

PIRATE'S COVE



CITRUS COUNTY, FLORIDA

APPLICATION FOR APPROVAL OF A DEVELOPMENT AGREEMENT

ATTACHMENT 1 *DEVELOPER'S PROPOSED AGREEMENT*

Bruce McLaughlin Consulting Services, Inc
Indian Rocks Beach, Florida
(727) 595-7634

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December 22, 2012

Revised

Printed December 22, 2012

R. Bruce McLaughlin
Member, American
Institute of
Certified Planners
Registration 3051

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2
3 **CITRUS COUNTY/PIRATE’S COVE**
4 **DEVELOPMENT AGREEMENT**
5

6 This Development Agreement (hereinafter referred to as the “Agreement”) is made and
7 entered this _____ day of _____, 2013 by and between Citrus County, a political
8 subdivision of the State of Florida (hereinafter referred to as “County”, and PIRATE’S COVE
9 OF OZELLO, INC., a Florida Corporation (hereinafter referred to as “Pirate’s Cove”)
10 (hereinafter both of the above referred to as the “Parties”).
11

12
13
14 RECITALS
15

16 **WHEREAS**, it is the function of the County to protect public and private property and to
17 coordinate development within the County as provided by the laws of the State of Florida; and
18

19 **WHEREAS**, it is the function of the County to prevent the creation of health and safety
20 hazards or conditions which result in a detriment to citizens; and
21

22 **WHEREAS**, this Agreement is authorized by §163.3220. *et seq.*, Fla. Stat., and Chapter
23 Twelve, of the Citrus County Land Development Code Ordinance 2012-06, as they existed as of
24 the Effective Date; and
25

26 **WHEREAS**, the Citrus County Land Development Code Ordinance 2012-06, requires
27 the execution of a Development Agreement to include agreed upon conditions, the timeline of
28 construction, hours of operation, maintenance agreements, and reference of amenities and
29 performance bonding for private and public improvements, as based upon County ordinances and
30 development approval conditions outlined herein; and
31

32 **WHEREAS**, Pirate’s Cove is the fee simple owner of a certain tract of land located
33 within Citrus County, consisting of 3.60 acres, more or less, and being more particularly
34 described in Exhibit”A” attached hereto and made a part hereof (hereinafter referred to as the
35 “Development Parcel”); and
36

37 **WHEREAS**, the names and addresses of Pirate’s Cove’ principals and other persons with
38 an interest in the business entity are more particularly set forth in Exhibit “B”, attached hereto
39 and made a part hereof; and
40

41 **WHEREAS**, the Owner on its own behalf and on the behalf of successor Owners and
42 Developers is desirous of developing land within the County more particularly described in

1 Exhibit "A," the "Development Parcel"; and

2
3 **WHEREAS**, the Owner would like to request approval from the Board of County
4 Commissioners of Citrus County (hereinafter the "BOCC"), to construct a development known
5 as Pirate's Cove (hereinafter referred to as the "Development" or as "Pirate's Cove") subject to
6 conditions outlined herein, and

7
8 **WHEREAS**, the Development as set forth herein is consistent with the Citrus County
9 Comprehensive Plan and the Citrus County Land Development Code; and

10
11 **WHEREAS**, this Agreement was presented to the BOCC at a duly noticed public hearing
12 on _____, 2013, in accordance with the requirements of Florida law and the
13 codes and ordinances of Citrus County, Florida; and

14
15 **WHEREAS**, the Parties hereto desire to enter into this legally binding Agreement in
16 reference to the aforesaid Development, and

17
18 **WHEREAS**, Pirate's Cove represents that it is the current fee simple owner of the
19 Development Parcel and that there are no deed restrictions, liens, encumbrances, mortgages,
20 equitable interests or any other type of property interest held by any other person, firm or
21 corporation whose legal or equitable interest in the lands constituting the Development Parcel
22 will be affected by the matters contained in this Agreement; and

23
24 **WHEREAS**, the Development Parcel is vacant waterfront land with no known
25 environmental constraints which would preclude development except for the area under the
26 jurisdiction of the Southwest Florida Water Management District, (SWFWMD) which area is
27 shown on the Conceptual Site Plan, (hereinafter referred to as the "CSP"), attached hereto and
28 made a part hereof, and which area shall be preserved and protected as provided by law; and

29
30 **WHEREAS**, the Development Parcel is served by Ozello Water Association, Inc., and
31 will be served by a performance based aerobic septic system; and

32
33 **WHEREAS**, the Development Parcel is currently shown as being designated as Coastal
34 Lakes Residential on the Generalized Future Land Use Map of the Citrus County Comprehensive
35 Plan (CCCP) but is recognized by the Future Land Use Categories (CCCP at p.10-102), as being
36 partially designated Coastal Lakes Commercial; and

37
38 **WHEREAS**, a portion of the Development Parcel is zoned Coastal Lakes Commercial
39 (CLC) and the balance of the Development Parcel is zoned Coastal Lakes Residential (CLR)
40 pursuant to the Citrus County Land Development Code ("LDC") Atlas Maps; and

41
42 **WHEREAS**, Pirate's Cove desires to develop the Development Parcel as a commercial

1 development consisting of 9,000 square feet, more or less, of improved commercial space and 33
2 resort condominium units and generally described as Pirate’s Cove (hereinafter referred to as the
3 “Development”); and

4
5 **WHEREAS**, the details of commercial land uses and areas and of the resort
6 condominium units for the Development is reflected on the CSP dated _____, 2013 attached
7 hereto as Exhibit “C” and made a part hereof; and

8
9 **WHEREAS**, it is the purpose of this Agreement to provide a mechanism to mitigate
10 certain impacts created by the Development and to insure that adequate public services are
11 provided to the Development Parcel at time of development and to the residents of the County;
12 and

13
14 **WHEREAS**, the Development will necessitate or provide an opportunity for certain
15 improvements to County infrastructure with respect to the Ozello Trail, Sanddollar Lane and the
16 Ozello Community Park; and

17
18 **WHEREAS**, the Development as set forth herein is consistent with the CCCP and the
19 LDC:

20
21 **NOW, THEREFORE**, in consideration of the foregoing premises, the conditions, and
22 promises hereinafter set forth, and other good and valuable consideration, the receipt and
23 sufficiency of which is hereby acknowledged, the Parties agree to be legally bound as follows:

24
25 1. **Recitals:** The foregoing recitals are true and correct and are incorporated herein
26 by reference.

27
28 2. **Effective Date & Recording:** Pursuant to §163.3220, Fla. Stat., this Agreement
29 shall be recorded with the Clerk of the Circuit Court of Citrus County within five (5) business
30 days of the last party’s execution. This Agreement will only become effective when it is properly
31 recorded in the Public Records of the County (the “Effective Date”). The Owner shall be
32 responsible for paying the cost to record the Agreement in the Public Records of the County.

33
34 3. **Agreement Term and Extensions:** Unless otherwise provided in this
35 Agreement, this Agreement shall be valid for ten (10) years from the Effective Date of this
36 Agreement. This Agreement may be extended by mutual consent of the Parties, subject to a
37 public hearing pursuant to §163.3225, Fla. Stat.. Notwithstanding the foregoing, the rights,
38 privileges, obligations and covenants of Owner and the County shall survive the completion of
39 the work of Owner with respect to completing the transportation, stormwater, potable water,
40 reclaimed water and/or wastewater facilities and services to any phase area and to the
41 Development Parcel as a whole.

1 4. **Owner(s) Representations:** Owner represents that it is the current fee simple
2 owner of the Development Parcel identified in Exhibit “A” and Owner is authorized to enter into
3 this Agreement. Owner acquired its fee interest in the Development Parcel via the instruments
4 attached hereto as Exhibit “D”. Owner further represent that there are no deed restrictions, liens,
5 encumbrances, mortgages, equitable interests or any other type of property interest held by any
6 other person, firm or corporation, not also a party to this Agreement, whose legal or equitable
7 interest in the Development Parcel will be affected by the matters contained in this Agreement.
8

9 5. **Agreement Precedence:** The Parties agree, and all other future third parties are
10 hereby put on notice that the rights of the County, the development limitations and all other
11 matters affecting the Development Parcel and any property of Adjacent Owners, pursuant to the
12 covenants of this Agreement, are in all ways superior in right, title and interest to any subsequent
13 mortgage, mechanics lien, or lien of any other type or other legal or equitable interest, whether
14 prior or subsequent in time to the recording of this Agreement, and that the rights of the County
15 as contained herein and the development limitations or permissions contained herein or
16 conferred, while not creating a lien on the Development Parcel, property of Adjacent Owners,
17 shall not be in any way subject to foreclosure or elimination due to subsequent event or the rights
18 of third parties which are not otherwise expressly set forth herein. The rights outlined herein
19 shall run with the land unless terminated as provided in this Agreement.
20

21 6. **Maximum Development Parameters:** The maximum density which shall be
22 built on the Development Parcel shall not be greater than 88,512 building square feet (MOL) on
23 land uses as reflected on the Conceptual Site Plan. The land uses reflected are governed by the
24 Land Development Code standards in effect at the time of the Effective Date. The maximum
25 height shall not exceed 50 feet.
26

27 7. **Fees:** For all new development authorized by this Agreement all applicable
28 impact fees, development review fees, building permit fees, and all other fees of any type shall be
29 paid in accordance with their terms and in such amount applicable as they become due and
30 payable except as is otherwise specifically provided herein. Notwithstanding the foregoing, it is
31 specifically acknowledged that any development permit application submitted during a period
32 where fees have been reduced or waived by the County, whether before or after the Effective
33 Date of this Agreement, shall be subject to the lower of the then applicable fees or the fees in
34 effect as of the Effective Date of this Agreement.
35

36 8. **Equitable Estoppel and Vested Rights Option:** The Parties agree that the
37 County’s willingness to enter into this Agreement, the staff approval or recommendation relative
38 to the proposed Development, land use plan designations, the passage of ordinances attempting
39 to modify the land use designations, submittals to or before the BOCC, and any other act in
40 furtherance of this Agreement by the County, including the negotiations leading up to the
41 execution of this Agreement, shall not be used by Owner, or its successors in interest in any way
42 whatsoever as committing the County legally through the theory of equitable estoppel or any
43 other legal theory to the approval of such proposed Development in the event that this Agreement

1 is terminated or for any other reason does not take effect in all material respects. The Parties
2 further agree that any and all actions by the County and Owner or their representatives in
3 negotiation of this Agreement, including all efforts in the implementation of this Agreement or
4 submittals to other governmental bodies, shall in no way be deemed to be an action in reliance
5 giving rise to an equitable estoppel. In the event that it is not possible to implement this
6 Agreement fully, the Parties' legal positions will be identical to the legal positions that they
7 would have maintained if the proposed Development of the Development Parcel had never been
8 discussed between them, unless otherwise specifically identified otherwise in this Agreement.
9 Notwithstanding the foregoing, it is recognized between the Parties that at the end of the term of
10 this Agreement, the Owner may proceed through a vested rights determination as provided by the
11 applicable County code in effect at the time of the vested rights application.
12
13

14 **9. Permitted Development:** Notwithstanding the current land use plan designations, the
15 maximum commercial density which may be constructed on the Development Parcel for the
16 purposes of compliance with the Citrus County Land Development Code is 88,512 building
17 square feet (MOL) of CLC land uses comprising a 33 unit resort condominium, a restaurant of
18 approximately 2,612 square feet of indoor seating, 1,055 square feet of outdoor seating and
19 approximately 5,359 square feet of ancillary resort space as reflected on the CSP - Exhibit "C".
20 The CLC uses reflected on the CSP are governed by the LDC standards in effect at the time of
21 the Effective Date. The permissible maximum height shall be fifty (50) feet. There is no
22 required phasing schedule for completion of the Development. The timing of future construction
23 shall be controlled by Pirate's Cove.
24

25 **10. Infrastructure:** Pirate's Cove, its successors, assigns or agents, shall permit, design,
26 construct and maintain all required infrastructure facilities, providing that said infrastructure
27 facilities have received site plan approval, construction plan approval and that all review
28 procedures have been complied with fully. Onsite infrastructure facilities shall include those
29 facilities to be located within the boundaries of the Development Parcel, including common areas
30 of the Development as shown on the CSP. Offsite infrastructure shall include any construction
31 outside the boundaries of the Development Parcel.
32

- 33 a. The Pirate's Cove structure shall not receive a certificate of occupancy until the
34 onsite infrastructure as shown on the CSP is completed and approved by the
35 County. In addition to meeting the requirements of the LDC, at a minimum the
36 following items shall be addressed:
37
- 38 i. Onsite access drives (i.e., internal roadways) and onsite easements
39 sufficient for the use of all County emergency vehicles and County utilities
40 to the extent necessary for the proposed development application.
 - 41 ii. A final stormwater drainage system to collect, conduct, transmit, channel
42 or otherwise provide for stormwater collection and flow from the proposed
43

1 development to an onsite stormwater drainage retention area as shown on
2 the CSP.

3
4 iii. At the completion of the Development, Sanddollar Lane shall be
5 established as a paved, 2-lane local road complying with all County
6 standards for such a road.

7
8 b. Buffer widths and plantings shall be constructed as required by the LDC to the
9 extent necessary for the proposed development application.

10
11 c. Onsite signage pursuant to the CSP and the Signage list attached hereto and made
12 a part hereof as Exhibit "E" to the extent necessary for the proposed development
13 application.

14
15 d. Water and sewer systems to the extent necessary for the proposed development
16 application; and

17
18 e. Sidewalks, pedestrian connections to the Ozello Community Park and other
19 pedestrian amenities such as lighting, trash receptacles and benches to the extent
20 necessary for internal pedestrian circulation in the proposed development
21 application.

22
23 **11. Ozello Community Park:** The parties acknowledge that improvements to the
24 Ozello Community Park will be mutually beneficial, and will help achieve the County's goals of
25 promoting eco-tourism, waterfront access and access to the St. Martins Aquatic Preserve. To
26 achieve these mutual benefits:

27
28 a. Pirate's Cove at its sole cost will construct its 6" waterline along the North Pirate
29 Point right-of-way as shown on the CSP so as to permit Citrus County to connect ¹
30 to said waterline and construct restrooms and related facilities in the Park. Water
31 thus supplied to Citrus County shall be metered so that the ongoing the cost of this
32 water supply shall be paid by Citrus County.

33
34 b. Citrus County at its sole cost may construct a sewer line from the restrooms at the
35 Ozello Community Park to the performance based aerobic septic system at
36 Pirate's Cove. Pirate's Cove shall provide an easement for this line. At no cost to
37 Citrus County, Pirate's Cove shall treat the sewage from the park restrooms in
38 accordance with the performance standards for the septic system.

39
40 c. Pursuant to the negotiations between the parties that resulted in the consummation

¹ Subject to the agreement of both parties, the connection point may be changed from that shown on the CSP.

1 of this agreement, Pirate’s Cove has prepared, at its cost, the Conceptual Park
2 Improvement Plan (CPIP) attached as Exhibit “F” hereto and made a part hereof.
3 Within 90 days of the issuance of the Certificate of Occupancy for Pirate’s Cove,
4 Citrus County shall complete the implementation of the CPIP. Thereafter, Citrus
5 County shall maintain the improvements made pursuant to the CPIP as if said
6 improvements were governed by the LDC.
7

8 **12. Water Supply for Firefighting:** In addition to all other required Citrus County
9 approvals required for the construction and installation of the water storage tank as shown on the
10 CSP, such construction and installation shall be subject to the approval of the Citrus County Fire
11 Rescue Department to ensure that the tank is appropriately designed and constructed to permit its
12 use as a source of water for firefighting, if needed at any point in time.
13

14 **13. Required Permits:** Local development permits and/or orders which will need to be
15 approved and issued include, but are not limited to, the following:
16

- 17 a. Any required amendment(s) to the Future Land Use Map.
- 18 b. Any required amendment(s) to the Zoning Atlas.
- 19 c. Any final local development order authorizing construction under the concurrency
20 provisions of the County’s land use controls.
- 21 d. Building permits for the commercial structure.
- 22 e. Final site plan approval:
 - 23 i. Final site plan approval for the Development issued per LDC Section 2233
24 shall be valid for a term of two (2) years from the date of issuance with a
25 right to one (1) extension for up to six (6) months as approved by the
26 Director of Development Services.
 - 27 ii. The County may approve minor modifications (as that term is defined by
28 the LDC) to the CSP during the site planning process without requiring the
29 amendment of this Agreement, provided such minor modifications are
30 consistent with the LDC and the terms of this Agreement.
 - 31 iii. If there is a discrepancy between the CSP and a final site plan for the
32 Development, the final site plan for the Development shall control.
- 33 f. Permits from the State of Florida, Department of Environmental Protection
34 (“FDEP”) for the onsite sewage disposal system and for the connection to the
35 water service provided by Ozello Water Association, Inc. See the Utilities section
36
37
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43

1 for additional standards relative to central utilities to the Development Parcel.

- 2
- 3 g. Citrus County Right of Way Utilization permits, including but not limited to
- 4 permits allowing Pirate's Cove to:
- 5
- 6 i. Excavate and relocate dirt and fill material offsite;
- 7
- 8 ii. For any excavated material to remain on the Development Parcel, Pirate's
- 9 Cove shall obtain a stockpile permit as required by the LDC; and
- 10
- 11 iii. For the extension of the waterline along North Pirate Point.
- 12
- 13 h. Connect its internal access drives to the County right of way at the locations
- 14 indicated on the CSP.
- 15
- 16 i. Make required improvements to Sanddollar Lane; and
- 17
- 18 j. A condominium plat consistent with construction plans and the CSP and with the
- 19 Draft Condominium Documents attached hereto as Exhibit "G", and made a part
- 20 hereof. Pirate's Cove, at its sole discretion, subject to the approval of Citrus
- 21 County, which approval shall not be unreasonably withheld, delayed or
- 22 conditioned, may change the ownership format from a condominium to a
- 23 comparable form such as, by way of example and not limitation, a Limited
- 24 Liability Company, except that a timeshare form of ownership as defined by
- 25 Chapter 721, Florida Statutes, is expressly prohibited.
- 26
- 27 k. All government approvals and permits shall be obtained by the Owner at the
- 28 Owner's sole cost. The Owner agrees to comply with all regulations, approvals
- 29 and specifications enacted or promulgated by the Federal Government, Florida
- 30 Department of Environmental Protection, and the Southwest Florida Water
- 31 Management District.
- 32
- 33 l. In the event that any Development permissions are not received, no further
- 34 development of the Development Parcel shall be allowed until such time as the
- 35 BOCC has reviewed the matter and determined whether or not to terminate this
- 36 Agreement or to modify it in a manner consistent with the public interest. Under
- 37 these conditions, action and reliance on this Agreement and expenditures in
- 38 pursuit of its terms and of any right accruing to the Owner shall not vest any
- 39 development rights in said parties, or their successors or assigns, nor shall it
- 40 constitute partial performance entitling said parties to a continuation of this
- 41 Agreement.
- 42
- 43 m. Owner shall, prior to the start of any site preparation activity, including clearing,

1 grubbing, grading, etc., obtain from the County all appropriate permits in
2 accordance with the requirements of all pertinent County ordinances. Violation of
3 any section or provision of this Agreement shall be deemed a violation of any
4 such permits and ordinances and shall subject Owner to any fines and penalties
5 pursuant thereto and shall, in addition, permit the County to revoke any permits
6 issued concerning the development and take any other remedial action provided
7 for in this Agreement or available under applicable law.
8

- 9 n. All Parties specifically agree that any permits issued in accordance with
10 appropriate County ordinances, shall automatically be revoked by the County if
11 the Owner, its contractors or subcontractors or builders fail to comply with any
12 portion of this Agreement, after the County provides notification to the Owner and
13 the Owner is provided forty-eight hours to remedy the situation, but fails to do so.
14 Exception shall be made for erosion control and dust control where the Owner
15 shall be required to immediately correct the violation.
16

17 Pirate's Cove shall also obtain any other necessary development permits from the appropriate
18 and necessary government agencies for its onsite and offsite improvements, including, without
19 limitation, the Withlacoochee Regional Planning Council, the State of Florida, FDEP, the U.S.
20 Army Corps of Engineers (ACOE), SWFWMD, the Environmental Protection Agency (EPA) of
21 the United States, and the County. All government approvals and permits shall be obtained by
22 Pirate's Cove at Pirate's Cove's sole cost and prior to construction. In the event that any
23 development permits are not received for the CSP, no further development of the Development
24 Parcel shall be allowed until such time as the County Commission has reviewed the matter and
25 determined whether or not to terminate this Agreement or to modify it in a manner consistent
26 with the public interest.
27

28 **14. Public Facilities: Transportation:** Pirate's Cove agrees that in order to provide
29 adequate access to the Development, as well as to mitigate certain additional transportation
30 impacts caused by the Development, certain improvements to the County's infrastructure and
31 related property dedications are required.
32

- 33 a. Sanddollar Lane. The estimated cost of the required improvements to Sanddollar
34 Lane are set forth on Exhibit "H", attached hereto and made a part hereof.
35 Pirate's Cove shall be responsible for making these improvements.
36
- 37 b. Ozello Trail. The parties acknowledge that the traffic for the construction of
38 Pirate's Cove will cause some wear and tear on the Ozello Trail. Accordingly, the
39 parties agree as follows:
40
- 41 i. The method and equipment used by Pirate's Cove to transport construction
42 equipment, supplies and material to the Development, in particular by way
43 of example and not limitation, vehicle types, maximum weights,

1 maximum lengths, and hours of operation, and shall be subject to the
2 approval of Citrus County, which approval shall not be unreasonably
3 withheld, delayed or conditioned.
4

- 5 ii. Within 10 days of the filing of the Notice of Commencement of the
6 construction, a representative of Citrus County and a representative of
7 Pirate's Cove shall inventory and document the then present condition of
8 the Ozello Trail.
9
- 10 iii. Within 10 days of the issuance of the final Certificate of Occupancy for
11 Pirate's Cove, a representative of Citrus County and a representative of
12 Pirate's Cove shall inventory and document the then present condition of
13 the Ozello Trail.
14
- 15 iv. Said representatives shall then confer and agree on the work necessary to
16 restore the Ozello Trail to its pre-construction condition. If the two
17 representatives are unable to agree on the repair costs, they shall appoint a
18 neutral mediator to resolve this issue. If Pirate's Cove and Citrus County
19 are unable to agree on informal mediation of this issue, then a mediator to
20 be selected at random from the then current list of approved mediators in
21 the Fifth Judicial Circuit of Florida shall mediate the issue. The mediation
22 shall proceed in general compliance with the provisions of § 70.51, F.S.,
23 with such adaptations as the mediator deems appropriate for use in this
24 issue. Notwithstanding the foregoing, while the mediation shall be a
25 public proceeding as provided for in § 70.51 (17) no public notice of the
26 mediation shall be required.
27
- 28 v. Pirate's Cove shall pay the Transportation Impact Fee ² at a time and in the
29 amount established by the Citrus County Code.
30
- 31 vi. Pirate's Cove's Transportation Impact Fee shall be held in reserve by
32 Citrus County until the cost of repairs set forth in ¶ ~ is established.
33
- 34 vii. If Pirate's Cove's Transportation Impact Fee is greater than the cost of
35 repairs to the Ozello Trail set forth in ¶ ~, the cost of said repairs shall be
36 paid first and the balance of the fee shall be used by the County at its sole
37 discretion.
38
- 39 viii. If Pirate's Cove Transportation Impact Fee is less than the cost of repairs
40 to the Ozello Trail set forth in ¶ ~, then Pirate's Cove shall pay an

² Presently estimated at \$43,200.

1 additional Transportation Impact Fee not to exceed 100% of the original
2 impact fee to be used for the further repair of the Ozello Trail.

3
4 c. Land Conveyed from Pirate’s Cove to Citrus County:

- 5
6 i. Pirate’s Cove shall dedicate as fee simple road right of way (“ROW”) an
7 area located on the Northwestern boundary of its property to regularize the
8 status of the access road to the Ozello Community Park as per Exhibit “I”,
9 attached hereto and made a part hereof and as indicated on the CSP.
10
11 ii. The access road ROW dedication shall be by quit claim deed in a form
12 satisfactory to the County, free and clear of any encumbrances.
13
14 iii. The deed shall be delivered to the County no later than sixty (60) days
15 after the Effective Date of this Agreement.
16

17 d. Right-of-Way Vacation:

- 18
19 i. Subject to compliance with C. 336, F.S., and Citrus County Administrative
20 Regulation 13.01-4; Citrus County shall vacate, abandon, discontinue and
21 close and renounce and disclaim any right of the county and the public in
22 and to any land in connection to the land described on Exhibit “J” attached
23 hereto and made a part hereof so that title thereto shall vest with Pirate’s
24 Cove.
25

26 **15. Public Facilities: Utilities:**

- 27
28 a. Sewage treatment on the site shall be achieved with a performance based aerobic
29 septic system; which shall be constructed and operated in accordance with all
30 requirements of Citrus County, the Citrus County Health Department and the
31 State of Florida.
32
33 b. Water service to the site shall be provided by the Ozello Water Association, Inc.,
34 in accordance with an agreement between Pirate’s Cove and the Association. Said
35 agreement shall be subject to the approval of Citrus County, which approval shall
36 not be unreasonably withheld, delayed or conditioned.
37
38 c. Subject to Pirate’s Cove’ compliance with the terms herein, the County shall
39 provide public facilities to the Development in the same manner as it provides
40 public facilities and services to other Citrus County residents/users.
41
42 d. The Development shall include a water storage tank of sufficient size, and
43 sufficiently equipped to provide fire protection to the Development in accordance

1 with all applicable codes and subject to the approval of the Citrus County Fire
2 Rescue Department. As set out in ¶ ~, the water storage tank shall be designed to
3 provide fire connections satisfactory to the Citrus County Fire Rescue to permit
4 the use of stored water in firefighting as determined to be necessary by the Fire
5 Rescue Department.
6

7 16. **Concurrency:** The parties acknowledge that transportation concurrency is no longer
8 a requirement pursuant to the LDC (Chapter 8). The Owner has, nonetheless, undertaken a
9 traffic study and has demonstrated that the project does not change the traffic level of service on
10 Ozello Trail either on a daily basis or in the PM Peak hour. The parties further acknowledge that
11 the Development will not adversely affect hurricane clearance times on the applicable evacuation
12 routes.
13

14 17. **LDC Compliance/Alternate Design Standards:** The Development as set forth
15 herein is consistent with the CCCP and the LDC. Unless otherwise specified, the Development
16 and CSP shall conform to the current LDC, Ordinance No.: 90-14, as amended, as of the
17 Effective Date of this Agreement. The following specific conditions shall control over the LDC:
18

- 19 a. Parking. Pursuant to the LDC, a total of 69 parking spaces are required. The
20 approved CSP provides 75 parking spaces, including four handicapped spaces and
21 10 motorcycle spaces. A bicycle rack for 10 bicycles shall be provided as shown
22 on the CSP. The dimensions of the regular parking spaces, handicapped parking
23 spaces, motorcycle parking spaces and the bicycle rack shall be as required by the
24 LDC.
25
- 26 b. Tree Preservation/Landscaping. Landscaping shall be provided as per the
27 landscape plan attached hereto as Exhibit “K”, and made a part hereof.
28
- 29 i. For the first two (2) years after the issuance of the Certificate of
30 Occupancy for the Development, Pirate’s Cove, its agents or assigns, shall
31 perform an annual inspection and report on plant survival and maintenance
32 for the Development.
33
- 34 ii. Pirate’s Cove shall provide a report to the County upon its annual
35 inspection, but no later than sixty (60) days after the anniversary of the
36 Certificate of Occupancy.
37
- 38 iii. Pirate’s Cove further agrees to implement any and all corrective measures
39 as indicated by the report or as separately directed by the County to ensure
40 all landscaping contained in the approved landscape plan, as contemplated
41 under this Agreement and/or required under future permits, is installed and
42 maintained in a healthy state.
43

1 iv. Failure to maintain the number of plantings required by the Landscape
2 Plan and/or replace dead plantings is subject to enforcement as provided
3 for in the LDC. The failure of Pirate’s Cove, its successors or assigns, to
4 maintain or replace its plantings, after notice and failure to cure, shall be a
5 violation of the terms of this Agreement.
6

7 c. Signage. Onsite signage shall be per the CSP and the Signage List, attached
8 hereto and made a part hereof as Exhibit “E”.
9

10 d. Lighting. All parking lot lighting shall be hooded or directed in such a manner
11 that there are minimal offsite impacts, and shall be per Exhibit “L”. Building
12 lighting shall also be provided in accordance with Exhibit “L”, which minimizes
13 light pollution on nearby properties and on the water.
14

15 e. Buffering. Buffering shall be provided in accordance with the LDC.
16

17 f. ISR and FAR. The impervious surface ratio (“ISR”) for the Development shall
18 not exceed the “Max ISR” as set forth on the “Site Data” table of the CSP. The
19 Floor Area Ration (FAR) shall not exceed the “Max FAR” as set forth on the
20 “Site Data” Table of the CSP.
21

22 g. Access Points. The number and location of access points shown on the CSP (the
23 “Access Points”) is consistent with the LDC.
24

25 h. Design and Aesthetics. In addition to meeting the LDC standards, Pirate’s Cove
26 shall insure that the facade, materials, entryways and roof design standards for the
27 Development shall be similar to the design shown in Exhibit “M” attached hereto
28 and made a part hereof. The Director of the Development Services Department,
29 as that term is defined by the LDC, may authorize alternative prototype designs
30 that are substantially similar to the design shown on Exhibit “M”, without
31 requiring an amendment to this Agreement.
32

33 18. Expedited Permitting. The County agrees to a good faith covenant to expedite
34 permitting for the Development, provided that Pirate’s Cove is in compliance with the terms of
35 this Agreement.
36

37 **19. Requirements During Construction:**
38

39 a. All erosion and sedimentation controls shall be installed and maintained in
40 accordance with an approved plan and report by a Department of Environmental
41 Protection Permit prior to any other construction activity occurring at the
42 Development.
43

- 1 b. During construction, the Owner, its contractors, sub-contractors and builders shall
2 keep public roads, private drives, and highways surrounding the property, which
3 are used by vehicles entering and leaving the construction site, in good repair.
4
- 5 c. The Owner is also responsible for ensuring that water and wastewater service
6 remains active without interruption to existing utility customers. If interruption of
7 utility service is necessary, the Owner must obtain written authorization from the
8 County.
9
- 10 d. During construction, the Owner shall police the construction area daily, keeping
11 the site safe and free and clear of all rubbish, refuse, brush, debris, and discarded
12 building materials so as not to create a public nuisance. The Owner may
13 accumulate said material in an area approved by the County until such time as the
14 accumulated matter is removed from the site by the Owner provided that the
15 County, at its sole discretion, may require the removal of said material by written
16 communication, indicating the reasons therefore, at any time during the
17 development. The Owner shall remove from the site and dispose of all rubbish,
18 refuse, brush, debris, and discarded building materials, leaving the Development
19 free and clear of the same prior to the release of any remaining financial security
20 or final acceptance of any public improvements. The burning of any rubbish,
21 refuse, and debris shall be in accordance with County ordinances and shall require
22 a separate permit.
23
- 24 e. The Owner shall maintain all stormwater detention and best management
25 practices as required by County ordinances.
26
- 27 f. During construction of any and all phases, parking for vehicles related to the
28 construction activities shall be arranged so as not to create a potential traffic
29 hazard.
30
- 31 g. The Owner shall not erect nor permit any agent of the Owner to erect any sign
32 related to the Development unless first obtaining a sign permit from the County.
33

34 **20. Timeline of construction:** Construction of the Development may commence at any
35 time in the Owner's sole discretion, provided that construction shall start no later than one year
36 before the expiration of this Agreement as said expiration date may be extended. At the time
37 construction commences, the Owner shall submit an approximate construction schedule to the
38 County for its approval, which approval shall not be unreasonably withheld, delayed or
39 conditioned. The approximate construction schedule shall include the hours of the day and days
40 of the week during which construction will occur.
41

42 **21. Completion of Construction:** If, after the construction of any vertical construction

1 element ³ of the Development has commenced, construction of the Development is halted for a
2 period greater than 270 consecutive days for any reason other than *force majeure*, as such term is
3 defined in ¶ ~, or any other cause clearly outside of the control of Pirate’s Cove, Citrus County,
4 subject to the consent of Pirate’s Cove, which consent shall not be unreasonably withheld,
5 delayed or conditioned, and subject to the permitting requirements of the LDC, may demolish the
6 vertical construction. Citrus County may place a lien on the Pirate’s Cove property for the cost
7 of the demolition and, if the lien is unsatisfied for a period of 90 days the County may foreclose
8 on the lien in accordance with Florida law
9

10 22. **Hours of Operation:** Once the development is complete, the resort shall be
11 permitted to be open 24 hours per day, and unit occupants may come and go at any time of day or
12 night. The restaurant shall not open before 6.00 a.m., and shall close no later than 1.00 a.m. The
13 bar may operate in accordance with the hours of operation requirements for alcoholic beverage
14 establishments as set out in the Citrus County Code. Room service may be provided 24 hours
15 per day.
16

17 23. **Maintenance Agreements:** Pirate’s Cove shall be maintained in strict
18 accordance with the maintenance requirements of the Draft Condominium Documents attached
19 hereto as Exhibit G. Pirate’s Cove shall also maintain the performance based aerobic based
20 septic system using best management practices in compliance with all requirements of Citrus
21 County, the Citrus County Department of Health and the State of Florida. Citrus County shall
22 maintain the Ozello Community Park in accordance with Exhibit F hereto and the provisions of ¶
23 ~ hereof.
24

25 24. **Terms:** Development of the Development Parcel shall be consistent with the
26 Conceptual Site Plan. The Owner shall comply with additional conditions, terms, restrictions,
27 and/or other requirements as may be approved by the County when determined necessary for the
28 public health, safety or welfare of its citizens as it applies to land development standards for such
29 components as utilities (drainage, water, and sewer), signs, transportation facilities/access,
30 landscaping/buffering, and other Land Development Code design standards, including but not
31 limited to the special conditions outlined in Exhibit “N” attached hereto and made a part hereof
32 by reference (hereinafter referred to as the “Special Conditions”). To the extent terms outlined in
33 the Special Conditions are inconsistent with the terms outlined in this portion of the Agreement,
34 the terms outlined in the Special Conditions shall take precedence.
35

36 25. **Disclosure Responsibility:** Owner assumes responsibility for disclosure of the
37 conditions, terms, restrictions, and/or other requirements to subsequent tenants or owners of the
38 Development Parcel and properties owned by Adjacent Owners. The County reserves its rights
39 granted wherein enforcement of said conditions, terms, restrictions, and/or other requirements
40 may occur whether or not subsequent ownership or lessees have “actual” or construction

³ A “vertical construction element” is any construction taller than a standard footer.

1 knowledge of the violation.
2

3 26. **Inspections:** The Owner gives specific permission for the County, its employees,
4 agents or contractors to conduct inspections on the Development Property. These inspections
5 may take place at any time and with any frequency the County deems appropriate in order to
6 insure construction in accordance with approved specifications. The Owner shall notify the
7 County twenty-four (24) hours prior to the following activities: excavating, embankment
8 construction, detention pond construction, installation of storm sewers, underdrain, subgrade,
9 base course, binder course, wearing course, and commencement of seeding.

10
11 27. **Insurance:** The Owner shall cause its contractors and/or subcontractors to obtain
12 and maintain liability and other insurance coverage in amounts required by the County and to
13 furnish certificates of insurance to the County, whenever contractors are installing improvements
14 located on existing public road rights-of-way and as may otherwise be required by the County.
15

16 28. **Transfer:** It is specifically understood by all Parties that this Agreement is
17 binding upon all Parties, their successors, assigns, agents, representatives and officers, but that
18 any partial or whole transfer of construction rights, approvals or agreements, shall subject the
19 transferee and all transferee's contractors and subcontractors to all provisions of this Agreement
20 and all other rules, regulations, statutes, and ordinances of the County. It is further specifically
21 understood that the Parties may not assign or transfer their rights hereunder without prior, written
22 consent of the County, which consent shall not be unreasonably withheld, delayed or
23 conditioned.. This Agreement shall constitute a covenant running with the land and shall be
24 recorded in the Public Records of the County as provided herein.
25

26 29. **Entire Agreement, Amendments, Applicable Law & Venue:** This Agreement
27 supersedes all previous agreements or representations either verbal or written, heretofore in effect
28 between Owner and the County, made with respect to the matters herein contained, and when
29 duly executed, constitutes the agreement between Owner and the County. No additions,
30 alterations or variations of the terms of this Agreement shall be valid, nor can provisions of the
31 Agreement be waived by either party, unless such additions, alterations, variations or waivers are
32 expressed in writing, duly signed by all Parties hereto, with the same level of formality as this
33 Agreement, and shall be governed by the process set forth in §163.3225, Fla. Stat. and the public
34 hearing process set forth in Chapter 12 of the Land Development Code. This Agreement shall be
35 governed by the laws of the State of Florida, as well as all applicable local ordinances of the
36 County. Citrus County, Florida shall be the venue for any legal proceeding pertaining to the
37 subject matter of this Agreement.
38

39 30. **Notices:** Any notice or request required or authorized to be given by the terms of
40 this Agreement or under any applicable law by either party shall be in writing, hand delivered or
41 sent by certified or registered mail, postage prepaid, return receipt requested or by FedEx or other
42 nationally recognized overnight courier. Such written notice shall be addressed as follows:
43

1 AS TO CITRUS COUNTY
2 County Administrator
3 110 N. Apopka Avenue
4 Inverness, FL 34450
5

AS TO PIRATE’S COVE
Pirate’s Cove
P. O. Box 784
Kodak, TN 37764

6 and

7
8 County Attorney
9 110 N. Apopka Avenue
10 Inverness, FL 34450
11

Luke Lirot, Esq.
2240 Belleair Road, Suite 190
Clearwater, FL 33764

12 Either party may, by subsequent written notice, designate a different address or party for
13 receiving notice. Any successor in interest in title to the Development Parcel, or any portion
14 thereof, shall provide the County and Pirate’s Cove (if applicable) with written notice of such
15 transfer or conveyance and request to receive notice under this paragraph. Upon receipt of such
16 notice, the County and Pirate’s Cove (if applicable) shall thereafter provide the successor in
17 title with all future notices pursuant to this Agreement without requiring an amendment to this
18 Agreement. Notice deposited in the mail in the manner herein above described shall be effective,
19 and deemed received, from and after three (3) days (exclusive of Saturdays, Sundays and postal
20 holidays) after such deposit and notice by FedEx or other nationally recognized overnight courier
21 shall be deemed effective and received on the next day (exclusive of Saturdays, Sundays and
22 postal holidays). Notice given in any other manner shall be effective only if and when delivered
23 to the party to be notified or at such party’s address for purposes of notice as set forth herein.
24

25 **31. Subsequent Laws:** Subject to the terms stated herein and the criteria of §163.3233,
26 F.S., subsequently adopted ordinances and policies of general application in the County shall not
27 be applicable to the lands subject to this Agreement unless agreed to by Pirate’s Cove.
28

29 **32. Covenant Running with the Land:** This Agreement shall constitute a covenant
30 running with the land for the duration hereof and shall be binding upon Pirate’s Cove and upon
31 all persons deriving title by, through or under said Pirate’s Cove and upon its assigns and
32 successors in title. The agreements contained herein shall benefit and limit all present and future
33 owners of the Development Parcel and the County for the term hereof.
34

35 **33. Entire Agreement:** This Agreement constitutes the entire agreement and
36 understanding between the parties and no modification hereof shall be made except by written
37 agreement executed with the same formality of this Agreement or as permitted by the
38 Amendment section of this Agreement.
39

40 **34. Assignment:** Any reference in this Agreement to Pirate’s Cove contemplates the
41 undersigned and its successors in interest. Pirate’s Cove may assign its rights and responsibilities
42 under this Agreement to a third party.
43

1 22 **Disclaimers & Limitations on Liability:**

- 2
- 3 a. Status: The parties deem each other to be independent contractors, and not agents
- 4 of the other.
- 5
- 6 b. Indemnity: Owner shall indemnify completely, defend and save harmless the
- 7 county, its elected officers and commission members, agents, contractors and
- 8 employees from any and all costs and claims, liability, demands, damages,
- 9 expenses, fines, penalties, suits, proceedings, actions and fees, including
- 10 attorneys’ fees and costs, for injury (including death) to persons or damage to
- 11 property or property rights that may arise from or be related to acts, errors, or
- 12 omissions of the Owner. Owner and adjacent owners their respective agents,
- 13 employees, servants, licensees, invitees, or contractors or by any person under the
- 14 control or direction of said parties in connection with the development, or by any
- 15 of said persons’ use of the county’s transportation, utility or other systems, and the
- 16 Owner shall indemnify the county as aforesaid from all liability, claims and all
- 17 other items above mentioned, arising or growing out of or connected with any
- 18 default, breach, violation or nonperformance by the Owner or any other party of
- 19 any covenant, condition, agreement or provision contained in this agreement.
- 20
- 21 c. Force Majeure: The county shall not be liable or responsible to the Owner or any
- 22 other party by reason of the failure or inability of the county to take any action it is
- 23 required to take or to comply with the requirements imposed hereby (or any injury
- 24 to the Owner or by those claiming by or through the Owner, which failure,
- 25 inability or injury is caused directly or indirectly by force majeure as hereinafter
- 26 set forth). The term “*force majeure*” as employed herein shall mean acts of god;
- 27 strikes; lock-outs or other industrial disturbance; acts of public enemies; war;
- 28 blockades; riots; acts of armed forces, militia, or public authority; epidemics;
- 29 breakdown of, or damage to, machinery, road systems, drainage or flood control
- 30 systems, traffic control devices, pumps or pipe lines; landslides; earthquakes;
- 31 fires; storms (including but not limited to hurricanes); floods or washouts; arrests;
- 32 title disputes or other litigation; governmental restraints of any nature whether
- 33 federal, state, county, municipal or otherwise, whether civil or military; civil
- 34 disturbances; explosions; failure or inability to obtain necessary materials,
- 35 supplies, labor or permits or governmental approvals whether resulting from or
- 36 pursuant to existing or future rules, regulations, orders, laws or proclamations
- 37 whether federal, state, county, municipal or otherwise, whether civil or military;
- 38 or by any other causes, whether or not of the same kind as enumerated herein, not
- 39 within the sole control of the county and which by exercise of due diligence the
- 40 county is unable to overcome.
- 41
- 42 d. Disclaimer of Third Party Beneficiaries: This agreement is solely for the benefit
- 43 of and shall be binding upon the formal parties hereto and their respective

1 authorized successors and assigns, and no right or cause of action shall accrue
2 upon or by reason hereof, to or for the benefit of any third part not a party to this
3 agreement or an authorized successor or assignee thereof.
4

- 5 e. Disclaimer of Security: Notwithstanding any other provision of this agreement,
6 the Owner expressly acknowledges (1) that it has no pledge of or lien upon any
7 real property (including, specifically, the county’s transportation or utility
8 systems), any personal property, or any existing or future revenue source of the
9 county (including, specifically, any revenue or rates, fees, or charges collected by
10 the county in connection with any county system) as security for any amounts of
11 money payable by the county under this agreement; and (2) that its rights to any
12 payments or credits under this agreement are subordinate to the rights of all
13 holders of any stocks, bonds, or notes of the county, whether currently outstanding
14 or hereafter issued.
15

16 35. **Enforcement:** As provided by §163.3243, Fla. Stat, any Party to this Agreement
17 may file an action for injunctive relief to enforce the terms of this Agreement.
18

19 36. **Severability:** If any part of this Agreement is found invalid or unenforceable by
20 any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if
21 the rights and obligations of the parties contained therein are not materially prejudiced, and if the
22 intentions of the parties can continue to be effected. To that end, this Agreement is declared
23 severable.
24

25 37. **Authority to Execute Agreement:** The signature by any person to this
26 Agreement shall be deemed a personal warranty by that person that he has the full power and
27 authority to bind any corporation, partnership, or any other business entity for which he or she
28 purports to act hereunder.
29

30
31 **IN WITNESS WHEREOF**, the parties have hereto set their hands and seals the day and
32 year first above written.
33

34 **BOARD OF COUNTY COMMISSIONER**
35 **OF CITRUS COUNTY, FLORIDA**
36

37
38
39 **ATTEST**
40

41
42 _____
43 **BETTY STRIFLER, CLERK**

41
42 BY: _____
43 **WINN WEBB, CHAIRMAN**

1
2 **APPROVED AS TO FORM FOR**
3 **THE RELIANCE OF CITRUS COUNTY ONLY.**
4
5
6

7
8 **RICHARD Wm. WESCH, COUNTY ATTORNEY**
9

10 STATE OF FLORIDA
11 COUNTY OF CITRUS
12

13 **BEFORE ME**, personally appeared Winn Webb, Chairman of the Citrus County Board
14 of County Commissioners, to me well known and known to me to be the person described in and
15 who executed the foregoing instrument, and acknowledged to and before me that he executed
16 said instrument for the purposes therein expressed.
17

18
19 **WITNESS** my hand and official seal this the ____ day of _____, 2013
20
21

22
23
24 _____
25 Notary Public
26
27

28
29 **PIRATE'S COVE OF OZELLO, INC.**
30 A Florida Corporation
31

32
33 By _____
34 George H. Decker, as President
35

36
37 _____
38 Witness
39 Printed Name
40

41
42 _____
43 Witness
Printed Name

41 STATE OF TENNESSEE
42 COUNTY OF SEVIER
43

1 CITRUS COUNTY/PIRATE’S COVE
2 DEVELOPMENT AGREEMENT

3
4 LIST OF EXHIBITS

- 5
6 A. Legal Description, Pirate’s Cove
7 B. Ownership Information
8 C. Conceptual Site Plan
9 D. Deeds to Property
10 E. Signage List (PENDING)
11 F. Conceptual Park Improvement Plan (PENDING)
12 G. Draft Condominium Documents
13 H. Sanddollar Lane Improvement Costs
14 I. Legal Description, Pirate’s Cove to Citrus County
15 J. Legal Description, Area to be Vacated by Citrus County
16 K. Landscaping Plan
17 L. Lighting Plan (PENDING)
18 M. Tentative Design Plans
19 N. Special Conditions