

ORDINANCE 21-06

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, RELATING TO AND ESTABLISHING A PLANNED UNIT DEVELOPMENT ZONE KNOWN AS THE SAN MARCO PLANNED UNIT DEVELOPMENT (“PUD”); MAKING FINDINGS; PROVIDING DEFINITIONS; REZONING PROPERTY DESCRIBED AS TRACT “A” OF A REPLAT OF TRACT “L”, MARCO BEACH UNIT SIX, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 12, PAGES 55 AND 56, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, LOCATED AT OR NEAR 40 SOUTH HEATHWOOD DRIVE, MARCO ISLAND, FLORIDA; CONSISTING OF APPROXIMATELY 10.02 ACRES AS ESTIMATED BY COLLIER COUNTY PROPERTY APPRAISER; CHANGING THE ZONING CLASSIFICATION OF THE HEREIN DESCRIBED REAL PROPERTY FROM “C-1” TO “PLANNED UNIT DEVELOPMENT (PUD) DISTRICT”; ADOPTING AND APPROVING A PUD DOCUMENT; PROVIDING FOR OWNER/DEVELOPER COORDINATION WITH MARCO ISLAND CIVIC ASSOCIATION; PROVIDING FOR FAILURE TO COMPLY WITH ORDINANCE; PROVIDING FOR NON-CODIFICATION AND INTEPRETATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-ESTABLISHMENT OF A VESTED RIGHT TO PERMITS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, this rezoning Ordinance relates to Property described as Tract “A” of a Replat of Tract “L”, Marco Beach Unit Six, according to the plat thereof, as recorded in Plat Book 12, Pages 55 and 56, Public Records of Collier County, Florida, consisting of approximately 10.02 acres, as estimated by the Collier County Property Appraiser, and as legally described in Exhibit “A,” which is attached hereto and incorporated herein by reference, (the “Property”); and

WHEREAS, the PUD contains three Tracts designated as Tracts A, B, and C, each Tract legally described in Exhibit “A-1,” which is attached hereto and incorporated herein by reference; and.

WHEREAS, Marco Island Senior Living, LLC, a Florida limited liability company, the contract purchaser of the portion of the Property identified in Exhibit “A-1” as Tract “B,” and Marco Island Hospital, Inc., a Florida Not-for-Profit corporation, the legal owner of the Property (together the “Applicants”), have petitioned the Marco Island City Council to change the zoning classification of the Property from Commercial Professional - C-1 to Planned Unit Development (“PUD”); and

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:

79
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:

89
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
97

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
109

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”).

367
368 (2) Attached hereto as Exhibit "D" and incorporated by this
369 reference is the Declaration which has been presented by the Applicants to satisfy
370 Section 30-382 of the LDC. The Declaration is hereby approved. With the consent of the
371 Owner/Developer, their successors and assigns, the City Attorney and City Manager are
372 authorized to make administrative and/or process related revisions (as opposed to
373 substantive revisions) that are legally necessary in order to finalize the Declaration in a
374 manner consistent with this Ordinance. The City Manager is authorized to execute the
375 Declaration. Upon execution by all parties, the Declaration shall be recorded in the Public
376 Records of Collier County at the Owner/Developer's expense. To approve and consent
377 to future amendments to the Declaration, where City Council approval is required and the
378 PUD Master Plan remains unchanged, said amendments to the Declaration may be
379 accomplished by the adoption of a Resolution of the City Council.

380
381 (3) The Declaration shall be joined in and consented to by any
382 mortgagee or other holder of a security interest of the Property. Prior to recording of the
383 Declaration, the Applicants shall provide to the City Attorney, for review and approval, an
384 attorney's title opinion as to the Property, which shall be addressed and certified to and
385 for reliance by the City in form acceptable to the City Attorney. The Applicants shall pay
386 the cost and fees of the City Attorney's review of such title opinion. The Owner/Developer
387 recognizes that the City Attorney is not representing the Owner/Developer of the San
388 Marco PUD Project or Property.

389
390 (4) All mortgagees and holders of security interests in the title to
391 the Property shall be required to consent and join in the Declaration. The Declaration
392 shall be recorded by the Applicants within fifteen (15) days after this Ordinance becomes
393 final and non-appealable. The Applicants shall be responsible for recording the
394 Declaration in the Public Records of Collier County.

395
396 (g) Public Safety Emergency Evacuation Plan.

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

405
406 (2) Plan description. The Public Safety Emergency Evacuation
407 Plan for any use that is permitted to operate within the PUD that is required to have a
408 Public Safety Emergency Evacuation Plan as provided herein, will be prepared and
409 submitted for each Tract in accordance with all applicable federal, state and local laws
410 in effect at the time of submittal.

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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.

523
524 (2) Continuous maintenance of the Stormwater Management
525 System shall be required, and at the expense, of the Owner/Developer of a particular
526 Tract, and the City may require the Owner/Developer of said tract to enter into a
527 Stormwater Management System agreement for maintenance by and operation of the
528 system by the Owner/Developer or by the City in the event of failure of the
529 Owner/Developer to do so. The Stormwater Management System agreement will provide
530 easements for ingress/egress by the City, and for the right to lien a particular Tract for
531 non-payment of City expenses in the event of a failure to maintain by the
532 Owner/Developer after reasonable notice from the City. No stormwater runoff shall be
533 permitted to flow from one Tract to another Tract, except as part of the City and water
534 management district approved infrastructure improvement and stormwater management
535 plan required by this condition and as approved by the City.

536
537 (k) Utilities.

538 (1) All water lines, sewer lines, pumps, laterals, mains, tees,
539 valves, wires, meters, bends, joints, lift stations, and appurtenances thereto (as used in
540 this condition collectively: the "Facilities") for water and wastewater service intended to
541 be operated and maintained by the City, Marco Island Utilities, or another utility shall be
542 conveyed by bill of sale from the Owner of the property on which the infrastructure is
543 located and an easement for said Facilities for Minimal Consideration where such
544 conveyance has not already occurred. All Facilities for water and wastewater service on
545 each Tract which are to be operated, installed, constructed, rehabilitated, removed, or
546 maintained by the City, Marco Island Utilities, or another utility, and which are located or
547 to be located in, over, or under the ground of the Property shall be placed in easement(s)
548 connecting to the public right-of-way. Said easements shall be at least ten (10) feet wide
549 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:** **CITY OF MARCO ISLAND, FLORIDA**
713
714 _____ By: _____
715 Casey Lucius, Acting City Clerk Jared Grifoni, Chairman

716
717

718 Approved as to form and legal sufficiency:
719

720 _____
721 Alan L. Gabriel, City Attorney