

**INTERLOCAL AGREEMENT
BETWEEN FLAGLER COUNTY, FLORIDA AND
THE TOWN OF MARINELAND, FLORIDA
PERTAINING TO PHASE 1 OF A PUBLIC MARINA**

THIS AGREEMENT is entered into between Flagler County, Florida, a political subdivision of the State of Florida, whose address is 1769 East Moody Blvd., Building 2, Suite 302, Bunnell, FL 32110, hereinafter referred to as the "County," and the Town of Marineland, a Florida municipal corporation, whose address is 9507 Ocean Shore Blvd., Marineland, FL 32086, hereinafter referred to as the "Town."

WITNESSETH:

WHEREAS, in 2009 the Town acquired the marina located in the Town that previously operated as a private service to boaters and recreational users on the Intracoastal Waterway; and

WHEREAS, the marina was in severe disrepair and was closed due to safety hazards in 1999; and

WHEREAS, the Town identified restoration of the marina as a key component of the Town's revitalization as a marine science education and nature tourism center; attracting visitors, residents and students; and

WHEREAS, there was significant private investment to restore the marina in 2002 and 2003, including rebuilding the marina bulkheads and perimeter walkways, reconstructing the fixed dock on the Intracoastal Waterway ("ICW"), dredging of the marina basin; and completion of other improvements; and

WHEREAS, the marina remains closed and remains unavailable for any public use; and

WHEREAS, the Town desires to build and operate a municipal marina available to the public; and

WHEREAS, the Town has secured funding in the amount of \$202,160 from the Florida Inland Navigation District ("FIND") to partially restore the marina, including the construction of a 260 foot floating dock and four fixed marina slips which will be available to boaters on a first come, first served basis, along with associated public facilities; and

WHEREAS, this will be the first municipally owned marina in Flagler County; and

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WHEREAS, the Town historically has been one of the major tourist destinations in Flagler County; and

WHEREAS, the Town's resources for tourism have increased in a variety of ways including its role as a gateway to the National Scenic Byway for State Road A1A, and further through its public parks and beaches in the River to Sea Preserve, its role as headquarters for the Right Whale Project and the northeast office of Florida Audubon, for its field station for the National Estuarine Research Reserve, its Dolphin Conservation Center, its Dolphin Conservation Field Station through a partnership between Marine Park of Flagler and the Georgia Aquarium, and the completion of the new Center for Marine Studies at the University of Florida's Whitney Laboratory for lectures and conferences; and

WHEREAS, restoring the marina as part of these water dependent facilities and resources is central to the Town's plan to revitalize its role as a major public destination for nature tourism, heritage tourism, and science education; and

WHEREAS, the Town has identified the restoration and operation of the marina in its Community Redevelopment Plan; and

WHEREAS, the Town has applied for \$150,000 in Tourist Development Revenue from the County to partially match the FIND grant; and

WHEREAS, the Town is matching the balance of the FIND grant with \$52,160 or more from its Community Redevelopment Agency to complete the project and also is obligating itself to maintain the municipal marina in accordance with the applicable standards of FIND; and

WHEREAS, the primary purpose of the County's grant of Tourist Development Revenue to the Town is to promote and advance tourism in Flagler County and is for a public purpose; and

WHEREAS, the County through its tourism agency, the Flagler County Chamber of Commerce, Inc., intends to market the municipal marina, along with other water related outdoor recreation activities and resources of the County as part of its strategic tourism marketing plan; and.

WHEREAS, this Interlocal Agreement is authorized by the provisions of Chapters 125, 163, and 166, Florida Statutes and other applicable law.

NOW, THEREFORE, in consideration of the premises, the County and Town agree as follows:

Section 1: Purpose. The purpose of this Agreement is to define rights and obligations of the County and the Town with respect to the County's assistance in the funding of Phase 1 of the Town's public marina project and the disbursement of those funds.



Section 2: Description of Project. Phase 1 of the project will consist of the redevelopment of the Town marina as a public facility catering to transient boat traffic, local boat owners, tourists and the stakeholders in the Town. The improvements will consist of a 260 foot floating dock with aluminum gangway (with 100% public access) and four (4) boat slips on fixed pilings available to the boating public on a first come, first served basis in accordance with the terms of the FIND grant. The project also includes electric/water hookups and sewage pump out stations for the floating dock and fixed slips, along with safety lighting, public restrooms, and a laundry facility, all as approved by FIND. The project further includes surveying and dredging the public portion of the marina basin, along with related engineering services for the public portion of the marina. The project is expected to be complete by November 30, 2011. The project scope shall be as determined by FIND and any modifications of the scope by FIND shall be binding upon the County and Town. Such modifications, if any, shall be in writing and shall be promptly furnished to the County by the Town.

Section 3: County Responsibilities. Contingent upon the town receiving an award from the Florida Inland Navigation District in an amount of at least \$202,160, the County agrees to reimburse the Town for Phase 1 project costs for the local match portion upon approval by FIND in an amount not to exceed \$150,000 for Phase 1 of the project.

Any request for payment by the Town shall be presented to the County Administrator to determine the adequacy and completion of the work that is being invoiced. Once the work has been verified to the County's satisfaction, the request for payment shall be submitted to be processed and payment shall be made within thirty (30) days. The County shall be the final authority on eligibility for reimbursement and shall be based on the grant actions of FIND.

Section 4: Town Responsibilities.

a. The Town shall diligently pursue the project in compliance with the FIND grant and shall furnish the County with a copy of each status report for FIND at the same time such report is furnished to FIND. Upon completion of the project, the Town shall be responsible for maintenance of the marina and for the day-to-day operations of the marina. The Town shall be responsible for insuring the marina.

b. The Town agrees that should it cease to operate the marina, the County shall have the first option to obtain the marina from the Town at no cost, including all associated title, improvements, easements, assignment of rents and rental agreements, and all other such instruments to vest the County with ownership and operational authority over the municipal marina, subject to accepting any outstanding obligations. Should the Town's interest not fully vest under the provisions of the First Amendment to the PUD Agreement and Agreement Related to Marina executed on May 21, 2009 (attached hereto as **Exhibit "A"**), the County is relieved of its obligation to provide funding for the marina project. Any funds advanced by the County shall be reimbursed in full. This Agreement shall be a first lien on the property should the marina be subject



to reversion and the Town shall cooperate with the County in securing the County's rights thereto.

c. The Town agrees to repay all County monies paid under this Agreement upon any future sale, transfer, reversion or loss of the marina, including a lease purchase, property swap, or any other similar arrangement, as such amount is adjusted annually for interest by 3% or by the increase in the CPI (as defined hereafter), whichever is less. The CPI adjustment shall be based on the Consumer Price Index for All Urban Consumers, South Region, US City Average (reference base of 1982 – 1984 = 100), published by the US Bureau of Labor Statistics, comparing a 12 month time period ending on December 31.

Section 5: Termination. This Agreement shall be terminated immediately and shall be null and void and the County shall have no further obligations hereunder in the event that the public marina reverts to the PUD developer, Centex Homes, or its successors or assigns, as provided in Exhibit A.

Section 6. Sovereign Immunity. The County and the Town expressly retain all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes, or its successor. Notwithstanding anything set forth in this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or waiver of the limits of liability. Liability of the County or the Town for damages shall not exceed the statutory limits of liability, regardless of the number or nature of any claim which may arise, including but not limited to, a claim sounding in tort, equity or contract. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County or the Town which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

Section 7: Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.

Section 8: Notice. Notices provided for in this agreement, unless expressly provided for otherwise, shall be in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

To: Town of Marineland
Attention: Mayor
9507 Ocean Shore Blvd.
Marineland, FL 32086

To: Flagler County
County Administrator
1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110



Section 9: Headings. All section and descriptive headings in this Agreement are inserted and intended for convenience only, and shall not affect the construction or interpretation hereof.

Section 10: Counterparts. This Agreement may be comprised of several identical counterparts, each to be fully executed by the parties and each to be deemed an original having identical legal effect.

Section 11: Effective Date. This Agreement shall be effective as of the date this Agreement is filed with the Clerk of the Court of Flagler County. The County shall be responsible for recording this Agreement.

Section 12: Entire Agreement and Assignment. This Agreement constitutes the entire agreement of the parties, and there are no understandings dealing with the subject matter of this Agreement other than those contained herein. This Agreement may not be modified, changed or amended, except in writing signed by the parties hereto or their authorized representatives, subject to the provisions of Section 2 herein. No party shall assign the Agreement, or any interest herein, without the express written consent of the other party.

Section 13: Interpretation. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both the Town and the County have contributed substantially and materially to the preparation hereof.

Section 14: Force Majeure. No party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by *force majeure*. *Force Majeure* shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any emergency declaration under state law, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and authority and without the fault or negligence of the party seeking relief under this Section.

Section 15. Time is of the Essence. Time is of the essence of the lawful performance of the duties and obligations contained in this Agreement. The parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Agreement.

Section 16. Applicable Law/Venue. This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida. Florida law shall govern the interpretation and enforcement of this Agreement. Venue for any dispute resulting from this Agreement shall be in Flagler County, Florida.

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Section 17. Binding Effect. Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it.

Section 18. Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorney's fees, including paralegal fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

IN WITNESS WHEREOF, the parties hereto have caused this Interlocal Agreement to be executed for the uses and purposes herein expressed.

ATTEST:

TOWN OF MARINELAND, FLORIDA

Dee Michaels
Dee Michaels, Town Clerk

By: James C. Netherton III
James C. Netherton, III, Mayor

Approved as to form:
Dennis Bayer
Dennis Bayer, Town Attorney

Date: NOV 15, 2010

ATTEST:

**BOARD OF COUNTY COMMISSIONERS,
OF FLAGLER COUNTY, FLORIDA**

Gail Wadsworth
Gail Wadsworth, Clerk and
Ex Officio Clerk of the Board

By: George Hanns
George Hanns, Chairman

Approved as to form:
Albert J. Hadeed
Albert J. Hadeed, County Attorney

Date: 11-16-10

[Handwritten signature]

**FIRST AMENDMENT TO PUD AGREEMENT
AND AGREEMENT RELATED TO MARINA**

THIS AGREEMENT is entered into by and between the TOWN OF MARINELAND, a Florida municipality (the "Town"), and CENTEX HOMES, a Nevada general partnership ("Centex"), on the Date of Agreement provided herein.

WHEREAS, the Town and Centex entered into a PUD Agreement dated December 21, 2006 (the "PUD Agreement"), attached as Exhibit A to PUD Ordinance No. 2006-02 ("PUD Ordinance"), for development of a 37.13± acre parcel on the west side of Highway A1A in Marineland (the "PUD Property") as a Planned Unit Development ("PUD"), according to the site plan and the conditions stated in the Agreement; and

WHEREAS, the PUD development includes a 3.54± acre parcel of submerged land plus the area known as the North Wall and a dock on the Matanzas River, all as shown on Exhibit "A" (the "Marina Parcel"), to be developed as a marina with a maximum of 85 wet slips and for which appropriate federal and state permits have been issued, along with a Florida sovereign submerged land lease for an existing dock on public land; and

WHEREAS, the PUD Agreement and the PUD Ordinance rezoning the PUD Property require that Centex seek its first permit for vertical construction on the PUD Property and complete installation of the primary water main to serve the entire 151-acre Town within two (2) years after the effective date of the PUD Agreement which, with the tolling of time for then-pending litigation, is June 1, 2009; and

WHEREAS, since December of 2007, Florida and the country have been in a deepening economic recession that has adversely affected the Florida housing market; and



WHEREAS, due to the economic recession and its negative impact on the Florida housing market, Centex has been unable to proceed with development of the PUD Property, including installation of the primary water main to serve the 151-acre Town; and

WHEREAS, it is in the best interests of the Town and its residents to encourage and facilitate development to attract members of the public to the Town to support the Whitney Lab, the Marineland Research Resort, LLC, the National Estuarine Research Reserve, and the River to Sea Preserve; and

WHEREAS, Centex has offered to convey the Marina Parcel to the Town as consideration for relief from its June 1, 2009, obligations under the PUD Agreement, which conveyance would enable the Town to develop a municipal marina to attract members of the public to the Town earlier than will likely occur otherwise; and

WHEREAS, in order to facilitate development within the Town and obtain access to marina slips, it is anticipated that Marineland Research Resort, LLC, will partner with the Town to construct a primary water main to serve existing and proposed development within the Town, other than the PUD Property; and

WHEREAS, under the circumstances, it is appropriate to grant Centex a three-year extension of time (to June 1, 2012) to submit an application for its first permit for vertical construction and to adjust Centex's obligation regarding the primary water main.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which are hereby acknowledged, the Town and Centex agree as follows:

1. **Recitals.** The foregoing recitals are incorporated herein by reference.
2. **First Amendment to PUD Agreement; Remainder Unaffected.** Sections 4.3 and 6.1 of the PUD Agreement dated December 21, 2006, between the Town and Centex is



amended as follows (with strike through indicating a deletion and underlined text indicating an addition):

4.0 Phasing; Temporary Construction Trailers and Sales Facility; Duration of Construction Activities.

* * *

4.3 Duration of Construction Activities.

The Developer shall submit its first permit application for vertical construction on the Property, ~~and shall complete installation of the primary water main to serve the Project and the existing approximately 151-acre Town (the "existing Town"), within two (2) years after the effective date of this Agreement.~~ on or before June 1, 2012. Initial construction on the Property shall be completed within ten (10) years after the effective date of this Agreement (that is, by June 1, 2017); provided, however, that extensions of this time period may be approved by the Zoning Consultant, without an amendment to this Agreement or the PUD Ordinance, where circumstances beyond the reasonable control of the Developer delay completion of the Project, and so long as the Developer is making a good faith effort to complete the Project.

* * *

6.0 Project Infrastructure.

6.1 Water/Wastewater.

All permanent residential and commercial uses within the Project will be served by one or more central water and sewer services. Permanent residential and commercial uses within the Project shall be required to connect to central water and sewer services prior to issuance of a certificate of occupancy for such use. The Developer shall construct or cause to be constructed necessary water mains to serve the Project ~~and the existing 151-acre Town.~~ The Developer may elect to construct or cause to be constructed a wastewater treatment facility to serve the development in the Project and in the existing Town. The Town may, but is under no obligation to, accept a dedication of any water or wastewater treatment facility.

The Project may include a master irrigation system(s) for common landscape areas. A master irrigation system(s) may utilize water sources as allowed by Chapter 40C-2, F.A.C., including, but not



limited to, groundwater, surface water, reclaimed water, and/or potable water, if authorized by the St. Johns River Water Management District ("SJRWMD"). The Developer may utilize recharge wells to stabilize water elevations in the retention ponds on the Property.

Except as expressly modified herein, the PUD Agreement shall remain in full force and effect.

3. **Conveyance of Marina Parcel to Town.** Within forty-five (45) days from the date of a written request from the Town, Centex shall convey (execute and deliver a deed to) the portion of the Marina Parcel owned by Centex to the Town for development of a municipal marina with up to 85 wet slips, consistent with the PUD Agreement and PUD Ordinance, subject to all of the following terms and conditions:

- (a) If, after the date of this Agreement, the Town decides not to develop a municipal marina on the Marina Parcel, the Town shall provide written notice of that decision to Centex.
- (b) The Town shall commence construction of a municipal marina on the Marina Parcel within six (6) months after obtaining all necessary permits or no later than June 1, 2012. The deed from Centex to the Town shall contain a reversionary clause that if the Town does not commence construction of a municipal marina on the Marina Parcel within the time period provided herein, title to the Marina Parcel will revert to Centex for development of the PUD as described in the PUD Agreement. In the event of a reversion, if requested by Centex in writing, the Town shall promptly execute and deliver a deed re-conveying the Marina Parcel to Centex.



- (c) Centex shall convey to the Town reasonable easements, as mutually agreed by the parties, to provide access and to construct facilities including parking, public restrooms, and a dock master's office to serve the municipal marina. Centex shall have the right to terminate the easements upon no less than sixty (60) days notice to the Town (1) if the Town does not develop a municipal marina as provided in this Agreement or (2) if, once construction of the PUD begins; Centex elects to replace the facilities built by the Town to support the municipal marina. Replacement facilities shall be consistent with the terms of the PUD Agreement.
- (d) The Town shall be responsible for recording the deed and easements and for all permitting or permit modifications, and any sovereign submerged land lease or lease modification, required to develop the municipal marina. Centex shall execute any and all documents necessary to transfer to the Town the existing federal and state permits for the marina development, as well as the existing sovereign submerged land lease for submerged land within the Marina Parcel. In addition, Centex shall assign to the Town any contracts and licenses held by Centex, or to which Centex is a party, that are necessary for the Town to develop the Marina Parcel. If the Town elects not to develop a municipal marina, the Town shall execute any and all documents necessary to transfer the existing federal and state permits and sovereign submerged land lease and any contracts and licenses assigned to the Town back to Centex.



- (e) It is agreed and understood by the Town that prior to conveying the portion of the Marina Parcel owned by Centex to the Town, Centex shall have entered into long-term leases to lease a maximum of nine (9) marina slips to the Marineland Research Resort, LLC (6 slips), the University of Florida Whitney Lab (2 slips), and the non-profit support organization for the National Estuarine Research Reserve (1 slip), as designated by the Reserve. Upon conveyance of the marina business to the Town, the leases shall be assigned to the Town at no expense to the Town.
- (f) The Town may build the municipal marina in phases, as determined by the Town. Any modifications to the marina plans approved under the PUD Ordinance and PUD Agreement shall be mutually agreed upon by the Town and Centex.
- (g) If the Town develops a municipal marina on the Marina Parcel, the Town shall ensure that, once construction of residential units within the PUD Property begins, the owners of property in the Centex developments shall have a right of first refusal to rent a minimum of sixty (60) marina slips or eighty-five percent (85%) of the marina slips built by the Town, whichever is greater, for a reasonable rental fee, subject to rules and regulations of the Town.

4. Limited Primary Water Main. If the Town does not develop a municipal marina within the time provided in this Agreement or decides not to develop a municipal marina, the Town shall notify Centex in writing. In that event, Centex shall be responsible for construction of a water main to serve the existing and future development in the



Town, other than the PUD Property (the "Limited Primary Water Main"), and shall apply for permits necessary to construct the Limited Primary Water Main within one (1) year after receipt of notice from the Town. However, if the portion of the Marina Parcel owned by Centex has been conveyed to the Town and reverts or is deeded back to Centex under the terms of this Agreement, Centex shall apply for permits necessary to construct the Limited Primary Water Main within one (1) year after the date Centex acquires title to the portion of the Marina Parcel subject to the conveyance. Construction of the Limited Primary Water Main shall commence and proceed expeditiously after receipt of all necessary permits. Centex shall remain obligated to construct a water main to serve the PUD Property as provided in Section 6.1 of the PUD Agreement, as amended herein.

5. **Notices.** Notices to the Parties pursuant to this Agreement shall be in writing and shall be provided to the persons named below or to such other persons as the parties may hereafter designate in writing. Delivery of written notices allowed or required under this Agreement shall be by hand delivery, certified U.S. Mail with a return receipt requested, or an express mail service that provides delivery confirmation. Notice shall be deemed to be complete upon delivery and shall be directed to the following:

To the Town of Marineland:

Mayor, Town of Marineland
9505 Ocean Shore Boulevard
St. Augustine, FL 32080
Telephone: (904) 461-4005

With a copy to:

Dennis Knox Bayer, Esq.
109 South 6th Street, Suite 200
Flagler Beach, FL 32136
Telephone: (386) 439-2332



To Centex Homes:

Daniel Blake
Vice President
Centex, National Land Division
12701 Whitewater Drive, Suite 300
Minnetonka, MN 55343
Telephone: (952) 912-2274 (office)
Telephone: (612) 282-5482 (mobile)

Centex Homes
2728 North Harwood
Dallas, TX 75201
Attn: General Counsel

6. **Binding Effect.** This Agreement shall be binding on the parties and their respective successors and assigns.

7. **Entire Understanding; Amendment.** This Agreement contains the entire understanding of the parties and may be modified only by an instrument in writing signed by both parties.

8. **Construction of Agreement.** This Agreement shall not be construed against any party on the basis of it being the drafter of the Agreement. The parties acknowledge that each of them played an equal part in drafting this Agreement.

9. **Date of Agreement.** The date of this Agreement is the later of the date the Town Commission approves this Agreement and the date the last party signs this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, by their duly authorized representatives, on the dates set forth below.

TOWN OF MARINELAND

May 21, 2009

By: James C. Netherton III
JAMES C. NETHERTON, III, MAYOR

ATTEST:

By: Lee Michaels
TOWN CLERK

APPROVED AS TO FORM AND SUFFICIENCY:

By: Dennis Knox Bayer
DENNIS KNOX BAYER
TOWN ATTORNEY

CENTEX HOMES, a Nevada general Partnership

By CENTEX REAL ESTATE CORPORATION, a Nevada corporation, Managing General Partner

7/10, 2009

By: DBlan
Printed Name: Daniel Blake
Title: VP

STATE OF MINNESOTA
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this 10th day of July, 2009, by Daniel Blake on behalf of CENTEX REAL ESTATE CORPORATION, a Nevada corporation, as the Managing General Partner of CENTEX HOMES, a Nevada general partnership, on behalf of the partnership. He/she is personally known to me OR produced _____ as identification, and did/did not take an oath.



Dana A. Johnson
(Signature of Notary)
DANA A. JOHNSON
(Name (typed, printed or stamped))
Notary Public, State of Florida at Large
Commission No. _____
My commission expires: 1/31/13

[Handwritten initials]