

CYPRESS HEAD PLANNED UNIT DEVELOPMENT (PUD) AGREEMENT

“A Working Copy”

THIS DOCUMENT WAS CREATED AS A CONVENIENCE FOR EASIER READING AND REFERENCE. IT COMBINES THE ORIGINAL PUD AGREEMENT WITH ALL OF THE AMENDMENTS TO READ AS A SINGLE DOCUMENT. ANY PARTS THAT WERE DELETED OR REVISED ARE NOT SHOWN; ONLY THE CURRENT, IN FORCE VERSIONS OF WORDING AND FORMAT ARE SHOWN.

THE USE OF ITALIC LETTERING IS MEANT TO INDICATE LOCATIONS WHERE NEW OR REVISED WORDING WAS USED. FOLLOWING SUCH ITALIC AREAS, REFERENCE IS MADE IN PARENTHESES TO THE AMENDMENT THAT CAUSED SUCH CHANGE.

THE OCCASSIONAL USE OF UNDERLINING IN THE BODY OF THE TEXT WAS ADDED BY THE AUTHOR TO ‘FLAG’ REFERENCED EXHIBITS.

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NOT ALL OF THE EXHIBITS ARE ATTACHED. A TABLE IS INCLUDED THAT OUTLINES ALL OF THE EXHIBITS WITH SOME BRIEF EXPLANATIONS. IN SOME CASES THE EXHIBIT WAS RETYPED FOR CLARITY AND INCLUDED.

IN ALL CASES, PLEASE REFER TO THE ORIGINAL, RECORDED DOCUMENTS FOR EXACT LEGAL LANGUAGE.

AGAIN, THIS DOCUMENT WAS PROVIDED BY THE AUTHOR AS A CONVENIENCE; ALL EFFORT WAS MADE TO CREATE AN ACCURATE AND COMPLETE REPRESENTATION OF THE PUD AGREEMENT IN ITS CURRENT FORM AS OF MAY 18, 2013.

PLEASE ADVISE THE BOARD OF ANY PERCEIVED ERRORS OF THIS DOCUMENT.

THANKS, DAN HUNTER (AUTHOR) MAY 18, 2013

CYPRESS HEAD PLANNED UNIT DEVELOPMENT AGREEMENT

The City of Port Orange, a Florida municipal corporation, (the "City"), and Pioneer Heights, Inc., a Florida corporation, (the "developer"), hereby covenant and agree, and bind their successors and assigns as follows: **(all references to 'Spruce Hammocks' replaced with 'Cypress Head' throughout; per Amendment 2, Part 1, March 11, 1993)**

I. OWNERSHIP OF THE PROPERTY

The overall concept plan, commonly known as "*Cypress Head*", involves approximately seven hundred and thirteen (713) acres, and encompasses land west of I-95 and north of County Road 4418 all as further described and depicted in the Legal Description attached as Exhibit A, (Herein "Property"), and the Conceptual Development Plan. The Conceptual Development Plan is part of engineering plans and specifications that are being submitted simultaneously with this Agreement, which plans and specifications are specifically incorporated herein by reference, as Exhibit B. (Herein "Plan").

The property is under unified ownership, and is under the sole control of the signatories to this Agreement.

II. USAGE OF THE PROPERTY

A. Type of Use

The proposed uses for the Property shall be as set forth on the Plan.

The commercial uses on the Property shall be addressed and detailed in a future, separate Planned Commercial Development (P.C.D.) Agreement that will be executed when such commercial property is to be developed. Such P.C.D. shall conform with Section 714.00 of the Port Orange Zoning Code.

The commercial property to be developed and which will be addressed in the P.C.D. Agreement contains approximately 15.79 acres. The gross leasable area of the two separate parcels that comprise that commercial tract will not exceed 140,000 square feet, and the parties to this agreement presently contemplate that the commercial property will be developed, generally, as follows. The larger commercial tract north of the Beltline may be developed into a Community Shopping Center, and the smaller commercial tract north of the Beltline and west of the loop collector road may be developed into a Neighborhood Commercial Center.

Design standards on commercial tracts will generally correspond to Regulations outlined within the compatible Commercial Zoning District listed within Port Orange Zoning Regulations, and as further detailed in the P.C.D. Agreement.

Upon approval of the Planned unit Development, the areas designated commercial, which will be addressed in the later P.C.D. agreement, will be zoned "P.C.D.", and will be reflected as such on the Official Zoning Map at the time of the adoption of the Planned unit Development. The portion of the Property that shows where a fire station and neighborhood park site will be built will be zoned G.P.U. at the time this Planned Unit Development is approved, and such zoning and use will be reflected on the Official Zoning Map at the time of the P.U.D. adoption.

B. Average Lot Sizes / Density of the Lots

Densities for the various housing types are:

- Estate, single family lots average size: 110' x 140'.
- Single family, medium low density lots, average lot size: 90' x 115'.
- Single family, medium density lots, average lot size: 80' x 110'.
- Zero lot line, average size 55' x 110', up to 5/DU/AC
- Villas, up to 8/DU/AC
- Multi-family, Townhouse/Garden Apartment, up to 12/DU/AC
- Multi-family, Condominium, up to 15/DU/AC

Densities for re-platted lots #85 through #128 of Cypress Head Phase I-A (The Palms) and other small lots originally designed as zero lot line lots in Cypress Head Phase II

- *Average size 55' x 110', up to 5/DU/AC*

(added per Amendment 2, Part 2, March 11, 1993)

At the time of Final Site Plan approvals for the various phases or sub-phases, the densities may vary slightly. Any increase of more than 10% of individual tract densities will require amendment of this Agreement. Any decrease of individual tract densities will not require amendment of this Agreement.

C. Number of Units

In no instance will the total number of residential units exceed one thousand three hundred ninety five (1,395).

D. Open Space

Development pursuant to this Agreement shall comply in all respects with the Open Space requirements of the Port Orange Zoning Code, Section 713.10 and to all Code requirements in effect at the time of final plan approval. This will include, but not be limited to, the "Wetlands Ordinance". The common open space shown on Exhibit "B" will be provided in accordance with Section 715.12 of the Zoning Ordinance.

The City acknowledges and agrees that the Developer shall be given open space credit for the Golf Course Property and the Parkland set forth on the Conceptual Development Plan which is to be given to the City. The City acknowledges that the open space on the Conceptual Development Plan is sufficient to meet the open space requirements for the development depicted by the Plan, and that under no circumstances shall the Developer be required to have any more large tracts of open space, since the conceptual plan attached to and made a part of this agreement meets the current minimum requirement of 60% space, with 20% common open space. The City may, however, require the Developer to have smaller open spaces areas for use as buffering in those areas of the property for which there will still be additional design of lot layouts. The City further acknowledges that any additional open park space that is needed for a development of this size may come from an additional adjacent or nearby community park.

E. Building Criteria / Set Backs

*All lots previously platted or designated as Zero Lot Line will have a minimum setback of twenty-five feet (25') from the rights of way on and through the property. The rear setback requirements will be fifteen feet (15') for all lots previously platted or designated as zero lot line. A minimum five foot (5') side yard setback shall be required on both sides of any residential structure to be erected upon re-platted lots #85 through #128 of Cypress Head Phase I-A (herein "The Palms") and lots #63 through #142 on the original concept plan for Cypress Head Phase II. The purpose of this requirement is to allow for the placement and erection of a dwelling on a lot in the center of such lot, or in a manner other than having one side of the dwelling on the side boundary of such lot. **(first paragraph of Subsection II.E previously amended in Amendment 1 was revised as shown above per Amendment 2, Part 3, March 11, 1993)***

*The minimum unit sizes and setback requirements and dimensional requirements for the proposed residential uses shall be as set forth in the charts attached as Exhibit C-1 and Exhibit C-2, incorporated herein by reference. **(the second paragraph of Subsection II.E was amended as shown above per Amendment 3, Part 1, August 6, 1999)** Exhibit "C" amended to incorporate the table "Exhibit A" from **(Amendment 4, Part 1, February 7, 2000)** Corrective Fourth Amendment dealt with Ashton Lakes, Phases I and II, originally a part of Cypress Head; rear yard setback for single family lots from 25' to 15'. Not really pertinent to Cypress Head today. **(Amendment 4 Correction, Part 1, November 8, 2000)***

The PUD Agreement is hereby amended to require all single family lots, whether vacant or developed, located within all phases of the Cypress head PUD, and as are more particularly described in Exhibit "A" (hereafter sometimes referred to as the "Subject property"), to comply with the following:

- *Maximum Building Coverage* 40%
- *Minimum Open Space* 40%

*This amendment does not apply to any townhome/villa, apartment, condominium, or commercial development within the PUD. **(The above paragraph was added per Amendment 10, Part 1, February 22, 2002.)***

The minimum landscape and perimeter buffers for the proposed uses within the P.U.D., the P.C.D., and the G.P.U. shall be as set forth in the chart attached as Exhibit D, incorporated herein by reference.

Approval by the City of the Conceptual Development Plan shall be considered by the City as conceptual subdivision approval for those sections of the Property which are already shown as being subdivided on the Conceptual Plan. For these subdivided areas, the Developer may proceed to the Final Plat/Final Engineering Plan stage for review. Those sections of the Property which are to be developed, but which are not subdivided on the Plan, will require the submission by the Developer of an additional conceptual plan that show how the lots are subdivided and be approved, before the Developer will be allowed to proceed to the Final Plat/Final Engineering Plan stage.

F () Setbacks for The Palms*

*Homes in the Palms with standard driveways perpendicular to the street shall be required to have a minimum twenty-five foot (25') front yard building setback. Homes designed with side entry garages shall be required to have a minimum twenty foot (20') front yard building setback. Side entry garages shall be allowed in accordance the "Lot Grading/Side Entry Driveway Location Plan", prepared by Jerry K. Finley, P.E., Florida Registration No. 29909, dated February 12, 1993, which was approved by the City on February 15, 1993. Said plan is attached hereto as Exhibit A and incorporated herein by reference. Side entry garage setback restrictions shall apply to lots 86, 96 through 100, 106 through 118, and 128. Driveways serving homes with side entry garages in The Palms shall be set back a minimum of eighteen inches (18") from the side lot line. No side lot line shall have an adjacent side entry driveway. On all other homes with front entry garages on lots in The Palms, driveways shall be set back a minimum of three and seventy-five one-hundredths feet (3.75') from the side lot line. **(Subsection F was added per Amendment 2, Part 4, March 11, 1993)***

F () Golf Villa Common Area Construction*

*Encroachment into the common area of the Golf Villas at Cypress Head is allowed for the purpose of constructing a screen room or an enclosed room on the existing patios only. In no case shall the patios be enlarged to cover more common area. Approval from the Golf Villas Home Owners Association and a "Golf Villa Common Area Construction Agreement" must be submitted to the City of Port Orange Department of community Development as part of the building permit application. All structures are required to meet applicable City and Building Code requirements. **(Subsection F was incorrectly duplicated and was added per Amendment 8, Part 3, October 23, 2001)***

III. SANITARY WASTE, STORMWATER, REUSE WATER, POTABLE WATER

The Developer will design and provide necessary sanitary sewer, water reuse, and potable water for the development of the Property in accordance with the City's Stormwater Management Ordinance, Conservation Ordinance, and other applicable ordinances. The sanitary sewer, water reuse, and potable water will be integrated with the systems of the City of Port Orange, and will be constructed in accordance with the time schedules set forth in this PUD Agreement. Any increase in sizes, capacities, or volumes over those required strictly to service the PUD will be the responsibility of the City of Port Orange.

This Agreement shall not supersede any action that has been taken or which will be taken by the City, regarding the installation and extension of sanitary sewers, water reuse lines, and potable water lines, or any other type of improvement which the City may address or decide to make, whether on and off the Property.

If maintaining the minimum acceptable water pressure that is needed to serve the Property, or developments beyond the Property, requires storage and pumping facilities of water on the Property, the City shall be responsible for the erection and maintenance of such storage and pumping facilities, and for the storage of such water on the Property.

IV. BICYCLE PATH/SIDEWALK

A. The Developer will construct an eight foot (8') sidewalk in the following areas:

- (1) On the north side of the Beltline,
- (2) On the west side of the public access road from Airport road to the Clubhouse that is anticipated to be built on the Property,
- (3) On the south side of Airport Road, between the Beltline, and the public access road from Airport Road to the Clubhouse
- (4) On or along the outside perimeter of the collector road that will intersect the Beltline at or near the Beltline's western end, and which will loop north of the Beltline, and intersect the Beltline again at or near the Belt line's eastern end,
- (5) On or along the inside perimeter of the collector loop road north of the Beltline, from the westernmost intersection of the collector loop road with the Beltline, north to the first intersection on the collector loop road with the first road leading to the residential developments to the north, and
- (6) On or along the inside perimeter of the collector loop road north of the Beltline, from the easternmost intersection of the collector loop road with the Beltline, north to the first intersection on the collector loop road with the first road leading to the residential developments to the north, all as further set forth or shown on the Plan incorporated herein by reference.

B. Where commercial or multifamily uses are across from each other and front on both sides of a road, the Developer will construct an eight foot wide sidewalk on both sides of the road.

C. The Developer shall only have to construct eight foot wide sidewalks on one side of collector roads with net densities of less than five (5) units per acre. Four foot wide sidewalks will be built on both sides of residential roads, except where one side of a road is adjacent to major open space areas of generally over 400 foot of frontage, in which case the Developer will only have to construct four foot sidewalks on one side of the road.

V. TRANSPORTATION REQUIREMENTS / TRAFFIC SIGNALS / GATES

A. CONCURRENCY REQUIREMENTS

The parties recognize that Florida Statutes, Section 5, 163.3177 and 163.3202, and Florida Administrative Code Section 9J-5.005, generally referred to as the ‘concurrency requirements’ generally require that to be sufficient road capacity to handle the traffic generated by any new development. When the traffic on the two lane beltline to be constructed by the Developer reaches a volume so that the level of Service on such Beltline is Service Level “D” at the peak traffic hour, Volusia County may have to construct two additional lanes to the Beltline, and the Developer may be prevented from continuing to develop the property pursuant to the P.U.D. until the construction of two additional lanes is complete. The Developer relieves the City of Port Orange and Volusia County from any and all liability stemming from such delay in “four-laning” the Beltline.

B. TRAFFIC SIGNALS

The Developer shall not be required to install or pay any share of costs for the installation of traffic signals at any intersection of the Beltline (Williamson Boulevard) or Airport Road within the P.U.D. (first paragraph amended to read as shown above, per Amendment 5, Part 1, January 18, 2000)

In order to provide for initial development and management of the Property, and to maintain the security on the Property, the Developer is hereby authorized to erect and maintain, temporarily, one mobile home on the Property. Such mobile home will be removed, prior to the completion and opening of the Club House.

VI. OPEN SPACE USE AND CREDIT

The Developer shall deliver a deed conveying title in fee simple to the City of Port Orange for that portion of the property located on the east central side of the Property, to be used as or for a park, all as graphically shown or pictured in more detail on the plan. The City shall credit the Developer with the amount that the City awards for such donation of parkland at the time that the Parkland is transferred to the City, according to and in compliance with the City’s standard policies and procedures for credits for such land. In no event, however, will the City give less than \$190,000 in recreational impact fee credits to the Developer for the parkland shown on the Plan to be transferred to the City.

The credit shall be offset against the park recreation impact fee the Developer would otherwise have to pay upon construction a dwelling or structure. The following percentage of the total credit for recreational impact fees will be offset against the following types of structures:

Single Family	60%
Zero Lot Line	20%
Villas	10%
Townhouses	10%

*The reference to zero lot line lots above shall include The Palms referred to herein and those lots currently identified as lots #63 through #142 on the original concept plan for Cypress head Phase II. **(added per Amendment 2, part 5, March 10, 1993)***

The Developer will thus not have to pay any park recreation impact fees for single family residential construction, for example, until the Developer has built enough single family homes to use up 60% of the total recreational impact fee credit. Similarly, the Developer will not have to pay any park recreation impact fees for zero lot lines until the Developer has built enough zero lot line homes to use up 20% of the total recreational impact fee credit. All credits shall be used or credited against the first units built in each category of uses.

The City further agrees to screen, to the satisfaction of the Developer, the recreational activities to be conducted on the Parkland to be conveyed to the City. This will include, at a minimum, pointing eastward any lights that will illuminate the driving range that may be located on the parkland to be conveyed to the City.

VII. MAINTENANCE OF COMMON OPEN SPACE AND COMMON FACILITIES

The Developer will form and incorporate a non-profit Homeowner's Association (HOA) which will operate, maintain and control all common areas and common facilities including but not limited to, common open space and all lakes wholly contained within the common areas. The lakes wholly contained on Cypress head subdivision common areas which are to be maintained by the HOA are designated as Lake Number 2,3,14,18,19,23, and 28, with locations shown in Exhibit B. All lakes are defined on Zev Cohen and Associates, engineering drawings revised March 1, 1991, and bearing the designation Drawing #89114-18.

Lake Numbers 15, 17, 29 and 30 are located partially within the adjacent golf course property and partially within Cypress Head subdivision common areas, with locations shown in Exhibit B and further defined in the Specific Purpose Survey attached hereto and incorporated herein as Exhibit C. The HOA shall maintain those portions of the lake perimeters for Lakes Numbered 15, 17, 29 and 30 (including shoreline vegetation) located within the common areas of Cypress Head. The HOA shall be responsible for algae control and other maintenance matters concerning the interior portions of Lakes Numbered 29 and 30. The HOA shall be responsible for maintaining the lakes and shorelines under their

respective maintenance control, as stated above, in conformance with all applicable governmental rules and regulations, including but not limited to those rules and regulations promulgated by the St. Johns River Water Management District.

There will be one or more "mini" homeowner's associations to control certain specified aspects of particular phases or sub-phases. These mini associations will promulgate restrictions on the use of the land, style of the architecture, and the colors of the structures on the land. The general scope and format of the homeowner's association documents, and the covenants and restrictions, will be similar in concept to the documents of similar homeowner's associations in Port Orange and the Greater Daytona Beach area. In addition, as necessary, the Developer will provide easements and grants for the utilities including water, water reuse, sewer, electricity, and telephone, as well as cable television. The Developer may from time to time add additional Covenants and Restrictions or make changes in the By-Laws as may be required to guarantee that the property will be developed in accordance with the policies outlined in this Agreement.

In addition to the above covenants and restrictions, the undersigned parties shall further develop and agree to design building criteria for each individual area to be developed within the Planned Unit Development, the Planned Commercial Development, and the G.P.U., which criteria will become part of the development agreement between the City of Port Orange and the Developer. Such criteria may include, but are not limited to, specifying the architectural style and the types and quality of the building materials to be used. Such criteria shall also include the maintenance standards for those lots which front on the golf course.

(Part VII was revised and amended in its entirety to read as shown above, per Amendment 9, Part1, December 11, 2001)

VIII. PROPOSED TIME PERIOD FOR DEVELOPMENT

The Developer shall develop what is called "Phase I" on the Plan within five (5) years from the date of the execution of this Agreement or from the date on which all approvals have been obtained in order to commence physical construction of Phase I on the Property, whichever date is later, all as set forth in more detail on the Plan.

The Developer shall develop what is called "Phase II" on the Plan within ten (10) years from the date of the execution of this Agreement or from the date on which all approvals have been obtained in order to commence physical construction of Phase II on the Property, whichever date is later, all as set forth in more detail on the Plan.

IX. CONFORMANCE WITH LAWS

The Developer agrees:

- (A) to develop the property according to all the PUD regulations of the City;
- (B) to provide agreements, contracts, deed restrictions and sureties acceptable to the City Legal Department for completion of the development or approved development phases, and for the continuing operation and maintenance of such areas, functions, and facilities as are not to be provided, operated, or maintained at public expense, and that the Developer' successors in title will be bound by the Developer's commitments made in this Agreement.
- (C) The City hereby acknowledges and agrees that the Owner shall be allowed ...
 - (1) *To install one security gate at the entrance to what is described and shown as the 28 Estate Lots, measuring approximately 120' x 140' on the attached Conceptual Development Plan.*
 - (2) *To install two manned guardhouses, one at the south entrance to the entire Planned Unit Development at the south end at the intersection of Pioneer Trail, and the other on the northwest side of the entire Planned Unit Development where the road that leads to the Club House will intersect Airport Road.*

X. REFERENCE TO STATUTES / FUTURE AMENDMENTS

The Developer shall be bound by all codes and ordinances, and future amendments to all such codes or ordinances, to the extent that such codes, ordinances, and future amendments are not in conflict with the specific language, requirements, and provisions of this Agreement.

IN WITNESS WHEREOF, the parties affix their signatures and seals on the dates set forth below.

The City of Port Orange

Mayor, Judy L Anderson

June 8, 1990

Witness, Linda B. Sheridan, Notary

Pioneer Heights, Inc.

Vice President, Foster H. Coleman

June 8, 1990

Witness, Linda B. Sheridan, Notary

CONTENT OF PLANNED UNIT DEVELOPMENT AGREEMENT – Original

Pages:	Exhibit	Documents	Description
1-8		PUD Agreement	
	A	Legal Description of the Property	Parcels 1-7 with exceptions
	B	Conceptual Development Plan	Zev Cohen; 6 reduced drawings
	C	Schedule of Minimum Unit Sizes	Typed Chart
	D	Schedule of Landscape Buffers	Typed Chart and Text

AMENDED EXHIBIT LOG

Amendment:	Part:	Exhibit:	Description:
1			
2			