to have a Qualified Contract as defined in the 2011 Universal Application Instructions and City desires Developer/Assignor and Developer/Assignee to have a Qualified Contract as defined in the 2011 Universal Application Instructions.

O. The purpose of this First Amended and Restated Fifth Amendment is to (i) clarify that the Principals are a party to the Original Fifth Amendment, and (ii) correct a scrivener's error in paragraph D of the Recitals of the Original Fifth Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable considerations, the receipt and sufficiency of which is hereby stipulated, the parties agree as follows:

**1. The foregoing recitals are true and correct.**

**2. The Development Agreement, Section 20.02, entitled "Specific Remedies; Termination Prior to Closing" is hereby amended to read as follows:**

**(a)** In the event the City does not timely tender conveyance of Parcel No. 1A or Parcel No. 2, or possession thereof, in the manner and condition, and by the date, provided in this Agreement, and any such failure shall not be cured within **thirty (30) days** after the date of written demand by the Developer, then the Developer may terminate this Contract or avail itself of any remedy allowable at law or equity, including but not limited to, specific performance.

**3.** This First Amended and Restated Fifth Amendment shall be given effect as of February 7, 2012.

**4.** In the event and to the extent that there is any conflict between the terms and conditions of the Development Agreement, as previously amended, the terms and conditions of the Original Fifth Amendment dated February 7, 2012 and this First Amended and Restated Fifth Amendment, then the terms and conditions of this First Amended and Restated Fifth Amendment shall supersede and prevail over any such conflicting terms in the underlying Development Agreement, as previously amended.

**5.** In all other respects, the parties ratify and confirm this Development Agreement, as previously amended.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

WITNESSES:

**CITY OF FORT LAUDERDALE**

\_\_\_\_\_

\_\_\_\_\_

John P. "Jack" Seiler, Mayor

\_\_\_\_\_  
[Witness print or type name]

\_\_\_\_\_

Lee R. Feldman, City Manager

\_\_\_\_\_  
[Witness print or type name]

ATTEST:

(CORPORATE SEAL)

\_\_\_\_\_

Jonda Joseph, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

Robert B. Dunckel,  
Assistant City Attorney

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2013, by JOHN P. "JACK" SEILER, Mayor of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

My Commission Expires:

\_\_\_\_\_  
Commission Number

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2013, by LEE R. FELDMAN, City Manager of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

My Commission Expires:

\_\_\_\_\_  
Commission Number

**Developer/Assignor:**

**MILTON JONES DEVELOPMENT CORPORATION, a Florida corporation**

By:

\_\_\_\_\_  
Milton L. Jones, Jr., President

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_  
[Witness type or print name]

\_\_\_\_\_

\_\_\_\_\_  
[Witness type or print name]

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by Milton L. Jones, Jr., President of MILTON JONES DEVELOPMENT CORPORATION, a Florida corporation. He is personally known to me or has produced \_\_\_\_\_ as identification.

Witness my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2013.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

My Commission Expires:

\_\_\_\_\_  
Commission Number

**Developer/Assignee:**

**VILLAGE OF THE ARTS, LTD., a Florida limited partnership**

By: MJDC VOA, Inc., a Florida corporation and General Partner of Village Of The Arts, Ltd.

By: \_\_\_\_\_  
Milton L. Jones, Jr., President

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_  
[Witness type or print name]

\_\_\_\_\_

\_\_\_\_\_  
[Witness type or print name]

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by Milton L. Jones, Jr., President of MJDC VOA, Inc., a Florida corporation, General Partner of VILLAGE OF THE ARTS, LTD., a Florida limited partnership. He is personally known to me or has produced \_\_\_\_\_ as identification.

Witness my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2013.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

My Commission Expires:

\_\_\_\_\_  
Commission Number

**JOINDER AND CONSENT  
OF  
PRINCIPALS**

BY EXECUTION HEREOF, the undersigned Principals do hereby evidence their Joinder and Consent to the execution of this Development Agreement as amended by the First Amended and Restated Fifth Amendment and agree to the limitations on Principals as set forth in Article 19, Restrictions on Assignment and Transfer and Article 21, Restrictions on Use; Declaration of Restrictive Covenants.

IN WITNESS OF THE FOREGOING, the Principals have set their hands and seals the day and year first written above.

WITNESSES:

\_\_\_\_\_

[Witness type or print name]

\_\_\_\_\_

[Witness type or print name]

\_\_\_\_\_  
MILTON L. JONES, JR.

\_\_\_\_\_  
BARBARA H. JONES

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by MILTON L. JONES, JR. and BARBARA H. JONES. They are personally known to me or have produced \_\_\_\_\_ as identification.

Witness my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2013.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

My Commission Expires:

\_\_\_\_\_  
Commission Number