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RESOLUTION 15-86

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**A RESOLUTION OF THE CITY OF MARCO ISLAND
FLORIDA APPROVING A PARKING SPACE USE
AGREEMENT BETWEEN CONDEE COOLING &
ELECTRIC INC. AND THE CITY OF MARCO ISLAND
LOCATED ON FRONT STREET CITY OF MARCO ISLAND
FLORIDA 34145; AND PROVIDING AN EFFECTIVE DATE.**

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WHEREAS, Section 30-484, of the Marco Island Land development Code provided the standards and regulations for off street parking under certain conditions including when there is different ownership. Approval requires public hearings and review and recommendation from the City's Planning Advisory Board and review and approval by the City Council; and

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WHEREAS, Condee Cooling & Electric Inc. ("Petitioner") desires to use the City owned parking spaces located on the Front Street public right-of-way-for the parking of motor vehicles; and

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WHEREAS, the Petitioner is the owner of certain real property adjacent to the City's parking spaces, and Petitioner has submitted a Parking Space Use Agreement to the City to allow such use of the City owned parking spaces, pursuant to the terms and conditions contained therein; and

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WHEREAS, pursuant to Section 30-484, Code of Ordinances of the City of Marco Island, the Planning Advisory Board reviewed and recommended approval and approved the Parking Space Use Agreement (a copy of which is attached hereto as Exhibit "A") on November 6, 2015; and.

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WHEREAS, the City Council does hereby approve the Parking Space Use Agreement subject to the conditions of approval set forth in this Resolution.

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NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA,

SECTION 1. Recitals.

The foregoing "Whereas" clauses are hereby ratified and confirmed as being true, correct and incorporated herein by reference.

SECTION 2. Adoption and Approval.

The Parking Space Use Agreement, attached hereto as Exhibit "A", is hereby approved subject to the below described conditions.

37 **SECTION 3. Conditions and Approval.**

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39 This Resolution shall be effective immediately upon adoption by the City Council.

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41 1. Improvement to the Front Street public right-of-way property shall start
42 immediately after the Parking Space Use agreement. Agreement has been executed by
43 the Petitioner and the City; all improvements shall be completed within 90 days
44 thereafter.

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46 **SECTION 4. Authority to Execute Agreement.**

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48 The City Manager is hereby authorized to execute the Parking Space Use Agreement
49 and take the necessary actions to comply with the terms and conditions of this
50 Agreement on behalf of the City.

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52 **SECTION 5. Effective Date.**

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54 This Resolution shall be effective immediately upon adoption by the City Council.

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57 ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 7th day of
58 December 2015.

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60 Attest:

CITY OF MARCO ISLAND, FLORIDA

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64 _____
65 Laura M. Litzan, City Clerk

By: _____
66 Robert C. Brown, Chairman

67 Approved as to form and legal sufficiency:

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69 _____
70 Alan L. Gabriel, City Attorney



CITY OF MARCO ISLAND

Growth Management Department

50 Bald Eagle Drive
Marco Island, Florida 34145
(239) 389-5000

Revised October 27, 2015

Revised November 20, 2015 (for December 7th City Council Meeting)

Exhibits to be Attached:

Exhibit "A" - Dated October 20, 2015

Diagram or Description of Parking Spaces on Right-of-Way

Subject to this Agreement

PARKING SPACE USE AGREEMENT

THIS PARKING SPACE USE AGREEMENT, made and entered into as of the _____ day of _____, 2015, by and between the CITY OF MARCO ISLAND, FLORIDA, a Florida Municipal Corporation (hereinafter referred to as the "City"), whose address is 50 Bald Eagle Drive, Marco Island, Florida 34145, and CONDEE COOLING & ELECTRIC, INC., a Florida Corporation (hereinafter referred to as the "Licensee"), whose address is 25 Front Street, Marco Island, FL 34145-3615.

WITNESSETH:

WHEREAS, the Licensee is desirous of using parking spaces on the Front Street public right-of-way, which is owned by and located, within the City for the parking of motor vehicles on said right-of-way in certain specified Parking Spaces numbered 1 to 33 as depicted on the drawing labeled Exhibit "A" dated October 20, 2015 attached hereto and described in Paragraph 2. of this Agreement (hereinafter referred to as the "Parking Spaces"); and

WHEREAS, the Licensee is the owner of certain real property adjacent to and East of the above described Parking Spaces, which real property is described as Lots 40 through 57, inclusive, Block 5, Marco Highlands, according to the plat thereof, as recorded in Plat Book 3, Page 72, Public Records of Collier County, Florida (hereinafter referred to as the "Real Property"); and

WHEREAS, the City Council has authorized said parking use subject to certain terms and conditions for said use.

NOW, THEREFORE, for and in consideration of the sum of \$10.00 and certain other good and valuable consideration, the receipt and sufficiency all of which is hereby acknowledged, the undersigned agree as follows:

1. Recitals. Each and all of the foregoing recitals be and the same are hereby incorporated herein and acknowledged to be true and correct. Failure of any of the foregoing recitals to be true and correct shall not operate to invalidate this Agreement. As used in this Agreement, the term "Licensee" shall refer to and mean the above named Licensee but not the successors and assigns of the Licensee.

2. License Granted. Pursuant to the terms hereof, the Licensee is hereby granted a license for the restricted use of the Parking Spaces for the parking of motor vehicles during the hours specified below (hereinafter "Licensee Hours"). This License shall be intended to benefit the Licensee. Provided, however, the above described Parking Spaces shall be available for use by the public as public parking for all times other than during the Licensee Hours. As a condition of this License, the Parking Spaces subject to this Agreement must specifically and directly serve the above referenced operating businesses located on the Real Property. The Licensee shall have use of Parking Spaces, between the hours of 5:00 p.m. and 7:00 a.m., seven days a week. This Agreement constitutes a license for utilization of certain Parking Spaces and does not act to convey any ownership or easement rights in favor of the Licensee, its successors or assigns, or any other person or legal entity. Further, the License granted by this Agreement may be assigned to any other legal entity or person upon Licensee's request and with prior written City approval.

Licensee, shall at its own expense provide and erect signage, (of which both content and location shall be subject to prior City approval), adjacent to the Parking Spaces that state:

- a. "Commercial Vehicles Prohibited from 5:00 pm to 7:00 am."
- b. "Trailer Parking Prohibited from 5:00 pm to 7:00 am"



CITY OF MARCO ISLAND

Growth Management Department

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(239) 389-5000

3. Maintenance Responsibilities. The Licensee shall be exclusively responsible for the maintenance of the Parking Spaces during the term of the Agreement. Maintenance shall include continuously keeping all of the Parking Spaces clean, free of litter, debris, branches, tree limbs, brush, grass, trash, junk, refuse, inoperative motor vehicles, and cars without current license plates. The Licensee at its sole expense shall provide: normal monthly maintenance to the landscape strip in front of the Parking Spaces; irrigation and lighting and maintenance of the irrigation and lighting systems on the landscape strip in front of the Parking Spaces; and litter control. The Licensee shall at a minimum provide maintenance and landscaping similar to the standards applied by the City to similar City maintained landscape strips and shall equal the standards established in the City codes for maintenance of private properties. The Licensee shall be responsible for any damage to the Parking Spaces subject to this Agreement during the term hereof regardless of when said damage is committed or by whom. The Licensee agrees that this Agreement may be cancelled with ninety (90) days prior written notice, if the Parking Spaces are not properly maintained or any costs timely and promptly paid, as reasonably determined by the City. The Licensee shall make no alterations or commence any construction to the Parking Spaces without the written consent of the City.

4. License Fee; License Revocation. The amount of this license to be paid by the Licensee is the cost and expense of maintenance fees referenced in paragraph 3 above. The Licensee agrees and acknowledges that this authorized usage is revocable at the discretion of the City, for any reason, with 180 day prior written notice to the Licensee upon which time this Agreement shall terminate.

5. Indemnification; Liability of City; Insurance.

(a) The Licensee covenants and agrees that the Licensee will at all times indemnify and save harmless the City from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and causes of action of every kind and nature arising or growing out of or in any way connected with the Licensee's use, occupancy, management or control of the Parking Spaces. The Licensee covenants and agrees that it will at its own cost and expense, defend any and all claims against the City, or in which the City may be impleaded with others in any such action or proceeding arising out of such use or occupancy. The Licensee covenants and agrees to satisfy, pay and discharge any and all judgments, orders and decrees that maybe entered against the City in any such action or proceeding to which the City may be a party, and to which the Licensee is determined to be liable.

(b) The City shall not be liable to the Licensee or to the Licensee's employees, agents, servants, licensees, invitees or visitors, or to any other person whomsoever, for any injury to person or damage to property on or about the Parking Spaces which the Licensee is permitted to use and during the time that the Licensee is authorized exclusive use pursuant to Paragraph 2. of this Agreement, caused by any cause whatsoever, including, but without limiting the generality of the foregoing: (i) any negligence or misconduct of the Licensee, their agents, servants or employees, or of any other person entering upon the Parking Spaces or the premises described in Exhibit "A," under the express or implied invitation of the Licensee; and (ii) an occurrence or event originating or occurring on or about the Parking Spaces resulting in property damage, personal injury and/or wrongful as a result of such use or occupancy.

(c) The Licensee agrees to continuously provide and maintain at all times during the term of this Agreement, without cost or expense to the City, policies of insurance generally known as: (i) commercial general liability insurance policies in the amount of \$1,000,000.00 single limit liability insuring the Licensee and the City (as an additional insured) against any and all claims, demands, action and causes of action whatsoever from injuries received and in connection with the use or occupancy of the Parking Spaces; and (ii) property damage in the amount of \$1,000,000.00 insuring the Licensee and the City (as a loss payee or additional insured) against any and all claims, demands, action and causes of action whatsoever from damage to the Parking Spaces, to vehicles or other property on the Parking Spaces, or in connection with the use or occupancy of the Parking Spaces. All insurance issued pursuant hereto shall be issued by a standard insurance company licensed to do business in the State of Florida by the Florida Insurance Commissioner. The company issuing the insurance pursuant hereto shall be rated as A+ or better, with a financial quality rating of VII or better, by Best's Rating Guide, and the insurance shall have a provision that the insurance cannot be cancelled or non-renewed without at least thirty (30) days prior written notice given by certified U.S. mail, return receipt requested to the City. Thereupon, the Licensee shall immediately secure replacement insurance. The Licensee shall promptly supply the City with copies of all insurance policies and certificates of insurance pursuant hereto prior to actual use of the Parking Spaces.

7. Attorney's Fees.



CITY OF MARCO ISLAND

Growth Management Department

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(a) If it shall become necessary for the City to employ an attorney to: (i) enforce this Agreement or defend the City under the terms of Agreement; (ii) take action against the Licensee or another party to vacate or repair the Parking Spaces; (iii) action connected with the termination or revocation of this Agreement; or (iv) defend the City in the event of a lawsuit regarding use, occupancy or injury (including death) of a third party or the Licensee on the Parking Spaces, or relating to the legality or validity of this Agreement, the Licensee agrees to pay all costs and attorney's/paralegal fees incurred by the City in such connection, including attorney's fees and costs in any appeals. This paragraph shall survive the termination or revocation of this Agreement.

(b) Licensee is responsible for a onetime fee for the City of Marco Island to prepare and review this Agreement, fees not exceed \$2,000.00 dollars.

8. Entire Agreement. This Agreement shall constitute the entire agreement between the parties.

9. Duration. This Agreement or the rights under this Agreement are not assignable or otherwise transferable in whole or in part by the Licensee. This Agreement will automatically roll over and continue for year to year extensions as long as (i) the Licensee is current on all maintenance obligations and payments due herein and (ii) neither party has provided a notice to terminate the Agreement. This Agreement may be cancelled with ninety (90) days prior written notice to the other party..

10. Enforcement. Enforcement of this Agreement may be by the Licensee or the City and may be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision hereof, either to restrain a violation or to recover damages to the extent permitted by this Agreement. Failure to enforce any covenant or provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City shall not be obligated or bound to enforce any of the covenants or provisions herein or be liable to or for non-enforcement hereof. Any non-enforcement by the City shall not be construed to be a waiver of the right to enforce this Agreement at a future time or declare its breach.

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

12. Interpretation. It is agreed that this Agreement has been mutually negotiated and written by all parties hereto. Consequently, this Agreement shall not be interpreted more harshly against any one party as drafter of this Agreement.

13. Recordation. This Agreement may not be recorded by either party.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

Signed, Sealed and Delivered
in the presence of:

Sign: _____

Print Name: _____

Sign: _____

Print Name: _____

LICENSEE:

CONDEE COOLING & ELECTRIC, INC.,
a Florida Corporation

By: _____

Print Name: Donald E. Condee, II

Title: President

Address: 25 Front St.

Marco Island, Florida 34145-3615

(CORPORATE SEAL)



CITY OF MARCO ISLAND

Growth Management Department

50 Bald Eagle Drive
Marco Island, Florida 34145
(239) 389-5000

STATE OF FLORIDA)
)
COUNTY OF COLLIER)

SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Donald E. Condee, II, as President of CONDEE COOLING & ELECTRIC, INC., a Florida Corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

Notary Public
State of Florida at Large
My commission expires:



CITY OF MARCO ISLAND

Growth Management Department

50 Bald Eagle Drive
Marco Island, Florida 34145
(239) 389-5000

CITY

CITY OF MARCO ISLAND, FLORIDA,
a Florida Municipal Corporation

Sign: _____
Print Name: _____

Sign: _____
Print Name: _____

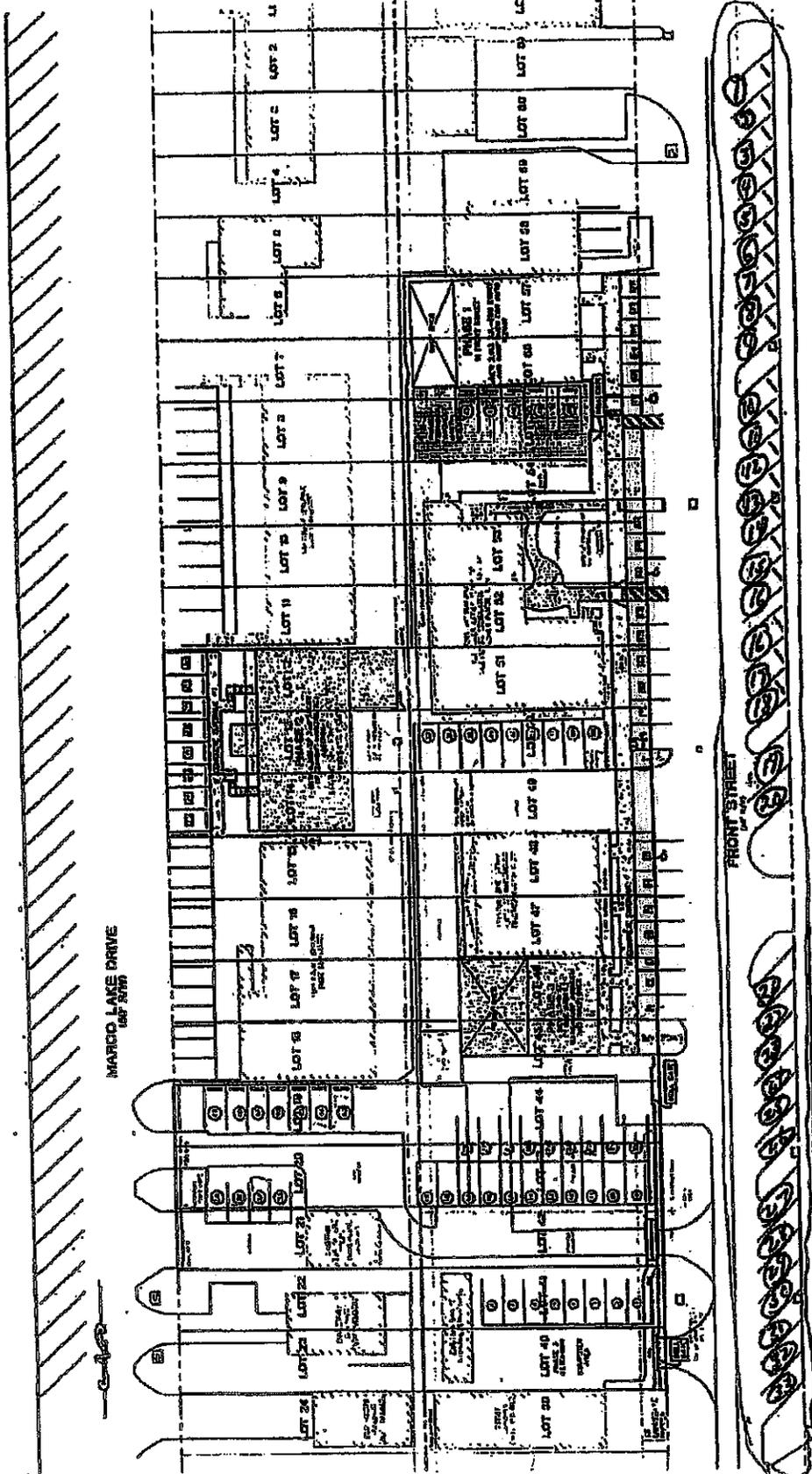
By: _____
Print Name: Roger T. Hemstadt, Its
Title: City Manager
Address: 50 Bald Eagle Dr.
Marco Island, Florida 34145

ATTEST:

(CITY SEAL)

By: _____
Laura M. Litzan, City Clerk

Signed this _____ day of _____, 2015.



RECEIVED
OCT 20 2005

Subject Area

Exhibit "A" to Candee Codings & Electric, Inc. City of Marco Island
PARKING SPACE USE AGREEMENT