

Prepared by and after
Recording return to:

Holland & Knight LLP
701 Brickell Avenue, Suite 3300
Miami, Florida 33131
Attention: Gavin Williams

RECOGNITION AGREEMENT

THIS RECOGNITION AGREEMENT (this "Agreement"), is dated effective as of _____, 2020 (the "Execution Date"), by and among **BANK OF AMERICA, N.A.**, a national banking association, having an office at c/o _____ ("Construction Lender"), **CITY OF FORT LAUDERDALE**, a Florida municipal corporation whose Post Office address is P.O. Drawer 14250, Fort Lauderdale, Florida 33302-4250 ("City"), **VILLAGE OF THE ARTS, LTD.**, a Florida limited partnership, whose address is 9 N.W. 4th Avenue, Suite A, Dania Beach, Florida 33004 ("Developer"), and joined into, into and consented to, by **MILTON L. JONES, JR.** and **BARBARA H. JONES**, ("Principals"), whose address is 9 N.W. 4th Avenue, Suite A, Dania Beach, Florida 33004.

Recitals:

A. City, Developer and Principals are parties to that certain Land Disposition, Development and Management Agreement, dated as of February 5, 2008 (as amended by the amendments set forth on Schedule 1 attached hereto and as may be further amended, restated, modified, or supplemented from time to time, collectively the "Development Agreement").

B. Pursuant to the terms of the Development Agreement, the Development Agreement governs the development of the parcel of property more particularly described on Exhibit "A" attached hereto (the "Original Property").

C. Pursuant to the terms of the First Amendment (as defined on Schedule 1), the City permitted the Original Property to be developed in two Phases, the Phase I Project and the Phase II Project (as such terms are defined in the Development Agreement").

D. Phase I was developed by MJDC AOA, LLC, a Florida limited liability company ("Phase I Developer") and, other than as specifically set forth herein, Phase I is not the subject of this Agreement.

E. Phase II is to be developed by Developer 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. 5th Avenue, Ft. Lauderdale, Florida and more particularly described on Exhibit "B" attached hereto (the "Property").

F. Bank has agreed to provide Developer with a senior, secured construction loan facility in an aggregate amount of \$_____ (the "Construction Loan") to be disbursed pursuant to, and secured by, among other things, the Construction Loan Documents (as defined below).

G. The Development Agreement provides certain terms, conditions and other restrictions on the construction and development of Phase II and the Construction Lender will not make the Construction Loan available unless and until the City and Developer provide certain assurances with respect to certain of the terms and conditions of the Development of Phase I and without entry into this Agreement.

H. The parties desire to enter into this Agreement for the purpose of coordinating the foregoing financing arrangements and to set forth the rights and obligations of the parties in connection with those arrangements and agreements.

In consideration of the foregoing recitals and the mutual covenants contained in this Agreement, the parties to this Agreement hereby agree as follows:

1. **Defined Terms.** In addition to the terms defined in the Recitals and elsewhere in this Agreement, as used herein the following terms shall have the meanings set out respectively after each (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

Plans and Specifications shall mean _____

Project shall mean the construction of 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 1.67 acres of land located at 543 N.W. 5th Avenue, Ft. Lauderdale, Florida.

Site Plan shall mean that certain Site Plan _____. The foregoing Site Plan also constitutes the Concept Site Plan (as such term is defined by the Development Agreement).

2. **Developer's Representations and Warranties.** Developer represents and warrants to the Construction Lender and City as follows:

(a) the Developer is in full compliance with all the terms and conditions of the Development Agreement;

(b) the Developer is not aware of any condition that with the passage of time or giving of notice would constitute a default under the Development Agreement;

(c) Once completed the Project will comply with all of the requirements of the Development Agreement;

(d) the Construction Loan Documents have been duly authorized, executed and delivered as appropriate by Developer, and constitute the valid and binding obligations of Developer, enforceable in accordance with their terms;

(e) as of the date of this Agreement, (A) the Construction Lender Documents are in full force and effect and (B) to Developer's knowledge, no defaults or events of defaults are continuing under the Construction Loan Documents;

(f) attached hereto as Exhibit G is the list of all Project Professionals and a description of the contract to which such Project Professional has been retained by Developer, copies of which have previously been delivered to the City (collectively, the "Project Professional Disclosures and Documents"). All of the Project Professional Disclosures and Documents contain the notices, terms and conditions required by Section 10.02(g) of the Development Agreement; and

(g) Exhibit H contains a listing of all bonds issued in connection with the Project and the City and Construction Lender are listed as dual obligees on all such bonds.

3. **Construction Lender's Representations and Warranties.** Construction Lender represents and warrants to the City as follows:

(a) all the Construction Loan Documents for the Construction Loan, as of the date hereof, are listed on Exhibit C attached hereto;

(b) the Construction Loan Documents have been duly authorized, executed and delivered as appropriate by Construction Lender, and constitute the valid and binding obligations of Construction Lender, enforceable in accordance with their terms; and

(c) as of the date of this Agreement and to Construction Lender's knowledge, (A) the Construction Lender Documents are in full force and effect and (B), no defaults or events of defaults are continuing under the Construction Loan Documents.

4. **City's Representations and Warranties.** City hereby represents, warrants and certifies to Lender as follows:

(a) all the documents constituting the Development Agreement, as of the date hereof, are listed on Exhibit D attached hereto and, other than as set forth on Exhibit D, the Development Agreement has not been modified, amended or terminated.

(b) Provided the Construction Lender has given the City at least 10 days to review final Construction Loan Documents, City has reviewed the Construction Loan Documents and hereby approves of and consents to the Construction Loan and such Construction Loan Documents.

(c) Pursuant to the Development Agreement, City has approved the Plans and Specifications and Site Plan for the Project and such Plans and Specifications and Site Plan comply with the terms and conditions of the Development Agreement. Approvals under the Development Agreement shall not be binding on the City acting in its regulatory capacity.

(d) as of the Execution Date,

(i) the Developer is in full compliance with the terms and conditions of the Development Agreement;

(ii) attached hereto as Exhibit F is the current Construction Schedule for the Project which construction schedule shall comply with the terms of the Development Agreement such that construction must be commenced within three (3) years of the date of the Quit Claim Deed and completed within five (5) years from the date of the Quit Claim Deed, unless otherwise extended due to delays caused by Florida Power and Light or Force Majeure;

(iii) attached hereto as Exhibit G is the list of all Project Professionals and a description of the contract to which such Project Professional has been retained by Developer, certified copies of which have previously been delivered to the City by the Developer;

(iv) City has received all of the Project Professional Disclosures and Documents and the joinders required by Section 4.02(b) of the Development Agreement;

(v) All conditions precedent to the conveyance of Parcel No. 2 (as such term is defined in the Development Agreement) have been satisfied and Parcel No. 2 has been conveyed to the Developer;

(vi) the Project is no longer subject to the requirements of any regulations, requirements, terms, conditions or other restrictions imposed by, or governed by, any Community Development Block Grant Funds or the Department of Housing and Urban Development. As such, Articles 12.03 and 22 of the Development Agreement is no longer applicable and of no further force and/or effect. Article 12.02 is still in full force and effect.;

(vii) the City has received and approved all insurance required by Article 13 of the Development Agreement; and

(viii) the City has not received a Notice of Termination of the Development Agreement.

(e) the Project (as originally defined in the Development Agreement) has been split into two phase, Phase I and Phase II. A default with respect to Phase I shall have no effect on Phase II, and vice versa.

5. **Developer's Covenants.** Developer hereby covenants with City and Construction Lender as follows:

(a) Developer will provide copies of all quarterly reports required by Section 10.03 of the Development Agreement and all Construction Progress Reports required by Article 11 of the Development Agreement simultaneously to both City and Construction Lender. Upon substantial completion of the Project, Developer shall deliver the Construction Completion Certificate (as such term is defined in the Development Agreement) simultaneously to both City and Construction Lender, and

(b) Developer will comply with, maintain in full force and effect and otherwise comply with all of the terms and conditions set forth in the Development Agreement; and

(c) In consideration of certain rights and privileges granted to the Construction Lender by the City, the Principals and Developer shall execute a Guaranty of Payment in form and substance acceptable to the City, in its sole discretion

6. **City's Covenants.** City hereby covenants with Construction Lender that the City shall not consent to any amendment, modification, waiver, supplement, or change to the Development Agreement, the Plans unless required by law or due to life/safety issues or other regulatory concerns, or the Construction Schedule (as each of the foregoing terms are defined in the Development Agreement) or issue an Agreement Termination Certificate, in each case, without the prior written consent of the Construction Lender, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything herein such covenants by the City is not binding on the City in its regulatory capacity.

7. **Notice of Default under Development Agreement.** At the time City gives written notice to Developer of (a) any breach or default by Developer under the Development Agreement, or (b) of any election by City to terminate the Development Agreement or (c) any election by City to avail itself of any remedy under the Development Agreement, City shall simultaneously send a copy of such notice to Construction Loan.

8. **Rights to Cure.**

(a) City shall have the right (but not the obligation) to cure any monetary default under the Construction Loan Documents within five (5) days after City receives written notice of such default. City shall also have the right (but not the obligation) to cure any non-monetary default under the Construction Loan Documents within the time frame provided by the Construction Loan Documents.

(b) Construction Lender shall have the right (but not the obligation) to cure any default under the Development Agreement in accordance with the terms and conditions of Section 7.04 of the Development Agreement.

9. **Obligations of Construction Lender.**

(a) Construction Lender, or any successor to Construction Lender, may elect, in its sole and absolute discretion, that if a default under the Construction Loan has occurred, and such default has not been cured by either Developer or the City, to cease funding construction of the Project and, upon Construction Lender or Construction Lender's successor obtaining title to the Project (whether by foreclosure, acceptance of a deed-in-lieu of foreclosure or other process), the Construction Lender may terminate the Development Agreement upon thirty (30) days prior written notice to City provided the Principals execute a Guaranty of Payment for the value of the land in favor of the City. The parties to this Agreement acknowledge that the Construction Lender shall not be bound by the terms of Section 7.05 of the Development Agreement nor shall it be obligated to fund, or otherwise be liable for, any Community Benefit (as such term is defined in the Development Agreement).

(b) The City may elect to purchase the Construction Loan Documents in accordance with the terms and conditions of Section 7.06 of the Development Agreement or may elect to exercise the right of redemption under Section 7.07 of the Development Agreement. If City elects to exercise either such option, and notwithstanding anything to

the contrary in the Development Agreement, the following terms and conditions shall apply to such exercise:

(i) At the time Construction Lender gives written notice to Developer of any material breach or default by Developer under the Construction Loan Documents relating to cessation of construction activity or monetary default under the Construction Loan Lender (each a "Construction Lender's Notice of Default"), Construction Lender shall simultaneously send a copy of such notice to City .

(ii) City shall have fifteen (15) days from City's receipt of Construction Lender's Notice of Default (the "Option Period") in which to elect to: (A) elect to purchase the Construction Loan Documents in accordance with the terms and conditions of Section 7.06 of the Development Agreement (the "Loan Purchase Option"), (B) elect to exercise the right of redemption under Section 7.07 of the Development Agreement (the "Redemption Option"); or (C) elect not to exercise either option set forth in the foregoing Clause (A) or (B) (the "Termination Option"). City shall notify Construction Lender in writing of City's election no later than five days following the expiration of the Option Period. If City elects to exercise Termination Option or fails to timely respond, then City shall be deemed to have elected the Termination Option.

(iii) If City elects to exercise either the Purchase Option or the Redemption Option, then City shall have thirty (30) days from the expiration of the Option Period in which to propose to Construction Lender the terms and conditions (the "Proposed Terms") pursuant to which City would either purchase the Construction Loan from Construction Lender or redeem the Construction Lender. In either of the foregoing, the purchase price of the Construction Loan or the redemption price of the Construction Loan shall be equal to the total outstanding amount secured by the Construction Loan Documents. Upon receipt of the total outstanding amount secured by the Construction Loan Documents from the City, the Construction Lender shall accept the tender and in which case the City and Construction Lender shall consummate the transaction. If the City offers to pay less than the full amount owed, on the Construction Loan the Construction Lender may elect, in its sole judgment, to accept the offer or continue negotiations over the Proposed Terms or elect to terminate the Development Agreement. Upon acquiring title to the Property, the Construction Lender may record a Notice of Termination of the Development Agreement in the manner set forth in Clause (iv) below.

(iv) If City elects the Termination Option, then Construction Lender shall have the ability to terminate this Development Agreement upon acquiring title to the Property and may record a Notice of Termination of Development Agreement in the Public Records of Broward County, Florida. Such Notice of Termination of Development Agreement shall only require execution by Construction Lender and none other (including, without limitation, the City). Once recorded, the Notice of Termination of Development Agreement shall be deemed immediately and automatically effective, the Development Agreement shall no longer encumber the Property, Construction Lender shall have no obligations under the Development Agreement, no Contractual Claim of Lien (as such term is defined in the Development Agreement) shall encumber the Property 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. The foregoing shall not prohibit the City from exercising any rights the City may have against either the Developer and/or the Principals, but the exercise of such rights shall not encumber the Property or prohibit or prevent the Construction Lender from exercising any rights Construction Lender may have under the Construction Loan Documents or otherwise available in law or equity. Nothing herein shall be deemed a waiver of the City's regulatory or police power.

10. **Assignment or Transfer.** If the Development Agreement is terminated, the exercise by Construction Lender of any rights available to Construction Lender pursuant to the Construction Loan Documents or in law or equity shall not constitute an assignment or transfer requiring the approval of the City, but, upon completion of the exercise of any rights that result in a change of ownership of the Property, the new owner of the Property shall notify City of their identity. Upon such change of ownership, the City shall recognize such new owner as the Developer under the Development Agreement and such new owner shall be afforded all the benefits of, and shall comply with all requirements of, the Development Agreement.

11. **No Change and Conflicts.** This Agreement does not supersede, extend or amend the Construction Loan Documents, nor does it, nor is it intended to, relieve Developer of any duties or obligations under the Construction Loan Documents, but it is intended to (a) clarify certain requirements set forth in the Construction Loan, and (b) set forth the agreements of the parties relative thereto. In the event of any conflict between this Agreement and the Construction Loan Documents, the Construction Loan Documents shall govern as between the Parties hereto. In the event of any conflict between this Agreement and the Development Agreement, this Agreement shall govern as between the Parties hereto.

12. **Notices.**

(a) **Delivery and Addresses.** Whenever any notice, demand, request, consent or other communication ("notice") is required or permitted hereunder, such notice, demand, or request shall be sent via facsimile or hand-delivered in person (directly or through an overnight-delivery or other courier service) or sent by United States mail, registered or certified, postage or delivery charge prepaid, to the appropriate party at the respective addresses set forth below:

To Construction Lender

Facsimile No.: _____

With a Copy to:

Facsimile No.: _____

To Developer:

Facsimile No.: _____

With a Copy to: _____

Facsimile No.: _____

To City: _____

Facsimile No.: _____

With a Copy to: _____

Facsimile No.: _____

Facsimile No.: _____

(b) When Given. Any notice that shall be served upon any party in the manner set forth above shall be deemed received for all purposes: (1) at the time the notice is transmitted if sent via facsimile, as evidenced, by confirmation receipt produced by the sender's facsimile machine, (2) at the time the notice is hand-delivered, or (3) on the day the notice is posted, postage prepaid in the United States mail in accordance with the preceding portion of this section; provided, however, that the time for response for any notice shall commence three (3) Business Days after such notice is posted, if sent via United States mail.

(c) Change in Addresses. Any party hereto shall have the right from time to time to designate, by written notice to the other parties, such other person or persons and at such other place or places in the United States as the party may desire written notice to be delivered or sent.

13. Termination. This Agreement will be terminated on written agreement by all of the Parties hereto. Otherwise, this Agreement shall remain in full force and effect until the Construction Lender has determined, in its discretion, that the Project is fully and finally, Complete (as such term is defined in the Construction Loan Documents).

14. General Provisions.

(a) No Oral Change. This Agreement may not be modified, terminated, or otherwise changed orally or in any manner other than by an agreement signed by the parties hereto.

(b) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(c) Captions. The captions and headings of various articles and sections of this Agreement are for convenience only and are not to be considered as defining or limiting in any way the scope or intent of the provisions hereof.

(d) No "Third-Party" Beneficiaries. This Agreement is solely to establish various rights between the parties to this Agreement, and no "third-party" or other person

shall be entitled to any rights or benefits from this Agreement or to rely on this Agreement in any way.

(e) Counterparts. This Agreement shall be effective if, and may be, executed in separate counterparts, which together shall constitute a single agreement. Delivery of an executed counterpart of a signature page of this Agreement by electronic transmission or telecopy shall be effective as a manually executed counterpart.

(f) Recitals, Etc. All recitals and all schedules and exhibits referred to in this agreement are incorporated into this agreement by reference and constitutes part of this agreement for all purposes as though set forth at length in this agreement.

[This space intentionally left blank.]

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

WITNESSES:

[Witness type or print name]

[Witness type or print name]

CONSTRUCTION LENDER:

BANK OF AMERICA, N.A.,
a national banking association

By: _____

Name: _____

Title: _____

STATE OF FLORIDA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 202____, by _____, as _____ of Bank of America, N.A., a national banking association, on behalf of the Bank, who is personally known to me or who has produced _____ as identification.

[NOTARIAL SEAL]

Print Name: _____
Notary Public, State of Florida
Commission #: _____
My Commission Expires: _____

WITNESSES:

[Witness type or print name]

[Witness type or print name]

DEVELOPER:

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

By: MJDC VOA, Inc.,
a Florida corporation,
its general partner

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

STATE OF FLORIDA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by Milton L. Jones, Jr., as President of MJDC VOA, Inc., a Florida corporation, the general partner of Village of the Arts, Ltd., a Florida limited partnership, on behalf of the corporation and limited partnership, who is personally known to me or who has produced _____ as identification.

[NOTARIAL SEAL]

Print Name: _____
Notary Public, State of Florida
Commission #: _____
My Commission Expires: _____

WITNESSES:

[Witness type or print name]

[Witness type or print name]

CITY:

CITY OF FORT LAUDERDALE

By:

Dean J. Trantalis
Mayor

By:

Christopher J. Lagerbloom, ICMA-CM
City Manager

ATTEST:

Jeffrey A. Modarelli, City Clerk

APPROVED AS TO FORM:

Lynn Solomon,
Assistant City Attorney

STATE OF FLORIDA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by Dean J. Trantalis, as Mayor of the City of Fort Lauderdale, on behalf of the City, who is personally known to me or who has produced _____ as identification.

[NOTARIAL SEAL]

Print Name: _____
Notary Public, State of Florida
Commission #: _____
My Commission Expires: _____

STATE OF FLORIDA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by Christopher J. Lagerbloom, as the City Manager of the City of Fort Lauderdale, on behalf of the City, who is personally known to me or who has produced _____ as identification.

[NOTARIAL SEAL]

Print Name: _____
Notary Public, State of Florida
Commission #: _____
My Commission Expires: _____

BY EXECUTION HEREOF, the undersigned Principals do hereby evidence their Joinder and Consent to the execution of this Agreement.

WITNESSES:

PRINCIPALS:

MILTON L. JONES, JR.

[Witness type or print name]

BARBARA H. JONES

[Witness type or print name]

STATE OF FLORIDA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, 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: _____