

PREPARED BY:
Michael D. Chiumento III, Esq.
Chiumento Selis Dwyer, PL
145 City Place, Suite 301
Palm Coast, FL 32164

RETURN TO:
City Clerk
City of Palm Coast
160 Cypress Point Parkway, Ste. B-106
Palm Coast, FL 32164

AMENDED AND RESTATED MASTER PLAN DEVELOPMENT AGREEMENT
FOR TUSCAN RESERVE

This Amended and Restated Master Planned Development (MPD) Agreement for Tuscan Reserve (the “Amendment”) is entered into between the City of Palm Coast whose address is 160 Cypress Point Parkway, Suite B-160, Palm Coast, FL 32164 (the “City”) and Tuscan Reserve, LLC whose address is 105 Due East, New Smyrna Beach, FL 32169 (the “Owner”).

Recitals

WHEREAS, on or about March 3, 2005, the City passed Ordinance 2005-14 (recorded in O.R. Book 1226, Page 1899, Public Records of Flagler County, Florida) approving an Amendment to the Madison Green Master Planned Development Agreement (hereinafter the “MPD Agreement”) which essentially permitted the Owner to construct two multifamily projects on approximately 21 acres of land located off State Road 100 (“the Property”) (**Exhibit “1”**) which are commonly known as Madison Green Apartments (“Madison Green”) and Tuscan Reserve Condominiums (“Tuscan Reserve” or the “Project”).

WHEREAS, Madison Green was constructed in 2007 as a 128 unit apartment complex.

WHEREAS, the MPD Agreement permits, among other things, that the Owner can develop up to 80 condominium units along with the associated amenities on a portion of the Property for Tuscan Reserve.

WHEREAS, in 2008, the Owner constructed the Project's infrastructure (roads, stormwater, utilities, etc.), 16 condominium units, and the clubhouse amenities for Tuscan Reserve. However, given the economic down turn, the remaining 64 condominium units permitted in Tuscan Reserve were not constructed.

WHEREAS, the Owner desires to re-commence construction of the remaining portion of the Tuscan Reserve but desires to amend the MPD Agreement to accommodate present market conditions and ensure the Project's viability.

WHEREAS, on September 18, 2013, the Owner filed an application with City to amend the MPD Agreement as to Tuscan Reserve only.

WHEREAS, it is the intent of the City and the Owner to amend and restate the MPD Agreement as to Tuscan Reserve only. The MPD Agreement shall continue in full force and effect as to Madison Green, and shall in no way affect the Madison Green Development Standards.

Now therefore, in consideration of the mutual covenant contained herein, the City and Owner amend the MPD Agreement as follows:

1. The aforementioned recitals are taken as true, incorporated by reference and made a material part of this Amendment.

2. **CONCEPTUAL SITE PLAN APPROVAL AND DEVELOPMENT REVIEW PROCESS**

- a. The provisions of the LDC, as shall be amended from time to time, shall be applicable to the Property unless otherwise specifically stated herein. Any City Code provision not specifically identified will not be affected by the terms of this

Second Amendment of the MPD Agreement. As part of this approval, the Conceptual Master Plan (**Exhibit “2”**) shall be deemed the controlling Master Plan for Tuscan Reserve. The Conceptual Master Plan depicts the Project characteristics and delineates the Project’s boundaries, streets, easements, property lines, general location of buildings and intended uses. The Conceptual Master Plan also illustrates the design and location of access points, driveways, parking, signage, landscape buffers, tree preservation, primary sidewalk/pathway system and other pertinent information. The future site plan can allow up to a 25 percent accumulative design change from the Conceptual Master Plan provided that the substantial integrity of the Conceptual Master Plan is maintained. However, no deviation from applicable LDC, as shall be amended from time to time, requirements or specific requirements within this this Agreement may be approved during the Site Plan review process, including but not limited to items such as: height, density increase, setbacks, and buffer requirements.

3. LAND DEVELOPMENT CODE NON-APPLICABILITY.

- a.** The development of the Project shall proceed in accordance with the terms of this Second Amendment. In the event of an inconsistency between the terms of this Second Amendment and the LDC, as shall be amended from time to time, the terms of this Second Amendment shall prevail. Where specific requirements are not contained in the Second Amendment, the LDC, as shall be amended from time to time, shall apply to the extent that it does not conflict with the provisions of this Second Amendment or the general intent of the Conceptual Master Plan. The requirements of the Second Amendment supersede any inconsistent

provisions of LDC of the City, as shall be amended from time to time, unless provided elsewhere in this Second Amendment.

4. **DEVELOPMENT STANDARDS**: The Development Standards identified below shall replace all design standards for Tuscan Reserve.

a. **PARKING**: The Project shall provide a minimum of 2.0 parking spaces per unit, including all guest parking, and 6 spaces for the clubhouse, as shown on the Conceptual Master Plan. Also, included in this parking ratio, the Owner shall construct 46 garages as generally depicted on the Conceptual Master Plan.

b. **OPEN SPACE**: Minimum open space shall exceed fifty percent (50%) of the Tuscan Reserve portion of the Property's gross area. Open space shall be defined by the LDC and include storm water ponds. Flexibility to the minimum open space requirements shall be as provided by the LDC which may include but not limited to, green building principles, land donation, or other mechanisms that would justify a lower percentage and approved by the LUA. Open Space shall be maintained by either the actual owner of the property or a property owners association as determined by the Owner.

c. **WATER/WASTEWATER**: The Project is located wholly within the City limits and is therefore within the City's water and wastewater service areas. All proposed permanent uses within the Project will be served by central water and sewer services. The City shall be the potable water and wastewater service provider for the Project upon payment of applicable fees.

d. **TRANSPORTATION CONCURRENCY**: Pursuant to review of the traffic analysis for the Project (**Exhibit "3"**), it appears that roadway capacity exists to

support the proposed increase in development density. A traffic study showing the correct number of units shall be submitted at the time of Site Plan application. Reservation of traffic concurrency shall be made only upon issuance of a Development Order (DO) for the Site Plan.

- e. DRAINAGE: As depicted on the Conceptual Master Plan, the Project shall include a Master Stormwater System (“MSS”), which was permitted by the SJRWMD. The MSS design shall meet, and be governed by, applicable SJRWMD and City of Palm Coast rules and regulations. Best Management Practices (BMPs) to treat, control, attenuate, and convey stormwater and surface waters may include, but are not limited to, vegetated natural buffers, swales, dry retention and wet detention
- f. LANDSCAPING: The Project shall be developed in general conformance with the Conceptual Landscape Plan **Exhibit “5,”** and the Conceptual Master Plan **Exhibit “2.”** Plantings within the internal landscape as well as the perimeter buffer areas shall exceed current standards for initial tree sizes, quantity of trees and screen plantings in order to provide visual and noise mitigation for the proposed height and density of the new units as detailed below:
- 1) All required shade trees shall be a minimum size of 4-1/2 inch caliper, 16-18 feet tall in 100 gallon (or equivalent balled and burlapped) containers .
 - 2) Where garages are not present along the perimeter buffers, a minimum 5 foot tall continuous shrubbery hedge shall be planted 6 foot on center. Along the exterior facing garage walls, shrubs 3 gallon, 24 inches tall spaced 3 feet on center shall be planted.

3) On the north, east and west sides of the proposed buildings, shade trees are to be planted where there is adequate space available to further buffer the impact of building height and noise from the adjacent properties.

4) Vehicular use area (VUA) islands within the parking lot must be a minimum of 250 square feet in area, and structural soils shall be used in adjacent parking spaces to support faster, larger and more long lived growth of shade trees within these areas. Final landscape plans will be determined at site plan review.

- g. LIGHTING: All exterior Lighting shall comply with the LDC and be consistent with the Project's architectural styles.
- h. FIRE PROTECTION: Fire protection requirements for the Project will be met through a system of fire hydrants installed on the site by the Owner in accordance with City standards. The locations of fire hydrants shall be shown on all construction documents, site plans or preliminary plats. The water requirements for the fire system will be served by the City's Utility Department. The Project shall comply with the City's fire protection requirements. The City will provide fire protection services to the Project and in accordance with established local response agreements.
- i. UTILITIES: All internal utility lines for the Project shall be placed underground.
- j. INTERCONNECTIVITY: All buildings within the Project shall be interconnected by roadways, driveways, sidewalks and paths, and the Project shall be interconnected to the neighboring Madison Green portion of the Property as

called for by the City's Comprehensive Plan, and as necessary to meet ADA Accessibility requirements.

- k. RESOURCE PROTECTION. The Owner shall comply with LDC, as shall be amended from time to time.
 - l. WETLANDS: The Owner shall comply with LDC, as shall be amended from time to time.
 - m. EMERGENCY ACCESS: The Owner of the Brookhaven parcel to the west has provided an access easement for emergency ingress/egress between Brookhaven and the Project as generally depicted by **Exhibit "4"**. The owner of the Tuscan Reserve property shall provide an easement that connects to the easement location depicted in Exhibit "4" that provides access rights to Municipal and Emergency vehicles. The Site Plan for the Project shall include a stabilized access path from the Project to the Brookhaven access easement depicted in **Exhibit "4,"** which shall be constructed by the Owner of the Project prior to construction of any new residential units.
 - n. NOISE ATTENUATION: The Owner shall provide landscaping consistent with Paragraph 4.f. and as generally depicted on Conceptual Master Plan and the Conceptual Landscape Plan to mitigate noise impact between buildings.
5. DIMENSIONAL STANDARDS:
- a. LOT SIZE/SET BACKS/HEIGHT:
 - i. Project Size: The Project is 8.20 acres.
 - ii. Building Setbacks: Building setbacks shall be a minimum of 85 feet from the north, south and west Project boundaries, except for garage

buildings, which may follow a 10 foot building setback. Building setbacks from the eastern boundary of the Project shall be a minimum of 50 feet, consistent with the pattern of existing site development.

iii. Buffers: In addition to requirements of Section 4(f) above, Landscape buffers shall be consistent with the Conceptual Master Plan. Landscape buffers shall be ten (10) feet along the property boundary except for the area of parking at the north end of the access drive that adjoins the Project's eastern property line, as shown on the Conceptual Master Plan.

iv. Height: 45 feet minimum as measured by the LDC.

b. IMPERVIOUS: Maximum impervious area shall be sixty five percent (65%) of the Project's gross area. The terms "pervious" and "impervious" are defined by the LDC.

c. DENSITY: Consistent with the City's Comprehensive Plan, the maximum density for the Project is 15 dwelling units per acre, and the proposed density for the Project is 14.02 dwelling units per acre. A total of 115 condominium units inclusive of the existing units may be constructed along with the recreational amenities as shown on the Conceptual Master Plan.

d. ARCHITECTURE: The architectural features of the Project shall be consistent with those portions of the Project existing today as more particularly shown on **Exhibit "5."** Otherwise the architectural requirements shall comply with the LDC Chapter 13, ARCHITECTURAL DESIGN GUIDELINES, in effect at the time of development.

e. UNITS: The minimum unit size shall be 650 square feet.

6. **NOTICES.** All notices required or permitted to be given under this Second Amendment must be in writing and must be delivered to the City or the Owner at its address set forth below (or such other address as may be hereafter be designated in writing by such party). Any such notice must be personally delivered or sent by registered or certified mail, overnight courier, facsimile, or telecopy. Any such notice will be deemed effective when received (if sent by hand delivery, overnight courier, telecopy, or facsimile) or on that date which is three (3) days after such notice is deposited in the United States mail (if sent by registered or certified mail). The party's addresses for the delivery of all such notices are as follows:

As to the City: Jim Landon, City Manager
160 Cypress Point Pkwy, Suite B-106
Palm Coast, Florida, 32164

As to the Owner: c/o Michael Gilardi
Tuscan Reserve, LLC
105 Due East
New Smyrna Beach, FL 32169

With copies to: Michael D. Chiumento III, Esq.
Chiumento Selis Dwyer, PL
145 City Place, Suite 301
Palm Coast, FL 32164

7. **TERM / EFFECTIVE DATE.** This Second Amendment shall be effective upon approval by the City Council of the City of Palm Coast, Florida and execution of this Second Amendment by all parties.

8. **ENTIRE AGREEMENT; EFFECT ON PRIOR AGREEMENTS.** This Second Amendment constitutes the entire agreement between the parties and supersedes all previous oral discussions, understandings, and agreements of any kind and nature as between the parties relating to the subject matter of this Second Amendment.

IN WITNESS WHEREOF, the Parties have executed this Amended and Restated MPD Agreement on the dates set forth below.

CITY OF PALM COAST, FLORIDA

Jon Netts, Mayor

ATTEST:

Virginia A. Smith, City Clerk

APPROVED AS TO FORM AND LEGALITY:

Catherine Reischmann, Esq.
City Attorney

Signed, sealed and delivered
in the presence of:

TUSCAN RESERVE, LLC,
a Florida limited liability company

Printed Name: _____

By: _____
Michael M. Gilardi, Manager

Printed Name: _____

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Michael M. Gilardi, Manager, TUSCAN RESERVE, LLC, a Florida limited liability company, on behalf of the Company.

Notary Public, State of Florida
Printed Name: _____
My Commission Number:

o:\gilardi, m (3719)\second amendment to pud agreement.docx

G:\docs\Cities\Palm Coast\Agreements\Development Agreements\Tuscan Reserve Second Amendment 5-13-14 LRM.docx