

43 D. Resolution 2011-05 establishes the application fee for review of a Developer's Agreement at
44 \$6,000.00 and fee for amendment to Developer's Agreement at \$3,000.00.

45
46 E. Water and sewer connection fees are set forth in Resolution 2012-19.

47
48 F. A downturn in the national, state, and local economy has resulted in a dramatic
49 decline of non-residential construction projects in the City and has negatively impacted the local
50 economy in general, leading to pronounced unemployment and impaired business opportunities.

51 G. City Council finds that removal of certain limited regulatory and economic
52 impediments to new non-residential development within the City, including the City of
53 Dunnellon CRA District where blighted conditions already exist, is an appropriate and viable
54 method for stimulating the local economy.

55 H. City Council has concluded that an efficient and effective economic stimulus that the
56 City can provide is to incentivize new non-residential development projects within the City
57 including the CRA District by allowing water and sewer connection fees to be paid in installment
58 payments and to reduce the application fees for Developer's Agreements and amendments to
59 Developer's Agreements.

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

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

71 K. The City Council has created and established a Community Redevelopment Agency
72 and a Community Redevelopment Plan consistent with Florida Statutes Sec. 163.330 et seq., the
73 Community Redevelopment Act of 1969.

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

79
80 M. To prevent taxpayers of the City from having to bear the expenses and costs related to
81 reviewing and processing land development applications and projects, the City Council finds and
82 determines that applicants should be required to pay review deposits to cover the City's
83 reasonable expenses and the costs incurred during the review and processing of such applications
84 by the City's consultants. The City Council therefore finds and determines that is in the best

85 interests of the City to require payment of deposits for all non-residential land development
86 applications.

87 **SECTION 2.** This Ordinance shall be known as the “Economic Development Incentive
88 Development Program #1.”

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

90
91 A. Notwithstanding the current resolutions and ordinances, for all completed
92 applications for Developer’s Agreements or amendments to Developer’s Agreements submitted
93 to the City after the Effective Date of this Ordinance, there shall be a reduction in application
94 fees for non-residential development in the City as follows:

95
96 (1) Application fee for a Developer’s Agreement, set at \$6,000.00 under Resolution
97 2011-05, is hereby reduced to **\$350.00**.

98
99 (2) Application fee for an amendment to a Developer’s Agreement, set at \$3,000.00
100 under Resolution 2011-05, is hereby reduced to **\$150.00** per amendment.

101
102 B. Except for the fees set forth above, all other fees set by resolution or ordinance of the
103 City of Dunnellon shall be timely paid by the Developer. All such planning fees represent costs
104 which the City incurs to process land development applications.

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

109
110 **SECTION 4. Temporary Annual Deferred Payments for Water and Sewer Connection**
111 **Fees.**

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

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

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

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

127 C. When application is made for a building permit. The due date for the first installment
128 shall be twelve (12) months from the date of issuance of the certificate of occupancy by the City,
129 and the due date for the second installment shall be twenty-four (24) months from the
130 anniversary date of the certificate of occupancy. The owner/applicant shall be in default for
131 failure to pay either payment in good and sufficient funds within fourteen (14) business days
132 after the due date. So long as the owner/applicant pays each of the installment payments on their
133 due dates, no interest shall be charged by the City. If the owner/applicant fails to pay an
134 installment payment on the due date, interest shall automatically begin to accrue at the amount
135 allowed by law.

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

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

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

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

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

174 nonresidential property owner. If the property owner defaults on payment of the installment
175 payment, the owner may be subject to all legal and equitable remedies and collection provisions
176 currently established by the City for utility services, including but not limited to the
177 discontinuance of service and filing an administrative lien on the property for failure of payment.
178 No partial payment of the connection fee shall be 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 the City
181 substantially in the form attached to this Ordinance as **Exhibit "C,"** which agreement once fully
182 executed shall be recorded by the City in the Public Records of Marion County. The City
183 Manager may approve and sign the agreement on behalf of the City so long as such agreement is
184 in a form substantially consistent with **Exhibit "C."** Upon satisfaction of the required annual
185 payments, the City shall record a memorandum of termination of the agreement in the Public
186 Records of Marion County.

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

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

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

211
212 **SECTION 5. Temporary Requirement of Review Deposits for Non-Residential Land**
213 **Development Applications.**

214
215 A. **Development Review Fees.** With the exception of pre-application conferences
216 and inquiries to the City as provided by the City's Code, no review of a non-residential
217 application shall commence until the application fee and any review deposit are paid. The total
218 development review amount shall be forwarded to the city manager or designee as soon as

219 possible following the submittal of an application.

220

221 **B. Definitions.** For purposes of this Ordinance, the following words, terms, and
222 phrases shall have the meanings ascribed to them in this Section.

223 *Application fee* shall mean a flat fee set by resolution of City Council which represents
224 the costs to reimburse the City for city employee clerical time to administratively review,
225 process, coordinate, and disseminate the application and related documents during the
226 development review process.

227 *City consultant* shall mean and refer to those companies, private consultants,
228 governments, individuals, or other entities under contract with the city to provide services to or
229 for the city, or who provide services to or for the city, or who provide technical or legal expertise
230 to or for the city, including but not limited to, attorneys, engineers and surveyors.

231 *City staff* shall mean and refer to city employees.

232 *Project account* shall refer to the separate record or account for all review deposit funds.
233 The city's consultants and experts shall invoice the city for their services, and such are to be paid
234 out of the project account and not from the city's budgeted revenue. Any identifiable costs,
235 consultants' fees or expert assistance-related costs associated with processing the development
236 application are paid out of the project account.

237 *Review deposit* shall mean and refer to a deposit of money, as established by this section,
238 to be paid by an applicant at the time of the filing of a non-residential land development
239 application. The review deposit shall be deposited in the project account defined above. The
240 review deposit is in addition to the application fee and is used to reimburse the city for the actual
241 costs paid by the city for mailing and publishing notices, other costs, and payments to
242 consultants during the review of the development activity.

243 *Total development review amount* shall mean and refer to the total amount of the
244 application fee plus the review deposit to be paid by an applicant, and any other fees authorized
245 to be collected by the city pursuant to its ordinances.

246

247 **C. Review deposits.**

248

249 *Required review deposits.* A five thousand-dollar (\$5,000.00) review deposit, payable to
250 the City of Dunnellon by money order, personal or company check or cashier's check drawn on a
251 financial institution authorized to do business in Florida shall be delivered to and collected by the
252 city at the time of submission of each application. During the review process, should the city
253 manager or designee determine at any time thereafter, in his or her sole discretion, that requiring
254 an additional review deposit is in the city's best interest, (s)he may require one at that time. In the
255 event the initial review deposit is depleted when the city pays its expenses, all work on the
256 application shall cease until the deposit is replenished, as required by the city manager or
257 designee.

258 *Partial or full waiver of review deposit; additional deposit.*

259

260 a) Full waiver. The city manager may grant a full waiver of the \$5,000.00 review
261 deposit if, based upon information from city staff, consultant(s), and the applicant,
262 no consultants will be required to review the application, and the amount of the
263 costs and expenses related to staff review, processing, inspection and regulation, as
264 estimated by the city manager, will not exceed the application fee.

265
266 b) Partial waiver. The city manager may grant a partial waiver of the \$5,000.00 review
267 deposit if, based upon information from city staff, consultant(s), and applicant, the
268 amount of the consultants' fees, costs, and expenses, will be less than the required
269 deposit and will not exceed a certain amount.

270
271 *Additional review deposit.* Should the city manager determine, in his or her sole
272 discretion at the time of submittal of an application or any time thereafter, that requiring an
273 additional review deposit is in the city's best interest, (s)he may require one at that time.

274
275 *Reimbursement of review deposit to applicant.* The balance of the review deposit, if any,
276 shall be returned to the applicant as provided for in subsection D herein. No interest shall be paid
277 to applicant on any review deposit on account with the city.

278 **D. Project account.** Once an application pertaining or relating to a non-residential land
279 development application has been submitted to the city, and the total review amount has been
280 collected, the total development review amount shall be forwarded to the city manager or
281 designee as soon as possible following the submittal of an application. The city manager or
282 designee shall establish an individual project account in which the review deposit shall be
283 deposited. Application fees shall not be deposited in or charged to the project account. All fees,
284 expenses, and costs incurred by the city which are directly attributable to the application will be
285 reimbursed to the city from the review deposit in the project account. The project account will be
286 maintained throughout the entire review, processing, inspection, and regulation process until the
287 latter of:

288 (1) Final action (after all appeal periods have run) by the city council has occurred
289 with respect to the application:

290 (2) No further significant involvement of the city staff or city consultants is expected
291 to occur;

292 (3) The city has been paid all of the amounts due under this section and the city code;
293 or

294 (4) The expiration of any warranty period associated with the conveyance or
295 dedication of improvements to the city.

296 Thereafter, if any monies remain in the project account, the monies shall be refunded to the
297 applicant.

298 **E. Payments by applicant.** The city manager or designee may periodically calculate the
299 costs, expenses and fees incurred by the city for each application for which a review deposit is
300 required and send an invoice to the applicant for payment.

301 (1) If at any time during the review process a project account has a balance of less
302 than \$2,500.00, the applicant shall, within 5 days of notification by the city, replenish said
303 project account so that it has a balance of at least \$5,000.00. The project account shall have a
304 balance of at least \$5,000.00 at least 15 days prior to final approval or the public hearing on the
305 application, or the final approval or public hearing shall be continued until the balance on the
306 project account has been replenished to at least \$5,000.00.

307 (2) If at any time during the review process the total of the costs, expenses, and fees
308 incurred by the city for an application exceeds that amount in the project account, then the city
309 manager or designee shall apply the project account monies to the invoice and send a notice of
310 nonpayment to the applicant, requiring the applicant to replenish the project account to a balance
311 of at least \$5,000.00. The city manager or designee shall also send a notice to all city staff and
312 city consultants associated with the subject application or project, instructing them to cease all
313 work relating to such application or project unless and until further notified by the city manager
314 or designee. A copy of such notice shall be sent to the applicant.

315 (3) Upon receipt of the notice, work by the city staff and city consultants on the
316 application or project shall cease, and neither building permits, certificates of completion,
317 temporary certificates of occupancy, nor certificates of occupancy will be issued with respect to
318 such real property. Continuation of the review of the application or project with respect to the
319 real property for which payment was not made will not be undertaken by the city until such time
320 as all outstanding fees, costs and expenses due under this section are paid in full and a new
321 review deposit paid to the city.

322 (4) If an applicant receives or is granted approval on an application or project or is issued
323 a building permit, certificate of completion, temporary certificate of occupancy, certificate of
324 occupancy, or other development order by the city, and additional fees, costs, expenses or such
325 other obligations attributable to the application are thereafter posted to the project account for
326 work that is associated with said approval or issuance, the applicant or his/her successor in
327 interest shall pay said costs, fees and expenses incurred by the city for such application. The city
328 shall send an invoice to the applicant or successor for such fees or expenses, and the applicant or
329 successor shall reimburse the city for such fees or expenses within ten (10) days of the date of
330 the invoice.

331 **F. Required payments.** Payment for all costs, expenses and fees incurred by the city is a
332 requirement for the city's final approval of all non-residential land development applications and
333 projects.

334 **G. Assessable costs, expenses, and fees.**

335 (1) All direct costs, expenses and fees incurred by the city that relate directly to the
336 review, processing, inspection, regulation or defense of an application, including, but not
337 limited to, expenses incurred by city consultants who review or defend the application at
338 the direction of the city, as well as other expenses related directly to advertising,
339 surveying, legal review and/or engineering review for an application or project shall be

340 assessed to the applicant and reimbursed to the city. Assessable expenses shall not include
341 the cost of city employee clerical time in administratively reviewing, processing,
342 coordinating, and disseminating the application and related documents during the
343 development review process. Such clerical time shall be deemed to have been reimbursed
344 by the application fee.

345 (2) City consultants shall submit records of their time, fees, costs, and expenses to the city
346 manager or designee, and such fees, costs and expenses shall be invoiced to the applicant on
347 a dollar-for-dollar basis for services provided under the direction of the city to review. The
348 amounts which the city charges to the applicant for said services shall not exceed those
349 charged to the city by the consultants.

350 **H. Objections/appeal.** Any objection to any invoice or to any matter set forth in this
351 section must be set forth in writing and addressed and delivered to the city manager on or before
352 the tenth day after the date of the relevant invoice. In the event the city manager denies the
353 objection in writing, the applicant shall have twenty (20) days after the date of the city manager's
354 written decision to file an appeal of such decision with the city clerk or designee, which appeal
355 shall be heard by the city council as soon as practicable. All objections and appeals shall set forth
356 in detail the reasons and evidence upon which the objection and appeal are based. Failure of the
357 applicant to establish beyond a preponderance of the evidence that an invoice is not appropriate
358 and is not based upon competent substantial evidence, shall result in a denial of the objection and
359 appeal. All work relating to the application or project shall cease during the appeal time until a
360 final determination is made.

361 **I. Attorney's fees in the event of failure to pay review costs.** In the event the city is
362 required to enforce this Section, then the city shall be entitled to recover from the applicant all
363 costs and expenses incurred, including but not limited to its reasonable attorneys' fees, paralegal
364 fees and other costs and expenses, whether incurred prior to, during, or subsequent to court
365 proceedings or on appeal, and/or in any bankruptcy proceedings involving the applicant, the real
366 property and/or the project being reviewed.

367 **J. Change of ownership.** An applicant shall provide prompt written notice to the city
368 manager in the event of a change in ownership of all or a portion of a lot, tract, or parcel of real
369 property with respect to a pending application or project. Such notice shall include the name,
370 address, phone numbers, and other contact information of the new owner and a legal description
371 of the lot, tract or parcel of real property now owned by the new owner. A new owner (i) shall
372 not be entitled to utilize or draw upon any review deposit previously paid to the city by the
373 original applicant, unless the original applicant authorizes, by affidavit, the use his/her review
374 deposit by the new owner; (ii) shall be liable to the city for all fees, costs and expenses related to
375 the lot, tract or parcel of real property which arise subsequent to the date the new owner acquires
376 title to such real property; and (iii) may be required by the city to pay a review deposit in the
377 same manner as a new application, in which case a separate project account will be opened in the
378 name of the new owner or the new owner's authorized agent. If a review deposit is required, no
379 work shall be undertaken by the city or its consultants with respect to the lot, tract or parcel of
380 real property under control of the new owner until the review deposit is paid to the city. Until
381 such time as the city receives such written notice of a change in ownership, the original applicant
382 shall be jointly and severally liable to the city for all fees, costs and expenses associated with the
383 application or project; provided, however, that upon receipt by the city of a notification of

384 change of ownership, the original applicant shall no longer be liable to the city for fees, costs and
385 expenses incurred by the city which arise after receipt of the notification of change of ownership,
386 and the new owner shall be solely liable to the city for all such fees, costs and expenses
387 associated with the application or project activities subsequent to the date of receipt by the city of
388 such notification. Additionally, the original applicant may be entitled to a refund of any review
389 deposit balance as of the date said change of ownership notice is received by the city, provided
390 all assessable costs, expenses and fees hereunder and incurred to that date are paid in full and the
391 original applicant has not authorized ownership of his/her review deposit by the new owner.

392 **K. Agreement to be bound by this section.** Submission of a non-residential application
393 shall constitute the consent and agreement for the applicant and the owner, if the application is
394 being executed by the owner's authorized agent, to be bound by the provisions of this Section.

395
396 **SECTION 6. Severability.** If any provision of this Ordinance or application thereof to any
397 person or circumstance is held invalid, the remainder of this Ordinance and the application of
398 such provision to other persons or circumstances shall not be affected and shall be considered
399 severed from the invalid provisions.

400 **SECTION 7. Repeal of Inconsistent Ordinances and Resolutions.** Any ordinance or
401 resolution in conflict with this Ordinance is hereby repealed.

402
403 **SECTION 8. Non-Codification.** The provisions of this Ordinance shall not be included and
404 incorporated within the Code of Ordinances of the City of Dunnellon.

405 **SECTION 9. Effective Date; Repeal or Expiration.**

406
407 This Ordinance shall become effective at 12:01 a.m. on September 15, 2015, one day after its
408 second reading and adoption by City Council. This Ordinance shall automatically sunset and
409 stand repealed at 11:59 p.m. on June 15, 2016 (“Sunset Date”) unless repealed sooner or
410 extended by the City Council in a subsequent ordinance. All completed applications submitted to
411 the City prior to the Sunset Date shall be entitled to the benefits of the Ordinance; provided
412 however that if an application is submitted by the City prior to the Sunset Date but is deemed by
413 the City after the Sunset Date to be incomplete, the applicant shall not be entitled to the benefits
414 of this Ordinance.

415 **Upon motion duly made and carried,** the foregoing Ordinance was approved upon the first
416 reading/public hearing on the 10th day of August, 2015.

417 **Upon motion duly made and carried,** the foregoing Ordinance was approved and passed upon
418 the second and final reading and public hearing on the 14th day of September, 2015.

419
420 Ordinance Posted on the City’s website on August 21, 2015. Public hearing advertised on
421 the City’s website on August 21, 2015 and in the Riverland News on September 3, 2015.

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ATTEST:

CITY OF DUNNELLON

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

NATHAN WHITT, Mayor

Approved as to Form and Legal Sufficiency:

Virginia Cassady, City Attorney

I HEREBY CERTIFY that copies of the foregoing Ordinance were posted at City Hall, the Chamber of Commerce, and the Dunnellon Library, in the City of Dunnellon, Florida, and on the City's Official Website this 21st day of August 2015.

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

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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 #ORD2015-09
Exhibit “A”

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

514 Address: _____

515 _____

516 _____

517 _____(SEAL)

518 PRINCIPAL

519 By: _____

520 Its: _____

521 (if corporation)

522 CORPORATE SEAL

523 ATTEST: _____

524 Its: _____

525 _____

526 Address: _____

527 _____

528 _____

529 SURETY

530 By: _____

531 Its Attorney-in-fact

532 ATTEST: _____

533 _____

534 _____

535 _____

536 _____

537 _____

538 **ORDINANCE #ORD2015-09**

539 Exhibit "A"

540 _____

541

542 (Name of Bank)

543

THIS DRAFT IS NON-NEGOTIABLE.

544 IRREVOCABLE LETTER OF CREDIT NUMBER: _____

545 ISSUING BANK:

546 _____

547 _____

548 _____

549 _____

550

551 BENEFICIARY

APPLICANT

552 City of Dunnellon City Council

553 20750 River Drive

554 Dunnellon, FL 34431-6744

555 Attention: City Manager

556

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

558

559 EXPIRATION DATE: _____ at our counters.

560

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

564

565 1. The original Letter of Credit and all amendments thereto or a copy of the original Letter of
566 Credit and amendments if the presentation is submitted by facsimile as indicated below.

567

568 2. A dated, notarized statement signed by an authorized representative of the Beneficiary on
569 Beneficiary's letterhead reading as follows:

570

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

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

576 3. Partial drawings: Allowed.

577

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

580

581 5. It is a condition of this Letter of Credit that it shall be automatically extended without
582 amendment for period(s) of one year each from the current or any future expiration date unless at forty

583 five (45) days prior to the then current expiration date we shall notify the Beneficiary in writing, via
584 overnight courier mail, at the above-listed address of our intention not to renew this Letter of Credit.
585

586 6. Any such notice shall be effective when sent by us and upon such notice to you, you may draw
587 hereunder, up to the full amount then available, by presentation of the original Letter of Credit and all
588 amendments thereto or a copy of the original Letter of Credit and amendments if the presentation is
589 submitted by facsimile, and your statement, on your letterhead purportedly signed by an authorized
590 representative, stating that you are in receipt of [name of bank] notice of nonrenewal under Letter of
591 Credit No. _____ and Applicant has failed to extend said Letter of Credit or provide a replacement
592 Letter of Credit in a form acceptable to you.
593

594 7. This Letter of Credit may be canceled upon receipt by us of the original Letter of Credit and all
595 amendments thereto, if any, along with your signed statement consenting to the cancelation.
596

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

600 9. This Letter of Credit is not transferable or assignable.
601

602 10. Drafts and documents may be presented at our office at _____.
603

604 11. Presentation of drafts drawn hereunder may also be made via facsimile to _____. (If
605 presented by fax, it must be followed up by a phone call to us at _____ to confirm receipt.)
606 In the event of a facsimile presentation, the originals are not required for delivery.
607

608 12. We hereby engage with the Beneficiary that drafts(s) drawn under and in compliance with the
609 terms of this Letter of Credit will be dully honored within five business days of presentation to us as
610 indicated above.
611

612 13. This Letter of Credit is subject to International Chamber of Commerce (CC) Uniform customs and
613 practice for Documentary Credits, 2007 Revision (UCP 600). For matters not addressed by UCP600, this
614 Letter of Credit shall be governed by and construed in accordance with the laws of the State of Florida,
615 without regard to conflicts of laws principles.
616

617 14. Beneficiary, Applicant and the Bank agree to submit to the jurisdiction of the Courts of Marion
618 County, Florida.
619

620 _____
621
622 [BANK]
623 AUTHORIZED SIGNATURE
624

625 **ORDINANCE #ORD2015-09**
626 **Exhibit "B"**
627

628 Prepared by:
629 Virginia Cassady, Esq.
630 2300 Maitland Center Parkway, Ste. 200
631 Maitland, Florida 32751
632

633 Return to:
634 City of Dunnellon
635 c/o Dawn Bowne, City Clerk
636 20750 River Drive
637 Dunnellon, Florida 34431-6744
638

639 Parcel ID # _____
640

641 **AGREEMENT FOR DEFERRED ANNUAL INSTALLMENT PAYMENTS FOR**
642 **CONNECTION FEES**

643 **(Economic Development Incentive Program #1)**
644

645 **THIS AGREEMENT FOR DEFERRED ANNUAL INSTALLMENT PAYMENTS FOR**
646 **CONNECTION FEES** (hereinafter referred to as the “Agreement”) is entered into this
647 _____ day of _____ 2014, between the CITY OF DUNNELLO, a Florida
648 municipal corporation (hereinafter sometimes referred to as the “City”), and
649 _____ a _____ (hereinafter referred to as
650 “Developer”).

651 **R E C I T A L S:**
652

653 WHEREAS, the Developer is the owner of fee simple title to certain real property
654 (“Property”) consisting of approximately _____ located _____.
655 The Property has its boundaries within the City of Dunnellon, Marion County, Florida, with
656 a street address of _____, Dunnellon, Florida 34432, the legal
657 description for which is attached hereto as Exhibit “A” ; and
658

659 WHEREAS, the City desires the Property to be redeveloped to attract and
660 accommodate local and out-of-town tourists who can enjoy the area’s unique natural
661 recreational resources; and
662

663 WHEREAS, Developer has acquired the Property and intends to redevelop it as
664 _____ (“Project”); and
665

666 WHEREAS, City and Developer have recognized the benefits of cooperation to redevelop
667 the Property; and
668

669 WHEREAS, the City adopted, an economic development incentive program by
670 Ordinance #ORD2015-09, and the Developer has availed itself of the benefits of such
671 program, and the City has determined that the Developer is eligible to receive the benefits
672 of the incentive program; and
673

673 **ORDINANCE #2015-09 EXHIBIT “C”**

674 WHEREAS, the City finds that the conditions, terms, restrictions, and requirements set
675 forth herein are necessary for the public, health, safety, and welfare of the citizens of the City;
676 and

677 WHEREAS, the City finds that this Agreement is consistent with and an exercise of the
678 City's powers under the *Municipal Home Rule Powers Act*; Article VIII, Section 2(b) of the
679 *Constitution of the State of Florida*; Chapter 166, Florida Statutes; the controlling law; and the
680 City's police powers; and

681 **NOW THEREFORE**, in consideration of the mutual covenants and agreements
682 contained herein, and other good and valuable considerations, the receipt and sufficiency of
683 which are hereby acknowledged, the parties hereto agree as follows:

684

685 **I. Incorporation of Recitals.** Each and all of the foregoing recitals are declared to be true
686 and correct and are incorporated herein by this reference. City and Developer shall hereinafter
687 be referred to as the "parties" or "each party."

688 **II. Description of the Project and Property.**

689 The Developer shall construct _____ consisting of the following:

690 Total Acreage: Approximately _____ acres

691 Land Use: _____

692 Name: _____

693 Description: _____

694 **III. Development Incentives.**

695

696 A. The City Council has deemed the Developer to be eligible for the benefits of the
697 development incentive program adopted by Ordinance #ORD2015-09 because the Developer's
698 Property is zoned _____; provided, however, that the Developer satisfies this Section.

699

700 (1) **Water and Sewer Connection Fees.**

701

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

714

715 b. The Sewer Connection Fee imposed by the City of Dunnellon for the Project is
716 \$_____. The Developer shall pay the Sewer Connection Fee in two
717 annual installments of \$_____ each. The due date for the first
718 installment shall be twelve (12) months from the date of issuance of the certificate
719 of occupancy by the City, and the due date for the second installment shall be
720 twenty-four (24) months from the anniversary date of the certificate of occupancy.
721 The Developer shall be in default for failure to pay either payment in good and
722 sufficient funds within fourteen (14) business days after the due date. So long as
723 the Developer pays each of the installment payments on their due dates, no
724 interest shall be charged by the City. If the Developer fails to pay an installment
725 payment on the due date, interest shall automatically begin to accrue at the
726 amount allowed by law.
727

728 c. The Developer is vested as to the amounts of the Water and Sewer Connection
729 Fees set forth above and shall not be subject to any increases (or decreases) in
730 these fees by the City, so long as the Developer timely pays the installment
731 payments. Under no circumstances does this sub-paragraph apply to any
732 development approvals.
733

734 d. As an alternative to sub-paragraphs a. and b. above, the Developer may pay in full
735 the outstanding connection fees, and the City shall not impose a prepayment
736 penalty.
737

738 e. To secure its obligation under sub-paragraphs a. and b. above, the Developer shall
739 provide either bonds or irrevocable letters of credit, in form(s) which are similar
740 to those attached to Ordinance #ORD2015-09 in favor of the City shall be with
741 face amount(s) of _____ and No/100 Dollars
742 (\$_____) for the Water Connection Fee and _____
743 and No/100 Dollars (\$_____) for the Sewer Connection Fee.. Any bond
744 must be executed by a security company qualified and registered to conduct
745 business in the state of Florida and having a A.M. Best Policyholder's Rating of
746 Excellent or better and a "financial size category" of Class VII or higher. The
747 proposed bond or letter of credit shall be provided to the City Manager or
748 designee and the City Attorney for review and their approval. The choice of
749 whether to accept either a bond or a letter of credit shall be solely that of the City.
750 The City shall be under no obligation to issue a building or change in use permit
751 until the bonds or letters of credit are presented to and accepted by the City. The
752 City shall only be permitted to request payment from the bonds or letters of credit
753 if the owner defaults on the payment of monies to the City and then only to the
754 extent of the nonpayment. The bonds or letters of credit shall be canceled upon
755 the successful payment of the connection fee(s). All costs of administering the
756 bonds or letters of credit shall be paid by the owner/applicant.
757

758 **IV. Terms and Conditions.** Other terms and conditions of this Agreement shall be those as

759 set forth in Ordinance #ORD2015-09 attached to this Agreement as **Exhibit “B.”**

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

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

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

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

772 **IX. Modifications/Amendments; Non-Waiver.**

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

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

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

782 **XI. Interpretation; Captions.**

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

788 B. This Agreement shall not be construed more strictly against either party on the
789 basis of being the drafter, and both parties have contributed to the drafting of this Agreement.
790

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

794 **XIII. Assignability; Successors.** The Developer may not assign, transfer, and/or sell any of the

795 rights under this Agreement, or associated with this Agreement, except under the conditions set
796 forth in Ordinance #ORD2015-09.

797 **XIV. Governing Law; Venue.** This Agreement shall be governed by and construed in
798 accordance with the laws of the State of Florida. Venue shall lie in Marion County, Florida.

799 **XV. Effective Date; Recordation.** The Effective Date of this Agreement shall be the date when
800 the last party signs this Agreement. Within fourteen (14) days after the Effective Date, the City
801 shall record this Agreement in Marion County, Florida. Prior to recordation, the Developer shall
802 pay the recording fees to the City.

803 **XVI. Termination of Agreement.** Upon completion of payment of all installment payments
804 under this Agreement, a Memorandum of Termination of the Agreement may be recorded in the
805 Public Records of Marion County, Florida by the City so long as the parties all agree that all
806 provisions of this Agreement have been executed.

807 **XVII. Notice.** Any notice to be given in accordance with this Agreement shall be in writing and
808 shall be sent by hand delivery, overnight mail, or certified mail, return receipt requested, to the
809 party being noticed at the addresses set forth below:

810

As to City:

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

As to Developer:

811 Should any party identified above change, it shall be that party's obligation to notify the other
812 party of the change in a fashion that is required for notices herein.

813 **XVIII. Personal Liability.** No provision of this Agreement is intended, nor shall any be
814 construed, as a covenant of any official (either elected or appointed), director, employee or agent
815 of City or officer, director, shareholder, member, partner, employee or agent of Developer, in an
816 individual capacity, and neither shall any such individuals be subject to personal liability by
817 reason of any covenant or obligation of City or Developer hereunder.

818 IN WITNESS WHEREOF, the parties have set their hands and seals.

819 **[SIGNATURE PAGES FOLLOW]**

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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:

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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.: _____

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EXHIBIT "A"

Legal description of Property

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EXHIBIT “B”

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Ordinance #ORD2015-09

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