

# TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Will Allen, Redevelopment Administrator / (954) 797-2093

**PREPARED BY:** Will Allen

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** District 1

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA RATIFYING A DEVELOPMENT AGREEMENT BETWEEN NOB HILL PARTNERS, LLC AND THE TOWN OF DAVIE COMMUNITY REDEVELOPMENT AGENCY; AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** This resolution ratifies the agreement between the Davie CRA and Nob Hill Partners, LLC which was approved by the CRA at their November 15, 2004 meeting. This agreement was prepared by the CRA attorney, Holland & Knight. The agreement provides financial assistance to the developer for constructing the Downtown Davie development. Such financial assistance is consistent with the strategies, goals and objectives for redevelopment listed in the Town of Davie Community Redevelopment Agency Community Redevelopment Plan. These strategies call for the CRA to serve as catalysts for redevelopment efforts and to leverage investments by private enterprise. Objectives of increasing the economic activity, leveraging investment by private enterprise, revitalizing the Davie Road corridor as a vibrant people-oriented marketplace, and eliminating obsolete or deteriorated buildings are also met.

The development agreement terms include incentives by the CRA totaling \$2.25 million. This totals approximately 3% of the expected cost of building improvements which is \$75 million. This percentage is actually lower than the assistance provided to other property owners who have constructed new buildings within the CRA. However, the scope of this project is much larger than those other developments. The CRA will receive additional tax increment funds after the buildings are occupied. It is expected that the CRA will receive approximately \$600,000 per year after the property is fully on the tax rolls. It should be noted that payments to the developer are made after certain construction milestones are achieved. Those milestones include paying \$150,000 after all of the appropriate governmental agencies have approved the plans, all property has been acquired and all buildings and improvements have been demolished on the property. The second funding cycle is that \$500,000 will be paid after all of the electrical and utility lines have been buried and another \$300,000 paid when a certificate of occupancy is issued by the Town for Buildings A, B and C. The remaining \$1.3 million is to be paid upon the final certificate of occupancy being issued for all of the vertical improvements shown on the site plan. Payments will be made from the CRA trust fund in future years. Most of the funds have been earmarked from unexpended funds from the previous year.

**PREVIOUS ACTIONS:** None

**CONCURRENCES:** The CRA approved this development agreement at their meeting of November 15, 2004 by a vote of 6-0. The development agreement is consistent with a term sheet for financial assistance approved at the January 20, 2004 CRA meeting.

**FISCAL IMPACT:**

Has request been budgeted?      Yes      The funds are expected to be paid within the next 36 months consistent with the project schedule.

    If yes, expected cost: \$2.25 million over three years.

        Account Name: Special Projects 001-0405-515-0502

**RECOMMENDATION(S):** The recommendation is to approve the resolution.

**Attachment(s):**      Resolution  
                            Development Agreement

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA RATIFYING A DEVELOPMENT AGREEMENT BETWEEN NOB HILL PARTNERS, LLC AND THE TOWN OF DAVIE COMMUNITY REDEVELOPMENT AGENCY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Davie Community Redevelopment Agency approved a Development Agreement between Nob Hill Partners, LLC and the Town of Davie Community Redevelopment Agency at their November 15, 2004 meeting; and

WHEREAS, the Developer is the owner of certain property, consisting of 12.263 acres located near the intersection of Griffin Road and Davie Road, and desires to redevelop such property in a manner consistent with the Community Redevelopment Plan; and

WHEREAS, the CRA and Developer have prepared and approved an agreement between them for certain financial assistance to be contributed by the CRA to the Developer in connection with the Developer's Project consistent with the goals and objectives of the Community Redevelopment Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council ratifies the Development Agreement between Nob Hill Partners, LLC and the Davie Community Redevelopment Agency. A copy of the Agreement is attached hereto.

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2004.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004

## DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between **NOB HILL PARTNERS, LLC** ("Developer"), and the **TOWN OF DAVIE COMMUNITY REDEVELOPMENT AGENCY**, a public agency created pursuant to Chapter 163, Part III, Florida Statutes, whose mailing address is 4700 Davie Road, Suite C, Davie, Florida 33314 ("CRA").

### WITNESSETH:

WHEREAS, the Town Council ("Town Council") of the Town of Davie ("Town"), created the CRA pursuant to Sections 12-395 through 12-409 of the Town of Davie Code of Ordinances, as amended; and

WHEREAS, the Developer is the owner of certain property, as hereinafter described, all of which is located near the intersection of Griffin Road and Davie Road, and desires to develop and/or redevelop such property in a manner consistent with the Plan, as described below, and with certain funding assistance from the CRA; and

WHEREAS, the Developer's Project, as defined below, is included within the boundaries of the redevelopment area over which the CRA has jurisdiction; and

WHEREAS, the Town Council has adopted a Community Redevelopment Plan ("Plan") for an area within the jurisdiction of the CRA including the Developer's Project; the Plan contemplates the development/redevelopment of property comprising the Developer's Project for mixed uses including multi family residential, retail, office and commercial uses;

WHEREAS, the Developer and the CRA desire to establish an agreement between them for certain financial assistance to be contributed by the CRA to the Developer in connection with the Developer's Project.

Now, THEREFORE, in consideration of the conditions, covenants and mutual promises set forth, the Developer and CRA agree as follows:

1. Recital. The foregoing recitations are true and correct and are hereby incorporated herein by reference. All Exhibits to this Agreement are hereby deemed a part hereof.

2. Definitions. In addition to other defined terms in this Agreement, as used herein the following terms shall have the meaning set opposite each:

2.1 Contract Administrator. The Redevelopment Administrator of the CRA, or his or her designee.

2.2 Improvements. The Infrastructure and Vertical Improvements constructed by the Developer.

2.3 Infrastructure Improvements. Improvements on public or private property as specified in Exhibit "D" to be constructed with and in support of the Developer's Project, including the development of plans and specifications, designs, tests, engineering and feasibility studies and drawings therefore or repairs as proposed to be constructed by the Developer that are necessary to commence and complete construction of Vertical Improvements, described herein, including, but not limited to, paving, lighting, irrigation, electrical facilities, landscaping, water, sewer and storm drainage systems to service the Developer's Project; off-site sewers and sewer connections, sewer upgrade or lift stations, if required, roads and sidewalks and other improvements, and relocation of existing infrastructure facilities.

2.4 Plans and Specifications. The documents required for the construction of the Infrastructure Improvements that may include construction documents, predesign plans and drawings, concept documents, preliminary plans and drawings, schematic design documents, design development documents, together with all amendments and modifications thereof, prepared by a professional engineer/architect.

2.5 Project Site Plan. The Project Site Plan prepared by the Developer as approved by the CRA and the Town Council, attached as Exhibit "B" hereto, for development of the Developer's Project.

2.6 Vertical Improvements. Any buildings, structures and other improvements shown on the Project Site Plan, as described in Section 3.1 hereof, to be constructed as part of the Developer's Project in accordance with this Agreement, including, without limitation, all residential units, commercial, office and retail structures, and all other improvements appurtenant to such residential units, commercial, office and retail structures.

### 3. Project Overview.

3.1 The Developer's Project. The Developer, is the owner of certain property comprising approximately 12 acres ("Developer's Property"), as described on Exhibit "A" attached hereto, for development of certain multi family, retail, office and commercial uses ("Developer's Project"). A Project Site Plan as approved by the CRA and Town Council is attached hereto as Exhibit "B". The Developer shall construct the Vertical Improvements, as defined herein, and shall be responsible for the design, construction and installation of all Infrastructure Improvements, as defined herein.

3.2 CRA Determination. The CRA has determined that the Developer's Project is consistent with and furthers the goals and objectives of the Community Redevelopment Plan approved by the CRA and the Town Council and that development of the Developer's Project will promote the health, safety, morals and welfare of the residents of the Town. The CRA is authorized to expend funds from its Redevelopment Trust Fund for the purposes established in this Agreement.

### 4. Approvals; Performance Schedules.

4.1 Land Development Approvals. The Developer will apply for and process any required land development approvals necessary to complete the Vertical and Infrastructure Improvements, in addition to the Site Development Plan attached hereto, from

any and all governmental agencies. The CRA staff shall cooperate with the Developer and the appropriate Town departments to assist in obtaining such governmental approvals; provided, however, that nothing herein shall be construed to waive the Town's police powers and obligations with respect to the review of such requests or to require the Town or the CRA to waive any such rights or requirements when acting in a governmental and regulatory capacity.

4.2 Vacation of Streets or Easements for Utilities. If applicable, Developer will apply for and process any required vacations and abandonment of all streets, roads, alleys and rights-of-way and easements for utilities or other public purposes currently lying within, or contiguous to, the Developer's Project. The CRA's staff will cooperate with the Town and the appropriate Town departments to facilitate the vacation and abandonment of the existing streets, roads, alleys and rights-of-way and easements for utilities or other public purposes within, or contiguous to, the Developer's Project, provided, however, that nothing herein shall be construed to waive the Town's police powers and obligations with respect to the review of a vacation request or to require the Town or CRA to waive any such rights or requirements when acting in its governmental and regulatory capacity.

4.3 Governmental Approval. The Developer shall use all reasonable efforts to obtain or cause to be obtained all appropriate approvals, permits, variances or waivers necessary under applicable law (other than building permits) for construction of the Developer's Project as contemplated by this Agreement and as required by the applicable governmental authority. The Developer shall comply with all applicable zoning, subdivision, land use and/or environmental laws; provided that the foregoing shall not relieve the Developer of the obligation to pay any fees or charges with respect to the Vertical Improvements, at their normal rates or levels, nor shall anything herein be construed to waive the Town's police powers and obligations with respect to the review of development approval applications acting in its governmental and regulatory capacity.

4.4 Project Schedule. The Developer has prepared a Project Schedule setting forth specific dates for the performance of its obligations under this Agreement (herein called the "Project Schedule"). The Project Schedule is hereby approved by the CRA and is attached hereto as Exhibit "C". Any proposed modifications to the Project Schedule, as approved hereby, shall be submitted to the Contract Administrator for approval, which approval will not be unreasonably withheld. Any request for such approval shall be acted upon by the Contract Administrator within thirty (30) days of submission of such request or such request shall be deemed approved by the CRA. Subject to the terms of this Agreement, the Developer agrees to undertake and complete the construction and development of the Developer's Project in accordance with this Agreement and the Project Schedule, and to comply with all of the obligations and abide by all the dates set forth therein. The Project Schedule may be modified by Developer upon approval by the CRA. Any request for such approval shall be acted upon by the Contract Administrator within thirty (30) days of submission or such request shall be deemed approved by the CRA. The Developer must obtain a final certificate of occupancy for all construction required pursuant to this Agreement no later than thirty-six (36) months from the issuance of the first building permit for the Vertical Improvements.

4.5 Developer's Obligations. The Developer shall have the following obligations with respect to the Developer's Project:

4.5.1 The Developer's Project shall be constructed, used and maintained substantially in accordance with the Project Site Plan attached hereto as Exhibit "B" and the terms of this Agreement; and

4.5.2 The Developer's Project shall be constructed in accordance with the Florida Building Code, local ordinances and all other applicable City, State and Federal laws, rules, regulations and requirements.

4.6 Project Site Plan. The Project Site Plan attached hereto as Exhibit "B" is hereby approved by the CRA. Any proposed modifications to the Project Site Plan, as approved hereby, shall be submitted to the Contract Administrator for approval, which approval will not be unreasonably withheld. Any request for such approval shall be acted upon by the Contract Administrator within thirty (30) days of submission of such request or such request shall be deemed approved by the CRA.

4.7. Approval of Agreement. By the execution hereof: The CRA represents that the execution and delivery hereof has been approved at a duly convened meeting of the CRA, has been ratified by the Town Council, and the same is binding upon and enforceable against the CRA in accordance with its terms. The Developer represents that: (i) the execution and delivery hereof has been approved by all parties whose approval is required, (ii) this Agreement is binding upon the Developer and enforceable against it in accordance with its terms; (iii) the persons executing this Agreement on behalf of the Developer are duly authorized and are empowered to execute the same for and on behalf the Developer. There are no actions, suits, or proceedings pending or, to the best knowledge of the Developer, threatened actions or proceedings before any court or administrative agency that questions or materially adversely affects the Developer's ability to perform its obligations under this Agreement.

## 5. Financing.

### 5.1 CRA Financing.

5.1.1 The CRA shall provide financial assistance to the Developer for the Project in an amount not to exceed Two Million Two Hundred Fifty Thousand (\$2,250,000) Dollars to be payable as follows:

5.1.1.1 The CRA shall provide up to Nine Hundred Fifty Thousand (\$950,000.00) Dollars toward the cost of preparing the Plans and Specifications for Infrastructure Improvements and the costs of constructing and installing the Infrastructure Improvements subject to the terms and conditions of this Agreement. Such payments shall be made to the Developer by the CRA on a reimbursable basis to reimburse the Developer for services rendered or purchases made related to the Infrastructure Improvements for the Developer's Project. Such costs and expenses included, but are not limited to, planning and engineering costs, environmental studies, surveys, soil tests, and construction or installation of Infrastructure Improvements identified specifically and as shown on Exhibit "D" attached hereto. The CRA shall reimburse the Developer the first One Hundred Fifty Thousand (\$150,000) Dollars ("Initial Funding") of the amount provided by this paragraph 5.1.1.1 only upon the occurrence of all of the following conditions: 1) the receipt by the Developer of all governmental approvals from all governmental agencies having jurisdiction of the Developer's

Project through and including site development plan approval; 2) acquisition by the Developer of all property necessary to construct the Project in accordance with the approved Project Site Plan; and 3) completion of demolition of all buildings and improvements on the property comprising the Developer's Project. Prior to the disbursement of any of the Initial Funding, the Developer shall provide the CRA with personal guarantees of Mark L. Schmidt and Harvey Mattel, evidencing joint and several liability, on a form acceptable to the CRA in the amount of One Hundred Fifty Thousand (\$150,000) Dollars to assure completion of the Developer's Project as contemplated by this Agreement, such guarantees to be released upon a determination by the CRA that Infrastructure Improvements have been constructed or installed in accordance with Exhibit "C" attached hereto in an amount of no less than One Hundred Fifty Thousand (\$150,000) Dollars. The CRA shall reimburse the Developer the remaining Eight Hundred Thousand (\$800,000) Dollars ("Second Funding") provided pursuant to this paragraph 5.1.1.1 to fund the costs of Infrastructure Improvements shown on the attached Exhibit "C" as follows: 1) Five Hundred Thousand (\$500,000) Dollars upon completion of the burial of electrical and utility lines as identified on Exhibit "C"; and 2) Three Hundred Thousand (\$300,000) Dollars upon completion of streetscape, landscaping, and lighting improvements evidenced by the issuance by the Town of a final certificate of occupancy for Buildings A, B, and C as such are shown on the Project Site Plan attached hereto as Exhibit "B". To the extent that any of the utility companies whose facilities are relocated and buried pursuant to this Agreement perform any portion of the work using their own forces or those of contractors performing the work on their behalf, the CRA shall make payments directly to the utility companies and not as a reimbursable item to the Developer.

5.1.1.2 The CRA shall provide an additional One Million Three Hundred Thousand (\$1,300,000) Dollars for the Project upon the issuance of a final certificate of occupancy for all Vertical Improvements shown on the Project Site Plan, but not earlier than January 1, 2006.

5.1.2 The parties acknowledge that this Agreement is subject to the availability of CRA funds.

5.2 Developer Financing. Within one hundred eighty (180) days following execution of this Agreement by both parties, the Developer will submit to the CRA such documentation as will reasonably demonstrate to the CRA the Developer's financial commitment to construct the Developer's Project. The Developer's failure to provide such documentation shall constitute an Event of Default, as provided in Section 9 hereof. In the event the actual costs and expenses for the Infrastructure Improvements shown on Exhibit "D" exceed the estimates therefore, the Developer shall be responsible to complete the Infrastructure Improvements at such actual costs. In the event the actual costs and expenses for the Infrastructure Improvements are less than the estimates therefore shown on Exhibit "D", the CRA shall retain such amount.

## 6. Disbursement of CRA Funds.

6.1 Costs Incurred by Developer. In order for costs incurred by the Developer to qualify as a cost or expense to be reimbursed by the CRA, the costs must be identified and reflected by category on Exhibit "D", and must be consistent with the approved Project Site Plan and with all other provisions of this Agreement.

6.2 Prior to the issuance of permits for the Infrastructure Improvements, the Developer shall submit the Plans and Specifications for such Infrastructure Improvements to the Town Engineer for review and approval.

6.3 In accordance with the Plans and Specifications and Town engineering standards, Developer shall complete construction within the time period provided in the Project Schedule. Infrastructure Improvements shall be clear of any liens. Final reimbursement to the Developer for Infrastructure Improvements shall be subject to final inspection and acceptance of such Infrastructure Improvements by the Town Engineer.

6.4 The Developer shall warrant the work completed as part of the Infrastructure Improvements for one (1) year from the date the Infrastructure Improvements is completed and accepted by the Town.

6.5 Initial Funding. The CRA shall reimburse the Developer the Initial Funding as provided in paragraph 5.1.1.1 hereof within forty-five (45) days of submission to the CRA of the following:

6.5.1 A letter from the appropriate representative of the Town that the Developer's Project has received all necessary governmental approvals, except for a building permit(s), for construction of the Developer's Project and that all buildings and improvements on the property described on Exhibit "A" have been demolished and debris removed according to all permits and requirements of the Town.

6.5.2 A statement from the Developer that it has acquired and is vested in legal title to all property described on Exhibit "A" hereof.

6.5.3 Copies of paid invoices for services rendered and purchases made demonstrating payments equal to or in excess of the amount of the Initial Funding as provided in Section 5.1.1.1 hereof.

6.6 Second Funding. The CRA shall reimburse the Developer the Second Funding as provided in paragraph 5.1.1.1 hereof within forty-five (45) days of submission to the CRA of the following:

6.6.1 Copies of paid invoices for services rendered and purchases by the Developer made for relocation and burial of utility lines as described in paragraph 5.1.1.1. hereof.

6.6.1 As provided in paragraph 5.1.1.1, a final certificate of occupancy issued by the Town for Buildings A, B, and C as shown on the Project Site Plan attached as Exhibit "B" hereto.

6.7 Conditions to Disbursements. The obligation of the CRA to make disbursements from CRA Funds is subject to the following conditions:

6.7.1 The Developer has satisfied all conditions to disbursements set forth in this Agreement.

6.7.2 On the date hereof and on the date of each such disbursement, the Developer shall be in compliance with all the terms and provisions set forth in this Agreement and no default or Event of Default (as such term is defined herein) remains uncured.

7. Bond to be Provided by the Developer. Before the commencement of construction of any of the Vertical or Infrastructure Improvements, the Developer shall furnish and provide to the CRA a Performance Bond in an amount of not less than Three Million Four Hundred Forty Eight Thousand Eight Hundred Thirty Six (\$3,448,836.00) Dollars and satisfying the requirements of Section 255.05, Florida Statutes ("Performance Bond"). The Performance Bond must guarantee the completion of the construction of the Improvements and shall include the CRA and the Town of Davie as additional co-obligees.

8. Insurance. The Developer shall maintain in full force and effect, at its sole cost, the insurance coverages set forth below in a form, content, and amount acceptable to the Town's Risk Manager:

(a) Fire and Extended Coverage: (Builder's Risk Policy) The Developer, at its expense, shall provide full theft, windstorm, fire and extended coverage on Improvements constructed, and personal property located on the premises by the Developer, for the benefit of the CRA and Developer, as each party's interests may appear, in an amount not less than one hundred percent (100%) of the replacement value of the completed Improvements or new construction. Such insurance shall provide that the interests of the CRA are included as a loss payee and contain a waiver of subrogation rights by Developer carrier against the CRA.

(b) Worker's Compensation: Developer shall provide, carry, maintain and pay for all necessary Worker's Compensation insurance for the benefit of its employees with the following limits: Worker's Compensation-statutory limits; Employer's Liability - Five Hundred Thousand (\$500,000.00) Dollars for each accident; Five Hundred Thousand (\$500,000.00) Dollars disease (policy limit); and One Hundred Thousand (\$100,000.00) Dollars disease (each employee).

(c) Commercial General Liability Insurance: Developer shall, at its own expense, provide, pay for, and continuously maintain, comprehensive and all inclusive public liability and property damage insurance for the benefit of the Town, with a policy limit of not less than One Million (\$1,000,000.00) Dollars, combined single limits, which coverage shall include property damage and personal injuries, including death. The policy shall include coverage for premises/operations; products; completed operations; contractual liability; independent contractors.

(d) Business Auto Liability: One Million (\$1,000,000.00) Dollars per occurrence Combined Single Limit for bodily injury and property damage. Policy shall include coverage for owned autos; hired autos; non-owned autos.

(e) Products - Completed operations - One Million (\$1,000,000.00) Dollars.

The CRA and the Town of Davie shall be named as additional insureds in both the Commercial General Liability policy provided in (c) above and the Auto Liability policy provided in (d) above.

Coverage must be issued following wording in the latest edition of the ISO Comprehensive General Liability policy and without restrictive endorsements.

Whenever, under the provisions of the Agreement, insurance is required of the Developer, the Developer shall promptly provide the following: (i) certificates of insurance evidencing the required coverage on a standard ACORD form or equivalent form; (ii) names and addresses of companies providing coverage; (iii) effective and expiration dates of policies; (iv) a provision in all policies affording the CRA thirty (30) days prior written notice by a carrier of any cancellation or material change in any policy.

Expiring certificates shall be replaced with new certificates throughout the term of this Agreement. Each such Certificate of Insurance shall be sent to and shall list the following as the Certificate Holder:

Town of Davie Community Redevelopment Agency  
Town of Davie  
Attn: Contracts Administration  
6591 Orange Drive  
Davie, Florida 33314

In the event of destruction of or damage to any of the premises and contents covered by insurance, the funds payable in pursuance of said insurance policies for repair and/or reconstruction shall be deposited in a commercial national bank located in the Town of Davie, Florida, selected by the CRA, as a trust fund. Said funds shall be used for the purposes of reconstruction or repair, as the case may be, first, all or any portion of the premises, second, improvements and third, personal property, so damaged or destroyed. Such reconstruction and repair work shall be done by the Developer in strict conformity with the ordinances of the Town and all governmental agencies having jurisdiction. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then in such event, such funds shall be used as far as the same will permit in paying the cost of said reconstruction or repair and the Developer shall be responsible for the remaining funds. In the event that the cost of such reconstruction or repair work shall be less than the proceeds derived for such insurance policies, the surplus shall be payable to the Developer. Should any of the required insurance policies be canceled before the expiration date or non-renewed, the issuing company will provide thirty (30) days written notice to the certificate holder.

9. Developer's Default, Remedies and Further Rights.

9.1. Event of Default. The occurrence of any one or more of the following shall constitute an Event of Default by Developer hereunder:

9.1.1 If the Developer defaults in the performance of any obligation imposed upon under this Agreement or if the Developer fails to complete any item required to be completed under the Project Schedule hereof, at the time called for therein, and the Developer does not commence to cure such default within thirty (30) days after delivery of

notice of such default from the CRA and diligently pursue such cure to completion within seventy-five (75) days after delivery of such notice; or

9.1.2 If any statement, representation or warranty made by the Developer herein or in any writing now or hereafter furnished in connection herewith shall be false in any material respect; or

9.1.3 If, (a) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating the Developer bankrupt or insolvent, approving a petition seeking a reorganization or appointing a receiver, trustee or liquidator of the Developer or of all or a substantial part of its assets, or (b) there is otherwise commenced as to the Developer or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues unstayed for more than sixty (60) days after any stay thereof expires.

If an Event of Default occurs and there is no cure, or if the Developer fails to comply with the requirements of Section 9.1.1 above, then Section 9.2 shall be applicable.

## 9.2 Remedies.

9.2.1 Upon the occurrence of any Event of Default hereunder, the CRA shall have the following non-exclusive rights: (i) to terminate the Agreement, without cost or liability to the Developer, (ii) to stop any disbursements of CRA Funds; (iii) to immediately enforce all of its rights under this Agreement; and (iv) to avail itself of any right it may have at law or in equity.

## 10. CRA Default, Remedies, and Further Rights.

10.1 Event of Default. The failure of the CRA to fund the design, construction and installation of the Infrastructure Improvements at such time as the Developer is entitled to reimbursement shall constitute an Event of Default.

In the Event of Default as provided above, the CRA shall commence to cure such default within thirty (30) days after delivery of such notice of default from the Developer and diligently pursue such cure to completion within seventy-five (75) days after delivery of such notice. If an Event of Default occurs and there is no cure, or if the CRA fails to comply with the requirements of this paragraph, then Section 10.2 shall be applicable.

## 10.2 Remedies.

The Developer may terminate this Agreement and the Developer will have no further obligations with respect to development of the Developer's Project.

## 11. General Provisions.

11.1 Non-liability of CRA Officials. No member, official or employee of the CRA shall be personally liable to the Developer or to any person with whom the Developer shall have entered into any contract, or for any amount which may become due to the Developer under the terms of this Agreement.

11.2 Compliance with Procurement Procedures. In contracting for any design, engineering, or surveying services for Infrastructure Improvements, the Developer shall comply, to the extent required by law, with the requirements of the Consultant's Competitive Negotiation Act (Section 287.055, Florida Statutes). In procuring the services of persons or firms to construct the Infrastructure Improvements which comprise public construction works as that term is defined in Section 255.20, Florida Statutes, regardless of the costs of such improvements, the Developer shall competitively award such services as provided in Section 255.20, Florida Statutes.

11.3 Notices. All notices to be given hereunder shall be in writing and personally delivered, or sent by registered or certified mail, return receipt requested, or sent by telefax with copy by mail, or delivered by an overnight courier service utilizing return receipts to the parties at the following addresses (or to such other or further addresses as the parties may designate by like notice similarly sent) and such notices shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail, if sent by registered or certified mail, or the date actually received if sent by personal delivery or overnight courier service, or on the date of transmission with confirmed answer back if by telefax if transmitted before 5:00 p.m. on a business day, and on the next business day if transmitted after 5:00 p.m. or on a non-business day, except that notice of a change in address shall be effective only upon receipt.

If to the CRA:

TOWN OF DAVIE  
COMMUNITY REDEVELOPMENT AGENCY  
Attn: Redevelopment Administrator  
4700 Davie Road  
Suite C  
Davie, Florida 33314  
Telephone No. (954) 797-2093  
Fax No. (954) 797-1200

With Copy to:

Susan F. Delegal, Esquire  
Holland & Knight LLP  
Post Office Box 14070  
Fort Lauderdale, Florida 33302-4070  
Telephone No. (954) 525-1000  
Fax No. (954) 463-2030

**If to the Developer:**

NOB HILL PARTNERS, LLC  
Attn: Mark L. Schmidt, Managing Member  
8320 W. Sunrise Boulevard  
Suite 215  
Plantation, Florida 33322  
Telephone No. (954) 536-6400  
Fax No. (954) 472-6420

With Copy to:

Harvey Mattel, Esquire  
633 S. Federal Highway (Street Address)  
5<sup>th</sup> Floor  
Fort Lauderdale, Florida 33301  
Post Office Box 02-9010 (Mailing Address)  
Fort Lauderdale, Florida 33302-9010  
Telephone No. (954) 763-5095  
Fax No. (954) 763-5193

11.4 Indemnification. The Developer agrees to indemnify and hold harmless the CRA, its officers, agents and employees from any and all liability, defense costs, including attorneys' fees, and all other fees incidental to the defense, loss, or damage the CRA may suffer as a result of claims, demands, costs, or judgments against it arising under this Agreement. Nothing in this Agreement shall be construed to affect in any way the CRA's or the Town of Davie's rights, privileges and immunities as set forth in Florida Statute 768.28.

11.5 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

11.6 Amendment. This Agreement may be amended by the parties hereto only upon the execution of a written amendment or modification signed by the parties.

11.7 Assignment. This Agreement shall be binding upon and enforceable by and against the parties hereto, their successors and assigns, and inure to the benefit of the successors and assigns of the parties. The Developer agrees that it shall not assign or transfer this Agreement to another party without the prior written consent of the CRA, which consent shall not be unreasonably withheld or delayed.

11.8 Contingent Fee. The Developer represents and warrants that it has not employed or retained any person to solicit or secure this Agreement and that it has not paid or agreed or promised to pay any person any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the execution of this Agreement.

11.9 Independent Contractor. In the performance of this Agreement, the Developer will be acting in the capacity of an independent contractor and not as an agent, employee or partner of the CRA.

11.10 Venue: Applicable Law. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Broward County, Florida, or United States District Court for the Southern District of Florida. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement.

11.11 Permitted Delays. Subject to providing written notice of such and event and the party's intention to exercise the applicability of this provision, no party to this Agreement shall be deemed in default, and the time for performance of any required act hereunder shall be extended for such period, where such a default is based on a delay in performance as a result of war, insurrection, strikes, lockouts, riots, floods earthquakes, fires, casualty, acts of God, epidemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, government restrictions of priority, litigation, severe weather and other acts or figures beyond the control or without the control of either party; provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay, and in no event shall any of the foregoing excuse any financial inability of a party.

11.12 Waivers. All waivers, amendments or modifications of this Agreement must be in writing and signed by both parties hereto. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, or any other rights or remedies for the same default or other default by the other party.

11.13 Severability. The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect any other provision of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

11.14 Agreement Not a Development Agreement or Order. This Agreement is not, and shall not be construed to be, a development agreement as that term is defined by Section 163.3220, Florida Statutes, et seq. and none of the provisions of Florida law applicable to development agreements pursuant to that statute or related statutes shall apply to this Agreement. No permit or order issued pursuant to, or affected by, this Agreement shall be deemed to be a development permit or development order as those terms are defined in Chapter 380, Florida Statutes, or Chapter 163, Part II, Florida Statutes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CRA

Signed, Sealed and Witnessed  
In the Presence of:

**TOWN OF DAVIE COMMUNITY  
REDEVELOPMENT AGENCY,**

\_\_\_\_\_

\_\_\_\_\_  
Name of Witness Printed Above

By: \_\_\_\_\_  
\_\_\_\_\_, Chair

\_\_\_\_\_

\_\_\_\_\_  
Name of Witness Printed Above

Attest:  
  
By: \_\_\_\_\_  
Cheryl Ellett, Secretary

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledge before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_ as \_\_\_\_\_ of the Town of Davie Community Redevelopment Agency, who is personally known to me or who produced \_\_\_\_\_, (type of identification) as identification.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC STATE OF FLORIDA  
(Signature of Notary Taking Acknowledgement)

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**DEVELOPER**

**NOB HILL PARTNERS, LLC**

\_\_\_\_\_

\_\_\_\_\_  
Name of Witness Printed Above

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Name of Witness Printed Above

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_ as \_\_\_\_\_ of Nob Hill Partners, LLC, who is personally known to me or who produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC STATE OF FLORIDA  
(Signature of Notary Taking Acknowledgement)

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

## EXHIBIT "A"

### Legal Description of Property Subject to the Development Agreement

A portion of Lots 6, 7, 8, 9 and 10, of PALM GARDEN PARK UNIT 2, according to the plat thereof, as recorded in Plat Book 8, of page 4, of the Public Records of Broward County, Florida, Together with a portion of Tracts 62 & 63 in Section 26, Township 50 South, Range 41 East of "EVERGLADES LAND SALES COMPANY SUBDIVISION" according to the plat thereof, as recorded in Plat Book 2, page 34 of the Public Records of Dade County, Florida being more particularly described as follows:

Beginning at the Northeast corner of Lot 5, PALM GARDEN PARK UNIT 2, according to the plat thereof as recorded in Plat Book 8, at page 4, of the Public Records of Broward County, Florida; Thence South 88°15'07" West, along the North line of said Lot 5, for 273.67 feet to the West Right of Way line for Davie Road as described on Florida Department of Transportation Right of Way Map Section 86015-2506 dated May 6, 1994; Thence North 01°41'16" West, along said West Right of Way line for 120.11 feet; Thence North 11°48'38" East for 38.56 feet; Thence North 01°41'16" West for 386.25 feet; Thence North 43°18'01" East for 56.55 feet to the south right of way for Griffin Road as described on said Right of Way Map; Thence North 88°08'01" East, along said south right of way line for 208.67 feet to a point of curvature; Thence northeasterly along a circular curve to the left, having a radius of 21,991.06, a central angle of 00°14'38", for an arc distance of 93.63 feet having a chord bearing of North 88°10'43" East; Thence South 78°31'15" East for 51.46 feet to a point on a curve; Thence northeasterly along a circular curve to the left, having a radius of 22,003.06, a central angle of 00°36'28", for an arc distance of 233.40 feet, having a chord bearing of North 87°37'22" East; Thence North 42°17'40" East for 16.97 feet to a point on a curve; Thence northeasterly along a circular curve to the left, having a radius of 21,991.06, a central angle of 00°17'54", for an arc distance of 114.50 feet, having a chord bearing of North 87°08'13" East to a point of reverse curvature; Thence northeasterly along a circular curve the right, having a radius of 21,895.06, a central angle of 00°17'35", for an arc distance of 111.99 feet, having a chord bearing of North 87°08'04" East; Thence South 51°13'56" East for 39.55 feet; Thence South 01°41'59" East for 4.97 feet; Thence North 88°15'09" East for 29.99 feet to the easterly line of said Tract 62, the last eight (8) mentioned courses being coincident with said south right of way line; Thence South 01°44'53" East, along the easterly line of said Tract 62, for 390.47 feet to a point 500 feet south of the northerly line of said Tract 62; Thence South 88°15'07" West, along a line 500 feet south of and parallel with the north line of said Tract 62, for 660.00 feet to the easterly line of said PALM GARDEN PARK UNIT 2; Thence South 01°44'53" East, along the westerly line of said Lot 6 of PALM GARDEN PARK UNIT 2, for 170.01 feet to the Point of Beginning.

Together with:

Parcel A, DAVIE PROFESSIONAL CENTER, according to the plat thereof as recorded in Plat Book 141, page 12, of the Public Records of Broward County, Florida.

Said lands situate, lying and being in Broward County, Florida and containing 534,183 square feet (12.263 acres more or less).

**EXHIBIT "B"**

**Project Site Plan**

## EXHIBIT "C"

### Project Schedule

<u>Action</u>	<u>Date by which Action must be completed</u>
Final Site Plan Approval by Town Council	March 16, 2005
Demolition of all buildings and structures	February 28, 2005
Issuance of building permit for buildings A, B & C and parking garage without contiguous residential units	June 1, 2005
Final certificate of occupancy for all construction	36 months from 1st building permit for vertical improvements

EXHIBIT "D"

Description of Infrastructure Improvements  
and Costs Associated Therewith

<u>DESCRIPTION OF INFRASTRUCTURE IMPROVEMENT</u>	<u>ESTIMATED COST</u>
BURIAL OF ABOVE GROUND UTILITY LINES	\$1,000,000
ON-SITE WATER DISTRIBUTION SYSTEM	\$ 239,076 *
ON-SITE SANITARY SEWER COLLECTION SYSTEM	\$ 555,425 *
ON-SITE DRAINAGE SYSTEM	\$ 414,960 *
OFF-SITE DRAINAGE SYSTEM	\$ 169,375 *
WATER RETENTION SITE PURCHASE	\$ 465,000
LANDSCAPING	\$ 300,000
STREETSCAPE IMPROVEMENTS	\$ 125,000
DEMOLITION OF EXISTING BUILDINGS	\$ 110,000
STREET LIGHTS	\$ 70,000
<b>TOTAL</b>	<b><u>\$3,448,836</u></b>

\* A detailed engineering detailed preliminary opinion of probable costs is attached for these items.

PRELIMINARY COST ESTIMATE

PRELIMINARY COST ESTIMATE					DATE
PROJECT TITLE Downtown Davie Development				K&A PROJECT NO. 02105.01	12/1/2004
LOCATION Town of Davie					
OWNER Nob Hill Farmers, LLC					
ESTIMATED BY SB		CHECKED BY MC		APPROVED BY W	
ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE MAT. & LAB	ESTIMATED AMOUNT
<b>On-site Water Distribution System</b>					
1	8-inch DIP Water Main	1,383	LF	\$50.00	\$69,250.00
2	DIP Fittings	1,385	LF	\$10.00	\$13,850.00
3	10" X 8" Tapping Sleeve and Valve	1	EA	\$8,500.00	\$8,500.00
4	8" X 8" Tapping Sleeve and Valve	2	EA	\$8,000.00	\$16,000.00
5	Tie into Existing Water Main	3	EA	\$3,000.00	\$9,000.00
6	Fire Hydrant Assembly w/ 6-inch G.V.	5	EA	\$4,000.00	\$20,000.00
7	Fire Hydrant Assembly w/ 6-inch G.V.	6	EA	\$4,001.00	\$24,006.00
8	Filling and Flushing Connection	1	EA	\$3,000.00	\$3,000.00
9	Gate Valves	9	EA	\$2,300.00	\$22,500.00
10	Water Service	8	EA	\$4,000.00	\$32,000.00
11	Mixer Assembly	23	EA	\$400.00	\$9,200.00
12	Reduced Pressure Backflow Preventor	8	EA	\$500.00	\$4,000.00
13	Sample Point and Bacteriological Test	5	EA	\$1,000.00	\$5,000.00
14	Disinfection of 8" Water Main	1,383	LF	\$2.00	\$2,770.00
				Subtotal =	\$239,076.00
<b>On-site Sanitary Sewer Collection System</b>					
1	Sewer Manholes	8	EA	\$4,500.00	\$36,000.00
2	8" PVC Sanitary Sewer	1,603	LF	\$55.00	\$88,275.00
3	Single Sewer Service Lateral	18	EA	\$1,500.00	\$27,000.00
4	Cleanouts	13	EA	\$2,000.00	\$26,000.00
5	4" DIP Force Main	110	LF	\$65.00	\$7,150.00
6	8" X 4" Tapping Sleeve and Valve	1	EA	\$8,000.00	\$8,000.00
7	Connection to Existing Force Main	1	EA	\$3,000.00	\$3,000.00
8	Lift Station	1	LS	\$350,000.00	\$350,000.00
				Subtotal =	\$855,425.00
<b>On-site Drainage System</b>					
1	Catch Basins	23	EA	\$4,000.00	\$92,000.00
2	Drainage Manholes	10	EA	\$4,000.00	\$40,000.00
3	18" CMP	1,064	LF	\$45.00	\$47,880.00
4	24" CMP	824	LF	\$50.00	\$41,200.00
5	36" CMP	360	LF	\$55.00	\$19,800.00
6	48" CMP	141	LF	\$60.00	\$8,460.00
7	8" X 5' Exfiltration Trench	1,183	LF	\$95.00	\$112,385.00
8	18" CMP Perforated Pipe	1,183	LF	\$45.00	\$53,235.00
				Subtotal =	\$414,960.00



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