

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**

Marsha Segal-George
Acting City Attorney
City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

Exhibit “A” to Ordinance No. 11-2022

DEVELOPMENT AGREEMENT

for the project known as Pell Excavation Business Planned Unit Development (PUD) located west of State Road 415 and north of Maytown Road, more particularly shown in Exhibit “A” attached hereto (hereinafter referred to as the “Subject Property”).

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as the “Agreement”) is entered into and made as of the ___ day of _____, 2022, by and between the CITY OF DELTONA, a Florida municipal corporation, with a mailing address of 2345 Providence Boulevard, Deltona, Florida 32725, (hereinafter referred to as the “City”), and Albert H. Pell and Janette K. Pell, (collectively, hereinafter referred to as the “Owner”), and Osteen Materials, LLC, a Florida limited liability company, (hereinafter referred to as the “Developer”).

WITNESSETH

WHEREAS, the Owner warrants that it holds legal title to the lands located in Volusia County, Florida, and within the corporate limits of the City of Deltona, said lands being more particularly described in Exhibit “B”, Legal Description for the Subject Property, attached hereto and by this reference made a part hereof; and that the holders of any and all liens and encumbrances affecting such property will subordinate their interests to this Agreement; and

WHEREAS, the Owner/Developer has clear title of the Subject Property or the Developer is currently under contract to purchase the Subject Property and intends to develop such property as an excavation; and

WHEREAS, the Owner/Developer or Developer desires to facilitate the orderly development of the Subject Property in compliance with the laws and regulations of the City and other governmental authorities, and the Owner/Developer or Developer desires to ensure that its development is compatible with other properties in the area and planned traffic patterns; and

WHEREAS, the development permitted or proposed under this Development Agreement is consistent with the City's Comprehensive Plan, concurrency management system, and all land development regulations and this Agreement does not replace, supersede, or grant variances to those regulations; and

WHEREAS, it is the purpose of this Agreement to clearly set forth the understanding and agreement of the parties concerning the matters contained herein; and

WHEREAS, the Owner and Developer have sought the City's approval to develop the Subject Property, and the City approved Ordinance No. _____, through rezoning the Subject Property to a form of Planned Unit Development (PUD), as defined under the City's Land Development Code on _____. The PUD shall consist of this Agreement as the Written Agreement of the PUD and an Exhibit "C", Master Development Plan (MDP), attached hereto and by this reference made a part hereof as the Preliminary Plan, subject to applicable covenants, restrictions, and easements offered by the Owner and Developer and contained herein, (hereinafter the "Master Development Plan"). Where more detailed criteria for City required submittals exceed the criteria required for a Master Development Plan, the more detailed criteria apply.

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

1. **Recitals and Definitions.** The recitals herein contained are true and correct and are incorporated herein by reference. All capitalized terms not otherwise defined herein shall be as defined or described in the City's Land Development Code as it may be amended from time to time unless otherwise indicated.
2. **Ownership.** The legal and equitable owners of the Subject Property are: Albert H. Pell and Janette K. Pell.
3. **Title Opinion/Certification.** The Developer will provide to the City, in advance of the City's execution and recordation of this Agreement, a title opinion from a licensed attorney in the state of Florida, or a certification by an abstractor or title company authorized to do business in the state of Florida,

verifying marketable title to the Subject Property to be in the name of the Owner and any and all liens, mortgages, and other encumbrances that are either satisfied or not satisfied or released of record.

4. **Subordination/Joinder.** Unless otherwise agreed to by the City and if applicable, all liens, mortgages, and other encumbrances that are not satisfied or released of record must be subordinated to the terms of this Agreement, or the Lienholder must join in this Agreement. It shall be the responsibility of the Owner and Developer to promptly obtain the said subordination or joinder, in form and substance that is acceptable to the City Attorney, prior to the execution and recordation of this Agreement.
5. **Duration.** The duration of this Agreement is binding and runs with the land in perpetuity, unless amended.
6. **Development of the Subject Property.** Development of the Subject Property shall be subject to performance standards listed in this Agreement. Where a land use listed below differs from a defined use in the City of Deltona's Code of Ordinances, the use listed in this Agreement shall prevail.
 - A. Comprehensive Plan Policies specific to this Subject Property.
 - B. Permitted principal uses allowable on the Subject Property:
 1. Excavation/Borrow Pit: resulting in a 9 acre pit and permitted up to five (5) years after operation commences.
 2. Other uses and structures of an accessory nature customary to the permitted use listed above.
 3. Hurricane debris disposal/storage site.
 4. Public Park.
 5. Improved and native, unimproved pasture for animal grazing.
 6. Passive recreation such as hunting and fishing.
 7. One single family home is permitted during this use; otherwise, no additional residential development is permitted unless reevaluated through an amendment to this BPUD document.
 - C. Prohibited principal uses, if any:
 1. All other uses not otherwise identified above as permitted principal uses.
 2. Stockpiling of material on site.
 3. Overnight heavy truck parking.
 - D. Proposed minimum density (in number of dwelling units per acre) or minimum intensity (measured in floor area ratio): n/a
 - E. Proposed maximum density (in number of dwelling units per acre) or maximum intensity (measured in floor area ratio), if any: n/a

- F.** Impervious surface ratio: n/a.
- G.** Maximum lot coverage (in %) (dry retention systems can be used towards open space): n/a
- H.** The Property shall maintain a 50-foot-wide perimeter landscape buffer yard which shall include required plantings per the City's Land Development Code; however, no landscape buffer yard is required along the easterly property boundary where it adjoins the adjacent excavation/borrow pit operation referred to as the McCaskill excavation. Stormwater management facilities shall not be placed within buffer yards. Natural vegetation shall be credited toward required plantings within landscape buffer yards.
- I.** Minimum lot size area (in acreage or square footage): +/- 197 acres
- J.** Minimum lot width (in feet): n/a
- K.** Minimum yard setbacks: (excavation uses and wetlands)
 - 1. Perimeter setback of 50 feet from all property boundaries; however, no setback is required along the easterly property boundary where it adjoins the McCaskill excavation/borrow pit.
 - 2. Wetlands: 100-feet
- L.** Maximum building height (in feet): n/a
- M.** Minimum parking standards are per Sections. 110-828 and 110-829 of the City's Land Development Code.
- N.** Minimum lighting standards per the City's Land Development Code shall be included on a separate Illumination Plan to be provided at the time of site plan submittal.
- O.** All environmental permitting, mitigation, and/or soil and erosion control for the Subject Property shall conform to all federal, state, and local permits/requirements, shall be the sole responsibility of the Owner and Developer, and shall be maintained in good condition/standing with the applicable permitting authorities. Best Management Practices and conformance to National Pollutant Discharge Elimination System (NPDES) criteria are required.
- P.** Transportation, site access, and traffic devices: The Owner and Developer or Developer shall be responsible for all transportation improvements within the Subject Property, including a concrete driveway apron with gravel drive and wash rack, and any off-site transportation requirements, as a result of the proposed development, for site function, that maintains or improves the level of service for area roadways, and ensures the public health, safety, and welfare of the community. Any vehicle tracking on to SR 415 will be the responsibility of the Owner/Developer to address. If tracking is not addressed the City has the ability to place a stop work order on the project

until tracking is rectified. All permits shall be obtained from appropriate permitting agencies prior to development. Site access in the form of a temporary median cut along SR 415 for the Subject Property shall be limited to the FDOT Driveway Permit No. 2020-A-591-0004. This median cut shall be large enough to provide refuge for a heavy dump truck making a left movement in or out of the site so the truck does not impede any SR 415 travel lane. The entrance facility for the BPUD will be of sufficient length to provide adequate truck storage as to prevent truck stacking on SR 415. Finally, heavy truck traffic will be capped at no more than 50 am and 50 pm peak hour trips.

Applicant Apex agrees as part of their regular business operation to request and document the destination for fill and whether the haul route for fill would require utilization of the Doyle Road/Debary Av. corridor from Interstate 4 to SR 415 or Goldenhills Street. Applicant will not enter into contracts for fill that require using Doyle Road/Debary Av. or Goldenhills Street as a haul route. In addition, Apex will not enter into contracts for fill that require using Lakeshore Dr. and/or Enterprise Osteen-Road as a haul route pursuant to the agreement regarding Doyle Road/Debary Av. Applicant will place signage on the driveway going out of the excavation site that clearly states: "NO THRU TRUCK TRAFFIC ON DOYLE ROAD/DEBARY AV OR GOLDENHILLS STREET"

- Q.** Site improvements for the Subject Property are limited to those improvements shown on the Master Development Plan.
- R.** Excavation of the Subject Property shall not begin until after final site plan review and approval by the City.
- S.** Excavation of the Subject Property, including reclamation activities, shall be limited to a five (5)-year time period from receipt of final site plan approval. One 12-month extension of completion dates may be permitted as a minor modification to this Agreement if the Developer shows good faith effort in performance of this Agreement.
- T.** Reclamation will be addressed as part of the site plan approval process and shall be coordinated with reclamation activities occurring within neighboring unincorporated Volusia County. Reclamation shall be consistent with applicable permitting agencies.
- U.** The excavation shall only operate from 7:00AM to 5:00PM, Monday through Friday. No operations shall occur on Saturday, Sunday or any Federal holidays.
- V.** The pumps used for dewatering shall be designed for quiet operation and shall be surrounded by earthen berms for noise abatement.
- W.** The excavation pit shall only be filled with water and shall not be filled with construction and demolition debris or other waste material.

- X. The Developer shall provide a 24-hour-a-day contact manager to the City during excavation activities, including a telephone number, to address any issues, concerns or emergencies.
 - Y. Every truck allowed on the excavation site shall be provided with onsite and offsite safety protocol and a truck driver in violation of the protocol shall be denied entry on the Subject Property. In addition, advanced warning signs shall be placed at appropriate distances from the driveway entrance to minimize conflicts between the traveling public and heavy truck traffic.
 - Z. Well and other environmental monitoring shall occur consistent with all permitting requirements of the St. Johns River Water Management District.
7. **Public Facilities/Land Dedication.** Facilities or tracts that either are or shall become public facilities/tracts that will serve the development and/or are on the Subject Property are as follows: n/a
 8. **Development Permits/Fees.** The Owner and Developer are responsible for obtaining all applicable permits and paying all applicable fees for permits, facilities, and services for the Subject Property. Any site permits shall be kept current with the respective permitting agency and shall ensure the protection of the public health, safety, and welfare of the community and the development. All impact fees are applicable, and no impact fee credits shall be awarded through this Agreement, unless a cessation of said impact fees exists through a City moratorium that is City-wide.
 9. **Obligations.** Should the Owner and Developer fail to undertake and complete their obligations, as described in this Agreement, to the City's specifications, then the City shall give the Owner and Developer thirty (30) days written notice to commence and ninety (90) days to complete said required obligation. If the Owner and Developer fail to complete the obligations within the ninety (90) day period, then the City, without further notice to the Owner and Developer, or their successors in interest, may, without prejudice to any other rights or remedies it may have, place liens and take enforcement action on the Subject Property. A lien of such assessments shall be superior to all others, and all existing lienholders and mortgagees, by their execution of the subordination or joinder documents, agree to subordinate their liens or mortgages to the City's said liens or assessments. Notice to the Owner and Developer and their successors in interest shall be deemed to have been given upon the mailing of notice to the address or addresses set forth in Paragraph 20 hereof.
 10. **Site Plan/Plat Approval.** Exhibit "C", the Master Development Plan, is the Preliminary Plan of the PUD and this Agreement. The Master Development Plan shall not replace, supersede, or absolve the Owner and Developer from approvals for any site plan, preliminary plat, and/or final plat and their respective regulations. Where more detailed criteria for City required submittals exceed the criteria required for a Master Development Plan, the more detailed criteria shall apply. Unless otherwise specified in this Agreement,

the site plan shall meet all requirements of Chapter 75 of the City's Land Development Code. Reclamation of the Subject Property shall be as specified in the Reclamation Plan. A performance bond shall be provided to the City based on engineer estimates in the amount of 115 percent of the estimated cost of project reclamation as part of site plan approval and prior to commencement of any construction.

11. **Indemnification.** The Owner and Developer shall indemnify and hold the City harmless from and against any and all claims, demands, disputes, damages, costs, and expenses (to include attorneys' fees whether or not litigation is necessary, and if necessary, both at trial and on appeal) incurred by the City as a result, directly or indirectly, of the use or development of the Subject Property, except those claims or liabilities caused by or arising from the negligence or intentional acts of the City, or its employees or agents. It is specifically understood that the City is not guaranteeing the appropriateness, efficiency, quality or legality of the use or development of the Subject Property, including, but not limited to, drainage or water/sewer plans, fire safety, or quality of construction, whether or not inspected, approved, or permitted by the City.
12. **Compliance.** The Owner and Developer, and their successors and assigns, agree that they will abide by the provisions of this Agreement, the City's Comprehensive Plan and the City's Code of Ordinances, including, but not limited to, the site plan regulations of the City, as amended from time to time, which are incorporated herein by reference, and such subsequent amendments hereto as may be applicable. Further, all required improvements, including landscaping, shall be continuously maintained by the Owner and Developer, or their successors and assigns, in accordance with the City's Code of Ordinances. The City may, without prejudice to any other legal or equitable right or remedy it may have, withhold permits, Certificates of Occupancy or plan/plat approvals for the Subject Property should the Owner and Developer fail to comply with the terms of this Agreement. In the event of a conflict between this Development Agreement and the City's Land Development Code, the more restrictive regulations shall govern the development of the Subject Property.
13. **Obligations for Improvements.** Any surface improvement, as described and required hereunder, including but not limited to improvements such as signalization, walls, stormwater management facilities, medians, utilities, or any other surface improvement shall be performed prior to the issuance of a Development Order of the DRC on that portion of the Subject Property to which the surface improvement(s) relate, or as otherwise scheduled in this Agreement. Should the Owner and Developer fail to undertake and complete their obligations for improvements, as described in this Agreement and to the City's specifications, then the City shall give the Owner and Developer thirty (30) days written notice to commence and ninety (90) days to complete said required obligations at the sole expense of the Owner and Developer. If the Owner and Developer fail to complete the obligations within the ninety (90) day period, then the City, without further notice to the Owner and Developer and

their successors and assigns in interest, may, but shall not be required to, perform such obligations at the expense of the Owner and Developer or their successors and assigns in interest, without prejudice to any other rights or remedies the City may have under this Agreement. Further, the City is hereby authorized to immediately recover the actual and verified cost of completing the obligations required under this Agreement and any legal fees from the Owner and Developer in an action at law for damages, as well as record a lien against the Subject Property in that amount. The lien of such assessments shall be superior to all others, and all existing lienholders and mortgagees, by their execution of the subordination or joinder documents, agree to subordinate their liens or mortgages to the City's said liens or assessments. Notice to the Owner and Developer and their successors and assigns in interest shall be deemed to have been given upon the mailing of notice as provided in Paragraph 20 of this Agreement.

14. **Environmental and Tree Preservation.** The Owner and Developer are responsible for obtaining all site related permits and approval prior to any development activity on or for the Subject Property. As part of the site plan process, the Owner/Developer shall provide all environmental surveys and applicable permits for City and administration. This may involve mitigation for impacts to habitat of threatened or endangered flora and fauna or for species identified. In addition, a permit for wetland impacts shall be submitted to the City. Finally, the City will require a tree survey and appropriate tree mitigation. This Agreement does not vest or exempt the Owner and Developer from any permitting and mitigation obligations needed to develop the Subject Property. All wetlands shall be afforded a minimum of a 100 foot buffer. 0.69 acres of the Pell property are proposed to be impacted to accommodate an all-weather access haul road. Wetland impacts shall be appropriately permitted and mitigated.

The Pell property contains significant wetland resources including a system known locally as the Savanna. The wetland areas known as "the Savanna", have been used for only low intensity agriculture (native pasture) for many years and is a viable ecological system. As per extensive geotechnical analysis, the construction of the proposed lake and related excavation activity on the upland portion of the parcel will not impact the Savanna. Upon the reclamation of the lake (littoral shelf creation and related littoral planting), the lake area will provide additional habitat which will complement the ecological value of the Savanna. The parties agree to maintain the Savanna wetlands in a natural state, while allowing the continuation of passive agricultural uses on the parcel. The parties further agree that subsequent to the completion of the excavation or lake creation on the property and upon the amendment of the BPUD to allow any other uses/activities, the parties shall consider placing a conservation easement over the wetland areas known as "the Savanna".

15. **Enforcement.** Both parties may seek specific performance of this Agreement and/or bring an action for damages in a court within Volusia County, Florida if this Agreement is breached by either party. In the event that enforcement of

this Agreement by the City becomes necessary, and the City is successful in such enforcement, the Owner and Developer shall be responsible for the payment of all of the City's costs and expenses, including attorneys' fees, whether or not litigation is necessary and, if necessary, both at trial and on appeal. Such costs, expenses and fees shall also be a lien upon the Subject Property superior to all others. Should this Agreement require the payment of any monies to the City, the recording of this Agreement shall constitute a lien upon the Subject Property for said monies until paid, in addition to such other obligations as this Agreement may impose upon the Subject Property and the Owner and Developer. Interest on unpaid overdue sums shall accrue at the rate of the lesser of eighteen percent (18%) compounded annually or at the maximum rate allowed by law.

16. **Utility Easements.** For any easement not established on a plat for the Subject Property, the Owner and Developer shall provide to the City such easements and other legal documentation, in a form mutually acceptable to the City Attorney and the Owner and Developer, as the City may deem reasonably necessary or appropriate for the installation and maintenance of the utility and other services, including but not limited to, sanitary sewer, potable water, and reclaimed water services, electric, cable, gas, fire protection and telecommunications.
17. **Periodic Review.** The City reserves the right to review the Subject Property in relation to this Agreement periodically to determine if there has been demonstrated good faith compliance with the terms of this Agreement. If the City finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of this Agreement, the City may not issue development orders or permits until compliance with this Agreement has been established. A progress report shall be provided to the City on an annual basis outlining that the excavation is proceeding in accordance with the terms of any permits issued by the City. The report shall include information on the location and delivery routes of fill material.
18. **Notices.** Where notice is herein required to be given, it shall be by certified mail return receipt requested, hand delivery or nationally recognized courier, such as Federal Express or UPS. E-mail delivery of documents shall not replace or be in lieu of the aforementioned process. Said notice shall be sent to the following, as applicable:

OWNER'S AND DEVELOPER'S REPRESENTATIVES:

Storch Law Firm
420 South Nova Road
Daytona Beach, Florida 32114

CITY'S REPRESENTATIVES:

City Manager
City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

With copy to:

Director
Community Services
City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

Should any party identified above change, it shall be said party's obligation to notify the remaining parties of the change in a fashion as is required for notices herein. It shall be the Owner's and Developer's obligation to identify their lender(s) to all parties in a fashion as is required for notices herein.

19. **Compliance with the Law.** The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner and Developer of the Subject Property from the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.
20. **Captions.** The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.
21. **Binding Effect.** This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner and Developer and their successors and assigns in interest, and the City and their successor and assigns in interest. This Agreement shall become effective upon its execution and recordation in the Public Records of Volusia County, Florida. This Agreement does not, and is not intended to, prevent or impede the City from exercising its legislative authority as the same may affect the Subject Property.
22. **Subsequently Enacted State or Federal Law.** If either state or federal law is enacted after the effective date of this Agreement that is applicable to and precludes the parties' compliance with the terms of this Agreement, this Agreement and corresponding zoning amendment shall be modified or revoked, as is necessary, to comply with the relevant state or federal law.
23. **Severability.** If any part of this Development Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Development Agreement, provided the rights and obligations of the parties contained herein are not materially prejudiced and provided the intentions of the parties can be affected. To that end, this Development Agreement is declared severable.

24. **Covenant Running with the Land.** This Agreement shall run with the Subject Property and inure to and be for the benefit of the parties hereto and their respective successors and assigns and any person, firm, corporation, or entity who may become the successor in interest to the Subject Property or any portion thereof.
25. **Recordation of Agreement.** The parties hereto agree that an executed original of this Agreement shall be recorded by the City, at the Owner's and Developer's expense, in the Public Records of Volusia County, Florida.
26. **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. Venue of any litigation relating to this Agreement shall be in the courts of Volusia County, Florida.
27. **Time of the Essence.** Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement. The Owner and Developer shall execute this Agreement within ten (10) business days of City Commission adoption of Ordinance No. 11-2022; and agree to pay the cost of recording this document in the Public Records of Volusia County, Florida. Failure to execute this Agreement within ten (10) business days of this ordinance adoption may result in the City not issuing development orders or permits until execution and recordation of this Agreement has occurred.
28. **Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings and agreements, with respect to the subject matter hereof; provided, however, that it is agreed that this Agreement is supplemental to the City's Comprehensive Plan and does not in any way rescind or modify any provisions of the City's Comprehensive Plan. Amendments to and waivers of the provisions of this Agreement shall be made by the parties only in writing by formal amendment.

Effective Date. The Effective Date of this Agreement shall be the day this Agreement is recorded in the Public Records of Volusia County, Florida.

IN WITNESS WHEREOF, the Owner, the Developer, and the City have executed this Agreement.

OWNER/DEVELOPER

By:

Signature of Witness # 1

Signature

Print or type name

Print or type name

AS:

Signature of Witness # 1

Signature

Print or type name

Print or type name

ATTEST:

Signature

Print or type Name

As:

Mailing Address:

**STATE OF FLORIDA
COUNTY OF VOLUSIA**

The foregoing instrument was acknowledged before me this _____ day of _____, 202__, by _____, and _____, of _____, who is/are personally known to me or who has/have produced _____ as identification and who did not (did) take an oath.

Signature of Notary

(NOTARY SEAL)

Print or type name

DEVELOPER

By:

Signature of Witness # 1

Print or type name

Signature of Witness # 1

Print or type name

Signature

Print or type name

AS:

Signature

Print or type name

ATTEST:

Signature

Print or type Name

As:

Mailing Address:

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 202__, by _____, and _____, of _____, who is/are personally known to me or who has/have produced _____ as identification and who did not (did) take an oath.

Signature of Notary

Print or type name

(NOTARY SEAL)

CITY OF DELTONA:

By: _____

Date: _____

ATTEST:

Date: _____

Mailing Address:

City of Deltona
2345 Providence Boulevard
Deltona, Florida 32725

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 202__, by _____, and _____, who are personally known to me and acknowledge executing the same freely and voluntarily under authority vested in them by the City of Deltona.

Signature of Notary

(NOTARY SEAL)

Print or type name

Approved as to form and legality for use and reliance by the City of Deltona, Florida

Marsha Segal-George
Acting City Attorney