

DEVELOPMENT AGREEMENT  
FOR  
REGENCY HOTEL & SPA

This agreement is entered into this 1 day of June, 2004, between Regency Hotel & Spa, also known as Bosta Corporation ("Regency") and the City of Hallandale Beach, a municipal corporation organized and existing under the laws of the State of Florida ("City").

FINDINGS OF FACT

This agreement is predicated upon the following facts:

- A. The City of Hallandale Beach Zoning and Land Development Code, Article III, Section 32-173(d)(2), requires the City to enter into binding Development Agreements for the development of real property with persons having legal or equitable interests in such real property;
- B. Pursuant to the Zoning and Land Development Code, Section 32-173 "PDD" Planned Development District and the Design Guidelines Manual, the City has adopted rules and regulations establishing procedures and requirements for Development Agreements;
- C. Regency has requested the City of Hallandale Beach to enter into a Development Agreement and proceedings have been taken into accordance with the aforementioned City of Hallandale Beach rules and regulations as cited above;
- D. The Hallandale Beach City Commission has found that this Development Agreement is consistent with the Comprehensive Plan, the Major Development Plan, the Land Development Regulations and all other applicable requirements except as otherwise provided for in this agreement;

NOW THEREFORE, THE PARTIES AGREE:

1. Definitions. For the purpose of this agreement, unless the context otherwise requires:

- a. "Project" shall mean the Major Development Plan approved by the City of Hallandale Beach for construction of a 130 unit luxury condominium-hotel located in the City of Hallandale Beach in Broward County, Florida. Applicant seeks to build on the property located at 2000 South Ocean Drive in Hallandale Beach, Florida, on the present site of the existing low rise Regency House Health Spa. This property is approximately 1.3 acres, and is bounded on the south by the Parker Plaza

Condominium, on the north by the Hemisphere Condominiums, on the east by the Atlantic Ocean, and on the west by State Road A1A.

b. "Owner" shall mean Regency, by and through Bosta Corporation, and includes the property owner's successors, assignees, tenants, agent, contractors, subcontractors and parties in interest.

2. Description of Real Property. The legal description of the property which is the subject of this agreement is described and contained in Exhibit "A" attached hereto and made a part hereof.

a. The name of the project is Regency Hotel & Spa.

b. The name of the applicant is Bosta Corporation.

3. Specific Restrictions on Development of Real Property. The project shall be undertaken and carried out in accordance with all City Codes and Ordinances in effect on the effective date of this agreement, except for those exceptions and variations as set forth in this agreement or any exhibit attached hereto. All additional Code Amendments adopted after the date of this agreement and not conflicting with the exceptions and variations enumerated in this agreement shall be applicable to the project. The City and the Owner agree that the development of the project will be governed in conformance with the following agreement, limitations, and modifications:

a. Permitted Uses. The project may include all those uses permitted by the RM-25 Zoning District with the application of the PDD overlay and all uses permitted under this agreement and in accordance with the Hallandale Beach Comprehensive Plan.

b. Permitted Development. 130 condominium hotel units are permitted.

c. Parking. A minimum of 158 parking spaces shall be provided per Exhibit "B".

d. Site Design Standards. Please refer to Exhibit "C", as to setbacks, maximum height, open space and landscaping and other applicable site development standards of the project. Exhibit "C" shall be maintained in the City of Hallandale Beach City Clerk's Office.

e. All plans shall provide detailed design data subject to final approval by the City Manager during the building permit process. The owner agrees to comply with all local, county, state and federal laws pertaining to this construction.

f. Completion of Project. Owner agrees to diligently prosecute to

completion the construction of the Project.

4. Special Conditions

- a. See attached Exhibit "B" for list of conditions.
- b. **Satisfaction of Conditions.** The Owner may notify the City asserting the completion of any of the conditions of this agreement, and as necessary, furnish evidence of same. The City shall then consider such notice, inspect the work or proof of completion and, within 21 days, notify the Developer that such conditions have either been found to be completely satisfied, or found to be not completed, with a list of deficiencies. In the event that the City fails to take action within 21 days of notification, the completion shall be deemed approved.

5. Exhibits and Controlling Documents. The following documents are made a part hereof by this reference:

- a. The Code of Ordinances of the City of Hallandale Beach.
- b. The Development Plans and Specifications (Exhibit "C") filed with the City in the Development Services Department.
- c. In the event that the Major Development Plan and/or any of its contents are found to be in conflict with this Development Agreement, the applicable provision of this Development Agreement shall prevail.
- d. There shall be strict adherence to this Development Agreement and the Major Development Plan. Any substantive change or amendment to the aforementioned Exhibits shall be addressed in conformance with Zoning and Land Development Code, Article IV, Section 22.10(a)-(c).

6. Amendments. Any amendment to this agreement or to the development plans shall not be approved unless all parties agree to the amendment in writing. All amendments not requiring City Commission approval shall be subject to the final approval by the City Manager on behalf of the City.

7. Building Permits and Certificates of Occupancy. The City agrees to issue to the Owner, upon application and approval, all required building permits, approvals or other required permits and Certificates of Occupancy for the construction, use an occupancy of the project, subject to compliance with the permit conditions, this agreement and the most current Florida Building Code as amended from time to time.

It is further understood and agreed that failure to fulfill any provision of this agreement, the Major Development Plan, or the conditions of approval, including any conditions of a specific building permit, may result in non-issuance of Certificates of Occupancy, Certificates of Completion, or other regulatory approvals until such time as all conditions of the specific building permit and this agreement are complied with, and that the City shall not be liable for any direct, indirect and/or consequential damages claimed for such non-issuance.

8. Fees. Regency shall pay all fees as required by City Code. Approvals are also based upon payment of the City's usual and customary fees and charges for such applications, permits or services, in effect at the time of issuance of the permit or approval, and any financial contribution identified as part of this agreement.

9. Binding Effect of Agreement. This agreement shall be binding upon the Owner and the City and upon any successive owners, their respective assignees, successors, including any mortgagees who acquire title by deed or foreclosure, legal representatives, heirs and beneficiaries (as applicable) upon acquiring any interest in the property and shall run with the land. This agreement may be recorded in the Public Records of Broward County, Florida.

10. Breach of Agreement. In the event that the Owner has materially breached the Development Agreement, prior to issuance of the Certificate of Occupancy, the Owner shall commence to cure the breach within 30 days of notice by the City. If the Owner is unable or unwilling to cure the breach and abide by the agreement, the City shall exercise its right to take appropriate legal action for the purpose of curing the breach and enforcing this agreement.

11. Hold Harmless. Owner agrees to and shall hold the City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from the direct or indirect operations of the Owner or those of the property owner's contractor, subcontractor, agent, employee, or other person acting on his behalf which relate to the project. Property owner agrees to and shall defend the City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of property owner's activities in connection with the project.

12. Monitoring Official. The City Manager or his designee shall ensure that all requirements of this agreement are met.

13. Surety. Bonding shall be as provided in the Code and applicable ordinances and regulations. This agreement shall not affect such requirements except to provide for joint and severable liability and to make clear that all requirements shall be binding on any mortgagees, successors or assigns. Irrevocable letters of credit in such form and issued by such institution as may be acceptable by the City shall serve as appropriate surety against failure to perform.

However, nothing herein shall prevent the City, in its discretion, from accepting bonds or letters of credit in lieu of any specific improvement, on site or off site, being completed within a specified time period.

14. Notices. Any notice, demand or other communication required or permitted under the terms of this agreement shall be in writing, made by overnight delivery services or certified mail, return receipt requested, and shall be deemed to be received by the addressee one (1) business day after sending by overnight delivery services, and three (3) business days after mailing, if sent by certified mail. Notices shall be addressed as provided below:

(1) If to the City:

City of Hallandale Beach  
Attention: City Manager  
400 South Federal Highway  
Hallandale Beach, FL 33009  
(954) 457-1300 - Phone  
(954) 457-1342 - Fax

(2) If to the Owner:

Nicholas Dejnega, President  
Bosta Corporation  
2000 South Ocean Drive  
Hallandale Beach, FL 33009  
(954) 454-2220 - Phone  
(954) 454-4637 - Fax

15. Effective Date of the Agreement. This agreement shall become effective upon the Hallandale Beach City Commission approval and execution by the Owner and City Manager of the City.

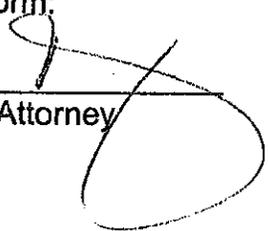
16. Recording. This agreement or a memorandum shall be recorded in the Public Records of Broward County, Florida and shall run with the land.

17. Severability. In the event that any portion or section of this agreement is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction,

such decision shall in no manner affect the remaining portions or sections of this agreement, which shall remain in full force and effect.

IN WITNESS WHEREOF this agreement has been executed by the parties on the day and year first above written.

Approved as to form:

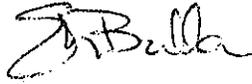
  
\_\_\_\_\_  
David Jove, City Attorney

CITY OF HALLANDALE BEACH

  
By: \_\_\_\_\_  
Mike Good, City Manager

Attest: \_\_\_\_\_  
E. Dent McGough, City Clerk

Witnesses:



Print Name: Elizabeth D. Smith

BOSTA CORPORATION

By:   
\_\_\_\_\_  
Nicholas Dejnega, President



Print Name: Barbara Kopeck

## EXHIBIT "A"

### LEGAL DESCRIPTION

A PORTION OF THE SOUTH 100.00 FEET OF THE NORTH 2450.00 FEET OF TRACT 2, "SECOND AMENDED PLAT OF OF SEMINOLE BEACH", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 15, AT PAGE 19 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, COMMENCE AT THE S.W. CORNER OF THE SOUTH 100.00 FEET OF THE NORTH 2450.00 FEET OF SAID TRACT 2; THENCE S83°48'04"E, FOR 17.01 FEET TO THE POINT OF BEGINNING OF A PARCEL OF LAND HEREINAFTER DESCRIBED; THENCE S83°48'04"E ALONG THE SOUTH LINE OF SAID SOUTH 100.00 FEET OF THE NORTH 2450.00 FEET OF SAID TRACT 2 FOR 570.08 FEET; TO A POINT ON THE WEST LINE OF THE PREMISES DEEDED TO THE STATE OF FLORIDA, AS RECORDED IN OFFICIAL RECORDS BOOK 4554, AT PAGE 954, PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE N03°54'41"E ALONG SAID WEST LINE OF THE PREMISES DEEDED TO THE STATE OF FLORIDA, FOR 100.23 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 100.00 FEET OF THE NORTH 2450.00 FEET OF SAID TRACT 2, THENCE N83°48'04"W ALONG THE NORTH LINE OF THE SOUTH 100.00 FEET OF THE NORTH 2450.00 FEET OF SAID TRACT 2, FOR 570.08 FEET, THENCE S03°54'41"W ALONG A LINE THAT IS 17.00 FEET EASTERLY OF AND PARALLEL WITH THE WEST LINE OF SAID TRACT 2 FOR 100.23 FEET TO THE POINT OF BEGINNING.

**EXHIBIT "B"**

**CONDITIONS OF COMMISSION APPROVAL**

**APPLICATION #15-03-DB**

All of the following conditions are intended to be requirements of the final design as submitted for and approved during construction document preparation and issuance of building permits. The conditions may include or supplement general requirements of the Zoning and Land Development Code, the Florida Building Code, the City Design Guidelines Manual, any other applicable Code and the approved Major Development Plan.

The following list incorporates conditions as stipulated in the Development Services Staff Report of Application #15-03-DB dated April 27, 2004. The developer shall comply with the list of conditions as specified herein:

1. The applicant must obtain a variance to build eastward of the Coastal Construction Line and must have the approval of the City Commission in addition to state regulatory agencies approval.
2. The property shall be replatted as required by the City and Broward County.
3. Recertification by the Broward County Planning Council of the City's land use plan amendment changing the designation to Residential High Density-2.
4. The existing dune system eastward of the east parcel shall be fenced in during construction and not disturbed as required by state regulatory agencies.
5. The temporary sales center shall be removed at the owner's expense if construction does not commence within one year from the date the sales trailer is installed or at the expiration of Major Development Plan (site plan) approval.
6. The maximum number of hotel units in the development shall not exceed 130 hotel units.
7. Roof-mounted mechanical equipment shall be screened from view, engineered and screened to reduce noise from roof equipment.
8. No required tree shall be less than 12 feet in overall height and have a

three-inch caliper.

9. Submission of hydraulic analysis of water system and sewer system showing adequate provision of fire and domestic use demand or upgrading the existing systems to the satisfaction of the City Engineer.
10. Drainage calculations will be required at time of permitting. Must comply with DPEP regulations and City criteria to retain 5-year, 1 hour storm on-site.
11. The existing 17 foot utility easement fronting the property on A1A shall be shown on drawings. Existing water and sewer mains shall be taken into account with landscaping.
12. Freestanding signage shall be limited to one 16 square foot backlit 8 feet in height monument sign setback a minimum of 10 feet from the front property line. No commercial signage shall be allowed on such sign.
13. The developer shall, at his expense, re-fly and generate an aerial photography of the A1A quadrant meeting the City's specifications after construction has been completed. The estimated cost is \$5,000.
14. The developer shall pay for the purchase of sewer capacity required of the Hollywood Treatment Plan as a result of the new construction. The estimated amount is \$103,500, which shall be paid to the City prior to the issuance of the Certificate of Occupancy for the development. Additionally, any required upgrades to the lift station shall be paid by the developer.
15. The developer shall pay a \$25,000 contribution for water main improvements to serve the area.
16. The developer shall contribute \$150,000 to the City for the purpose of replacing the existing light poles on A1A to decorative type.
17. The developer shall contribute \$17,000 to the City's bus shelter program which will fund the replacement of one bus shelter for A1A. in accordance with the City's specifications.
18. The developer shall contribute \$20,000 to the City for improving the pedestrian public beach access across located directly south of the project.
19. The developer shall contribute an additional \$40,000 to the City to upgrade and enhance the public showers at the City's Beach.

20. The developer shall contribute \$50,000 to the City's affordable housing program.
21. The developer shall pay the City \$10,000 for the City's Transportation Fund.
22. The developer shall pay a \$20,000 contribution for a City Marketing Plan.
23. Financial contributions for the bus shelter, beach access improvements, public showers, housing programs, transportation fund and Marketing Plan (items 17, 18, 19, 20, 21 and 22 above) shall be paid to the City upon issuance of the building permit for the development. Payment for the aerial, purchase of sewer capacity, water main and decorative lights contributions (items 13,14,15, and 16) shall be paid prior to the issuance of the Certificate of Occupancy for the development.
24. The developer shall provide an irrevocable easement from the Hemispheres Condominium to provide the developer with access to stucco, paint, and maintain the north wall of the garage building prior to the issuance of the building permit.
25. The developer shall put forth and provide evidence that they gave their best effort to retain local City of Hallandale Beach contractors or subcontractors for the construction of this project.
26. Execution of a Developer's Agreement pursuant to Section 32-174(d)(2) stipulating agreed conditions of the negotiated process satisfactory to the City.

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This agreement is predicated upon the following facts:

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a. The name of the project is Regency Hotel & Spa.

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It is further understood and agreed that failure to fulfill any provision of this agreement, the Major Development Plan, or the conditions of approval, including any conditions of a specific building permit, may result in non-issuance of Certificates of Occupancy, Certificates of Completion, or other regulatory approvals until such time as all conditions of the specific building permit and this agreement are complied with, and that the City shall not be liable for any direct, indirect and/or consequential damages claimed for such non-issuance.

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Attention: City Manager  
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Hallandale Beach, FL 33009  
(954) 457-1300 - Phone  
(954) 457-1342 - Fax

(2) If to the Owner:

Nicholas Dejnega, President  
Bosta Corporation  
2000 South Ocean Drive  
Hallandale Beach, FL 33009  
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(954) 454-4637 - Fax

15. Effective Date of the Agreement. This agreement shall become effective upon the Hallandale Beach City Commission approval and execution by the Owner and City Manager of the City.

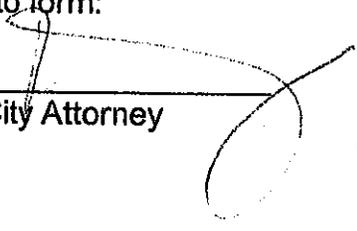
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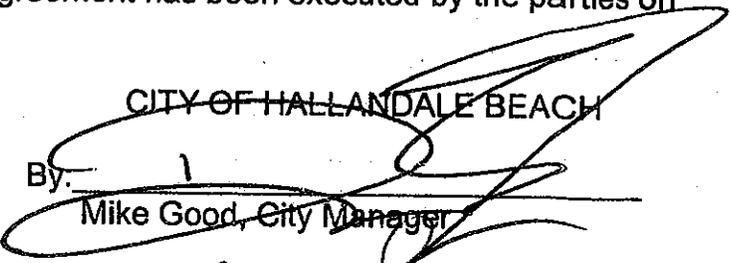
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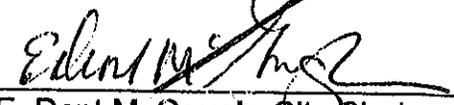
IN WITNESS WHEREOF this agreement has been executed by the parties on the day and year first above written.

Approved as to form:

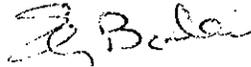
  
\_\_\_\_\_  
David Jove, City Attorney

CITY OF HALLANDALE BEACH

By:   
\_\_\_\_\_  
Mike Good, City Manager

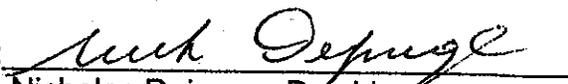
Attest:   
\_\_\_\_\_  
E. Dent McGough, City Clerk

Witnesses:



Print Name: Elizabeth Bonilla

BOSTA CORPORATION

By:   
\_\_\_\_\_  
Nicholas Dejnega, President



Print Name: Barbara Kopeck

## EXHIBIT "A"

### LEGAL DESCRIPTION

A PORTION OF THE SOUTH 100.00 FEET OF THE NORTH 2450.00 FEET OF TRACT 2, "SECOND AMENDED PLAT OF OF SEMINOLE BEACH", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 15, AT PAGE 19 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.  
COMMENCE AT THE S.W. CORNER OF THE SOUTH 100.00 FEET OF THE NORTH 2450.00 FEET OF SAID TRACT 2; THENCE S83°48'04"E, FOR 17.01 FEET TO THE POINT OF BEGINNING OF A PARCEL OF LAND HEREINAFTER DESCRIBED; THENCE S83°48'04"E ALONG THE SOUTH LINE OF SAID SOUTH 100.00 FEET OF THE NORTH 2450.00 FEET OF SAID TRACT 2 FOR 570.08 FEET; TO A POINT ON THE WEST LINE OF THE PREMISES DEEDED TO THE STATE OF FLORIDA, AS RECORDED IN OFFICIAL RECORDS BOOK 4554, AT PAGE 954, PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE N03°54'41"E ALONG SAID WEST LINE OF THE PREMISES DEEDED TO THE STATE OF FLORIDA, FOR 100.23 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 100.00 FEET OF THE NORTH 2450.00 FEET OF SAID TRACT 2, THENCE N83°48'04"W ALONG THE NORTH LINE OF THE SOUTH 100.00 FEET OF THE NORTH 2450.00 FEET OF SAID TRACT 2, FOR 570.08 FEET, THENCE S03°54'41"W ALONG A LINE THAT IS 17.00 FEET EASTERLY OF AND PARALLEL WITH THE WEST LINE OF SAID TRACT 2 FOR 100.23 FEET TO THE POINT OF BEGINNING.

**EXHIBIT "B"**

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**APPLICATION #15-03-DB**

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three-inch caliper.

9. Submission of hydraulic analysis of water system and sewer system showing adequate provision of fire and domestic use demand or upgrading the existing systems to the satisfaction of the City Engineer.
10. Drainage calculations will be required at time of permitting. Must comply with DPEP regulations and City criteria to retain 5-year, 1hour storm on-site.
11. The existing 17 foot utility easement fronting the property on A1A shall be shown on drawings. Existing water and sewer mains shall be taken into account with landscaping.
12. Freestanding signage shall be limited to one 16 square foot backlit 8 feet in height monument sign setback a minimum of 10 feet from the front property line. No commercial signage shall be allowed on such sign.
13. The developer shall, at his expense, re-fly and generate an aerial photography of the A1A quadrant meeting the City's specifications after construction has been completed. The estimated cost is \$5,000.
14. The developer shall pay for the purchase of sewer capacity required of the Hollywood Treatment Plan as a result of the new construction. The estimated amount is \$103,500, which shall be paid to the City prior to the issuance of the Certificate of Occupancy for the development. Additionally, any required upgrades to the lift station shall be paid by the developer.
15. The developer shall pay a \$25,000 contribution for water main improvements to serve the area.
16. The developer shall contribute \$150,000 to the City for the purpose of replacing the existing light poles on A1A to decorative type.
17. The developer shall contribute \$17,000 to the City's bus shelter program which will fund the replacement of one bus shelter for A1A. in accordance with the City's specifications.
18. The developer shall contribute \$20,000 to the City for improving the pedestrian public beach access across located directly south of the project.
19. The developer shall contribute an additional \$40,000 to the City to upgrade and enhance the public showers at the City's Beach.

20. The developer shall contribute \$50,000 to the City's affordable housing program.
21. The developer shall pay the City \$10,000 for the City's Transportation Fund.
22. The developer shall pay a \$20,000 contribution for a City Marketing Plan.
23. Financial contributions for the bus shelter, beach access improvements, public showers, housing programs, transportation fund and Marketing Plan (items 17, 18, 19, 20, 21 and 22 above) shall be paid to the City upon issuance of the building permit for the development. Payment for the aerial, purchase of sewer capacity, water main and decorative lights contributions (items 13,14,15, and 16) shall be paid prior to the issuance of the Certificate of Occupancy for the development.
24. The developer shall provide an irrevocable easement from the Hemispheres Condominium to provide the developer with access to stucco, paint, and maintain the north wall of the garage building prior to the issuance of the building permit.
25. The developer shall put forth and provide evidence that they gave their best effort to retain local City of Hallandale Beach contractors or subcontractors for the construction of this project.
26. Execution of a Developer's Agreement pursuant to Section 32-174(d)(2) stipulating agreed conditions of the negotiated process satisfactory to the City.