

## INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is made and entered into this 19<sup>th</sup> day of December, 2011 by and between the DUNES COMMUNITY DEVELOPMENT DISTRICT, a Special District in the State of Florida (hereafter referred to as the "District" whose address is 5000 Palm Coast Parkway SE, Palm Coast, FL 32137, and the COUNTY OF FLAGLER, a political subdivision of the State of Florida (hereafter referred to as the "County"), whose address is 1769 East Moody Boulevard, Bldg. 2, Bunnell, Florida 32110 and together collectively are referred to as the "Parties".

### WITNESSETH

WHEREAS, the District is a special purpose unit of local government located entirely within Flagler County, Florida established for the purpose of planning, financing, constructing, installing, and/or acquiring certain improvements, facilities and services in conjunction with the development of lands located within the District;

WHEREAS, the District is the owner and operator of a certain toll bridge commonly known as The Hammock Dunes Bridge ("Bridge") which derives revenues ("Bridge Funds") for the sole benefit of the District;

WHEREAS, the District has historically collected Bridge Funds from all residents, visitor and tourists to fund the Bridge's operations, construction indebtedness, maintenance, and potential bridge expansion;

WHEREAS, because the Bridge Funds come from a wide variety of payers, the County and the District desire to use a portion of the Bridge Funds to develop or construct various improvements and amenities for the benefit of County residents which also includes the residents of the District ("Community Project");

WHEREAS, the Bridge serves as a critical transportation connection for business, homeowners, visitors and emergency services to include being a critical part of the County's emergency evacuation routes;

WHEREAS, it is in the mutual interest of the County and the District to establish intergovernmental relations that encourage, promote and improve the coordination, overall effectiveness and efficiency of governmental activities and services within

County including, but not limited to the development and construction of Community Projects;

WHEREAS, Chapter 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969," permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, the County and the District find this Interlocal Agreement to be necessary, proper and convenient to the exercise of their powers, duties and purposes authorized by law; and

WHEREAS, the County and the District desire to jointly exercise their common powers and authority concerning the cost effective financing and construction of Community Projects and clarify their respective responsibilities, obligations, duties, powers, and liabilities as set forth in this Interlocal Agreement.

NOW, THEREFORE, in consideration of the recitals, agreements and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

**SECTION 1. Recitals and Authority.** The foregoing recitals are true and correct and, by this reference, are incorporated as a material part of this Interlocal Agreement. This Interlocal Agreement is entered into pursuant to the provision of Florida law, including but not limited to Chapters 163, 166, 189, and 190, Florida Statutes, and the Florida Constitution.

**SECTION 2. Agreement by the Parties.**

a. **Equity in Toll Rates.** It is agreed by the parties that all users of the Bridge by vehicular classification shall pay the same tolls. Any discounts offered would be equally available to all bridge users and that no special discounts would be available to any special group of geographic region within the County. The exception to this

standard would only be permitted for emergency vehicles which are currently authorized by Florida Statutes.

**b. Bridge Maintenance.** It is agreed by the parties that from time to time the District will conduct engineering and financial analyses to evaluate the timing and need for the maintenance of the bridge. Furthermore, the District shall, at its sole discretion (1) maintain the Bridge in accordance with proper engineering standards and (2) set aside or generate adequate funds for Bridge maintenance.

**c. Use of Bridge Funds.** The District shall make certain Bridge Funds, as defined below, available to the County for the County's development or construction of Community Projects. The County's use of the Bridge Funds for Community Projects shall be further restricted as follows unless otherwise mutually agreed to in writing by the parties:

1. Community Projects shall be limited to only projects for the public good and in the public domain accessible by anyone from the general public;
2. Community Projects shall be within the boundaries of the District or directly adjacent to the District boundaries; and
3. Community Projects shall be approved in writing by the District with said approval not being unreasonably withheld.
4. Notwithstanding the above, the County shall use Three Hundred and Fifty Thousand Dollars \$350,000.00 of the Initial Contribution, as defined below, for improvements triggered ("Trigger Obligations") in the Hammock Dunes DRI and mutually agreed to in the Essentially Built Out Agreement between the County and Admiral Corporation ("EBO Agreement").

**d. Amount of Bridge Funds**

1. The District shall make available to the County One Million Dollars (\$1,000,000.00) of Bridge Funds to be used by the County exclusively for

Community Projects ("Initial Contribution"). Use of the Initial Contribution shall be for mutually agreed upon, beneficial Community Projects or Trigger Obligations including the cost for the design, permitting and construction.

2. Commencing on October 1, 2013 and ending on October 1, 2016, the District shall make available to the County Two Hundred Thousand dollars (\$200,000.00) per year to be used by the County for Community Projects ("Annual Contribution"). Use of the Annual Contributions shall be for mutually agreed upon, beneficial Community Projects including their cost for the design, permitting and construction. The Annual Contributions shall be made available to the County on October 1<sup>st</sup> of each year during this period. After October 1, 2016, the District shall no longer make any Annual Contributions to the County. The Annual Contribution Funds authorized herein shall roll over from year to year until such time as they are fully expended.

3. The District shall place the Initial Contribution and any Annual Contribution, as they may come due, in designated account <sup>to the benefit of Flagler County</sup> with the release of any funds subject to the approval of the District Board which shall not be unreasonably withheld. LJH  
RJR

4. The payment of any contribution as defined in this section shall not become due until:

a. The appeals period regarding the County's adoption of the EBO Agreement has expired with no party making an appeal of said County action; and

b. April 1, 2012

e. **County Consent.** The County hereby consents to the District's use of Bridge Funds outside of the District for various purposes benefiting the County and District residents. These various purposes include, but are not limited to the development of Parks, Trail Creation/Improvements, Billboard Purchase and/or Removal, Median Landscaping and other non-median landscaping/beautification, underground installation of electric, installation of utilities, stormwater management improvements, security/tourism

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cameras, trail bathrooms, parking, environmental issues in the greenway, and similar type items.

**SECTION 3. Indemnification.** To the extent permitted by law, each party agrees to indemnify and hold the other party harmless from and against any and all damages, losses or claims, including, but not limited to, legal fees and expenses, to the extent that such damages, losses or claims are attributable to either party's actions, omissions or negligence in its performance under this Interlocal Agreement. Nothing in this Interlocal Agreement shall be deemed as a waiver of immunity or limits of liability of either party, including their supervisors, officers, agents and employees and independent contractors, beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, Florida Statutes or other statute, and nothing in this Interlocal Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

**SECTION 4. Default.** A default by either party under this Interlocal Agreement shall entitle the other party to all remedies available at law or in equity, which may include, but not be limited to, damages, injunctive relief and specific performance. Each of the parties hereto shall give the other party written notice of any defaults hereunder and shall allow the defaulting party not less than five (5) days from the date of receipt of such notice to cure monetary defaults and fifteen (15) days to cure other defaults.

**SECTION 5. Disputes/Enforcement** All disputes under this Interlocal Agreement shall be governed in accordance with the requirements of Chapter 164, Florida Statutes. In the event that either party seeks to enforce this Interlocal Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution or appellate proceedings.

**SECTION 6. Controlling Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Florida.

**SECTION 7. Severability.** In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such

provision shall be construed or deleted as such authority determines, and the remainder of this Agreement shall be construed to remain in full force and effect.

**SECTION 8. Amendment.** This Interlocal Agreement shall not be modified or amended except by written agreement duly executed by both parties hereto.

**SECTION 9. Interpretation.** This Interlocal Agreement has been negotiated fully between the parties as an arms length transaction. Both parties participated fully in the preparation of this Interlocal Agreement. In the case of a dispute concerning the interpretation of any provision of this Interlocal Agreement, both parties are deemed to have drafted, chosen and selected the language, and the doubtful language will not be interpreted or construed against any party. The headings contained in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.

**SECTION 10. Employee Status.** Persons employed by either Party in the performance of services and functions pursuant to this Agreement shall not be deemed to be employees of the other Party nor shall they have any claim to pension, worker's compensation, civil service, or other employee rights or privileges granted by the other Party to its officers and employees.

**SECTION 11. Entire Agreement.** This instrument constitutes the entire Agreement between the parties and supersedes all previous discussions, understandings and agreements.

**SECTION 12. Time is of the Essence.** The parties agree that time is of the essence for this Interlocal Agreement.

**SECTION 13. Notice.** Each party shall furnish to the other such notice, as may be required from time to time pursuant to this Interlocal Agreement, in writing, posted in the U.S. mail or by hand delivery, or by overnight delivery service and addressed as follows:

**FOR THE DUNES COMMUNITY DEVELOPMENT DISTRICT:**

Dunes Community Development District  
Attn: District Manager

5000 Palm Coast Pkwy S.E.  
Palm Coast, Florida 32137

With copy to: Chiumento Selis Dwyer, PL  
145 City Place  
Suite 301  
Palm Coast, FL 32164  
Telephone (386) 445-8900  
Fax (386) 445-6702  
Attn: Michael Chiumento III, Esq.

**FOR FLAGLER COUNTY:**

Flagler County Board of County Commissioners  
Attn: County Administrator  
1769 East Moody Boulevard, Building 2  
Bunnell, Florida 32110

With Copy to: Flagler County Board of County Commissioners  
Attn: County Attorney  
1769 East Moody Boulevard, Building 2  
Bunnell, Florida 32110

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

**SECTION 14. Effective Date.** This Interlocal Agreement and the rights conferred herein shall become effective upon the execution and recording of the EBO Agreement. Upon execution this Interlocal Agreement shall be immediately filed with the Clerk of the Circuit Court of Flagler County, Florida, in accordance with the requirements of Chapter 163.01(11), Florida Statutes. Should the Hammock Dunes DRI concurrency requirement to widen the Bridge be reinstated for whatever reason, this Interlocal Agreement shall be held in abeyance, with no further District payments to the County required, until such time as this concurrency requirement is resolved to not require the widening of the Bridge. Should the requirement be reinstated and enforced to require the Bridge widening this Interlocal Agreement shall be null and void and the County shall repay the District all money the District paid to the County through this Agreement on a repayment schedule approved by the District. Any time held in abeyance shall toll and shall automatically extend this Agreement and the provisions herein accordingly based on the time held in abeyance.

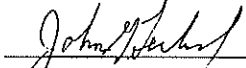
**SECTION 15. Term of Interlocal Agreement.** The term of this Interlocal Agreement shall commence upon the Effective Date and expire when the funds in the designated account are depleted. However, the District will not be obligated to make any further contributions after October 1, 2016, except as may be extended as provided for in Section 2 paragraph d.2. to expend the funds authorized herein and Section 14 to account for any tolling period.

[END OF TEXT; SIGNATURE PAGES FOLLOW].

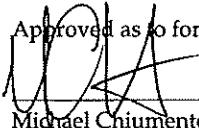
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IN WITNESS WHEREOF, the parties hereto affix their hand and seal this 19<sup>th</sup> day of December 2011.

DUNES COMMUNITY DEVELOPMENT DISTRICT

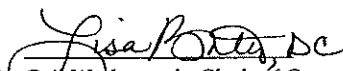
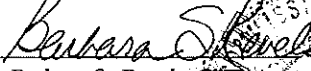
  
John G. Leckie, Jr., Chairman

Approved as to form and legality:

  
Michael Chiumento, III, Esq. CDD District Attorney

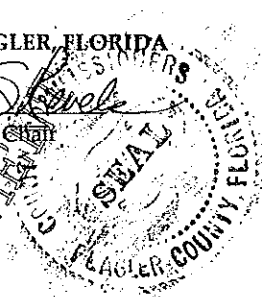
ATTEST:

COUNTY OF FLAGLER, FLORIDA

   
for Gail Wadsworth, Clerk of Court Barbara S. Revels, Clerk

Approved as to form and legality:

  
Al Hadeed, County Attorney



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