

ECONOMIC INCENTIVE COMMITMENT AGREEMENT

This Economic Incentive Commitment Agreement (hereinafter “Agreement”), is made and entered by and between Cobb County, Georgia (hereinafter “County”), a political subdivision of the State of Georgia, and NF IV-VA ATL Cumberland, LLC, a Delaware limited liability company (hereinafter the “Company”), with a local principal address of 2000 Monarch Tower, 3425 Peachtree Road NE, Suite 2000, Atlanta, Georgia 30326.

RECITALS

WHEREAS, the County has enacted the Economic Development Incentive Ordinance of Cobb County (“Ordinance”) to provide for quality, controlled growth, retention, redevelopment, and rehabilitation of targeted areas within the County; and

WHEREAS, the Company seeks to develop an approximately 260 room, dual-branded Hilton Garden Inn and Home2Suites hotel to be located on an approximately 1.0 acre tract of land to be purchased by said Company along Cobb Galleria Parkway on property that will adjoin the Cobb Energy Performing Arts Centre in unincorporated Cobb County (such development being referred to as the “Project”), and

WHEREAS, the Project represents an estimated capital investment of approximately \$63.5 million, including \$6.2 million in land; and

WHEREAS, the Company intends to purchase new furniture, fixtures, and equipment for the development valued at approximately \$6.5 million resulting in an estimated total project cost of \$76.2 million; and

WHEREAS, the Company has submitted an application to the County seeking consideration of incentives available through the Economic Development Incentive Program (the “Application” attached hereto and referred to as Exhibit “A”); and

WHEREAS, the Economic Department Division Manager has reviewed the application and based on this review made a recommendation to the County Manager, District Commissioner and Chairman of the Board of Commissioners and received their concurrence to offer incentives to the Company in accordance with the Ordinance and approved Economic Incentive Overview and Review Process; and

WHEREAS, the County, through the appropriate authority of the Board of Commissioners, and pursuant to the Ordinance, agrees as expressed herein to provide the Company with certain incentives available under the Ordinance for development of the Project; and

WHEREAS, the Company is a target business identified by standard industrial classification codes as specified under the Targeted Industry incentive program provided in the Official Code of Cobb County Section 2-172 as approved by the Board of Commissioners; and

WHEREAS, pursuant to and in conformance with the Ordinance, the parties hereto desire to set forth their agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **PROJECT**

The Company agrees to develop an approximately 260 room, dual-branded Hilton Garden Inn and Home2Suites hotel to be located on an approximately 1.0 acre tract of land to be purchased by said Company along Cobb Galleria Parkway on property that will adjoin the Cobb Energy Performing Arts Centre in unincorporated Cobb County, which would include approximately 5,600 square feet of premium event/meeting space, a restaurant serving breakfast and dinner, and a rooftop bar open to the public that will also serve food, among other related amenities for approximately \$63.5 million including \$6.2 million for the land, and purchase new furniture, fixtures, and equipment for the development valued at approximately \$6.5 million resulting in an estimated total project cost of \$76.2 million.

The Company is committed to create 70 jobs over a ten-year period (“Incentive Period”).

2. **INCENTIVE PERIOD**

The parties agree that the Incentive Period shall commence on January 1 of the year following the issuance of the Certificate of Occupancy for the hotel and remain in effect for a ten-year period.

3. **VALUE OF INCENTIVES**

The County agrees to authorize an incentive package valued at approximately \$353,281 for the Project, based on the following:

- i. The Company will be the direct beneficiary of the capped permit fee of \$5,000 for the building construction beginning with the commencement of the Incentive Period. The building construction permit fee is normally calculated at \$6.25 per \$1,000 of construction value, and the parties agree that the building construction permit fees for the building would ordinarily cost \$358,281. Consequently, the value of this incentive is \$353,281.
- ii. The Company will be the direct beneficiary of the flexible payment of the Sewer Development Fee (SDF) which is estimated at \$193,285 with \$64,429 due as a requirement of plan review and the remainder included as part of the water/sewer bill in equal parts at \$5,369/month over the first 24 months of operation.

4. **ANNUAL REVIEW; REPORTS**

In compliance with Code Section 2-176, the Company shall submit to the County an annual progress report documenting the number of New Jobs (permanent, full-time or full-time equivalent positions created by the target business) at the Project Site and any other information relevant to this Agreement that the County reasonably deems appropriate for the Incentive Period (no later than April 1 of the year following the original year of the Incentive Period and for each successive year of the Incentive Period). Such New Jobs must have been created and maintained by the Project to confirm that the initiatives' eligibility is being satisfied. The parties agree and understand that the Project is intended to generate sufficient governmental revenues to the County during the Incentive Period that meet or exceed the net present value of the incentives being provided to the Company.

Failure to report, as required by this paragraph, will not be deemed to be a violation for purposes of Paragraph 5 unless the Company has failed to file such report within thirty (30) days of the receipt from the County of a written notice of such failure.

5. **RECAPTURE OF INCENTIVES**

The Company agrees that should it violate the conditions of this Agreement, fail to complete the Project, or relocate or be annexed during the period for which the incentives are granted, it will immediately reimburse County for the full value of any and all incentives received hereunder.

If any incentive provided to the Company is later determined to be illegal, unenforceable or invalid, the Company agrees to promptly reimburse the County for the full value of any and all incentives provided hereunder.

6. **BREACH, NOTICE & TERMINATION**

If the Company materially fails to fulfill its obligations under this Agreement, the County shall provide written notice and thirty (30) days to cure the breach or to show cause why it should not be deemed to be in default. If the breach is not corrected within the thirty (30) days after the written notification, and no resolution or mediation of the breach have been reached, the County may terminate or suspend the incentives granted under this Agreement and may require the recapture of incentives. In the event of such termination or suspension, the County may pursue all appropriate legal remedies and/or relief.

7. **NOTICES**

Except as may otherwise be provided herein, all notices, demands, requests and other communications under this Agreement shall be in writing and shall be either personally delivered, sent by registered or certified mail, or sent by courier, to the following addresses (or to such other address as may be designated by written notice transmitted in accordance with this provision):

In case of the County, to:
Economic Development Division Manager
Community Development Agency
P.O. Box 649
Marietta, Georgia 30061
(770) 528-2018

In case of the Company, to:
NF IV-VA ATL Cumberland, LLC
Attn: Mark K. Rafuse
Vice President
Noble Investment Group, LLC
2000 Monarch Tower
3425 Peachtree Road, NE
Suite 2000
Atlanta, Georgia 30326
Mark.rafuse@nobleinvestment.com
(404) 832-3830

8. **FALSE STATEMENTS, PENALTIES**

The Company affirmatively covenants that it has made no false statements to the County in the process of obtaining approval for the economic incentives provided by this Agreement. If any representative of the Company has knowingly made a false statement to the County to obtain the incentives or fails to redress a false statement that was unknowingly made, the parties shall be required to immediately return all benefits received under the Agreement and shall be ineligible for any future economic development assistance from the County. Any person who provides a false statement to secure economic development assistance may be faced with criminal charges.

9. **INDEMNIFICATION**

The County shall not be liable for any contractual or other claim caused by or related to the construction, implementation, and/or operation of the Project. The Company agrees to indemnify and hold harmless the County from any claims or actions arising in any manner related to the construction, implementation, and/or operation of the Project.

10. **ENTIRE AGREEMENT; NOT BINDING PRIOR TO EXECUTION**

This Agreement contains the entire agreement between the parties, and no promise, terms, or obligations, other than herein set forth, or subsequently set forth in writing and signed by all parties hereto, shall be binding upon any party hereto. This Agreement supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement may be amended only by written instrument, subject to approval by the Cobb County Board of Commissioners and execution by all parties.

11. **ASSIGNMENT**

The parties may not assign this Agreement or the rights and obligations herein without the consent of the other parties. The Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties to the Agreement and their respective successors and permitted assigns.

12. **GOVERNING LAW**

The parties agree that economic incentives are governed by the Official Code of Cobb County, Georgia, Sec. 2-166, et seq., as amended. The parties further agree this Agreement shall be governed exclusively by the internal laws of the State of Georgia, without regard to its conflicts of laws rules. The courts located in Cobb County, Georgia shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party consents to the exclusive jurisdiction of these courts.

SIGNATURES TO FOLLOW ON THE NEXT PAGE

IN WITNESS WHEREOF, the parties acting through their duly authorized agents have caused this Agreement to be signed, sealed and delivered for final execution by the County on the dated indicated herein.

NV IV-VA ATL CUMBERLAND, LLC

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

By: _____

Title: Notary

Seal

COBB COUNTY, GEORGIA

By: _____

Michael H. Boyce, Chairman
Cobb County Board of Commissioners

Date: _____

Attest:

By: Pamela L. Mabry
Title: County Clerk

Approved as to Form:

Cobb County Attorney's Office

Seal

Approved as to Form:

Community Development Agency

Exhibit A

Economic Incentive Application