

AMENDED IMPACT FEE AGREEMENT

THIS AMENDED IMPACT FEE AGREEMENT (“Amended Agreement”) is made and entered into this _____ day of _____, 2011 (“Effective Date”), by and between **THE VILLAES OF LAKE-SUMTER, INC.**, a Florida corporation, whose address is 1020 Lake Sumter Landing, The Villages, Florida 32162 (“Developer”), and **SUMTER COUNTY**, a political subdivision of the State of Florida, whose address is 7375 Powell Road, Wildwood, Florida 34785 (“County”).

RECITALS

WHEREAS, on February 10, 2009, the Developer and County entered into an Impact Fee Agreement (“Original Agreement”) for the development of the following transportation improvements:

- A. US 301 – Widen to four (4) lanes from milepost 24.615 on the south to milepost 27.329 on the north.
- B. US 301 – Intersection safety improvement at US 301 and Florida Turnpike.
- C. US 301 – Intersection improvement at C-466.
- D. US 301 – Intersection improvement at SR 44.
- E. Florida Turnpike – New interchange at C-468.
- F. C-466 – New interchange at I-75 and associated widening to four (4) lanes from CR 245 to 7/10ths of one mile east of I-75.
- G. C-466 - Intersection improvement at Morse Boulevard.

WHEREAS, on January 27, 2009, the Developer and the State of Florida Department of Transportation (“FDOT”) entered into The Villages DRI Transportation Proportionate Share and Joint Participation Agreement (“Proportionate Share Agreement”) for improvements to US 301 and Florida Turnpike, as described above, and

WHEREAS, the Proportionate Share Agreement between the Developer and FDOT does not address the design, permitting, and construction of the new interchange at C-466 and I-75 and the related widening to C-466, as described above, and

WHEREAS, the widening of US 301 to four (4) lanes, as described above is under construction and is anticipated to be complete by December 2011, and

WHEREAS, the County completed the intersection improvement at C-466 and Morse Boulevard, and

WHEREAS, on _____, 2011, FDOT amended its Proportionate Share Agreement with the Developer to remove the intersection improvement projects on US 301 at the Florida Turnpike, C-466, and SR 44. The C-466 intersection improvement at Morse Boulevard was also removed, and

WHEREAS, the County is in the final stages of design and permitting for the widening of C-468 from the Florida Turnpike to SR 44, and

WHEREAS, at this time, the Developer and County wish to set forth their amendment to the Original Agreement. Those portions of the Original Agreement that are not amended by this Amended Agreement shall remain in full force and effect, and

NOW THEREFORE, accepting the above recitals as true and incorporating them as if stated herein, and in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agree that the Original Agreement is amended hereby, and further that this Amended Agreement sets forth the parties agreements for the construction of certain improvements to C-468 from the Florida Turnpike to SR 44. Any conflicts in interpretation or application between this Amended Agreement and the Original Agreement shall be resolved in favor of this Amended Agreement.

A. COUNTYWIDE IMPROVEMENTS TO US 301

1. Sections A(1)(B), A(1)(C), and A(1)(D) of the Original Agreement are hereby deleted.
2. Section A(2)(B) of the Original Agreement is amended and replaced as follows: Within sixty (60) days of the effective date of this Amended Agreement, the Developer shall pay the County \$1,392,974.00. The County shall exclusively utilize these funds for the improvement of C-466A from Powell Road to US 301.

B, DISTRICT NO. 1 IMPROVEMENTS TO THE FLORIDA TURNPIKE AT C-468, AND ALSO C-466

1. Section B(2) of the Original Agreement is hereby deleted.
2. The following transportation project is added:

a. IMPROVEMENT TO C-468 FROM FLORIDA TURNPIKE TO SR 44

1. **The Project.** The Project involves the construction of the widening of C-468 to four (4) lanes from the Florida Turnpike to SR 44 consistent with the design plans developed by the County.
2. **Responsibilities.** The Developer shall be responsible for the construction of the Project. The County has retained the services of Springstead Engineering, Inc. to provide design and engineering services for the Project. The

Developer shall utilize the engineered Construction Documents provided by the County Inc. for the construction.

3. **Right-of-Way.** The County shall secure all right-of-way for the construction of the Project. The Developer agrees to cooperate with the County in assisting the County in securing such right-of-way.
4. **Construction of Project.** The Developer shall construct the Project in accordance with all applicable regulations, including periodic inspections and submission to the County of all testing reports and final inspection prior to acceptance of the Project. The Developer shall commence construction of the Project no later than December 1, 2014, and in coordination with the development of the new interchange at the Florida Turnpike and C-468. The Developer shall complete construction of the Project for final acceptance by the County within eighteen (18) months from commencement of construction.
5. **Impact Fee Credit and Reimbursement.** The County agrees that the Developer shall be entitled to road impact fee credit and reimbursement based upon the actual cost of construction of the Project funded by the Developer pursuant to this Amended Agreement. However, in no event shall the Developer be entitled to any credit or reimbursement in excess of 120% of the estimated construction cost of the Project set forth in Exhibit "A", unless the Project is competitively bid, in which case, the Developer shall be entitled to road impact fee credit and reimbursement in the amount of the actual cost of construction of the Project. Also, in no event shall the Developer be entitled to any reimbursement except to the extent of any funds on deposit in the County's road impact fee fund.
 - a. **Records.** The Developer may apply for a credit and/or reimbursement from the County road impact fee fund based upon the percentage of work completed by delivering to the County a certification by a third party licensed Professional Engineer indicating the percentage of work completed, through the date of certification, which credit and/or reimbursement shall be available to the Developer upon inspection, approval, and acceptance by the County. The Developer shall pay road impact fees pursuant to such ordinance until the County's first approval of a portion of the credit entitlement under this Amended Agreement. During construction, such road impact fee credit shall accrue, and/or reimbursement paid to the Developer in an amount equal to 90% of the cost of the Project completed. Upon completion of the Project, 100% of the cost associated with shall be available for credit and/or reimbursement to the Developer upon inspection, approval, and acceptance by the County. Road impact fees paid by the Developer to the County before the date the Developer first established road impact fee credits shall be rebated to the Developer to the extent of the Developer's impact fee credit entitlement on a monthly basis.

Notwithstanding the fact that the Developer has established a road impact fee credit balance, the Developer shall continue to make payment for road impact fees on or before the issuance of building permits. If the Developer has not previously assigned its road impact fee credits pursuant to the Section below, within fifteen (15) days after end of each month, the County shall rebate to the Developer an amount equal to previous month's end balance of road impact fees paid by the Developer, provided such rebate does not exceed the existing credit entitlement available to the Developer. The amount of each monthly rebate shall be deducted from the credit entitlement available to the Developer. The County shall deliver to the Developer monthly reports indicating all activity on the account during the month, and the month end balance. The Developer shall keep or provide for retention of adequate records and supporting documentation which concern or reflect total Project cost. This information will be available to the County, or its duly authorized agent or representative, for audit, inspection, or copying, for a minimum of five (5) years from the termination of this Agreement.

- b. Assignment of Road Impact Fee Credits by Developer. The road impact fee credits shall be fully transferrable and assignable by the Developer in accordance with this section. Prior to the issuance of a building permit, the owner of the Developer contribution credit must file an application to assign the credits with the Sumter County Planning Director. An assignment of road impact fee credits must meet the following requirement to be accepted by the Sumter County Planning Director:
 - i. Developer contribution credits can only be assigned once, not including any collateral assignments in favor of a bank, a community development district created pursuant to Chapter 190, Florida Statutes, or other local unit of special purpose government.
- c. Financial Accounting. All financial records of the Developer pertaining to this Amended Agreement shall be maintained according to generally accepted accounting principles. A separate project will be created in the accounting records to account for the Project costs. The financial records shall enable ready identification of all Project costs. The County shall have the right to audit or verify the amount and accuracy of Project costs and Project documentation throughout the term of this Amended Agreement and for five (5) years subsequent, and shall have access to any and all records, documents, or correspondence related to this Project.

- d. Annual Review and Audit. The County shall conduct an annual review and audit of performance under this Amended Agreement to determine whether or not there has been demonstrated good faith compliance with the terms of this Amended Agreement and to report the credit applied toward payment of road impact fees and the balance of available and unused credit. If the County finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of this Amended Agreement, this Amended Agreement may be revoked or modified by the County. Prior to taking any such action, the County agrees to give the Developer written notice with reasonable time in which to cure any alleged failure.

C. GENERAL PROVISIONS. The General Provisions of the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amended Agreement on the day and year above first written.

**BOARD OF COUNTY COMMISSIONERS
SUMTER COUNTY, FLORIDA**

ATTEST:

Donald Burgess, Chairman

Gloria Hayward, Clerk of the Court

Approved as to Form
And Legal Sufficiency

Sumter County Attorney

THE VILLAGES OF LAKE-SUMTER, INC.

ATTEST:

H. Gary Morse, President

Gary L. Moyer, Vice President