

**AGREEMENT TO COVER EXCESS COST
AND GRANT OF EASEMENT**

THIS Agreement to Cover Excess Cost ("Agreement") and Grant of Easement is entered into this ____ day of _____, 2021 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

VILLAGE OF THE ARTS, LTD., a Florida limited partnership,
whose address is 9 N.W. 4th Avenue, Suite A, Dania Beach, FL
33004 ("VOA" or "Developer")

and

REGAL TRACE, LTD., a Florida limited partnership, whose
address is 9 NW 4th Avenue, Dania Beach, FL 33004, ("Regal
Trace")

R E C I T A L S

A. Whereas, on _____, 2021, City approved a Facilities Relocation Agreement ("Relocation Agreement") with Florida Power & Light Company ("FPL") for the relocation of certain FPL facilities and equipment ("FPL Facilities") which are incompatible and conflict with the intended construction of an apartment community to be known as the Village of the Arts on property located at 543 NW 5th Avenue, Fort Lauderdale, Florida 33311 and legally described on Exhibit "A" (the "Property"), attached hereto and made a part hereof.

B. Whereas, the City is the owner of the Property and, subject to certain conditions, has agreed to convey the Property by Quit Claim Deed to VOA pursuant to a Development Agreement dated February 5, 2008, as amended, in exchange for construction of the Project (as defined in the Development Agreement), conveyance of an easement in favor of FPL by Regal Trace, execution of this Agreement and other covenants, promises and conditions.

C. Whereas, construction of the Project is not viable unless the FPL Facilities are removed.

D. Whereas, FPL has produced a Cost Estimate in the amount of \$1,831,420.83 to relocate the FPL Facilities (the "Cost Estimate"), a copy of which is attached hereto and made a part hereof as Exhibit "B".

E. Whereas, City is required to pay FPL 120% of the Cost Estimate which amount is \$2,197,705.00 ("120% of the Cost Estimate").

F. Whereas, upon approval of the Relocation Agreement by the City Commission, the City will tender the 120% of the Cost Estimate less the engineering deposit of \$143,080.00 previously paid to FPL for a total balance of \$2,054,625.00 to FPL along with delivery of the executed Relocation Agreement.

G. Whereas, the City has allocated and will contribute \$1,989,869.02 and VOA will contribute \$207,835.98 towards the 120% of the Cost Estimate.

H. Whereas, pursuant to the Relocation Agreement, the City has agreed to be at risk for cost pursuant to paragraph 5.4. and other sections of the Relocation Agreement that exceed the Cost Estimate ("Excess Cost").

I. Whereas, VOA will receive a direct benefit as a result of removal and relocation of the FPL Facilities.

J. Whereas, the Relocation Agreement requires the City to provide an easement for the relocated Facilities on property owned by Regal Trace.

K. Whereas, the design of the relocated FPL Facilities calls for location of certain FPL infrastructure within the real property, as legally described in Exhibit "C" owned by Regal Trace, a private entity owned by and controlled by Milton Jones and Barbara Jones.

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

TERMS

1. The foregoing recitals are true and correct and are incorporated herein.
2. VOA agrees to pay the City the Excess Cost, regardless of whether FPL terminates the Relocation Agreement, within twenty (20) days after the City sends notice of the final bill (as described in paragraph 5.7 of the Relocation Agreement). The City agrees to send notice (via email at the following email addresses: regaltrce@aol.com and seanfjones@aol.com) within thirty (30) days after receipt of the FPL final bill. City shall provide a copy of the FPL final bill along with notice to VOA. VOA's obligation to pay the Excess Cost is absolute and unconditional other than the City's obligation to provide notice and a copy of the final bill and its agreement not to increase the Cost Estimate without VOA's written consent. Failure to deliver payment for Excess Cost shall be deemed an event of default and City shall be entitled to pursue any and all legal and equitable remedies available, including refusing to subordinate its right of reverter to a construction lender for the benefit of VOA.
3. As the owner of the Property, VOA agrees to assume all obligations of the City, without recourse to the City, under the Relocation Agreement, including the duties and responsibilities set forth in paragraph 7.10 and 7.12. VOA shall take appropriate and reasonable steps to coordinate its redevelopment activity with FPL relocation of FPL Facilities such that its activities shall not conflict or interfere with the actions of activities of FPL, or its agents. VOA shall do or cause to be done all activities necessary to cooperate and assist FPL in relocating the FPL Facilities. Nothing herein shall be deemed a transfer or assignment of the City's rights to receive any refunds or a termination of the City's ability to exercise any and all rights under the Relocation

Agreement. The duties and obligations herein shall not be assignable to a third party without the City's written consent.

4. City agrees to obtain the written consent of VOA, which shall not be unreasonably withheld, conditioned or delayed, prior to (i) requesting a change in the relocation scope of work which increases the Cost Estimate; or (ii) entering into an agreement to pay any additional costs to relocate the transmission lines. City shall not be required to provide notice of change in scope of work ordered or made by FPL or its agents and such change by FPL shall not reduce VOA's obligation to cover Excess Cost.

5. To the extent FPL refunds to City pursuant to paragraph 5.8.1 of the Relocation Agreement, City shall reimburse VOA first to a total of \$207,835.98 before retaining the remainder of the refund from FPL.

6. To the extent VOA has paid the Excess Cost, City shall reimburse VOA any Excess Cost reimbursed to the City by FPL within thirty (30) days of receipt by City.

7. All notices provided for or permitted to be given pursuant to this Agreement must be in writing. All notices to be sent hereunder shall be deemed to have been properly given or served: if hand delivered by courier, in hand when received; if mailed, on the third business day following the date upon which the same is deposited in the United States mail, addressed to the recipient of the notice, certified with return receipt requested; if by telecopy, on the date sent (or the next business day after the date of transmission if the transmission day is not a business day) provided that the facsimile was properly addressed and that a duplicate notice was forwarded via nationally recognized overnight courier guarantying next day delivery; if by electronic mail, on the date sent (or the next business day after the date of transmission if the transmission day is not a business day) provided that the electronic mail was properly addressed and that a duplicate notice was forwarded via nationally recognized overnight courier guarantying next day delivery; and, if by nationally recognized overnight courier guarantying overnight delivery, on the day such notice was deposited with such a courier, so long as the day of deposit was on a service day of such courier and prior to the last pick up for such day.

If to City: Christopher J. Lagerbloom
City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301
E-mail: clagerbloom@fortlauderdale.gov

If to VOA: Village Of The Arts, Ltd.:

c/o Regal Trace Apartments Management Office
540 NW 4th Avenue
Fort Lauderdale, Florida 33311
Attn.: Milton L. Jones, President
Office: (954) 467-1800
Facsimile: (954) 467-4044
Email: regaltrce@aol.com and seanfjones@aol.com

If to Regal Trace:

c/o Regal Trace Apartments Management Office

540 NW 4th Avenue
Fort Lauderdale, Florida 33311
Attn.: Milton L. Jones, President
Office: (954) 467-1800
Facsimile: (954) 467-4044
Email: regaltrce@aol.com and seanfjones@aol.com

8. Regal Trace represents and warrants that it is the owner of the real property described in Exhibit "C". Further, Regal Trace shall grant a utility easement, with the joinder and consent of all lienholders, in form and substance acceptable to FPL for recording in the public records of Broward County, Florida simultaneously with execution and recording of a Quit Claim Deed from the City to VOA. Failure to do so shall be deemed a default under this Agreement and the City shall be entitled to exercise any and all legal remedies available to it, including refusing to subordinate its right of reverter for the benefit of VOA or terminating the Development Agreement. If the Relocation Agreement is terminated by both the City and FPL, FPL does not relocate the FPL Facilities pursuant to the Relocation Agreement, or FPL releases or terminates in writing its rights under the easement granted by Regal Trace, then Regal Trace may take all steps necessary to terminate the easement on its property so long as such termination does not jeopardize or interfere with the existing rights of the City on the property owned by Regal Trace.

9. Prior to conveyance of the Property to VOA and during the term of this Agreement and any renewal or extension term of this Agreement, VOA, at the VOA's sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of this Agreement. VOA shall provide the City a certificate of insurance evidencing such coverage. VOA insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by VOA shall not be interpreted as limiting the VOA's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by the City's Risk Manager, which such approval shall not be unreasonably withheld or delayed.

The coverages, limits, and endorsements required herein protect the interests of the City, and these coverages, limits, and endorsements may not be relied upon by VOA for assessing the extent or determining appropriate types and limits of coverage to protect VOA against any loss exposure, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the VOA under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$2,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$2,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

If the City requires another party similar to VOA to increase their policy limits for the insurance described in this subparagraph, then VOA agrees to increase its insurance limits accordingly.

Policy must include coverage for Contractual Liability and Independent Contractors.

The City and the City's officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the VOA. The coverage shall contain no special limitation on the scope of protection afforded to the City or the City's officers, employees, and volunteers.

10. VOA shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including attorney's fees or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of VOA under this Agreement or in connection with VOA performance of duties and obligations under the Relocation Agreement or its acts or omissions under the Relocation Agreement or the breach or default by VOA of any covenant or provision of this Agreement or the Relocation Agreement except for any occurrence arising out of or resulting from City's breach of this Agreement or the Relocation Agreement or the intentional torts or gross negligence of the City, its officers, agents and employees acting within the scope and course of their duties. This indemnity shall survive termination of this Agreement and Relocation Agreement and is not limited by insurance coverage. Any and all such claims, suits, causes of action relating to personal injury, death, damage to property, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right, or any actual or alleged violation of the City's Charter or any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity. VOA further agrees to investigate, handle, respond to, provide defense for, and defend (with counsel selected by City) any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the City, VOA shall assume and defend not only itself but also the City in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to City, provided that City, exercisable by City's Risk Manager (the "Risk Manager") shall retain the right to select counsel of its own choosing.

11. In consideration of conveyance of the Property and payment of \$1,989,869.02 of the amount owed to FPL, VOA hereby agrees to release, indemnify, defend, save and hold harmless FPL, its parent, subsidiaries, affiliates or their respective officers, directors or employees, from all claims, demands, liabilities and suits whether or not due to or caused by negligence of FPL for bodily injuries or death to persons or damage to property resulting in connection with the performance of the work or performance of duties under the Relocation Agreement by VOA, its subcontractor, agents or employees. This indemnification in favor of FPL shall extend up to but shall not exceed the sum of \$1,000,000.00 for bodily injury or death of person(s) or property damage combined single limit and \$3,000,000.00 occurrence aggregate. In the event VOA is insured for liability with limits in excess of these amounts, VOA's said obligation shall extend up to but shall not exceed the limits of that insurance. VOA's costs of defending FPL, including attorneys' fees, are excluded from and are in addition to the aforesaid limitation of liability for injury, death and property damage.

12. This Agreement shall be governed and construed in accordance with the laws of the State of Florida.

13. Other than the Development Agreement and the instruments referenced therein, this is the entire agreement between Developer and the City and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on the parties unless reduced to writing and signed by all parties to be bound.

14. This Agreement and any amendments hereto hereinafter executed by the parties may be executed in multiple counterparts, all of which together shall constitute one agreement. Electronically transmitted signatures shall be deemed originals.

15. Time is of the essence to Developer and City in the performance of this Agreement, and each has agreed that strict compliance is required as to any date or time period set out or described herein. If the final date of any period which is set out in any paragraph of this Agreement falls upon a Saturday, Sunday or legal holiday under the laws of the United States or the State of Florida, then, and in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

16. Each of the parties hereto agrees to perform, execute, acknowledge and deliver and cause to be performed, executed, acknowledged and delivered all such further acts and assurances as shall reasonably be requested of it in order to carry out this Agreement and give effect thereto. The parties hereto acknowledge that it is to their mutual benefit to effectuate an orderly and efficient payment of the Excess Cost and grant of easement. Accordingly, without in any manner limiting their specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

17. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, up to and including all trial and appellate levels and post-judgment proceedings. Venue in connection with any such proceeding shall lie in Broward County, Florida.

18. All defined terms herein shall have the same meaning as in the Relocation Agreement or Development Agreement, unless otherwise defined herein.

19. Nothing herein shall be deemed a waiver of sovereignty immunity in favor of the City.

20. The parties signing this Agreement has the power and authority to enter into this Agreement on behalf of VOA and Regal Trace, and upon execution, this Agreement is binding and enforceable against VOA and Regal Trace.

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

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

WITNESSES:

**CITY OF FORT LAUDERDALE, a Florida
municipal corporation**

Dean J. Trantalis, Mayor

[Witness print or type name]

Christopher J. Lagerbloom, ICMA-CM
City Manager

[Witness print or type name]

ATTEST:

(CORPORATE SEAL)

Jeffrey A. Modarelli, City Clerk

APPROVED AS TO FORM:
Alain E. Boileau, City Attorney

Lynn Solomon,
Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____,
2021, by Dean J. Trantalis, Mayor of the City of Fort Lauderdale, a municipal corporation of the
state of Florida by means of ☐ physical presence or ☐ online notarization. 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 _____,
2021 by Christopher J. Lagerbloom, City Manager of the City of Fort Lauderdale, a municipal
corporation of the state of Florida by means of ☐ physical presence or ☐ online notarization. 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

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

By: MJDC VOA, Inc., a Florida corporation, as 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 _____, 2021, 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 by means of ☐ physical presence or ☐ online notarization. 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 _____, 2021.

(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires:

Commission Number

REGAL TRACE, LTD., a Florida limited partnership

By: Milton Jones Development Corporation, a
Florida corporation, as General Partner of Regal
Trace, Ltd.

WITNESSES:

By: _____
Milton L. Jones, Jr., President

[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 _____, 2021, by Milton L. Jones, Jr., President of Milton Jones Development Corporation, a Florida corporation, General Partner of REGAL TRACE, LTD., a Florida limited partnership by means of ☐ physical presence or ☐ online notarization. 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 _____, 2021.

(SEAL)

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

Name of Notary Typed, Printed or Stamped

My Commission Expires: _____
Commission Number

Exhibit “A”
Legal Description

**Exhibit “B”
Cost Estimate**

Exhibit "C"
Legal Description For Easement