

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark A. Kutney, AICP, Development Services Director/ (954) 797-1101

PREPARED BY: David M. Abramson, Planner II

SUBJECT: Developer's Agreement / DA 1-1-06 / Diamond III / 10230 West State Road 84 / Generally located on the south side of Southwest 101st Road, approximately 1,000' west of Nob Hill Road.

AFFECTED DISTRICT: District 3

TITLE OF AGENDA ITEM: DA 1-1-06 / Diamond III

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO A REGIONAL ROAD CONCURRENCY AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND DIAMOND III LLC, FOR THE CONSTRUCTION OF IMPROVEMENTS RELATING TO THE DIAMOND 5 PLAT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: The petitioner's request is for Town Council to authorize the Mayor and Town Administrator to enter into a Regional Road Concurrency Agreement between the Town of Davie, Broward County, and Diamond III LLC. This Tri-Party Agreement is for the construction of improvements including a U-turn at Southwest 14 Street and Nob Hill Road, as well as a bus bay on eastbound Peters Road at Pine Island Road. These improvements are being completed within the Town of Davie and shall benefit future transit.

This request is in connection with Town Council approval of Diamond III's Delegation Request on March 7, 2005. The Town is a party to the agreement because Broward County has determined that the proposed note change on the Diamond 5 Plat requires the mitigation of eight (8) traffic trips. The petitioner is securing the construction of these improvements via a Letter of Credit that is an exhibit to the agreement. Staff has no objection to the request.

PREVIOUS ACTIONS: None

CONCURRENCES: N/A

FISCAL IMPACT: N/A

RECOMMENDATION(S): Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

Attachment(s): Resolution, Justification, Agreement, Future Land Use Plan Map, Zoning and Aerial Map

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO A REGIONAL ROAD CONCURRENCY AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND DIAMOND III LLC, FOR THE CONSTRUCTION OF IMPROVEMENTS RELATING TO THE DIAMOND 5 PLAT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Delegation Request for Diamond III was approved by the Town Council of the Town of Davie on March 7, 2005;

WHEREAS, Broward County requires improvements to be satisfy concurrency on the regional road network;

WHEREAS, Broward County requires that the Town of Davie not issue a certificate of occupancy on said plat until the Town receives confirmation from the County that the payment required for the improvements to satisfy concurrency on the regional road network has been received.

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 does hereby authorize the Mayor and Town Administrator to enter into an Agreement, attached hereto as Exhibit "A.

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2006.

Attest:

MAYOR/COUNCILMEMBER

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2006.

Attachment 2 (Justification Letter)

Diamond III, LLC

Real Estate Developers

February 7, 2006

via Hand Delivered

City of Davie, Planning and Zoning Department

Attn: Bruce Dell

Town of Davie

6591 Orange Drive

Davie, FL 33314

RE: Diamond III Plat Note Modification

Dear Mr. Dell:

On March 7, 2005, The Town Council adopted Resolution R-2005-75 permitting a change in the restrictive note on the Diamond 5 Plat subject to certain conditions as outlined in the Resolution. The Broward County DRC has determined that the proposed plat note change requires the mitigation of eight (8) traffic trips affecting the regional road network to satisfy concurrency.

We have worked with our consultants for nearly a year to satisfy the traffic mitigation requirements of the Town and the County. With the assistance of the Town and County staff we propose the following improvements to satisfy the Town and County requirements:

1. U-turn at SW 14 Street and Nob Hill Road
2. Bus bay on east bound Peters Road at Pine Island Road

A Tri-Party Developer Agreement has been prepared on the County's standard form covering these roadway improvements. We are securing the construction of these improvements via a Letter of Credit which is an exhibit to the Tri-Party Agreement.

We respectfully request that the Tri-Party Developer Agreement be scheduled for approval at the next available Town Council Meeting. Thank you.

Very truly yours,



Christian Klink

CC: Marcie Oppenheimer Nolan, AICP
David Abramson, Planner I
Town of Davie Communications – File

Diamond III, LLC
3900 S.W. 30th Avenue, Ste 3, Fort Lauderdale, FL 33312
Phone 954/581-1606 Fax 954/581-1603

Attachment 3 (Agreement)

Return recorded document to:

Development Management Division
115 S. Andrews Avenue, A240
Fort Lauderdale, FL 33301

Document prepared by:
Stephen V. Hoffman, Esq.
Mastriana & Christiansen, P.A.
1500 N. Federal Highway, Suite 200
Fort Lauderdale, FL 33304

NOTICE: PURCHASERS, GRANTEES, HEIRS, SUCCESSORS AND ASSIGNS OF ANY INTEREST IN THE PROPERTY SET FORTH ON EXHIBIT "A" ARE HEREBY PUT ON NOTICE OF THE OBLIGATIONS SET FORTH WITHIN THIS AGREEMENT WHICH SHALL RUN WITH THE PROPERTY UNTIL FULLY PAID AND/OR PERFORMED.

**REGIONAL ROAD CONCURRENCY AGREEMENT
CONSTRUCTION OF IMPROVEMENTS**

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

AND

Diamond III, LLC, its successors and assigns, hereinafter referred to as "DEVELOPER",

[AND IF THE PROPERTY IS LOCATED WITHIN A MUNICIPALITY]

The Town of DAVIE, a municipal corporation created and existing under the laws of the State of Florida, hereinafter referred to as "TOWN"

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, requires that the regional transportation network be adequate to serve the reasonably projected needs of proposed developments; and

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, more specifically requires that an application for a development permit satisfy concurrency requirements for impact areas; and

WHEREAS, DEVELOPER has applied for approval of or an amendment to the **Diamond 5 Plat (091-MP-94)**, hereinafter referred to as "PLAT," more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, on May 6, 2005, the Broward County Development Management Division issued a Notification of Failure to Satisfy Broward County Concurrency Standards for the regional transportation network, finding that the application for approval of or amendment to the PLAT does not satisfy the impact area concurrency standards for the regional road network as stated in the Broward County Land Development Code ("CODE"); and

WHEREAS, DEVELOPER has conducted a study and has determined that certain remedial measures will mitigate the traffic impacts so that the PLAT or amendment to the PLAT will satisfy Broward County concurrency standards; and

WHEREAS, the Broward County Development Management Division has approved these remedial measures and finds that its concurrency requirements for the PLAT or the amendment to the PLAT will be met with the execution of, and compliance with, the terms of this Agreement by DEVELOPER; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the parties agree as follows:

1. The above recitals and representations are true and correct and are incorporated herein.
2. Construction of Improvements.

PLEASE CHECK THE APPROPRIATE SECTION

[X] IMPROVEMENTS CONSTRUCTED BY DEVELOPER

- (a) DEVELOPER agrees to construct the improvements described in Exhibit "B" attached hereto, hereinafter referred to as the "Improvements." DEVELOPER agrees to complete the Improvements prior to receipt of the first certificate of occupancy for property within the PLAT.
- (b) If the improvements described in Exhibit "B" are on a state road, as that term is defined in Chapter 334, Florida Statutes, DEVELOPER agrees that, prior to PLAT recordation, DEVELOPER shall provide COUNTY with proof of having received a permit or letter of intent to permit from the State of Florida Department of Transportation for the Improvements.

- (c) DEVELOPER shall provide to COUNTY, contemporaneously with this Agreement, an irrevocable Letter of Credit, attached hereto as Exhibit "C," in the amount of \$29,378.00 in a form acceptable to the COUNTY, which represents 125% of the costs of the Improvements.
- (d) The Improvements described in Exhibit "B" shall be installed in accordance with applicable COUNTY, State of Florida Department of Transportation standards and specifications and in accordance with the Development Review Report for the PLAT. The construction plans for the Improvements, including pavement marking and signing plans, shall be submitted to COUNTY for review and approval prior to commencement of construction. Construction shall be subject to inspection and approval by the COUNTY. Pavement marking and signing shall be provided for all of the Improvements and shall be subject to review, field inspections and final approval by the Broward County Traffic Engineering Division, which Improvements shall be consistent with the previously approved plans.
- (e) Developer agrees that this agreement shall be recorded in the Official Records of Broward County, Florida, against the property described in Exhibit "A" to put subsequent purchasers, grantees, heirs, successors and assigns of any interest in such property on notice of the obligations set forth herein, which shall run with the property until fully performed. However, the amount(s) set forth above which are secured by a letter of credit shall not constitute a lien on the property unless and until the provisions below are activated by the recording of a "Notice of Lien."
- (f) If property is located within a municipality, DEVELOPER, its successors and assigns agree that no certificates of occupancy within the Plat shall be obtained prior to completion of the Improvements according to the schedule set forth in Exhibit "B." Failure to comply with the above shall constitute a default of this Agreement. If the property is located within the unincorporated area, the COUNTY shall not issue any certificates of occupancy within the Plat prior to completion of the Improvements according to the schedule set forth in Exhibit "B."
- (g) In the event DEVELOPER defaults under the terms of this Agreement or the COUNTY receives notice that the security will be canceled by the issuing institution, COUNTY shall be entitled to draw against the security for the amount set forth above, plus costs and interest as set out herein. If COUNTY draws against the security and the amount recovered is less than the amount due, COUNTY may maintain an action against DEVELOPER in a court of competent jurisdiction for the difference between any sums obtained and the amount due, plus costs and interest accrued from the due date at the rate of twelve (12) per cent per annum or, at the option of the COUNTY,

the COUNTY may record a document entitled "Notice of Lien" which shall constitute a lien on the property described in Exhibit "A" in the amount stated above. To the extent that the failed security is attributable to an identified parcel or portion of the PLAT, the Notice of Lien, as set forth above, shall be recorded against and apply only to such parcel or portion of the PLAT. The above provisions shall control such lien, except that the provision regarding subordination of mortgages shall not apply. Such lien may be foreclosed or otherwise enforced by the COUNTY by action or suit in equity as for the foreclosure of a mortgage on real property.

- (h) DEVELOPER shall ensure that the security remains valid and in full force and effect until DEVELOPER'S obligations are fully satisfied. Expiration of the security prior to DEVELOPER'S satisfaction of such obligations, or notice to Broward County that the security will expire or be canceled prior to DEVELOPER'S satisfaction of all obligations hereunder, shall constitute a default of this Agreement.
- (i) In the event the COUNTY determines that the security has been canceled or disaffirmed by the issuing institution, COUNTY may record a document entitled "Notice of Lien" which shall constitute a lien on the property described in Exhibit "A" for the Outstanding Balance or stated portion thereof. To the extent that the disaffirmed security is attributable to an identified parcel or portion of the PLAT, the Notice of Lien, as set forth above, shall be recorded against and apply only to such parcel or portion of the PLAT. The above provisions shall control such lien, except that the provision regarding subordination of mortgages shall not apply. If the DEVELOPER provides substitute security in a form acceptable to COUNTY, COUNTY shall release the lien.
- (j) In the event COUNTY draws on the security in accordance with the provisions of this Agreement, DEVELOPER shall be responsible for COUNTY'S reasonable costs incurred in drawing against the security.
- (k) DEVELOPER agrees that any contract(s) for the Improvements shall:
 - 1. Indemnify and hold harmless COUNTY and TOWN, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of DEVELOPER and persons employed or utilized by or under contract with the DEVELOPER in the performance of this Agreement. Except as specifically provided herein, this Agreement does not require DEVELOPER to indemnify COUNTY and TOWN, its employees, officers, directors, or agents from any liability, damage, loss, claim,

action, or proceeding. In the event that any action or proceeding is brought against COUNTY or TOWN by reason of any such claim or demand, DEVELOPER shall, upon written notice from COUNTY and/or TOWN, resist and defend such action or proceeding by counsel satisfactory to COUNTY and TOWN. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

2. In order to insure the indemnification obligation contained above, the DEVELOPER and/or its contractor shall, as a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth below, in accordance with the terms and conditions required by this section.
3. Such policy or policies shall be without any deductible amount and shall be issued by United States Treasury approved companies authorized to do business in the state of Florida, and having agents upon whom service of process may be made in Broward County, Florida. Such policies shall specifically protect COUNTY, the Broward County Board of County Commissioners, TOWN and Town Council of the Town of Davie by naming COUNTY, the Broward County Board of County Commissioners, TOWN and Town Council of the Town of Davie as additional insureds.
4. Comprehensive General Liability Insurance. A Comprehensive General Liability Insurance Policy with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Premises and/or operations.

Independent contractors.

Products and/or completed operations for contracts.

Broad Form Contractual Coverage applicable to this specific contract, including any hold harmless and/or indemnification agreement.

Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

Underground coverages.

5. Business Automobile Liability Insurance. Business Automobile Liability Insurance with minimum limits of Three Hundred Thousand Dollars (\$300,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Owned vehicles.
Hired and non-owned vehicles.
Employers' non-ownership.
6. Workers' Compensation Insurance. Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:

Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) each accident.
7. DEVELOPER shall furnish to the Broward County Engineering Division Certificates of Insurance or endorsements evidencing the insurance coverages specified by this Article prior to beginning performance of work under this Agreement. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Agreement, and state that such insurance is as required by this Agreement.
8. Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of DEVELOPER is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days' prior to the date of their expiration.

[] **IMPROVEMENTS CONSTRUCTED BY COUNTY, CITY OR FDOT**

- (a) If the Improvements are to be constructed by the State of Florida, Department of Transportation (FDOT) or a municipality or a combination thereof, DEVELOPER agrees to pay the amount in Exhibit "B," attached hereto, which represents DEVELOPER's proportionate share of the cost of the Improvements described in Exhibit "B," hereinafter referred to as the Improvements. DEVELOPER agrees that payment must be made to the

municipality or to FDOT (or any combination thereof) either prior to receipt of the first certificate of occupancy for property within Exhibit "A" or within thirty (30) days of receiving notice from COUNTY that payment is due, whichever date occurs first. Failure to comply with the above shall constitute a default of this Agreement.

- (b) If the Improvements are to be constructed solely by the COUNTY, DEVELOPER agrees that payment of the amount in Exhibit "B" shall be made to COUNTY prior to PLAT recordation or recordation of the Agreement amending the Notation on the Face of the PLAT. COUNTY agrees that no security shall be required by the COUNTY since payment shall be made prior to PLAT recordation or recordation of the Agreement amending the Notation on the Face of the PLAT.
 - (c) If the Improvements are to be constructed by the TOWN or FDOT, DEVELOPER shall provide to the municipality or FDOT, contemporaneously with this agreement, security acceptable to the municipality or FDOT.
3. CONCURRENCY COMPLIANCE. COUNTY finds that the execution of and adherence to this Agreement on the part of DEVELOPER satisfies the requirement of Chapter 5, Article IX, Broward County Code of Ordinances, that plats of land shall be designed to provide for the adequacy of the regional road network, at the adopted levels of service, concurrent with the impact of the development. Nothing in this Agreement shall be construed as constituting a waiver or an exemption from road impact fees authorized to be assessed by COUNTY to DEVELOPER under the provisions of Chapter 5, Article IX, Broward County Code of Ordinances.
4. PROPERTY WITHIN A MUNICIPALITY.
- (a) If the property is located within a municipality, TOWN agrees that, upon notification from the COUNTY that DEVELOPER is in default of this Agreement, TOWN shall withhold issuance of all building permits, certificates of occupancy, or any other development permits within the boundaries of the PLAT, until such time that the COUNTY notifies the TOWN that the default has been resolved. If the property is located within the unincorporated area and the DEVELOPER is determined to be in default of this Agreement by the COUNTY, the COUNTY shall withhold issuance of all building permits, certificates of occupancy, or any other development permits within the boundaries of the PLAT, until such time as the default has been resolved.
 - (b) If the property is located within a municipality, the parties hereto agree that, except as may otherwise be provided herein, the TOWN is a party to this Agreement solely for the purpose of issuing or withholding the issuance of permits for the construction of buildings within the property subject to this

Agreement and for the purpose of issuing or withholding the issuance of certificates of occupancy for the construction of buildings within the property subject to this Agreement. The parties specifically agree and recognize that nothing in this Agreement is a waiver, specific or otherwise, of the obligation of the DEVELOPER to strictly comply with all the requirements of the TOWN'S land development codes.

5. DEVELOPER, its successors and assigns agree that in the event of a default of this Agreement, DEVELOPER, its successors and assigns agree that no building permits, certificates of occupancy, or any other development permits shall be obtained within the boundaries of the PLAT, until such time that the COUNTY notifies the local government that the default has been resolved. If the property is located within the unincorporated area and the DEVELOPER is determined to be in default of this Agreement by the COUNTY, the COUNTY shall withhold issuance of all building permits, certificates of occupancy, or any other development permits within the boundaries of the PLAT, until such time as the default has been resolved.
6. NOTICE. Whenever any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving of notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

For the COUNTY:

Director of the Broward County Development Management Division
115 South Andrews Avenue, Room A240
Fort Lauderdale, FL 33301

Director of the Broward County Engineering Division
115 South Andrews Avenue, Room 321
Fort Lauderdale, FL 33301

For the DEVELOPER:

Diamond III, LLC

C/o Richardson Development

3900 SW 30th Avenue, Fort Lauderdale, FL 33312

FOR the TOWN:

Town of Davie, Administrator's Office

6591 Orange Drive

Davie, FL 33314

7. RECORDATION. This Agreement shall be recorded in the Public Records of Broward County Florida, at the DEVELOPER'S expense. The benefits and obligations contained in this Agreement shall inure to grantees, successors, heirs, and assigns who have an interest in the PLAT.
8. VENUE; CHOICE OF LAW. Any controversies or legal issues arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue sitis, and shall be governed by the laws of the State of Florida.
9. CHANGES TO FORM AGREEMENT. DEVELOPER represents and warrants that there have been no amendments or revisions whatsoever to the form Agreement without the prior written consent of the County Attorney's Office. Any unapproved changes shall be deemed a default of this Agreement and of no legal effect.
10. CAPTIONS AND PARAGRAPH HEADINGS. Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provisions hereof.
11. NO WAIVER. No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
12. EXHIBITS. All Exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference. Typewritten or handwritten provisions inserted in this Agreement or attached hereto shall control all printed provisions in conflict therewith.
13. FURTHER ASSURANCES. The parties hereby agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Agreement.

14. ASSIGNMENT AND ASSUMPTION. DEVELOPER may assign all or any portion of its obligations pursuant to this Agreement to a grantee of the fee title to all or any portion of the property described in Exhibit "A." DEVELOPER agrees that any assignment shall contain a provision which clearly states that such assignment is subject to the obligations of this Agreement and recorded in the public records of Broward County, Florida.
15. AMENDMENTS. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties to this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on the ____ day of _____, 20__, DEVELOPER, signing by and through its _____ duly authorized to execute same and TOWN OF DAVIE, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

County Administrator and
Ex-Officio Clerk of the
Board of County Commissioners
of Broward County, Florida

By _____
Mayor

____ day of _____, 20__
Approved as to form by
Office of County Attorney
Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____
Assistant County Attorney

____ day of _____, 20__

DEVELOPER-CORPORATION/PARTNERSHIP

Witnesses (if partnership):

[Signature]
(Signature)
Print name: CHRISTIAN J. KUNK
[Signature]
(Signature)
Print name: Christopher Richardson

Diamond III, LLC, a Florida limited liability co.
Name of Developer (corporation/partnership)

By [Signature]
(Signature)
Print name: Kenneth E Richardson
Title: Manager
Address: 3900 SW 30 Avenue
Fort Lauderdale, FL 33312

10 day of January, 2006

ATTEST (if corporation):

(Secretary Signature) (CORPORATE SEAL)
Print Name of Secretary: _____

ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP

STATE OF Florida)
) SS.
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 10 day of January, 2006, by _____, as _____ of Diamond III, LLC, a Florida corporation/partnership, on behalf of the corporation/ partnership. He or she is: limited liability company
 personally known to me, or
 produced identification. Type of identification produced _____

(Seal)
My commission expires:

NOTARY PUBLIC:
[Signature]
Print name: Donna Marie Carli
Commission # DD137426
Expires July 29, 2006
Bonded Thru
Atlantic Bonding Co., Inc.

MORTGAGEE-CORPORATION/PARTNERSHIP

Mortgagee, being the holder of a mortgage relating to the parcel(s) described in Exhibit "A" hereby consents and joins in for the purpose of agreeing that its mortgage shall be subordinated to the foregoing Agreement.

Witnesses (if partnership):

Kara Sciarra
(Signature)

Print name: Kara Sciarra

Dayle Holt
(Signature)

Print name: DAYLE HOLT

Bank of Florida
Name of Mortgagee (corporation/partnership)

By Debra Stoltz
(Signature)

Print name: Debra Stoltz

Title: Sr Vice President

Address: 110 East Broward Boulevard, Suite 100 Fort Lauderdale, FL 33301

11 day of January, 2006

ATTEST (if corporation):

[Signature]
(Secretary Signature)

Print Name of Secretary: Arlette Yassa

(CORPORATE SEAL)



ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP

STATE OF Florida)
) SS.
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 11 day of January, 2006, by Debra Stoltz, as Sr Vice President of Bank of Florida, a Florida corporation/partnership, on behalf of the corporation/ partnership. He or she is:

- personally known to me, or
- produced identification. Type of identification produced _____.

(Seal)

My commission expires:

NOTARY PUBLIC:

[Signature]
Print name:

CAF#361
01/01/02



TOWN

(If Property is located within a City)

WITNESSES:

TOWN of DAVIE

By _____
Mayor-Commissioner

____ day of _____, 20__

ATTEST:

Town Clerk

By _____
Town Manager

____ day of _____, 20__,

APPROVED AS TO FORM:

By _____
Town Attorney

EXHIBIT "A"

LEGAL DESCRIPTION

All of the Diamond 5 Plat, according to the plat thereof, as recorded in Plat Book 159, Page 8 of the public records of Broward County, Florida.

CAF#361
01/01/02

EXHIBIT "B"

IMPROVEMENTS & COST OF IMPROVEMENTS

Prior to the issuance of a certificate of occupancy within the plat, the Developer shall:

1. Construct an eastbound bus bay on Peters Road, located approximately 35 feet east of Pine Island Road, with 60 feet of transition in, 100 feet of storage and 36 feet of exit transition.

Estimated Cost: \$19,258.00

2. Widen the east side of the northbound lane on Nob Hill Road immediately north of SW 14 Street to provide for a southbound to northbound U-turn lane on Nob Hill Road with 50 feet of storage and 36 feet of transition.

Estimated Cost: \$10,120.00

EXHIBIT "C"

SECURITY

CAF#361
01/01/02

MASTRIANA & CHRISTIANSEN, PA

ATTORNEYS AT LAW

1500 North Federal Highway, Suite 200, Fort Lauderdale, Florida 33304
Visit our web site: www.m-c-law.com

Stephen V. Hoffman
Email: Steve@m-c-law.com
Direct Fax: (954) 566-9219

Broward (954) 566-1234
Dade (305) 949-1234
Main Facsimile: (954) 566-1592

TITLE CERTIFICATE

To: Broward County Board of County Commissioners

With the understanding that this Title Certificate is furnished to Broward County Board of County Commissioners, as inducement for acceptance of a Regional Road Concurrency Agreement Construction of Improvements covering the real property, hereinafter described, it is hereby certified that we have examined a complete "Abstract of Title" covering the period from the beginning to the 21st day of December, 2005, at the hour of 11:00 p.m., inclusive, of the following described property:

Legal Description: All of the Diamond 5 Plat, according to the Plat thereof, as recorded in Plat Book 159, Page 8 of the public records of Broward County Florida. We hereby certify that on the last mentioned dated, the fee simple title to the above-described real property was vested in:

Names of all Owner(s) of Record:

Diamond III, LLC, a Florida limited liability company

Subject to the following:

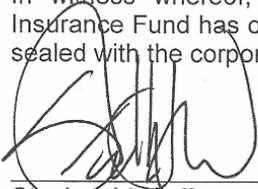
Mortgage(s) of Record: Mortgage in favor of Bank of Florida recorded in Official Records Book 37203, Page 1277 of the public records of Broward County, Florida.

List of easements and Rights-of-Way lying within the plat boundaries:

1. Restrictions, conditions, reservations, easements, and other matters contained on the Plat of Diamond 5, as recorded in Plat Book 159, Page(s) 8, Public Records of Broward County, Florida.
2. Reservations for drainage recorded in Deed Book 46, Page 240 of the Public Records of Broward County, Florida.
3. Covenants, conditions and restrictions recorded in O.R. Book 6666, Page 91 of the Public Records of Broward County, Florida.

4. Ordinance recorded in O.R. Book 14022, Page 894 of the Public Records of Broward County, Florida.

WE HEREBY CERTIFY that the foregoing report reflects a comprehensive search of the Public Records of Broward County, Florida, affecting the above described property. In witness whereof, Mastriana & Christiansen P.A., as agent of Attorney's Title Insurance Fund has caused this Certificate to be signed by an authorized signatory and sealed with the corporate seals this 4 day of January, 2006.



Stephen V. Hoffman, Esq.
Florida Bar No. 622140

MASTRIANA & CHRISTIANSEN, PA

ATTORNEYS AT LAW

1500 North Federal Highway, Suite 200, Fort Lauderdale, Florida 33304
Visit our web site: www.m-c-law.com

Stephen V. Hoffman, Esq.
Email: Steve@m-c-law.com
Direct Fax: (954) 566-9219

Broward (954) 566-1234
Dade (305) 949-1234
Main Facsimile: (954) 566-1592

September 8, 2004

VIA HAND DELIVERY

Marcie Nolan, AICP
Planning Supervisor
Town of Davie
6591 Orange Drive
Davie, FL 33314

RE: Diamond III Plat

Dear Ms. Nolan:

This office represents Diamond III, LLC, the owner of the property described as the Diamond 5 Plat recorded in Plat Book 159, Page 8 of the public records of Broward County, Florida. This 3.3 acre parcel is located on the South side of S.R. 84 just East of Nob Hill Road. The plat is restricted to 18,500 square feet of office use. We are pleased to submit our application to amend the plat note to permit a 42,500 square foot office development. The developer intends to construct 3 two-story office buildings ranging from 11,000 square feet to 14,750 square feet.

The current plat note reads as follows:

"This Plat is restricted to 18,500 square feet of office use. Commercial/Retail uses are not permitted without the approval of the Board of County Commissioners who shall review and address these uses for increased impacts."

The proposed plat note will read as follows:

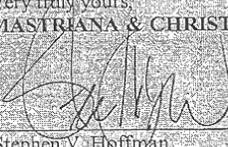
"This Plat is restricted to 42,500 square feet of office use. Commercial/Retail uses are not permitted without the approval of the Board of County Commissioners who shall review and address these uses for increased impacts."

Currently, there is an unmet market demand for quality, low-rise office space in this area. This proposal will help fill this demand. Enclosed please find a conceptual site plan showing the orientation of the proposed office development.

Enclosed for your use are 3 copies of the survey, plat and proposed site plan along with the application package and the \$500 application fee.

We will be happy to answer any questions you may have. Please place this item on the earliest available City Commission agenda for approval. Thank you for your consideration in this regard.

Very truly yours,
MASTRANA & CHRISTIANSEN, P.A.



Stephen V. Hoffman
For the Firm

SVH
Enclosures



IRREVOCABLE LETTER OF CREDIT Date of Issue: January 11, 2006

Issuing Bank's No. 2106276

Beneficiary:

County Administrator
Broward County Board of
County Commissioners
Governmental Center, Room 409
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

Applicant: Diamond III, LLC
(Developer)

Amount: \$29,378.00
in United States Funds

Expiry: January 11, 2007
(Date)

Diamond 5 Plat (091-MP-94)
Broward Co. Project Name & Number

We hereby authorize you to draw on Bank of Florida, 110 E. Broward Boulevard, Suite 100, Fort Lauderdale, Florida 33301 by order of Diamond III, LLC, and for the account of Diamond III, LLC. up to an aggregate amount, in United States funds, of \$29,378.00 available by your drafts at sight, accompanied by:

A signed statement from the County Administrator of Broward County, or an authorized representative, that the drawing is due to default in the performance of certain obligations or failure to pay sums, on the part of Diamond III, LLC, hereinafter referred to as DEVELOPER, agreed upon by and between Broward County and DEVELOPER in the Regional Road Concurrency Agreement, hereinafter referred to as "Agreement", for the Parcel A Diamond 5 Plat, Plat No./Clerk's File No. Plat Book 159 Page 8, hereinafter referred to as "PLAT," approved by the Broward County Board of County Commissioners on April 4, 1995.

Drafts must be drawn and negotiated not later than January 11, 2007.

Drafts must bear the clause: "Drawn under Letter of Credit No. 2106276 of Bank of Florida, dated January 11, 2006."

This Letter of Credit shall be renewed for successive periods of one (1) year each unless we provide the Broward County Administrator and the Director of the Broward County Development Management Division, 115 South Andrews Avenue, Room A240, Fort Lauderdale, Florida 33301, with written notice of our intent to terminate the credit herein extended, which notice must be provided at least thirty (30) days prior to the expiration date of the original term hereof or any renewed one (1) year term. Notice to Broward

County that this Letter of Credit will expire prior to performance of the DEVELOPER's obligations shall be deemed a default by the DEVELOPER.

This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, or amplified by reference to any documents, instrument, or agreement referred to herein or in which this Letter of Credit is referred to or this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement.

We hereby agree with the drawers, endorsers, and bona fide holders of all drafts drawn under and in compliance with the terms of this credit, that such drafts will be duly honored upon presentation to the drawee.

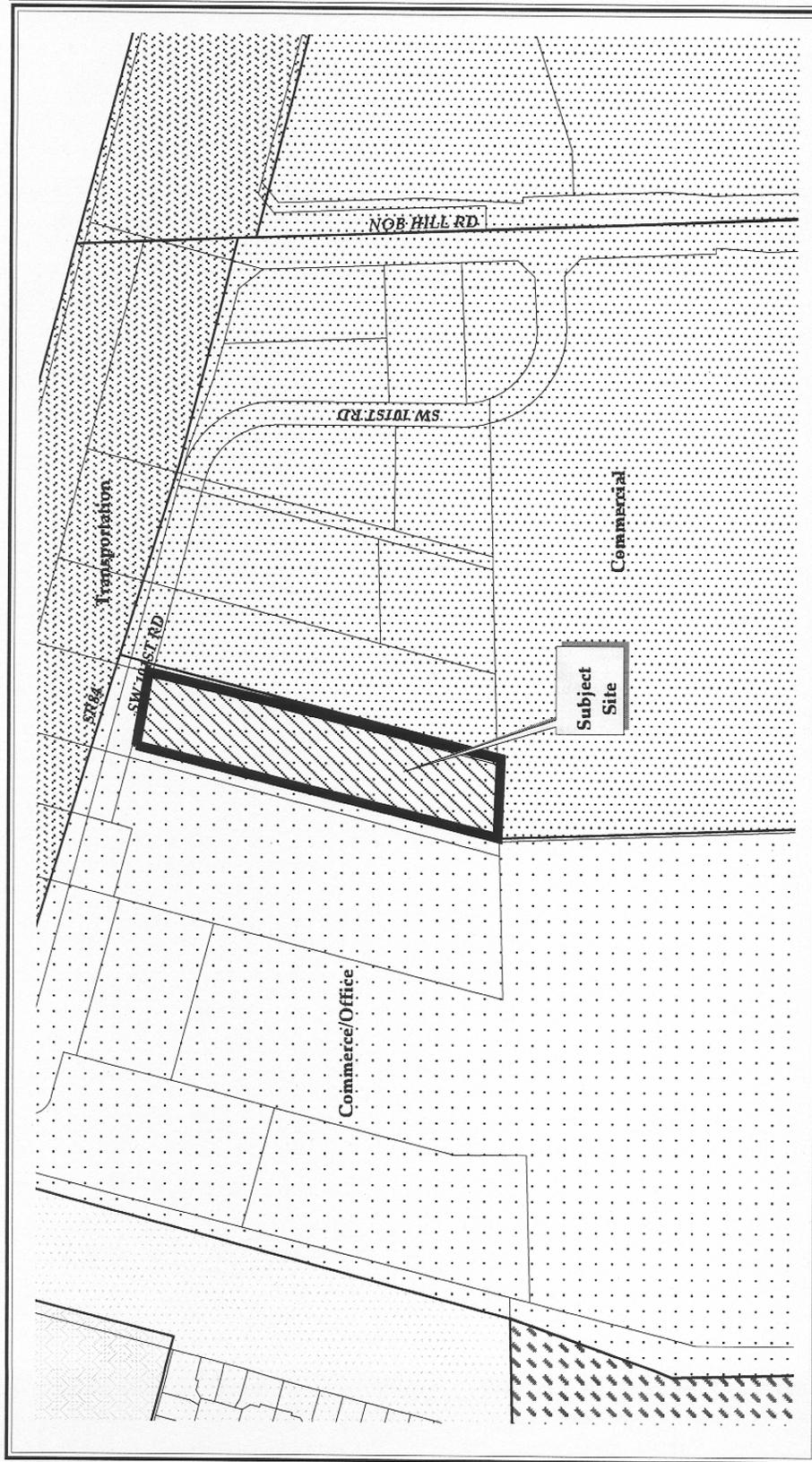
Satisfaction of the payment of all monies by the DEVELOPER as provided for in the "Agreement" for the PLAT shall be a release of all obligations under the Letter of Credit.

This Credit is subject to the "Uniform Customs and Practice for Documentary Credits," International Chamber of Commerce Publication No. 500 and to the provisions of Florida law. If a conflict between the Uniform Customs and Practice for Documentary Credits and Florida law should arise, Florida law shall prevail. If a conflict between the law of another state or country and Florida law should arise, Florida law shall prevail.



Debra Stoltz, as Senior Vice President
BANK OF FLORIDA

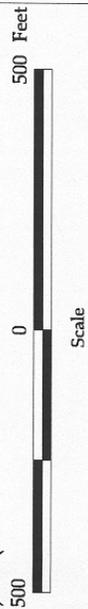
Attachment 4 (Future Land Use Map)



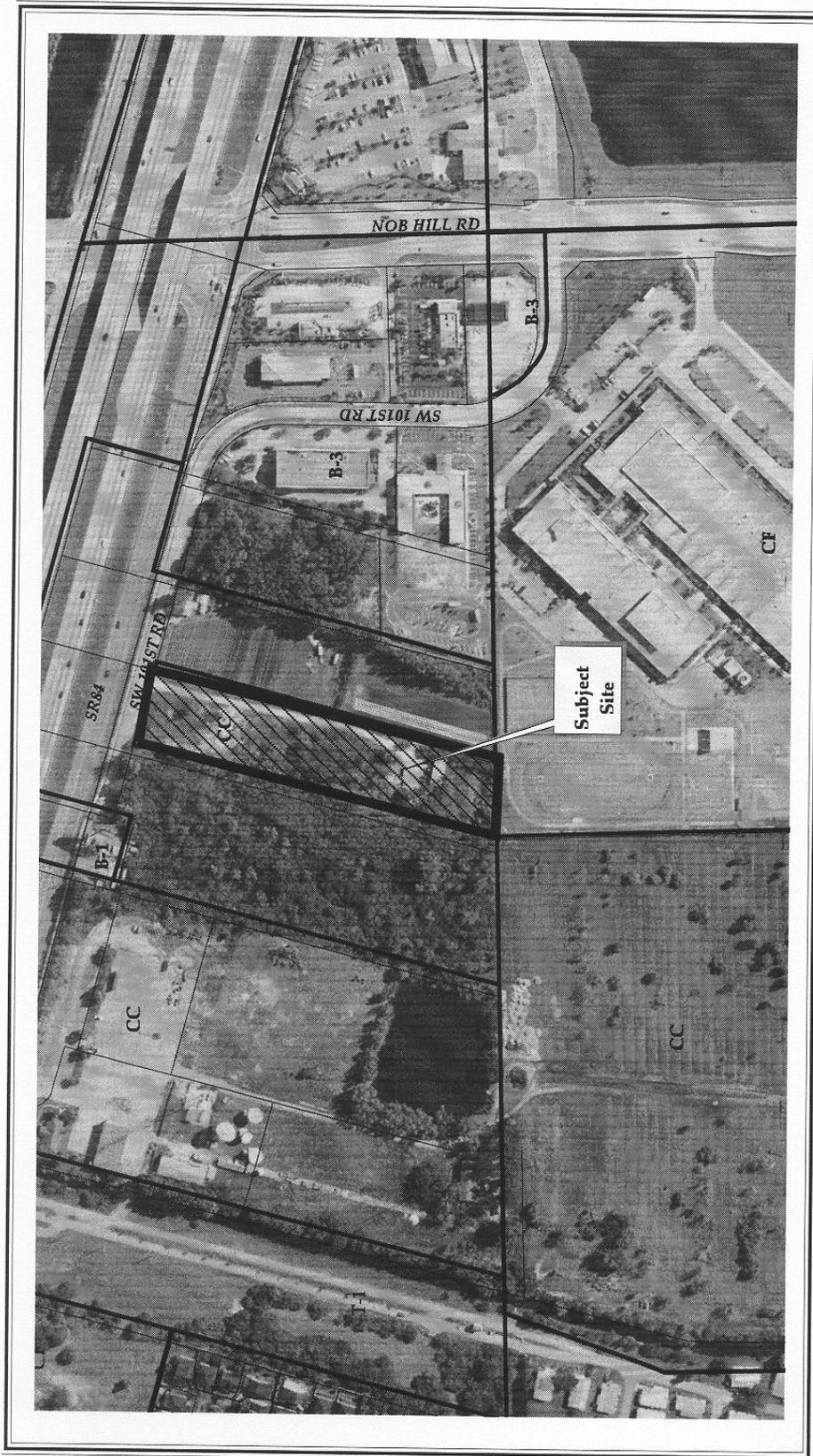
Future Land Use Map

Prepared By: A.J.P.
Date Prepared: 01/31/05

The Town of Davie
Development Service Department
Planning & Zoning Division



Attachment 5 (Aerial, Zoning, Subject Site Map)



Aerial, Zoning, and Subject Site Map
Prepared By: A.J.P.
Date Prepared: 01/31/05



The Town of Davie
Development Service Department
Planning & Zoning Division

Scale

500 0 500 Feet

A horizontal scale bar with markings at 0, 500, and 500 feet. A north arrow is positioned to the left of the scale bar.