

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

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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 _____, 2021, the Marco Island City Council (“**City Council**”) adopted Ordinance Number _____ (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

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 _____, 20__.

Witnesses:

DEVELOPER:

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

Print Name:_____

By: Rookis Development Company, as its Manager

Print Name:_____

By: _____
Richard J. Rookis, as its President

STATE OF FLORIDA)

) SS:

COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of _____, 2021, by Richard J. Rookis, as President of Rookis Development Company, 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

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.

DEVELOPER:

MARCO ISLAND SENIOR LIVING, LLC, a
~~CHIEF OF MARCO ISLAND~~ any
a Florida Municipal corporation

By: _____
Name: _____
Title: _____, City Council Chairman

Date: _____

(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).