



TO: Honorable Mayor & Members of the
Fort Lauderdale City Commission

FROM: Lee R. Feldman, ICMA-CM, City Manager

DATE: October 15, 2013

TITLE: Consent Resolution – Phase II Project - Village of the Arts (A) First Amended and Restated Fifth Amendment to Development Agreement; (B) First Amended and Restated Seventh Amendment to Development Agreement; (C) Third Amended and Restated Assignment of Rights and Assumption of Obligations under Development Agreement and Conditional Consent; and (D) Eighth Amendment to Development Agreement

Recommendation

It is recommended that the City commission adopt a resolution authorizing execution by the proper City officials of (A) First Amended and Restated Fifth Amendment to Development Agreement; (B) First Amended and Restated Seventh Amendment to Development Agreement; (C) Third Amended and Restated Assignment of Rights and Assumption of Obligations under Development Agreement and Conditional Consent for the Phase II Project - Village of the Arts and (D) Eighth Amendment to Development Agreement

Background

The action requested of the City Commission is in support of Phase II of a project, proposed by the Milton Jones Development Corporation, formerly known as the Northwest Commercial Project. The Developer will be submitting an application to the Florida Housing Finance Corporation (FHFC) for Low-Income Housing Tax Credits. Applications for tax credit projects proposed in Broward, Miami-Dade and Palm Beach Counties are due on November 12, 2013.

Phase I of the Milton Jones Development Corporation project is complete with new retail businesses in the area including Save-a-Lot, Family Dollar and Bank of America. Phase II of the development project is a residential development that will be constructed on a property east of the new shopping center. The developer proposes a 103-unit multi-story, multi-family project with ground floor retail and a parking garage on site.

Under the terms of Article 7 of the Development Agreement the entire site is owned by the City of Fort Lauderdale and will not be conveyed until all development conditions have been satisfied. However, in order to apply for tax credits the developer must demonstrate site control at the time of submitting an application. This requires the conveyance process for Phase II to be modified to allow an application for tax credits to be submitted for the development site.

In order to meet the site control requirement in accordance with the FHFC application process the Developer has requested the conditional assignment of the rights provided on to develop and receive fee simple title to Parcel No. 2 (Phase II). The developer's request is attached as **Exhibit 1**.

(A) First Amended and Restated Fifth Amendment to Development Agreement

On February 7, 2012, City of Fort Lauderdale, MJDC AOA LLC, Village of the Arts Limited and Milton L. Jones, Jr. and Barbara H. Jones entered into a Fifth Amendment to the Development Agreement for the purpose of making the Development Agreement a Qualified Contract as defined in the Florida Housing Finance Corporation 2011 Universal Application Instructions. The purpose of the First Amended and Restated Fifth Amendment is to clarify that the Principals are a party to the Original Fifth Amendment, and inserting MJDC AOA LLC as the Developer/Assignee in paragraph D of the Recitals section of the Original Fifth Amendment.

(B) First Amended and Restated Seventh Amendment to Development Agreement

On July 2, 2013, City of Fort Lauderdale, MJDC AOA LLC, Village of the Arts Limited and Milton L. Jones, Jr. and Barbara H. Jones entered into a Seventh Amendment to the Development Agreement for the purpose of amending the Project Development Schedule to accurately list the date of the Certificate of Occupancy occurred 58 months after the Effective Date of the Agreement in accordance with a condition precedent to Closing on Parcel 2. The purpose of the First Amended and Restated Seventh Amendment is to clarify the purpose of the amendment and correct a scrivener's error that properly describes the relationship between the Developer and the entity created for the purpose of the development of the Phase II Project in the Original Seventh Amendment.

(C) Third Amended and Restated Assignment of Rights and Assumption of Obligations under Development Agreement and Conditional Consent

On February 7, 2012 a First Amended and Restated Assignment and Assumption was approved to correct a scrivener's error in the Original Assignment and Assumption whereby in the signature block for Developer/Assignee was incorrectly referred to as MJDC AOA, Inc., instead of MDJC VOA, Inc.; and extended the Conditional Consent date when the MJDC VOA, Inc. could demonstrate sufficient Financial Capacity and a Firm Financing Commitment with an award of tax credits for the development of Phase II Project to December 31, 2012.

On July 2, 2013 a Second Amended and Restated Assignment and Assumption was approved to extend the Conditional Consent of the CITY in which Village of the Arts, LTD could demonstrate sufficient Financial Capacity and a Firm Financing Commitment with an award of tax credits for the development of the Phase II Project to August 1, 2014.

The purpose of the proposed Third Amended and Restated Assignment and Assumption is to clarify the purpose of the assignment and assumption agreement, and to correct scrivener's

errors where the signature block for the General Partner was incorrectly referred to as MJDC AOA, Inc., instead of MDJC VOA, Inc.

(D) Eighth Amendment to Development Agreement

Applicants seeking funding through the FHFC must meet a new threshold test that caps development costs based on the size and type of development, also known as the “Total Costs Per Unit Limitation”. Project limitations are placed on Mid-Rise Concrete – four to six stories; or High-Rise – seven stories or more. Based on the definition of a “Mixed Use” project in the current development agreement the project cost per unit exceeds the cost per limit. The purpose of the proposed Eighth Amendment is to change the definition of a “Mixed-Use Project” to allow the project height to be increased from five to seven stories so that the project would be considered as a high-rise project and meet the cost per unit threshold test as a High-Rise development project to apply for low-income housing tax credits.

If approved, the actions taken by the City Commission would provide the Developer with the site control evidence required for the purpose of applying for low-income housing tax credits. It should be noted that approval of these requested amendments does not provide the Developer with final site plan approval. If the developer is awarded housing tax credits, they shall submit an application for site plan review and approval under the regular Development Review Committee (DRC) process.

According to the original Fifth Amendment to the Development Agreement, a Firm Financing Commitment is required on or before August 1, 2014. If the City Commission adopts the proposed amendments the Firm Financing commitment deadline of August 1, 2014 would remain in place. In the event the Developer fails to secure a Firm Financing Commitment by August 1, 2014, the Project Development Agreement immediately becomes null and void and of no further force and effect.

Resource Impact

No budgetary impact

Attachments:

- Exhibit 1 – Developer’s Request
- Exhibit 2 - Developer’s Request to Amend Definition of Mixed Use Development
- Exhibit 3 - First Amended and Restated Fifth Amendment to Development Agreement
- Exhibit 4 - First Amended and Restated Seventh Amendment to Development Agreement
- Exhibit 5 - Third Amended and Restated Assignment of Rights and Assumption of Obligations under Development Agreement and Conditional Consent Assumption and Assignment and Conditional Consent
- Exhibit 6 - Eighth Amendment to Development Agreement
- Exhibit 7 - Resolution

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