

ORDINANCE 60 – 25

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF CAPE CORAL, A FLORIDA MUNICIPAL CORPORATION AND GULF GATEWAY RESORT & MARINA, LLC, A FLORIDA LIMITED LIABILITY COMPANY, FOR A MIXED-USE PROJECT KNOWN AS “SEVEN ISLANDS” LOCATED ON APPROXIMATELY 47 ACRES; PROPERTIES LOCATED AT 106 OLD BURNT STORE ROAD NORTH AND 606 OLD BURNT STORE ROAD NORTH; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Council adopted Ordinance 88-22 on November 2, 2022, which approved the sale of municipal surplus real property described as all of Lots 12 through 17, Block 6400; all of Tract G and all of Lots 1 through 5 Block 6401; all of Tract F and all of Lots 1 through 7, Block 6402; all of Tract E and all of Lots 1 through 4, Block 6403; all of Tract D and all of Lots 1 through 3, Block 6404; all of Tract C and all of Lots 1 and 2, Block 6405; all of Tract B and all of Lots 1 through 7, Block 6406; and all of Tract A and all of Lots 1 through 8, Block 6407, all as shown on the plat of Cape Coral, Unit 76, The Islands, recorded in Plat Book 35 at Pages 121 through 129 of the Public Records of Lee County, Florida, containing approximately 47 acres; and

WHEREAS, the Mayor and City Council adopted Ordinance 59-25 on October 22, 2025, which approved Amendment No. 1 to the Vacant Land Contract to extend the Closing Date to February 11, 2026, which provides for the appropriate statutory processing and approval of those Comprehensive Plan Amendment(s) requested by the Gulf Gateway Resort & Marina, LLC; and

WHEREAS, the Vacant Land Contract states that the Parties must enter into a Development Agreement concerning the proposed development of the Project; and

WHEREAS, the City Manager recommends that the Mayor and City Council approve the Development Agreement between the City of Cape Coral, Florida and Gulf Gateway Resort & Marina, LLC, which has been reviewed at a duly noticed public hearing on January 7, 2026, and at a second public hearing on January 21, 2026, and find that the Development Agreement is consistent with the City’s Comprehensive Plan and that approval of the Development Agreement is in the best interests of the City.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION 1. The Mayor and City Council hereby approve the Development Agreement between the City of Cape Coral, Florida and Gulf Gateway Resort & Marina, LLC, relating to the proposed development of the mixed-use project known as Seven Islands. A copy of the Development Agreement is attached hereto as Exhibit 1.

SECTION 2. The Mayor and City Council hereby authorize the City Manager or their designee to execute the Development Agreement.

SECTION 3. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AT THEIR REGULAR SESSION THIS _____ DAY OF _____, 2026.

JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

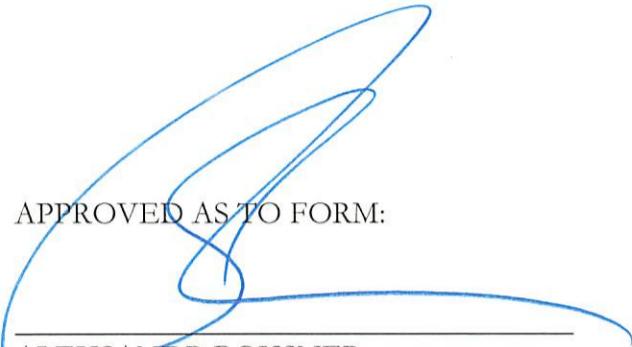
GUNTER _____
STEINKE _____
LEHMANN _____
DONNELL _____

LASTRA _____
KILRAINE _____
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KADUK _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2026.

KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:


ALEKSANDR BOKSNER
CITY ATTORNEY
ord\Development Agreement- Seven Islands

YL

Prepared by and Return to:

Saul Ewing LLP
Attn: Anthony Kang, Esq.
701 Brickell Avenue, 17th Floor
Miami, Florida 33131

(Space Reserved for Clerk)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the _____ day of _____, 2026, by and among the CITY OF CAPE CORAL, a Florida municipal corporation (the "City"), and GULF GATEWAY RESORT & MARINA, LLC, a Florida limited liability company (the "Developer").

Introduction

A. The property that is the subject of this Agreement lies in Cape Coral, Lee County, Florida. This Agreement, among other things, is intended to and shall constitute a development agreement between the parties pursuant to Sections 163.3220-163.3243, Florida Statutes, and Article 3 of the Code of Ordinances of the City of Cape Coral, Florida (the "City Code").

B. The City owns the property more specifically described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), which is currently vacant land generally located at 606 Old Burnt Store Road North and 106/200 Old Burnt Store Road North, Cape Coral, Florida 33991.

C. The Developer and City have executed a purchase and sale agreement requiring a specific plan of development as an inducement for the City to convey the Property to the Developer.

D. Due to common market changes, the specific plan of development specified in the purchase and sale agreement is no longer suitable to the Developer, and Developer is proposing to amend the purchase and sale agreement in order to develop the Property with the "Project" (as more specifically defined below).

E. The City is willing to amend the purchase and sale agreement and convey the Property to the Developer provided that the Developer develops the Project on the Property in accordance with the terms and conditions contained herein.

F. The City is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes, the Charter for the City of Cape Coral and Code of Ordinances of the City of Cape Coral, Florida. The City has all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions, and render municipal services,

including the authority to adopt, implement and enforce (together with any other required governmental approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the City and its inhabitants.

G. Having fully considered this Agreement at two (2) duly noticed public hearings in compliance with Section 163.3225 of the Act; and, having determined that the Project and this Agreement are in compliance with the City of Cape Coral Comprehensive Plan and the Land Development Code of the City of Cape Coral Florida as of the Effective Date (as may be amended by the "Land Development Code Amendments" (as more specifically defined below); and, having further determined that it is in the City's best interest to address the issues covered by this Agreement in a comprehensive manner; the City has agreed to enter into this Agreement with the Developer.

H. The City has determined that the Project will benefit the City and the public.

I. All capitalized terms used in this Introduction are defined in Paragraph 3 of or elsewhere in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitations. The foregoing recitations are true and correct and are incorporated herein by this reference.

2. Authority. This Agreement is entered into pursuant to the authority and procedures provided by the Act.

3. Definitions. All capitalized terms used in this Agreement shall have the definitions set forth in this paragraph unless such terms are defined elsewhere in the body of this Agreement.

3.1 "Act" shall mean the Florida Local Government Development Agreement Act (Sections 163.3220 - 163.3243, Florida Statutes (2024)).

3.2 "Amenities Site" shall mean the property located west of the Dominica Canal and the Tortuga Canal, north of the Malta Canal and south of the St. Michel Canal as depicted in Exhibit "B" attached hereto and incorporated herein by this reference.

3.3 "Building Permit" shall mean any permit issued by the City of Cape Coral Permitting Services Division, including any foundation, building or phase permits.

3.4 "Business Day" shall mean any day other than a Saturday, Sunday, any federal or state holiday. If a period expires on a day which is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day.

3.5 “City” shall mean the City of Cape Coral, a Florida municipal corporation, having its principal offices at 1015 Cultural Park Boulevard, Cape Coral, Florida 33990. In all respects hereunder, the City’s obligations and performance is pursuant to the City’s position as the owner of the Property acting in its proprietary capacity. In the event the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any laws, rules, regulations, ordinances, and plans (including through the exercise of the City’s building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to the City’s regulatory authority as a governmental body and shall not be attributable in any manner to the City as a party to this Agreement or in any way deemed in conflict with, or a default under, the City’s obligations hereunder.

3.6 “Closing” shall mean the formal exchange of documents between the parties and the conveyance of the Property from the City to the Developer in accordance with that certain Vacant Land Contract by and between the City and the Developer effective as of November 9, 2022, as supplemented by that certain Addendum to the Vacant Land Contract (as may be amended, the “Purchase and Sale Agreement”).

3.7 “Comprehensive Plan” shall mean the City of Cape Coral Comprehensive Plan which the City has adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163 Part II, of the Florida Statutes, as may be amended in accordance therewith.

3.8 “Commence Vertical Construction” shall mean the initiation of physical construction activities on the Project Site as it pertains to a specific building or improvement, including but not limited to the completion of foundation work (including pouring of concrete footings, slabs, or other structural elements), pursuant to approved building permits and in accordance with the approved site plan and construction documents.

3.9 “Community Center” shall mean the community center building containing at least 16,500 square feet, associated parking, amphitheater, dog park, splash pad, kayak launch, vessel slips and docks, sidewalks, and pedestrian and golf cart bridge connecting Island 6 and Island 7 to be constructed on the Amenities Site as specifically delineated on Island 7 of the Master Plan.

3.10 “Developer” shall mean Gulf Gateway Resort & Marina, LLC, a Florida limited liability company, and any permitted successors, assigns, or heirs thereof; provided, however, the term “Developer” shall not mean the City.

3.11 “Development Order” shall mean any order granting, denying, or granting with conditions an application for a Development Permit.

3.12 “Development Permit” shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2024).

3.13 “Effective Date” shall mean the date when the City records the executed Agreement in the Public Records of Lee County, as provided in Section 163.3239, Florida Statutes (2024), and Paragraph 19 of this Agreement.

3.14 “**Environmental Permit**” shall mean any environmental permit the Developer needs to complete the Project, including, without limitation, any permit required for mitigation of aquatic species and construction of any seawalls or docks and any permit required by the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, Florida Department of Environmental Protection and any other permitting agencies, excluding any permits that may be required for the construction of docks for single-family homes.

3.15 “**Execution Date**” shall mean the date the last of the required parties executes this Agreement.

3.16 “**Hotel**” shall mean a 10-story hotel/resort with 150 to 300 rooms and parking providing no less than seventy (70) parking spaces available to the general public, which shall be in addition to the minimum required hotel parking, and no less than 19,000 square feet of meeting space to be constructed on the Property. If the parking garage serving the Hotel is automated, the seventy (70) parking spaces available to the general public may be located anywhere throughout the parking garage. If such parking garage is not automated, the seventy (70) parking spaces available to the general public shall be located on the first (1st) and second (2nd) floor of the parking garage.

3.17 “**Land Development Regulations**” shall have the meaning set forth in Section 163.3221(8), Florida Statutes (2024) and shall also include, without limitation, the Land Development Code of the City of Cape Coral, Florida.

3.18 “**Land Development Code Amendments**” shall mean the amendments to the Land Development Regulations as described in Exhibit “D” attached hereto and incorporated herein by this reference specifically delineated on to, among other things, amend the text of the Land Development Regulations to authorize the development of the Project, as necessary.

3.19 “**Laws**” shall mean all laws, rules, regulations, ordinances, plans, resolutions, comprehensive plans and land development regulations, specifically including the City’s Comprehensive Plan and the City’s Land Development Regulations.

3.20 “**Marina**” shall include all of the following depicted on Island 6 of the Master Plan: (a) all marine improvements, including without limitation, docks, thirty-nine (39) vessel slips, pilings, seawall and bulkhead; (b) an approximately 2,106 square foot dockmaster building, of which 1,053 square feet must be open to the public and used for marine retail sales and services with products typically found in a marina ship’s store including but not limited to marine safety and boating supplies, oil, clothing, ice, beverages, snacks, and other nautical items; (c) a fueling area having at least two fuel pumps with gas and diesel fuel available for purchase by the general public, and (d) electric shore power, water, and pump-out facility to serve the vessels docking at and visiting the Marina. A portion of the dockmaster building may be used for office space, but the primary purpose and principal use shall be the retail sale of boating-related goods and fuel as described herein.

3.21 “**Master Plan**” shall mean the plan of development for Gulf Gateway Resort and Marina Village attached hereto as Exhibit “C” and incorporated herein.

3.22 “**Occupiable Rooftop**” shall have the same meaning as defined by the City of Cape Coral Land Development Code as of the date that the Cape Coral City Council adopts this Agreement, unless the definition of “Occupiable Rooftop” is amended in the Cape Coral Land Development Code, and the City and Developer agree such amended definition shall apply to this Agreement and the Project.

3.23 “**Project**” shall mean the development of the Property consistent with the Master Plan.

3.24 “**Property**” shall mean the property more specifically described in Exhibit “A” attached hereto and incorporated herein by this reference.

4. Master Plan.

4.1 The Property shall be developed in accordance with this Agreement, the Master Plan, and the Land Development Regulations (as may be amended by the Land Development Code Amendments). The Master Plan may only be modified by a written amendment to this Agreement and, as necessary, the Land Development Code.

4.2 The Property is zoned as Mixed-Use Seven Islands Zoning District (MX7), pursuant to the City’s Land Development Regulations. The MX7 zoning district for the Property currently permits multi-family residences, single-family residences, public parks and recreational facilities, marinas, bars and brewpubs, restaurants without a drive-thru, hotels, retail, professional offices, personal services, community centers, and mixed-use buildings. The Property may be used for the purposes permitted by the City’s Land Development Regulations (as may be amended by the Land Development Code Amendments attached hereto as Exhibit “D”). Developer expressly agrees that the Property shall be limited to one drive-thru associated with a coffee shop use only as depicted on the Master Plan, and no other drive-thrus shall be constructed. Notwithstanding the foregoing, the Property shall have: (i) a maximum of 995 residential units (including multi-family residential units, single-family detached or attached units, fish houses, townhomes, condominiums, and apartments), (ii) the Hotel, (iii) the Marina, (iv) the Community Center, (v) an amenity area or areas to be determined by the Developer, and (vi) approximately 45,980 square feet of commercial uses, all of which are specifically delineated on the Master Plan.

4.3 The maximum total floor area permitted upon the Property shall not exceed that provided by the City’s Land Development Regulations (as may be amended by the Land Development Code Amendments or the Master Plan) for the purposes of determining population densities and building intensities as required by the Act.

4.4 The height of any building constructed on the Property as measured from Base Flood Elevation as provided by the civil engineer of record retained by the Developer for the development of the Project (the “**Civil Engineer**”) shall not exceed that provided by the City’s Land Development Regulations (as may be amended by the Land Development Code Amendments), and any architectural projections will comply with the terms of the Land Development Regulations (as may be amended by the Land Development Code Amendments). Notwithstanding the foregoing, the height of the Hotel shall not exceed the greater of 150 feet in height or 10 stories; any condominium or apartment building shall not exceed the greater of 120

feet in height or 8 stories; the Community Center and any commercial building (excluding the Hotel and any condominium and apartment buildings) shall not exceed the greater of 45 feet in height or 2 stories; and, any single-family home shall not exceed the greater of 45 feet in height or 4 stories.

4.5 The minimum dwelling unit sizes for any residential building shall comply with the City's Land Development Regulations (as may be amended by the Land Development Code Amendments).

4.6 The maximum setbacks for the Project shall comply with the City's Land Development Regulations (as may be amended by the Land Development Code Amendments) and any applicable Federal, State or County laws, rules and regulations.

4.7 The Project shall include on-site parking in accordance with the provisions of the Land Development Code (as may be amended by the Land Development Code Amendments) and as depicted on the Master Plan.

4.8 Any residential units or homes constructed on the Property may be rented through a rental program operated by the Hotel or an affiliate under common control with the Hotel, and any rental of such residential units or homes through such program shall not be subject to Section 12-129 of the City Code.

4.9 Any docks or vessel slips located on Islands 1, 2, 3, 4, and 5, as depicted on the Master Plan, may be constructed at any time in the sole discretion of the Developer after issuance of permits required for these improvements. These docks and vessel slips may be sold, leased or otherwise freely conveyed. In the event that the total number of docks and vessel slips in the project must be reduced due to environmental permitting requirements, the boat docks and vessel slips shown on Islands 6 and 7, as depicted on the Master Plan must not be reduced or eliminated.

4.10 Docks and vessel slips on Island 6, as depicted on the Master Plan, may not be sold to an individual without the City's prior written consent. A minimum of four (4) slips, as specifically delineated on the Master Plan, shall be open to the public for no fee on a first come first serve basis for temporary day dock usage, and not subject to a long-term lease or otherwise transferred for exclusive private use to an individual, to provide access to Island 6.

4.11 A minimum of six (6) slips, as specifically delineated on the Master Plan shall be open to the public on a first come first serve basis for temporary day dock usage, and not subject to a long-term lease or otherwise transferred for exclusive private use to an individual, to provide access to Island 7. Docks and vessel slips on Island 7, as depicted on the Master Plan, may not be sold to an individual without the City's prior written consent.

5. Land Development Code Amendments.

5.1 The City and the Developer acknowledge and agree that development of the Project requires modification of certain City Land Development Regulations, including but not

limited to the MX7 zoning district, which require approval by the Cape Coral City Council (collectively, the “Land Development Code Amendments”), as described in Exhibit “D”.

5.2 The City shall initiate and process the Land Development Code Amendments required to allow for the development of the Project consistent with the Master Plan.

5.3 The City shall initiate the Land Development Code Amendments prior to the Closing. The Developer acknowledges that nothing in this Agreement obligates the City to approve the Land Development Code Amendments. If the Land Development Code Amendments are not approved by the City, then the Developer may elect to: (i) construct the Development in accordance with the Master Plan and the Land Development Code Amendments that are approved by the City; (ii) work with the City to diligently prepare revised Land Development Code Amendments requesting the Land Development Code Amendments for a revised Project that still conforms with the Master Plan; or (iii) the Developer may not proceed with the Master Plan and will be limited to the scope of development allowed by the City Land Development Regulations existing at the time of execution of the Purchase and Sale Agreement. If the Land Development Code Amendments are approved by the City, the City agrees not to further modify or amend the City’s Land Development Regulations in a manner that specifically and directly adversely affects the Project, which shall exclude legislation applicable City-wide and of a general nature, without the Developer’s prior written consent, which consent may not be unreasonably withheld, conditioned or delayed.

6. Closing. At the Closing, the Developer and the City shall perform the following:

(a) The City will convey the Property to the Developer by special warranty deed in accordance with the terms and conditions of the Purchase and Sale Agreement.

(b) The Developer shall grant an easement to the City against the Property for utilities, public vehicular and pedestrian uses (the “Utility and Roadway Easement”) pursuant to an easement agreement in substantial conformance with the form easement agreement attached hereto as Exhibit “F” (the “Utility and Roadway Easement Agreement”).

(c) The special warranty deed conveyed to Developer from City shall include a restrictive covenant allowing permanent access to the general public for park purposes against Island 7.

7. Old Burnt Store Road Improvements. The parties acknowledge that the following off-site improvements are required to be completed at the Developer’s sole cost and expense pursuant to this Agreement. Developer agrees to construct and complete all off-site median improvements shown on the Master Plan. Including Type F curbs, irrigation, and landscaping within the medians of Old Burnt Store Road as shown on the Master Plan (the “Median Improvements”). The Median Improvements shall be in accordance with City Engineering and Design Standards and City-adopted “Tropical High Intensity” median landscape template as adopted by the City pursuant to City of Cape Coral Resolution 102-20. Developer shall coordinate the installation of the irrigation and landscaping to ensure the survival of the landscaping upon planting. Once completed and acceptable to the City in its sole discretion, not to be unreasonably withheld, the City shall accept ownership and maintenance at its sole cost and expense of the

Median Improvements. The City shall exercise its best efforts to maintain a speed limit of all vehicles through such stretch of Old Burnt Store Road not to exceed thirty-five (35) miles per hour. The Developer shall modify the City's existing Environmental Resource Permit affected by any improvements along Old Burnt Store Road. The proposed modification must accommodate the existing contributing area from the right of way as well as proposed improvements along the frontage of Old Burnt Store Road. The City will cooperate, as necessary, as a joint permit applicant as the proposed improvements include frontage near Island 7 as well as the Old Burnt Store Road right of way because the water management system is located in both areas. The Developer will maintain all road frontage up to the edge of pavement of Old Burnt Store Road, pursuant to the Land Development Code and any approved South Florida Water Management District permit conditions, including all physical improvements, landscape, and mowing. Appropriate access and maintenance easements must be provided to the City over the frontage and associated water management system features in the event that the Developer does not maintain the system as required. The City agrees to maintain inlets and culverts located within the City right of way, and the Developer agrees to maintain any water management areas, pipes, inlets and structures located on the Developer's property. Any changes proposed to the existing City system must maintain existing treatment and storage capacity as required by all applicable South Florida Water Management District permit modification(s) at all times. The City must approve any changes prior to construction.

8. Economic Incentives. The City and the Developer hereby acknowledge and agree that the City has approved certain economic incentives to the Developer in the amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) (the "Economic Incentives"), which shall be payable in immediately available funds pursuant to the timely completion of the following milestones:

(a) One Million and No/100 Dollars (\$1,000,000.00) in Economic Incentives to be paid to the Developer within thirty (30) days after issuance of a certificate of completion for the Marina, as defined herein;

(b) One Million and No/100 Dollars (\$1,000,000.00) in Economic Incentives to be paid to the Developer within thirty (30) days after the issuance of the certificate of occupancy for the Hotel, as defined herein; provided, however, that any such Economic Incentive shall be proportionately reduced if the Hotel has less than 240 rooms. By way of example only, if the Hotel has 216 rooms, the Economic Incentive granted to the Developer hereunder this subparagraph (b) shall be reduced to Nine Hundred Thousand and No/100 Dollars (\$916,000.00) (or, $(216/240) \times \$1,000,000.00$); and,

(c) Five Hundred Thousand and No/100 Dollars (\$500,000.00) in Economic Incentives to be paid to the Developer within thirty (30) days after the issuance of the certificate of occupancy for the Community Center, as defined herein.

City and Developer expressly acknowledge that in order to receive the full Economic Incentives, the improvements described herein must be completed as follows: the Marina shall be completed no later than eight (8) years from the Closing date, the Hotel shall be completed no later than (10) years from the Closing date, and the Community Center shall be completed no later than six (6) years from the Closing date. If the Hotel, Marina, or Community Center is not timely completed,

the incentive amount for that component will be reduced by ten percent (10%) for each year that it remains not completed beginning upon the first anniversary of the improvement deadline. As such, if upon the tenth (10th) anniversary of the improvement deadline passing, and the improvement is not complete, the Economic Incentive will no longer be available for that improvement. It is expressly acknowledged that the Project Development Timeline, attached hereto and incorporated by reference as **Exhibit “E”**, includes aspirational goals and timing and there shall be no penalty or default resulting from a failure to timely construct any improvements, except that the incentive amounts for the Marina, Hotel, and Community Center shall be reduced as described herein if not timely completed.

9. Design and Construction Documents.

9.1 Intentionally Deleted.

9.2 Notwithstanding anything to the contrary contained herein, the Developer shall submit the application(s) for the civil engineering permits for the development of those certain components of the Project depicted on **Exhibit “G”** attached hereto and incorporated herein by this reference (“**Phase 1**”) on or before nine (9) months after the Effective Date.

9.3 The City shall implement a priority review program for the City’s review and approval of the construction documents for the Project and all permits, inspections, and plans. As to permit and plan reviews, the City will provide pre-submittal review of the Developer’s permit and plan submittals at the 30%, 60% and 90% stage of completion of the Project. Each submittal shall be reviewed by the City within five (5) Business Days after receipt from the Developer. Each applicable City department or division thereof shall designate a qualified team of professionals dedicated to the Project to review proposed plans and give priority review of the Project over other review work unaffiliated with the Project. If the City timely rejects such submittals, the City shall give the specific and detailed reasons for such rejection; in which event, the Developer shall revise any such construction document for the rejected component of the Project so that any such construction document conforms to the Master Plan and this Agreement and then re-submit any such construction document to the City pursuant to the foregoing process until such construction document have been approved by the City (such construction documents, once approved by the City, are referred to herein as the “**Approved Project Plans**”). The Developer shall submit to the City for review and approval any proposed modifications to the Approved Project Plans that deviate from the Master Plan and this Agreement. Proposed modifications to the Master Plan and this Agreement require City Council approval. Such proposed modifications, once approved by the City, shall become part of the Approved Project Plans. Any dispute regarding the City’s rejection of the construction documents or any proposed modification thereof must be resolved prior to the commencement of the construction of the particular component of the Project in dispute. If the City fails to timely deliver a response or render a determination within said five (5) Business Days, then the City and Developer shall meet within three (3) Business Days thereof to reallocate or add resources to ensure compliance with the expedited priority review procedures provided herein. If such reallocation of resources is not possible or results in another untimely response in the same calendar year, then the City shall replace such professional and/or engage a new professional with a qualified professional who is capable of reviewing submittals on a timely basis.

9.4 The Developer agrees that it will compensate the City, on an hourly basis, for actual time spent by the qualified professional or team of professionals hired by the City for reviewing the Developer's submittals and agrees to pay such hourly fee no more frequently than monthly upon receipt of a detailed invoice reflecting the specific submittal reviewed by the person performing such review. The hourly rate charged shall be the actual costs for all assigned personnel, with the rates for each based on the experience and technical skills of each employee, as mutually agreed upon by the City and the Developer. Upon request, the City shall provide the Developer a reasonable opportunity to review proposed rates prior to commencement of priority permit review work, and shall allow the Developer to prioritize and coordinate reviews and inspections based on actual needs as the Developer develops the Project. If the Developer fails to pay an uncontested priority review invoice within thirty (30) days after receipt of the invoice, the City shall deliver to the Developer a written demand notice whereupon the Developer shall have an opportunity to cure for a period of five (5) days after receipt of such demand notice before such nonpayment of an uncontested priority review invoice shall be deemed an Event of Default hereunder.

9.5 Upon reasonable notice from the Developer, the City will make available and mobilize a priority permit inspection team to perform on-demand, no later than next day inspections as needed. Upon notice from Developer that continuous inspection or review work is required, the City will assign full-time inspectors or reviewers on site, until the Developer notifies the City that inspections or reviews are no longer needed continuously, and inspections and reviews may revert to an on demand, no later than next day basis. The Developer agrees that it will compensate the City for actual time spent for priority inspections and reviews and agrees to pay on a monthly basis invoices reflecting priority permit inspections performed. The hourly rate charged shall be reflective of the difficulty of the work performed and the skill level required of the person performing the permit inspection, as reasonably determined by the City. If full-time on site inspectors or reviewers are requested by the Developer, the Developer shall provide suitable air-conditioned work space for all on-site inspection personnel.

9.6 All typical permit reviews and determinations under this Section 9 made by the City's team members shall be in writing and shall be considered binding upon the City.

10. Construction of the Project.

10.1 The Developer shall construct the Project in accordance with the Approved Project Plans and the Building Permits. Upon the commencement of construction of the Project, the Developer shall maintain a regular meeting schedule with the City to keep the City reasonably apprised of the progress of the construction of the Project in accordance with the terms and conditions contained herein, the City Code and the City's Land Development Regulations.

10.2 After the Closing, the City may inspect the Property in accordance with the City Code for the purpose of performing building permit inspections and code compliance investigation as is typical for all property located within the City of Cape Coral.

10.3 Completion of each phase of the Project shall occur when the Developer has obtained a temporary certificate of occupancy, a final certificate of occupancy, and/or a certificate

of completion that individually or collectively encompass such phase of the Project. Notwithstanding anything contained herein to the contrary.

(a) prior to the issuance of the 73rd residential certificate of occupancy, the Developer shall, as described herein and depicted on the Master Plan:

(i) complete the construction of the Community Center, evidenced by the issuance of a certificate of completion.

(ii) complete the construction of at least twenty-five percent (25%) of the Median Improvements.

(iii) Commence Vertical Construction of all structures and improvements on the Amenities Site, and Commence Vertical Construction of at least fifty percent (50%) of the commercial square footage included in parcels "COMM A, B, C, D, E, F, G, and H" along Old Burnt Store Road as depicted on the Master Plan.

(b) prior to the issuance of the 605th residential certificate of occupancy, the Developer shall:

(i) satisfy all requirements described in Section 10.3(a) above, and receive a certificate of completion for fifty percent (50%) of the commercial square footage included in parcels "COMM A, B, C, D, E, F, G, and H" along Old Burnt Store Road; and

(ii) Commence Vertical Construction of one hundred percent (100%) of the commercial square footage included in parcels "COMM A, B, C, D, E, F, G, and H" along Old Burnt Store Road.

Developer may permit and construct residential development exceeding these limits solely at-risk with the express understanding that certificates of occupancy will only be issued for residential development consistent with this Section 10.3, and any damages incurred or alleged by Developer related to the non-issuance of a certificate of occupancy shall be the sole responsibility of the Developer and, notwithstanding anything to the contrary herein, the City shall have no liability regarding the non-issuance of a certificate of occupancy.

11. Operation and Maintenance of the Community Center and Amenities Site. The Developer shall lease a portion of the Community Center and other components of the Amenities Site to the City pursuant to the draft lease agreement, which may be revised by mutual consent of both parties, attached hereto as Exhibit "H" and incorporated herein, and shall execute the same upon the issuance of a certificate of occupancy for the Community Center (the "Community Center Lease"). Upon issuance of a certificate of completion for the Community Center, the parties shall enter into the Community Center Lease if the parties have not already done so. The City shall operate and be responsible for the leased portion of the Community Center pursuant to the terms and conditions contained in the Community Center Lease. The Developer shall have no further obligation or liability in or with respect to the normal and ordinary operation, maintenance, repair and replacement of the Community Center, except (i) as otherwise provided in the Community Center Lease, and (ii) at Developer's sole cost and expense, to diligently enforce and pursue all legal and equitable remedies related to the warranty provisions of the Design Contract,

construction contract, or other applicable legal obligation; including civil litigation through appeal, applicable to the correction of defective conditions related to the Community Center.

12. Applications for CDD and Environmental Permits.

12.1 The City and the Developer hereby acknowledge and agree that the Developer may, at the Developer's sole and absolute discretion, apply for the establishment of a community development district covering some or all of the Property (the "CDD") in accordance with the Uniform Community Development District Act of 1980, Chapter 190, Florida Statutes, as amended and supplemented (the "CDD Act") and issuance of bonds for the purpose, among others, of financing, funding, planning, establishing, acquiring, constructing or reconstructing, enlarging or extending and equipping basic public infrastructure projects within or outside the boundaries of the Project (the "CDD Bonds"). The applications for the establishment of the CDD and the issuance of the CDD Bonds shall be collectively referred to herein as the "CDD Applications". The City shall reasonably cooperate with the Developer's CDD Applications. If the Developer submits the CDD Applications before the Closing, the City shall sign the CDD Applications as the owner of the Property and/or a joinder to the CDD Applications, unless City is otherwise prohibited by law from doing so. If permitted by law, the City shall not unreasonably withhold, condition or delay the City's execution of the CDD Applications as owner of the Property or any joinder to the CDD Applications. The City shall process any such CDD Applications with reasonable diligence and shall timely schedule any hearings necessary to adopt an ordinance to establish the CDD.

12.2 If a CDD is established for the Property, then such CDD Bonds may finance, fund, plan, acquire, construct or reconstruct, enlarge or equip, operate and maintain systems and facilities for those purposes set forth in Chapter 190, F.S., generally and including specifically and without limitation those purposes in section 190.012(2), F.S. If created, the parties acknowledge that the CDD may be responsible for financing, funding, planning, acquiring, constructing or reconstructing, enlarging or equipping, operating and maintaining any such projects within or without the boundaries of the CDD required by the City or necessary to serve the Project.

12.3 If the Developer is required to provide, pay for or otherwise cause to be provided infrastructure, projects, systems or facilities as set forth in Chapter 190, F.S., including without limitation those in section 190.012(1) and (2), F.S., then it is intended that the CDD may independently satisfy such obligations and the City consents to the CDD's role. In this event, the City and the CDD may enter into an Interlocal Agreement in a form substantially similar to Exhibit "I" to formally acknowledge and memorialize the CDD's rights, obligations, and responsibilities. The Interlocal Agreement will provide that, to the extent any such obligation is met or performed by the CDD, then the Developer shall no longer be subject to the obligation.

12.4 The City and the Developer hereby acknowledge and agree that the Developer is required to apply for the Environmental Permits in order to construct the Development. The City shall reasonably cooperate with the Developer in applying for the Environmental Permits, and if the Developer applies for the Environmental Permits before the Closing, the City shall sign such application(s) as the owner of the Property and/or a joinder to such application(s). The City shall not unreasonably withhold, condition or delay the City's execution of such application(s) as owner of the Property or any joinder to such application(s).

12.5 If the Developer does not obtain the CDD Bonds and/or the Environmental Permits, or the CDD Bonds and/or the Environmental Permits contain any terms, conditions or obligations not consistent with the terms and conditions acceptable to Developer, in its sole and absolute discretion, then the Developer may elect to: (i) diligently prepare revised applications requesting the CDD Bonds and/or the Environmental Permits for a revised Project that still conform with the Master Plan; or (ii) exercise any rights of appeal the Developer may have.

13. Applications for Development Approvals and Development Permits. This Agreement contemplates that the Developer will file applications for Development Orders and Development Permits. The City shall use its best efforts to review all such applications and either issue the permit or a notice of insufficiency reasonably detailing items that are insufficient within thirty (30) calendar days from receipt thereof. Notwithstanding the foregoing, the Developer shall be solely responsible for obtaining all final, non-appealable Development Orders and Development Permits for the Project.

14. Laws Governing this Agreement. For the entire Term of this Agreement, the City hereby agrees that the City's Land Development Regulations (as may be amended by the Land Development Regulation Amendments) governing the development of the Property (including the Project) as they exist as of the Execution Date of this Agreement shall govern the development of the Property (including the Project) during the entire Term of this Agreement. Notwithstanding the foregoing, the City may apply subsequently adopted laws or policies of general applicability to the Property (including the Project) (particularly as they may relate to quality of life issues such as, but not limited to noise, litter, and hours of operation) as permitted or required by the Act, including, without limitation, Section 163.3233(2), Florida Statutes, as same may be amended from time to time; provided, however, that in no event shall the City apply any subsequently adopted law or policies in a manner that requires any alterations or modifications to the Project or any amendments or modifications to the Master Plan and this Agreement.

15. Compliance with Local Regulations Regarding Development Permits. This Agreement is not and shall not be construed as a Development Permit, Development Order, approval or authorization to commence any development, fill, or other land modification. The Developer and the City agree that the failure of this Agreement to address a particular permit, approval, procedure, condition, fee, term or restriction in effect on the Effective Date shall not relieve the Developer of the necessity of complying with any such permit, approval, procedure, condition, fee, term or restriction, subject however to the terms and provisions of this Agreement.

16. Reservation of Rights. This Agreement shall not affect any rights that may have accrued to any party to this Agreement under any applicable law, rule or regulation and each party hereto reserves any and all of such rights.

17. Consistency with the City's Comprehensive Plan. The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Agreement dealing with the Property (including the Project) are consistent with the City's Comprehensive Plan and Land Development Regulations.

18. Concurrency.

18.1 The Developer shall be solely responsible for obtaining all land use permits for the Project, including, but not limited to, all permits and approvals required pursuant to Section 163.3180, Florida Statutes (2024), with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and schools (the “Concurrency Requirements”). Prior to applying for a Building Permit for the Project, the Developer shall apply to the appropriate governmental authorities and obtain letters or other evidence that the Developer has satisfied all applicable Concurrency Requirements with respect to the Project, and shall diligently and in good faith obtain such letters or other evidence that the Project meets all applicable Concurrency Requirements, and shall pay such impact fees or mobility fees as may then be due or applicable to meet Concurrency Requirements. The City shall reasonably cooperate with the Developer in applying for the Concurrency Requirements, and if the Developer applies for the Concurrency Requirements before the Closing, the City shall sign such application(s) as the owner of the Property and/or a joinder to such application(s). The City shall not unreasonably withhold, condition or delay the City’s execution of such application(s) as owner of the Property or any joinder to such application(s).

19. Effective Date; Duration; and Term.

19.1 Within fourteen (14) days following approval of this Agreement at two (2) public hearings and the execution of this Agreement by all parties, the City shall record this Agreement in the Public Records of Lee County. This Agreement shall become effective only after it has been recorded in the Public Records of Lee County, Florida. The Developer shall be responsible for all recording fees related to the recording of this Agreement.

19.2 This Agreement shall run for an initial term of thirty (30) years from the Effective Date (the “Term”); provided, however, that the Term of this Agreement may be extended by the mutual written consent of the City and the Developer subject to any public hearing required by the City Code or the Florida Statutes. No notice of termination shall be required by either party upon the expiration of this Agreement, and after the expiration of this Agreement the parties shall have no further obligations under this Agreement, except for those obligations that expressly survive the expiration of this Agreement.

20. Public Facilities to Serve the Property. A description of the public facilities that will service the Property, including who shall provide such facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development of the Property, is set forth in Exhibit “J” attached hereto and incorporated herein by this reference.

21. Public Reservations and/or Dedications. A description of the reservations and/or dedications of land for public purposes that are proposed under the terms of this Agreement is set forth in Exhibit “K” attached hereto and incorporated herein by this reference.

22. Required Development Permits. A listing and description of all local development permits approved or needed to be approved for the development of the Project is set forth in Exhibit “L” attached hereto and incorporated herein by this reference.

23. **Default.** It shall be an "**Event of Default**" if the Developer shall fail to observe or perform any term, covenant or condition of this Agreement on the Developer's part to be observed or performed and the Developer shall fail to cure or remedy the same within (i) ninety (90) days of the Developer's receipt of written notice from the City with respect to monetary defaults, or (ii) sixty (60) Business Days of the Developer's receipt of written notice from the City with respect to non-monetary defaults (each, a "**Default Notice**"). If such non-monetary default is susceptible to cure but cannot reasonably be cured within such sixty (60) Business Day period, then the Developer shall have additional time as is necessary to cure such failure and no Event of Default shall be deemed to exist hereunder so long as the Developer commences such cure within such initial sixty (60) Business Day period and diligently and in good faith pursues such cure to completion. Nothing herein shall serve to extend the incentive deadlines related to the Hotel, Marina, and Community Center.

In the event the City shall claim any Event of Default shall have occurred under this Agreement, the City's Default Notice shall state with specificity the provisions of this Agreement under which the Event of Default is claimed, the nature and character of such Event of Default, the date by which such Event of Default must be cured pursuant to this Agreement (if applicable), and, if elected by the City, that the failure of the Developer to cure such Event of Default by the date set forth in such Default Notice will result in the City having the right to terminate this Agreement.

24. **Enforcement of Performance; Damages; and Termination.** If an Event of Default occurs under this Agreement, and such Event of Default has not been cured within any applicable notice and cure period, the City may elect (subject to the terms, conditions and limitations set forth in this Agreement) any one or more of the following remedies:

- (a) Enforce strict performance by the Developer; or
- (b) Pursue any other remedy available to the City at law or in equity.

If the Event of Default is the Developer's failure to timely construct any of the Island 7 improvements, the commercial square footage fronting Old Burnt Store Road, or the Median Improvements, the parties agree that the City shall be entitled to liquidated damages in the amount of \$500.00 per day for each day that the Developer is in default and any damages may be enforced through a lien on the Property. The City's election of a remedy under this Agreement with respect to any one or more Events of Default shall not limit or otherwise affect the City's right to elect any of the remedies available to it under this Agreement with respect to any other Event of Default.

Notwithstanding anything to the contrary contained in this Agreement, in no event shall the City have the right to terminate this Agreement after the Developer has commenced vertical construction of the Island 7 improvements and 50% of the commercial square footage fronting Old Burnt Store Road depicted on the Master Plan.

25. **Strict Performance; Waiver.** No failure by the City or the Developer to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of the other party's default hereunder shall

constitute a waiver of any such default or of such other covenant, agreement, term or condition hereunder.

26. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the City at:	City of Cape Coral, City Hall
Physical Address:	1015 Cultural Park Boulevard
	Cape Coral, Florida 33990
Mailing Address:	PO Box 150027
	Cape Coral, FL 33915
	Attn: City Manager
With a copy to:	City of Cape Coral, City Hall
Physical Address:	1015 Cultural Park Boulevard
	Cape Coral, Florida 33990
Mailing Address:	PO Box 150027
	Cape Coral, FL 33915
	Attn: City Attorney
If to Developer at:	Gulf Gateway Resort & Marina, LLC
	11231 US Highway 1, Suite 354
	North Palm Beach, Florida 33408
	Attn: Peter Baytarian
With a copy to:	Saul Ewing LLP
	701 Brickell Avenue, 17 th Floor
	Miami, Florida 33131
	Attn: Anthony Kang, Esq.

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mails. The terms of this paragraph shall survive the expiration or earlier termination of this Agreement.

27. Governing Laws, Construction and Litigation. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The Developer and the City agree that Lee County, Florida is the appropriate and exclusive state court venue, and that the U.S. District Court, Middle Division of Florida is the appropriate and exclusive federal court venue, in connection with any litigation between the parties with respect to this Agreement. 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 of the parties hereto. In construing this Agreement,

captions, and section and paragraph headings shall be disregarded and the use of any gender shall include every other and all genders. All of the exhibits referenced in this Agreement are incorporated in, and made a part of, this Agreement. In the event of any litigation between the parties under this Agreement for a breach thereof, each party shall bear its own attorney's fees and court costs at all trial and appellate levels. The terms of this paragraph shall survive the expiration or earlier termination of this Agreement.

28. 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.

29. Time of Essence. Time shall be of the essence for each and every provision hereof.

30. Entire Agreement. This Agreement, together with the documents referenced herein, constitutes the entire agreement and understanding among the parties with respect to the construction and development of the Project, and there are no other agreements, representations or warranties other than as set forth herein. Neither party shall be bound by any agreement, condition, warranty nor representation other than as expressly stated in this Agreement. This Agreement may not be changed, altered or modified except by an instrument in writing signed by both parties hereto, subject to the requirements for the amendment of development agreements in the Act.

31. Other Agreements. This Agreement has no effect on any other agreement, the City's development orders, or declaration of restrictions otherwise encumbering the Property. Any and all agreements currently in the public records remain valid. The parties incorporate by reference each and every requirement set forth in the Act.

32. Binding Effect. The obligations imposed pursuant to this Agreement upon the Developer and upon the Property shall run with and bind the Property as covenants running with the Property, and this Agreement shall be binding upon and enforceable by and against the parties hereto and their respective successors, assigns and heirs.

33. Force Majeure. Except for the incentive deadlines associated with the Marina, Hotel and Community Center, which shall be strictly enforced, time periods set forth in the Project Development Timeline and in any approval or permit issued in connection with the Property and/or the Project will be tolled due to force majeure events (including, without limitation, strikes, lockouts, acts of God, hurricanes and severe weather, pandemics, epidemics, diseases or public health emergencies and any quarantines related thereto, government acts, laws, regulations or shutdowns, disruption of supply chains, and other causes beyond the control of either party).

34. Indemnification. Developer shall indemnify, defend and hold the City harmless from and against any actual damages, losses, liabilities, fees, costs and expenses incurred by the City in any action, suit or proceeding brought against the City by any third-party as a result of any breach of this Agreement by the Developer or negligent act or omission of the Developer and/or its officers, directors, managers, members, employees, contractors and agents in performing under this Agreement. The Developer shall directly pay all actual costs and expenses related to any expense or cost charged, or legal defense required by the City pursuant to the foregoing. The City

shall reasonably cooperate and collaborate (but at no expense to the City) with the Developer in connection with any legal proceeding in which the Developer is defending the City. This paragraph shall survive the expiration or any earlier termination of this Agreement.

35. Corporate Obligations. It is expressly understood that this Agreement and the obligations issued hereunder are solely corporate obligations, and that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, managers, members, partners, trustees, beneficiaries, elected or appointed officials (including, without limitation, the Mayor and City Manager of the City) or employees, as such, of the Developer, the City, or any successor or assign of any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any of all such rights and claims against, every such incorporators, stockholders, officers, directors, managers, members, partners, trustees, beneficiaries, elected or appointed officials (including, without limitation, the Mayor and City Manager of the City) or employees, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as consideration for, the execution of this Agreement.

36. No Conflict of Interest. The Developer represents and warrants that no member, official or employee of the City has any direct or indirect financial interest in this Agreement nor has participated in any decision relating to this Agreement that is prohibited by law. The Developer represents and warrants that no officer, agent, employee, or representative of the City has received any payment or other consideration for the making of this Agreement, directly or indirectly, from the Developer.

37. No Third Party Beneficiaries. This Agreement is not intended to, and shall not be construed to give, any third party (including, without limitation, any homeowners association, condominium association, or neighborhood association in the surrounding area, or any individual members thereof) any rights or interests whatsoever, nor is it intended that any third party shall be a third party beneficiary of any provisions hereof.

38. Limitations of Liability and Waiver of Consequential Damages

(a) Any tort liability to which the City is exposed under this Agreement shall be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations shall be applied as if the parties had not entered into this Agreement, and City expressly does not waive any of its rights and immunities thereunder.

(b) The City will not in any event whatsoever be liable for any injury or damage to the Developer (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees), nor for any injury or damage to the Property (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees), caused by the use, misuse or abuse of the Amenities Site (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees).

(c) The City will not be liable to the Developer for any injury or damage to the Property caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from any part of the Amenities Site, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein (unless caused by the gross negligence or willful misconduct of the City, its agents, contractors or employees).

(d) Except as may be otherwise expressly provided herein, no approval to be made by the City in its proprietary capacity under this Agreement or any inspection of the Property or the Project by the City under this Agreement, shall render the City liable for its failure to discover any defects or nonconformance with any governmental requirement.

(e) No member, official, elected representative or employee of the City shall be personally liable to the Developer or any successor, assign or heir thereof in the event of any default or breach of this Agreement by the City or for any amount which may become due to the Developer or successor, assign or heir thereof under this Agreement.

39. Police Power.

(a) The parties recognize and agree that certain provisions of this Agreement require the City and its boards, departments or agencies, acting in their governmental capacity, to consider governmental actions. All such considerations and actions shall be undertaken in accordance with established requirements of state statutes and municipal ordinances in the exercise of the City's jurisdiction under the police power. Nothing contained in this Agreement shall entitle the Developer to compel the City to take any such actions, save and except for the execution of consents (if applicable) to the filing of applications for the Project Approvals, Development Permits and/or Development Orders as more fully set forth herein and to timely process such applications.

(b) The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly in full accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of the public. Nothing in this Agreement shall be construed to prohibit the City from duly acting under its police power to approve, approve with conditions, or reject any public hearing application dealing with the Property.

40. Conflict. In the event of an inconsistency or conflict between the terms of this Agreement and the terms of the Purchase and Sale Agreement, the terms of this Agreement shall control.

[signature page(s) to follow]

EXECUTED as of the date first above written in several counterparts, each of which shall be deemed an original, but all constituting only one agreement.

Signed, sealed and delivered
In the presence of:

**CITY OF CAPE CORAL,
a Florida municipal corporation**

Print Name: _____

By: _____
John Gunter, Mayor

Print Name: _____

Attest: Kimberly Bruns, City Clerk

Approved as to Form

Aleksandr Boksner, City Attorney

STATE OF FLORIDA)
)
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2026, by John Gunter as Mayor of the City of Cape Coral, a municipal corporation, on behalf of the municipality. He is personally known to me or has produced _____ as identification and who did (did not) take an oath.

NOTARY PUBLIC

Typed or Printed Name of Notary
My Commission expires:
Serial No., if any: _____

Signed, sealed and delivered
In the presence of:

GULF GATEWAY RESORT & MARINA, LLC,
a Florida limited liability company

Print Name: _____

By: _____
Peter Baytarian, Manager

Print Name: _____

STATE OF _____)
)SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2026, by Peter Baytarian, as Manager of Gulf Gateway Resort & Marina, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification and who did (did not) take an oath.

NOTARY PUBLIC

Typed or Printed Name of Notary
My Commission expires:
Serial No., if any: _____

EXHIBIT "A"

Legal Description of the Property

PARCELS OF LAND LYING IN SECTIONS 12 AND 13, TOWNSHIP 44 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA; AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

- 1.) ALL OF LOTS 12 THROUGH 17, BLOCK 6400;
- 2.) ALL OF TRACT "G" AND ALL OF LOTS 1 THROUGH 5, BLOCK 6401;
- 3.) ALL OF TRACT "F" AND ALL OF LOTS 1 THROUGH 7, BLOCK 6402;
- 4.) ALL OF TRACT "E" AND ALL OF LOTS 1 THROUGH 4, BLOCK 6403;
- 5.) ALL OF TRACT "D" AND ALL OF LOTS 1 THROUGH 3, BLOCK 6404;
- 6.) ALL OF TRACT "C" AND ALL OF LOTS 1 THROUGH 2, BLOCK 6405;
- 7.) ALL OF TRACT "B" AND ALL OF LOTS 1 THROUGH 7, BLOCK 6406;
- 8.) ALL OF TRACT "A" AND ALL OF LOTS 1 THROUGH 8, BLOCK 6407;

ALL AS SHOWN ON THE PLAT OF CAPE CORAL, UNIT 76, THE ISLANDS, RECORDED IN PLAT BOOK 35 AT PAGES 121 THROUGH 129 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

EXHIBIT "B"

Amenities Site

[See attached hereto]

EXHIBIT "C"

Master Plan

[See attached hereto]

CONCEPTUAL SITE PLAN

FOR
ISLAND 1

FINAL MCP REVISION DATE : 10/09/25

**NOTE:
OLD BURNT STORE ROAD MEDIAN ISLANDS TO BE
LANDSCAPED AS AGREED TO BY CITY OF CAPE
CORAL AND DEVELOPER IN THE DEVELOPERS
AGREEMENT

VEHICULAR PARKING REQUIREMENTS FOR ALL PROPOSED USES / DEVELOPMENT BASED ON THE SITE ANALYSIS DETAILED IN "SHARED PARKING STATEMENT" PREPARED BY SIMMONS & WHITE. (SEE SHEET 3 FOR VEHICULAR PARKING CALC) (SEE SHEET 3 FOR BICYCLE PARKING CALC)



NOT INTENDED

infogateway

**GULF GATEWAY RESORT
AND MARINA VILLAGE
MIXED USE**
BEING A PART OF CAPE CORAL UNIT

MASTER CONCEPT PLANS
(ISLAND 1)

2

VERTICAL ELEVATIONS BASED ON NGVD 29

CONCEPTUAL SITE PLAN
FOR
ISLAND 2
FINAL MCP REVISION DATE : 10/09/25

LEGEND

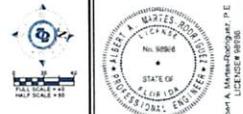
- SURVEY EDGE OF WATER
- MEDIAN LANDSCAPING
- STORMWATER AREA
- MANGROVE PRESERVE AREA
- 8 PAVED PUBLIC COMMUNITY PATH (IMPERVIOUS SURFACE)
- RESIDENTIAL TOWERS OVER GARAGE
- ROOF TOP AMENITIES OVER 2ND LEVEL OF GARAGE
- FISH HOUSE

NOTE:
OLD BURNT STORE ROAD MEDIAN ISLANDS TO BE
LANDSCAPED AS AGREED TO BY CITY OF CAPE
CORAL AND DEVELOPER IN THE DEVELOPERS
AGREEMENT

**NOTE:
OLD BURNT STORE ROAD MEDIAN ISLANDS TO BE
LANDSCAPED AS AGREED TO BY CITY OF CAPE
CORAL AND DEVELOPER IN THE DEVELOPERS
AGREEMENT

MATCHLINE - ISLAND 1 — — —
MATCHLINE - ISLAND 2 — — —

VEHICULAR PARKING REQUIREMENTS FOR ALL PROPOSED USES / DEVELOPMENT BASED ON THE SITE ANALYSIS DETAILED IN "SHARED PARKING STATEMENT" PREPARED BY SIMMONS & WHITE. (SEE SHEET 3 FOR VEHICULAR PARKING CALC) (SEE SHEET 3 FOR BICYCLE PARKING CALC)



Document-Code : NL-004-07 - Received on 11/01/2018

**MASTER CONCEPT PLANS
(ISLAND 2)**

3 of 8

3 of 8

AVALON ENGINEERING, INC.
2503 DEL PRADO BLVD. S #200
CAPE CORAL, FLORIDA 33994
FB#E#128 (239) 573-2077

MASTER CONCEPT PLANS (ISLAND 2)

3 of 8

VERTICAL ELEVATIONS BASED ON NGVD 29

CONCEPTUAL SITE PLAN

FOR
ISLAND 3

FINAL MCP REVISION DATE : 10/09/25

VEHICULAR PARKING REQUIREMENTS FOR ALL PROPOSED USES / DEVELOPMENT BASED ON THE ITE ANALYSIS DETAILED IN "SHARED PARKING STATEMENT" PREPARED BY SIMMONS & WHITE. (SEE SHEET 3 FOR VEHICULAR PARKING CALC) (SEE SHEET 3 FOR BICYCLE PARKING CALC)



NOT INTENDED
FOR PUBLICATION

5 ARE N
OUGHT

NOTE:
OLD BURNT STORE ROAD MEDIAN ISLANDS TO BE
LANDSCAPED AS AGREED TO BY CITY OF CAPE
CORAL AND DEVELOPER IN THE DEVELOPERS
AGREEMENT

CAPE CORAL SPREADER
WATERWAY

SANTA LUCIA CANAL
MATCHLINE ISLAND 2
MATCHLINE ISLAND 3

ST. CROIX CANAL
MATCHLINE - ISLAND 3

MASTER CONCEPT PLANS (ISLAND 3)

4 of 8

1000

VERTICAL ELEVATIONS BASED ON NGVD 29

CONCEPTUAL SITE PLAN

FOR
SI AND 4

FINAL MCP REVISION DATE : 10/09/25

VEHICULAR PARKING REQUIREMENTS FOR ALL PROPOSED USES / DEVELOPMENT BASED ON THE ITE ANALYSIS DETAILED IN "SHARED PARKING STATEMENT" PREPARED BY SIMMONS & WHITE. (SEE SHEET 3 FOR VEHICULAR PARKING CALC) (SEE SHEET 3 FOR BICYCLE PARKING CALC)



THESE PLANS ARE NOT INTENDED
FOR CONSTRUCTION

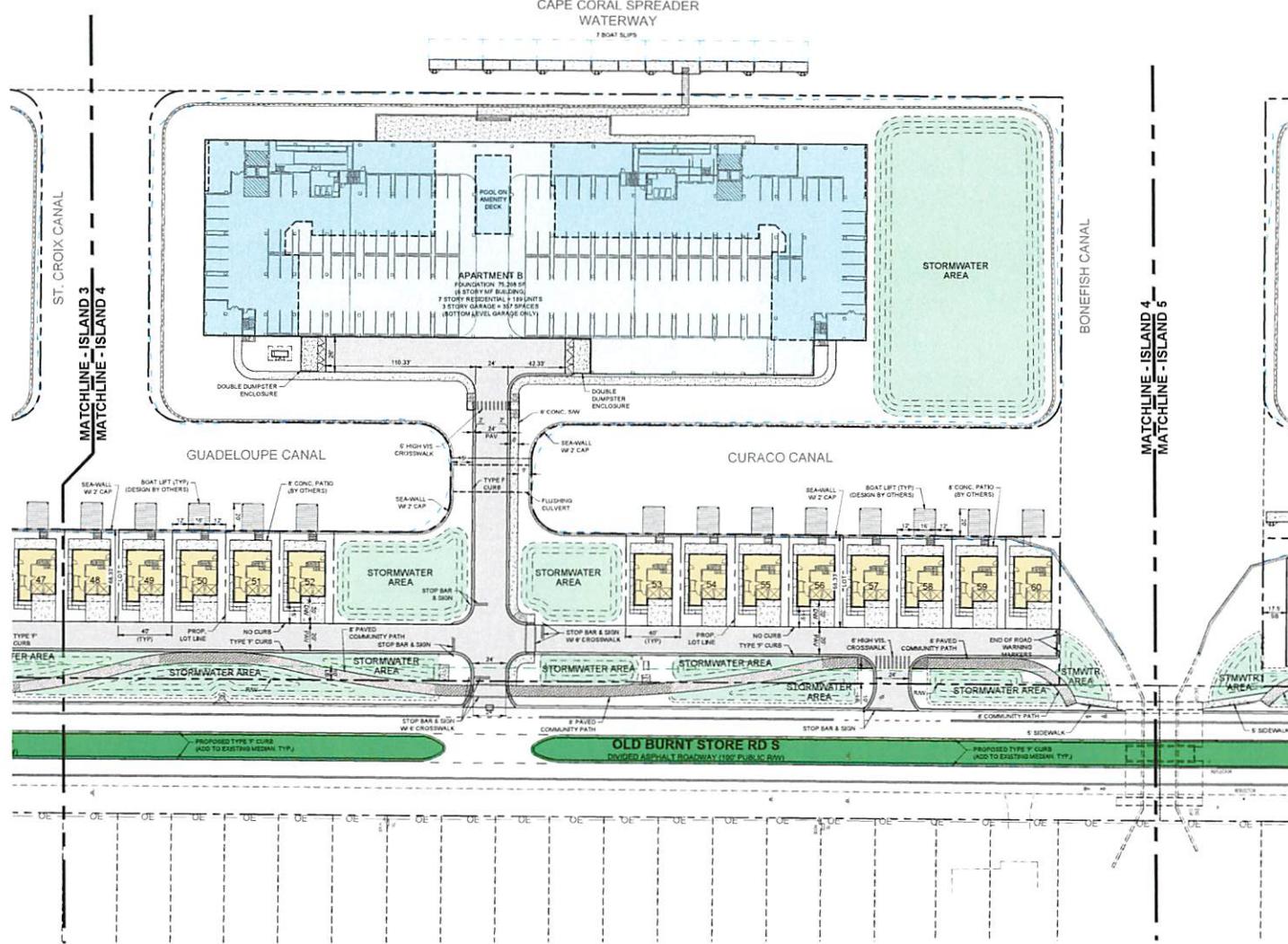
10/09/24 100% OWNERSHIP OF GOVERNMENT CONTRACTS

10

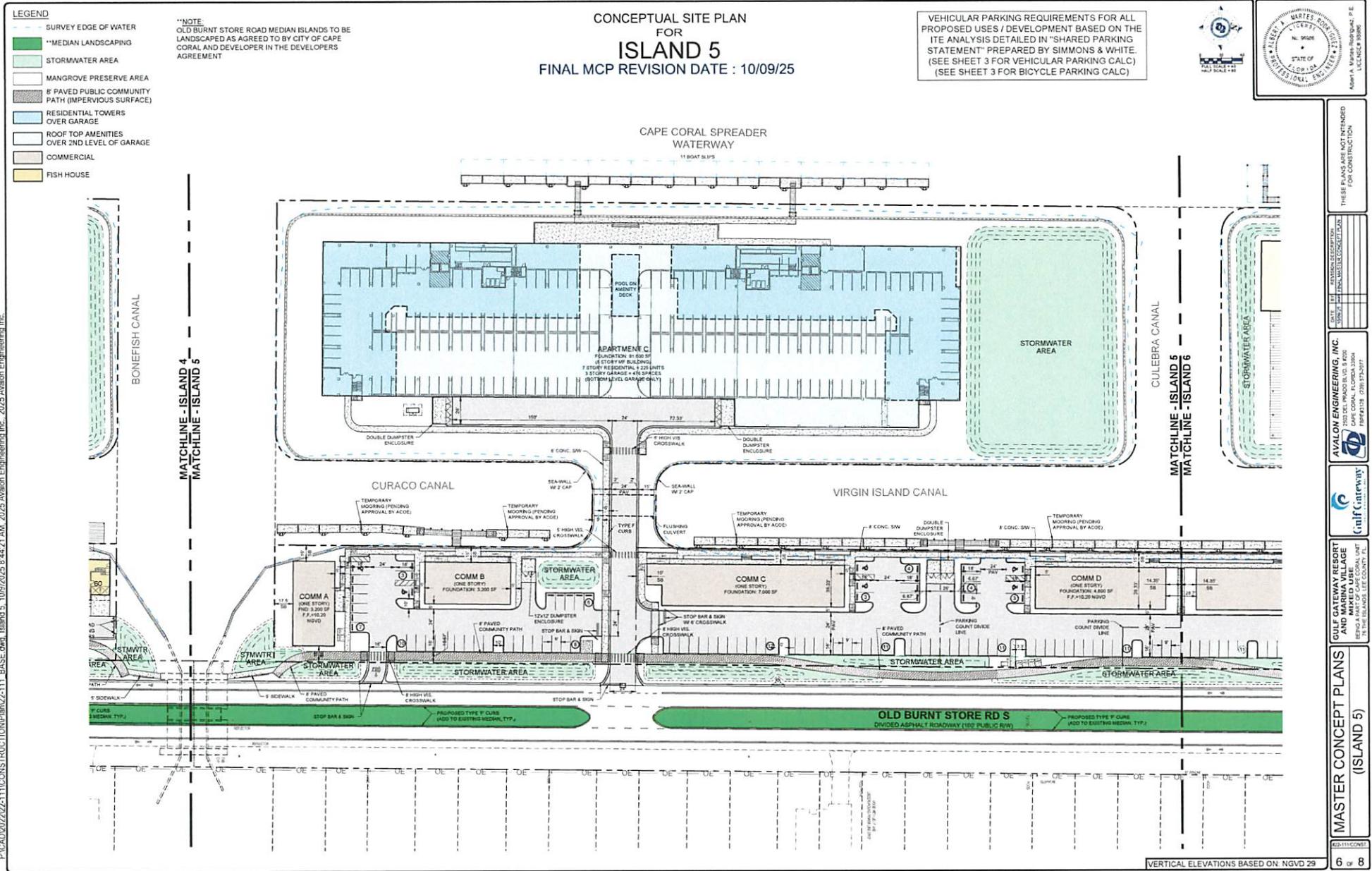
GULF
AND

NCEP
AND A)

5



VERTICAL ELEVATIONS BASED ON NGVD 29



CONCEPTUAL SITE PLAN

FOR
ISLANDS

ISLAND 6
FINAL MGR REVISION DATE : 10/09/25

****NOTE:**
OLD BURNT STORE ROAD MEDIAN ISLANDS TO BE
LANDSCAPED AS AGREED TO BY CITY OF CAPE
CORAL AND DEVELOPER IN THE DEVELOPERS
AGREEMENT

VEHICULAR PARKING REQUIREMENTS FOR ALL PROPOSED USES / DEVELOPMENT BASED ON THE ITE ANALYSIS DETAILED IN "SHARED PARKING STATEMENT" PREPARED BY SIMMONS & WHITE. (SEE SHEET 3 FOR VEHICULAR PARKING CALC) (SEE SHEET 3 FOR BICYCLE PARKING CALC)



Mr. A. Martin Rodriguez, P.E.
LIC#3956 • DB#285

THESE PLANS ARE NOT INTENDED
FOR CONSTRUCTION

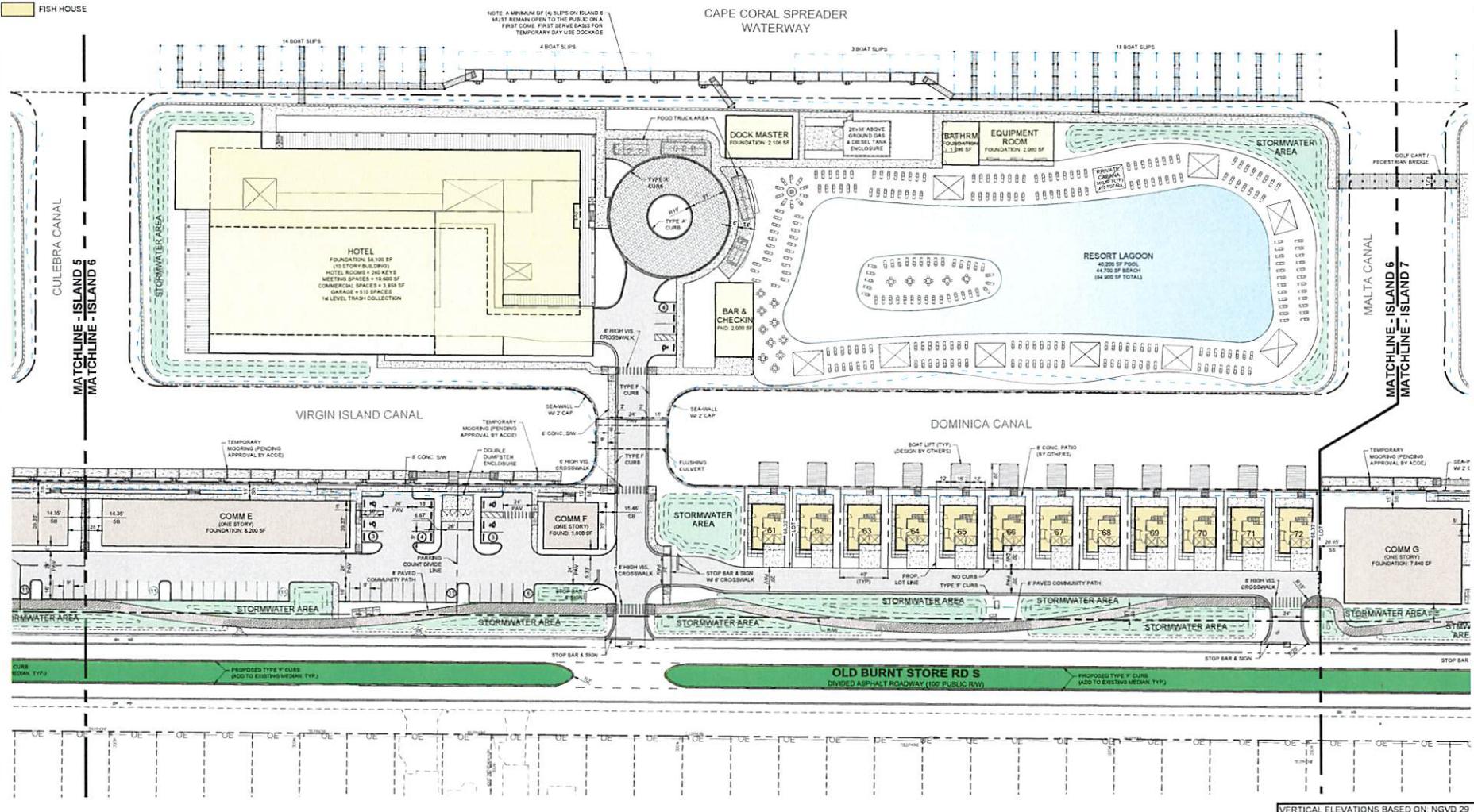
15/08/7
RINGS, INC.
1100 S. 6200
SUITE 33004
1173-2077

Inteway

CULF GR
AND M
M
BING A PA
76 THE ISL

ISLAND 6 CONCEPT PLANS

7 of 8



VERTICAL ELEVATIONS BASED ON: NGVD 29

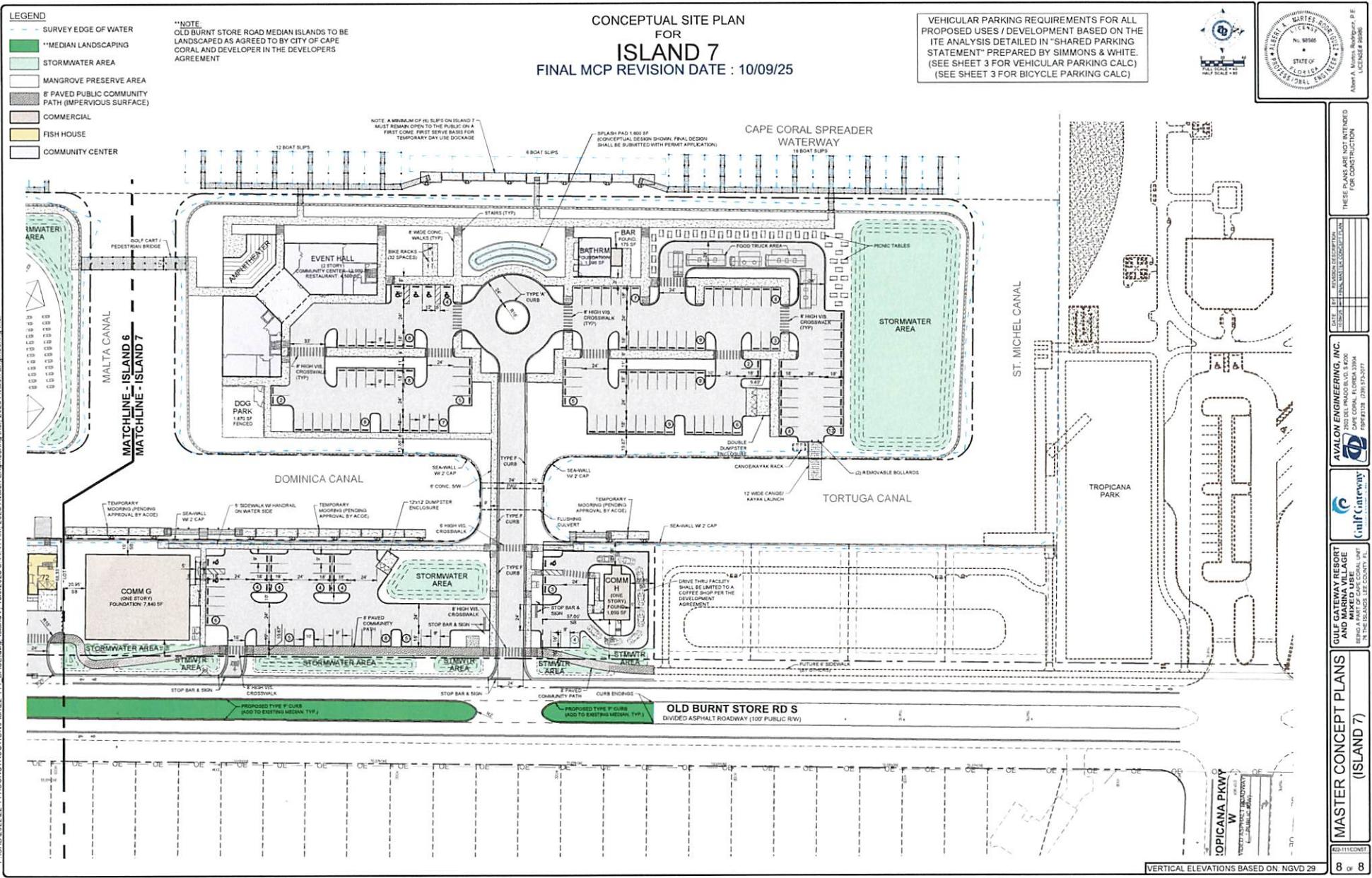


EXHIBIT "D"

Land Development Code Amendments

Ordinance 55-25 – Adopted by the Mayor and City Council on November 19, 2025
[See attached hereto]

ORDINANCE 55 – 25

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF CAPE CORAL, FLORIDA, ARTICLE 4, ZONING DISTRICTS, CHAPTER 1, GENERAL PROVISIONS, SECTION 4.1.6 USES BY ZONING DISTRICT – USE HIERARCHY, AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF CAPE CORAL, FLORIDA, ARTICLE 4, ZONING DISTRICTS, CHAPTER 2, SPECIFIC REGULATIONS BY DISTRICT, SECTION 4.2.14. MIXED-USE SEVEN ISLANDS DISTRICT (MX7); AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF CAPE CORAL, FLORIDA, ARTICLE 11, DEFINITIONS, CHAPTER 1, GENERAL PROVISIONS, SECTION 11.2. DEFINITIONS, REGARDING PERMITTED USES IN THE MX7 MIXED USE DISTRICT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral, Florida Land Development Code, Article 4, Zoning Districts, Chapter 1, General Provisions, Section 4.1.6., Uses by zoning district – Use hierarchy, is hereby amended as follows:

Section 4.1.6. Uses by zoning district—Use hierarchy.

A. Classification of Uses Listed in Table 4.1.6.

1. Permitted Uses. Uses that are allowed by right. These uses are shown in the table with a "P".
2. Permitted Uses with Specific Regulations. Uses that are permitted with specific regulations that apply in all zoning districts where those uses are permitted. The specific regulations are provided in Article 5, Chapter 10. These uses are shown in the table with a "P*".
3. Conditional Uses. Uses which are generally appropriate in a Zoning district. Conditional uses are permitted uses which, because of potential impacts, may require reasonable special limitations or conditions of approval peculiar to the use for the protection of the public health, safety, or welfare and the integrity of the Comprehensive Plan. The specific requirements for conditional uses are provided in Article 5, Chapter 11. These uses are shown in the table with a "CU".
4. Special Exception Uses. Those uses or structures that may not be appropriate generally or without restriction throughout a district but which, if controlled as to, area, location, or their relationship and potential impacts to nearby residences or neighborhoods, would be acceptable. These uses are shown in the table with an "SE".
5. Prohibited Uses. Any use not specifically listed as a permitted use, a permitted use with specific regulations, a conditional use, a special exception use, a permitted accessory use, or permitted through a similar use determination shall be considered expressly prohibited.

B. Uses not listed in Table 4.1.6.

1. Accessory Uses. Accessory uses are customarily associated with and are incidental and subordinate to such principal uses. An accessory use shall be subject to the same regulations that apply to the principal use in each district, except as otherwise provided.
2. Temporary Uses. Uses that are deemed temporary in nature regulated by Article 5, Chapter 9 or the City Code of Ordinances, shall not be subject to the standards and requirements as set forth in this article, except that the City may impose conditions which may include limiting the period of approval, imposing hours of operations, location of any aspect of the temporary use, operational standards to minimize impacts on surrounding properties, and any other conditions deemed necessary to minimize detrimental impacts to the welfare of the community. These uses are listed in Article 5, Chapter 9 or the City Code of Ordinances.
3. Similar Use Determinations. See Article 3Section 3.3.3.

USE HIERARCHY

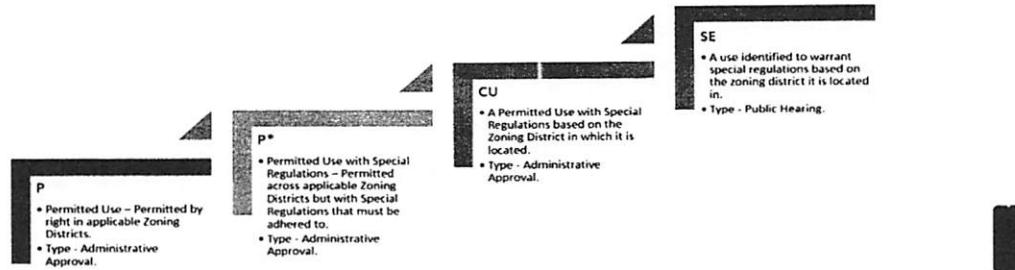


Table 4.1.6 Use Table

The following table of uses, when read together with the definitions set forth in Article 11 shall be used to determine the zoning district in which a given use may be established.

Use Table

P= Permitted P*= Permitted with Standards CU= Conditional Use SE= Special Exception Empty= Not Permitted

PUD zoning allows all uses consistent with the Future Land Use Classification

Use Type	Residential Districts					Non-Residential Districts					Mixed Use Districts								
	R	RML	RMM	RE	A	P	C	I	INST	PV	CC	NC	MX7	MXB	SC	PRI	SEC	LOC	
Residential	Single-family	P	P			P	P								P				
	Duplex		P*																
	Multi-family		CU	CU								CU	CU	CU	CU	CU	CU	CU	
	Single-family Semi-detached		P*	P*								CU							
	Single-family Attached -		CU	P								CU	CU	CU	CU			CU	
	3 or more																		
	Micro-Cottage																		
	Assisted Living Facility		SE	P					P	P		P	P			P			
	Family Day Care Home - 5 or fewer	P	P	P	P	P													
	Community Residential Home - up to 6 res	P	P	P	P	P													
	Community Residential Home - 7 to 14 residents		P	P															
Public and Institutional Uses	Model Home	P*	P*			P*													
	Home-Based Business	CU	CU	CU	CU	CU									CU	CU	CU	CU	
	Animal Shelter					P			SE	SE									
	Essential Services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Educational Facilities -	P	P	P	P	P			P			P			P				
	Primary and Secondary																		
	Educational Facilities -			SE				P	P	P		P			P				
	Vocational Schools								P	P		P							
	Educational Facilities -								P	P		P							
	Colleges and universities																		
	Essential Service Facilities - Major	SE	SE	SE	SE	SE	SE	P	P	P	SE	P	SE	SE	SE	SE	SE	SE	
	Essential Service Facilities - Minor	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Government Office Facilities						P	P	P	P		P	P	P	P	P	P	P	
	Hospital							P	P		P	P							
	Police and Fire	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Recreation and Entertainment	Public Parks and Recreational Facilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Social Services							P	P	P						P	P		
	Sexually Oriented Business							P											
	Commercial Recreation, Indoor							P	P		P	P		P	P	P	P	P	
	Commercial Recreation, Outdoor					P	P				P	P		P	P				
	Golf Course w/ Ancillary activities	P	P	P	P	P													
	Golf, Driving Range					P													
	Golf, Miniature				P	P					P	P				P	P		
	Marina					P					P	P	P	P	P				
	Shooting Range/Archery - Indoor					P				P									
Vehicle-related	Shooting Range/Archery - Outdoor					SE													
	Boat Sales						P	P		P						CU	CU		
	Car Wash							CU		CU									
	Commercial Parking lot or Garage						P			P	P	P	P	P	P				
	Heavy Vehicle, Sales & Rental						P		P										
Vehicle-related	Light Vehicle, Rental						P		P	P					P	P			

	Light Vehicle, Sales							P*							
	Vehicle Repair, Major					P			SE						
	Vehicle Repair, Minor				CU	P			P	CU					
	Vehicle Fueling Station			CU	P			P	CU				CU		
	Marine Fuel Pump				P*	P*			P*						
	Vehicle and Boat Storage					P									
	Accessory Parking Lot	P*			P*				P*						
Food and Beverage	Bar					P			P	P	P	P	P	P	P
	Brewpub					P			P	P	P	CU	P	P	P
	Craft Brewery, Distillery, Winery				P*	P*			P*						
	Mobile Food Vendor											P			
	Mobile Food Courts (MFC)			CU	CU	CU		CU							
	Mobile Food Vendor (MFV)			CU	CU	CU	CU	CU	CU	CU	CU	CU	CU	CU	CU
	Restaurant, no drive-thru			SE	P	P		P	P	P	P	P	P	P	P
	Restaurant, drive-thru					P		P	P						P
Lodging	Bed and Breakfast	SE	SE	SE	SE	SE									
	Campground					SE									
	Hotel/Motel						P		P	P	P	P	P	P	P
	Resort	P*	P*	P*			P								
	RV Resort					SE*									
Commercial and Professional Services	Animal Kennel, Indoor		P	P	P				P				P	P	
	Animal Kennel, Outdoor			P											
	Day Care Facilities - Adult or Child	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Banks and Finance - no drive thru				P	P		P	P			P	P	P	P
	Banks and Finance w/ drive thru				P	P		P							P
	Building and Construction w/o outdoor storage/display				P	P	P		P	P			P	P	P
	Building and Construction w/outdoor storage/display				P*	P*			P*						
	Landscaping Services w/o outdoor storage/display				P	P	P		P	P			P	P	P
	Landscaping Services w/outdoor storage/display				P*	P*			P*						
	Self-Storage Facilities				CU	CU		CU							
	Personal Services		P	P				P	P	P	P	P	P	P	P
	Pharmacy - no drive through		P	P				P	P	P	P	P	P	P	P
	Pet Services		P	P				P	P			P	P	P	P
	Pharmacy with drive through			P				P							P
	Professional Offices		P	P				P	P	P	P	P	P	P	P
	Professional Services		P	P				P	P	P	P	P	P	P	P
Agriculture	Radio and TV Station				P	P		P	P				P	P	
	Repair Shops			P	P			P	P				P	P	
	Retail <30,000 sq. ft. per tenant			P				P	P	P	P	P	P	P	P
	Retail >30,000 sq. ft. per tenant			P				P	SE			SE	SE	SE	
	Non-Domestic Animal Boarding		P												
	Community Garden		P			P									
	Farms - Produce & Livestock		P												
	Greenhouse/Nursery		P					P							
Industry	Stable		P	P											
	Roadside Food and Vegetable Stand			P*											
	Distribution Center					P		P							
Industry	Automotive Towing Establishment					P									

Dry Cleaning/Laundry Plant					P							
Extraction w/ancillary use			SE		P							
Industrial, Heavy					P							
Industrial, Light					P		SE					
Industrial Business Centers					P			CU				
Laboratory - medical, research, testing				SE	P	SE		SE				
Energy Resource Generation			SE			P						
Storage, Heavy Equipment					P	SE						
Storage, Outdoor Screened					P	SE		CU				
Storage, Outdoor					P							
Solid Waste Transfer Station			SE			SE						
Warehouse					P			P*				
Places of Assembly			SE			SE				SE	SE	SE
					P		P	P		P	P	P
			P				P	P		P	P	P
				P					P	P	P	P
				P	SE				P	P	P	P
						P	P	P	P	P	P	P
	CU	CU	CU	CU	P	P	P	P		P	P	P
Other	Cemetery/Mausoleum				P		P					
	Crematory					P		P				
	Funeral Homes				P	P		P	P		P	P
	Heliport				SE	SE	SE	SE	SE			
	Helistop			SE	SE	SE	SE	SE	SE			
	Live/						P	P	P		P	P
	Workspace				P*	P*	P*	P*			P*	P*
	Wireless Communication Facilities				P*	P*	P*	P*				
	Solar Arrays			P*		P*						
	Mixed-use Building					P*						
	Wildlife Rehabilitation Center			P		P						

SECTION 2. The City of Cape Coral, Florida Land Development Code, Article 4, Zoning Districts, Chapter 2, Specific Regulations by District, Section 4.2.14., Mixed-use Seven Islands District (MX7), is hereby amended as follows

Section 4.2.14. Mixed-use seven islands district (MX7).

- A. Intent and purpose. It is the intent of this district to implement City Council adopted plans to create a comprehensively planned, mixed-use development for the Seven Islands area. The specific purposes of the Mixed-Use Seven Islands District are:
 1. To provide for an integrated mix of uses that includes:
 - a. A diversity of housing options;
 - b. A diversity of commercial, and office, research and development, and institutional uses providing employment as well as goods and services; and
 - c. Adequate open space for active and passive recreation that encourages public interaction.
 2. To provide for access via a circulation system and pattern that encourages travel on foot and by bicycle within the neighborhood and the use of public transit for external travel, augmented by locations for automobile parking that do not inhibit such circulation.
 3. To provide, where appropriate, for integration and compatibility of residential uses with commercial, and office, research and development, or institutional uses.
 4. To establish land use and design standards that will ensure compatibility with surrounding uses.

5. To establish standards and procedures through which the land use objectives and guidelines of an approved and adopted master or area plan serve as the basis for evaluating an individual multi-use neighborhood proposal.
6. To authorize development that is consistent or may be shown to be consistent with applicable laws, regulations, and restrictions addressing environmental protection.

B. ~~Where applicable, Land classified MX7 must be in an area for which an approved and adopted Use same language as above master or area plan recommends mixed-use development at an appropriate scale.~~

C. ~~Location. The location of properties identified as MX7 are limited to those identified in the Seven Islands Master Plan. Properties identified as MX7 are limited to Tracts A-C, and I, and Blocks 6400-6408, Unit 76, Cape Coral Subdivision.~~

D. ~~Residential. Any type of dwelling unit as well as any accessory use is allowed, so long as the location and mix of types must be consistent with the Seven Islands Master Plan. A residential use may be intermixed with a nonresidential use or uses in the same block, lot, or building.~~

EB. ~~Maximum residential dwelling units and non-residential square footage. The maximum number of residential dwelling units is 995 dwelling units; and non-residential square footage is limited to an FAR of 1.0 440,000 square feet, no less than 40,000 of which is a which includes a community center. The mix of residential dwelling units and non-residential square footage shall be in accordance with the Seven Islands Master Plan, concept D1.~~

FC. ~~Compatibility and design standards. All uses must conform to the guidelines of the Seven Islands Master Plan. Uses must be compatible with existing or planned development on or adjacent to the site.~~

1. Master Concept Plan
Development within the MX7 shall be in accordance with the Master Concept Plan dated October 9th, 2025.

42. Height and Orientation.

- a. ~~No building may be constructed to a height greater than 8 stories or 115 feet, or as indicated in the Seven Islands Master Plan, Concept D1. First or second stories that are uses primarily for vehicle parking shall not count towards the eight stories. Occupiable rooftops shall not count towards height unless an enclosed structure is constructed on Occupiable Rooftop.~~
- b. A building primarily used for retail or office use must be oriented toward the street on which it fronts. Off-street parking shall be kept to a minimum between the building and the front lot line.

2 3. External access and internal circulation.

- a. ~~The internal vehicular circulation system must follow a pattern of intersecting streets that provide alternative routes.~~
- b. ~~Points of external access and alignments of internal roadways must facilitate use of public transit. This includes providing sufficient rights of way for bus pull-outs and bus shelters, as well as transit easements on private streets.~~
- ea. A comprehensive pedestrian and bicycle circulation system must link all uses, with the intent of minimizing walking distances and reducing dependence on the private automobile for internal travel and external access; and include:
 - i. Pedestrian sidewalks within the rights-of-way of Old Burnt Store Road and Tropicana Parkway;
 - ii. Pedestrian pathways and bikeways within open space areas, in addition to the sidewalks, when environmental factors do not prohibit the construction of paths and bikeways; and
 - iii. Safe and convenient access to retail and service uses, community and public facilities, and public transit, carpool, or vanpool services.

34. Public facilities and utilities.

- a. All utility lines must be placed underground.
- b. Street lighting must be provided in accordance with the site plan.

GD. Green area and public use space requirements. The minimum amount of green area is 30 percent of the gross area of the site. This green area must include the following:

1. Within the nonresidential area, a plaza for public use;
2. Within the residential area, a public park or common open space suitable for active or passive recreation within a reasonable walking distance of any area devoted to multi-family or single family attached dwelling units; and
3. Integration of active and passive spaces to encourage joint use by employees and residents, subject to the following criteria:
 - a. Active open spaces include large, open play fields, local parks, and small recreation areas;
 - b. Passive open space areas and preserve natural features such as trees and wetlands; and
 - c. Active and passive open spaces will not be isolated from the Seven Islands development.

HE. Surface parking. The form, arrangement, and landscaping of off-street surface parking for multi-family dwellings and commercial uses are designed to avoid large expanses of paved area. Parking shall be away from the street frontage and in the interior of the lot, unless the City Council makes a finding that parking between the building and front lot line will serve the purposes of the district more effectively than an interior location.

- I. Drive-thru lanes prohibited. To encourage pedestrian friendliness, no use may utilize drive-thru lanes in the MX7 district.
- J. Specific regulations or conditions for multi-family residences; single family attached 3 units or greater; craft brewery, distilleries, and wineries; marine fuel pumps; mobile food courts; mobile food vendors; and home-based businesses are found in Article 5, Chapters 10 and 11.

SECTION 3. The City of Cape Coral, Florida Land Development Code, Article 11, Definitions, Chapter 1, General Provisions, Section 11.2. Definitions, is hereby amended as follows:

Section 11.2. Definitions.

.....
Occupiable Rooftops, shall mean areas on the roof of a building that can be used for interaction and recreation use that are not a Building as defined in Article 11 of the Land Development Code.

.....
SECTION 4. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 5. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA,
AT THEIR REGULAR SESSION THIS 14th DAY OF November, 2025.


JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

GUNTER
STEINKE
LEHMANN
DONNELL

aye
aye
aye
aye

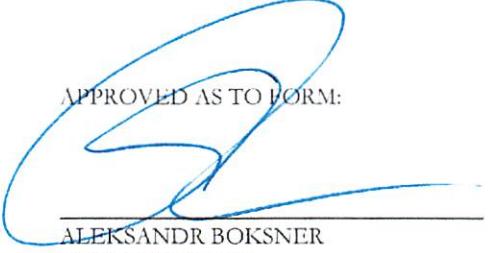
LASTRA
KILRAINE
LONG
KADUK

aye
aye
aye
aye

ATTESTED TO AND FILED IN MY OFFICE THIS 1st DAY OF December,
2025.

Kimberly Bruns
KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:


ALEKSANDR BOKSNAR
CITY ATTORNEY
ord/Permitted Uses MX7

AB

EXHIBIT "E"

Project Development Timeline

[See attached hereto]

ID	Task Name	Duration	Predecessors	
1	Gulf Gateway: Development Schedule			
2	Development Agreement - Receipt of Civil Engineering Permit	331 days		
3	Execution of Development Agreement	1 day		
4	Submit Civil Engineering Phase 1 Plan for Permit	270 days	3	
5	City Review of Civil Engineering Plan	60 days	4	
6	Seawall and Infrastructure Construction	1336 days	3, 4, 5	
7	Southwest Florida Water Management & Army Corps Permits	1 day		
8	Seawall Construction	583 days	7	
9	Land Clearing and Grubbing, Includes Permit Time	227 days	8	
10	Horizontal Infrastructure Construction Phase 1	525 days	5, 8, 9	
11	Phase 1 Vertical Construction Plan Development & Permitting	1766 days	7, 8, 9, 10	
12	Complete Old Burnt Store Road Developer Improvements	365 days	10	
13	Develop Community Center Plans	150 days	10	
14	Community Center - Submit for & Receive Permits	60 days	13	
15	Community Center - Island 7 Construction	450 days	14	
16	Develop Fish Houses Plans for Permit	150 days	10	
17	Fish Houses - Submit for & Receive Permits	1020 days	16	
18	Fish Houses - Construction	1556 days	17+60 days	
19	Marina Construction on Islands 6 & 7	545 days	10	
20	Develop Building Plans for 1st 50% of Old Burnt Store Road Commercial	150 days	10	
21	1st 50% Commercial - Submit for & Receive Permits	60 days	20	
22	Complete 1st 50% of Old Burnt Store Road Commercial	600 days	21	
23	Develop Building Plans for 2nd 50% of Old Burnt Store Road Commercial	150 days	22	
24	2nd 50% Commercial - Submit for & Receive Permits	60 days	23	
25	Complete 2nd 50% of Old Burnt Store Road Commercial	600 days	24	
26	Islands 1 - 5 & Hotel Plan Development & Construction	6879 days	12, 15, 19, 25	
27	Develop Hotel Plans & Submit For Permit	270 days	25	
28	Commence Construction of Hotel - Island 6	730 days	27	
29	Develop Plans for Permit Islands 1 - 5	1563 days	25	
30	Commence Construction of Islands 1 - 5	5316 days	29	

This schedule does not contemplate items further defined in sections 9.3, 12.5, 23, or 33 or other areas of the Development Agreement identifying potential delays.

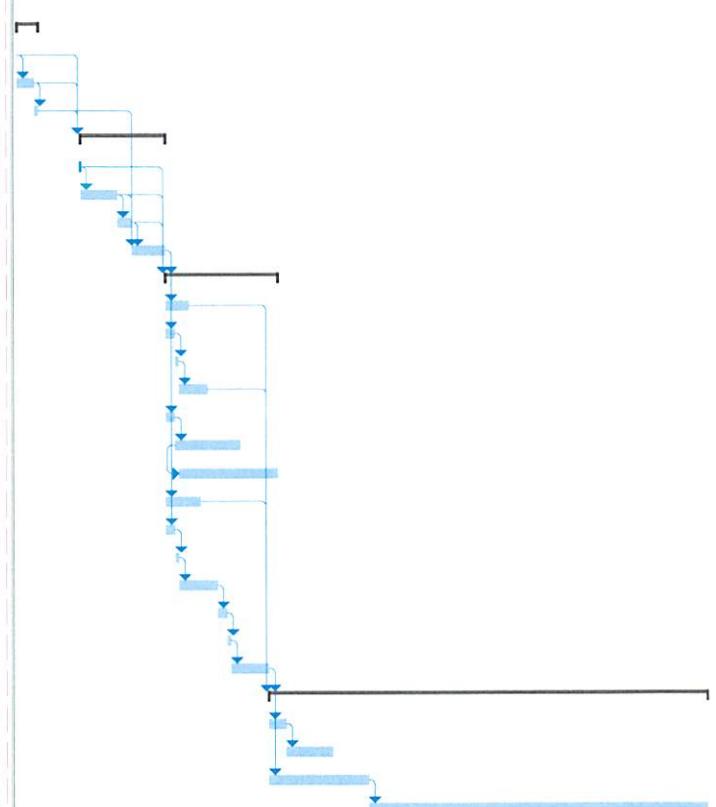


EXHIBIT "F"

Utility and Roadway Easement Agreement

[See attached hereto]

Prepared by:
CITY OF CAPE CORAL
P.O. BOX 150027
CAPE CORAL, FLORIDA 33915-0027
STRAP: xxx

PERMANENT UTILITY AND DRAINAGE EASEMENT & PUBLIC INGRESS AND EGRESS EASEMENT

This Grant of Utility and Drainage Easement and Public Ingress and Egress Easement, made this _____ day of _____ 20XX by and between XXXXXX, a Florida limited liability company, whose mailing address is XXXXXX, as "Grantor", and the **City of Cape Coral**, a Florida municipal corporation, whose address is c/o Real Estate Division, P.O. Box 150027, Cape Coral, Florida 33915-0027 as "Grantee".

WITNESSETH that said Grantors, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable considerations to said Grantors in hand paid by said Grantee, the receipt whereof is hereby acknowledged, have granted and conveyed to the said Grantee, and Grantee's successors and assigns forever, a perpetual easement to survey, construct, operate, maintain, repair, remove, replace or abandon utility and drainage facilities, in, along, under, above and upon the following described land, situate, lying and being in Lee County, Florida, to wit:

A parcel of land XX.00 feet wide for Permanent Utility, Road and Drainage Easement purposes lying in Cape Coral Unit XX, Block XXX, Lots XX, being in Section XX, Township XX South, Range XX East, Lee County, Florida, recorded in Plat Book XX, Pages XX through XX, inclusive of the Public Records of Lee County, Florida, being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Easement Area").

Grantor, for such considerations, further grants and conveys Grantee, its successors and assigns, an easement for vehicular and pedestrian ingress and egress for the general public over, through, and across the land described as:

Plat of Cape Coral, Unit 76, the Islands, recorded in Plat Book 35, Pages 121 through 129, inclusive, of the Public Records of Lee County, Florida

Reserving unto the Grantors, Grantor's successors and assigns forever, the right to construct, maintain, install, operate and place upon the "Easement Area" described herein, any surface improvements, excluding buildings, to include but not be limited to, sidewalks, curbing, landscaping provided that such surface improvements do not unreasonably interfere with the utility, road and/or drainage facilities constructed within said "Easement Area". Grantors and Grantor's successors and assigns, agree to assume all liability for any damage to any surface improvements constructed by Grantors within the above "Easement Area", which result from the actions of the Grantee, including but not limited to any construction, maintenance or repairs to the utility and/or drainage facilities located within the above

described "Easement Area" in accordance with Section 5.1.6 of the City of Cape Coral Land Development Code.

By the execution hereof, Grantor covenants that Grantor has the right to convey this easement and that the Grantee and its successors and assigns shall have quiet and peaceful possession, use, and enjoyment of this easement and the rights granted hereby.

In Witness Whereof, Grantor has hereunto set its hand the day and year first above written.

XXXXXXXXXXXX
a Florida Corporation

Witness

Print Name

Address

Address

By: _____
XXXX, Title

Witness

Print Name

Address

Address

STATE OF: _____ §

COUNTY OF: _____ §

The foregoing instrument was acknowledged before me by physical presence this _____ day of _____ 20XX, by XXXXX, Title of XXXXX, Inc., a Florida corporation, who is personally known to me or has produced _____ as identification.

My Commission Expires:

Notary Public Signature
(seal)

EXHIBIT "G"

Phase 1

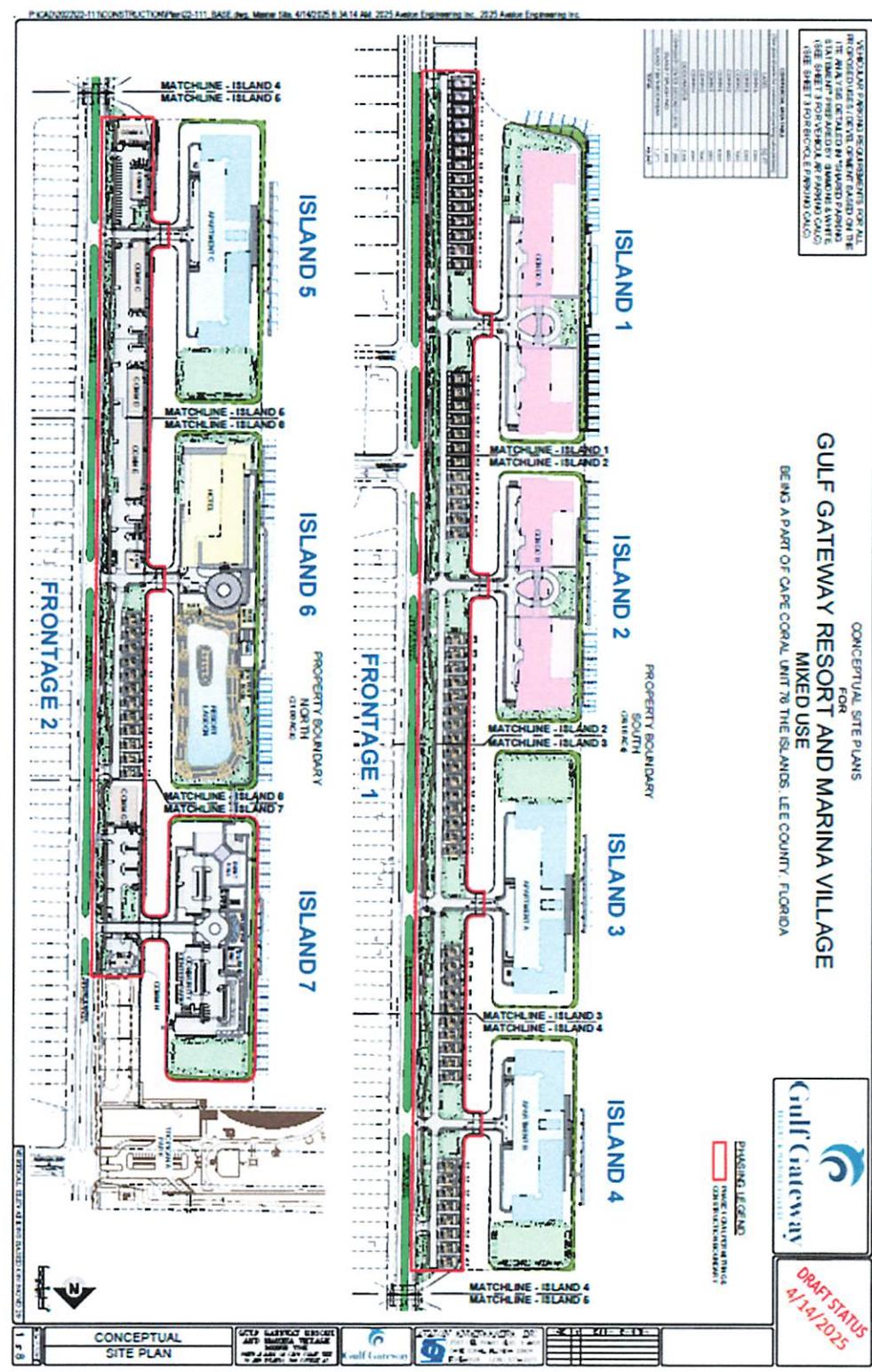


EXHIBIT "H"

Community Center Lease

[See attached hereto]

LEASE AGREEMENT

This Lease Agreement ("Lease") is made and entered into this _____ day of _____, 20____, by and between the CITY OF CAPE CORAL, a Florida municipal corporation ("CITY"), and GULF GATEWAY RESORT & MARINA, LLC, a Florida limited liability company (the "DEVELOPER")

WHEREAS, DEVELOPER is the owner of the property located at [INSERT STREET ADDRESS], Cape Coral, Florida 33993 ("Property"); and

WHEREAS, CITY desires to lease a portion of the Property from DEVELOPER pursuant to the terms provided herein; and

WHEREAS, DEVELOPER agrees to grant a lease to the CITY allowing the CITY to use a portion of the Property pursuant to the terms provided herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, DEVELOPER hereby leases to CITY, and CITY hereby leases from DEVELOPER, a portion of the Property, as more particularly described in Exhibit "A" which is attached hereto and incorporated herein by reference ("Premises"), subject to the terms, covenants, agreements and conditions set forth in this Lease.

1. TERM. The initial term of this Lease shall be for ninety -nine (99) years and shall commence on _____ and, unless sooner terminated or extended as provided in this Lease, shall terminate on _____. Thereafter, this Lease shall automatically be extended for successive one (1) year renewal terms unless either party notifies the other of its intention not to renew at least one hundred-twenty (120) days prior to the commencement of any renewal term.

2. RENT. CITY shall pay to DEVELOPER as rent for the Premises the sum of One Dollar (\$1.00) per year, payable on the 1st day of each year for the initial term of this Lease. During the initial term or any subsequent terms of the Lease, the annual rent amount shall not be increased.

3. TAXES. CITY is a governmental agency and a political subdivision under Florida law and is exempt from paying Florida tax. Any property taxes assessed against the Premises shall be paid by DEVELOPER.

4. UTILITY CHARGES. CITY shall reimburse DEVELOPER in a timely manner upon receipt of a bill or invoice, its pro-rata share of the charges for water, gas, electricity, sewer, trash and any and all other utilities, used upon the Premises throughout the Lease Term. Notwithstanding the foregoing, DEVELOPER shall be responsible to pay any and all electric and utility charges associated with the parking lot lights.

5. USE OF PREMISES. CITY shall have the right to use the Premises for the operation of recreation facilities, to create recreational programming for residents and non-residents, and to create social opportunities for the community, which may include, but are not limited to: arts and crafts classes; learning opportunities; adult and child leisure classes; senior and family food programs; cooking classes; music lessons and classes; special holiday events; birthday and special event parties; wellness classes; athletic programming and other adult and child athletic opportunities; before and after school care; summer camp; special events camp; holiday break camps for ages 5 – 18; hosting non-profit organizational meetings and events; utilizing office spaces for CITY personnel; and utilizing storage areas for equipment and supplies. CITY shall have the right to allow use of a portion of the premises adjacent to the boat launch by a kayak concessionaire or similar business to facilitate water access by the public. CITY shall have the right to use any areas adjacent to the Premises for City-sponsored large community events or festivals.

6. PARKING. CITY shall have the right to use any parking spaces located at the Property. DEVELOPER shall designate 10 parking spaces at the Property for the exclusive use of CITY vehicles, at a location mutually agreed between the CITY and DEVELOPER.

7. HOURS OF OPERATION. The parties agree that the normal operating hours for the CITY to utilize and access the Premises and the parking spaces at the Property, shall be from 6:00 A.M. to 10:00 P.M., seven days a week. DEVELOPER agrees that, CITY's Parks and Recreation Director may authorize limited use and access outside normal operating hours if the Director determines that such use is necessary and is in the CITY's best interest.

8. ALTERATIONS AND IMPROVEMENTS. DEVELOPER shall deliver the Premises to CITY in "white box" condition and CITY shall be responsible for the interior finish of the building in its sole and absolute discretion. All improvements shall be installed or carried out in a good workmanlike manner.

All improvements of every kind and nature whatsoever that may be installed by CITY shall remain the property of CITY who may remove the same upon termination of this Lease, provided that such removal is accomplished in a manner which does not damage the Premises. Should CITY fail to remove said improvements as provided herein, CITY agrees to assign, transfer and set over to DEVELOPER all of CITY's right, title and interest in and to said improvements and any personal property not removed by CITY, for the sum of Ten Dollars (\$10.00).

9. COMPLIANCE WITH LAWS, ORDINANCES, POLICIES, RULES AND REGULATIONS. CITY, its employees, licensees, and invitees, while on the Property, shall abide by and comply with all applicable local and state laws, policies, rules, and regulations.

10. SIGNAGE. CITY shall neither erect nor maintain upon the Premises any signs of any nature whatsoever, without prior written approval of DEVELOPER which approval shall not be unreasonably withheld, conditioned, or delayed.

11. REPAIRS AND MAINTENANCE. CITY agrees to keep and maintain the Premises clean and safe at all times during the term of this Lease.

DEVELOPER shall be responsible for any and all costs to repair any fixtures located at the Premises, including but not limited to, the roof, plumbing, windows, doors, flooring, appliances, security system, fire suppression system, HVAC system, parking lot and parking lot lights. DEVELOPER agrees to maintain such items in good working order for the duration of the Lease. DEVELOPER shall be responsible to repair and maintain all Common Areas on the Property in a manner consistent with the standard of a first-class, well-maintained development of similar nature in the area.

Notwithstanding the foregoing, CITY agrees to repair or replace at its expense any personal property, equipment, or fixtures located at the Premises that are damaged by the negligence or willful misconduct of the CITY, its employees, agents, and invitees.

DEVELOPER shall maintain the parking lot and its associated lighting, as it currently exists, as well as the landscaping and irrigation system. DEVELOPER shall be responsible, at its expense, for retaining and managing a licensed professional pest control company to perform all necessary inspection, prevention, and extermination services on the Premises.

12. LIABILITY AND INSURANCE. The CITY is self-insured and carries the following limits of coverage:

a) Commercial General Liability Insurance, such insurance to insure against liability for bodily injury and death and for property damage in an amount not less than \$1,000,000 combined single limit on a per occurrence and \$2,000,000 general aggregate.

b) Automobile Liability Insurance for all owned, non-owned and hired vehicles in an amount not less than \$1,000,000 combined single limit.

c) Workers' Compensation Insurance for all employees of the CITY as required by Florida Statutes.

CITY shall be responsible for assuring the insurance remains in force and uninterrupted for the duration of the Lease term. CITY agrees to submit a copy of its Certificate of Coverage. Nothing in this Lease shall be construed as consent for the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

To the extent allowed by Florida law and subject to the limitations contained in Section 768.28, Florida Statutes, each party assumes responsibility for the negligent or wrongful acts or omissions of its own employees, agents, invitees, or other representatives while acting within the scope of their employment or otherwise within an authorized capacity, arising from the use of the Premises under this Lease. Any claims, lawsuits, judgments,

damages, losses, and expenses, including reasonable attorney's fees, arising from the use of the Premises under this Lease shall be governed by Florida law. However, nothing in this provision shall require either party to indemnify the other for any losses, damages, or injuries caused by or otherwise arising from the negligent or wrongful act or omission of its employees, agents, invitees, or representatives. Each party shall retain all rights and defenses under Florida law in the event of any claims, suits, or other disputes arising from its performance of the obligations of this Lease.

13. DEFAULT, ATTORNEY FEES, AND COSTS. In the event that CITY shall be in default of any payment of any rent or in the performance of any of the terms or conditions herein agreed to be kept and performed by CITY and the default continues for a period of thirty (30) days after receipt of written notice from DEVELOPER, then, in that event, DEVELOPER may terminate and end this Lease at any time thereafter, and may bring legal action to enforce any of the terms hereof, or to obtain possession of the Premises by reason of any default of CITY. Each Party in any legal action against the other Party concerning this Lease shall pay its own attorney fees and costs connected to such action.

14. EMINENT DOMAIN. If the whole or any substantial part of the Premises shall be taken under the power of eminent domain, then this Lease shall terminate as to the part so taken from the date when possession of that part is taken for any public purpose, and from that day, CITY shall have the right to either cancel this Lease or to continue in possession of the remainder of the Premises under the terms herein provided. All damages that may be awarded for such taking shall belong to and be the property of DEVELOPER, with the exception of business damages and damages related to any improvements belonging to CITY.

15. NOTICES. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the City at: City Manager
 City of Cape Coral
 Mailing Address
 PO Box 150027
 Cape Coral, FL 33915-0027
 Hand-Delivery
 1015 Cultural Park Boulevard
 Cape Coral, Florida 33990

With a copy to: City Attorney
 City of Cape Coral
 Mailing Address
 PO Box 150027
 Cape Coral, FL 33915-0027
 Hand-Delivery

1015 Cultural Park Boulevard
Cape Coral, Florida 33990

If to Developer at: Gulf Gateway Resort & Marina, LLC
 11231 US Highway 1, Suite 354
 North Palm Beach, Florida 33408
 Attn: Peter Baytarian

With a copy to: Saul Ewing LLP
 701 Brickell Avenue, 17th Floor
 Miami, Florida 33131
 Attn: Anthony Kang, Esq.

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mails. The terms of this paragraph shall survive the expiration or earlier termination of this Agreement.

17. SEVERABILITY. The invalidity or unenforceability of any provision of this Lease shall not affect other provisions of this Lease Agreement and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

18. SUCCESSORS IN INTEREST. Each and every covenant, condition, and restriction contained in this Lease Agreement shall inure to the benefit of and shall be binding upon the successors in interest of DEVELOPER and CITY.

19. RELATIONSHIP OF PARTIES. Nothing contained in this Lease Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent, or of partnership, joint venture, or of any association between CITY and DEVELOPER, and neither the method of computation of rent nor any other provisions contained in this Lease Agreement nor any acts of the parties shall be deemed to create any relationship between CITY and DEVELOPER, other than the relationship of Lessor and Lessee.

20. QUIET ENJOYMENT. DEVELOPER covenants and agrees that CITY, upon paying the Rent and all other charges herein provided for, and upon observing and keeping the covenants, agreements, and conditions of this Lease on its part to be kept, shall lawfully and quietly hold, occupy, and enjoy the Premises during the Term of this Lease without hindrance or molestation from anyone lawfully claiming by, through, or under DEVELOPER.

21. MODIFICATION. The terms of this Lease Agreement may only be modified in writing and signed by both parties.

22. VENUE. This Lease shall be governed by the laws of the State of Florida. Any and all disputes that may arise under this Lease shall be resolved in the Circuit Court of Lee County, Florida.

23. ENTIRE AGREEMENT. This Lease constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements.

24. ANNUAL APPROPRIATION CONTINGENCY. Notwithstanding any provision to the contrary contained within this Lease, CITY's performance and obligation to pay under this Lease is contingent upon an annual appropriation by the City Council. This Lease is not a commitment of future appropriations. Authorization for continuation and completion of the Lease may be rescinded, upon written notice to DEVELOPER, at the discretion of the CITY if the City Council reduces or eliminates appropriation. In such event, DEVELOPER and CITY agree that this Lease shall be deemed void and of no further effect on the last day of the fiscal period for which appropriations were made.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed on the date set forth below.

Signed, sealed and delivered
in the presence of:

Print: _____

CITY OF CAPE CORAL, a Florida
municipal corporation

BY: _____
John Gunter, Mayor

Date: _____

Print: _____

APPROVED AS TO FORM

Aleksandr Boksner, City Attorney

GULF GATEWAY RESORT & MARINA, LLC,
a Florida limited liability company

Print: _____

BY: _____
Peter Baytarian, Manager

Date: _____

Print: _____

EXHIBIT "A"
The Premises

[First floor of the community center building and the kayak concessionaire area]

EXHIBIT "I"

Community Development District Interlocal Agreement

[See attached hereto]

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (this "Interlocal Agreement"), dated as of this _____ day of _____, 202_____, is entered into by and between the City of Cape Coral, Florida (the "City"), a municipal corporation of the State of Florida and the _____ Community Development District (the "District"), a community development district created pursuant to the provisions of Chapter 190, *Florida Statutes*. The addresses of the parties are set forth below.

RECITALS:

WHEREAS, the City enacted Ordinance Number _____ which was effective on _____ (the "Ordinance") establishing the District; and

WHEREAS, the District consists of that real property wholly within the boundaries described in the Ordinance (the "Property"); and

WHEREAS, the District is an independent special district and a local unit of special-purpose government which is created pursuant to Chapter 190, *Florida Statutes*, and is limited to the performance of those specialized functions authorized by to Chapter 190, *Florida Statutes*, and the Ordinance; and

WHEREAS, the governing body of the District is created, organized, constituted and authorized to function specifically as prescribed in Chapter 190, *Florida Statutes*, and the Ordinance for the delivery of urban community development infrastructure and services; and

WHEREAS, pursuant to Chapter 190, *Florida Statutes*, the District is presently authorized to construct, acquire, finance, fund, install and maintain certain infrastructure improvements and services for which the District may impose, levy and collect non-ad valorem special assessments on the Property; and

WHEREAS, on _____, the District adopted resolution _____ which (i) approved a capital improvement program totaling \$_____ of infrastructure improvements (the "CIP") and (ii) levied special assessments on the Property to secure future bonds or other debt to be issued by the District to fund the CIP (the "Special Assessments"); and

WHEREAS the CIP approved by the District includes the Project Infrastructure (as defined below); and

WHEREAS, on _____, the circuit court in the twentieth judicial circuit in and for Lee County, Florida entered a final judgment of validation authorizing the District to issue revenue bonds in an amount not to exceed \$_____ (the "Bonds") to be paid from the Special Assessments on the Property, in order to fund the CIP inclusive of the Project Infrastructure (as defined below); and

WHEREAS, the City and Gulf Gateway Resort & Marina, LLC, a Florida limited liability company (the "Developer"), entered into that certain Development Agreement, dated as of _____ and recorded on _____ under Document Number _____

, in the Public Records of Lee County, Florida (the “**Development Agreement**”), which, among other matters, requires the execution of this Interlocal Agreement by the City and the District; and

WHEREAS, in order to effectuate the terms of the Development Agreement, this Interlocal Agreement between the City and the District is entered into to further define the responsibility of the District to provide for the acquisition and/or completion and conveyance to the City of the infrastructure, projects, systems or facilities as set forth on Schedule 1 attached hereto and incorporated herein (referred to herein as the “**Project Infrastructure**”); and

WHEREAS, this Interlocal Agreement has been approved by the District and the City; and

WHEREAS, it is in the mutual interest of the City and the District to establish intergovernmental relations that encourage, promote and improve the coordination, overall effectiveness and efficiency of governmental activities and services within the boundaries of the District; and

WHEREAS, Section 163.01, *Florida Statutes*, known as the “*Florida Interlocal Cooperation Act of 1969*”, permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities, and

WHEREAS, the City and the District find this Interlocal Agreement to be necessary, proper and convenient to the exercise of their powers, duties and purposes authorized by law; and

WHEREAS, the City and the District desire to exercise jointly their common powers and authority concerning the cost effective financing of the acquisition and construction of the Project Infrastructure; the avoidance of inefficiencies caused by the unnecessary duplication of services and facilities; and the clarification of responsibilities, obligations, duties, powers, and liabilities of each of the governmental bodies.

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the District agree as follows:

ARTICLE I – INTRODUCTION

Section 1.01. **Authority.** This Interlocal Agreement is entered into pursuant to the authority set forth in the *Florida Interlocal Cooperation Act of 1969* and Chapter 190, *Florida Statutes*, and other applicable controlling provisions of law.

Section 1.02. **Recitals, Exhibits and Schedules.** The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Interlocal Agreement. All exhibits and schedules identified herein are hereby incorporated by reference to the same extent as if fully set forth herein.

Section 1.03. Authority to Contract. The execution of this Interlocal Agreement has been duly authorized by the appropriate body or officials of the City and the District, each party has complied with all applicable requirements of law, and each party has full power and authority to comply with the terms and provisions of this instrument.

ARTICLE II – PROJECT INFRASTRUCTURE OBLIGATIONS

Section 2.01. Project Infrastructure Obligations.

(a). The City and the District agree and acknowledge that unless expressly specified herein, the execution of this Interlocal Agreement does not release any obligation of the Developer or any other developer or owner of land with regard to the Property within the District and the City retains all powers and control under all development orders and permits, including the Development Agreement, as well as any general law.

(b). The District hereby agrees for the benefit of the City that the District shall provide for the financing and completion of the Project Infrastructure if and when permitted by applicable law and as may be detailed in the Development Agreement. As further clarification of the above and in furtherance of the District's performance obligations hereunder, the District acknowledges and agrees to the following commitments in favor of the City under this Interlocal Agreement:

(i) the District shall diligently proceed to issue the Bonds to provide financing for the completion of the Project Infrastructure (which includes all soft and hard costs associated therewith and all costs incurred to ensure the completion of said Project Infrastructure is performed in a lien-free manner);

(ii) the District shall take any and all necessary actions to timely collect the Special Assessments securing the Bonds issued to provide funding for the Project Infrastructure;

(iii) the District shall, on a monthly basis, provide the City with copies of its financial statements including, but not limited to, bond trust account balances;

(iv) the District shall provide the City with copies of any agreements entered into by the District regarding the construction, installation, acquisition and/or completion of the Project Infrastructure;

(v) the District shall in accordance with the District's prompt payment obligations pay or cause to be paid all invoices and requisitions for payment regarding the construction, installation, acquisition and/or completion of the Project Infrastructure, as and when due.

(c). The City agrees and acknowledges that this Interlocal Agreement shall evidence sufficient security for the completion of the Project Infrastructure in satisfaction of any such requirements set forth in the Development Agreement, and no further bond, letter of credit, or cash escrow shall be required of the District, the Developer or any other developer or owner of the Property related to the Project Infrastructure.

(d). The District irrevocably agrees that the commitments made herein are not subject to the provisions of Section 70.45, *Florida Statutes*, relating to governmental exactions, or any similar law or legal theory of a similar nature in any respect. Further, the District agrees that the City is not responsible for the construction or creation of the Project Infrastructure in order to facilitate the development of the Property, except as otherwise agreed to or provided in the Development Agreement.

Section 2.02. Parking Rights.

(a). The District hereby grants in favor of the City a non-exclusive parking license (the “Parking License”) to use any and all parking garages and/or surface parking within the Project that is owned and/or controlled by the District (collectively, the “Parking Areas”) in order to stage emergency vehicles three (3) days prior to, during, and two (2) days after an emergency or a disaster as defined in Chapter 252, *Florida Statutes*, subject to the following terms and conditions:

(i) The City’s use of the Parking Areas shall be available without charges, fees or rent.

(ii) The City must provide advance written notice, which may be delivered electronically, to the District but in no event less than twenty-four (24) hours in advance of the City’s use of the Parking Areas.

(iii) The City’s use of the Parking Areas is permitted through the duration of the federal emergency, state emergency and state of local emergency affecting the City of Cape Coral for emergency purposes only as defined by Chapter 252, *Florida Statutes*. Either earlier than or upon termination of such declared emergency, the City agrees to terminate use of and vacate the Parking Areas, but in no event no later than two (2) days after the effective time and date of termination of the declared emergency.

(iv) The City shall exercise all reasonable care in carrying out its emergency management activities. In the event of damage to the Parking Areas or other areas not owned by the City which are caused by the City, its agents, employees, contractors or evacuees, the City shall promptly repair or replace such damage, but in no event less than seven (7) days after the City and its evacuees have left the Parking Areas. Alternatively, the City may reimburse the District for such repair or replacement within seven (7) days of receipt of the invoice.

(v) The City or any of its contractors performing the work described in this Interlocal Agreement shall maintain throughout the term of this Agreement the following insurance:

- a. Worker’s Compensation Insurance in accordance with the laws of the State of Florida.
- b. Employer’s Liability Coverage Insurance with limits of at least \$1,000,000 (one million dollars) per accident or disease.

- c. Employment Practices Liability Insurance with limits of at least \$1,000,000 each claim and \$2,000,000 in the aggregate.
- d. Commercial General Liability Insurance covering the City's legal liability for bodily injuries, with limits of not less than \$1,000,000 combined single limit bodily injury and property damage liability and covering at least Independent Contractor Coverage for bodily injury and property damage in connection with the City's operation of the emergency facility.
- e. Automobile Liability Insurance for bodily injuries in limits of not less than \$1,000,000 combined single limit bodily injury and for property damage, providing coverage for any accident arising out of or resulting from the operation, maintenance, or use by the City of any owned, non-owned, or hired automobiles, trailers, or other equipment required to be licensed.
- f. Public Officials Liability Insurance with limits of at least \$1,000,000 each claim and \$2,000,000 in the aggregate.
- g. The following insurance related the crime:
 - 1. Employee Dishonesty Insurance of \$1,000,000 per claim;
 - 2. Forgery or Alteration Insurance of \$1,000,000 per occurrence;
 - 3. Theft, Disappearance & Destruction Insurance of \$1,000,000 per occurrence; and
 - 4. Computer Fraud (including Funds Transfer) Insurance of \$1,000,000 per claim.
- h. The District, its staff, consultants, agents and supervisors shall be named as additional insureds and certificate holders. The City shall furnish the District with the Certificate of Insurance evidencing compliance with this requirement. No certificate shall be acceptable to the District unless it provides that any change or termination within the policy periods of the insurance coverage, as certified, shall not be effective within thirty (30) days of prior written notice to the District. Insurance coverage shall be from a reputable insurance carrier, licensed to conduct business in the State of Florida, and such carrier shall have a Best's Insurance Reports rating of at least A-VII.
- i. If the City fails to have secured and maintained the required insurance, the District has the right (without any obligation to do so, however), to secure such required insurance in which event, the City shall pay the cost for that required insurance and shall furnish, upon demand, all information that may be required in connection with the District obtaining the required insurance.

(vi) Subject to the limitations of liability contained in Section 768.28, *Florida Statutes*, and Section 252.51, *Florida Statutes*, the City agrees to defend, indemnify and

hold harmless the District and its officers, agents, staff and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage or of any nature, arising out of, or in connection with this Interlocal Agreement as a result of action or inaction, wholly or in part, of the City, its agents, employees, and evacuees. Nothing herein shall constitute or be construed as a waiver of the City's or District's limitations on liability contained in Section 768.28, *Florida Statutes*, and Section 252.51, *Florida Statutes*, as applicable.

(vii) The rights set forth in this Section 2.02 may not be assigned by the City without the prior written consent of the District, which consent may be withheld in its sole and absolute discretion.

ARTICLE III - NO ASSESSMENT OF CITY PROPERTY

Section 3.01. Exemption of City Property. The District shall not impose, levy, certify or otherwise seek to encumber or assess property owned by the City with regard to special assessments, non-ad valorem assessments, maintenance assessments or taxes, fees, or charges of any type or nature whatsoever. This exemption applies to property which is owned at the present time or becomes owned by the City at a later time and regardless of, or to, which use or uses the property is put including but not limited to the Project Infrastructure.

ARTICLE IV – SELF-HELP AND INDEMNIFICATION

Section 4.01. Self-Help. The City shall have the right, upon notice and an opportunity to cure as set forth herein, to exercise self-help and cause the completion of the Project Infrastructure upon any default by the District hereunder or by the Developer under the Development Agreement. Upon the City's exercise of its self-help rights hereunder, the District shall assign all of its right, title and interest in and to the construction contracts for the Project Infrastructure so that the City may cause the completion of the Project Infrastructure per the approved plans whereupon the Project Engineer shall be required to authorize all requisitions for payment sought by the City (and the District shall not object) so long as each requisition for payment is accompanied by (a) an engineer's certificate certifying completion of the work covered by such requisition for payment in compliance with all permits and approvals, (b) original partial releases of lien (or final release of lien if the Project Infrastructure has reached final completion), (c) proof of payment of the prior requisition for payment together with a bring down title update showing no liens against the Property associated with the Project Infrastructure, and (d) any other applicable requirements of the trust indentures governing the District's expenditures from such construction accounts. In furtherance of these self-help provisions, and solely in the event of a default by the Developer under the Development Agreement, the District agrees and consents to the City providing notice of a landowner's election in accordance with section 190.006(2)(a), *Florida Statutes*, and agrees to accept a proxy from the Developer authorizing the City to cast votes in any such election to fill any vacancies on the District's Board of Supervisors.

Section 4.02. Indemnification. To the extent permitted by law, but without waiving any sovereign immunity protection provided by Section 768.28, *Florida Statutes*, or any limits on liability afforded by other law, the District shall indemnify and hold harmless the City and its council members, agents, employees, staff, contractors, officers, supervisors and representatives (collectively, the "Indemnitees") from any and all liability, loss or damage, whether monetary or

otherwise, including reasonable attorneys' fees and costs and all fees and costs of mediation or alternative dispute resolution, as a result of any claims, liabilities, suits, liens, demands, costs, interest, expenses, damages, penalties, fines, or judgments, against Indemnitees which arise out of any of the activities referred to under the terms of this Interlocal Agreement.

ARTICLE V - MISCELLANEOUS PROVISIONS

Section 5.01. Notices. Any notices required or allowed to be delivered shall be in writing and be deemed to be delivered when: (i) hand delivered to the official hereinafter designated, or (ii) upon receipt of such notice when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the party or parties shall have been specified by written notice to the other party delivered in accordance herewith.

If to the City:

City of Cape Coral
Attention: City Manager
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

With a copy to:

City of Cape Coral
Attention: City Attorney
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

If to the District:

With a copy to:

Section 5.02. Binding Effect. This Interlocal Agreement shall be binding upon and shall inure to the benefit of the City, the District, and their respective successors and assigns.

Section 5.03. Filing. The City and the District hereby authorize and direct, after execution of this Interlocal Agreement by the duly qualified and authorized officers of each of the

parties hereto, that this Interlocal Agreement be filed with the Clerk of the Circuit Court of Lee County, Florida, in accordance with the requirements of Subsection 163.01(11), *Florida Statutes*.

Section 5.04. Applicable Law and Venue/Public Records.

(a). This Interlocal Agreement and the provisions contained herein shall be governed by and construed in accordance with the laws of the State of Florida.

(b). In any action, in equity or law, with respect to the enforcement or interpretation of this Interlocal Agreement, venue shall be solely in Lee County, Florida.

(c). The parties agree to comply with the law of the State of Florida relating to public records.

(d). IF THE DISTRICT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE DISTRICT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS INTERLOCAL AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT _____

Section 5.05. Entire Agreement; Integration; Amendments and Waivers; Implied Amendments.

(a). This instrument and its exhibits constitute the entire integrated agreement by and between the parties and supersedes any and all previous discussions, understandings and agreements, if any, between the parties relating to the subject matter of this Interlocal Agreement.

(b). All prior discussions and negotiations by and between the parties are integrated into this Interlocal Agreement.

(c). Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendment arising out of a document of equal dignity herewith.

(d). If material changes in Chapters 189 and 190, *Florida Statutes*, or any other controlling Florida Law are deemed by a party to automatically amend this Interlocal Agreement; then, in that event, if a party believes that such is the case, then that party shall, within five (5) days, notify the other party of such belief and the rights of the parties to dispute such matter are preserved.

Section 5.06. Effective Date. This Interlocal Agreement shall become effective after its execution by the authorized representatives of both parties and upon the date of its recording with the Clerk of the Circuit Court of Lee County, Florida to become an encumbrance running with title to the Property, which shall automatically terminate upon the City's formal acceptance of the ownership and maintenance of the Project Infrastructure.

Section 5.07. Third Party Beneficiaries. Neither this Interlocal Agreement, or any part or provision thereof, this Interlocal Agreement, creates any rights in any third party or any

relationship with any third party and this Interlocal Agreement is meant and intended to be solely for the benefit of the District and the City although the City has undertaken efforts to benefit the general public as a whole in taking the actions set forth herein.

Section 5.08 Construction. This Interlocal Agreement arises out of bona fide and good faith arms-length negotiations by and between the parties and, regardless of which party drafted this Interlocal Agreement, or any part or provision thereof, no part or provision of this Interlocal Agreement, nor this Interlocal Agreement as a whole, shall be construed or interpreted against a party for being the drafted of this Interlocal Agreement or any part or provision of this Interlocal Agreement.

Section 5.09 Force Majeure. The performance of any act by the City or Concessionaire hereunder may be delayed or suspended at any time while, but only so long as, such party is hindered in or prevented from performance of its obligations under this Agreement by a Force Majeure Event, provided, however, if such condition persists for more than one hundred eighty (180) consecutive days, the City and Concessionaire may in their sole discretion renegotiate the terms of this Agreement. If the performance of the contractual obligations is prevented or delayed by an event believed by a party to be a Force Majeure Event, such party shall immediately upon learning of the occurrence of the event or of the commencement of any such delay, but in no case later than thirty (30) days from the occurrence of the event, provide notice of (i) of the occurrence of the event believed to be a Force Majeure Event, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure Event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure Event is in fact a Force Majeure Event, and the burden of proof of the occurrence of a Force Majeure Event shall be on the requesting party.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

**COMMUNITY
DEVELOPMENT DISTRICT**

By: _____

Chair – Board of Supervisors

ATTEST:

Name: _____
Title: Secretary

ACKNOWLEDGMENT

STATE OF FLORIDA

COUNTY OF _____

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared _____, as Chair of the Board of Supervisors, and _____, as Secretary, and they acknowledged executing the same freely and voluntarily and they are personally known to me or provided the following for identification _____. Sworn and subscribed before me, by said persons by means of [] physical presence or [] online notarization on the _____ day of _____, 202_____, the said persons did take an oath and were first duly sworn by me, on oath, said persons, further, deposing and saying that they have read the foregoing and that the statements and allegations contained herein are true and correct.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 202_____.
(Affix Notary Seal)

Notary Public: State of Florida
Print Name: _____

[ADDITIONAL SIGNATURE PAGE IMMEDIATELY FOLLOWS]

CITY OF CAPE CORAL

ATTEST:

ACKNOWLEDGMENT

STATE OF FLORIDA

COUNTY OF _____

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared _____ and _____, as _____ and _____ of the City of Cape Coral, respectively, and they acknowledged executing the same freely and voluntarily and they are personally known to me or provided the following for identification _____. Sworn and subscribed before me, by said persons by means of [] physical presence or [] online notarization on the _____ day of _____, 202_____, the said persons did take an oath and were first duly sworn by me, on oath, said persons, further, deposing and saying that they have read the foregoing and that the statements and allegations contained herein are true and correct.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 202_____.
(Affix Notary Seal)

Notary Public: State of Florida
Print Name: _____

EXHIBIT "J"

Description of the Public Facilities

The proposed development will be serviced by those roadway transportation facilities currently in existence as provided by state, county, and local roadways. The proposed development will also be serviced by public transportation facilities currently in existence, as provided by Lee County, the City of Cape Coral, and such other governmental entities as may presently operate public transportation services within the City of Cape Coral.

Sanitary sewer, reclaimed water, solid waste, drainage, and potable water services for the proposed development shall be those services currently in existence and owned or operated by Lee County, the City of Cape Coral, and State of Florida. The proposed development shall be serviced by those existing educational facilities owned or operated by the School District of Lee County, if applicable. The proposed development shall be serviced by those existing parks and recreational facilities owned or operated by the United States Government within Lee County, by the State of Florida, by Lee County, and by the City of Cape Coral. The proposed development shall be serviced by those existing health systems and facilities operated by the United States Government within Lee County, by the State of Florida, by Lee County, and by the City of Cape Coral.

The proposed development will also be serviced by any and all public facilities, as such are defined in Section 163.3221(13) of the Act, that are described in the Comprehensive Plan, specifically including those facilities described in the Chapter 1 Capital Improvements Element and Chapter 5 Infrastructure Element therein, a copy of which is available for public inspection in the offices of the City Clerk of the City of Cape Coral. Notwithstanding the foregoing, the Project may be required to provide for some of its own services, including water well, solid waste removal and stormwater drainage. Any expansion required to any of the facilities described herein that is necessary due in whole or in part to the impacts of the Project shall be the responsibility of the Developer. Any facility expansion initiated by the City shall be at the sole and absolute discretion of the City and in no event is the City required to ensure any guarantees of capacity unless all applicable fees have been paid by Developer.

Exhibit “K”

Description of the Reservations and/or Dedications of Land for Public Purposes

1. Median Improvements

EXHIBIT "L"

Required Development Permits

The following constitutes a generalized list of local permits anticipated as necessary to be approved by the terms of this Agreement:

1. Development Permit
2. Utility Permits
3. Demolition Permits
4. Building Permits
5. Environmental Permits
6. Hazardous Materials Removal Permit, if removal of hazardous materials is found necessary.
7. Public Works Permit, Paving and Drainage
8. City Utilities Permit, Potable Water, Reclaimed Water and Sanitary Sewer
9. Public Works Revocable Permits
10. Certificates of Use and/or Occupancy
11. Fire Permits, and
12. All other local governmental approvals as may be applicable to the subject property from time to time pursuant to the terms of this Agreement and the Community Center Lease.