

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT
GLEN ABBEY (F/K/A SWALLOWS) PUD TRACTS A and B
ORDINANCE NO. 11-14 – EXHIBIT “B”**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT GLEN ABBEY (F/K/A SWALLOWS) PUD TRACTS A and B (hereinafter referred to as the “PUD Agreement”) is made and entered into by and between the City of DeBary, a Florida municipal corporation, with an address of 16 Colomba Road, DeBary, Florida 32713 (hereinafter referred to as the “City”) and T.J. O’Neil, Inc., a Florida for-profit corporation, with an address of 204 Glen Abbey Lane, DeBary, Florida 32713 (hereinafter referred to as the “Applicant”).

WHEREAS, the Applicant is the owner of +/- 5.7 acres of land also known as Tracts “A” and “B”, Glen Abbey Club, according to the plat recorded at Plat Book 48, Pages 60-63 inclusive, as more particularly described in the legal description attached as Exhibit “A” to Ordinance No. 11-14 (hereinafter referred to as the “Property”); and

WHEREAS, the development agreement for the Property was amended on June 07, 2006 by Ordinance No. 07-06 to change the use of the Property from a tennis complex to a single family residential townhome development; and

WHEREAS, the development agreement for the Property was subsequently amended on February 02, 2011 by Ordinance No. 01-11 to add a communication tower as an additional permitted use on the Property; and

WHEREAS, the development agreement for the Property was subsequently amended on September 07, 2011 by Ordinance No. 07-11 to allow overhead utility lines and a gravel driveway with a paved apron for a portion of the Property; and

WHEREAS, Ordinance No. 07-11 permitted the temporary installation of overhead power lines to the cell tower on the Property, but required said lines to be placed underground by a date certain, and said power lines have in fact been placed underground; and

WHEREAS, Ordinance No. 07-11 permitted a stabilized access to the cell tower on the Property, and the access requirements for the cell tower are modified in this PUD Agreement and the other requirements of the development agreement and amendments thereto approved by Ordinances Nos. 07-06, No. 01-11 and No. 07-11 are hereby amended and restated by this PUD Agreement and new requirements are established as set forth herein to provide for a single family residential development with a cellular communications tower ; and

WHEREAS, the Applicant has made proper application to the City to amend and restate the development agreement for the Property to change the development plan for that portion of the Property which is designated for residential development from townhomes to a maximum of 15 detached single family homes; and

WHEREAS, nothing in this PUD Agreement is intended to affect any of the provisions of City of DeBary Ordinance No. 01-11 or City of DeBary Ordinance No. 07-11 which allow for a communication tower as well as vehicular and utility access thereto, or to otherwise remove, limit or impair those uses; and

WHEREAS, the City Council for the City of DeBary, Florida finds that this PUD Agreement promotes the public health, safety and welfare and is consistent with its authority under Chapter 166, Florida Statutes, Article VIII, Section 2(b) of the Florida State Constitution, and the City of DeBary Comprehensive Plan.

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

1. **DEVELOPMENT CONCEPT:** The Property shall be developed with a maximum of 15 detached single family homes, in conjunction with the existing or any replacement communication tower, as more particularly provided for in City of DeBary Ordinance No. 01-11 and City of DeBary Ordinance No. 07-11, in accordance with the Master Development Plan dated November 18, 2014 and attached as Exhibit "C" to Ordinance No. 11-14 (hereinafter referred to as the "Master Development Plan").
 - a) The Master Development Plan shall be implemented consistent with the requirements of this PUD Agreement. The Master Development Plan shall be filed and retained for public inspection in the offices of the City of DeBary or its assigns, and shall constitute a supplement to the Official Zoning Map of the City of DeBary.
 - b) Subdivision Approval: After the Master Development Plan has been recorded and prior to the issuance of building permits, an overall development plan, and preliminary and final plats, for the areas of the Property to be subdivided, shall be submitted for review and approval under the Land Development Code of the City of DeBary, Florida.
 - c) The Applicant or his successors shall maintain unified ownership of the Property until after the approval of the Final Plat for areas to be subdivided.
2. **LAND USE AND DENSITY:** The development of the Property shall be consistent with the following limits for land and use density. The location and size of said land use areas are shown on the Master Development Plan.

- a) Land Use Description: Single family residential development consisting of a maximum allowable 15 detached single family residences, along with the existing cellular tower, and related infrastructure, located on Tract C as depicted in the Master Development Plan, together with a way of access and utility connections thereto. In addition, essential utility services, and exempt excavations and landfills associated with the construction of subdivision improvements as provided in the Land Development Code, as amended, are permitted.
- b) Density: Not to exceed 4 single family units per acre.

3. LOT REGULATIONS

- a) Minimum requirement for front yard: 25 ft.
Minimum requirement for rear yard: 20 ft.
Minimum requirement for side yard: 5 ft.
Minimum requirement for street side yard: 5 ft.
Minimum lot size per dwelling unit is to be 6,500 sq. ft.
Minimum floor area: 1,600 sq. ft. of heated area per unit.
- b) Maximum building height: 35 feet.
Maximum building coverage: 50% of lot area.
Maximum impervious area: 4,000 square feet average per lot;
Maximum of 60,000 combined on all 15 single family home lots.
- c) The lots at the entrance to the subdivision shall not be deemed corner lots, and the side yard set-back shall be 5 ft. from the property line. In the case of double frontage lots (ie, lots 12, 13, 14), the west property line shall be designated the front and the east property line shall be designated the rear. Lots 11 and 12 have a 10' side yard setback on the south side of the lots for any accessory structures.
- d) Minimum building separation: 10 feet.
- e) Off-street parking requirement: Each unit shall have a minimum two-car garage.
- f) Unless otherwise provided for in this PUD Agreement, Article 3, Section 301.2 of the City of DeBary Land Development Code, as amended, shall apply to that portion of the Property designated for residential development in the same manner as the R-4 zoning classification.
- g) Tract C, which is permitted to be used as a cellular communication tower and associated infrastructure, shall be platted as an individual lot

which may be conveyed separately from any other property after final plat approval. Tract C will not be subject to the above-referenced lot requirements, but shall be required to be a minimum of 70' x 70' in total area, with no minimum yard size or other requirements. Furthermore, the center of the cellular communication tower on the Property shall be set back from the boundary lines of the Property as follows:

West boundary line	:	+/- 79'
Northeasterly boundary line	:	+/- 79'
Easterly boundary line	:	+/- 90'
Southerly boundary line	:	+/- 780'

Tract C will also comply with the following conditions:

- 1) The tower shall be a flagpole type with a height limited to 150' above ground level.
 - 2) All ground equipment associated with the communication tower shall be located on Tract C and enclosed by an 8' high solid white PVC fence/wall with a locked gate.
 - 3) The communications tower will accommodate up to six (6) collocations by telecommunications carriers. All cabling and antennae will be enclosed within the communication tower. Each telecommunication carrier will have a designated area within Tract C to place their equipment, including, but not limited to, concrete pads, shelters and generators.
 - 4) The communications tower will be equipped with up-lighting compliant with Title 4 of the United States Code (the "United States Flag Code"). The telecommunications tower shall at all times have a current American flag placed upon it in accordance with the United States Flag Code. The flag shall be one that is designed to fly in all types of weather. If the flag becomes faded, tattered, dirty beyond cleaning or otherwise is in such condition that the flag is no longer a fitting emblem for display, then the flag shall be promptly replaced.
 - 5) The communications tower will be designed to have a Fall Zone radius of 65' and, as provided in Section 10 below, shall not be closer than 340' from any home in the development.
4. ENVIRONMENTAL CONSIDERATIONS: The site is permitted to be completely cleared and graded during site development, with the exception of the shrubs and trees adjacent to the Tract C which shall remain. However, effort shall be made to preserve existing non-invasive trees where practicable in the designated tree preservation areas. In order to replace trees on the

- site, each lot shall have two (2) canopy trees, with a minimum caliper of two (2) inches, installed prior to the issuance of a certificate of occupancy for the home on that lot. In addition, the fifteen (15) foot and twenty (20) foot Tree Preservation Areas along the east and west sides of Tract B, as more particularly depicted on the Master Development Plan, will be set aside for tree preservation. These two areas shall contain a minimum of one (1) canopy tree with a minimum caliper of two (2) inches and a minimum height of six (6) feet, per 30 linear feet and one (1) understory/small tree per 70 linear feet. Existing non-invasive trees within these Tree Preservation Areas shall be preserved where possible. The foregoing requirements shall satisfy the tree preservation requirements for the Property. The Applicant will otherwise comply with all other applicable environmental regulations.
5. OPEN SPACE: Tract B, as depicted on the Master Development Plan, shall, in addition to its uses for stormwater retention and tree preservation, shall be otherwise maintained as open space. Tract E, as depicted on the Master Development Plan, shall be maintained as open space.
 6. SEWAGE: Wastewater management will continue to be the responsibility of the County of Volusia and shall meet or exceed all effluent standards as specified by the Department of Environmental Protection (DEP).
 7. WATER: Potable water shall be supplied by the County of Volusia.
 8. ROADWAYS WITHIN THE SITE: All roadways within the site shall be paved and shall be built to City of DeBary Land Development Code standards. However, the 20' access easement to Tract C, as depicted on the Master Development Plan, does not need to be paved. A portion of the said access easement will, however, be surfaced with concrete as more particularly depicted on the Master Development Plan. Applicant is responsible to make all transportation improvements required by the DeBary Land Development Code, as amended. Furthermore, the existing access road and easement providing access to the existing cell tower on the Property may remain in place until construction of the site infrastructure for the development on the Property is completed.
 9. DECORATIVE FENCE: A six (6) foot tall black aluminum fence shall be installed on the south side of lots 11 and 12, and extending so far to the north of southern boundary of Tract E as is deemed prudent by City staff during the platting process, as more particularly depicted on the Master Development Plan. If permission cannot be obtained to install the fence across the utility easement between lot 12 and Tract E, then no fence shall be required in that section. No other fences may be installed on the south boundary of lots 11 and 12 in order to preserve the aesthetics and view from North Pine Meadow Drive. In addition, if the City of DeBary chooses to grant the homeowners association the use of the right-of-way adjacent to said lots, then the

Applicant shall install a viburnum hedge, which will be opaque to a height of four (4) feet within 24 months of planting, and the homeowners association shall maintain said hedge until such time as the City of DeBary elects to terminate the homeowner association's use of the said right of way.

10. CELL TOWER DISTANCE: No home within the development shall be located any closer than 340 feet from the base of the existing or any replacement cellular communications tower located on Tract C, as depicted on the Master Development Plan. This minimum distance requirement applies only to residential structures (ie: homes), and does not apply to sheds or other accessory structures which are not permitted for human habitation.
11. PROPERTY OWNERS ASSOCIATION: A homeowners association shall be formed concurrently with the recording of this Final Plat. Said association shall have the duty and power to enact uniform rules and regulations governing the use and enjoyment of the proposed subdivision. The owner of each lot or unit within the proposed subdivision shall be a member of the association, and shall be liable for, with a lien securing the payment of, annual and special assessments collected by the association. The City of DeBary shall not be responsible for the enforcement of the Articles of Incorporation or by-laws of the association, or maintenance of any private common area.
12. UTILITY SERVICE: All electric, cable and telephone utility lines shall be underground.
13. BINDING EFFECT OF PLANS; RECORDING: The provisions of the foregoing "PUD Agreement," including any and all supplementary orders and resolutions, and all Subdivision Plans shall bind and insure to the benefit of the Applicant or its successor in title or interest. Provisions of this PUD Agreement and all approved plans shall run with the land and shall be administered in a manner consistent with the City of DeBary Land Development Code, as amended. Ordinance No. 11-14 and its exhibits (including this PUD Agreement) and all subsequent amendments thereto shall be recorded in the Official Records of Volusia County, Florida. The Applicant shall pay all filing costs for recording documents.
14. AMENDMENTS: Minor and major amendments to this PUD, PUD Agreement and Master Development Plan shall be reviewed, evaluated and processed in the manner required by the City of DeBary Land Development Code, as may be amended from time to time. The Zoning Enforcement Official shall make the initial determination of whether a requested amendment is a major or minor amendment.
15. EFFECTIVE DATE/EXPIRATION: This PUD Agreement shall be effective upon the adoption of Ordinance No. 11-14. All provisions of this PUD

Agreement and the Master Development Plan shall expire and terminate 720 days following the effective date of this PUD Agreement if a subsequent Development Order for Tracts A and B has not been secured in writing by the Owner or Applicant within said period of time. In the event of expiration and termination, any subsequent proposed development of the Property shall be processed in accordance with the City of DeBary Land Development Code as may be amended from time to time.

Agreed to by the City Council of the City of DeBary, Florida and the Applicant this _____ day of _____, 2014.

ATTEST:

City of DeBary, a Florida municipal corporation

Stacy Tebo, City Clerk

Chris Carson, Interim Mayor

**STATE OF FLORIDA
COUNTY OF VOLUSIA**

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Chris Carson as Mayor of the City of DeBary, and who are personally known to me.

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name:

Commission No: _____

My Commission expires: _____

WITNESSES:

T. J. O'NEIL, INC.

By: _____
Timothy Jay O'Neil, Pres.

The foregoing instrument was acknowledged before me this ___ day of _____ 2014,
by Timothy J. O'Neil, as President of T. J. O'Neil, Inc., who is personally known to me or
who has produced _____ as identification.

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name:

Commission No: _____

My Commission expires: _____

WITNESSES:

CROWN CASTLE TOWERS 06 2, LLC
a foreign limited liability company

By: _____

Printed Name: _____

Title: _____

The foregoing instrument was acknowledged before me this ___ day of _____ 2014,
by _____, as _____ of CROWNE CASTLE TOWERS 06 2,
LLC, who is personally known to me or who has produced _____ as
identification.

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name:

Commission No: _____

My Commission expires: _____

**JOINDER, CONSENT AND SUBORDINATION OF MORTGAGEE TO
 AMENDED AND RESTATED DEVELOPMENT AGREEMENT
 GLEN ABBEY (F/K/A SWALLOWS) PUD –TRACTS A and B**

PNC BANK, National Association, as successor by merger to HARBOR FEDERAL SAVINGS BANK, whose address is P.O. Box 249, Ft. Pierce, Florida 32750 (“Mortgagee”), being the owner and holder of that certain mortgage of T. J. O’NEIL, INC., a Florida corporation, (“Mortgagor”), recorded at Official Records Book 5850, Page 2442-2447, Public Records of Volusia County, Florida which encumbers the real property located in Volusia County, Florida, more fully described in the legal description attached as Exhibit “A” to Ordinance No. 11-14 (herein referred to as the “Mortgagee Lien Documents”), hereby joins in and consents to the Amended and Restated Development Agreement Glen Abbey (f/k/a Swallows) PUD Tracts A and B being entered into between Mortgagor, Crown Castle Towers 06 2, LLC and the City of DeBary and to be recorded in the Public Records of Volusia County, Florida (herein “PUD Development Agreement”), and Mortgagee hereby expressly subordinates its above referenced Mortgage Lien Documents to the PUD Development Agreement. This Joinder, Consent and Subordination does not release any property from the lien and effect of the Mortgagee Lien Documents or any other lien instrument, and does not otherwise amend or alter any Mortgagee Lien Documents.

IN WITNESS WHEREOF, the Mortgagee hereto has executed and delivered this Joinder, Consent and Subordination of Mortgagee as of this _____ day of _____, 2014.

Witnesses:

MORTGAGEE
 PNC BANK, NATIONAL ASSOCIATION

Name Printed: _____

By: _____
 Printed name: _____

Name Printed: _____

Its: _____

STATE OF _____
 COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2014, by _____ as _____ of PNC Bank, N.A., on behalf of said company, who is personally known to me or has produced _____ as identification.

 Signature of Notary Public
 Printed name: _____

Commission expires: _____