

ARTWORK INSTALLATION AND MAINTENANCE AGREEMENT

This ARTWORK INSTALLATION AND MAINTENANCE AGREEMENT (the "Agreement") is made this 10th of December 2021, in the City of Doral Florida, by and between ICP NW 97th Associates LLC and EEBB Apartment II Holdco LLC ("Owners"), Dolf James ("Artist") and the City of Doral ("City").

RECITALS

WHEREAS, City understands the importance of art in public places and the role that it plays in preserving our culture, conveying the history of our community, beautifying the city, and advancing the arts; and

WHEREAS, the City has adopted a Public Arts Program codified in Chapter 75 of the Code of Ordinances; and

WHEREAS, the Artist has submitted a proposal to design, fabricate, install and donate to the City the following particular piece of art ("Art work") at the following described location: 1500 NW 97th Ave, Doral, FL 33172; and

WHEREAS, on December 10, 2021, the Public Art Program Committee approved the Artist's Artwork proposal (attach photo or rendering to this Agreement) and accepted the donation based on the conditions set forth in this Agreement; and

WHEREAS, to comply with the City's sections of the code of ordinances regulating art in public places, Owner, Artist, and City desire to execute an agreement establishing the Parties' rights and responsibilities with respect to the installation, maintenance, and ownership of the Artwork.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions

1.1 "Art work means durable creations that can be original or limited editions of art including, but not be limited to, sculptures, art works, monuments, frescoes, fountains, paintings, stained glass, murals, or ceramics and may include architectural designs, components or structures. The "art work" medium can include, but not be limited to, glass, steel, bronze, wood, stone and concrete. For purposes of the art program, "art work" does not include the following:

- i. Directional elements, such as signage or graphics.
- ii. Objects that are mass produced in a standard design.
- iii. Landscape gardening, unless substantially comprising durable elements defined as "art work" under this section.

1.2 "Commercial" means words or images used elsewhere in the marketplace for the purpose of promoting a particular business, product, service, cause, place or brand.

1.3 "Commercial element" means art that by virtue of its location or proximity to a business may serve a minimal commercial purpose. If that art were in a different location, it would be considered pure art and not commercial in nature.

1.4 "Good condition" means that the artwork is free of dirt, debris, and any other object or substance interfering with the public's view of the artwork.

2. Owner's Covenants

2.1 Compliance with Section 75-106. Owner covenants that Owner has complied with section 75-106 of the Code of Ordinances entitled "Application Procedures for placement of art work on private property.

2.2 Authorization. Owner covenants that Owner owns the property located at 1500 NW 97th AVE, Doral, FL 33172 (the "Property"), is authorized to permit the installation of the approved Artwork upon construction of the Property and will permit Artist to do so following this Agreement's execution.

2.3 Maintenance and Repair. Owner covenants to maintain and repair the artwork during the term of this Agreement in accordance with the terms and conditions provided for in Section 75-114 of the Code of Ordinances so that the artwork is at all times in a state of good condition.

3. Artist's Covenants

3.1 Installation. Artist covenants to complete installation of the art work in accordance with the building permit issued and specifications as approved by the City.

3.2 Necessary Artistic Repairs. Artist covenants to assist Owner in making any necessary repairs to the art work.

3.3 Maintenance. Artist covenants adhere to the maintenance plan submitted to the City pursuant to section 75-115.

4. Term, Termination, and Extension

4.1 Term. This Agreement shall have a term of twenty-five (25) years from the date of execution, unless terminated pursuant to this Article 4.

4.2 Owner's Termination. Owner may elect to terminate this Agreement if Artist fails to install the art work as specified in this Agreement.

4.3 City's Termination. City may elect to terminate this Agreement if the art work is not maintained in accordance with the maintenance plan.

4.4 If this Agreement is terminated prior to the 25-year term, Owner understands and agrees that he will be responsible for the Public art in-lieu fee required under Chapter 75.

5. Specifications

5.1 The art work shall be consistent with the preliminary sketches, photographs or other documentation previously submitted and approved by the City.

5.2 Artistic Freedom. The provisions of this Article 5 shall not in any way limit or restrict Artist's right to include content that is not commercial, indecent, or obscene.

5.3 Sponsor and Artist Identification. In no event shall the name of a sponsor, a sponsor product likeness, or the Artist's signature individually comprise more than one (1) percent of the art work.

5.4 Configuration and Dimensions. The art work shall be of the same configuration and dimensions as the scale rendition preliminarily approved by the City.

6. Installation

6.1 Time of Installation. Artist shall begin installing the art work as soon as reasonably practicable after this Agreement's execution and receipt of all required permits.

6.2 Notice of Installation. Artist shall provide advance notice in writing to Owner and the City of the date and time Artist intends to install the art work. Artist may thereafter proceed with the installation if Owner is not present, unless Owner notifies Artist in writing otherwise.

6.3 Materials. Artist shall be responsible for providing, at its cost, all materials necessary to install the artwork.

6.4 Landscape Protection and Removal. To the extent reasonably practicable under the circumstances, Artist shall take care to protect any landscaping on the Property during installation. If installation requires the removal of any landscaping on the Property, Artist shall be responsible for replacing the landscaping after completing installation. Prior to removing or altering any landscaping on the Property, Artist shall first acquire Owner's consent to such removal or alteration.

7. Maintenance and Repairs

7.1 Maintenance and Repairs. Owner shall be responsible for maintaining the art work in good condition at all times while this Agreement is in force. If, for any reason, the art work is not so maintained, as determined by City, City shall notify Owner of the need to perform maintenance and/or repairs and identify the actions necessary for compliance with this provision. If, after thirty (30) days from the date of the City's notification to Owner of the need for maintenance and/or repairs, Owner has not

performed the actions identified by City as being necessary for compliance with this provision, City may enter Owner's property and perform any necessary maintenance and/or repairs at Owner's expense.

7.2. Access. Owner hereby grants City and Artist a right of access to the Property to perform maintenance and repairs required pursuant to this Agreement, and otherwise to ensure the art work remains in good condition while this Agreement is in force. The license shall continue for a period of twenty-five (25) years from the date of this Agreement's execution.

8. Removal

8.1 Removal by City. City may remove the art work at Owner's expense if Owner fails to maintain the art work in good condition as provided in Section 7.1.

8.2 Removal by Owner. Owner may remove the art work at Owner's expense if Owner reasonably determines that the art work is harming the Property or limiting Owner's ability to use the Property for the purpose for which it is intended; provided that Owner shall provide Artist and City with sixty (60) days' notice that Owner intends to remove the art work at the end of the notice period. If possible, Owner shall work with Artist and City to find another suitable site for the art work. If Owner is unable to find a suitable site for the art work acceptable to the City, Owner shall be pay the City the Public art in-lieu fee.

9. Insurance and Indemnification

9.1 Insurance. Owner and Artist shall obtain adequate insurance, both in type and amount, as determined by the City Manager.

9.2 Indemnification and Coordination. Owner and Artist hereby agree: (i) to jointly and severally indemnify City for any costs the City incurs in connection with the art work caused by the actions of the Owner or Artist, their officers, employees, or agents, or any person who was under their control insofar as permitted by law. Further, Owner and Artist hereby agree to hold harmless, indemnify, and defend the City of Doral, its officials, members, agents, and employees against any claims, costs, damages, demands, liability, and notices, or any of these, arising or resulting from any claims of damage or injury proximately caused by actions of either party in connection with the art work, regardless of whether the city is actively negligent or passively negligent, except for those claims, costs, damages, demands, liability, and notices, or any of these, caused solely by the negligence or willful misconduct of City; and (ii) to cooperate with the City to respond to specific risks, hazards, and dangers to public health and safety that are reasonably foreseeable consequences of the activity contemplated by this Agreement.

10. Intellectual Property

10.1 Copyright. Subject to the restrictions and usage rights and licenses granted to the City hereunder, and unless otherwise agreed to by the parties in writing, Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. If Artist is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the art work.

10.2 Intellectual Property License. Artist hereby grants to Owner, and to Owner's agents, authorized contractors and assigns, and to City an unlimited and irrevocable license to do the following with respect to the art work:

- (i) Owner may use and display the art work on the Property.
- (ii) Owner and City may make, display, and distribute, and authorize the making, display, and distribution of photographs and other reproductions of the art work. Owner and City may use such reproductions for any Owner-related or City-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic, and multimedia publicity. Owner and City shall ensure that such reproductions are made in a professional and tasteful manner, in their sole and reasonable judgment. Owner and City shall make reasonable efforts to ensure that such reproductions include the following credit line and copyright notice where practicable: "[Title of Artwork]" © [Year of completion] by [Artist's name]. Failure to include such credit line and notice in any reproductions shall not constitute a breach of this agreement. Neither Owner nor City may license or sublicense its rights for any private or commercial purpose. This license granted hereunder does not include the right to sell photographs or reproductions of the art work or to reproductions.

10.3 Third Party Infringement. Artist represents and warrants that the art work is the sole work of the Artist and does not infringe the intellectual property rights of any third parties. Neither Owner nor City is responsible for any third-party infringement of Artist's copyright or for protecting Artist's intellectual property rights. Further, Artist agrees to indemnify Owner and City against any claims brought against Owner or City alleging that the art work infringes the intellectual property rights of any third parties.

10.4 Publicity. Owner and City shall have the right to use Artist's name, likeness, and biographical information, in connection with the display or reproduction and distribution of the art work. Artist shall be reasonably available to attend any ceremonies related to the art work.

10.5 Trademark. In the event that Owner's or City's use of the art work creates trademark, service mark or trade dress rights in connection with the art work, Owner and City shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

10.7 Waiver of Artist's Rights. With respect to the art work produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Artist hereby waives any and all claims, arising at any time and under any circumstances, against Owner and City, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)) and any other local, state, federal or international laws that convey rights of the same nature or any other type of moral right protecting the integrity of works of art. Specifically, Artist hereby waives any and all such claims against Owner or any future owners of the Property, and its agents, officers and employees, and City. Artist hereby represents and warrants that the Artist is authorized to sign this waiver.

11. Miscellaneous Provisions

11.1 Limitation of Liability. Under no circumstances shall one party to this agreement be liable to the other party for any special, consequential, indirect, or incidental damages, including lost profits, arising out of or in connection with this agreement, or any activities performed in connection with this agreement, regardless of whether a claim made by that party is based on contract or tort.

11.2 Survival. The provisions contained in Articles 9 and 10 shall survive the expiration or termination of this Agreement.

11.3 Modification and Amendment. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

11.4 Governing Law; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of Florida, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Miami-Dade County.

11.5 Headings. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

11.6 Entire Agreement. This Agreement sets forth the entire agreement between the parties and supersede all other oral or written provisions.

11.7 Counterparts. This Agreement may be executed in multiple counterparts and signatures may be exchanged by facsimile or electronically, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same document.

11.8 Relationship of the Parties. Nothing contained in the Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the Parties. The relationship between the Parties shall at all times be that of independent contractors. Neither Party shall have authority to contract for or bind the other in any manner whatsoever. The Agreement confers no rights upon either Party except those expressly granted herein.

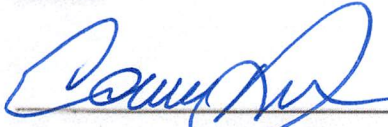
11.9 Attorney Fees. In the event either party commences legal proceedings for the enforcement of this Agreement, the prevailing party shall be entitled to recovery of its attorney's fees, litigation expenses, and court costs incurred in the action brought thereon. Attorney's fees and litigation expenses shall include without limitation costs of preparation and discovery and retaining expert witnesses, and such fees and expenses shall be payable whether or not the litigation proceeds to final judgment.

12. Limitation of Liabilities as an Owner

Upon sale or other disposition of an ownership interest in the Property covered by this Agreement, the transferring Owner shall be released from all liability hereunder, except for matters arising during such transferring Owner's term of ownership, provided that the transferring Owner obtains and delivers to City and the Artist a written assumption of all Owner responsibilities and obligations hereunder effective from and after the date that the new Owner acquires title to all or any part of the Property. Such Assumption Agreement shall be in the form and content reasonably acceptable to, and approved by, the City.

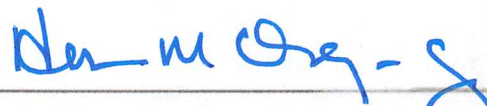
IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature:

Attest:



Connie Diaz, City Clerk


CITY OF DORAL

By: 

Hernan M. Organvidez, Acting City Manager

Date: 4/25/22


Approved As To Form and Legal Sufficiency for the Use
And Reliance of the City of Doral Only:



Luis Figueredo, Esq.
City Attorney

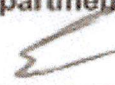
OWNER:

ICP NW 97th Associates LLC

By: 

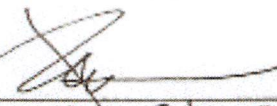
Its: EDUARDO J. FASION, MANAGER
Date: 02/10/2022

EEBB Apartment II Holdco LLC

By: 

Its: EDUARDO J. FASION, MANAGER
Date: 02/10/2022

Artist

By: 

Its: DOLF JAMES ARTIST
Date: 3/29/2022

RESOLUTION No. 22-20

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING THE INSTALLATION OF TWO (2) WELDED ALUMINUM SCULPTURES AT THE ICP AT NW 97 AVENUE WAREHOUSE DEVELOPMENT PROJECT LOCATED AT 1500 NW 97 AVENUE, DORAL, FLORIDA, PURSUANT TO CHAPTER 75 OF THE CITY'S LAND DEVELOPMENT CODE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on June 15, 2015, the City of Doral (the "City") implemented the Public Arts Program to guide the placement of public art within private and public development projects throughout the City; and

WHEREAS, the intent of the City's Public Arts Program is to stimulate the City's cultural environment, heritage, diversity, and create unique community character through public and private artworks integrated into the architecture, infrastructure, and landscape of new developments; and

WHEREAS, ICP NW 97th Associates LLC (the "Developer") is constructing a warehouse development at 1500 NW 97 Avenue, Doral, FL 33172 (the "Project"); and

WHEREAS, ICP NW 97th Associates LLC (the "Applicant") has elected the option to install artwork within the project as specified in Chapter 75 "Public Arts Program" of the City's Land Development Code; and

WHEREAS, on December 10, 2021, a concept proposal of public artwork by Dolf James (the "Artist") was presented to the City's Public Arts Program Advisory Board for review; and

WHEREAS, after evaluating the Artist's proposal and considering all testimony, the Public Arts Program Advisory Board voted unanimously to recommend approval of the proposal to the Mayor and the City Council; and

WHEREAS, the Mayor and City Council finds that the adoption of this resolution is in the best interest of the health, safety and welfare of the residents of the City of Doral.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.


Section 2. Approval. The Mayor and the City Council hereby approve the Public Arts Program application by ICP NW 97th Associates LLC, for the ICP @ NW 97th Avenue development located at 1500 NW 97 Avenue, Doral, FL 33172, attached hereto as "Exhibit A."

Section 3. Effective Date. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was offered by Councilmember Mariaca who moved its adoption. The motion was seconded by Vice Mayor Cabral and upon being put to a vote, the vote was as follows:


Mayor Juan Carlos Bermudez	Yes
Vice Mayor Digna Cabral	Yes
Councilman Pete Cabrera	Yes
Councilwoman Claudia Mariaca	Yes
Councilman Oscar Puig-Corve	Yes

PASSED AND ADOPTED this 9 day of February, 2022.




JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



CONNIE DIAZ, MMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



LUIS FIGUEREDO, ESQ.
CITY ATTORNEY