

# **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM:** Monroe D. Kiar

**SUBJECT:** Resolution

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE TOWN OF DAVIE AND NOB HILL PARTNERS, LLC FOR THE PURCHASE OF CONDOMINIUM OFFICE SPACE IN THE DEVELOPMENT REFERRED TO AS THE "DOWNTOWN DAVIE PROJECT".

**REPORT IN BRIEF:** The Town Administrator has requested the Town Attorney's Office to have the attached Resolution added to the Agenda for the Town Council Meeting of October 19, 2005.

**PREVIOUS ACTIONS:** N/A

**CONCURRENCES:** N/A

**FISCAL IMPACT:** Money to be provided through Development Services funds.

**RECOMMENDATION(S):** The Resolution is suitable for the Town Council review.

**ATTACHMENTS:** Resolution, letter dated October 17, 2005, from Attorney Stephen J. McDonald.

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

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE TOWN OF DAVIE AND NOB HILL PARTNERS, LLC FOR THE PURCHASE OF CONDOMINIUM OFFICE SPACE IN THE DEVELOPMENT REFERRED TO AS THE "DOWNTOWN DAVIE PROJECT".

WHEREAS, The Town Council previously authorized the Town Administrator to negotiate an agreement for the purchase of condominium office space in the development referred to as the Downtown Davie Project; and

WHEREAS, pursuant to the direction of the Town Council, the Town has negotiated an agreement with Nob Hill Partners, LLC; and

WHEREAS, the Town's special legal counsel for this matter, William Crawford, of the law firm of McDonald & Crawford, has reviewed the agreement and prepared his recommendations.

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

Section 1. The Town Council of the Town of Davie hereby agrees to enter into an agreement with Nob Hill Partners, LLC for the purchase of condominium office space in the development known as the Downtown Davie Project.

Section 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005

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

ATTEST:

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

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005

This is a Contract to acquire a condominium parcel in a Florida condominium. As such, Florida law requires the following to be placed on the first page of the Contract:

**ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY DEVELOPER.**

**STANDARD CONTRACT FOR SALE AND PURCHASE**

This Standard Contract for Sale and Purchase (the "Contract") is made between NOB HILL PARTNERS, LLC., a Florida limited liability company ("Seller") whose address is P.O. Box 02-9010, Fort Lauderdale, Florida 33302-9010, and Purchaser, whose name and U.S. address are set forth below, for the purchase of the Unit as set forth below.

**NAME AND ADDRESS OF PURCHASER:**

Purchaser: Town of Davie  
Social Security or Federal I.D. Number: \_\_\_\_\_  
Address: 6591 Orange Drive  
City: Davie  
State: Florida Zip: 33314  
Telephone: 954.797.1000

**UNIT:**

Purchaser hereby agrees to purchase, and Seller hereby agrees to sell and convey to Purchaser, the condominium parcel hereinafter described for the price and on the terms and conditions now about to be set forth. (All terms used herein with initial capital letters and quotation marks are defined later in this Contract).

The Unit is located in the office building known as Downtown Davie, a Condominium ("DTD") in Davie, Florida and is shown on the floor plan attached hereto and made a part hereof as Exhibit "A" (hereinafter collectively referred to as the A"Office Suite"). The Office Suite is comprised of units **201-248 and 301-350**, (collectively, the "Unit") of Downtown Davie, a Condominium as described in the Declaration (as hereinafter defined). In addition to the Unit, Purchaser is acquiring a percentage of undivided ownership interest in the common elements attributable to the Unit; and other appurtenances as described in and subject to the Declaration of Condominium of Downtown Davie, a Condominium ("Declaration") and any amendments thereto, as recorded or to be recorded in the Public Records of Broward County, Florida ("County"), furnished pursuant to Chapter 718, Florida Statutes, as amended through the date of execution of this Contract. (The terms "Office Suite" and "Unit" are used interchangeably within the Contract.)

**PURCHASE PRICE:**

The following items comprise the Purchase Price:	<u>Price</u>
Office Suite: Second, Third Floors plus pro rata 2/3 First floor lobby less pro rata 1/3 communications room(Building B) (unit numbers 201-248 and 301-350):	\$4,502,316.00
Upgrades and Options (see Addendum):	<b>\$-0-</b>
<b>TOTAL PURCHASE PRICE:</b>	<b>\$4,502,316.00</b>

**METHOD OF PAYMENT:**

Purchaser agrees to pay the TOTAL PURCHASE PRICE in U.S. currency to Seller as follows:

Deposit paid upon execution of this Contract by Purchaser, receipt of which is acknowledged, subject to collection	\$450,000.00
Balance of Total Purchase	\$4,052,316.00

**BROKERAGE**

The **provision initialed below** is selected by Purchaser:

         Purchaser hereby represents that the sale of the Unit pursuant to this Contract was facilitated by the following brokerage company:

\_\_\_\_\_, ("Broker"), as well as

  X   Purchaser hereby represents that no Broker was involved in facilitating this Contract except, Seller's Broker, None direct purchase from Seller.

The terms of this Paragraph shall be deemed to survive the closing of the purchase of the Unit and the default of either party. It is binding on Seller and Purchaser and on their respective successors and assigns.

**SCHEDULED CLOSING DATE:** May 1, 2007 (See Section C)

**STANDARD PROVISIONS:**

The Standard Provisions set forth on the following pages are incorporated herein and are an integral part of this Contract. Purchaser acknowledges having read same and agrees thereto.

IN WITNESS WHEREOF, the parties have hereunto affixed their respective hands and seals on the day and year set forth under their respective names.

**ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY DEVELOPER.**

\_\_\_\_\_  
PURCHASER Date: \_\_\_\_\_

**THIS CONTRACT SHALL NOT BE BINDING ON SELLER UNTIL FULLY EXECUTED BY SELLER.**

SELLER: NOB HILL PARTNERS, LLC., a Florida limited liability company

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Harvey Mattel, Managing Member

## STANDARD PROVISIONS

### A.UNIT

**1. Finalization of Unit Selection, Upgrades and Options.** Purchaser acknowledges that the Unit purchased, as well as the selection of upgrades and options, is FINAL once Seller has executed this Contract.

Any request by Purchaser for a change in the Unit or upgrades and options may or may not be accepted by Seller in the sole discretion of Seller.

**2. Upgrades.** Purchaser acknowledges that only those items specifically included in Exhibit "C" attached hereto entitled "Included Features" (receipt of which is hereby acknowledged by Purchaser) are included in the Unit.

**3. Included Features.** Purchaser acknowledges that the standard features specific to DTD are set forth in Exhibit "C" attached hereto entitled Included Features. All features are subject to availability, and to change or substitution as deemed advisable by Seller, its architect or its engineer, or as required by law. In the event the features are changed or substituted for at any time prior to closing, Seller agrees that such modifications will not substantially lessen the value of the Unit and Seller will provide substitutions which are of similar, equal or better quality. In the event the features are changed or substituted for, Purchaser agrees that Purchaser will accept such changes or substitutions without compensation and that this Contract shall remain in full force and effect.

**4. Square Footage of Office Suite.** The gross square footage of the Unit is 33,852 square feet, as shown on the building plans, representing the square feet in the Unit, including an agreed upon additional factor representing the proportionate share of the square footage of the common elements in the Condominium and other loss factors in the building comprising the Condominium ("Building"). By execution of this Contract, Purchaser agrees to the calculation of the gross square footage of the Unit and the determination of the Purchase Price. Purchaser further agrees that the reference to gross square footage as utilized herein is only for the purpose of calculating the Purchase Price. Purchaser further acknowledges that in preparing the survey to be attached as an exhibit to the Declaration and to be used in calculating the percentage interest appurtenant to each Unit, the square footages as finally determined by Seller's architect may differ from the preliminary measurement utilized in calculating the Purchase Price as certain items may be excluded from the calculations of area for purposes of complying with Chapter 718, Florida Statutes ("Act").

No such difference shall result in a modification of the Purchase Price payable pursuant to this Paragraph 4. Seller and Purchaser hereby agree that the gross square footage of the Office Suite as stated above. All dimensions and square footage indications are estimates only and Seller and Purchaser agree that they are conclusively bound by same.

PURCHASER

\_\_\_\_\_ Date: \_\_\_\_\_

## **B.ADDITIONAL CONSTRUCTION**

**1. Options.** The Purchase Price of the Unit includes those items shown on the document entitled Included Features attached hereto as Exhibit "C." Alternate selections or "upgrades" are available at Purchaser's option at an additional expense. Purchaser agrees that the options, changes, additions, deletions or other modifications in the construction of the Unit (the "Selections") desired by Purchaser and agreed to at the sole discretion of Seller shall be agreed upon in writing by Purchaser and Seller at the time of execution of this Contract and/or any Addendum. Any Selections purchased will require that one hundred percent (100%) of the costs of such Selections be paid to Seller by Purchaser at the time of execution of this Contract and/or Addendum therefor. Any changes to or additional Selections purchased after Purchaser has completed the Selection Process, as determined in the sole discretion of Seller, if accepted by Seller (which it shall have no obligation to do), will require that one hundred percent (100%) of the additional costs or charges incurred due to such changes to or additional Selections be paid to Seller by Purchaser at the time of execution of the Change Order Form. All such payments shall not be a deposit or any part of a deposit for the purchase of the Unit but are separate consideration paid by Purchaser to Seller to induce Seller to alter or amend Seller's plans, specifications and procedures to accommodate the preferences of Purchaser. Further, because of the personalized nature of the Selections, such payments shall not be refunded to Purchaser under any circumstances other than a default by Seller (which Seller fails to cure after notice and the expiration of the applicable cure period) without any default by Purchaser, and Seller shall be entitled to retain such payments in the event of a default by Purchaser as liquidated damages in accordance with the provisions of Section E.1 below.

**2. Unavailable Selections.** In the event an item selected by Purchaser on the Option Addendum is discontinued, changed, substituted for or otherwise made unavailable for installation, Purchaser shall promptly within five (5) calendar days and without compensation re-select that item from the choices made available by Seller. The quality of the item to be re-selected shall be similar to, equal to or better than the item originally selected; however, Purchaser acknowledges and accepts that significant differences may exist in availability. In the event Purchaser fails to timely re-select an item, Seller shall have the right to make such re-selection on behalf of Purchaser as it deems advisable to facilitate completion of construction and Purchaser agrees to accept such items as selected by Seller. In the event re-selection of an item is required, Purchaser shall not select an upgrade except at an additional cost to Purchaser and only upon approval by Seller.

**3. Changes to Options Selected.** If any options or changes are omitted by Seller, whether as required by law or for any other reason, Purchaser shall receive a refund of any amounts paid for each item omitted and Seller will have no further liability to Purchaser. The omission of an option shall not give Purchaser the right to terminate this Contract or otherwise require Seller to install or provide the omitted option.

The provisions of this Section B.3 shall survive the Closing and delivery of the Deed to Purchaser.

**4. Interior Improvements.** The Office Suite shall be completed in accordance with the preliminary floor plan for the floor in which the Office Suite is located and in accordance with the preliminary floor plan for the Office Suite, a copy of which is attached hereto as Exhibit "A." Purchaser, at its sole cost and expense shall complete all plans and specifications for its floor plan layout for interior improvements to the Office Suite which shall be consistent with the dimensions of Exhibit "A" (the "Interior Improvements"). No Interior Improvements are included in the Purchase Price. Purchaser is buying shell space only as described on Exhibit "C". All Interior Improvements shall be constructed by Purchaser at Purchaser's sole cost and expense after Closing.

PURCHASER \_\_\_\_\_

Date: \_\_\_\_\_

## C.CLOSING

**1. Title.** Seller shall convey fee simple title to the Unit to Purchaser by Special Warranty Deed, subject to: (a) the provisions of the Association Documents (hereinafter defined); (b) matters shown on any plat or replat of DTD or any portion thereof and/or matters shown on any plat or replat of Nob Hill Shoppes Commerce Center or any portion thereof; (c) taxes and assessments for the year of closing and subsequent years, including, but not limited to, pending and certified county or municipal improvement liens; (d) matters reflected on the Schedule of Specific Exceptions attached hereto as Exhibit B; (e) any other restrictions, reservations, conditions, limitations, easements and other matters of record prior to closing or imposed by governmental authorities having jurisdiction or control over the subject property; and (f) all laws, ordinances, regulations, restrictions, prohibitions and other requirements imposed by governmental authorities, including, but not limited to, all applicable zoning, building, land use and environmental ordinances, rules and regulations, and rights or interests vested in the United States of America and/or the State of Florida.

**2. Certificate of Occupancy.** Purchaser acknowledges that the Unit has not yet received a Certificate of Occupancy and further acknowledges that Closing will not occur until such time as a Certificate of Occupancy, or its equivalent, is obtained for the Unit by the appropriate governmental authority. In the event any Addendum requires additional work to be performed, the completion of construction shall be conclusively evidenced by a temporary or permanent certificate of occupancy or its equivalent for the additional work. The subsequent conveyance of title to the Unit from Seller to Purchaser will constitute full performance by Seller of all Seller's obligations under this Contract (except as set forth on the "Inspection List" described in Section C.5 below).

**3. Closing Date / Completion of Construction.** Seller cannot guarantee a firm completion and availability date if additional work is required by an Addendum, such advance projections being, and by their very nature having to be, approximate estimates. The closing date may change as a result of a number of factors including, by way of example but not limitation, the following: the time period necessary for the governing authority to issue a building permit, perform required inspections and issue the Certificate of Occupancy; inclement weather during the construction processes; casualty; acts of God; any requests by Purchaser for changes, additions, deletions or other modifications to the Unit subsequent to the completion of the Selection Process; and, unavailability of materials or labor problems during the construction process. Purchaser acknowledges that the actual closing date cannot be determined until the Certificate of Occupancy (temporary or final) for the Unit is issued by the governing authority. (The date on which any such Certificate of Occupancy is issued is herein referred to as the "Completion Date."). The Completion Date shall be extended for the foregoing reasons provided the Seller has proceeded to construct the Unit with due diligence in the ordinary course of business. However, if the Unit is not completed on or before December 31, 2008, because the Seller has failed to exercise due diligence in the ordinary course of business, within the Seller's control, then the Purchaser, at Purchaser's option, may elect by written notice delivered to the Seller between January 1, 2009 and March 1, 2009 elect to cancel this Contract, in which case, the Deposit together with accrued interest, if any, shall be returned to the Purchaser and this Contract shall be null and void. If Purchaser does not elect to cancel this Contract within the time period permitted, then the Purchaser's right to cancel this Contract due to delay in the completion of the Unit due to developers failure to exercise due diligence to construct the Unit is waived. Therefore, Purchaser acknowledges that any estimated closing date should not be relied upon for purposes of decision making including, but not limited to, locking in mortgage interest rates, sales of other property or terminating leases. Purchaser further acknowledges that Purchaser will not rely upon any representations by Seller's representatives with respect to any estimates of closing dates during the construction of the additional work, if any. Seller shall not be liable or held responsible for any loss, liability or claim arising out of Purchaser's reliance on an estimated closing date including, by way of example and not limitation, additional monies owed to extend rate lock periods, higher interest rates due to expiration of rate lock periods, additional or higher rental payments and/or rent penalties, moving expenses

and/or storage costs. The provisions of this paragraph control any provisions in this Contract or the Declaration in conflict herewith.

**4. Actual Closing Date.** Notwithstanding any date for the Scheduled Closing Date shown on page 1 of this Contract, in the event Seller has agreed to perform additional work, Purchaser shall close no later than ten (10) days after the date of the issuance of the temporary, partial or final Certificate of Occupancy for the additional work, unless Seller in its sole discretion extends the closing to a later date, on the date stated in a written notice from Seller or Seller's closing agent, which notice shall be personally delivered or mailed to Purchaser, advising Purchaser of the scheduled date of closing (the "Scheduled Closing Date"). In the event Seller has not agreed to do any additional work to the Unit, the Scheduled Closing Date shall be on the date shown on page 1 of this Contract. The closing shall be deemed to have occurred on the date that Seller receives all funds due from Purchaser, including Purchaser's mortgage proceeds, if any (the "Actual Closing Date"). If Purchaser is unable to close on the Scheduled Closing Date for any reason whatsoever, including but not limited to the unavailability of funds from Purchaser's mortgage lender or another third party, Purchaser shall be in default. Purchaser further acknowledges that it is Purchaser's sole responsibility to ensure that Purchaser's lender is ready to close on time because any delay will cause Purchaser to be in default. In the event of such default, at Seller's option and without limiting the generality of Section E.1 below, Seller may postpone the closing, in which event Purchaser agrees to pay interest on the Purchase Price at the highest non-usurious rate allowed by law or, if no rate is provided, then eighteen percent (18%) per annum from the Scheduled Closing Date until the Actual Closing Date, and further agrees that the prorations for taxes and maintenance shall be as of the Scheduled Closing Date. The parties agree that such interest charge constitutes liquidated damages to Seller for actual costs incurred and loss of interest by Seller as a result of the delay in closing. Such interest shall be charged on the closing statement through the Actual Closing Date. If Seller elects to postpone the closing, Purchaser agrees to close on the date to which closing is postponed. Should Purchaser desire to close by mail rather than in person, Seller will attempt to (but shall not be obligated to) accommodate Purchaser within the parameters of this Contract. However, any delays caused by such procedures, including delays in mail delivery, shall be the responsibility of Purchaser and shall not relieve Purchaser of the obligation to close by the Scheduled Closing Date or to pay liquidated damages as provided above. The provisions of this paragraph shall survive the closing.

**5. Inspection Prior to Closing.** Purchaser will be given an opportunity prior to closing, on the date and at the time scheduled by Seller, which shall be the day before or morning of closing, to inspect the Unit with a representative of Seller. At the time, Purchaser will sign an inspection statement listing any defects in workmanship or materials ("Inspection List") (keeping in mind the construction standards applicable in Broward County for similar property). Seller will be obligated to correct those defects at its cost. Seller shall be obligated to correct those defects at its cost within a reasonable period of time after closing, but Seller's obligation to correct will not be grounds for deferring the closing, nor for imposing any conditions on closing.

Also, Purchaser recognizes that at the time of closing, the Unit will have a certificate of occupancy but that Seller may still be in the process of completing the finishing details. Purchaser agrees that this will not be grounds for deterring or imposing any conditions on closing. **NO ESCROWS OR HOLDBACKS OF CLOSING FUNDS WILL BE PERMITTED.** If Purchaser fails to take advantage of the right to a pre-closing inspection on the date and time scheduled by Seller, Purchaser will be deemed to have waived that right and Seller will not be obligated to reschedule Purchaser's inspection date prior to closing. Purchaser may not order any work on the Property (other than options or extras which Seller agrees in writing to provide) until after closing. Purchaser's breach of these provisions will be a default and entitle Seller immediately to its remedies for default. Before the date of closing, Seller shall obtain from the proper governmental agency a certificate of occupancy or completion for any additional work which Seller has agreed to perform to the Unit.

**6. Place of Closing.** Closing shall take place in the office of Seller or its designated agent in Broward County, Florida. All monies required to be paid by Purchaser hereunder and at closing shall be in U.S.

currency in the form of a cashier's check drawn upon a financial institution with offices in Broward County, Miami-Dade County or Palm Beach County, Florida, or by wire transfer in the form of federal funds.

**7. Purchaser's Closing Expenses.** At the closing, Purchaser shall also pay: (i) a reimbursement to Seller of utility deposits and/or installation or new service connection charges paid by Seller with respect to the Unit, if any; (ii) all costs and fees payable in connection with any mortgage that Purchaser may obtain for the purchase of the Unit, which costs are variable depending on the mortgage lender plus a fee of \$750 payable to Seller's closing agent to coordinate the loan closing; (iii) a working fund contribution to the Association (or to Seller if paid by Seller to the Association in advance of closing) equal to two (2) months' share of Association assessments and the Master Association assessments pursuant to the then current Estimated Operating Budget of the Association; (iv) Purchaser's prorated share of the Association assessments for the assessment payment period in which closing occurs and for the following assessment payment period; and (v) the cost of a final survey, not to exceed \$450, for Purchaser or Purchaser's lender. Purchaser shall pay to Seller the sum of one and seven-tenths percent (1.7%) of the Purchase Price for closing costs, which costs shall include the costs of officially recording the Special Warranty Deed, the documentary stamp tax payable on the Special Warranty Deed, the fee charged by the closing agent and the premium for the issuance of an owner's title insurance policy to Purchaser at the promulgated rate (as more particularly set forth in Section C.8 below). For purposes of this paragraph, the Purchase Price of the Unit shall be deemed to include the Total Purchase Price set forth on the first page of the Contract plus (to the extent not already included therein) the cost of any options purchased pursuant to any Option Addendum, Change Order Form(s) or otherwise. Purchaser shall pay all utility charges for the Unit purchased from and after the date of closing. Certified, confirmed and ratified special assessment liens as of the Scheduled Closing Date shall be paid by Seller; however, to the extent any such certified, confirmed or ratified special assessment liens are payable in installments, Purchaser shall take title subject to such liens and assume and be responsible for the balance of any installments which are payable after the Scheduled Closing Date. Pending liens as of the Scheduled Closing Date and special assessment liens which become certified, confirmed or ratified after the Scheduled Closing Date shall be the responsibility of and paid by Purchaser. The provisions of this paragraph shall survive the closing.

**8. Title Insurance.** A standard ALTA marketability owner's title insurance commitment and policy shall be provided to Purchaser at Seller's expense. The owner's title insurance commitment and policy will be subject to real estate taxes for the year of closing, the Association Documents, and those matters set forth in Section C.1 above. The standard printed exceptions appearing in the title insurance commitment shall be deleted at closing. Seller shall not provide an abstract of title or any other type of title information for the Unit. Seller's agreement to pay for a title insurance policy as provided above is based on the assumption that the cost of title insurance at closing will be based on the minimum rates promulgated by the Florida Insurance Commissioner which are in effect as of July 1, 2002. In the event such rates increase prior to closing and the cost of the title insurance provided by Seller increases accordingly, then Purchaser shall pay Seller for such additional cost at closing. Purchaser shall pay for any title insurance required by any lender used by Purchaser.

**9. Prorations.** Real estate taxes, less any available discount, the assessments payable to the Association and the Master Association and any other proratable items shall be prorated as of the Scheduled Closing Date, unless possession is delivered to Purchaser prior to the closing, in which event the proration shall be as of the date of delivery of possession. Nothing herein shall require Seller to deliver possession of the Unit to Purchaser prior to the Actual Closing Date. Any tax proration at closing based upon an estimate shall be subsequently readjusted at the request of either party to the transaction upon receipt of a tax bill. Any interim service fees, which have been prorated by the municipality and paid for by Seller at issuance of the certificate of occupancy, shall be reimbursed by Purchaser at closing. The provisions of this paragraph shall survive the closing.

**10. Errors in Bookkeeping.** Errors in bookkeeping include errors in: the transfer of numbers between

Contract documents; summation errors within this Contract, subsequent addendum(s) and the settlement statement; and, any other mathematics pertaining to this Contract which are clerical in nature. Purchaser and Seller have the right to demand that errors in bookkeeping be corrected. Purchaser has the obligation to pay to Seller the dollar amount of any error in bookkeeping understating the correct Total Purchase Price. Purchaser is entitled to a credit of the dollar amount of any error in bookkeeping overstating the correct Total Purchase Price. Errors in bookkeeping discovered at or prior to closing shall be settled between Purchaser and Seller at the closing. Errors in bookkeeping discovered subsequent to closing shall be settled by the appropriate transfer of funds between the parties in a timely manner. The provisions of this paragraph shall survive the closing.

**11. Possession.** Possession shall be delivered simultaneously with the Actual Closing Date.

**12. Documents.** Seller shall furnish to Purchaser at time of closing a No Lien Affidavit, a copy of the temporary or permanent certificate of occupancy for any additional work and a Special Warranty Deed.

**13. Acceptance of Deed.** The acceptance of a deed by Purchaser shall be deemed to be full performance and discharge of every agreement and obligation on the part of Seller to perform pursuant to the provisions of this Contract, except those which are herein specifically deemed to survive the Closing or which survive the Closing by operation of law.

\_\_\_\_\_ Date: \_\_\_\_\_

PURCHASER

## D.ASSOCIATION

**1. Development Plan.** DTD is a proposed development known as Downtown Davie, a Condominium which will consist of eight (8) Buildings ("Building"). DTD is being developed by Seller in accordance with the plan of development described in the Declaration. The condominium will be built in phases. DTD is a mixed use condominium containing commercial retail space, commercial office space and residential units.

Purchaser acknowledges that there will be one (1) condominium association responsible for the management of DTD. Upon conveyance of the Unit to Purchaser, Purchaser shall become a member of the Downtown Davie Condominium Association, Inc. ("Association"). Every purchaser, by acceptance of a deed to a unit in DTD, acknowledges that he or she is subject to and bound by the "Association Documents" (as hereinafter defined). The Association Documents consist of the Declaration, the Articles of Incorporation of Downtown Davie Condominium Association, Inc., ("Association"), and the Bylaws of the Association, all as may be amended or supplemented from time to time (collectively the "Association Documents"). Purchaser acknowledges receipt of the current Association and a current Estimated Operating Budget of the Association and agrees to be bound by, and take title to the Unit subject to, the Association Documents. Seller reserves the right to modify any of the Association Documents, as Seller, governmental authorities, title insurers, mortgage lenders, or job conditions require or deem necessary; provided, however, that the size of the Unit may not be modified without Purchaser's consent.

**2. Membership in Association.** Purchaser acknowledges that, as owner of the Unit, Purchaser will be a member of the Association, subject to all of the respective rights and obligations applicable to a member of the Association. Purchaser acknowledges that Purchaser is liable for the payment of all fees and assessments applicable to Purchaser as owner of the Unit under the Declaration, and that the Unit will be subject to a lien as security for the payment of such fees and assessments. Purchaser acknowledges that Seller, as Declarant under the Declaration, may use the working capital fund contributions paid by Purchaser pursuant to Section C.7 hereof to offset Association Expenses (as defined in the Association Documents). Purchaser also acknowledges that Seller may have to advance money to the Association to permit it to pay for certain of its start-up expenses (which may include, by way of example but not limitation, insurance premiums, utility charges and deposits, permit and license fees, fees under service contracts, landscape maintenance, management fees and other similar expenses) and Seller is entitled to reimbursement from the Association for all of these expenses advanced by Seller. The Association may reimburse Seller out of assessments and the working capital fund contributions paid by Purchaser and the purchasers of other units in DTD or by way of credit against any obligation Seller may have to the Association, at Seller's election. Purchaser acknowledges and agrees that construction of all improvements, and any modifications or additions thereto, will be subject to the requirements of the Declaration, any design guidelines promulgated under the Declaration and approval by the Association. Purchaser further acknowledges that the Association will be controlled by Seller and that Seller will be entitled to operate the Association until such time as control of the Association is turned over to the unit owners.

**3. Maintenance of Common Elements.** Purchaser acknowledges that, except as may be otherwise provided herein or in the Association Documents, the Association is responsible for all maintenance and repair of the common elements within DTD as defined in the Declaration which may include, but not be limited to, the following: drives; landscaping; irrigation and lighting. The costs and expenses of the operation, maintenance and repair of the common elements which are maintained and repaired by the Association are shared by all owners in DTD. Notwithstanding the preceding, an owner may be additionally required to maintain certain portions of common elements pursuant to the Association Documents. All of the foregoing maintenance obligations are more fully described in the Association Documents.

**4. Estimated Operating Budget.** Purchaser understands that: (a) the Estimated Operating Budget of the Association provides only an estimate of what it will cost to run the Association when DTD is fully constructed and (b) the Association may make changes in the Estimated Operating Budget at any time to cover increases or decreases in actual or estimated expenses. Purchaser also understands that the assessments for the Unit as shown in the Estimated Operating Budget are not guaranteed, except to the extent and only in the manner provided (if at all) in the Association Documents, and Seller is not obligated to pay assessments on the Units and other property owned by Seller. Purchaser acknowledges and agrees that assessments payable by Purchaser may also change based on, among other things, the costs of operating and maintaining the common elements.

**5. No Amendment.** The provisions of this Section D shall survive closing; however, the provisions of this Section D are not intended to and shall not be deemed to modify, amend or otherwise alter the Association Documents.

PURCHASER

\_\_\_\_\_ Date: \_\_\_\_\_

## E. OPERATION OF CONTRACT

**1. Purchaser's Default.** In the event that Purchaser shall default in the performance of the obligations to be performed by Purchaser pursuant to this Contract, including, but not limited to, the timely payment of additional deposits, if and as required, and timely closing and funding of proceeds, Seller shall retain a sum equal to all deposits tendered, plus all payments for options made pursuant to Section B.1 above and/or any Option Addendum or Change Order Form(s). The foregoing sum, in view of the impossibility of accurately ascertaining the loss which Seller will suffer by reason of Purchaser's default hereunder, is hereby fixed and agreed as the liquidated damages which Seller will suffer by reason of such default and not as a penalty. Purchaser acknowledges that this sum is fair and reasonable. In the event that Purchaser shall default in the performance of any of its obligations which by the terms of this Contract survive closing, Seller shall be entitled to all remedies available under applicable law. Seller, in its sole discretion, may unilaterally extend Purchaser's time frames to comply with any requirements of this Contract. Seller's failure to exercise, or delay in exercising, any of its rights or remedies shall not be construed as a waiver of any such right or remedy or a waiver of any default of Purchaser nor shall it prevent or impair the later exercise of such right or remedy by Seller. The provisions of this paragraph shall survive closing.

**2. Seller's Default.** If for any reason whatsoever Seller shall default in the performance of any of the obligations to be performed by Seller pursuant to this Contract, Purchaser shall give Seller written notice of such default. If Seller within seven (7) days from receipt of such written notice shall fail to take action that would cure the default within a reasonable period of time, and if Purchaser has performed all Purchaser's obligations hereunder, Purchaser shall have the option to cancel this Contract by giving written notice thereof to Seller and upon cancellation Seller shall refund to Purchaser all monies paid by Purchaser to Seller hereunder, in which event this Contract shall be terminated and neither party shall have any claim against the other. Nothing contained herein shall be deemed to restrict Purchaser's remedy of specific performance of this Contract. The foregoing shall be Purchaser's sole remedies.

**3. Attorney's Fees.** In connection with any litigation arising out of this Contract, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorneys' fees, through and including all appellate levels. The provisions of this paragraph shall survive the closing and any termination of this Contract prior to closing.

**4. Construction Interference.** Purchaser agrees that all matters pertaining to construction will be discussed by Purchaser only at the office of Seller and that Purchaser and Purchaser's agents and representatives shall not in any way interfere with workmen during the time any additional work is being performed or completion of the work specified in the Inspection List. Purchaser further agrees that Purchaser and Purchaser's agents and representatives shall not visit the construction site without Seller's prior written consent, which Seller may grant or deny in Seller's sole discretion. Seller shall not be liable or responsible for any injury, loss or damage resulting from any violation of this paragraph or any visit to the construction site by Purchaser or Purchaser's agents or representatives. In addition, Purchaser agrees to indemnify and hold Seller harmless from and against any and all injury, loss or damage (including, without limitation, reasonable attorneys' fees and court costs at trial and through all appellate levels and whether or not suit be brought) arising out of or in connection with any violation of this paragraph or any visit to the construction site by Purchaser or Purchaser's agents or representatives. Purchaser also agrees that prior to closing, Purchaser and Purchaser's contractors, subcontractors, agents and representatives shall not apply for any building permit with respect to the Unit for any modifications to the Unit, and that any such building permit application prior to closing may result in a delay in the issuance by the appropriate governmental authority of a certificate of occupancy for any additional work which Seller may have agreed to perform in the Unit and a delay in closing. In the event of any such building permit application prior to closing, in addition to any other remedies provided for in this Contract, Seller may charge Purchaser, and Purchaser

agrees to pay, an interest charge as liquidated damages in accordance with the provisions of Section C.4 above. The provisions of this paragraph shall survive the closing and any termination of this Contract prior to closing.

**5. Sales Interference.** Purchaser agrees not to interfere in any manner whatsoever in the sales process (including, without limitation, by picketing or distributing flyers or other literature) with other purchasers or prospective Purchasers in, near or around or in the vicinity of DTD or any other project owned or developed by Seller or any of its affiliates. In the event of interference, in addition to any remedies provided for in this Contract, Seller may seek remedies available under applicable law. Purchaser agrees that monetary damages will not be a sufficient remedy for a violation of this paragraph and Seller shall be entitled to injunctive relief in addition to any other remedies available under law. The provisions of this paragraph shall survive the closing and any termination of this Contract prior to closing.

**6. Contract Subordination.** This Contract is subordinate and subject to any mortgage which Seller may obtain to finance the purchase of DTD or any portion of the construction of DTD, or any mortgage the proceeds of which are used to satisfy any such mortgage, and any modifications of such mortgages, even if such mortgages (and modifications of such mortgages) are made or recorded after the date of this Contract. The provisions hereof shall be self-executing, but Purchaser agrees upon request of Seller to execute any document of subordination as reasonably requested by Seller or any mortgage lender. If a mortgage encumbers the Unit at the time of closing, Seller may use Purchaser's closing funds to obtain a partial release of such mortgage after the closing. Neither this Contract, nor Purchaser's payment of deposits or payment for options, shall give Purchaser any lien or claim against the Unit or DTD. The provisions of this paragraph shall survive the closing and any termination of this Contract.

**7. Assignment of Contract.** This Contract is personal to Purchaser and cannot be assigned without the prior written consent of Seller, which consent may be arbitrarily withheld by Seller, in Seller's sole discretion. If so approved by Seller, any assignment shall be subject to the provisions of the Association Documents and no such assignment shall release Purchaser of its obligations under this Contract. Any attempted assignment in violation of this provision shall be void.

**8. Sale of Unit after Closing.** As a material inducement for Seller to sell the Unit to Purchaser at the Purchase Price and terms stated in this Contract, Purchaser (i) must take occupancy of the Unit, (ii) utilize the Unit for the purposes of offices for the Town of Davie, and (iii) is prohibited from selling, listing or advertising the Unit, or any part thereof, for sale in any real estate listing service and/or publication, or on any online electronic medium or on any radio, television or any other medium for advertising, for a period of not less than three years after the later of Closing or completion of Purchaser's Interior Improvements and Purchaser having commenced the utilization of the Unit for office space for the Town of Davie. This paragraph shall survive Closing or any termination of this Contract.

**9. No Joint Venture.** This Contract does not create a joint venture between Purchaser and Seller. The only relationship created by this Contract is that of an arms-length business contract for the purchase and sale of the Condominium Parcel described in this Contract.

**10. Persons Bound.** This Contract, together with any amendments, modifications and/or addenda thereto, shall be construed in accordance with the laws of the state of Florida and shall, except as otherwise expressly provided herein, bind and inure to the benefit of the heirs, personal representatives, executors and successors of Purchaser and Seller. If more than one person is signing this Contract as Purchaser, all such individuals are jointly and severally bound.

**11. Notices.** Unless notice of change of address is given in writing, notices shall be deemed duly sent if mailed to either Seller or Purchaser at their respective addresses as listed on the front page hereof. Except as specifically provided herein to the contrary, every notice, demand or request hereunder shall be in writing, and shall be deemed to have been duly given or made if either delivered personally or mailed by registered or certified mail, return receipt requested, addressed as set forth in the previous sentence. Any such notice, demand or request by mail shall be deemed received on the date appearing on the return receipt thereof.

Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been received by Seller shall constitute receipt of the notice, demand or request sent on the date such notice was attempted to be sent by registered or certified mail, return receipt requested, addressed as set forth above. The signature of an employee, family member or any other person at the designated address shall be deemed to constitute receipt by the addressee. If Purchaser is not a resident of the United States, Purchaser shall designate a United States resident as agent for the purposes of accepting notices under this Contract and such person shall be listed on the local address section on the front page of this Contract. Notwithstanding the foregoing, notice of the acceptance of this Contract by Seller may be made by first class mail, and this Contract shall be deemed accepted by Seller on the day a fully executed copy hereof is either personally delivered to Purchaser or deposited in the U.S. mail.

**12. Recording of Contract.** Purchaser shall be in default by recording this Contract or any memorandum or other document referring to or describing this Contract, in the Public Records of any county in the State of Florida. Further, Purchaser shall not record any lis pendens against the Unit or DTD in the Public Records of any county in the State of Florida. The provisions of this paragraph shall survive closing and any termination of this Contract.

**13. Time.** Time is of the essence with regard to all provisions of this Contract. All references in this Contract to days shall mean calendar days (and not business days); however, any time period provided for in this Contract which would end on a Saturday, Sunday or legal holiday shall be deemed extended to the next business day immediately following such Saturday, Sunday or legal holiday.

**14. Amendment.** Except as expressly provided herein to the contrary, this Contract may only be amended or modified by an instrument in writing signed by Purchaser and Seller. This Contract may not be changed or terminated orally.

**15. Entire Agreement.** This Contract contains the entire agreement of the Parties. Only the written terms of this Contract may be relied upon by Purchaser. Purchaser acknowledges that oral representations made by Seller or Seller's agents cannot be relied upon and are not a part of this Contract. This Contract is the last repository of all prior written and oral dealings between Purchaser and Seller and no precontract dealings in conflict with this Contract may be relied upon by the Purchaser or are binding upon the Seller.

**16. Severability.** Should any provisions or portion of this Contract be found or ruled to be invalid by a court of competent jurisdiction, the same will not invalidate the remaining provisions of this Contract, which provisions will remain in full force and effect. Without limiting the generality of the foregoing and notwithstanding anything to the contrary in this Contract, if any provisions of this Contract are unenforceable, then all of those provisions are hereby deleted and made null and void as if never a part of this Contract.

**17. Captions.** Captions contained in this Contract are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Contract or the intent of any provision thereof.

PURCHASER

\_\_\_\_\_ Date: \_\_\_\_\_

## **F.ADDITIONAL DISCLOSURES & ACKNOWLEDGMENTS**

**1. Receipt of Documents and Exhibits.** Purchaser acknowledges receipt of copies of the following documents and exhibits:

Association Documents;  
Estimated Operating Budget of the Association;  
Schedule of Specific Exceptions;  
Included Features;  
Option Addendum, if applicable.

**Purchaser hereby acknowledges that the Association Documents and the documents listed above are subject to change by Seller.**

**2. Seller's Representations.** Purchaser acknowledges that neither Seller nor any of its agents or representatives has made any representation of any kind as to tax or other economic benefits or advantages, if any, which may be realized from owning the Unit, nor any representations as to the ability or willingness of Seller or its affiliates to assist Purchaser in renting or selling the Unit. In addition, Purchaser acknowledges that neither Seller nor any of its agents or representatives has made any representation, warranty or guarantee of any kind whatsoever upon which Purchaser has relied as to the land use plan designation, zoning, current or future uses, or any other matters with respect to any property which is located adjacent to or in the vicinity of DTD. Purchaser further acknowledges that Purchaser is responsible to make its own investigation of any such matters with the city, county, state or any other governmental agencies with jurisdiction, and Seller has no duty or obligation to disclose any such matters or any liability therefor.

Purchaser warrants that Purchaser has not relied upon any verbal representations, advertising, portrayals or promises other than as expressly contained herein and in the Association Documents. The provisions of this Paragraph 2 shall survive the closing.

**3. Risk of Loss.** If the Unit is damaged by fire or other casualty after the date of this Contract, but prior to the closing of the Unit, then Seller shall be financially responsible for the loss. In such event, the Completion Date and the Scheduled Closing Date shall be extended until such repairs have been made by Seller. If, however, such damage occurs after the closing of the sale of any Unit, then the Association, in accordance with the Association Documents, shall have the right to decide whether or not to repair the Unit. After the Closing, neither the Association nor the Seller shall be financially responsible to Purchaser for the loss of any property lying within the boundaries of the Unit, including but not limited to, personal property of Purchaser.

In the event Seller or the Association decides to repair the damage, then Seller and/or the Association shall have a reasonable time to complete repairs. Any such repair work will be judged by the same standards used to evaluate new construction. In the event of the foregoing, Purchaser shall not have any right to a reduction in the total Purchase Price, nor have any claim against Seller or the Association, and Purchaser agrees to accept title on the Closing Date (provided the repairs are finished by the Closing Date). Any monies that Seller and/or Association receive in settlement of any damages (insurance, etc.) will belong to Seller and/or Association, as the case may be. In the event Purchaser receives any money in connection with the damage, then Purchaser shall deliver such funds to Seller or the Association as the case may be. If Seller or the Association elects not to repair the damage, then and in that event, this Contract shall be cancelled and all deposits shall be returned to Purchaser, and the parties shall be relieved of all further obligations hereunder. The provisions of this paragraph shall survive the closing or termination of this Contract.

**4. Real Estate Brokerage.** Except as shown on page 1, Purchaser covenants and represents to Seller that Purchaser has dealt only with Seller's broker, **none/no Broker**, and has not dealt with any other real estate broker or salesperson in connection with this transaction. Purchaser agrees to indemnify and hold Seller harmless from any claim whatsoever by any other real estate broker or salesperson for any commission and for the costs and expenses of defending any claim for commission including, without limitation, reasonable attorneys' fees, arising out of or related to this transaction. Broker's statements shall not be

attributable to or binding upon Seller. The provisions of this paragraph shall survive the closing and the termination of this Contract prior to closing.

**5. Radon Disclosure.** Florida Law requires the following disclosure: RADON GAS - Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**6. Waiver of Trial by Jury.** SELLER AND PURCHASER HEREBY MUTUALLY, KNOWINGLY AND VOLUNTARILY WAIVE THE RIGHT TO A TRIAL BY JURY, AND NEITHER OF THEM SHALL SEEK A TRIAL BY JURY, IN ANY LAWSUIT OR PROCEEDING (INCLUDING, WITHOUT LIMITATION, ANY COUNTERCLAIM) BASED UPON, ARISING OUT OF OR RELATED TO THIS CONTRACT OR THE TRANSACTION CONTEMPLATED BY THIS CONTRACT. THE WAIVER CONTAINED HEREIN IS IRREVOCABLE AND SHALL BE SUBJECT TO NO EXCEPTIONS. SELLER AND PURCHASER HEREBY ACKNOWLEDGE HAVING READ AND UNDERSTOOD THE MEANING AND RAMIFICATIONS OF THE WAIVER PROVISION.

Purchaser

\_\_\_\_\_ Date: \_\_\_\_\_

## G.ESCROW OF DEPOSIT MONIES

1. Seller has established an escrow account in accordance with Section 718.202 of the Condominium Act, Florida Statutes (the "Act") with Ruden, McClosky, Smith Schuster & Russell, P.A. ("Escrow Agent"), whose address is 200 East Broward Boulevard, Suite 1500, Fort Lauderdale, Florida 33301, Attention: Mark F. Grant, Esquire (which account shall hereinafter be referred to as the "Escrow Account"). Seller reserves the right to designate a different Escrow Agent ("New Escrow Agent") provided the New Escrow Agent is one of the parties designated by Section 718.202 of the Act. In the instance where this Contract is executed prior to the Completion Date, all deposit monies received by Seller from Purchaser prior to Closing pursuant to this Contract shall be deposited in the Escrow Account until the amount deposited shall equal ten percent (10%) of the Purchase Price. Such payments shall be held in the Escrow Account, together with payments of other purchasers of units in DTD. Purchaser may, upon written request to the Escrow Agent, obtain a receipt for his deposit. Purchaser, by his execution of this Contract, expressly authorizes the Escrow Agent to disburse Purchaser's payments held in the Escrow Account to Seller upon written notice to the Escrow Agent by Seller that Closing has occurred or that Purchaser is in default as provided herein, whichever shall first occur. Escrow Agent is hereby authorized to act and rely exclusively on this last stated authorization as its instruction from Purchaser to so release such payments held in the Escrow Account. Purchaser agrees to indemnify and hold Escrow Agent harmless from any claims or damages which may result from Escrow Agent's escrowing or disbursing of Purchaser's payments held in the Escrow Account other than those claims or damages resulting from Escrow Agent's gross negligence or willful malfeasance.

2. Seller has also established a special escrow account ("Special Escrow Account") in accordance with Section 718.202 of the Act with Escrow Agent. In the instance where this Contract is executed prior to the Completion Date, any deposit monies paid to Seller prior to Closing in accordance with this Contract in excess of ten percent (10%) of the Purchase Price shall be held in the Special Escrow Account, together with other deposits in excess of ten percent (10%) of the Purchase Price of units of other purchasers in DTD. Purchaser agrees that the funds deposited in the Special Escrow Account may be withdrawn by Seller when the construction of improvements for DTD has begun and may be used in accordance with Section 718.202 of the Act. Purchaser expressly authorizes the Escrow Agent to disburse monies held in the Special Escrow Account to Seller upon request of Seller provided Seller shall state in such request that construction of improvements has begun and the Escrow Agent is entitled to rely on this authorization so as to release to Seller such payments from the Special Escrow Account. Purchaser agrees to indemnify and hold the Escrow Agent harmless from any claims or damages which may result from its escrowing or disbursing of Purchaser's payments held in the Special Escrow Account other than those claims or damages resulting from its gross negligence or willful malfeasance. Further, any of Purchaser's payments remaining in the Special Escrow Account may be withdrawn by Seller at the Closing or upon default by Purchaser as provided herein upon written authorization by Seller to the Escrow Agent of the fact of such default or the fact of such Closing and the Escrow Agent is hereby authorized to act and rely exclusively on these authorizations so as to release to Seller such payments held in the Special Escrow Account.

Date: \_\_\_\_\_

PURCHASER

## H.LIMITATION OF WARRANTIES

1. Prior to Closing and upon notice from Seller, Purchaser shall have the right to inspect the Unit and the common elements. Purchaser hereby agrees that from and after the Closing, Purchaser shall not make or bring, and shall not support the bringing of such action by others, any claim or action whatsoever against Seller or Seller's agents with respect to the dimensions of the Unit or the common elements, the materials employed in the construction of the Unit or the common elements, the materials employed in the construction of the Unit or the common elements, or the quality of workmanship or the merchantability or fitness of the Unit or the common elements or fixtures or items of personal property sold pursuant to this Contract, or the merchantability or fitness thereof, except such claims or actions as may be permitted by Paragraph 2 below.

2. Purchaser acknowledges that at the time of execution of this Contract, Seller has no reason to know of any particular purpose of Purchaser in purchasing the Unit and items of personal property sold pursuant to this Contract other than for normal governmental office use. Purchaser acknowledges and agrees that the only warranties applicable to the Condominium are those that may validly be imposed thereon by statutory law on the date hereof, as set forth in Section 718.203, Florida Statutes, as such section exists as of the date of this Contract ("Sole Warranties"). Purchaser further acknowledges and agrees that, to the extent allowed by law, Seller makes no other express or implied warranties whatsoever in regard to the Unit, the common elements, any fixtures or items of personal property sold pursuant to this Contract or any other real or personal property whatsoever sold hereby.

3. Notwithstanding anything to the contrary in this Contract, Purchaser acknowledges and agrees that Seller shall be irreparably harmed if Purchaser undertakes the repair or replacement of any defective portion of the Unit, common elements, fixtures, items of personal property or any other real or personal property in connection with the Unit during the time in which the Sole Warranties remain in effect. Accordingly, Purchaser hereby agrees: (i) to promptly, upon Purchaser's knowledge of the existence of any such defective portion, provide written notice to Seller specifying each such defective portion, upon the receipt of which Seller shall have sixty (60) days ("Repair Period") to commence to repair or replace such defective portion and diligently pursue the completion thereof; or (ii) not to repair, replace or otherwise adjust any such defective portion during the Repair Period; provided, however, that if Seller fails to commence the repair or replacement of such defective portion within the Repair Period, Purchaser may repair or replace same. If Purchaser fails to comply with the provisions of this Paragraph 3, Purchaser will be deemed to have breached his obligation to mitigate damages and Purchaser's conduct shall constitute an aggravation of damages. If Seller does not commence repairs within the Repair Period, or if Seller fails to diligently attempt to complete repairs within the Repair Period, then Purchaser may avail itself of remedies available to it pursuant to Section 718.203 Florida Statutes.

**SELLER MAKES THIS WARRANTY EXPRESSLY IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES CONCERNING THE UNIT SOLD OR TO BE CONSTRUCTED HEREUNDER AND THE PROPERTY SOLD HEREUNDER OR PREVIOUSLY PURCHASED FROM SELLER, AND ANY OTHER REPRESENTATIONS, STATEMENTS OR PROMISES MADE BY ANY PERSON ARE UNAUTHORIZED AND ARE NOT BINDING UPON SELLER. ALL OTHER WARRANTIES WITH RESPECT TO THE UNIT AND THE PROPERTY HEREUNDER ARE HEREBY DISCLAIMED, TO THE EXTENT PERMITTED BY LAW, WHETHER IMPLIED OR ARISING BY OPERATION OF LAW, COURSE OF DEALING, CUSTOM AND PRACTICE, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF HABITABILITY, MERCHANTABILITY, AND FITNESS FOR PARTICULAR PURPOSE; AND PURCHASER REPRESENTS THAT PURCHASER HAS READ AND UNDERSTOOD THIS PROVISION, AND THAT PURCHASER UNDERSTANDS AND AGREES**

**THAT BY ENTERING INTO THIS CONTRACT AND ACCEPTING THE BENEFITS OF THE LIMITED WARRANTY DESCRIBED ABOVE, PURCHASER HAS KNOWINGLY RELINQUISHED ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE REGARDING THE UNIT AND THE PROPERTY.**

It is hereby agreed that the maximum liability of Seller under the Sole Warranties shall be the replacement cost of the defective portion of the Unit, common elements, fixtures, items of personal property or other real or personal property. Seller shall have the sole right to determine whether the defect shall be corrected by repair or replacement. In addition, at Seller's sole option, rather than repairing or replacing the defective item, Seller may pay Purchaser the amount by which the value of the Unit has decreased as a result of this defect. In no event shall Seller be liable to Purchaser or the Association or any other person or entity for consequential or exemplary damages, or for personal injuries arising from any breach of the Sole Warranties.

4. Purchaser hereby acknowledges that: (i) the Sole Warranties shall not apply if the defective portion of the Unit, common elements, fixtures or any other real or personal property has resulted from or been caused by, in whole or in part, the misuse of same (whether intentional or unintentional) by any person, firm or entity other than Seller or from an accident, casualty or physical alteration or modification; and (ii) the Sole Warranties are further conditioned upon routine maintenance being performed unless such maintenance is an obligation of Seller or a Seller-controlled association.

5. The provisions of this Article H shall survive the Closing and delivery of the Deed.

6. If more than one person signs this Contract as Purchaser, each person shall be liable for full performance of all Purchaser's duties and obligations hereunder. Seller may enforce this Contract against each of such persons as individuals or together.

7. Notwithstanding that this Contract was prepared by one party hereto, it shall not be construed more strongly against or more favorably for either party, it being understood that both parties have had equal bargaining power, have been represented (or have had the opportunity to be represented) by their own independent counsel and have equal business acumen such that any rule of construction that a document is to be construed against the drafting party shall not be applicable.

8. Pursuant to Section 553.996, Florida Statutes, Purchaser hereby acknowledges receipt of a copy of the information brochure prepared by or on behalf of the Department of Community Affairs of the State of Florida, notifying Purchaser of the option for an energy-efficiency rating of the Office Suite. Purchaser is further notified that pursuant to Section 553.9085, Florida Statutes, the energy performance level resulting from compliance with such section shall be disclosed if requested by Purchaser. Any request to have the energy-efficiency rating or energy performance level provided to Purchaser must be delivered to Seller in writing, and shall be at Purchaser's cost and expense. This paragraph and any information provided pursuant hereto is only for purposes of complying with the requirements of Chapter 553, Florida Statutes, and this Contract is not contingent upon Purchaser approving same.

9. The Unit has not been previously occupied.

10. Purchaser acknowledges that Purchaser acquires no right, title, interest or lien rights in the Unit prior to the conveyance of the title and Purchaser agrees not to file in the Public Records any claim, memorandum or notice (including a Lis Pendens) concerning any dispute with Seller relative to the subject matter of this Contract. Any such recording shall be a default entitling Seller to retain Purchaser's deposits and all sums paid by Purchaser as liquidated damages as provided in this Contract. In addition, Seller shall be entitled to an immediate order discharging such lis pendens if such is filed by Purchaser.

11. Seller shall have the right to litigate ad valorem tax matters, impact charges, service fees and interim and/or special assessments concerning the Unit or underlying lands for prior years and the year of conveyance.

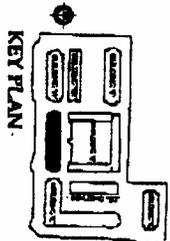
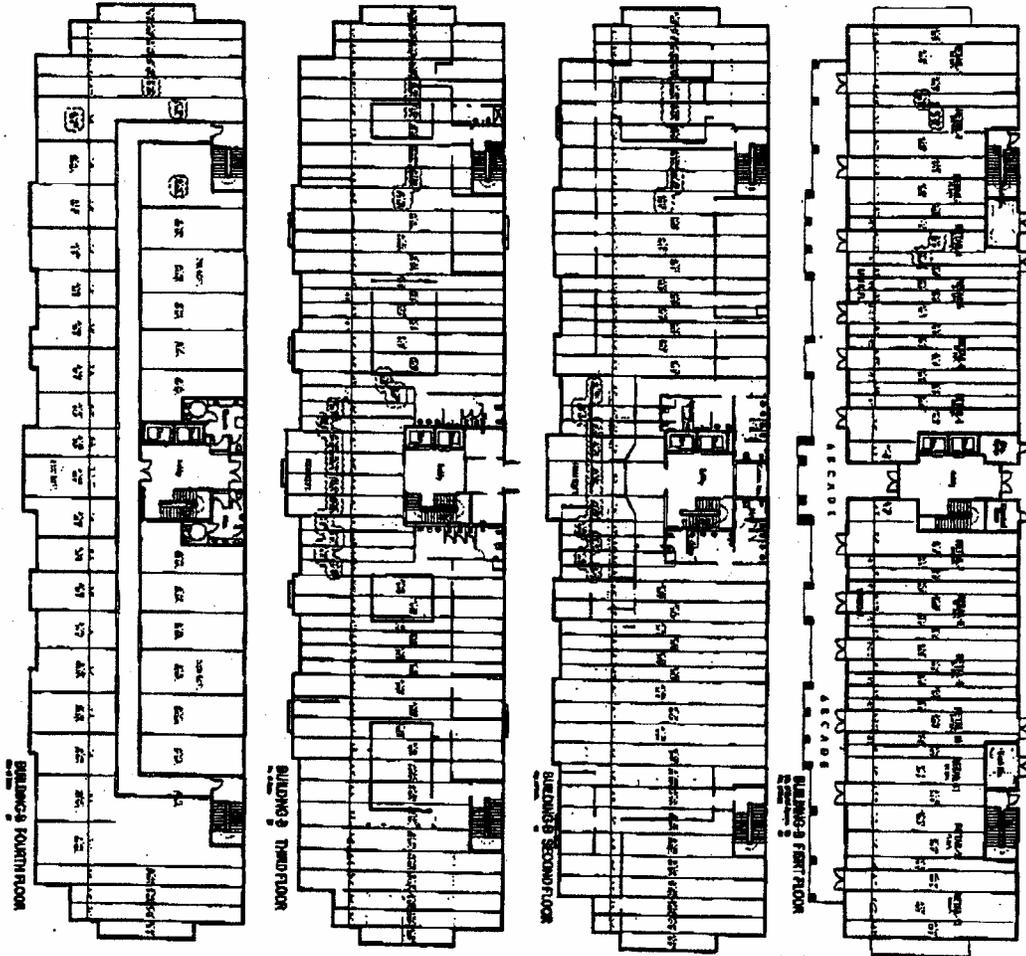
**12.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument which may be sufficiently evidenced by one such counterpart.

**13.** Purchaser acknowledges that its primary inducement to enter into this Contract is the Unit and not the common elements of the Condominium.

**EXHIBIT A**

**Floor Plan**

**SEE ATTACHED**



11/10/2005  
 10:28  
 9547635193

### DOWNTOWN DAVIE

S.E. CORNER OF GRIFFIN RD. & DAVIS RD.  
DAVIE, FLORIDA

Project  
 Name  
 Location  
 Date  
 Scale  
 Drawing No.





**Exhibit “B”**  
**Schedule of Special Exceptions**

1. The lien of all taxes for the year of closing and thereafter, which are not yet due and payable.
2. Taxes or special assessments which are not shown by the Public Records
3. Declaration of Condominium for Downtown Davie Condominium, recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of Broward County, Florida.
4. Resolution of the Central Broward Drainage District recorded in O.R. Book 3438, Page 60, Public Records of Broward County, Florida.
5. Restrictions, conditions, reservations, easements, and other matters contained on the Plat of EVERGLADE LAND SALES CO. SUBDIVISION, as recorded in Plat Book 2, Page(s) 34, Public Records of Miami-Dade County, Florida.
6. Easement recorded in O.R. Book 5325, Page 89, Public Records of Broward County, Florida.
7. Water and Sewer Agreement with Davie Utilities, Inc., recorded in O.R. Book 9526, Page 401, Public Records of Broward County, Florida.
8. Perpetual Right-of-Way Easement contained in the Order of Taking recorded in O.R. Book 25065, Page 617, as amended by O.R. Book 26812, Page 381, Public Records of Broward County, Florida.
9. Restrictions, conditions, reservations, easements, and other matters contained on the Plat of PALM GARDEN PARK UNIT 2, as recorded in Plat Book 8, Page(s) 4, Public Records of Broward County, Florida.
10. Resolution of the Central Broward Drainage District recorded in O.R. Book 3438, Page 60, Public Records of Broward County, Florida.
11. Maintenance Agreement with the Central Broward Drainage District recorded in O.R. Book 13134, Page 296, Public Records of Broward County, Florida.
12. Ordinance No. 88-23 creating the Davie Community Redevelopment Agency recorded in O.R. Book 26827, Page 812, O.R. Book 27841, Page 23 and O.R. Book 28701, Page 129, Public Records of Broward County, Florida.
13. Water and Sewer Service Agreement with the Town of Davie recorded in O.R. Book 13049, Page 810, Public Records of Broward County, Florida.
14. Water and Sewer Agreement recorded in O.R. Book 5454, Page 614, Public Records of Broward County, Florida.
15. Perpetual and Temporary Easement recorded in O.R. Book 25303, Page 864 and O.R. Book 25303.

16. Ordinance No. 1998-161 recorded in O.R. Book 28465, Page 213, Public Records of Broward County, Florida.
17. Ordinance No. 2002-61 recorded in O.R. Book 34145, Page 1891, Public Records of Broward County, Florida.
18. Restrictions, conditions, reservations, easements, and other matters contained on the Plat of Davie Professional Center, as recorded in Plat Book 141, Page(s) 12, Public Records of Broward County, Florida.
19. Easement in favor of Central Broward Water Control District, contained in instrument recorded May 9, 2005, in O.R. Book 39597, Page 1756, Public Records of Broward County, Florida.
20. Easement contained in instrument recorded May 9, 2005, in O.R. Book 39597, Page 1762, Public Records of Broward County, Florida.
21. Matters appearing on the Plat of Downtown Davie, according to the Plat thereof recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Public Records of Broward County, Florida.

Note: Additional exceptions may be:

22. New Utilities Agreement for Services at Downtown Davie.

## EXHIBIT C

### Included Features

1. Exterior Finishes.

(a) All exterior finishes shall be installed in accordance with the plans and specifications as amended for construction.

(b) All windows and glazing shall be installed in accordance with the plans and specifications as amended for construction.

2. Interior Finishes First Floor Lobby.

(a) Lobby floor shall be ceramic tile or improved at the sole discretion of Seller and installed throughout the first floor common areas.

(b) Lobby walls shall be finished with paint as set forth in the plans and specifications as amended.

3. Unit FinishesShell Space Only.

(a) Concrete floor.

(b) Conduit to the communication room.

(c) Fire sprinkler to be installed by Seller. Heads to be turned up until space is ready. Purchaser will pay for additional sprinkler work required.

## INDOOR AIR QUALITY ADDENDUM

### **THIS ADDENDUM SHOULD BE READ AND UNDERSTOOD CAREFULLY**

”This Addendum to Standard Contract for Sale and Purchase (the "Addendum") is executed in conjunction with and, by this reference, incorporated into the Standard Contract for Sale and Purchase dated October \_\_\_\_\_, 2005, between NOB HILL PARTNERS, LLC., a Florida limited liability company, ("Seller"), and the TOWN OF DAVIE, ("Purchaser"), for Units 201-248 and 301-350(the “Contract”).

This Addendum contains important information on indoor air quality and what owners can do to minimize the risk for water intrusion and to help control indoor environmental contaminants such as mold. Seller is not an expert on mold and the information described in this Addendum has been obtained from various third party sources, including governmental agencies. However, there is continuing research and studies being conducted in the areas addressed by this Addendum and the accuracy of the information contained herein can change at anytime. Therefore, you, the Purchaser, should independently verify the information and latest developments, and seek additional information regarding any matter of concern to you. Additional information concerning moisture control, mold and your unit can be obtained from the websites of organizations like the U.S. Environmental Protection Agency (“EPA”), the Center for Disease Control (“CDC”) and the U.S. Consumer Product Safety Commission.

Public awareness of mold and the effects of mold on the indoor air quality in the unit is increasing. Most owners are familiar with mold in at least some way, such as mold growth on food (such as bread or cheese) or mold growth in the bathroom (such as on bathroom tile). Seller wants you to be aware of what mold is, what you can do to minimize the chance of growth of mold in your unit, and how you can minimize any negative impact on the indoor air quality of your unit. Since you are conducting business in your unit and have sole responsibility for fully maintaining your unit, you have the ability to identify early any condition which could potentially give rise to the growth of mold or otherwise affect the indoor air quality, and then take care of it before it causes any concern. Understanding what causes mold, together with the immediacy of responding to mold growth, is paramount.

Mold is a type of fungus and is found virtually everywhere indoors and outdoors. There are many different kinds of molds, the vast majority of which are not harmful to human health and which are necessary to our daily lives. Mold may appear in many colors, including black, white, green, orange and red. Every new unit is constructed with products that include water, powders, solids and industrial chemicals. There are also many different types of indoor environmental contaminants such as pet dander, dust mites, and mold that people are exposed to. The construction of the unit is NOT designed to, nor can it exclude, all mold spores and other contaminants. There is no practical way to eliminate all mold spores or other contaminants in an indoor environment. Mold spreads by means of microscopic spores borne on the wind. Since mold spores are in the air outside and are spread by the wind, mold spores may enter your unit through open doorways, windows and other openings in your unit. In addition, every time you walk into your unit from the outside you bring mold and other substances into your unit on your clothes, your pets and your personal belongings. Therefore, everyone is exposed to these contaminants on a daily basis, but most of the time without any evident consequence.

Mold naturally grows in the indoor environment, and is necessary for the natural decomposition of plant and other organic material. In order to grow, mold spores require a food source and sufficient moisture. Food sources could include building materials, such as drywall and baseboards, or other items in the unit such as fabric, carpeting and wallpaper. Since the potential food source will always be present, you, the Purchaser, will be faced with the prospect of having to be sensitive to, and maintaining control over, sources of moisture in the unit. Moisture can come from many sources including leaks, condensation, irrigation, spills,

precipitation, and high humidity. The way you maintain your environment in your unit will also affect the indoor air quality of your unit. Good upkeep and unit maintenance practices are essential in the effort to prevent mold growth. See “*Prevention of Mold Growth: Owner Responsibilities*” section below. The key to controlling indoor mold growth is to control the moisture. If moisture is allowed to remain on the growth medium, mold can develop within 24 to 48 hours. Although the vast majority of molds are not known to cause health problems, some types have been shown to have adverse health effects in susceptible persons. Since sensitivities to various types of mold and contaminants differ from person to person, there have so far been no federal, state or local standards which tell us what are acceptable levels of exposure to mold. Experts disagree about the level of mold exposure that may cause health problems, and about the exact nature and extent of the health problems that may be caused by mold. The Center for Disease Control states that a causal link between the presence of toxic mold and serious health conditions has not been proven. The most common effects that have been reported, however, are hay fever-like allergic symptoms similar to those caused by plant pollen and animal dander (such as watery eyes, runny nose, coughing, skin irritation, sneezing, congestion, sore throat and headaches). Research on mold and its health effects is on-going and the list is not intended to be all-inclusive. Many of these conditions also have causes unrelated to the indoor environment. Therefore, it is currently unknown how many potential health problems, if any, relate exclusively to poor indoor air. Purchaser must determine for himself/herself whether Purchaser, Purchaser’s family members or any other individuals who will occupy or use the unit have special needs or may have increased risk to any of these conditions. Naturally, common sense dictates that you should consult your physician for any symptoms of concern to you.

***Prevention of Mold Growth: Owner Responsibilities.*** Since microscopic mold spores exist everywhere naturally in our environment, mold cannot be prevented or removed entirely. Therefore, the best way to prevent mold growth is to eliminate excessive moisture in the unit. It is important to know where water sources can occur and what you can do to prevent or avoid the introduction of water into the unit, which can lead to the growth of mold. Do not allow moisture to stand or make contact with carpet, furniture and cellulose-based materials such as drywall or wood. Dry all water damaged areas immediately to prevent mold growth. Visible mold must be removed immediately. You, the Purchaser, must take positive steps to eliminate excessive moisture in the unit, and thereby prevent mold growth and any possible adverse effects that may be caused by mold growth. Owners’ responsibilities include, but are not limited to, the following:

**Don’t Bring Mold Into Your Unit.** Before bringing items into the unit, check for signs of mold. Potted plants (roots and soil), furnishings, as well as many other goods, could already contain mold growth. Even furniture and other personal belongings from residences or storage facilities may have mold, so check these items as well prior to moving them into your unit.

**Keep it Clean and Dry.** Regular vacuuming and cleaning will help reduce mold levels. Mild cleaning solutions are generally effective in eliminating or preventing mold growth. After cleaning carpets, make sure that the carpets are completely dry before replacing furniture. Do not close closet doors or otherwise enclose spaces until the carpets have completely dried out.

**Routine Maintenance and Inspection is a Must.** It is important that Purchaser regularly inspect and maintain the unit, make arrangements for regular inspections of the unit if no one will be in the unit for any extended period of time. For example, regularly caulk windows, faucets, drains, and other plumbing fixtures; and inspect condensation pans in the air conditioners and refrigerators for mold growth. Be alert to musty odors, stains, and signs of mold. Purchaser should also periodically inspect window tracks for blockages impeding the ability of moisture to drain through the weep holes, and clean window tracks. Follow all manufacturer’s instructions for the air conditioning system and other major appliances, and have them inspected, cleaned and serviced regularly by a qualified professional. In addition, regularly change the air filters, clean air conditioning coils, and clean and dry condensation pans and lines of the air conditioning system. Purchaser should also have the unit repainted within three to five years following closing.

**Watch Humidity and Ventilate.** Keep the humidity (water vapor) in the unit low. Ventilate bathrooms by opening windows, using the pre-installed exhaust fans (do not disconnect them), and by running the air conditioning to remove excess moisture in the air and to facilitate evaporation of water from wet surfaces. Moisture sources that increase indoor air humidity include, but are not limited to, steam from indoor plants and humidifiers. Therefore, open doors between rooms to increase air circulation in the unit including doors to closets to periodically ventilate enclosed spaces. Even an aquarium in the unit can contribute to excess moisture.

**Mold Cleanup.** If mold is found, it must be removed and the source of the water must be eliminated immediately. The measures taken to initiate the clean up process are dependent on the extent of the problem. According to the EPA, if the affected area is less than about 10 square feet (less than roughly a 3 ft. by 3 ft. patch), in most cases it can be taken care of by the owner by thoroughly cleaning with a mild cleaning solution. If the affected area is greater than about 10 square feet or the owner does not think they can manage the cleanup themselves, a professional who has experience in cleaning mold in units should be contacted. Since moisture control is the key to minimizing the risk of mold growth, it is important that Purchaser immediately report to Seller any signs of leaks or abnormal amounts of moisture accumulating in sections of the unit relating to the original construction of the unit, such as leaks from the roof, plumbing, or windows. While Seller does not anticipate that Purchaser will experience any such conditions, in the unlikely event that such a leak or abnormal amount of moisture should occur, Purchaser must report it to Seller without delay so that Seller can appropriately assess the source of leak or water intrusion. Purchaser hereby understands that mold grows very quickly, and can start growing anywhere from 24 to 48 hours after the introduction of water. Accordingly, time is of the essence for Purchaser to act.

**DISCLAIMER, RELEASE AND WAIVER.** All claims against Seller for secondary, incidental and consequential damages are specifically excluded and disclaimed, and Purchaser relinquishes and waives any and all rights Purchaser may have to any such damages. Without limiting the generality of the foregoing, **Purchaser expressly understands and agrees that Seller will not be responsible for, and hereby knowingly and voluntarily releases and discharges Seller (and Seller's partners, affiliates, agents, successors and assigns) from and against any and all damages whatsoever caused by or resulting from the growth of mold in the unit, whether or not associated with defects in construction of the unit including, but not limited to, property damage, loss of use, loss of value, personal injury, adverse health effects, loss of income, emotional distress, death, and/or any other effects. As provided in Article H of the Standard Provisions of the Contract, except only for the Sole Warranties: (i) there are no warranties (express or implied) provided to Purchaser in connection with the unit, and (ii) Purchaser knowingly and voluntarily relinquishes and waives, and Seller hereby expressly disclaims, any and all warranties (express or implied) as to the unit and the other property which is the subject of the Contract, whether arising from custom, usage of trade, course of dealing, case law or otherwise, including, but not limited to, any implied warranty of habitability, any implied warranty of merchantability or any implied warranty of fitness for any intended or particular purpose.** I/we understand and acknowledge that we have received, reviewed and fully understand this Addendum (including, without limitation, our obligations with respect to unit ownership) and have fully considered them in making my/our purchase decision. I/we agree to comply with the provisions of this Addendum. This Addendum shall survive Closing and at Seller's option, the terms of this Addendum may be included in the deed of conveyance delivered to Purchaser at closing.

**PURCHASER: THE TOWN OF DAVIE**

By: \_\_\_\_\_  
Chris Kovanes, Town Administrator

Date: \_\_\_\_\_

DOWNTOWN DAVIE, A CONDOMINIUM

SOUND DISCLOSURE ADDENDUM

This Sound Disclosure Addendum to Contract for Purchase and Sale by and between NOB HILL PARTNERS, LLC, a Florida limited liability company ("Seller"), and TOWN OF DAVIE ("Purchaser").

Purchaser(s) hereby acknowledges that Downtown Davie, a Condominium is a mixed-use development with street traffic, which produces noise.

Seller can give no assurance that noise from street traffic will not be audible from any particular Unit, including at night.

Purchaser(s) further acknowledges that Downtown Davie, a Condominium is subject to potential aircraft overflights and associated noise impact due to its close proximity to the Fort Lauderdale-Hollywood International Airport. By taking title to the Unit, Purchaser accepts and agrees to this anticipated and unavoidable condition. Purchaser is advised that further information regarding the current and potential impact of airport operations on Downtown Davie, a Condominium may be obtained from the Broward County Aviation Department, Planning and Development Division.

Purchaser(s) hereby acknowledges that his or her or their decision to purchase a Unit in Downtown Davie, a Condominium is not based on any representations concerning noise that may or may not be audible within the condominium, including the Units which are the subject of this Contract, from other portions of the condominium and the surrounding area, including street traffic.

Executed the day and year written below.

PURCHASER:  
TOWN OF DAVIE

By: \_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_

SELLER:  
NOB HILL PARTNERS, LLC

By: \_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_