

**DEVELOPER AGREEMENT BETWEEN
ALACHUA COUNTY
AND
PR GAINESVILLE LIMITED PARTNERSHIP**

THIS AGREEMENT, made and entered into, this 26th day of April, A.D., 2011, by and between **ALACHUA COUNTY**, a charter county and political subdivision of the State of Florida, hereinafter referred to as the "County", and **PR GAINESVILLE LIMITED PARTNERSHIP**, a limited partnership organized under the laws of Delaware and authorized to do business in the State of Florida, hereinafter referred to as "PR Gainesville";

WITNESSETH:

WHEREAS, on April 13, 1999, a Developer's Agreement (hereinafter, 1999 Developer's Agreement) was entered between Alachua County and Haufler Properties, Inc., NRB Development, Inc., and O&E Ltd., (hereafter, Hauflers et.al.) following submittal of a development plan by Hauflers et. al., seeking approvals for the Springhills Shopping Center, Phase I (a 65,000 square foot retail building now occupied by Publix and other retail businesses) and four outparcels on the north side of NW 39th Avenue; and

WHEREAS, the 1999 Developer's Agreement requires construction of a right turn storage lane for eastbound to southbound movements at the southwest corner of the intersection of NW 39th Avenue and NW 91st Street, with construction of same to commence prior to issuance of the Alachua County Public Works Department Construction permit for the last of the projects listed in the 1999 Developer's Agreement and with completion of the right turn lane required prior to the Certificate of Occupancy for the last of the listed projects; and

WHEREAS, on July 26, 1999, the Alachua County Board of County Commissioners approved Resolution No. 99-73 which constituted the original Development of Regional Impact Development Order for the property referred to as the Springhills Development of Regional Impact; and

WHEREAS, on December 14, 2000 the 1999 Developer's Agreement was amended without making any modification to the timing for the requirement for the construction of the required right turn lane; and

WHEREAS, on April 12, 2005, in response to a Notice of Proposed Change for a Substantial Deviation Determination filed on February 22, 2005 by the developer and landowners at that time, the Alachua County Board of County Commissioners approved Resolution No. 05-26, rescinding and replacing in its entirety Resolution No. 99-73 which had since 1999 constituted the Development of Regional Impact Development Order for the Springhills Development of Regional Impact; and

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WHEREAS, Resolution No. 05-26 upon taking effect on April 12, 2005 and thereafter has constituted the Development of Regional Impact Development Order issued by Alachua County; and

WHEREAS, Resolution No. 05-26 was approved by the Alachua County Board of County Commissioner pursuant to Chapter 380, Florida Statutes and has remained in effect since its adoption; and

WHEREAS, Resolution No. 05-26 incorporates and restates the requirement of the Amended Developer's Agreement and states that 'At the time of issuance of the last construction permit for (listed projects) or prior to completion of Phase II, whichever occurs first, construction of a right turn storage lane for eastbound to southbound movements at the southwest corner of the intersection of NW 39th Avenue and NW 91st Street shall commence and must be completed prior to issuance of a certificate of occupancy on the last of the listed projects or the last of Phase II projects, whichever first occurs; and

WHEREAS, Resolution No. 05-26 also establishes a requirement that before initiation of Phase II of the Springhills DRI development, the following transportation improvements shall be in place: extension of left turn lanes on all approaches and northbound and southbound right turn lanes at NW 92nd Court /NW 39th Avenue Intersection; and extend left turn lanes on all approaches and northbound and southbound right turn lanes at NW 91st Street/NW 39th Avenue intersections; and

WHEREAS, on February 8th, 2006, the Hauflers et. al. conveyed fee simple title ownership of most of the properties governed by Resolution No. 05-26 to PR Gainesville Limited Partnership which thereafter has maintained ownership of the property; and

WHEREAS, the Resolution No. 05-26 is binding upon subsequent purchasers of the land, remains in effect, and is binding upon the current owners, PR Gainesville Limited Partnership; and

WHEREAS, as of the date of this Developer Agreement, there is no mitigation that is currently due, though there is mitigation attributable to approved and constructed development that has not yet been performed; and

WHEREAS, Section 380.06(29)(c) Florida Statutes provides that any proposed development within a designated 'urban service area' (as defined in s.163.3164 F.S.) established by a county that does not qualify as a dense urban land area pursuant to s.163.3264 F.S., is exempt from the development-of-regional- impact process; and

WHEREAS, Alachua County has designated an 'urban service area' as defined by s. 163.3164 Florida Statutes in its adopted comprehensive plan; and

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WHEREAS, the entire Springhills development is within the boundaries of the urban service area; and

WHEREAS, 380.06(29)(e) Florida Statutes provides that within the urban service area 'any previously approved development-of-regional-impact development orders shall continue to be effective, but the developer has the option to be 'governed by' s. 380.115(1) F.S.; and

WHEREAS, 380.115(1)(b) Florida Statutes provides that upon request of the 'developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed; and

WHEREAS, the developer and predominate landowner, PR Gainesville has requested rescission of Resolution No. 05-26; and

WHEREAS, in order to assure that development impacts from approved and constructed development are appropriately mitigated, PR Gainesville and Alachua County believe it is in the best interests of the parties and the public that the substance and timing of transportation mitigation requirements are specified in an enforceable developer agreement that is binding on the developer and successors in interest; and

WHEREAS, the County has determined that PR Gainesville's request to rescind the development order, with the conditions and obligations provided for in this Developer Agreement, is consistent with Section 380.115(1)(b), Florida Statutes, and that rescission is appropriate; and

WHEREAS, PR Gainesville has agreed to enter this Developer Agreement for the purpose of ensuring timely provision of said improvements.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein, and other good and valuable consideration, the parties agree as follows:

1. **Recitals Incorporated.** The above recitals are true and correct and incorporated herein.

2. **Transportation System Improvements.**

- a. Prior to issuance of a certificate of occupancy for any development for which final development plan approval is hereafter issued for properties previously governed by Resolution No. 05-26, PR Gainesville shall seek authorization from the Florida Department of Transportation to extend, or have extended, eastbound

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and westbound left turn lane approaches on NW 39th Avenue at the NW 92nd Court and NW 91st Street intersections, and if so authorized, make said improvements; and

- b. Prior to issuance of a certificate of occupancy for any development for which final development plan approval is hereafter issued for properties previously governed by Resolution No. 05-26 and east of I-75, PR Gainesville shall seek authorization from the Florida Department of Transportation to construct, or have constructed, an eastbound right turn lane at the NW 91st Street and NW 39th Avenue intersection, and if so authorized, make said improvement..
3. **Impact of the Development.** PR Gainesville agrees that the improvements required by this Developer's Agreementⁱ are necessary to mitigate impacts to the public road system and that the requirements meet the 'essential nexus' and 'rough proportionality' requirements established by the United States supreme Court in the cases of *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*. Nothing in this Agreement shall be construed to waive any legal rights PR Gainesville might assert regarding any other property owned by PR Gainesville or any development approval being sought by PR Gainesville other than the approvals specifically referenced herein.
4. **Burden of Property Owner's Rights.** PR Gainesville further agrees that the requirement to construct the transportation improvements set forth in Section 2 above, in no way inordinately burdens an existing use of the property or vested right to a specific use of the property. Nothing in this Agreement shall be construed to waive any legal rights PR Gainesville might assert regarding any other property owned by PR Gainesville or any development approval being sought by PR Gainesville other than the approvals specifically referenced herein.
5. **Notices.** Except as otherwise provided herein, any notice, acceptance, request, or approval from either party to the other party shall be in writing and sent by certified mail, return receipt requested, and shall be deemed to have been received when either deposited in the United States Postal Service mailbox or personally delivered with signed proof of delivery.

The County representative and PR Gainesville representatives are:

County: County Manager
 Post Office Drawer 2877
 Gainesville, FL 32602

PR Gainesville Bruce Goldman
 200 South Broad Street

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Philadelphia, PA 19102

A copy of any notice hereunder shall also be sent to:

J.K. "Buddy" Irby
Clerk of the Circuit Court
Post Office Box 939
Gainesville, FL 32602
Attn: Finance and Accounting

6. Agreement Running With the Land. This Agreement shall be binding on the parties, and shall inure to the benefit of the heirs, legal representatives, successors, and assigns of the parties, and shall be a covenant running with the Property and be binding upon the successors and assigns of the Developer and upon any person, firm, corporation, or entity who may become the successor in interest to the Property.

7. Entire Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document.

8. Amendments. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality.

9. Compliance with all Requirements. Nothing contained herein shall relieve PR Gainesville or its successors or assigns from obtaining any local, regional, state, or federal permits, or compliance with any applicable ordinances, laws, rules, or regulations necessary for the development of any of its properties previously governed by Resolution 05-26.

10. Annexation. This Agreement is not intended to be, and indeed is not, a "development agreement" within the meaning of Section 163.3220-163.3243, F.S. The parties shall not be deprived of their rights and obligations, and this Agreement shall not be terminated, modified, or affected, by operation of a municipal annexation of any portion of the Property.

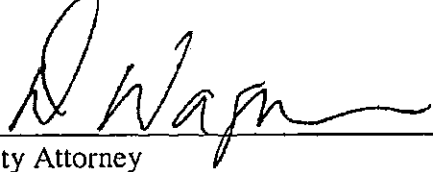
IN WITNESS WHEREOF, the parties have caused this Developer's Agreement to be executed for the uses and purposes therein expressed on the day and year first above-written.

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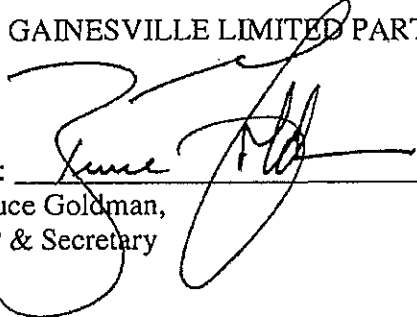
ALACHUA COUNTY, FLORIDA

By: 
Randall Reid
County Manager

APPROVED AS TO FORM

By: 
Alachua County Attorney

PR GAINESVILLE LIMITED PARTNERSHIP

By: 
Bruce Goldman,
VP & Secretary