

ORDINANCE 21-06

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2
3 AN ORDINANCE OF THE CITY OF MARCO ISLAND,
4 FLORIDA, RELATING TO AND ESTABLISHING A
5 PLANNED UNIT DEVELOPMENT ZONE KNOWN AS THE
6 SAN MARCO PLANNED UNIT DEVELOPMENT ("PUD");
7 MAKING FINDINGS; PROVIDING DEFINITIONS;
8 REZONING PROPERTY DESCRIBED AS TRACT "A" OF A
9 REPLAT OF TRACT "L", MARCO BEACH UNIT SIX,
10 ACCORDING TO THE PLAT THEREOF AS RECORDED IN
11 PLAT BOOK 12, PAGES 55 AND 56, PUBLIC RECORDS
12 OF COLLIER COUNTY, FLORIDA, LOCATED AT OR NEAR
13 40 SOUTH HEATHWOOD DRIVE, MARCO ISLAND,
14 FLORIDA; CONSISTING OF APPROXIMATELY 10.02
15 ACRES AS ESTIMATED BY COLLIER COUNTY
16 PROPERTY APPRAISER; CHANGING THE ZONING
17 CLASSIFICATION OF THE HEREIN DESCRIBED REAL
18 PROPERTY FROM "C-1" TO "PLANNED UNIT
19 DEVELOPMENT (PUD) DISTRICT"; ADOPTING AND
20 APPROVING A PUD DOCUMENT; PROVIDING FOR
21 OWNER/DEVELOPER COORDINATION WITH MARCO
22 ISLAND CIVIC ASSOCIATION; PROVIDING FOR FAILURE
23 TO COMPLY WITH ORDINANCE; PROVIDING FOR NON-
24 CODIFICATION AND INTERPRETATION; PROVIDING FOR
25 SEVERABILITY; PROVIDING FOR NON-
26 ESTABLISHMENT OF A VESTED RIGHT TO PERMITS;
27 AND PROVIDING FOR AN EFFECTIVE DATE.
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29 WHEREAS, this rezoning Ordinance relates to Property described as Tract "A" of
30 a Replat of Tract "L", Marco Beach Unit Six, according to the plat thereof, as recorded in
31 Plat Book 12, Pages 55 and 56, Public Records of Collier County, Florida, consisting of
32 approximately 10.02 acres, as estimated by the Collier County Property Appraiser, and
33 as legally described in Exhibit "A," which is attached hereto and incorporated herein by
34 reference, (the "Property"); and
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36 WHEREAS, the PUD contains three Tracts designated as Tracts A, B, and C, each
37 Tract legally described in Exhibit "A-1," which is attached hereto and incorporated herein
38 by reference; and
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40 WHEREAS, Marco Island Senior Living, LLC, a Florida limited liability company,
41 the contract purchaser of the portion of the Property identified in Exhibit "A-1" as Tract
42 "B," and Marco Island Hospital, Inc., a Florida Not-for-Profit corporation, the legal owner
43 of the Property (together the "Applicants"), have petitioned the Marco Island City Council
44 to change the zoning classification of the Property from Commercial Professional - C-1 to
45 Planned Unit Development ("PUD"); and
46

47 **WHEREAS**, the PUD, known as the "San Marco Planned Unit Development," or
48 San Marco PUD, is located contiguous to and along the western right-of-way of South
49 Heathwood Drive and north of San Marco Road, in Marco Island, Florida; and

50
51 **WHEREAS**, the San Marco PUD is located in the Community Commercial
52 planning district on the Future Land Use Map; and

53
54 **WHEREAS**, the San Marco PUD, as designed will consist of three separate
55 development parcels, known as Tract A, B, and C, as depicted on the PUD Master Plan,
56 which is attached hereto as Exhibit "B," and incorporated herein by reference; and

57
58 **WHEREAS**, the intent of the San Marco PUD is to promote the public health,
59 safety, aesthetics, public interest, and welfare, by providing for an assisted living and
60 memory care facility ("ALF"), with medical and complementary commercial uses, an
61 urgent care/medical office building, and a passive public park; and

62
63 **WHEREAS**, after the notice of public hearing was duly published and notifications
64 of all property owners of record within three hundred feet (300') of the San Marco PUD
65 provided, a public hearing was held before the Planning Board of the City of Marco Island,
66 also sitting as the Local Planning Agency, on December 4, 2020, at which hearing all
67 interested persons were afforded the opportunity to be heard; and

68
69 **WHEREAS**, at the aforementioned Planning Board meeting, the Planning Board
70 of the City of Marco Island recommended approval of the Project with a finding of
71 consistency for the proposed Project with the City of Marco Island Comprehensive Plan
72 (vote: 6-0); and

73
74 **WHEREAS**, the Planning Board of the City of Marco Island, also sitting as the
75 Local Planning Agency, found the San Marco PUD and the rezoning set forth in this
76 Ordinance to be consistent with the Marco Island Comprehensive Plan; and

77
78 **WHEREAS**, Objective 1.1 of the Marco Island Comprehensive Plan states that:

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80 New, revised, or redeveloped uses of land shall be consistent
81 with the designations shown on the Future Land Use Map
82 (FLUM) presented in Exhibit 2.1. The Future Land Use Map
83 and companion Future Land Use designations are hereby
84 adopted as amended (2008) and shall be binding on all
85 development orders approved by the City of Marco Island.;
86 and

87
88 **WHEREAS**, Policy 1.1.1 of the Marco Island Comprehensive Plan states that:

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90 The Marco Island Future Land Use Map (FLUM) incorporates
91 the following Land Use designations, residential densities,
92 and density incentive programs as allocated on Table 2.1.

93
94 Measurement: Incorporation of the above enumerated land
95 use designations and densities on the adopted Future Land
96 Use Map (FLUM); and
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98 **WHEREAS**, the wording of Table 2.1 which lists the Community Commercial Land
99 Use Category on the Future Land Use Map permits Retail, Office Mixed Use, and
100 residential uses of up to twelve (12) units per acre; and
101

102 **WHEREAS**, the PUD will permit not more than 86 Assisted Living Facility ("ALF")
103 units, overall, to be located in Tract B, and shall not to exceed 92 beds, which results in
104 a density of 8.6 units per acre in addition to the other uses permitted in Tracts A and C;
105 and
106

107 **WHEREAS**, all of the density for the ALF has been located pursuant to the PUD
108 on Tract B of the Properties; and
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110 **WHEREAS**, Objective 1.6 of the Marco Island Comprehensive Plan states that:
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112 All future development orders shall be issued only upon a
113 finding that adequate public facilities will be available at the
114 adopted LOS standard concurrent with project development;
115 and
116

117 **WHEREAS**, concurrency requirements consistent with the adopted level of service
118 ("LOS") standards will be satisfied for each of Tracts A, B and C of the San Marco PUD
119 project at the time of the Site Development Plan approval for any development to be
120 carried out on each Tract in the Project in a manner consistent with the City's Land
121 Development Code; and
122

123 **WHEREAS**, the Planning Board of the City of Marco Island, also sitting as the
124 Local Planning Agency, determined that the Project and this Ordinance are consistent,
125 as interpreted, with Objectives 1.1, 1.6, Policy 1.1.1 and Table 2.1(a), and the Future
126 Land Use Map ("FLUM") of the Future Land Use Element of the City of Marco Island
127 Comprehensive Plan requiring all new land uses to be consistent with the Future Land
128 Use Map (FLUM); and
129

130 **WHEREAS**, in compliance with Sections 30-62(c)(3)b.1., 30-63(d)(3), and 30-
131 382(a), Marco Island Code of Ordinances, the Planning Board, also sitting as the Local
132 Planning Agency, has determined that the San Marco PUD Project is consistent with the
133 purpose and development restraints of the Community Commercial Future Land Use
134 District; and
135

136 **WHEREAS**, in compliance with Section 30-62(3)b.2., 3., 7. and 17., and 30-
137 63(d)(1), Marco Island Code of Ordinances, the Planning Board, also sitting as the Local
138 Planning Agency, has found that the area for this Project is suitable with regard to the

139 type and pattern of Development proposed in relation to physical characteristics of the
140 land, surrounding areas, traffic and access, drainage, sewer, water, and other utilities,
141 because the project has already been substantially developed as proposed and
142 requirement have been made in the PUD for additional traffic access, drainage, and other
143 utilities, if need; and
144

145 **WHEREAS**, in compliance with Sections 30-63(d)(2) and 30-382(c), Marco Island
146 Code of Ordinances, the Planning Board, also sitting as the Local Planning Agency, has
147 found that based on the provisions of the Declaration of Covenants, Conditions,
148 Restrictions, and Easements attached as Exhibit "D" (the "Declaration"), that there is
149 adequate evidence of unified control, particularly as it may relate to arrangements or
150 provisions to be made for the continuing operation and maintenance of areas over which
151 easements are to be declared, and facilities that are to be used in common by owners of
152 the respective Tracts, and not to be provided or maintained at public expense; and
153

154 **WHEREAS**, in compliance with Sections 30-63(d)(4) and 30-382, Marco Island
155 Code of Ordinances, the Planning Board, also sitting as the Local Planning Agency, has
156 found that there is internal compatibility of uses given the existing development of the
157 Project, and external compatibility with surrounding use; and
158

159 **WHEREAS**, in compliance with Section 30-63(d)(5), Marco Island Code of
160 Ordinances, the Planning Board, also sitting as the Local Planning Agency, has
161 determined that the addition of the greenspace and plaza on Tract A, the Waterside
162 Pedestrian Walkway on Tract B, and the Public Park on Tract C of the San Marco PUD
163 Master Plan for this Project assists in providing usable open space areas; and
164

165 **WHEREAS**, in compliance with Section 30-63(d)(6), Marco Island Code of
166 Ordinances, the Planning Board, also sitting as the Local Planning Agency, has
167 determined that the timing or sequence of development for the purpose of assuring the
168 adequacy of available improvements and facilities, both public and private, is adequate;
169 and
170

171 **WHEREAS**, in compliance with Section 30-63(d)(7), Marco Island Code of
172 Ordinances, the Planning Board, also sitting as the Local Planning Agency, has found
173 that there will be no adverse impact on surrounding properties, given the nature and
174 location of the Project; and
175

176 **WHEREAS**, in compliance with Section 30-63(d)(8), Marco Island Code of
177 Ordinances, the Planning Board, also sitting as the Local Planning Agency, has found
178 the proposed Project is in conformity with the City's PUD regulations; and
179

180 **WHEREAS**, in compliance with Section 30-62(c)(3)b.4. and 5., Marco Island
181 Code of Ordinances, the Planning Board, also sitting as the Local Planning Agency, has
182 determined that the Project boundaries are logically drawn in relation to existing
183 conditions, and there are adequate changed conditions as demonstrated through the
184 provision of an ALF facility for rezoning to PUD; and

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WHEREAS, in compliance with Section 30-62(c)(3)b.6., Marco Island Code of Ordinances, the Planning Board, also sitting as the Local Planning Agency, has determined that the proposed Project will not adversely affect property values in the adjacent area; and

WHEREAS, in compliance with Section 30-62(c)(3)b.7., Marco Island Code of Ordinances, the Planning Board, also sitting as the Local Planning Agency, has determined that the proposed change to PUD zoning should not contribute to traffic congestion, and that based on a traffic study submitted, the traffic level of service on adjacent roadways will be maintained; and

WHEREAS, in compliance with Section 30-62(c)(3)b.8. and 9., Marco Island Code of Ordinances, the Planning Board, also sitting as the Local Planning Agency, has determined that given that the San Marco PUD should not reduce air and light in adjacent areas and that this Ordinance requires the application of City and South Florida Water Management District regulations to avoid drainage problems; and

WHEREAS, in compliance with Section 30-62(c)(3)b.10. and 11., Marco Island Code of Ordinances, the Planning Board, also sitting as the Local Planning Agency, has found that no evidence has been submitted to suggest that the San Marco PUD will adversely affect property values in the adjacent area or that there will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations; and

WHEREAS, in compliance with Section 30-62(c)(3)b.14., Marco Island Code of Ordinances, the Planning Board, also sitting as the Local Planning Agency, has found that no evidence has been submitted to suggest that the San Marco PUD is out of scale with the needs of the neighborhood or the City, especially, since portions of the Property are already developed; and

WHEREAS, in compliance with Section 30-62(c)(3)b.15., Marco Island Code of Ordinances, the Planning Board, also sitting as the Local Planning Agency, has found that the site is adequate where located given that the San Marco PUD is located near a major commercial intersection of the City (near Bald Eagle Drive and San Marco Road); and

WHEREAS, in compliance with Section 30-62(c)(3)b.16., Marco Island Code of Ordinances, the Planning Board, also sitting as the Local Planning Agency, has determined that based on the physical characteristics of the Property, there will be a lack of site alteration required to make the Property usable for Development as proposed by the PUD Master Plan; and

WHEREAS, the Planning Board, also sitting as the Local Planning Agency, has also found that the San Marco PUD , as proposed, is compatible with adjacent land uses

230 and will include adequate buffering where dissimilar land uses are located adjacent to
231 each other; and.

232
233 **WHEREAS**, after notice was duly published, a public hearing was held before the
234 City Council on February 1, 2021, at which hearing all interested parties were afforded
235 the opportunity to be heard; and

236
237 **WHEREAS**, at the aforementioned public hearing the City Council was presented
238 with the proposed San Marco PUD, and after due consideration and discussion, this
239 Ordinance and the San Marco PUD were approved with conditions,

240
241 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY**
242 **OF MARCO ISLAND, FLORIDA:**

243
244 **SECTION 1. *Recitals; Exhibits.***

245 (a) The foregoing recitals ("WHEREAS" clauses) are hereby ratified and
246 confirmed as being true and correct and are hereby made a specific part of this
247 Ordinance.

248
249 (b) All exhibits attached hereto are by this reference incorporated herein. Said
250 exhibits include: Exhibit A – the legal description for the Property; Exhibit "A-1" – the legal
251 description of Tracts A, B and C; Exhibit "B" - the PUD Master Plan; Exhibit "C" – PUD
252 Document; Exhibit "D" – the Declaration of Covenants, Conditions, Restrictions, and
253 Easements ("Declaration"); Exhibit "E" – the Architectural Renderings; and Exhibit "F" –
254 Park Agreement.

255
256 **SECTION 2. *Definitions.*** As used in this Ordinance and the attached exhibits,
257 the following terms shall be defined with the meanings set forth below, unless the context
258 as set forth in this Ordinance or the appended exhibits, affirmatively indicates to the
259 contrary:

260
261 "City" means the City of Marco Island, a Florida Municipal Corporation.

262
263 "Development" is defined as set forth in Sections 163.3164 and 380.04, Florida
264 Statutes.

265
266 "Development Order" is defined as set forth in Sections 163.3164, Florida Statutes.

267
268 "Development Permit" is defined as set forth in Section 163.3164, Florida Statutes.

269
270 "Effective Date" means the date that this Ordinance goes into effect after its
271 adoption on second reading, as set forth in Section 9. of this Ordinance.

272
273 "LDC" means the City's Land Development Code, Chapter 30, Marco Island Code
274 of Ordinances, as amended or supplemented, from time to time.

275

276 "Master Plan" or "PUD Master Plan" means the two-page scaled drawing depicting
277 the Property, attached hereto as Exhibit "B," entitled "San Marco Planned Unit
278 Development" prepared by RWA Engineering of Naples, FL, under Project No.
279 170073.00.08 dated March, 2020 with last date of revision being September 15, 2020.
280 Sheet 1 of 2 includes the PUD Master Plan, and Sheet 2 of 2 includes the PUD Master
281 Plan Notes.

282
283 "Minimal Consideration" means not more than Ten and 00/100 dollars (\$10.00).

284
285 "NAICS" means the North American Industry Classification System, 1997 edition,
286 which uses constitute descriptions of what economic activity is contemplated by a
287 particular use name.

288
289 "Ordinance" means this Ordinance 21-06, as amended from time to time.

290
291 "Owner/Developer" means Marco Island Hospital, a Florida not-for-profit
292 corporation, Marco Island Senior Living, LLC, a Florida limited liability company, and each
293 of their successors and assigns as owners in fee simple. As used, it generally means
294 each such separate owner in relation to the Tract or portion of the Property owned by it,
295 from time to time. The use and identification of proper names above is solely for
296 convenience and does not limit or regulate who will or may own any particular Tract and
297 does not imply any partnership, joint ownership, liability for any improvements, or
298 maintenance, except as specifically set out herein.

299
300 "Tract" means one of the parcels of land conceptually depicted on the PUD Master
301 Plan for the Project as Tract A, Tract B, or Tract C.

302
303 "Park Property" means the parcel of land depicted on the PUD Master Plan for the
304 Project as Tract C.

305
306 "Property" means Tract "A" of a Replat of Tract "L", Marco Beach Unit Six,
307 according to the plat thereof, as recorded in Plat Book 12, Pages 55 and 56, Public
308 Records of Collier County, Florida, consisting of approximately 10.02 acres, as estimated
309 by the Collier County Property Appraiser, and as more fully described in Exhibit "A" to this
310 Ordinance, which is attached hereto and incorporated herein by reference.

311
312 "Project" means the San Marco PUD, and San Marco PUD Master Plan as
313 described in and approved by this Ordinance.

314
315 "PUD" means Planned Unit Development.

316
317 "PUD Document" means the document attached and incorporated as Exhibit "C"
318 to this Ordinance, comprising the allowed permitted uses in and applicable regulations
319 for the San Marco PUD.

320

321 "San Marco Planned Unit Development" or the "San Marco PUD" means the
322 Project.

323
324 "Site Development Plan" or "SDP" shall be defined as a "site development plan"
325 approved by the City after the Effective Date of this Ordinance, said "site development
326 plan" being described as set forth in Sections 30-671 to 30-680, Marco Island City Code
327 of Ordinances, as amended or supplemented from time to time. Site Development Plans
328 for Tracts A, B, and C shall be processed in a manner consistent with the City's Land
329 Development Code. The term "site development plan" shall include a "site improvement
330 plan" approved by the City after the Effective Date of this Ordinance, said "site
331 improvement plan" being described as set forth in Sections 30-671 to 30-680, Marco
332 Island City Code, as amended or supplemented from time to time.

333
334 **SECTION 3. Rezoning of Property.**

335
336 (a) The Owner/Developer's petition for a zoning classification change of
337 the Property from "C-1" to "Planned Unit Development (PUD) District" in accordance with
338 this Ordinance is approved. The change of zoning shall be noted, together with the
339 number of this Ordinance on the City's Official Zoning Atlas.

340
341 (b) Attached as Exhibit "C" is the PUD Document containing the
342 permitted uses, and the regulations and the terms and conditions concerning such uses
343 permitted within the PUD.

344
345 (c) PUD Master Plan. Attached hereto as Exhibit "B" and incorporated
346 herein by this reference is the PUD Master Plan. The Project shall be developed
347 consistent with the PUD Master Plan.

348
349 (d) Unified Control Of Property.

350
351 (1) Section 30-382 of the LDC requires that "[a]ll land included for
352 purpose of development within the PUD district shall be owned or under the control of
353 the applicant [the Owner/Developer] for such zoning designation, whether that applicant
354 [the Owner/Developer] be an individual, partnership or corporation, or a group of
355 individuals, partnerships or corporations. The applicant [Owner/Developer] shall
356 present competent substantial evidence of the unified control of the entire area within
357 the proposed PUD district . . ." Section 30-382 of the LDC also requires the
358 Owner/Developer to, ". . . provide written agreement, contracts, deed restrictions, or
359 sureties acceptable to the city for completion of the undertaking in accord with the
360 adopted PUD master plan as well as for the continuing operation and maintenance of
361 such areas, functions and facilities that are not to be provided, operated or maintained
362 at general public expense; and bind his successors in title to any commitments made
363 under this division." The City Council hereby determines that, the necessary unified
364 control of San Marco PUD has been established by this Ordinance, the PUD Document
365 and the PUD Master Plan (respectively Exhibits "B" and "C") and the Declaration (Exhibit
366 "D").

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(2) Attached hereto as Exhibit "D" and incorporated by this reference is the Declaration which has been presented by the Applicants to satisfy Section 30-382 of the LDC. The Declaration is hereby approved. With the consent of the Owner/Developer, their successors and assigns, the City Attorney and City Manager are authorized to make administrative and/or process related revisions (as opposed to substantive revisions) that are legally necessary in order to finalize the Declaration in a manner consistent with this Ordinance. The City Manager is authorized to execute the Declaration. Upon execution by all parties, the Declaration shall be recorded in the Public Records of Collier County at the Owner/Developer's expense. To approve and consent to future amendments to the Declaration, where City Council approval is required and the PUD Master Plan remains unchanged, said amendments to the Declaration may be accomplished by the adoption of a Resolution of the City Council.

(3) The Declaration shall be joined in and consented to by any mortgagee or other holder of a security interest of the Property. Prior to recording of the Declaration, the Applicants shall provide to the City Attorney, for review and approval, an attorney's title opinion as to the Property, which shall be addressed and certified to and for reliance by the City in form acceptable to the City Attorney. The Applicants shall pay the cost and fees of the City Attorney's review of such title opinion. The Owner/Developer recognizes that the City Attorney is not representing the Owner/Developer of the San Marco PUD Project or Property.

(4) All mortgagees and holders of security interests in the title to the Property shall be required to consent and join in the Declaration. The Declaration shall be recorded by the Applicants within fifteen (15) days after this Ordinance becomes final and non-appealable. The Applicants shall be responsible for recording the Declaration in the Public Records of Collier County.

(g) Public Safety Emergency Evacuation Plan.

(1) Prior to initial development, or expansion of the number of inpatient beds, in any Ambulatory Health Care (NAICS Group 621), Hospital (NAICS Group 622), or Nursing and Residential Care Facilities (NAICS Group 623) limited to subgroups 6231, Nursing Care, the Owner/Developer shall prepare and have approved a draft public safety emergency evacuation plan (the "Public Safety Emergency Evacuation Plan"). The draft Public Safety Emergency Evacuation Plan shall be submitted to the City not later than the time of Site Development Plan application.

(2) Plan description. The Public Safety Emergency Evacuation Plan for any use that is permitted to operate within the PUD that is required to have a Public Safety Emergency Evacuation Plan as provided herein, will be prepared and submitted for each Tract in accordance with all applicable federal, state and local laws in effect at the time of submittal.

412 (3) The Public Safety Emergency Evacuation Plan for any use
413 permitted to operate within the PUD, that is required to have a Public Safety Emergency
414 Evacuation Plan as provided herein, must be coordinated with the City and any county
415 and state regulatory agencies, including but not limited to the City department assigned
416 growth management regulatory responsibility, fire chief, and police chief and the
417 emergency management director for Collier County, or similar individual. The Public
418 Safety Emergency Evacuation Plan is subject to review and approval by the City as part
419 of the Site Development Plan. The final Public Safety Emergency Evacuation Plan shall
420 be delivered to the City when the license for the facility is approved by the State of
421 Florida. Thereafter, the Public Safety Emergency Evacuation Plan shall be reviewed
422 annually and subject to approval by the City department assigned growth management
423 regulatory responsibility, fire chief, and police chief and the emergency management
424 director for Collier County, or similar individual. The standard for approval of the Public
425 Safety Emergency Evacuation Plan is a determination of whether for the particular
426 facility the requirements of the plan are adequate for the protection, health, and safety
427 of the safety to accomplish the purpose of a public safety plan.

428
429 (h) Attached hereto as Exhibit "E" and incorporated by this reference are
430 the Architectural Renderings, which have been presented by the Applicants. Final
431 Architectural Renderings shall be approved by the City at the time of Site Development
432 Plan, in a manner consistent with the City's LDC, and shall be consistent with the
433 Architectural Renderings made a part of this Ordinance. Architectural Renderings for
434 structures on Tract A shall be approved by Site Development Plan approval at the time
435 of any development of Tract A. Architectural renderings for structures on Tract B shall be
436 approved at the time of Development of Tract B.

437
438 (i) Usable open space requirements.

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440 (1) Usable open space, as provided in Section 30-387 of the LDC,
441 both active and passive, shall be substantially as depicted on the PUD Master Plan. Final
442 approval of usable open space shall be subject to Site Development Plan approval for
443 each of Tracts A, B, and C, in a manner consistent with the City's LDC. Specifically, a
444 waterfront pedestrian walkway (the "Waterfront Pedestrian Walkway") ten feet in width
445 shall be constructed along the entire waterfront of Tract B, and on Tract C, the
446 development of a public park (the "Park Property"). Trees, landscaping, and other
447 improvements shall be constructed in accordance with the specifications set forth in the
448 Park Agreement which is attached hereto as Exhibit "F" (the "Park Agreement").

449
450 (2) Upon completion of the Development of the Waterfront
451 Pedestrian Walkway and the Park Property by the Owner of Tract B, an easement shall
452 be conveyed by the Owner of Tract B to the City permitting public access to the Waterfront
453 Pedestrian Walkway and the Park Property. In addition, the Owner of Tract A shall
454 provide a vehicular/pedestrian access easement across Tract A to provide public access
455 to the Park Property. The Waterfront Pedestrian Walkway Easement and the easement
456 across Tract A are collectively referred to as the "Easements." The Easements provided
457 shall be in a form acceptable to the City Attorney. All necessary Easements for the

458 Waterfront Pedestrian Walkway and the Park Property, and other instruments related to
459 the dedication of the Park Property included in Tract C, and Tract A shall be delivered to
460 the City by not later than the date that the Park Property is conveyed to the City. The
461 Waterfront Pedestrian Walkway Easement shall also provide that the easement shall be
462 subject to continuous maintenance to reasonable City standards at the expense of the
463 Owner of Tract B. The maintenance obligations as to the Park Property are more fully
464 set forth in the Park Agreement.

465
466 (3) Immediately prior to conveyance of the Waterfront Pedestrian
467 Walkway easement, and the Tract A easement, the easement conveyance, and related
468 documents will be submitted to the City Attorney for review. Accompanying the same,
469 the Owner/Developer of Tract B and of Tract A shall give the City an attorney's title opinion
470 and survey as to the easement property which shall be addressed and certified to and for
471 reliance by the City in form acceptable to the City Attorney. The Owner/Developer of
472 Tracts B and Tract A shall pay the costs and fees of the City Attorney's review. In
473 reviewing the easement, the Declaration and associated title work, title opinion, and
474 survey, the Owner/Developer and any property owner of portions of the San Marco PUD
475 recognize that the City Attorney is not representing the Owner/Developer or any property
476 owner of portions of the San Marco PUD Project or Property.

477
478 (4) All title or other impediments to the use of any easement,
479 including the Waterway Pedestrian Walkway easement shall be removed prior to the time
480 of conveyance, or in the case of mortgages and other security interest, the holder thereof
481 shall join and consent to the conveyance of any easement. Any easement to be conveyed
482 to the City pursuant to this Ordinance shall be subject to a covenant by the
483 Owner/Developer in favor of the City, that the Owner/Developer is lawfully seized of said
484 land in fee simple; that the Owner/Developer has good right and lawful authority to sell
485 and convey said easement; that the Owner/Developer does hereby fully warrant the title
486 to the said easement, and will defend the same against the lawful claims of all persons
487 whomsoever; and that said easement is free of all encumbrances, except the
488 encumbrances listed.

489
490 (5) The Owner/Developer of each Tract shall be responsible for
491 and promptly pay for any costs related to the City's acquisition of any easement on said
492 Tract which easement is required by this Ordinance to be conveyed to the City, cost of
493 recording said conveyance and easement documents, in the Public Records of Collier
494 County, payment of any documentary stamp or other tax related to the conveyancing,
495 survey of the easement location, and required title work.

496
497 (j) Stormwater Management and drainage.

498 (1) The Stormwater Management System shall be designed as
499 part of the Site Development Plan, constructed as provided for therein at the cost of the
500 Owner/Developer of the Tract subject to the system. This provision shall be in effect as
501 to Tract A at the time of any redevelopment or expansion of existing Development on
502 Tract A. This provision shall be in effect for any Development on Tracts B and C. The
503 Stormwater Management System, at the sole expense of the Owner/Developer of the

504 Tract or Tracts of land it is intended to serve, shall have capacity to store and pre-treat all
505 stormwater drainage on the Tract of land that it is intended to serve, and the Stormwater
506 Management System shall meet all City, water management district, and Department of
507 Environmental Protection standards, in effect at the time that it is permitted by each
508 respective agency, including but not limited to Chapters 40E-4, 40E-40 and 40E-41,
509 Florida Administrative Code, as revised or substituted from time to time. Detailed on-site
510 and off-site infrastructure design/improvement plans and construction documents shall
511 be submitted in conformance with the design standards of this code and current city
512 ordinances, regulations, policies and procedures which consist of, but are not limited to:
513 a topographical map of the Tract including existing features, such as, watercourses,
514 wetlands, drainage ditches, lakes, marshes; existing contours or representative ground
515 elevations at spot locations and a minimum of 50 feet beyond the Tract line; benchmark
516 locations and elevations (NAVD); and drainage calculations and studies shall be required
517 on a Tract-by-Tract basis as determined by the City's public works director so as to
518 determine adverse impacts to downstream receiving drainage systems and the need to
519 expand and improve on existing downstream drainage facilities. Written technical
520 specifications shall be submitted for all proposed infrastructure and site improvements to
521 be performed. Such specifications shall be signed and sealed by a licensed Florida
522 engineer and certified to and for reliance by the City.

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- (2) Continuous maintenance of the Stormwater Management System shall be required, and at the expense, of the Owner/Developer of a particular Tract, and the City may require the Owner/Developer of said tract to enter into a Stormwater Management System agreement for maintenance by and operation of the system by the Owner/Developer or by the City in the event of failure of the Owner/Developer to do so. The Stormwater Management System agreement will provide easements for ingress/egress by the City, and for the right to lien a particular Tract for non-payment of City expenses in the event of a failure to maintain by the Owner/Developer after reasonable notice from the City. No stormwater runoff shall be permitted to flow from one Tract to another Tract, except as part of the City and water management district approved infrastructure improvement and stormwater management plan required by this condition and as approved by the City.

(k) Utilities.

- (1) All water lines, sewer lines, pumps, laterals, mains, tees, valves, wires, meters, bends, joints, lift stations, and appurtenances thereto (as used in this condition collectively: the "Facilities") for water and wastewater service intended to be operated and maintained by the City, Marco Island Utilities, or another utility shall be conveyed by bill of sale from the Owner of the property on which the infrastructure is located and an easement for said Facilities for Minimal Consideration where such conveyance has not already occurred. All Facilities for water and wastewater service on each Tract which are to be operated, installed, constructed, rehabilitated, removed, or maintained by the City, Marco Island Utilities, or another utility, and which are located or to be located in, over, or under the ground of the Property shall be placed in easement(s) connecting to the public right-of-way. Said easements shall be at least ten (10) feet wide or more, if required by the utility or the City, and shall be conveyed by an instrument

550 subject to review and approval as to form and substance by the City Attorney. An
551 ingress/egress easement(s) over, under, and across portions of the Tract to access the
552 water or wastewater facility easement(s) shall be provided to the City and any utility
553 providing service for Minimal Consideration. Said ingress/egress easement shall be wide
554 enough for a construction motor vehicle to access and easily maneuver in, as determined
555 by the City and utility providing service. Said easements shall only be required if the
556 easements do not exist or do not exist to the extent as described in this Ordinance. At
557 the time of Site Development Plan review, the Owner/Developer shall submit a survey
558 depicting the location, metes and bounds description, and width of all easements currently
559 existing or proposed for conveyance together with copies of the easement documents for
560 City review.

561
562 (2) Accompanying the draft easement documents, the
563 Owner/Developer shall give the City an attorney's title opinion and survey as to the
564 easement property, both of which shall be addressed and certified to and for reliance by
565 the City in form acceptable to the City Attorney. The Owner/Developer shall pay the cost
566 and fees of the City Attorney's review. In reviewing the easement and associated title
567 work, title opinion, and survey, the Owner/Developer and any property owner of portions
568 of the San Marco PUD recognize that the City Attorney is not representing the
569 Owner/Developer or any property owner of portions of the San Marco PUD Project or
570 Property.

571
572 (3) All title or other impediments to the use of any utility or
573 ingress/egress easement shall be removed prior to the time of conveyance, or in the case
574 of mortgages and other security interest, the holder thereof shall join and consent to the
575 conveyance of the easement and the Park Property.

576
577 (4) It is acknowledged that the conditions and requirements in
578 nos. 1, 2 and 3 above are applicable only to Tracts B and C and not Tract A.

579
580 (l) Landscaping. Not later than the time of submittal of the Site
581 Development Plan for each Tract subject to this Ordinance, a landscaping plan in
582 substantial compliance with this Ordinance and the City Code of Ordinances then in effect
583 shall be submitted by the Owner/Developer of said Tract for review and approval by the
584 City which landscaping plan shall be in substantial conformance with as the landscaping
585 plan as depicted in this Ordinance and the then effective requirements of Sections 30-
586 431 through 30-444, Marco Island City Code of Ordinances, as amended or substituted
587 from time to time, and in effect at time of Site Development Plan approval. All landscaping
588 materials and landscape irrigation systems, whether on private or public property, shall
589 be maintained by the Owner/Developer of the Tract with the use of reasonable industry
590 standards in effect at the time of maintenance, and pursuant to the City Code of
591 Ordinances, to properly care for and maintain the vegetation and remove and replace
592 material that becomes diseased, dies or fails to thrive. The responsibility and cost for this
593 maintenance undertaking shall be included as a responsibility of the Owner/Developer of
594 the Tract and, as to Tracts B and C, shall include the Waterfront Pedestrian Walkway and

595 Landscaped Park easement areas within those respective Tracts, as well as the
596 obligations contained in the Park Agreement.

597

598 (m) Threatened/Endangered Species Protection. The Owner/Developer is
599 advised that burrowing owls are found on Marco Island, and have been observed to be
600 nesting on the Property, and are classified as a Florida threatened species by the Florida
601 Fish and Wildlife Conservation Commission ("FWC"). See, Rule 68A-27.003, F.A.C.
602 Section 18-145; of the Marco Island Code of Ordinances provides, in part:

603

604 (1) [N]o active or inactive owl . . . burrow, or nests of any other listed
605 species, may be taken without proper state permits issued by the
606 FWC.

607 (2) If state permit(s) are issued, they shall be posted on site during
608 all phases of the construction.

609 (3) No city building permits will be issued for applicants to take an
610 owl burrow, unless the FWC has issued permits to take the owl
611 burrow(s) during nesting season or permits have been issued to take
612 the owl burrow(s) after nesting season and the construction can
613 commence with a protection zone in place. . . ."

614

615 Prior to submission of a building permit application, the Owner/Developer of each Tract
616 must survey the Subject Property for Burrowing Owls and their burrows. The FWC and
617 FDEP must be contacted for management guidelines and issuance of any required
618 permits to take the owls or their burrows. The Owner/Developer must include the survey
619 and permits with the building permit application and indicate that the appropriate state
620 permit is being pursued for taking, removal, relocation or protection of the listed species
621 onsite. A management plan for a protection zone during construction shall be submitted
622 for review and approval by the Director of Community Affairs for the management of on-
623 site habitat and wildlife, including measures for protection and/or relocation of the species,
624 if permitted. Such plans shall comply with current federal, state and local policies. The
625 City may consider and utilize recommendations and letters of technical assistance of the
626 FDEP, FWC, and recommendations and guidelines of the USFWS, in issuing
627 developmental orders on property containing wildlife species of special status;

628

629 **SECTION 4. MICA Disclosure.** As provided in the City's Code of Ordinances,
630 the Owner/Developer is responsible for obtaining any and all approvals required by the
631 Marco Island Civic Association (MICA) for any improvements related to this Project.

632

633 **SECTION 5. Failure to Obtain Other Permits.** That issuance of this approval by
634 the City does not in any way create any right on the part of the Owner/Developer to obtain
635 a permit from the City, a State of Florida, or federal agency, and does not create any
636 liability on the part of the City for issuance of the approval if the Owner/Developer fails to
637 obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency
638 or undertakes actions that result in the violation of state or federal law. All applicable
639 local, state, and federal permits must be obtained before commencement of the

640 Development. This condition is included pursuant to Section 166.033, Florida Statutes,
641 as amended.

642

643 **SECTION 6. Failure to Adhere to Ordinance.**

644

645 (a) That failure to adhere to the terms and conditions contained in this
646 Ordinance shall be considered a violation of this Ordinance and the City Code, and
647 persons found violating this Ordinance shall be subject to the penalties prescribed by the
648 City Code of Ordinances.

649

650 (b) Should the Owner/Developer of any particular Tract fail to comply
651 with the provisions set forth in this Ordinance, the City may, but is not obligated to,
652 withhold building permits and other Development Orders and Certificates of Occupancy,
653 or Certificates of Completion, (all whether temporary or permanent in nature) for such
654 Tract until such time as the particular Tract is brought into compliance.

655

656 (c) Any violation of this Ordinance, or attached exhibits to this
657 Ordinance, is deemed to be a violation of the City Code of the City of Marco Island,
658 Florida. The failure by the City to enforce a violation shall not waive said violation.
659 Violations of this Ordinance may be prosecuted: (1) as a code enforcement violation
660 pursuant to Sections 14-31 *et seq.* or 14-71 *et seq.*, Marco Island Code of Ordinances,
661 as amended from time to time; (2) as a code enforcement violation as may be authorized
662 from time to time by Chapter 162, Florida Statutes, as amended from time to time; (3)
663 pursuant to Section 1-14, Marco Island Code of Ordinances, as amended from time to
664 time; (4) by any legal or equitable action in a court of law.

665

666 **SECTION 7. Codification; Interpretation.**

667

668 (a) This Ordinance shall not be codified in the City Code of Ordinances
669 of Marco Island, Florida. However, the rezoning of the Property to PUD zoning, the
670 ordinance number of this Ordinance, and the date of final adoption, shall be entered and
671 noted on the Official Zoning Atlas, as described by Ordinance 02-04 of the City of Marco
672 Island, Florida, and as such Official Zoning Atlas is described in the City Code.

673

674 (b) In the event there is an ambiguity or conflict between the terms and
675 conditions set forth in this Ordinance and its exhibits, the terms and conditions set forth
676 in the Exhibits shall prevail. In the event there is an ambiguity or conflict between the
677 written word terms and conditions set forth herein and the terms and conditions in the
678 PUD Master Plan, or the Architectural Renderings, whether written or depicted as a
679 drawing, exemplar, artist's conception or photograph, the terms and conditions set forth
680 in the PUD Master Plan shall prevail. The Owner/Developer of a particular Tract shall be
681 required to resolve any inconsistencies or ambiguities to the satisfaction of the City during
682 the Site Development Plan approval process for that Tract.

683

684 (c) In the event of a conflict between the Land Development Regulations
685 contained in this Ordinance or its Exhibits and code provisions of general application in

686 the Marco Island City Code, the provisions of this Ordinance and its attachments shall
687 prevail as to this Project. Where this Ordinance fails to provide Developmental standards,
688 then the provisions of the most similar district in the Land Development Code shall apply,
689 as determined by the City.

690
691 (d) Notwithstanding sub-section (c) above, unless modified, waived or
692 excepted by this Ordinance, the provisions of the Comprehensive Plan and the Marco
693 Island City Code, shall remain in full force and effect with respect to the Development of
694 the Property.

695
696 **SECTION 8. Severability.** In the event that any term, provision, clause, sentence
697 or section of this Ordinance shall be held by a court of competent jurisdiction to be partially
698 or wholly unenforceable or invalid for any reason whatsoever, any such invalidity,
699 illegality, or unenforceability shall not affect any of the other or remaining terms,
700 provisions, clauses, sentences, or sections of this Ordinance, and this Ordinance shall be
701 read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause,
702 sentence, or section did not exist.

703
704 **SECTION 9. Effective Date.** This Ordinance shall become effective upon
705 adoption.

706
707 Passed in open and regular session through roll call vote by the City Council of the City
708 of Marco Island, Florida, on First Reading the 1st day of February 2021, and adopted on
709 Second Reading the 5th day of April 2021.

710
711
712 **ATTEST:**

713 
714 _____
715 Casey Lucius, Acting City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

Jared Grifoni, Chairman

716
717
718 Approved as to form and legal sufficiency:

719 
720 _____
721 Alan L. Gabriel, City Attorney

EXHIBIT A

LEGAL DESCRIPTION – OVERALL PROPERTY

Tract "A" of a Replat of Tract "L", Marco Beach Unit Six, as per plat thereof recorded in Plat Book 12, Pages 55 and 56, Public Records of Collier County, Florida.

**Exhibit
"A-1"**

Tract A

A TRACT OR PARCEL OF LAND LYING IN TRACT "A" OF A REPLAT OF TRACT "L", MARCO BEACH UNIT SIX, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 12, PAGES 55 AND 56, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, SAID TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT "A" THENCE S.89°36'17"E. ON THE SOUTH LINE OF SAID TRACT "A" FOR 331.81 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;

THENCE N.00°23'43"E., DEPARTING SAID SOUTH LINE FOR 215.86 FEET;

THENCE N.02°49'45"E., FOR 173.05 FEET;

THENCE N.00°37'09"E., FOR 247.95 FEET TO AN INTERSECTION WITH THE NORTH LINE OF SAID TRACT "A";

THENCE S.89°36'17"E., ON SAID NORTH LINE FOR 344.63 FEET TO THE NORTHEAST CORNER OF SAID TRACT "A" AND A POINT ON A CURVE;

THENCE THE FOLLOWING BEARINGS AND DISTANCES ON THE EAST AND SOUTH SIDE OF SAID TRACT "A":

SOUTHERLY 21.95 FEET ALONG THE ARC OF A NON-TANGENTIAL CURVE TO THE RIGHT HAVING A RADIUS OF 950.00 FEET THROUGH A CENTRAL ANGLE OF 01°19'26" AND BEING SUBTENDED BY A CHORD WHICH BEARS S.00°15'07"E. FOR 21.95 FEET;

S.00°23'43"W., FOR 564.75 FEET TO A POINT OF CURVATURE;

SOUTHWESTERLY 78.54 FEET ALONG THE ARC OF A TANGENTIAL CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET THROUGH A CENTRAL ANGLE OF 90°00'00" AND BEING SUBTENDED BY A CHORD WHICH BEARS S.45°23'43"W. FOR 70.71 FEET;

N.89°36'17"W., FOR 303.19 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;

CONTAINING 221,761 SQUARE FEET OR 5.09 ACRES, MORE OR LESS.

Tract B

A TRACT OR PARCEL OF LAND LYING IN TRACT "A" OF A REPLAT OF TRACT "L", MARCO BEACH UNIT SIX, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 12, PAGES 55 AND 56, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, SAID TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT "A" THENCE N.00°23'43"E., ON THE WEST LINE OF SAID TRACT A, FOR 396.70 FEET;
THENCE S.89°36'17"E., FOR 339.19 FEET;
THENCE S.00°37'09"W., FOR 7.95 FEET;
THENCE S.02°49'45"W., FOR 173.05 FEET;
THENCE S.00°23'43"W., FOR 215.86 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT "A";
THENCE N.89°36'17"W., ON SAID SOUTH LINE, FOR 331.81 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;

CONTAINING 132,324 SQUARE FEET OR 3.04 ACRES, MORE OR LESS

Tract C

A TRACT OR PARCEL OF LAND LYING IN TRACT "A" OF A REPLAT OF TRACT "L", MARCO BEACH UNIT SIX, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 12, PAGES 55 AND 56, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, SAID TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT "A", THENCE N.00°23'43"E., ON THE WEST LINE OF SAID TRACT "A" FOR 396.70 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;
THENCE CONTINUE N.00°23'43"E., ON THE WEST LINE OF SAID TRACT "A" FOR 240.00 FEET TO THE NORTHWEST CORNER OF SAID TRACT "A";
THENCE S.89°36'17"E., ON THE NORTH LINE OF SAID TRACT "A" FOR 340.13 FEET;
THENCE S.00°37'09"W., FOR 240.00 FEET;
THENCE N.89°36'17"W., FOR 339.19 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;

CONTAINING 81,518 SQUARE FEET OR 1.87 ACRES, MORE OR LESS.

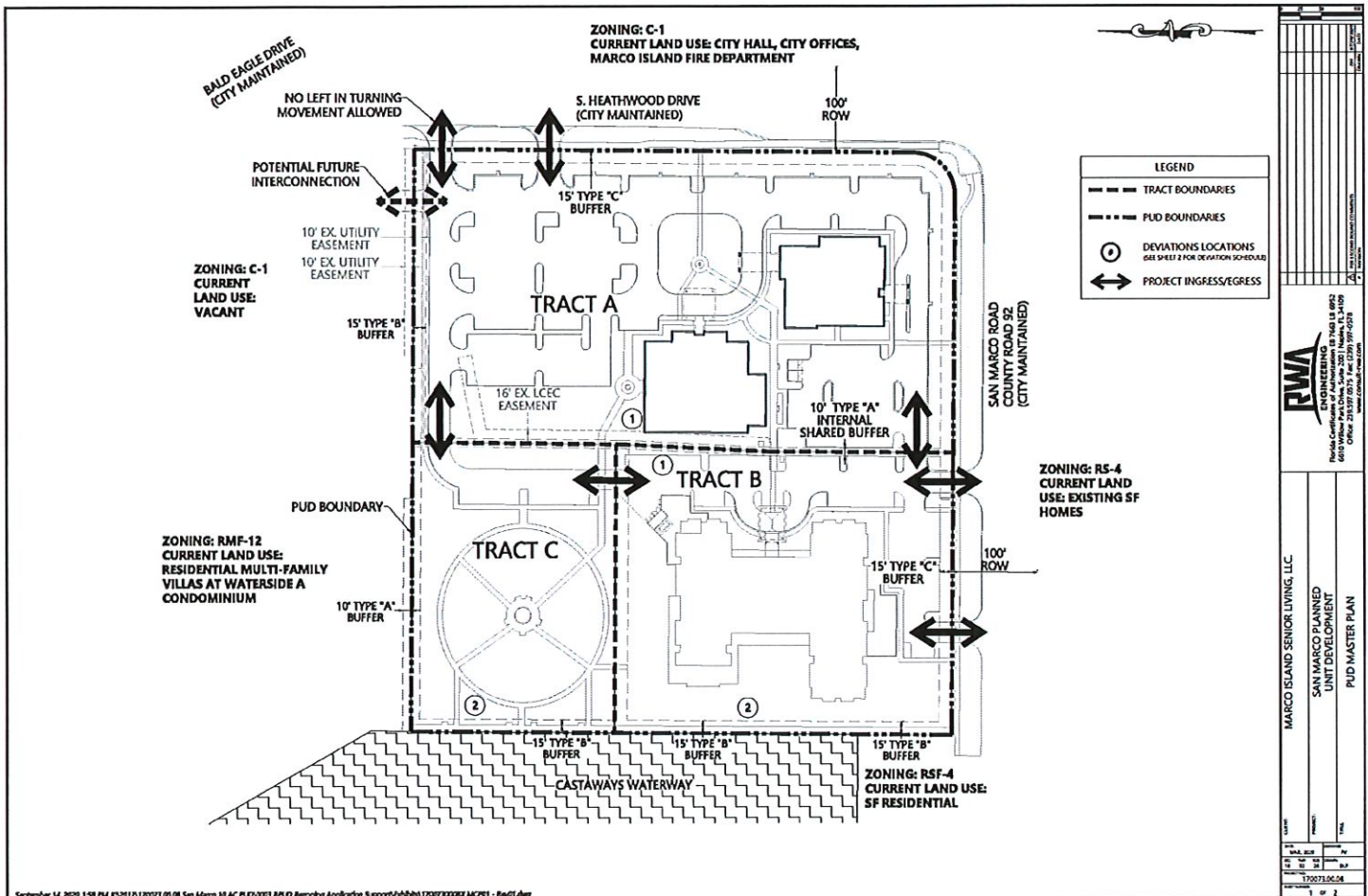


Exhibit "B"

EXHIBIT "C"

SAN MARCO PUD ORDINANCE

ORDINANCE NO. 21- 06

The following conditions shall govern the development within the San Marco PUD

(1) Regulations for Development of the San Marco Planned Unit Development (PUD) shall be in accordance with this Ordinance and applicable sections of the LDC and Comprehensive Plan in effect at the time of issuance of any Development Order to which said regulations relate. Where this Ordinance does not provide Development standards, then the provisions of the specific sections of the LDC that are otherwise applicable shall govern.

(2) Maximum Density and Intensity.

(A) Tract A. A maximum of 50,050 square feet of medical and complementary commercial and office uses shall be allowed within the PUD on Tract A, as shown on the PUD Master Plan.

(B) Tract B shall be limited to Assisted Living and Memory Care facility as more fully described as follows:

1. The ALF facility shall be considered to be a residential facility, consistent with Florida law. The ALF facility is located in the Community Commercial Future Land Use District as shown on the Future Land Use Map of the Comprehensive Plan and defined in Table 2.1 of the Future Land Use Element.
2. To be located on Tract B, as shown on the PUD Master Plan. A maximum of 86 Assisted Living Facility (ALF) units, not to exceed 92 beds, shall be allowed within the PUD.
3. The ALF beds shall be restricted to Tract B as defined on the PUD Master Plan.

(C) Tract C shall be limited to Public Park uses or required usable open space as shown on the PUD master plan, and consistent with the Park Agreement which is Exhibit "F" to the Ordinance.

(3) Uses. The following uses, as identified with a number from the North American Industry Classification System (1997), or as otherwise provided for within this section, are permitted as of right, or as uses accessory to permitted uses within this PUD.

(A) Permitted Principal Uses:

EXHIBIT "C"

SAN MARCO PUD ORDINANCE

ORDINANCE NO. 21- 06

1. C-1 Uses, as the C-1 zoning district list of permitted uses (not including conditional uses) as amended from time to time.
 2. Ambulatory Health Care (NAICS Group 621) (Tract A only).
 3. Hospitals (NAICS Group 622), excluding Psychiatric and Substance Abuse Hospitals (Tract A only)
 4. Nursing and Residential Care Facilities (NAICS Group 623) limited to subgroups 6231, Nursing Care Facilities, and 6233 Community Care Facilities for the Elderly (Tract B only).
- (B) Conditional Uses. None.
- (C) Uses Accessory to Permitted Principal Uses:
1. Uses and structures that are accessory and incidental to the customary principal uses permitted above.
 2. Any other accessory use which is comparable in nature with the foregoing list of permitted accessory uses, as determined by the City Council.
- (4) List of Permitted Deviations from the LDC:
- (A) Deviation #1: Deviation from LDC Sec. 30-441 Table 2, which would require dual buffers for abutting internal tracts, to allow a ten-foot, Type-A, shared buffer internal to the San Marco PUD at location identified on the PUD Master Plan.
 - (B) Deviation #2: Deviation from LDC Sec. 30-441(b) Table 2 which requires a 15' Type "B" buffer between multi-family residential (category that most closely resembles the proposed ALF use) and single-family residential (across water basin) to allow the hedge or hedge/berm combination to be maintained at 3' rather than 6', only where the subject property abuts the water basin.

EXHIBIT "C"

SAN MARCO PUD ORDINANCE

ORDINANCE NO. 21- 06

Development Standards

San Marco Planned Unit Development

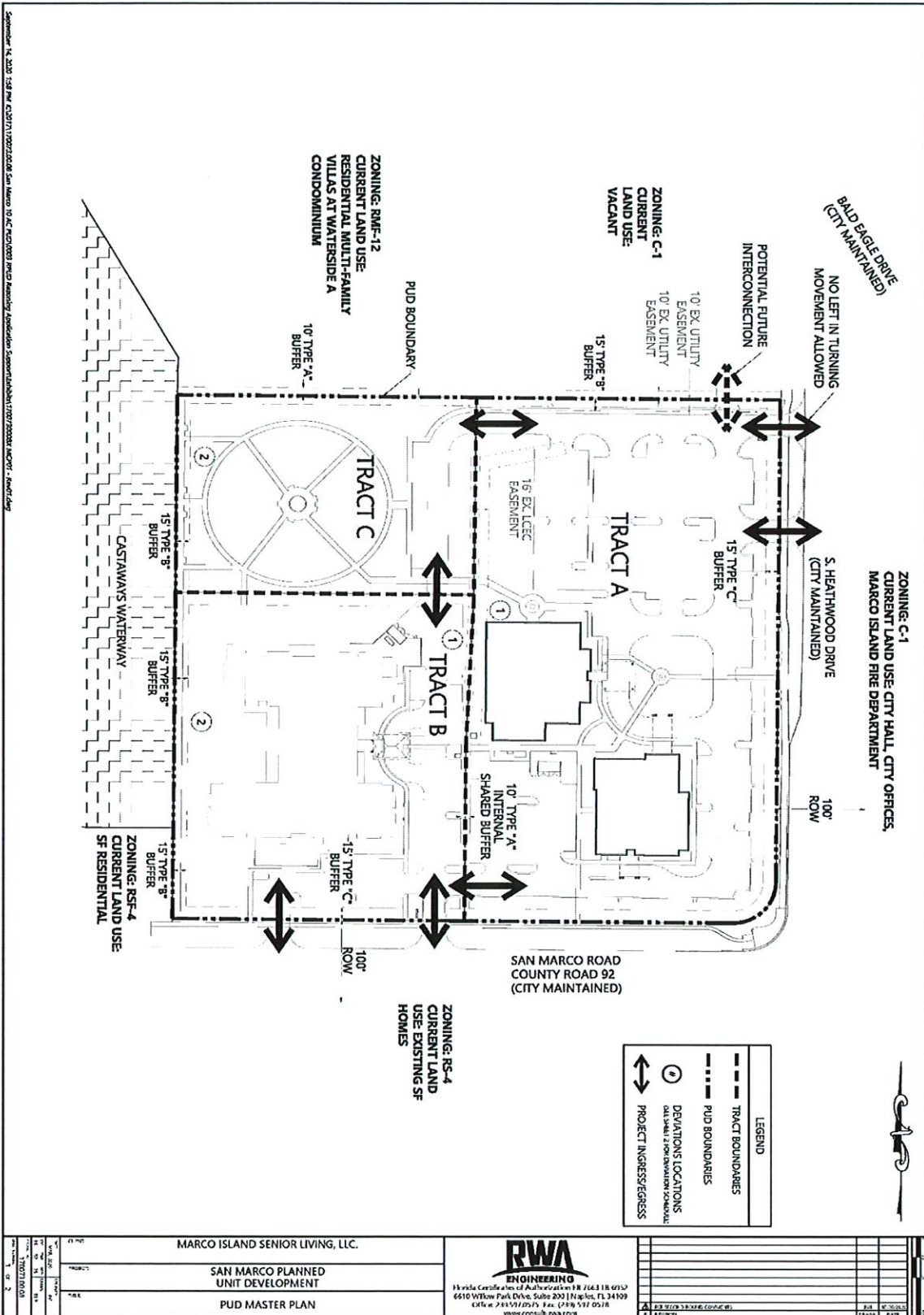
Principal Structures	
Minimum Lot Area	20,000 square feet
Minimum Unit Size	350 square feet
Minimum Lot Width	100 feet
Minimum Yard Requirements *	
Front Yard	25 feet
Side Yard	15 feet
Rear Yard/Water Basin	15 feet
Minimum yard requirement from any residentially zoned or used property	25 feet
Minimum yard from ALF building to northern boundary	275 feet
Maximum height of structures**	35' 10"
Minimum floor area of principal structure	1,000 square per building
Minimum building separation	½ the sum of the building heights
Accessory Structures	
Minimum distance from perimeter boundary	10'
Minimum separation from principal structure	10'

* Minimum yard requirements measured from structure to PUD perimeter boundary. Structures internal to the PUD shall meet the minimum building separation requirement.

** Zoning height as defined by LDC Section 30-10- Definitions

EXHIBIT "C"

SAN MARCO PUD ORDINANCE



SAN MARCO PUD
EXHIBIT "D"

Document Prepared By
and Return To:
Valerie Stoker Litschgi, Esq.
Barnett, Kirkwood, Koche, Long &
Foster
601 Bayshore Boulevard, Suite
700
Tampa, Florida 33606

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("Declaration") is made on _____, 2021, by Marco Island Hospital, Inc., a not-for-profit Florida corporation ("MIH").

Recitals

WHEREAS, MIH is the owner of certain properties in the City of Marco Island, County of Collier, State of Florida as listed and described as Tract A, Tract B and Tract C on Exhibit "A", which is attached hereto and by this referenced incorporated herein (the "Properties"); and

WHEREAS, MIH desires to formalize various covenants, conditions, and restrictions to ensure the protection of the value and desirability of the Properties; and

WHEREAS, MIH covenants and warrants unto the City of Marco Island (the "City") that MIH as of the date of execution hereof, is an active Florida corporation incorporated and in good standing with the office of the State of Florida, Secretary of State;

NOW, THEREFORE, MIH hereby declares that the Properties shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Properties, and which shall run with the Properties and be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner.

1. Recitals. Each and all of the recitals ("WHEREAS" clauses) are hereby incorporated herein and declared to be true and correct.

2. Definitions. The following words when used in this Declaration (unless the context shall prohibit) have the following meanings:

- a. "City" means and refers to the City of Marco Island, a Florida Municipal Corporation.

- b. **"Declaration"** means and refers to this instrument, as amended from time to time.
- c. **"Development"** is defined as set forth in Sections 163.3164 or 380.04, Florida Statutes.
- d. **"MIH"** means Marco Island Hospital, Inc., a Florida Not-for-Profit Corporation, and its successors and assigns.
- e. **"Owner"** means and refers to MIH, and the record owner, whether one or more persons or entities from time to time as the case may be of fee simple title to any Tract that is a part of the Properties, or to a portion of any Tract which is a part of the Properties.
- f. **"Properties"** means and refers to certain real property in the City of Marco Island, Florida, known as Tract A, Tract B, and Tract C as described more completely in Exhibit "A," and as shown on the SM-PUD (as hereinafter defined).
- g. **"PUD"** means Planned Unit Development
- h. **"SM-PUD"** means and refers to the San Marco Planned Unit Development, as approved by City Ordinance No. ____, as amended from time to time.
- i. **"Tract"** means and refers to Tract A, Tract B, or Tract C, each of which are described in Exhibit "A".

3. Unified Control

- a. Development of the Properties shall proceed strictly in accordance with the SM-PUD, the regulations and development standards as set forth in this document, the City's Land Development Code, the City's Comprehensive Plan, and all applicable state, county, and local laws, regulations, and rules as may be amended from time to time.
- b. Each Owner shall be responsible for meeting and complying with all applicable Development requirements on its respective portion of the Properties.

4. Ownership of the Properties

MIH hereby intends to subject the Properties to the conditions and restrictions of this Declaration understanding that the City intends to permit Development of the Properties in accordance with the terms of the SM-PUD Ordinance, and this Declaration.

5. Access Easement and Public Easement

a. To the extent necessary, and consistent with the requirements of the SM-PUD Ordinance, appropriate easements will be, granted over the Tracts. MIH declares that such easements are private and that maintenance and upkeep shall be a private responsibility without recourse to the City or the public.

b. There shall be an easement in favor of the public along the waterfront, as part of Tract B, for a pedestrian walkway, as generally depicted in Exhibit "B", which is attached hereto and by this referenced incorporated herein (the "Public Waterway Easement"). There shall also be a vehicular/pedestrian access easement across Tract A for access to the Park Parcel, as provided in the SM-PUD Ordinance and the Park Agreement. The Public Waterway Easement shall provide for use by the general public, and for ingress to and egress from said walkway over a portion of Tract B by the general public. The Public Waterway Easement walkway shall be located adjacent to the western property line of Tract B. When the earlier of the following events occurs: (a) within thirty (30) days after a Certificate of Occupancy is issued for the principal structure on Tract B, or (b) thirty-six (36) months after the effective date of the Park Agreement (as hereinafter defined), the aforementioned walkway, together with accessory landscaping and any signage, over the waterfront easement shall be installed, constructed, and completed, and the easement shall be conveyed to the City. The walkway and amenities will be constructed and continuously and promptly maintained by the Owner of Tract B in accordance with the terms of the Park Agreement, consistent with the Code of Ordinances of Marco Island and the SM-PUD. The walkway and amenities will at all times be free of graffiti, peeling or faded paint, or dead landscaping. All maintenance shall be at the cost and expense of the Owner of Tract B in accordance with the terms of the Park Agreement. The Owner(s) of Tract A and C shall have no maintenance or other obligation with respect to the Public Waterway Easement.

6. PUD Infrastructure/Transportation and Easement

a. Each Owner shall build or provide for the construction of roadway connections upon its respective Tract, as well as water, sewer, and reuse waterlines to City specifications, and upon acceptance by the City, the lines shall be dedicated to the City together with all easements and licenses necessary for the City to maintain and operate the utility systems located on the Properties.

b. Stormwater drainage shall be constructed for the development within the Properties, and each Owner shall handle its own stormwater drainage on its Tract. The stormwater retention facilities shall be maintained at a level consistent with the standards and permit conditions of the South Florida Water Management District.

c. Construction of all PUD Infrastructure, including all transportation and stormwater improvements shall be done in a manner consistent with the SM-PUD Ordinance, and any site development plans approved for the Tracts included within the PUD.

7. Residential and Commercial Density Allocation

a. The residential density for all of the Properties shall be allocated entirely to Tract B in accordance with the SM-PUD.

b. The commercial intensity for the Properties shall be allocated entirely to Tract A in accordance with the SM-PUD.

8. Landscaping, Site Improvements, and Usable Open Space Standards

a. Landscaping, fencing, and landscape buffers shall be as provided pursuant to the SM-

PUD Ordinance. Any landscaping, fencing, or landscape buffer details or requirements not specified in the SM-PUD shall comply with the City's Land Development Code, as may be amended from time to time.

b. All sidewalks, landscaping, and other site improvements shall be maintained by the respective Owners.

c. There are no jointly owned structures or architectural improvements.

9. Parking Standards

a. Parking shall be as provided in the SM-PUD Ordinance. Any parking details or requirements not specified in the SM-PUD shall comply with the City's Land Development Code, as may be amended from time to time.

b. There shall be no shared parking. No Tract, or portion thereof, shall provide to, or share parking with, a Tract owned by a different Owner. Each Owner and Tract, or portion thereof, shall meet the City's parking requirements for their respective uses.

10. Duration. This Declaration and the provisions hereof shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the City or any Owner of the Properties subject to this Declaration, for a term of thirty (30) years from the date this Declaration is recorded. Pursuant to the requirements hereof, all Owners before the termination of this Declaration are required to join in the filing a notice to preserve and protect the effectiveness of this Declaration as provided by Florida Statutes. The City is appointed as an attorney-in-fact with the ability and right, but not the obligation, to do this.

11. Notice. Any notice to be sent to an Owner, or the City under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postage prepaid, first class U.S. certified mail, return receipt requested, to the last known address of the said Owner as most currently shown on the ad valorem tax rolls of Collier County, or in the case of the City to the attention of the City Manager at the City.

12. Enforcement. Enforcement of this Declaration may be by an Owner or the City, and may be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision hereof, either to restrain a violation or to recover damages. Failure to enforce any covenant or provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City shall not be obligated or bound to enforce any of the covenants or provisions herein or be liable to or for any person or persons for non-enforcement.

13. Amendment. The terms and provisions of this Declaration may be amended at any time and from time to time upon the execution and recordation in the Public Records of Collier County, Florida, of an instrument executed by all Owners of the Properties. In the event that an amendment affects only one Tract, said amendment may be at any time made from time to time upon the execution and recordation in the Public Records of Collier County, Florida, of an instrument executed the Owner of the affected Tract.

14. Covenants Running With The Land. Anything to the contrary herein notwithstanding and without limiting the generality (and subject to the limitations) hereof, it is the intention of MIH as the current sole Owner of the Properties that this Declaration shall constitute covenants running with the land and with title to the Properties, or as an equitable servitude upon the land, as the case may be.

15. Insurance and Indemnification of the City by the Owner of Tract B.

Prior to the conveyance of the Public Waterway Easement over a portion of Tract B to the City, as provided for in this Declaration, and at all times after the conveyance to the City of said easement, the Owner of Tract B will at its sole cost and expense procure and at all times maintain commercial general liability insurance as required by the Park Agreement, which is an exhibit to the SM-PUD Ordinance (the "Park Agreement"), and which will be more particularly described in the instrument conveying the Public Waterway Easement to the City.

16. Miscellaneous. Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment, court order, or administrative hearing or order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

The parties have executed this Declaration as of the date first written above.

Witnesses:

Print Name: _____

Print Name: _____

MIH:

Marco Island Hospital, Inc., a Florida Not-for-Profit Corporation

By: _____

Name: _____

Its: _____

Dated: _____

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of _____, 20__, by _____, as _____ of Marco Island Hospital, Inc., a Florida corporation, on behalf of the corporation, who is personally known to me or who has produced _____ as identification.

(Signature of Notary Public –State of _____)

Print, type or Stamp Commissioned Name of Notary Public)

Notary Seal:

Exhibit A

Tract A

A TRACT OR PARCEL OF LAND LYING IN TRACT "A" OF A REPLAT OF TRACT "L", MARCO BEACH UNIT SIX, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 12, PAGES 55 AND 56, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, SAID TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT "A" THENCE S.89°36'17"E. ON THE SOUTH LINE OF SAID TRACT "A" FOR 331.81 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;

THENCE N.00°23'43"E., DEPARTING SAID SOUTH LINE FOR 215.86 FEET;

THENCE N.02°49'45"E., FOR 173.05 FEET;

THENCE N.00°37'09"E., FOR 247.95 FEET TO AN INTERSECTION WITH THE NORTH LINE OF SAID TRACT "A";

THENCE S.89°36'17"E., ON SAID NORTH LINE FOR 344.63 FEET TO THE NORTHEAST CORNER OF SAID TRACT "A" AND A POINT ON A CURVE;

THENCE THE FOLLOWING BEARINGS AND DISTANCES ON THE EAST AND SOUTH SIDE OF SAID TRACT "A":

SOUTHERLY 21.95 FEET ALONG THE ARC OF A NON-TANGENTIAL CURVE TO THE RIGHT HAVING A RADIUS OF 950.00 FEET THROUGH A CENTRAL ANGLE OF 01°19'26" AND BEING SUBTENDED BY A CHORD WHICH BEARS S.00°15'07"E. FOR 21.95 FEET;

S.00°23'43"W., FOR 564.75 FEET TO A POINT OF CURVATURE;

SOUTHWESTERLY 78.54 FEET ALONG THE ARC OF A TANGENTIAL CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET THROUGH A CENTRAL ANGLE OF 90°00'00" AND BEING SUBTENDED BY A CHORD WHICH BEARS S.45°23'43"W. FOR 70.71 FEET;

N.89°36'17"W., FOR 303.19 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;

CONTAINING 221,761 SQUARE FEET OR 5.09 ACRES, MORE OR LESS.

Tract B

A TRACT OR PARCEL OF LAND LYING IN TRACT "A" OF A REPLAT OF TRACT "L", MARCO BEACH UNIT SIX, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 12, PAGES 55 AND 56, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, SAID TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT "A" THENCE N.00°23'43"E., ON THE WEST LINE OF SAID TRACT A, FOR 396.70 FEET;
THENCE S.89°36'17"E., FOR 339.19 FEET;
THENCE S.00°37'09"W., FOR 7.95 FEET;
THENCE S.02°49'45"W., FOR 173.05 FEET;
THENCE S.00°23'43"W., FOR 215.86 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT "A";
THENCE N.89°36'17"W., ON SAID SOUTH LINE, FOR 331.81 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;

CONTAINING 132,324 SQUARE FEET OR 3.04 ACRES, MORE OR LESS

Tract C

A TRACT OR PARCEL OF LAND LYING IN TRACT "A" OF A REPLAT OF TRACT "L", MARCO BEACH UNIT SIX, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 12, PAGES 55 AND 56, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, SAID TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT "A", THENCE N.00°23'43"E., ON THE WEST LINE OF SAID TRACT "A" FOR 396.70 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;
THENCE CONTINUE N.00°23'43"E., ON THE WEST LINE OF SAID TRACT "A" FOR 240.00 FEET TO THE NORTHWEST CORNER OF SAID TRACT "A";
THENCE S.89°36'17"E., ON THE NORTH LINE OF SAID TRACT "A" FOR 340.13 FEET;
THENCE S.00°37'09"W., FOR 240.00 FEET;
THENCE N.89°36'17"W., FOR 339.19 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;

CONTAINING 81,518 SQUARE FEET OR 1.87 ACRES, MORE OR LESS.

Exhibit B

–See attached Public Access Easement along the waterfront, adjacent to Tract B, for a pedestrian walkway (To be provided at SDP)

Exhibit C

[insert approved SM-PUD Master Plan]



Exhibit "E"



Exhibit "E"





**SAN MARCO PUD
ORDINANCE
EXHIBIT “F”**

(space above this line for recording data)

PARK AGREEMENT

THIS PARK AGREEMENT (this “**Agreement**”) is made this _____ day of _____, 2021 (the “**Effective Date**”), by and between **MARCO ISLAND SENIOR LIVING, LLC**, a Florida limited liability company (“**Developer**”), having its principal place of business at 1228 E. 7th Avenue, 4th Floor, Tampa, Florida 33605, **KENNETH D. GOODMAN, TRUSTEE OF THE MARCO PARK TRUST DATED FEBRUARY 10, 2020** (“**Donor**”), having its principal place of business at 3838 Tamiami Trail North, Suite 300, Naples, Florida 34103, and the **CITY OF MARCO ISLAND**, a Florida municipal corporation (“**City**”), having its principal place of business at 50 Bald Eagle Drive, Marco Island, Florida 34145.

WHEREAS, the Developer currently owns or is under contract to purchase that certain property situated, lying and being in Collier County, Florida, being developed as a senior housing facility (the “**Project**”), consisting of approximately 3.04 acres and more particularly described in Exhibit “A” attached hereto (“**ALF Parcel**”); and

WHEREAS, the Donor currently owns or is under contract to purchase that certain property in Collier County, Florida adjacent the the ALF Parcel, consisting of approximately 1.87 acres and more particularly described in Exhibit “B” attached hereto (“**Park Parcel**”); and

WHEREAS, on April 5, 2021, the Marco Island City Council (“**City Council**”) adopted Ordinance Number 21-06 (the “**Ordinance**”) approving a Planned Unit Development (“**PUD**”), which includes the ALF Parcel and the Park Parcel, pursuant to LDC Sec. 30-63 Planned Unit Development (PUD) Procedures or LDC Division 13 – Planned Unit Development (PUD) District of the Marco Island Land Development Code (LDC); and

WHEREAS, the Donor has offered the Park Parcel as a gift to the City to be operated perpetually as a public park for the use, enjoyment and recreation by residents

of Marco Island and the public, and the City Council has agreed to accept it in accordance with the terms of this Agreement; and

WHEREAS, Developer has agreed, at Developer's cost, to make certain improvements to the Park Parcel, as more particularly described in the Park Parcel Concept Master Plan and the specifications attached hereto and incorporated herein as Exhibit "C" and Exhibit "C-1", and after such improvements are completed, the Donor has agreed convey the Park Parcel to the City to operate as a public park pursuant to the terms of this Agreement; and

WHEREAS, Developer has agreed, at Developer's cost, to pay all costs associated with the Park Parcel, including but not limited to real estate taxes and liability insurance, until conveyance of the Park Parcel to the City; and

WHEREAS, following conveyance of the Park Parcel to the City, the Developer has agreed to maintain the Park Parcel Improvements (as hereinafter defined) installed by the Developer for a period of thirty (30) years; and

WHEREAS, the parties agree that this Agreement is being entered into by and between the Developer, the Donor and the City consistent with the requirements set forth in the PUD.

NOW THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer, the Donor, and the City hereby agree to enter into this Agreement.

1. **Recitals**. The foregoing recitals are true and correct and incorporated into this Agreement by this reference.

2. **Park Conveyance**. Donor does hereby agree to convey to the City, on the terms and conditions contained herein, the Park Parcel. The conveyance of the Park Parcel shall be at no cost to the City. At the time of conveyance of the Park Parcel, the Donor and Developer shall provide for the conveyance of the Waterfront Pedestrian Walkway Easement across Tract B and the vehicular/pedestrian access easement across Tract A, collectively (the "Easements"). The Park Parcel, the Easements, and the Improvements, as defined herein, will be conveyed when the earlier of the following events occurs (the "**Conveyance Event**"): (a) within thirty (30) days after a Certificate of Occupancy is issued for the improvements to be constructed on the ALF Parcel, or (b) thirty-six (36) months after the Effective Date. Donor agrees to deliver into escrow, to be held by Woodward, Pires and Lombardo, P.A., as escrow agent ("**Escrow Agent**"), a deed for the Park Parcel (the "**Deed**"), which will be recorded by Escrow Agent at the time of the Conveyance Event.

3. **Improvements/Conveyance**.

(a) Developer shall be responsible, at its sole costs and expense, for obtaining all necessary governmental approvals and constructing the Improvements on

the Park Parcel. Developer agrees to coordinate with the City in developing a final plan for the Improvements, which shall include necessary repairs to the sea wall located on the boundary of the Park Parcel. The City shall not be responsible for any costs associated with the Improvements.

(b) Donor shall instruct Escrow Agent to deliver and record the Deed conveying the Park Parcel and the Improvements, as defined herein, to the City (“**Conveyance**”) upon the issuance of a Certificate of Occupancy for the improvements located on the ALF Parcel. The Park Parcel and Improvements, as defined herein, shall be conveyed free and clear of all liens and encumbrances, except easements, covenants and restrictions of record. Notwithstanding the foregoing, the Deed shall contain a provision requiring the Park Parcel to be operated as a public park.

(c) In accordance with the Ordinance, Developer shall provide pedestrian and vehicular access to the Park Parcel. The connector sidewalk/bike path to and from San Marco Road and Bald Eagle/Heathwood shall be a minimum of eight (8) feet in width. The connector sidewalk/bike path, as depicted on Exhibit “C,” shall be considered part of the Improvements as defined herein.

(d) In addition, the improvements to be constructed by the Developer on the Park Parcel (the “**Improvements**”) shall include the elements as described on Exhibit “C-1,” which is attached hereto and incorporated herein by reference. The Developer and City agree that the issuance of the Certificate of Occupancy for the improvements to be constructed on the ALF Parcel shall be conditioned on the completion of the installation of the Improvements on the Park Parcel, and the issuance of the certificate of completion for the Improvements.

(e) As depicted on the Park Parcel Concept Master Plan and in more detail in the Declaration of Easements to be recorded in the public records of Collier County which will benefit and burden both the Park Parcel and the ALF Parcel, the detention area shared between the Park Parcel and the ALF Parcel will provide stormwater detention for both parcels. The detention area shall be a depressed dry detention area which will be stabilized with grass/vegetation. It is the intent that the detention area, along with stormwater conveyance pipes and smaller vegetated swales, will serve as the water quality and attenuation for the Park and the Project per applicable governmental requirements. It is agreed that the design will not utilize the Park Parcel beyond the approximate detention boundaries to meet the attenuation requirements during the design storm event. It is understood that the City’s Stormwater Department will review and approve the detailed plans for the stormwater system during the Site Development Plan submittal process.

4. **Maintenance of Permitted Improvements.**

(a) Following the Conveyance, and for a period of thirty (30) years thereafter (the “**Developer Maintenance Period**”), the Developer, as part of Developer’s donation to the City, shall have the responsibility, at its sole cost and expense, to keep, maintain and repair the Park Parcel and the Improvements installed by the Developer in

good condition and in a safe, clean and attractive manner at all times. The City hereby grants to the Developer, during the Developer Maintenance Period, a non-exclusive easement on, over, under, across, and through the Park Parcel to enable the Developer to perform the maintenance required by this Section 4(a). If it is determined that a separate written instrument is necessary to grant such maintenance easement, the City agrees to execute, upon the request of the Developer, a form of maintenance easement reasonably acceptable to the City for recording in the public records.

(b) The Developer agrees to the following maintenance and operations requirements for the Park Parcel and installed Improvements:

- (1) Fitness equipment and area(s) – Repaired as needed.
Cleaned once a week.
- (2) Two (2) handicapped accessible restrooms open from dawn to dusk – Cleaned at least once per day plus restroom supplies.
- (3) Benches –weekly inspection
- (4) Seawall - Check French drain. (Monthly)
- (5) Picnic tables – Cleaned daily.
- (6) Sidewalks/trails/irrigation/lighting – Inspection every 3 months. Maintenance as needed.
- (7) Parking lot – Re-seal every 3 years and repave every 10 years.
- (8) Landscaping - Lawn – Mow once a week. Best Management Practices for lawn care and fertilization.
- (9) Landscaping Trees & Shrubs – Trim every 2 weeks. Best Management Practices for Woody Landscape care and fertilization.
- (10) Bike rack – Paint (Annually if necessary)
- (11) Pest Control for the restroom facility – monthly
- (12) Drinking fountain – cleaned daily.
- (13) Trash containers – empty daily.

(c) Following such thirty (30) year period, the City shall be responsible, at its sole cost and expense, for all maintenance of the Park Parcel and the Improvements.

(d) The Developer shall maintain at a minimum such insurance coverages and in such limits as are set forth in Exhibit “D” attached hereto. Such insurance shall name the City as an additional insured on all applicable policies.

(e) During the Developer Maintenance Period, the Developer shall be responsible for payment of costs associated with water and electricity, if any, for the Park Parcel. The City agrees to waive any required impact/tap fees for utility connections to the Park Parcel.

(f) The Park Parcel shall be operated as a public park. The City's park regulations and rules, as amended from time to time, shall apply to the use of the Park Parcel.

(g) If Developer fails to perform or diligently commence to perform any necessary maintenance or repair work within thirty (30) days after the date on which the City gives written notice to the Developer of the City's intention to perform such necessary maintenance or repair work, the City shall have the right (but not the obligation) to perform the necessary maintenance or repair work. In the event of an emergency or other extraordinary circumstances requiring immediate repairs, the aforesaid thirty (30) day notice may not be given and the City shall have the right (but not the obligation) to perform the necessary maintenance or repair work after the City has given the Developer the written or oral notice that is reasonable under the circumstances. Provided the necessary prior notice was given by the City to the Developer, within thirty (30) days after receiving copies of invoices or purchase orders or other evidence disclosing the costs ("**Maintenance Costs**") incurred in performing such maintenance or repair work (the "**Due Date**"), the Developer shall pay the City such Maintenance Costs in accordance with the terms of this Section 4(h).

(h) If the Developer fails to pay such Maintenance Costs within thirty (30) days after the Due Date, then such Maintenance Costs, together with interest, and the cost of collection shall constitute an assessment against the ALF Parcel, and thereupon become a lien against the ALF Parcel until paid. If any Maintenance Costs are not paid within thirty (30) days after the Due Date, at the option of the City, such Maintenance Costs shall accrue interest at the highest rate of interest then permissible by law. Further, the City may record a claim of lien (as evidence of its lien rights as hereinabove provided for) against the ALF Parcel for the unpaid Maintenance Costs, or may pursue any such remedies that are available under Florida law, including the right to recover reasonable attorneys' fees and costs of preparing and filing the claim of lien and the complaint, if any, if the City prevails in such action.

(i) The sale or transfer of the ALF Parcel, or any portion thereof, shall not affect the obligation, charge, or lien placed as a result of the Agreement. No sale or transfer of the ALF Parcel, or any portion thereof, shall relieve any portion of the ALF Parcel from liability for any cost, charge, or assessment made by the City thereafter becoming due or from the lien thereof, all pursuant to this Agreement.

(j) The Developer hereby agrees to indemnify and hold harmless the City, from all liability, damage, expenses, causes of action, suits, claims or judgments, including but not limited to reasonable attorneys' fees and paralegals' fees arising from personal injury, death or property damage occurring in the Park Parcel as a result of the improper maintenance of the Park Parcel, including any improvements installed by Developer; omission to properly maintain the Park Parcel, use of the Park Parcel by the public, or arising from any fine, penalty, liability, or cost arising out of the Developer's violation of any law, ordinance, governmental regulation or directive, or this Agreement, related to the Park Parcel. Nothing herein shall constitute a waiver of the City's

entitlement to sovereign immunity, or the City's rights pursuant to Section 768.28, Florida Statutes, as may be amended from time to time.

5. **Mechanic's Liens.** The Developer shall keep the Park Parcel (and all portions thereof) at all times free of mechanics' and/or construction liens and any other liens for labor, services, supplies, equipment or materials purchased or procured, directly or indirectly, by or for the Developer. The Developer agrees that it will promptly pay and satisfy all liens of contractors, subcontractors, mechanics, laborers, materialmen and others of like character, and will, to the extent permitted, indemnify the Donor and the City against all liabilities, expenses, costs and charges, including, without limitation, bond payments for release of liens and attorneys' fees and costs reasonably incurred in and about the defense of any suit in discharging the Park Parcel (or any portion thereof) from any liens, judgments or encumbrances, caused or suffered by or through the Developer. In the event any such liens shall be made or filed, the Developer shall bond against or discharge same within thirty (30) days after receiving written notice of the filing of same. The Developer shall not have any authority to create any liens for labor or material on the Park Parcel and all persons contracting with the Developer for the performance of any services, supply of any materials or provision of any labor for any work done in, on or around the Park Parcel, and all materialmen, contractors, suppliers, mechanics and laborers are hereby charged with notice that they must look solely to the Developer to secure payment of any bill for work done or materials furnished at the request or instruction of the Developer.

6. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, as applicable.

7. **Notices.** Any notice, request, demand, instruction or other communication to be given to any party hereunder shall be in writing and either hand delivered, delivered by overnight courier or by electronic transmission, or sent by registered, or certified mail, return receipt requested, postage prepaid, addressee as follows:

If to the City at: City of Marco Island
50 Bald Eagle Drive
Marco Island, Florida 34145
Attn: City Manager
Email: _____

With a copy to: Alan Gabriel, City Attorney
200 E. Broward Blvd. Suite 1900
Fort Lauderdale, FL 33301
Email: agabriel@wsh-law.com

If to Developer at: Marco Island Senior Living, LLC
1228 E. 7th Avenue, 4th Floor
Tampa, Florida 33605
Attention: Walt Chancey
Email: wchancey@chanceydesign.com

With a copy to: David L. Koche, Esq.
Barnett, Kirkwood, Koche, Long & Foster
601 Bayshore Boulevard, Suite 700
Tampa, Florida 33606
Email: dkoche@barnettbolt.com

And to: Craig R. Woodward, Esq.
Woodward, Pires & Lombardo, P.A.
P.O. Box 1
606 Bald Eagle Dr. Suite 500
Marco Island, Fl. 34146
Email: cwoodward@wpl-legal.com

If to Donor at: Kenneth D. Goodman, Trustee
Goodman Breen
3836 Tamiami Trail North, Suite 300
Naples, Florida 34103
Email: kgoodman@goodmanbreen.com

Any notice demand, request or other communication shall be deemed to be given upon actual receipt in the case of hand delivery, facsimile or electronic transmission, delivery by overnight courier, or by registered, or certified mail, return receipt requested, postage prepaid. In the event of any notice via telecopier or facsimile transmission, hard copy shall be sent via regular mail on the day of such transmission. Any such transmission received after 5:00 p.m. Eastern Standard Time (or Daylight Savings Time, whichever then applicable) shall be deemed to have been given on the next following business day. The respective attorneys for the Developer, the Donor and the City are hereby expressly authorized to give and receive any notice, demand, request or to make any other communication pursuant to the terms of this Agreement on behalf of their respective clients. The addressees and addresses for the purpose of this section may be changed by either party by giving written notice of such change to the other party in the manner provided herein. For the purpose of changing such addresses or addressees only, unless and until such written notice is received, the last addressee and respective address stated herein shall be deemed to continue in effect for all purposes.

8. **Construction.**

(a) This Agreement shall be construed and governed in accordance with the laws of the State of Florida. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and, accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

(b) In construing this Agreement, the use of any gender shall include every other and all genders, and captions and section and paragraph headings shall be disregarded.

(c) All of the exhibits attached to this Agreement are incorporated in, and made a part of, this Agreement.

9. **Severability.** In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

10. **Enforcement/Litigation.** In the event of any litigation between the parties under this Agreement for a breach hereof, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. The terms of this Section shall survive the termination of this Agreement.

11. **Covenant to Run With the Land.** The rights and obligations created hereby shall run with the land, shall be a burden on the ALF Parcel and the Park Parcel and shall inure to the benefit and burden of the Developer, the Donor and the City and their respective successors and/or assigns.

12. **Entire Agreement.** This Agreement, together with the documents referenced herein, constitute the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought.

13. **Recording.** Developer shall be responsible for recording this Agreement in the Public Records of Collier County, Florida.

14. **Force Majeure.** For purposes hereof, force majeure means fire, flood, earthquake, hurricane, other acts of God, war, declaration of hostilities, revolts, civil strife, strike, labor dispute or epidemic. If Developer is rendered unable, in whole or in part, by force majeure to carry out its obligations under this Agreement, Developer shall give to the City prompt written notice of the force majeure with reasonably full particulars concerning the same.

(Remainder of Page Intentionally Left Blank- Signatures Begin on Next Page)

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed by execution of this instrument as of this _____ day of _____, 2021.

Witnesses:

DEVELOPER:

MARCO ISLAND SENIOR LIVING, LLC, a Florida limited liability company

Print Name: _____

By: Gulf Coastal Development, Inc., a Florida corporation, as its Manager

Print Name: _____

By: _____
Walton H. Chancey, as its President

STATE OF FLORIDA)
) SS:
COUNTY OF HILLSBOROUGH)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of _____, 2021, by Walton H. Chancey, as President of Gulf Coastal Development, Inc., a Florida corporation, as Manager of MARCO ISLAND SENIOR LIVING, LLC, a Florida limited liability company, on behalf of the company, and who is either personally known to me or produced _____ as identification.

[Notary Seal]

Notary Public

Name typed, printed or stamped

My Commission Expires: _____

Witnesses:

Print Name: _____

Print Name: _____

ATTEST:

_____, City Clerk

_____, City Attorney
Approved as to form and legality

CITY:

CITY OF MARCO ISLAND, a Florida
municipal corporation

By: _____
Print Name: _____
City Council Chairman

Date: _____, 2021

STATE OF FLORIDA)
)
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of _____, 2021, by _____, Chairman of City of Marco Island, a Florida Municipal corporation, on behalf of the City, and is either personally known to me or has produced _____ as evidence of identification.

(SEAL)

NOTARY PUBLIC
Name: _____
(Type or Print)
My Commission Expires:

Witnesses:

DONOR:

Print Name: _____

KENNETH D. GOODMAN, TRUSTEE OF
THE MARCO PARK TRUST DATED
FEBRUARY 10, 2020

Print Name: _____

STATE OF FLORIDA)
)
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of _____, 2021, by Kenneth D. Goodman, as Trustee of the Marco Park Trust dated February 10, 2020, and is either personally known to me or has produced _____ as evidence of identification.

(SEAL)

NOTARY PUBLIC
Name: _____
 (Type or Print)
My Commission Expires:

Escrow Agent hereby joins in to this Agreement and agrees to act as Escrow Agent.

Witnesses:

ESCROW AGENT:

WOODWARD, PIRES AND LOMBARDO,
P.A.

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

STATE OF FLORIDA)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of _____, 2021, by _____, as _____ of Woodward, Pires and Lombardo, P.A., and is either personally known to me or has produced _____ as evidence of identification.

(SEAL)

NOTARY PUBLIC

Name: _____

(Type or Print)

My Commission Expires:

Exhibit "A"

Legal description of ALF Parcel

A TRACT OR PARCEL OF LAND LYING IN TRACT "A" OF A REPLAT OF TRACT "L", MARCO BEACH UNIT SIX, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 12, PAGES 55 AND 56, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, SAID TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT "A" THENCE N.00°23'43"E., ON THE WEST LINE OF SAID TRACT A, FOR 396.70 FEET;

THENCE S.89°36'17"E., FOR 339.19 FEET;

THENCE S.00°37'09"W., FOR 7.95 FEET;

THENCE S.02°49'45"W., FOR 173.05 FEET;

THENCE S.00°23'43"W., FOR 215.86 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT "A";

THENCE N.89°36'17"W., ON SAID SOUTH LINE, FOR 331.81 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN.

CONTAINING 132,324 SQUARE FEET OR 3.04 ACRES, MORE OR LESS.

Exhibit "B"

Legal Description of Park Parcel

A TRACT OR PARCEL OF LAND LYING IN TRACT "A" OF A REPLAT OF TRACT "L", MARCO BEACH UNIT SIX, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 12, PAGES 55 AND 56, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, SAID TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT "A", THENCE N.00°23'43"E., ON THE WEST LINE OF SAID TRACT "A" FOR 396.70 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;
THENCE CONTINUE N.00°23'43"E., ON THE WEST LINE OF SAID TRACT "A" FOR 240.00 FEET TO THE NORTHWEST CORNER OF SAID TRACT "A";
THENCE S.89°36'17"E., ON THE NORTH LINE OF SAID TRACT "A" FOR 340.13 FEET;
THENCE S.00°37'09"W., FOR 240.00 FEET;
THENCE N.89°36'17"W., FOR 339.19 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;

CONTAINING 81,518 SQUARE FEET OR 1.87 ACRES, MORE OR LESS.

Exhibit "C"

PARK PARCEL CONCEPT MASTER PLAN AND SPECIFICATIONS

Exhibit "C-1"

San Marco PUD Park Components: General Specifications

FOR EACH OF 2 ADA RESTROOMS:

- 8' x 8' Exterior Dimensions with covered connector.
- 8" CMU construction, painted masonry interior, stucco exterior (consistent with ALF)
- Wood truss roof construction, metal roofing.
- Electrical service for lighting, indoor and outdoor receptacles, and ventilation fans
- Hollow metal frame and door with commercial hardware
- Sealed concrete floor
- Commercial grade toilet and wall-hung sink (one each restroom)
- ADA water fountain (Elkay VRCTL8WSK or equal) at restroom location
- Hose bib at one restroom location (exterior)
- Code required commercial grade accessoires
-

SIDEWALKS / PADS:

- Minimum thickness: 4", width as indicated on Park Plan Exhibit
- Reinforced with 'fibermesh' or 6 x 6 x #10 woven wire mesh
- Minimum concrete strength: 3000 PSI
- Expansion joints as required
- Concrete to be broom finish

ASPHALT PARKING:

- 1 ½" Type S-1 asphalt on 6" thick compacted Limestone base, on stabilized subgrade

BENCH:

- Six (6) Everest Series 6-Ft. Park Bench (or equal)

PICNIC TABLE:

- Four (4) Everest Series 8-Ft Heavy Duty Picnic Table (or equal)

BIKE RACK and TRASH RECEPTICLES:

- One (1) 7-Bike Wave Rack – 2 3/8 in. Heavy-Duty (or equal)
- Six (6) Global Industrial 32 gal. steel trash can with self-closing dome lid (or equal)
- One (1) dog waste station (Dogipot Header Pak Pet Station (or equal)

FITNESS EQUIPMENT:

- GameTime Thrive 900 or equal with 3 Canopies on ADA wood-chip safety surface.

LANDSCAPING: (Quantities per plan. Specifications per Land Development Code)

- Large Shade Trees
- Small Accent Trees
- Ground Cover plants
- Sod and Irrigation with timer
- All security and landscape lighting.

PARK SIGNAGE:

- Park signage with park name and City Logo at both Bald Eagle/Heathwood and San Marco Road entranceways.

SEAWALL:

- Construction of new seawall with safety rail.

Exhibit “D”

Insurance Requirements

The Developer shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about the Park Parcel, to afford protection equal to coverages, in an amount not less than \$2,000,000.00 Combined Single Limit Liability. The Developer shall provide the City with certificates of such insurance within fifteen (15) days after obtaining such insurance to evidence that insurance is in force. Such insurance shall provide that the same may not be canceled without thirty (30) days' prior written notice to Cityloper (or its successors and assigns).