

ORDINANCE #ORD2014-03

1
2
3 AN ORDINANCE OF THE CITY OF DUNNELLON, FLORIDA,
4 ESTABLISHING THE “*ECONOMIC DEVELOPMENT INCENTIVE*
5 *PROGRAM #1*” TO INCENTIVIZE DEVELOPMENT OR
6 REDEVELOPMENT OF NON-RESIDENTIAL PROPERTIES WITHIN
7 THE CITY LIMITS, INCLUDING SUCH PROPERTIES WITHIN THE
8 COMMUNITY REDEVELOPMENT AREA (CRA); PROVIDING THAT
9 BUSINESSES WHICH APPLY FOR LAND DEVELOPMENT
10 APPLICATIONS THAT REQUIRE DEVELOPER AGREEMENTS OR
11 AMENDMENTS TO DEVELOPER AGREEMENTS, OR PERMIT
12 APPLICATIONS REQUIRING WATER AND SEWER CONNECTION
13 FEES TO BE PAID MAY RECEIVE A REDUCTION IN APPLICATION
14 FEES AND ANNUAL DEFERRED PAYMENTS FOR WATER AND
15 SEWER CONNECTION FEES; PROVIDING LEGISLATIVE FINDINGS;
16 PROVIDING FOR AUTOMATIC REPEAL OF THIS ORDINANCE;
17 PROVIDING FOR SEVERABILITY, REPEAL OF INCONSISTENT
18 ORDINANCES AND RESOLUTIONS, NON-CODIFICATION; AND
19 PROVIDING FOR AN EFFECTIVE DATE.
20

21 **BE IT ORDAINED** by the City Council of the City of Dunnellon, Florida, as follows:

22 **SECTION 1. Legislative Findings and Intent.**
23

24 Following are the legislative findings and intent of the City Council of the City of Dunnellon
25 relative to this Ordinance:
26

27 A. Under Sec. 70-31 of the City’s Code, owners of property within the City’s utility
28 connection area must connect to the City’s water and sewer system, where available, when
29 owners wish to develop or redevelop their property.
30

31 B. Sec. 70-35 of the City’s Code allows residential homestead property owners to pay the
32 one-time connection (impact) water and sewer fees in installment payments with interest. All
33 other property owners must pay the connection fees at the time of issuance of building permits.
34

35 C. Resolution 2011-05 establishes the application fee for review of a Developer’s
36 Agreement at \$6,000.00 and fee for amendment to Developer’s Agreement at \$3,000.00.
37

38 D. Water and sewer connection fees are set forth in Resolution 2012-19.
39

40 E. A downturn in the national, state, and local economy has resulted in a dramatic decline
41 of non-residential construction projects in the City and has negatively impacted the local
42 economy in general, leading to pronounced unemployment and impaired business opportunities.

Second Draft 10/13/2014 City Council Meeting
First Draft 10/08/2014 City Council Workshop

43

44 F. City Council finds that removal of certain limited regulatory and economic impediments
45 to new non-residential development within the City, including the City of Dunnellon CRA
46 District where blighted conditions already exist, is an appropriate and viable method for
47 simulating the local economy.

48

49 G. City Council has concluded that an efficient and effective economic stimulus that the
50 City can provide is to incentivize new non-residential development projects within the City
51 including the CRA District by allowing water and sewer connection fees to be paid in installment
52 payments and to reduce the application fees for Developer's Agreements and amendments to
53 Developer's Agreements.

54

55 H. City Council has determined that temporarily reducing land development application
56 fees for Developer's Agreements or amendments to Developer's Agreements for applicants who
57 proposed to develop or redevelop non-residential property within the City including the CRA
58 District is a reasonable, necessary, and limited response to the immediate need to stimulate and
59 re-energize the economy in a non-discriminatory manner for a limited duration.

60

61 I. City Council has also determined that temporarily allowing water and sewer connection
62 fees to be paid in installment payments non-residential by property owners who are developing
63 their property or changing the use of their property such that the change of use of the property
64 will trigger an increase in water and wastewater usage per day is a reasonable, necessary, and
65 limited response to the immediate need to stimulate and re-energize the economy in a non-
66 discriminatory manner for a limited duration.

67

68 J. The City Council has created and established a Community Redevelopment Agency and
69 a Community Redevelopment Plan consistent with Florida Statutes Sec. 163.330 et seq., the
70 Community Redevelopment Act of 1969.

71 K. Policy 7.2.1 of the Community Redevelopment Plan (May 2001) authorizes the CRA
72 and the City Council to create incentives for development in the CRA District in order to achieve
73 the desired mix of uses. The City Council finds it to be in the best interest of the health and
74 welfare of the City to expand incentives to include all non-residential properties within the City
75 who wish to develop or re-develop their property

76

77 L. The CRA recommends this Economic Development Incentive Program.

78 **SECTION 2.** This Ordinance shall be known as the "Economic Development Incentive
79 Development Program #1."

80 **SECTION 3. Temporary Reduction in Land Development Application Fees.**

81

82 A. Notwithstanding the current resolutions and ordinances, for all completed applications for
83 Developer's Agreements or amendments to Developer's Agreements submitted to the

84 City after the Effective Date of this Ordinance, there shall be a reduction in application
85 fees for non-residential development in the City as follows:

86
87 (1) Application fee for a Developer's Agreement, set at \$6,000.00 under Resolution
88 2011-05, is hereby reduced to **\$350.00**.

89
90 (2) Application fee for an amendment to a Developer's Agreement, set at \$3,000.00
91 under Resolution 2011-05, is hereby reduced to **\$150.00** per amendment.

92
93 B. Except for the fees set forth above, all other fees set by resolution or ordinance of the
94 City of Dunnellon shall be timely paid by the Developer. All such planning fees represent
95 costs which the City incurs to process land development applications.

96
97 C. In addition to paying planning and other fees, pursuant to Resolution 2001-05, applicants
98 will be responsible for paying all planning consultant, attorney, and engineering fees
99 incurred by the City related to development or redevelopment projects. Applicants must
100 also pay mailing and advertising costs for any public hearings required.

101
102 **SECTION 4. Temporary Annual Deferred Payments for Water and Sewer Connection**
103 **Fees.**

104 A. Eligible applicants. Notwithstanding the current resolutions and ordinances, the
105 following owner/applicants are eligible to pay water and sewer connection fees in two (2)
106 annual deferred installments:

107
108 (1) Owners or applicants who submit completed applications to the City for building
109 permits to construct non-residential structures in the City and who are required to
110 connect to the water and/or sewer system.

111
112 (2) Owners or applicants who require a change in use that triggers an increase in water
113 and wastewater usage per day and an attendant increase in the water and sewer
114 connection fees.

115
116 B. Completed applications. Only completed applications which are submitted after the
117 Effective Date of this Ordinance are eligible for the option to pay in annual deferred
118 installments. For purposes of this Ordinance, "completed applications" are those
119 applications that contain all information and/or data required by the City's Code and
120 necessary to enable an informed decision to be made with respect to an application and
121 that such information has been verified by the City as truthful and accurate and that no
122 money is owed to the City.

123
124 C. When application is made for a building permit. The due date for the first installment
125 shall be twelve (12) months from the date of issuance of the certificate of occupancy by
126 the City, and the due date for the second installment shall be twenty-four (24) months
127 from the anniversary date of the certificate of occupancy. The owner/applicant shall be in

128 default for failure to pay either payment in good and sufficient funds within fourteen (14)
129 business days after the due date. So long as the owner/applicant pays each of the
130 installment payments on their due dates, no interest shall be charged by the City. If the
131 owner/applicant fails to pay an installment payment on the due date, interest shall
132 automatically begin to accrue at the amount allowed by law.
133

134 D. When an application is made for change in use: The due date for the first installment
135 shall be twelve (12) months from the date of the City's approval in the change in use, and
136 the due date for the second installment shall be twenty-four (24) months from the
137 anniversary date of the City's approval in the change in use. The owner/applicant shall be
138 in default for failure to pay either payment in good and sufficient funds within fourteen
139 (14) business days after the due date. So long as the owner/applicant pays each of the
140 installment payments, no interest shall be charged by the City. If the owner/applicant fails
141 to pay an installment payment on the due date, interest shall automatically begin to
142 accrue at the amount allowed by law.
143

144 E. Guarantee of obligation. To secure its obligations under this Section, the owner/applicant
145 shall provide either bonds or irrevocable letters of credit, in form(s) which are similar to
146 those attached to this Ordinance as **Exhibit "A"** and **Exhibit "B"** and incorporated
147 herein by reference. Bonds or irrevocable letters of credit in favor of the City shall be
148 with face amount(s) of the connection fees. Any bond must be executed by a security
149 company qualified and registered to conduct business in the state of Florida and having a
150 A.M. Best Policyholder's Rating of Excellent or better and a "financial size category" of
151 Class VII or higher. The proposed bond or letter of credit shall be provided to the City
152 Manager or designee and the City Attorney for review and their approval. The choice of
153 whether to accept either a bond or a letter of credit shall be solely that of the City. The
154 City shall be under no obligation to issue a building or change in use permit until the
155 bonds or letters of credit are presented to and accepted by the City. The City shall only
156 be permitted to request payment from the bonds or letters of credit if the owner defaults
157 on the payment of monies to the City and then only to the extent of the nonpayment. The
158 bonds or letters of credit shall be canceled upon the successful payment of the connection
159 fee(s). All costs of administering the bonds or letters of credit shall be paid by the
160 owner/applicant.
161

162 F. Vesting. The owner/applicant shall be vested as to the amount(s)s of the connection fees
163 and shall not be subject to any increases (or decreases) in these fees by the City, so long
164 as the owner timely pays the installment payments. Under no circumstances does this
165 sub-paragraph apply to any development approvals.
166

167 G. Payment in full acceptable. Nothing in this Section shall prevent an owner/applicant
168 from paying in full the outstanding connection fees, and the City shall not impose a
169 prepayment penalty.
170

171 H. Supplemental remedies for nonpayment. Upon becoming due, the deferred annual
172 installment payments for connection fees shall be included upon a billing invoice to the

173 nonresidential property owner. If the property owner defaults on payment of the
174 installment payment, the owner may be subject to all legal and equitable remedies and
175 collection provisions currently established by the City for utility services, including but
176 not limited to the discontinuance of service and filing an administrative lien on the
177 property for failure of payment. No partial payment of the connection fee shall be
178 accepted.

179 I. Agreement for payment required. Any property owner/applicant eligible to make
180 deferred annual installment payments shall be required to enter into an agreement with
181 the City substantially in the form attached to this Ordinance as **Exhibit "C,"** which
182 agreement once fully executed shall be recorded by the City in the Public Records of
183 Marion County. The City Manager may approve and sign the agreement on behalf of the
184 City so long as such agreement is in a form substantially consistent with **Exhibit "C."**
185 Upon satisfaction of the required annual payments, the City shall record a memorandum
186 of termination of the agreement in the Public Records of Marion County.

187
188 J. Transfer of ownership of property. The ability of a nonresidential property owner to
189 avail itself of the deferred annual installment payments for connection fees shall
190 terminate upon any transfer in ownership of the property or assignment of the annual
191 deferred payment obligation(s) unless: (1) the owner obtains prior written approval for
192 the assignment of the agreement for repayment from the City Manager or designee; and
193 (2) the transferee provides adequate guarantees of the payment obligation(s) under the
194 terms and conditions set forth in sub-section E herein. If the owner transfers the property
195 or assigns the deferred installment payment obligation without prior written approval of
196 the City or without providing adequate payment guarantees approved by the City
197 pursuant to sub-section E, the outstanding balance for the connection fees shall become
198 due and owing, and owner of the property shall be notified by the City of the outstanding
199 balance due. The outstanding balance shall be added to the next billing invoice to the
200 property owners subject to the collection provisions currently established by the City for
201 utility services, including but not limited to discontinuance of service and filing an
202 administrative lien on the property for failure of payment.

203
204 K. Payment of monies owed to the City. Notwithstanding the foregoing, if any
205 owner/applicant owes outstanding monies to the City at the time of application for annual
206 deferred payments, the owner/applicant shall be ineligible for this Incentive Program
207 until all payments to the City are paid with good and sufficient funds. In addition, the
208 City reserves the right to deny application of this Incentive Program if the
209 owner/applicant fails to present a bond or letter of credit which is acceptable to the City.
210

211 L. All connection fees that may become due and collectable for complete or incomplete
212 applications that are submitted to the City prior to the Effective Date of this Ordinance
213 shall remain due, are ineligible for this Economic Development Incentive Program #1,
214 and are collectable prior to the time of building permit issuance.
215

216 **SECTION 5. Severability.** If any provision of this Ordinance or application thereof to any
217 person or circumstance is held invalid, the remainder of this Ordinance and the application of
218 such provision to other persons or circumstances shall not be affected and shall be considered
219 severed from the invalid provisions.

220 **SECTION 6. Repeal of Inconsistent Ordinances and Resolutions.** Any ordinance or
221 resolution in conflict with this Ordinance is hereby repealed.

222
223 **SECTION 7. Non-Codification.** The provisions of this Ordinance shall not be included and
224 incorporated within the Code of Ordinances of the City of Dunnellon.

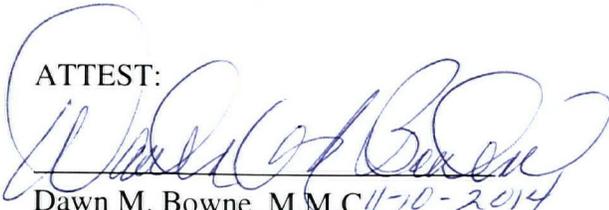
225
226 **SECTION 8. Effective Date; Repeal or Expiration.**

227
228 This Ordinance shall become effective at 12:01 a.m. on November 11, 2014, one day after its
229 second reading and adoption by City Council. This Ordinance shall automatically sunset and
230 stand repealed at 11:59 p.m. on August 11, 2015 ("Sunset Date") unless repealed sooner or
231 extended by the City Council in a subsequent ordinance. All completed applications submitted to
232 the City prior to the Sunset Date shall be entitled to the benefits of the Ordinance; provided
233 however that if an application is submitted by the City prior to the Sunset Date but is deemed by
234 the City after the Sunset Date to be incomplete, the applicant shall not be entitled to the benefits
235 of this Ordinance.

236 **Upon motion duly made and carried,** the foregoing Ordinance was approved upon the first
237 reading/public hearing on the 13th day of October 2014.

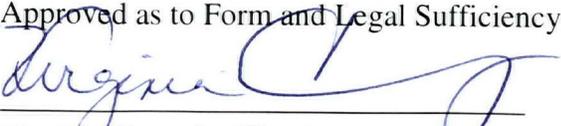
238
239 **Upon motion duly made and carried,** the foregoing Ordinance was approved and passed upon
240 the second and final reading and public hearing on the 10th day of November 2014.

241
242 Advertised on October 30, 2014 in the Riverland News and posted on the City's Website
243 on October 9, 2014.

244
245
246 ATTEST:
247 
248 Dawn M. Bowne, M.M.C. 11-10-2014
249 City Clerk

CITY OF DUNNELLON

NATHAN WHITT, Mayor 11-10-2014

251
252 Approved as to Form and Legal Sufficiency:
253 
254 Virginia Cassady, City Attorney 11-10-2014
255

256

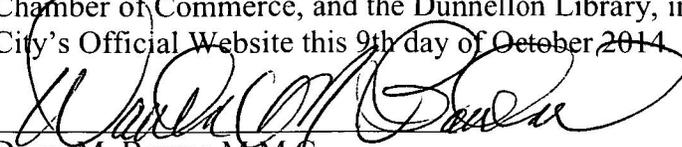
257 **I HEREBY CERTIFY** that copies of the foregoing Ordinance were posted at City Hall, the
258 Chamber of Commerce, and the Dunnellon Library, in the City of Dunnellon, Florida, and on the
259 City's Official Website this 9th day of October 2014.

260

261

262

263


Dawn M. Bowne M.M.C.

City Clerk

PAYMENT BOND
(Economic Development Incentive Program #1)

KNOW ALL MEN BY THESE PRESENTS:

That we _____, whose address is _____, hereinafter referred to as "PRINCIPAL" and _____, whose address is _____, hereinafter referred to as "SURETY" are held and firmly bound unto the CITY OF DUNNELLON, a municipality of the State of Florida, whose address is 20750 River Drive, Dunnellon, Florida 34431, hereinafter referred to as the CITY, in the full sum of (full amount of the installment payments to be paid) for the payment of which we bind ourselves, heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bound on PRINCIPAL has entered into an Agreement with the CITY dated _____, 20__ (hereinafter referred to as "AGREEMENT") in which the PRINCIPAL has made representations, commitments, covenants, and agreements and the CITY has agreed to accept installment payments for water and sewer connection fees to assist the PRINCIPAL in developing/redeveloping its non-residential property.

WHEREAS, the PRINCIPAL has agreed to and hereby covenants and guarantees, among other things that it will timely pay its installment payments to the CITY under the terms of the AGREEMENT.

WHEREAS, it is a condition of the AGREEMENT that this Bond be executed.

NOW THEREFORE, the SURETY unconditionally covenants and agrees that if the PRINCIPAL defaults on any payment under the terms of the AGREEMENT[s], upon seven (7) calendar days' written notice from the CITY or its authorized representative (City Manager or Finance Director) of the default, the SURETY shall forthwith fulfill the requirements of the AGREEMENT to which the PRINCIPAL and SURETY unconditionally agree.

Should the SURETY fail or refuse to fulfill the requirements of the AGREEMENT, the CITY shall have the right to resort to any and all legal remedies against the PRINCIPAL and the SURETY, or either, both at law and in equity, specifically including specific performance, to which the PRINCIPAL and SURETY unconditionally agree.

The PRINCIPAL and the SURETY further jointly and severally agree that the CITY at its option shall have the right to call once or, up to the amount of this Bond, on several occasions the funds guaranteed herein in the event of any failure to adhere to the terms of the AGREEMENT. In the event the CITY should exercise and give effect to such right, the PRINCIPAL and the SURETY shall be jointly and severally liable hereunder to reimburse the CITY the total cost thereof including, but not limited to, legal costs which may be sustained on account of the failure of the PRINCIPAL to carry out and execute the provisions of said AGREEMENT or resulting from the SURETY's failure to comply with its obligation herein made.

ORDINANCE #ORD2014-03

Exhibit "A"

IN WITNESS WHEREOF, the PRINCIPAL and the SURETY have executed this Performance Bond this the _____ day of _____, 20__.

Address:

_____(SEAL)
PRINCIPAL

By: _____

Its: _____
(if corporation)
CORPORATE SEAL

ATTEST: _____

Its: _____

Address:

SURETY

By: _____
Its Attorney-in-fact

ATTEST: _____

ORDINANCE #ORD2014-03

Exhibit "A"

(Name of Bank)

THIS DRAFT IS NON-NEGOTIABLE.

IRREVOCABLE LETTER OF CREDIT NUMBER: _____

ISSUING BANK:

BENEFICIARY

APPLICANT

City of Dunnellon City Council
20750 River Drive
Dunnellon, FL 34431-6744
Attention: City Manager

AMOUNT: Not exceeding _____ and ___/100 US Dollars (\$ _____ USD)

EXPIRATION DATE: _____ at our counters.

We hereby issue this Irrevocable Letter of Credit No. _____ in your favor, for the account of Applicant, for up to an aggregate amount of USD \$ _____, available by your draft(s) drawn on us at sight, accompanied by the following:

1. The original Letter of Credit and all amendments thereto or a copy of the original Letter of Credit and amendments if the presentation is submitted by facsimile as indicated below.
2. A dated, notarized statement signed by an authorized representative of the Beneficiary on Beneficiary's letterhead reading as follows:

" _____, has failed to perform its obligations under the CDBG Participating Party Agreement by and between the City of Dunnellon City Council and _____ dated _____."

"Authorized representative" of the Beneficiary means the City Manager or Finance Director of the City of Dunnellon.

3. Partial drawings: Allowed.
4. This Irrevocable Letter of Credit shall remain in full force and effect notwithstanding a partial draw or draws so long as a sum remains to be drawn or until the Irrevocable Letter of Credit has expired.

ORDINANCE #ORD2014-03

Exhibit "B"

5. It is a condition of this Letter of Credit that it shall be automatically extended without amendment for period(s) of one year each from the current or any future expiration date unless at forty five (45) days prior to the then current expiration date we shall notify the Beneficiary in writing, via overnight courier mail, at the above-listed address of our intention not to renew this Letter of Credit.

6. Any such notice shall be effective when sent by us and upon such notice to you, you may draw hereunder, up to the full amount then available, by presentation of the original Letter of Credit and all amendments thereto or a copy of the original Letter of Credit and amendments if the presentation is submitted by facsimile, and your statement, on your letterhead purportedly signed by an authorized representative, stating that you are in receipt of [name of bank] notice of nonrenewal under Letter of Credit No. _____ and Applicant has failed to extend said Letter of Credit or provide a replacement Letter of Credit in a form acceptable to you.

7. This Letter of Credit may be canceled upon receipt by us of the original Letter of Credit and all amendments thereto, if any, along with your signed statement consenting to the cancellation.

8. Draft(s) must state 'Drawn under [name of bank] Letter of Credit Number _____ dated _____, 20____.'

9. This Letter of Credit is not transferable or assignable.

10. Drafts and documents may be presented at our office at _____.

11. Presentation of drafts drawn hereunder may also be made via facsimile to _____. (If presented by fax, it must be followed up by a phone call to us at _____ to confirm receipt.) In the event of a facsimile presentation, the originals are not required for delivery.

12. We hereby engage with the Beneficiary that drafts(s) drawn under and in compliance with the terms of this Letter of Credit will be dully honored within five business days of presentation to us as indicated above.

13. This Letter of Credit is subject to International Chamber of Commerce (CC) Uniform customs and practice for Documentary Credits, 2007 Revision (UCP 600). For matters not addressed by UCP600, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of Florida, without regard to conflicts of laws principles.

14. Beneficiary, Applicant and the Bank agree to submit to the jurisdiction of the Courts of Marion County, Florida.

[BANK]
AUTHORIZED SIGNATURE

ORDINANCE #ORD2014-03

Exhibit "B"

Prepared by:
Virginia Cassady, Esq.
2300 Maitland Center Parkway, Ste. 200
Maitland, Florida 32751

Return to:
City of Dunnellon
c/o Dawn Bowne, City Clerk
20750 River Drive
Dunnellon, Florida 34431-6744

Parcel ID # _____

AGREEMENT FOR DEFERRED ANNUAL INSTALLMENT PAYMENTS FOR CONNECTION FEES

(Economic Development Incentive Program #1)

THIS AGREEMENT FOR DEFERRED ANNUAL INSTALLMENT PAYMENTS FOR CONNECTION FEES (hereinafter referred to as the "Agreement") is entered into this _____ day of _____ 2014, between the CITY OF DUNNELLON, a Florida municipal corporation (hereinafter sometimes referred to as the "City"), and _____ a _____ (hereinafter referred to as "Developer").

RECITALS:

WHEREAS, the Developer is the owner of fee simple title to certain real property ("Property") consisting of approximately _____ located _____. The Property has its boundaries within the City of Dunnellon, Marion County, Florida, with a street address of _____, Dunnellon, Florida 34432, the legal description for which is attached hereto as **Exhibit "A"**; and

WHEREAS, the City desires the Property to be redeveloped to attract and accommodate local and out-of-town tourists who can enjoy the area's unique natural recreational resources; and

WHEREAS, Developer has acquired the Property and intends to redevelop it as _____ ("Project"); and

WHEREAS, City and Developer have recognized the benefits of cooperation to redevelop the Property; and

WHEREAS, the City adopted, an economic development incentive program by Ordinance #ORD2014-03, and the Developer has availed itself of the benefits of such program, and the City has determined that the Developer is eligible to receive the benefits of the incentive program; and

ORDINANCE #2014-03 EXHIBIT "C"

law.

- b. The Sewer Connection Fee imposed by the City of Dunnellon for the Project is \$_____. The Developer shall pay the Sewer Connection Fee in two annual installments of \$_____ each. The due date for the first installment shall be twelve (12) months from the date of issuance of the certificate of occupancy by the City, and the due date for the second installment shall be twenty-four (24) months from the anniversary date of the certificate of occupancy. The Developer shall be in default for failure to pay either payment in good and sufficient funds within fourteen (14) business days after the due date. So long as the Developer pays each of the installment payments on their due dates, no interest shall be charged by the City. If the Developer fails to pay an installment payment on the due date, interest shall automatically begin to accrue at the amount allowed by law.

- c. The Developer is vested as to the amounts of the Water and Sewer Connection Fees set forth above and shall not be subject to any increases (or decreases) in these fees by the City, so long as the Developer timely pays the installment payments. Under no circumstances does this sub-paragraph apply to any development approvals.

- d. As an alternative to sub-paragraphs a. and b. above, the Developer may pay in full the outstanding connection fees, and the City shall not impose a prepayment penalty.

- e. To secure its obligation under sub-paragraphs a. and b. above, the Developer shall provide either bonds or irrevocable letters of credit, in form(s) which are similar to those attached to Ordinance #ORD2014-03 in favor of the City shall be with face amount(s) of _____ and No/100 Dollars (\$_____) for the Water Connection Fee and _____ and No/100 Dollars (\$_____) for the Sewer Connection Fee.. Any bond must be executed by a security company qualified and registered to conduct business in the state of Florida and having a A.M. Best Policyholder's Rating of Excellent or better and a "financial size category" of Class VII or higher. The proposed bond or letter of credit shall be provided to the City Manager or designee and the City Attorney for review and their approval. The choice of whether to accept either a bond or a letter of credit shall be solely that of the City. The City shall be under no obligation to issue a building or change in use permit until the bonds or letters of credit are presented to and accepted by the City. The City shall only be permitted to request payment from the bonds or letters of credit if the owner defaults on the payment of monies to the City and then only to the extent of the nonpayment. The bonds or letters of credit shall be canceled upon the successful payment of the connection fee(s). All costs of administering the bonds or letters of credit shall be paid by the owner/applicant.

IV. Terms and Conditions. Other terms and conditions of this Agreement shall be those as set forth in Ordinance #ORD2014-03 attached to this Agreement as **Exhibit "B."**

V. Termination by City. The failure of the Developer to apply for a building permit within six (6) years of the Effective Date of this Agreement shall entitle the City to terminate this Agreement upon thirty (30) days written notice to the Developer. The City shall refund all connection fees paid at the time of termination, without interest.

VI. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one (1) and the same document.

VII. Third Party Rights. This Agreement is not a third party beneficiary contract, and shall not in any way whatsoever create any rights on behalf of any third party.

VIII. Power to Bind. Each party covenants to the other party/parties that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

IX. Modifications/Amendments; Non-Waiver.

A. Amendments. This Agreement shall not be modified or amended except by written agreement executed by the Developer or successor in interest affected by such modification or amendment after approval of the City Council of the City of Dunnellon.

B. Non-Waiver. Failure of any party to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

X. Liability. To the extent permissible by law, the Developer shall indemnify, defend and hold the City harmless from, and against all claims and reasonable costs associated with the Developer's performance under this Agreement.

XI. Interpretation; Captions.

A. The parties agree that all words, terms and conditions contained herein are to be read in harmony and in concert each with the other. When an inconsistency occurs between a specific provision and a general provision, the specific provision shall prevail. In the event of any ambiguity, or in choosing among reasonable meanings of terms, the meaning that serves the public's best interests is preferable.

B. This Agreement shall not be construed more strictly against either party on the basis of being the drafter, and both parties have contributed to the drafting of this Agreement.

XII. Severability. If any provisions of this Agreement are held to be illegal or invalid, the other provisions of this Agreement shall remain in full force and effect so long as each party substantially gets the consideration contemplated hereunder.

CITY:

NATHAN WHITT, Mayor
City of Dunnellon, Florida

ATTEST:

Dawn M. Bowne, M.M.C., City Clerk

Approved as to Form and Legal Sufficiency:

Virginia Cassady, City Attorney

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by NATHAN WHITT, Mayor of the City of Dunnellon, Florida (City), who is personally known by me and who did take an oath.

NOTARY PUBLIC, State of Florida
Print Name: _____

My Commission Expires: _____
No.: _____

DEVELOPER:

By: _____
Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____,
2014, by _____, as _____ of
_____, who is personally known to me or who has produced
_____ as identification and who did take an oath.

NOTARY PUBLIC, State of Florida
Print Name: _____

My Commission Expires: _____
No.: _____

EXHIBIT "A"

Legal description of Property

EXHIBIT "B"

Ordinance #ORD2014-03