

**RESOLUTION NO. 09-11**

**A RESOLUTION GRANTING CONDITIONAL USE APPROVAL FOR AN AMENDMENT TO APPROVED CONDITIONAL USE PERMIT CU 06-05 AS PREVIOUSLY APPROVED BY CITY COUNCIL PURSUANT TO CITY RESOLUTION 07-31 ON JUNE 4, 2007, TO EXTEND THE CONSTRUCTION COMPLETION DATE FOR PHASE 2 OF MARRIOTT CRYSTAL SHORES RESORT FROM AUGUST 4, 2010 TO OCTOBER 5, 2013, THE COMPLETION DATE FOR PHASE 3A FROM DECEMBER 31, 2011 TO OCTOBER 14, 2015, AND THE COMPLETION DATE FOR PHASE 3B FROM SEPTEMBER 6, 2013 TO OCTOBER 19, 2017; AND TO EXTEND THE APPROVED COMPLETION AND TURNOVER DATE OF THE REQUIRED PERMANENT PUBLIC BEACH ACCESS FROM THE LATEST PERMISSIBLE DATE OF DECEMBER 31, 2011 TO OCTOBER 14, 2015 WITH PROVISION OF A TEMPORARY BEACH ACCESS DURING THE INTERIM PERIOD TO BE COMPLETED WITHIN 90 DAYS OF THE EFFECTIVE DATE OF THIS RESOLUTION, IN ACCORDANCE WITH SECTION 30-164(8) OF THE "RT" ZONING DISTRICT AND MARCO ISLAND LAND DEVELOPMENT CODE, FOR PROPERTY DESCRIBED AS 600 COLLIER BOULEVARD, IN SECTION 18, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the Legislature of the State of Florida established the Charter of the City of Marco Island in Chapter 97-367, Laws of Florida ("City Charter"); and

**WHEREAS**, the Marco Island City Council acting as the City's Board of Zoning Appeals approved Resolution 07-31 on June 4, 2007 for approval of Conditional Use Permit CU 06-05 to increase the density on-site from 26 units per acre to 29 units per acre and to increase the maximum building height from 100 feet to 150 feet for property located at 600 South Collier Boulevard within the Residential Tourist "RT" Zoning District, pursuant to Section 30-164(8) of the Marco Island Land Development Code, and found as a matter of fact that satisfactory provision and arrangement had been made concerning all applicable matters required by said regulations and in accordance with Section 30-64(3) of the Marco Island Land Development Code; and

**WHEREAS**, the Marco Island Planning Board, being the duly appointed and constituted planning board for the area hereby affected, held a public hearing on February 13, 2009 after proper notice, and voted 5 to 1 to recommend that the Marco Island City Council acting as the City's Board of Zoning Appeals approve Conditional Use Permit CU 08-05, for amendment of approved conditional use permit CU 06-05 as previously approved by City Council pursuant to City Resolution 07-31 on June 4, 2007, to extend the construction completion date for Phase 2 from August 4, 2010 to October 5, 2013; the completion date for

phase 3A from December 31, 2011 to October 14, 2015; and the completion date of phase 3B from September 6, 2013 to October 19, 2017; and to extend the approved completion date of the required permanent public beach access from the latest permissible date of December 31, 2011 to October 14, 2015, with provision of a temporary beach access during the interim period to be completed within 90 days of the effective date of this resolution, in accordance with Section 30-164 (8) of the RT Zoning District and Marco Island Land Development Code, and has found as a matter of fact that satisfactory provision and arrangement have been made concerning all applicable matters required by said regulations and in accordance with Section 30-164(8) of the Marco Island Land Development Code; and

**WHEREAS**, City Council, acting as the Board of Zoning Appeals, has held a public hearing after proper notice, and has considered the request for approval of Conditional Use Permit 08-05 to amend the original Conditional Use Permit 06-05 on Residential Tourist "RT" zoned property pursuant to Section 30-164(8) of the Marco Island Land Development Code, and has found that satisfactory provision and arrangement have been made concerning all applicable matters required by said regulations; and

**WHEREAS**, all interested parties have been given an opportunity to be heard by this Board in a public meeting assembled and the Board having considered all matters presented.

**NOW, THEREFORE BE IT RESOLVED, BY THE MARCO ISLAND CITY COUNCIL, ACTING AS THE BOARD OF ZONING APPEALS OF THE CITY OF MARCO ISLAND, FLORIDA:**

Section 1. Petition CU-08-05 filed by Vincent M. Grasser of Marriott Ownership Resorts, Inc., representing Marriott Ownership Resorts, Inc. with respect to the property hereinafter described as 600 Collier Boulevard, in Section 18, Township 52 South, Range 26 East, Collier County, Florida, is hereby approved to amend Conditional Use Petition CU 06-05 as previously approved by City Council pursuant to City Resolution 07-31 on June 4, 2007 for Conditional Use "8" of Section 30-164 of the "RT" zoning district in accordance with the terms and conditions of Section 30-164(8) and the following exhibits and conditions:

Findings of Fact:

As determined by the Marco Island Planning Board on February 13, 2009, identified as Exhibit "A" within the public records of the Board.

Site Plan: As approved pursuant to Marco Island Resolution 07-31, Exhibit "B" with no amendments proposed or approved.

Building Architecture: As approved pursuant to Marco Island Resolution 07-31, Exhibits "C", "D", "E", "F", and "G" with no amendments proposed or approved.

Building Heights: As approved pursuant to Marco Island Resolution 07-31, Exhibits "H", "I", and "J" with no amendments proposed or approved.

Pedestrian Beach Access Easement Agreement: As amended pursuant to amended Exhibit "K", attached.

Demolition Activities: As approved pursuant to Marco Island Resolution 07-31, with no amendments proposed or approved.

Project Phasing: As amended pursuant to the amended construction phasing schedule as follows:

1. Phase Zero: Sales center – start construction April 9, 2007, complete October 1, 2007;
2. Phase 1: Renovate existing beach tower and north tower – start October 1, 2007, complete ~~November 11, 2008~~ December 12, 2008.
3. Phase 2: Construct the East Tower and Parking Garage – start ~~May 8, 2009~~ October 26, 2011, complete ~~August 24, 2010~~ October 5, 2013. ~~A bond shall be provided for the pedestrian crosswalk prior to commencement of Phase 3 A (see right-of-way condition);~~
4. Phase 3A: Construct exterior facade of North Tower – start ~~July 12, 2010~~ April 30, 2014, complete ~~December 31, 2014~~ October 14, 2015. Additionally, complete all site improvements including landscaping, water management, and parking facilities by ~~December 31, 2014~~ October 14, 2015;
5. Phase 3B: Complete interior improvements to North Tower – start ~~May 21, 2012~~ May 27, 2016, complete ~~September 6, 2013~~ October 19, 2017.
6. Pedestrian Beach Access – To be constructed pursuant to the terms and conditions of the Pedestrian Beach Access Easement Agreement. The Developer shall be required to turn over ("Turnover") the Pedestrian Improvements to the City no later than the first to occur of the following: a) the issuance of a certificate of occupancy for any unit built exceeding 26 units per acre density (i.e. the CO for the 197th unit built) or b) October 14, 2015 (hereinafter the "Turnover Date"). A bond has been provided and will terminate upon written acceptance of the public beach access improvements by the Obligee to the Principal and/or Surety. In the interim period, the developer shall provide a temporary beach access pursuant to the provisions and requirements of the Pedestrian Beach Access Easement Agreement within 90 days of approval of this resolution by City Council.

Daily Occupancy: As approved pursuant to Marco Island Resolution 07-31, with no amendments proposed or approved.

Storm Water Management: As approved pursuant to Marco Island Resolution 07-31, with no amendments proposed or approved.

Right-of Way: As approved pursuant to Marco Island Resolution 07-31, with no amendments proposed or approved.

Beach Grill: As approved pursuant to Marco Island Resolution 07-31, with no amendments proposed or approved.

Section 2. **Effective Date.** This resolution shall take effect immediately upon approval.

**BE IT FURTHER RESOLVED** that this Resolution relating to petition Number CU-08-05 be recorded in the Minutes of City Council and filed with the Marco Island City Clerk's Office.

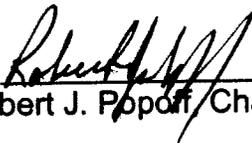
This Resolution adopted after motion, second and majority vote.

Done this 18<sup>th</sup> day of May 2009.

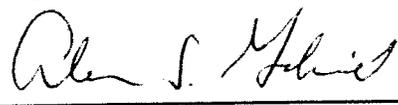
Attest:

MARCO ISLAND CITY COUNCIL  
MARCO ISLAND, FLORIDA

  
\_\_\_\_\_  
Laura Litzan  
City Clerk

By:   
\_\_\_\_\_  
Robert J. Popoff / Chairman

Approved as to Form and  
Legal Sufficiency:

  
\_\_\_\_\_  
Alan L. Gabriel, Esq.  
City Attorney

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(space above this line for recording data)

Exhibit "K"

**FIRST AMENDMENT TO PEDESTRIAN BEACH ACCESS EASEMENT AGREEMENT**

**THIS AMENDMENT TO A PEDESTRIAN BEACH ACCESS EASEMENT AGREEMENT** (this "Easement Agreement") is made this 18<sup>th</sup> day of May, 2009, by and between **MARRIOTT OWNERSHIP RESORTS, INC.**, a Delaware corporation ("Developer") having its principal place of business at 6649 Westwood Blvd Orlando, FL 32821-6044 Attention: Daniel B. Zanini, Esq. and the **CITY OF MARCO ISLAND**, a Florida municipal corporation ("City"), having its principal place of business at 50 Bald Eagle Drive, Marco Island, Florida 34145. This First Amendment amends and replaces completely the Pedestrian Beach Access Easement Agreement recorded at O.R. Book 4258 Page 3328 of the Public Records of Collier County, Florida.

**WHEREAS**, the Developer currently owns that certain property situated, lying and being in Collier County, Florida, being developed as a Timeshare Resort (hereinafter the "Project") located at 600 South Collier Boulevard, Marco Island, Florida, and more particularly described in Exhibit "A" attached hereto ("**Property**"); and

**WHEREAS**, on June 4, 2007 the Marco Island City Council ("**City Council**") adopted Resolution Number 07-31 (the "Resolution") approving a Conditional Use for the above referenced project pursuant to Section 30-164(8) of the Marco Island Land Development Code (LDC); and

**WHEREAS** on May 18, 2009 the City Council adopted Resolution 09 (the "Resolution") approving an amendment to the Conditional Use for the above referenced project previously approved by Resolution Number 07-31 and approving modifications to the Pedestrian Beach Access Easement Agreement; and

**WHEREAS**, Policy 1.1.2.3 of the Comprehensive Plan and Section 30-164(8)(i) of the LDC allows for the construction of an additional three units per acre upon providing public beach access and improvements; and

**WHEREAS**, pursuant to Section 30-164 (8) (i) of the LDC, the applicant is required to grant the City an easement twenty (20) feet wide along the northern boundary of the Property as more particularly described in Exhibit "B" attached hereto ("**Easement Parcel**") to accommodate pedestrian beach access from South Collier Boulevard to and from the beach and the Gulf of Mexico; and

**WHEREAS**, Section 30-164 (8) (i) of the Land Development Code further provides that: (i) improvement plans for the pedestrian improvements in the Easement Parcel shall be reviewed by the City as a site development plan, and (ii) any costs associated with improving the beach access shall be the responsibility of the Developer; and

**WHEREAS**, the Developer agrees to improve the Easement Parcel in accordance with City's "Beach Access Construction Standards" as described herein; and

**WHEREAS**, following turnover of the pedestrian improvements to the City by the Developer, the City will maintain and repair said pedestrian beach access and other related improvements; and

**WHEREAS**, the parties agree that this Easement Agreement is being entered into by and between the Developer and the City in full satisfaction of Developer's commitment to provide beach access contained in the approval of the Conditional Use.

**NOW THEREFORE**, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer by these presents hereby grants, sells, and conveys to the City, its successors and assigns, a perpetual non-exclusive easement on, in, and over the Easement Parcel for the purpose of providing pedestrian beach access from South Collier Boulevard to the beach and the Gulf of Mexico.

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

2. **Easement**. Developer does hereby grant to the City, its successors and assigns, on the terms and conditions contained herein, a perpetual non-exclusive easement over, across, through and upon the Easement Parcel for the following purposes: (i) construction, installation, maintenance, repair, and/or replacement within the Easement Parcel of a pedestrian and bicycle pathway, together with other such improvements as deemed necessary by the City (except as hereinafter provided), including but not limited to, perimeter fencing, buffer walls, signage, landscaping, irrigation, benches, bicycle racks, trash receptacles and drinking fountain to make the walkway safe, attractive and functional for the public ("**Permitted Improvements**"), and (ii) pedestrian ~~and bicycle~~ ingress and egress from South Collier Boulevard to and from the beach and the Gulf of Mexico by the City, its employees, guests, invitees and the general public ("**Permitted Use**"). Except for the Permitted Improvements and the Permitted Use, no other improvement shall be constructed or located on and no other use shall be permitted on ~~or of~~ the Easement Parcel. Notwithstanding anything herein to the contrary, no restrooms shall be located within the Easement Parcel.

3. **Pedestrian Improvements/Turnover**.

(a) Developer shall be responsible, at its sole costs and expense, for the design, permitting, supplying to the City a performance bond (the "Bond"), and constructing the pedestrian improvements (the "Pedestrian Improvements") within the

Easement Parcel consistent with the City's "Beach Access Construction Standards" set forth on Exhibit "C" attached hereto and made a part hereof. The Bond shall be in form and content acceptable to the City and shall secure the timely and complete construction by Developer of the Pedestrian Improvements pursuant to the plans approved in this Section. The amount of the Bond shall be the estimated construction cost for the Pedestrian Improvements plus a fifteen percent (15.0%) contingency. The Pedestrian Improvements shall provide pedestrian access between South Collier Boulevard and the beach consistent with the purpose of this Easement Agreement. The design plans and location for the Permitted Improvements shall be subject to the review and approval of the City and shall be submitted to the City no later than October 31, 2007. The design plans shall be submitted to the City together with a construction cost estimate submitted by the engineer of record for the Project, which cost estimate shall serve as the basis for determining the amount of the Bond. Construction of the Pedestrian Improvements shall be consistent with the plans approved by the City and shall be completed prior to the Turnover Date (as defined below). Developer will provide the Bond to the City at the time that Developer obtains the building permit for Phase 1 of the project development. A phase schedule is attached hereto as Exhibit "E".

(b) Developer shall be required to turn over ("Turnover") the Pedestrian Improvements to the City no later than the first to occur of the following: a) the issuance of a certificate of occupancy for any unit built exceeding 26 units per acre density (i.e. the CO for the 197th unit built) or b) ~~December 31, 2011~~ October 14, 2015 (hereinafter the "Turnover Date"). Turnover of the Pedestrian Improvements shall be by bill of sale and/or such other documentation required by the City. Prior to Turnover, the Developer shall provide the City with evidence of ownership acceptable to the City, describing the nature of Developer's rights or interest in the Pedestrian Improvements being conveyed, and stating that the Pedestrian Improvements are free and clear of all liens and encumbrances, except as provided herein, and that all governmental approvals necessary to install the Pedestrian Improvements have been obtained.

(c) Developer will provide within ninety (90) days of approval of Petition CU 08-05 by City Council and ceasing on the Turnover Date referred above, a temporary designated beach access for pedestrian access only through Developer's property from South Collier Boulevard to the beach using the dune crossover bridge constructed for Developer's project (hereafter the Temporary Beach Access or Access Path). The Temporary Beach Access will be available for use by the City, its employees, guests, invitees, and the general public but only during daylight hours. No bicycles will be allowed, no benches will be provided, no parking of vehicles allowed, nor will this access path be fenced or exclusively used for this purpose. The access path will be clearly marked and the Developer will cooperate with the City to implement reasonable safety measures. The Temporary Beach Access will not be required to meet the Beach Access Construction Standards shown on Exhibit C. The Developer will, at their sole cost and expense, maintain and repair the Temporary Beach Access and pay utility costs associated therewith (if any). The City will provide reasonable police patrols. The insurance coverage as shown on Exhibit D of this Easement Agreement will not be required to be provided by the City while the Temporary Beach Access is being used and

only will be required commencing upon the Turnover of the permanent Pedestrian Improvements.

4. **Maintenance of Permitted Improvements; Security.** Following Turnover, the City shall do the following:

(a) The City shall have the responsibility, at its sole cost and expense, to keep, maintain and repair the Pedestrian Improvements and any modifications thereto in good condition and in a safe, clean and attractive manner at all times.

(b) The City agrees that it shall provide reasonable police patrols for the Easement Parcel.

(c) The City shall maintain at a minimum such insurance coverages and in such limits as are set forth in Exhibit "D" attached hereto. The City shall deliver a certificate to Developer evidencing same within fifteen (15) days from obtaining such insurance coverage.

(d) The City shall be responsible for payment of costs associated with water and electricity used in the easement areas.

**(e) The Developer, its successors and assigns shall have the responsibility, at its sole cost and expense, to keep, maintain and repair the utilities installed upon the Easement Parcel that services the Project (as previously defined), including the obligation to repair and re-establish the Pedestrian Improvements and any modifications thereto in the same condition as they were prior to any damage caused by or to the Pedestrian Improvements from the utilities or from the maintenance or repair of same.**

5. **Interference/Reservation.** Developer reserves the permanent right to use the Easement Parcel, in a manner so that it does not conflict with the uses granted herein, including but not limited to minimum storm water runoff structures, and for the permanent location of utilities. In addition the Developer can use the Easement Parcel during the construction of the Project for the trailers, cranes, storage containers, etc. The easement contained herein is granted subject to easements, restrictions, limitations, and other matters of record, including, but not limited to taxes and assessments for the year 2007 and subsequent years; all laws, ordinances, and governmental regulations, including, but not limited to, all applicable building, zoning, land use and environmental ordinances and regulations; and facts that an accurate survey and/or inspection would disclose. Developer is responsible for obtaining, in recordable form, a consent and joinder to this Easement Agreement from any party holding a mortgage or lien on the Property.

6. **Indemnification.** Following Turnover, to the extent permitted by law, the City shall indemnify, defend, save and hold harmless Developer, and its officers, board of directors, management, agents and/or employees, from and against any suits, demands, claims, liability, losses, penalties, damages, judgments, order, decrees, and costs and expenses (including attorneys' fees and all costs of litigation) for property damage,



Facsimile: (954) 764-7770

If to Developer at:

Marriott Ownership Resorts, Inc.  
6649 Westwood Blvd.  
Orlando, Florida 32821 - 6044  
Attention: Mr. Tom Brust  
Regional Vice President  
Facsimile: (407)206-6420

With a copy to:

Daniel B. Zanini, Esq.  
6649 Westwood Blvd.  
Orlando, Florida 32821- 6044  
Facsimile:(407)206-6420

And

With a copy to:

Craig R. Woodward, Esq.  
Woodward, Pires & Lombardo, P.A.  
P.O. Box 1  
Marco Island, Fl. 34145  
Facsimile: (239) 642-6402

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

10. **Construction.**

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

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

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

11. **Severability.** In the event any term or provision of this Easement 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 Easement shall be construed to be in full force and effect.

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

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

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

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

16. **Force Majeure.** Developer acknowledges and agrees that the timely completion and turnover of the Pedestrian Improvements is an integral part of this Easement Agreement. Subject to force majeure, Developer shall provide and perform all work required to complete on schedule the Pedestrian Improvements and meet the Turnover Date. For purposes hereof, force majeure means fire, flood, earthquake, hurricane, other acts of God, war, declaration of hostilities, revolts, civil strife, strike, labor dispute or epidemic. If Developer is rendered unable, in whole or in part, by force majeure to carry out its obligations under this Agreement, Developer shall give to the City prompt written notice of the force majeure with reasonably full particulars concerning the same. If Developer has proven that the delay of the delivery is attributed to or a consequence of force majeure, the Turnover Date shall be extended by a period equaling the delay.

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



ATTEST:

CITY:

\_\_\_\_\_  
Laura Litzan, City Clerk

**CITY OF MARCO ISLAND,**  
a Florida Municipal corporation

\_\_\_\_\_  
Alan L. Gabriel, City Attorney  
Approved as to form and legality

By: \_\_\_\_\_  
Robert J. Popoff, City Council Chairman

Date: \_\_\_\_\_

STATE OF FLORIDA        )  
  )  
COUNTY OF COLLIER     )

The foregoing instrument was acknowledged before me, this \_\_\_\_\_ of \_\_\_\_\_, 2009, by Robert J. Popoff, Chairman of City of Marco Island, a Florida Municipal corporation, on behalf of the City, who is ( ) personally known to me or ( ) has produced \_\_\_\_\_ as evidence of identification.

(SEAL)

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

**Exhibit "A"**

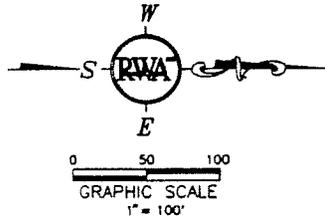
**Legal description of the Property (a/k/a as the Timeshare Parcel)**

A parcel of land lying in Section 18, Township 52 South, Range 26 east, Collier County, Florida, and being more particularly described as follows:

Commencing at the intersection of the center lines of South Collier Boulevard and Valley Avenue, as shown on the Plat of Marco Beach, Unit 10, recorded in Plat Book 6, Pages 74 through 79, inclusive, of the Public Records of Collier County, Florida; thence North 85 deg. 41'07" West, a distance of 50.00 feet to a point on the Westerly right-of-way line of the aforementioned South Collier Boulevard, 100 foot wide; thence with said right-of-way line North 04 deg. 18'53" East, along said Westerly right-of-way for a distance of 544.69 feet to a point of curvature of a curve having a radius of 1950.00 feet concave to the Northwest; thence Northerly along said curve, curving to the left through a central angle of 03 deg. 33'11" and an arc distance of 120.93 feet to the Point of Beginning of the hereby described parcel of land; thence leaving said right-of-way line South 89 deg. 16'35" West, a distance of 731.23 feet to an iron pin; thence continue South 89 deg. 16'35" West, a distance of 118 feet more or less to a point, said point hereafter know as Point "D" and the approximate mean high water line (elevation +1 – 1.5 contour) of the Gulf of Mexico as it existed on December 9, 1980; thence return to the aforementioned Point of Beginning; thence continue Northerly along said Westerly right-of-way line of South Collier Boulevard and the aforementioned curve having a radius of 1950.00 feet concave to the Northwest, curving to the left through a central angle of 11 deg. 33'00" and an arc distance of 393.09 feet to the point of tangency; thence North 10 deg. 47'18" West, a distance of 15.96 feet; thence leaving said right-of-way South 86 deg. 13'24" West, a distance of 703.92 feet to an iron pin; thence continue South 86 deg. 13'24" West, a distance of 149 feet, more or less, to a point on the approximate high water line (elevation +1 – 1.5 contour) of the Gulf of Mexico as it existed on December 9, 1980; thence meander in a Southerly direction along said approximate mean high water line (elevation +1 – 1.5) 363 feet more or less to the aforementioned Point "D" and the Point of Termination.

**Exhibit "B"**

**Legal and sketch of the Easement Parcel**



GULF OF MEXICO  
 APPROXIMATE HIGH WATER LINE (ELEVATION +1-1.5 CONTOUR)  
 OF THE GULF OF MEXICO AS IT EXISTED ON DECEMBER 9, 1980

A PARCEL OF LAND LYING N SECTION 18, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTER LINES OF SOUTH COLLIER BOULEVARD AND VALLEY AVENUE, AS SHOWN ON THE PLAT OF MARCO BEACH, UNIT 10, AS RECORDED IN PLAT BOOK 6, PAGES 74 THROUGH 79, INCLUSIVE OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA;  
 THENCE N.85°41'07"W., FOR 50.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF SAID SOUTH COLLIER BOULEVARD;  
 THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES:  
 1) THENCE N.04°18'53"E., FOR 544.69 FEET TO A POINT ON A CURVE;  
 2) THENCE NORTHERLY 494.80 FEET ALONG THE ARC OF A NON-TANGENTIAL CURVE TO THE LEFT HAVING A RADIUS OF 1,950.00 FEET THROUGH A CENTRAL ANGLE OF 14°32'19" AND BEING SUBTENDED BY A CHORD WHICH BEARS N.02°58'38"W. FOR 493.48 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;  
 3) THENCE CONTINUE NORTHERLY 19.21 FEET ALONG THE ARC OF A NON-TANGENTIAL CURVE TO THE LEFT HAVING A RADIUS OF 1,950.00 FEET THROUGH A CENTRAL ANGLE OF 00°33'52" AND BEING SUBTENDED BY A CHORD WHICH BEARS N.10°31'44"W. FOR 19.21 FEET;  
 4) THENCE N.10°47'18"W., FOR 0.79 FEET;  
 THENCE S.79°33'15"W., FOR 8.19 FEET;  
 THENCE N.52°06'40"W., FOR 24.08 FEET;  
 THENCE S.86°13'24"W., FOR 828.65 FEET MORE OR LESS TO A POINT ON THE APPROXIMATE HIGH WATER LINE (ELEVATION +1-1.5 CONTOUR) OF THE GULF OF MEXICO AS IT EXISTED ON DECEMBER 9, 1980;  
 THENCE S.06°13'02"E. ALONG SAID APPROXIMATE HIGH WATER LINE, FOR 49.31 FEET MORE OR LESS;  
 THENCE N.86°15'55"E., FOR 2.76 FEET;  
 THENCE N.03°44'05"W., FOR 29.27 FEET;  
 THENCE N.86°13'24"E., FOR 816.16 FEET MORE OR LESS;  
 THENCE S.52°06'40"E., FOR 25.45 FEET;  
 THENCE N.79°33'15"E., FOR 17.20 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;

BEARINGS ARE BASED ON THE WESTERLY RIGHT-OF-WAY DEPICTED HEREON, AS HAVING AN ASSUMED BEARING OF N.04°18'53"E.

CONTAINING 17,337 SQUARE FEET OR 0.40 ACRES, MORE OR LESS.

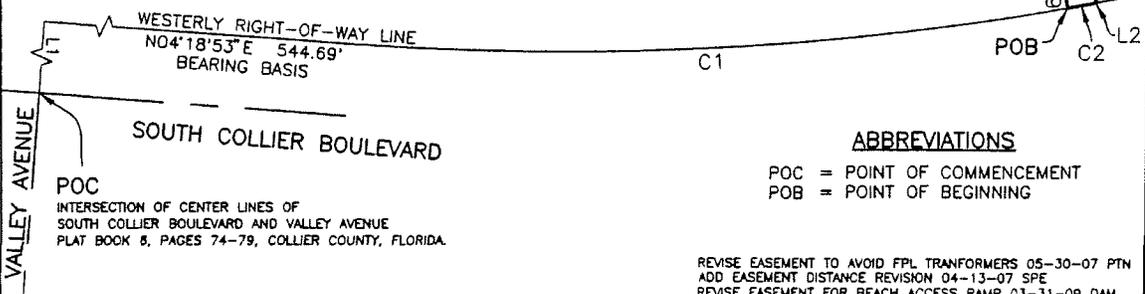
PREPARED BY:  
 RWA INC.  
 FLORIDA CERTIFICATE OF AUTHORIZATION No. LB 6952

OFFICIAL RECORDS BOOK 4074, PAGE 3304,  
 OF THE PUBLIC RECORD OF  
 COLLIER COUNTY, FLORIDA.

*Dennis A. Miller* 3-30-09  
 DENNIS A. MILLER DATE  
 PROFESSIONAL SURVEYOR AND MAPPER  
 FLORIDA CERTIFICATE No. LS 5626

LINE TABLE		
LINE	BEARING	LENGTH
L1	N85°41'07"W	50.00'
L2	N10°47'18"W	0.79'
L3	S79°33'15"W	8.19'
L4	N52°06'40"W	24.08'
L5	S06°13'02"E	49.31'
L6	N86°15'55"E	2.76'
L7	N03°44'05"W	29.27'
L8	S52°06'40"E	25.45'
L9	N79°33'15"E	17.20'

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG.
C1	494.80'	1950.00'	14°32'19"	493.48'	N02°58'38"W
C2	19.21'	1950.00'	0°33'52"	19.21'	N10°31'44"W



**ABBREVIATIONS**

POC = POINT OF COMMENCEMENT  
 POB = POINT OF BEGINNING

REVISE EASEMENT TO AVOID FPL TRANSFORMERS 05-30-07 PTN  
 ADD EASEMENT DISTANCE REVISION 04-13-07 SPE  
 REVISE EASEMENT FOR BEACH ACCESS RAMP 03-31-09 DAM

**RWA** INC.  
 CONSULTING  
 Planning  
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 Civil Engineering  
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MARRIOTT VACATION  
 CLUB INTERNATIONAL  
 SKETCH AND  
 LEGAL DESCRIPTION

DATE	3-30-09
BY	D.A. MILLER
CHECKED BY	
APPROVED BY	
TITLE	SKETCH AND LEGAL DESCRIPTION

## **Exhibit "C"**

### **Beach Access Construction Standards**

The Developer agrees to improve the Easement Parcel in accordance with the following standards:

1. The improvements shall meet all ADA requirements for handicapped accessibility
2. The dune crossover shall be consistent with all regulations and standards as established by the State of Florida, Department of Environmental Management
3. The pathway surface, from the City ROW to a point where the dune crossover boardwalk begins, shall be constructed using brick pavers as specified by the City, and shall be a minimum of eight (8) feet wide, and/or a maximum of ten (10) feet wide.
4. The dune crossover boardwalk, stairs and ADA accessible ramp shall be constructed of pressure treated wood and Ipe wood as specified by the City and shall meet all applicable standards per the Florida Building Code; provided, however, that if the Developer can demonstrate that the cost for Ipe wood exceeds the cost of composite plastic (Trex) by more than fifteen percent (15.0%) then the Developer shall be permitted to use composite plastic (Trex).
5. Site furniture, including benches, drinking fountains, trash receptacles, bicycle racks and shower/foot washer shall be installed as specified by the City.
6. Landscaping to enhance the easement area and to provide a landscape buffer from adjacent property shall be installed as specified by the City. This may include landscaping installed on adjoining property in order to provide an adequate landscape buffer.
7. Irrigation, using re-use water, where applicable, shall be installed as specified by the City, to properly irrigated landscaping.
8. Pathway lighting, in the form of low-level bollard lighting, shall be installed if specified by the City
9. Drainage of the easement area must be managed within the Developer's storm water management plan for the proposed development and may not negatively impact adjacent properties.

## **Exhibit "D"**

### **Insurance Requirements**

The City shall procure and maintain in full force and effect throughout the term of this Easement Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about the Easement Parcel, to afford protection to the limit of not less than \$2,000,000.00 Combined Single Limit Liability. The City shall provide the Developer (or the Condominium Association, if applicable) with certificates of such insurance within fifteen (15) days after obtaining such insurance to evidence that insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the City which may cover other property in addition to the Easement Parcel. Such insurance shall provide that the same may not be canceled without thirty (30) days' prior written notice to Developer (or the Condominium Association, if applicable).

## **Exhibit “E”**

### **Phasing Schedule**

Project Phasing: As amended pursuant to the amended construction phasing schedule as follows:

1. Phase Zero: Sales center – start construction April 9, 2007, complete October 1, 2007;
2. Phase 1: Renovate existing beach tower and north tower – start October 1, 2007, complete December 12, 2008.
3. Phase 2: Construct the East Tower and Parking Garage – start October 26, 2011, complete October 5, 2013;
4. Phase 3A: Construct exterior facade of North Tower – start April 30, 2014, complete October 14, 2015. Additionally, complete all site improvements including landscaping, water management, and parking facilities by October 14, 2015;
5. Phase 3B: Complete interior improvements to North Tower – start May 27, 2016, complete October 19, 2017.
6. Pedestrian Beach Access – To be constructed pursuant to the terms and conditions of this Pedestrian Beach Access Easement Agreement. The Developer shall be required to turn over (“turnover”) the pedestrian improvements to the City no later than the first to occur of the following: a) the issuance of a certificate of occupancy for any unit built exceeding 26 units per acre density (i.e. the CO for the 197<sup>th</sup> unit built) or b) October 14, 2015 (hereinafter the “Turnover Date”). A bond has been provided and will terminate upon written acceptance of the public beach access improvements by the Obligee to the Principal and/or Surety. In the interim period, the Developer shall provide a temporary beach access pursuant to the provisions and requirements of this Agreement within 90 days of approval by City Council.

