

## **GUARANTY AGREEMENT**

THIS GUARANTY AGREEMENT ("Agreement") dated \_\_\_\_\_, 2021, is from MILTON L. JONES, JR., individually, and BARBARA H. JONES, individually, whose address is 9 N. W. 4<sup>th</sup> Avenue, Suite A, Dania Beach, Florida 33004 (jointly and severally the "Guarantors") to CITY OF FORT LAUDERDALE, a Florida municipal corporation whose Post Office address is 100 North Andrews Avenue, Fort Lauderdale, Florida 33301 ("City")

### **RECITALS**

A. City, Village Of The Arts, Ltd., a Florida limited partnership ("Developer") and Guarantors are parties to that certain Land Disposition, Development and Management Agreement, dated February 5, 2008, as amended, restated, modified, or supplemented from time to time, (collectively the "Development Agreement").

B. All defined terms herein shall have the same meaning as in the Development Agreement unless otherwise defined herein.

C. Pursuant to the terms of the Development Agreement, the Development Agreement governs the development of a parcel of property more particularly described on Exhibit "A", attached hereto and also known as Parcel No. 2.

D. Phase II is being developed on Parcel No. 2 as no greater than an eight (8) story midrise apartment building consisting of no less than 104 residential apartment units and no more than 200 residential apartment units, and no less than 5,000 square feet of commercial space to be constructed on the real property located at 543 N. W. 4<sup>th</sup> Avenue, Fort Lauderdale, Florida.

E. City is conveying Parcel No. 2 to Developer for the purpose of the development of Phase II.

F. As a part of the deed of conveyance, the City shall execute a Declaration of Restrictive Covenants, which shall be binding upon the Developer and every successor in interest to Parcel No. 2 or any part thereof. Such Declaration of Restrictive Covenants shall be recorded in the Public Records of Broward County, Florida.

G. Bank of America, N.A., a national banking association ("Bank"), has agreed to provide Developer with a senior, secured construction loan facility in an amount of \_\_\_\_\_ ("Construction Loan") to be secured by Parcel No. 2 to develop and construct Phase II.

H. Bank, City and Developer have entered into that certain Recognition Agreement for the purpose of coordinating the financing arrangements and to set forth the rights and obligation of the parties in connection with those arrangements and agreements.

I. Pursuant to the Recognition Agreement, the Construction Loan shall be superior in interest to the Declaration of Restrictive Covenants.

J. The Recognition Agreement further provides that if a default occurs under the Construction Loan, and the City elects the Termination Option, the Bank, or its nominee, affiliates, subsidiaries or successors and/or assigns shall have the ability to terminate the Development Agreement upon acquiring title to Parcel No. 2 and upon the recordation of a Notice of Termination of Development Agreement in the Public Records of Broward County, Florida. Once recorded, the Notice of Termination of Development Agreement shall be deemed immediately and automatically effective, the Development Agreement shall no longer encumber Parcel No. 2, Bank shall have no obligations under the Development Agreement, no Contractual Claim of Lien (as such term is defined in the Development Agreement) shall encumber Parcel No. 2 and the City shall not be entitled to a revesting of title in Parcel No. 2 as set forth in Section 20.05 of the Development Agreement.

K. The Recognition Agreement further provides that the Bank may elect, upon Bank or Bank's successor obtaining title to Parcel No. 2 (whether by foreclosure, acceptance of a deed-in-lieu of foreclosure or other process), terminate the Development Agreement upon thirty (30) days prior written notice to City.

L. City has required a guaranty from the Guarantors that upon Bank, or its nominee, affiliates or subsidiaries, or successors and/or assigns to Bank, obtaining title to Parcel No. 2 (whether by foreclosure, acceptance of deed-in-lieu of foreclosure or other process), the City can exercise on this Guaranty. The Guaranty shall be executed simultaneously with closing on the Bank's Construction Loan.

M. Guarantors are willing to give such guaranties pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, Guarantors, jointly and severally, agree as follows:

1. The Recitals are true and correct and incorporated herein.

2. Guarantors, jointly and severally, absolutely guarantee to the City of Fort Lauderdale the payment of the fair market value of Parcel No. 2 upon Bank, its nominee, affiliate or subsidiary, or successor and/or assign obtaining title to Parcel No. 2 (whether by foreclosure, acceptance of deed-in-lieu of foreclosure or other process), which fair market value of Parcel No. 2 "as is" vacant land fee simple estate shall be determined by an MAI appraisal paid for by Developer by a licensed and experienced appraiser to be performed in connection with commitment of the Construction Loan by Bank. Said appraisal shall be certified to the City of Fort Lauderdale. Such value of Parcel No. 2 as stated in the appraisal shall be dispositive of the amount owed under this Guaranty. This Guaranty is absolute and is a guaranty of payment and not one of collection. Guarantor shall make any payment required under this Guaranty in lawful money of the United States of America in immediately available funds without set-off or counterclaim. Guarantor shall be and remain fully bound hereunder regardless of whether Developer shall be found not liable on the obligations under the Development Agreement or any other guarantor be relieved or released from liability for any reason whatsoever.

Guarantors shall be discharged from liability hereunder only upon the full performance of their obligations under this Guaranty.

3. Guarantors shall pay to City on demand each cost and expense (including, but not limited to, fees, costs, expenses and disbursements of counsel to City) incurred by City in enforcing any obligation of Guarantors or exercising or preserving any right or remedy of City pursuant to this Agreement.

4. City shall be entitled to pursue any and all legal remedies against Guarantors upon r Bank, its nominees, affiliates or subsidiary, or successor and/or assigns to Bank, obtaining title (whether by foreclosure, deed in lieu or other process) to Parcel No. 2 and upon termination of the Development Agreement on Parcel No. 2.

5. Guarantors waive all notices whatsoever with respect to this Guaranty and with respect its obligations herein, including, but not limited to, notice of:

5.1 The City's acceptance of this Guaranty or its intention to act, or its action, in reliance hereon;

5.2 The extension of a grant by City to Developer;

5.3 Presentment and demand for performance of the obligations hereunder or any portion thereof;

5.4 Protest and notice of dishonor or non-performance with respect to the obligations hereunder or any portion thereof;

5.5 Any default by Developer or any pledgor, grantor of security, or any guarantor, including the Guarantors; and

5.6 Any other notices to which the Guarantors may otherwise be entitled.

6. Guarantors waive (a) any right or claim of right to cause a marshalling of any of the Developer's assets or the assets of any other party now or hereafter held as security for the obligations hereunder, and (b) the benefit of any statute of limitations affecting the liability of Guarantors hereunder.

7. Guarantors represent and warrant to City that:

(a) This Guaranty when executed and delivered by Guarantors will constitute the legal, valid and binding obligations of Guarantors enforceable in accordance with the terms hereof.

(b) There are no judgments outstanding against Guarantors and there is no action, suit, proceeding, or investigation now pending (or to the best of Guarantors' knowledge, threatened) against, involving or affecting Guarantors or any of Guarantors' properties or any part thereof, at law or in equity that if adversely determined as to Guarantors, would result in a material adverse change in the business or financial

condition of Guarantors, or Guarantors' operation and ownership of any of its properties, nor is there any basis for such action, suit, proceeding, or investigation.

(c) Guarantors are not insolvent and will not be rendered insolvent by the execution, delivery, and performance of this Guaranty.

7.1 Guarantors acknowledge that the City has relied upon the Guarantors' representations, has made no independent investigation of the truth thereof and is not charged with any knowledge contrary thereto that may have been received by any officer, agent, or employee of City. Guarantors further acknowledge that they have not been induced to execute and deliver this Guaranty as a result of, and is not relying upon, any representations, warranties, agreements, or conditions, whether express or implied, written or oral, by City or by any officer, director, employee, or agent of City.

8. Guarantors consents that City may at any time and from time to time, before or after any default by the Developer, with or without further notice to or assent from Guarantors:

8.1 Waive or delay the exercise of any of its rights or remedies against the Developer or any other person or entity, including, without limitation, any guarantor; notwithstanding any waiver or delay, the City shall not be precluded from further exercise of any of its rights, powers or privileges expressly provided for herein or otherwise available, it being understood that all such rights and remedies are cumulative;

8.2 Waive or extend the time of Developer's performance of any and all terms, provisions and conditions set forth in any instrument or agreement evidencing or relating to the obligations hereunder;

8.3 Release the Developer or any other person or entity, including, without limitation, any guarantor, from all or any portion of the obligations hereunder;

8.4 Proceed against the Guarantors without first proceeding against or joining the Developer, or any property securing the performance of the obligations hereunder;

8.5 Renew, extend or modify the terms of the obligations hereunder or any instrument or agreement evidencing or relating to the obligations hereunder; and

8.6 Generally, deal with the Developer or any of the security for the obligations hereunder or other person or party as the City may see fit.

8.7 The Guarantors shall remain bound under this Guaranty notwithstanding any such exchange, release, surrender, subordination, waiver (whether or not such waiver is oral or written), delay, proceeding, renewal, extension, modification, application, act or failure to act, or other dealing described herein even though done without notice to or consent from the Guarantors.

9. This Agreement contains the entire agreement between Guarantors and City with respect to the subject matter of this Agreement, and supersedes each course of conduct previously pursued, accepted or acquiesced in, and each oral agreement and representation previously made, by Guarantors or City with respect thereto, whether or not relied or acted upon. No course of performance or other conduct pursued, and no oral agreement or representation made, in the future by Guarantors or City, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall modify or terminate this Agreement or impair or otherwise affect any obligation, right or remedy of Guarantors or City pursuant to this Agreement. No modification of this Agreement shall be effective unless made in a writing duly executed by Guarantors and City.

10. This Agreement shall be governed by and interpreted and enforced in accordance with the internal law of the State of Florida, without regard to principles of conflict of laws.

11. This Agreement shall be binding upon Guarantors and City and upon each successor and assignee of Guarantors and City, and shall inure to the benefit of, and be enforceable by, Guarantors and City and each successor and assignee of Guarantors and City.

12. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If, however, any such provision shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law, or if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof, or any other such provision, being prohibited or invalid.

13. This Agreement shall remain in full force and effect and shall not terminate until City issues certificate of occupancy for Phase II ("Certificate of Occupancy") by the appropriate governing authority. Upon City issuing Certificate of Occupancy for Phase II, this Agreement shall automatically terminate without further action of City and Guarantors.

14. CITY AND GUARANTORS HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS GUARANTY, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR CITY ACCEPTING THIS GUARANTY FROM GUARANTORS AND FOR GUARANTORS GIVING THIS GUARANTY TO CITY.

15. Guarantors irrevocably and unconditionally (a) agrees that any suit, action, or other legal proceeding arising out of or relating to this Guaranty may be brought, at the option of the City, in a court of record of the State of Florida in Broward County, in the United States District Court for the Southern District of Florida, or in any other court of competent jurisdiction; (b) consents to the jurisdiction of each such court in

any such suit, action, or proceeding; (c) waives any objection which it may have to the laying of venue of any such suit, action, or proceeding in any of such courts; and (d) agrees that service of any court paper may be effected on Guarantors by mail, addressed and mailed as provided in Section 16 hereof or in such other manner as may be provided under applicable laws or court rules in said State.

16. Notice. All notices, demands, requests and other communications, if any, required under this Guaranty) may be given orally (either in person or by telephone if confirmed in writing within three (3) days thereafter) or in writing delivered by hand, email, telecopy, or mail and shall be conclusively deemed to have been received if delivered or attempted to be delivered by telecopy or United States first class mail, return receipt requested, postage prepaid, addressed to the party for whom it is intended at its address set forth below. Any party may designate a change of address by written notice to the other party, received by such other party at least ten (10) days before such change of address is to become effective.

Guarantors" address for the purpose of this Section is:

for the purpose of this Section is:

Milton L. Jones, Jr. and Barbara H. Jones  
Nine NW 4<sup>th</sup> Avenue, Suite A  
Dania Beach, Florida 33004  
E-mail: [Regalttrce@aol.com](mailto:Regalttrce@aol.com)

With a copy to:

Sean F. Jones, Esq.  
P. O. Box 41  
Fort Lauderdale, Florida 33302  
E-mail: [seanfjones@aol.com](mailto:seanfjones@aol.com)

City's address for the purpose of this Section is:

City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301  
Attn: City Manager  
E-mail: [CLagerbloom@fortlauderdale.gov](mailto:CLagerbloom@fortlauderdale.gov)

With a copy to:

City of Fort Lauderdale  
City Attorney's Office  
100 North Andrews Avenue  
Fort Lauderdale, Florida  
Attn: Lynn Solomon, Esq.  
E-mail: [lsolomon@fortlauderdale.gov](mailto:lsolomon@fortlauderdale.gov)

This Guaranty does not require that City give Guarantors any notice, demand, or request and this Section shall not be construed to create such a requirement.

IN WITNESS WHEREOF, Guarantors have executed this Agreement as of the date set forth in the first paragraph of this Agreement.

Guarantors

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

\_\_\_\_\_  
BARBARA H. JONES, individually

STATE OF FLORIDA                    )  
  ) ss:  
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2021, by Milton L. Jones, Jr. and Barbara H. Jones, each of whom are personally known to me or who has produced \_\_\_\_\_ as identification.

_____	_____
[NOTARIAL SEAL]	Print
Name: _____	Notary Public, State of Florida
	Commission
#: _____	My _____ Commission
Expires: _____	



## **Exhibit A**

### **Parcel No. 2**

Parcel "C" of the NORTHWEST REDEVELOPMENT PLAT, according to the Plat thereof as recorded in Plat Book 148. Page 26 of the Public Records of Broward County, Florida