

RESOLUTION NO. 07- 17

A RESOLUTION DETERMINING PETITION NUMBER OSP-06-01, AN OFF-STREET PARKING VARIANCE FROM SECTION 30-484 OF THE MARCO ISLAND LAND DEVELOPMENT CODE FOR 39 OFF-STREET PARKING SPACES AT THE WINTERBERRY PARK LOCATED AT THE NORTHEAST INTERSECTION OF WINTERBERRY DRIVE AND PEACOCK TERRACE, MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR FILING WITH THE CITY CLERK; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 30-484 of the Marco Island Land Development Code establishes off-street parking and loading standards; and

WHEREAS, the Marco Island Planning Board conducted a public hearing on February 23, 2007 to consider the advisability of off-street parking at Winterberry Park for a maximum of 39 off-street parking spaces for the First Baptist Church located at 1450 Winterberry Drive, and voted 7-0 to recommend that the Marco Island City Council approve the requested off-street parking variance; and

WHEREAS, the Marco Island City Council is acting as the Board of Zoning Appeals; and

WHEREAS, City Council, as the Board of Zoning Appeals, has held a public hearing after proper notice, and has considered the advisability of off-street parking as shown on the attached plot plan, Exhibit "A" in a Public Use "P" zoning district for the property hereinafter described, 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 30-484 of the Marco Island Land Development Code; and

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

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS of Marco Island, Florida, that:

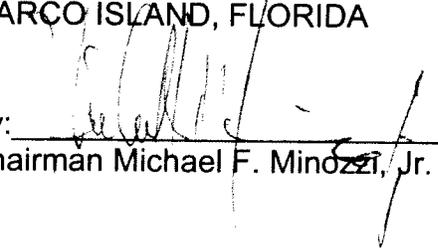
The petition OSP-06-01, filed by Pat Kaikini, RIBA of PK Architects Incorporated, representing the First Baptist Church of Marco Island with respect to the property herein described Tract "A", Unit 8, Section 17, Township 52 South, Range 26 East, City of Marco Island, Florida. The same is hereby approved for 39 off-street parking spaces as shown on the attached site plan Exhibit "A", and parking agreement Exhibit "B" of the "P" zoning district wherein said property is located, subject to the following conditions:

1. The petitioner shall construct an 8-foot concrete sidewalk adjacent to the swale parking spaces along Auburndale Avenue; provide a 6-foot sidewalk from the south parking lot (adjacent to Winterberry Drive) to the church; and provide a 6-foot sidewalk around the entire church property for public access. The sidewalk plan shall be constructed in accordance with Exhibit "A".
2. Vehicular parking for 39 off-street parking spaces shall be provided by the petitioner in accordance with that certain Mutual and Reciprocal Parking License Agreement dated September 18, 2006 between the City of Marco Island and petitioner, as may be amended from time to time. In the absence of such agreement, the petitioner shall provide such required off-street parking for the use approved hereunder through another means permitted under the City's Land Development Code.
3. In the case that the Public Works Director through demonstration of a traffic study and/or warrants deem traffic lane improvements or similar improvements are required at the petitioner's property due to impacts of petitioner's uses, then the petitioner shall be responsible for providing such improvements.

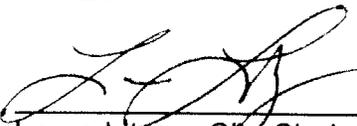
BE IT FURTHER RESOLVED that this Resolution relating to Petition Number OSP-06-01 be recorded in the Minutes of this Board and filed with the Marco Island City Clerk's Office.

This Resolution adopted after motion, second, and majority vote.
Done this 19th day of March 2007.

MARCO ISLAND CITY COUNCIL
MARCO ISLAND, FLORIDA

By: 
Chairman Michael F. Minozzi, Jr.

ATTEST:



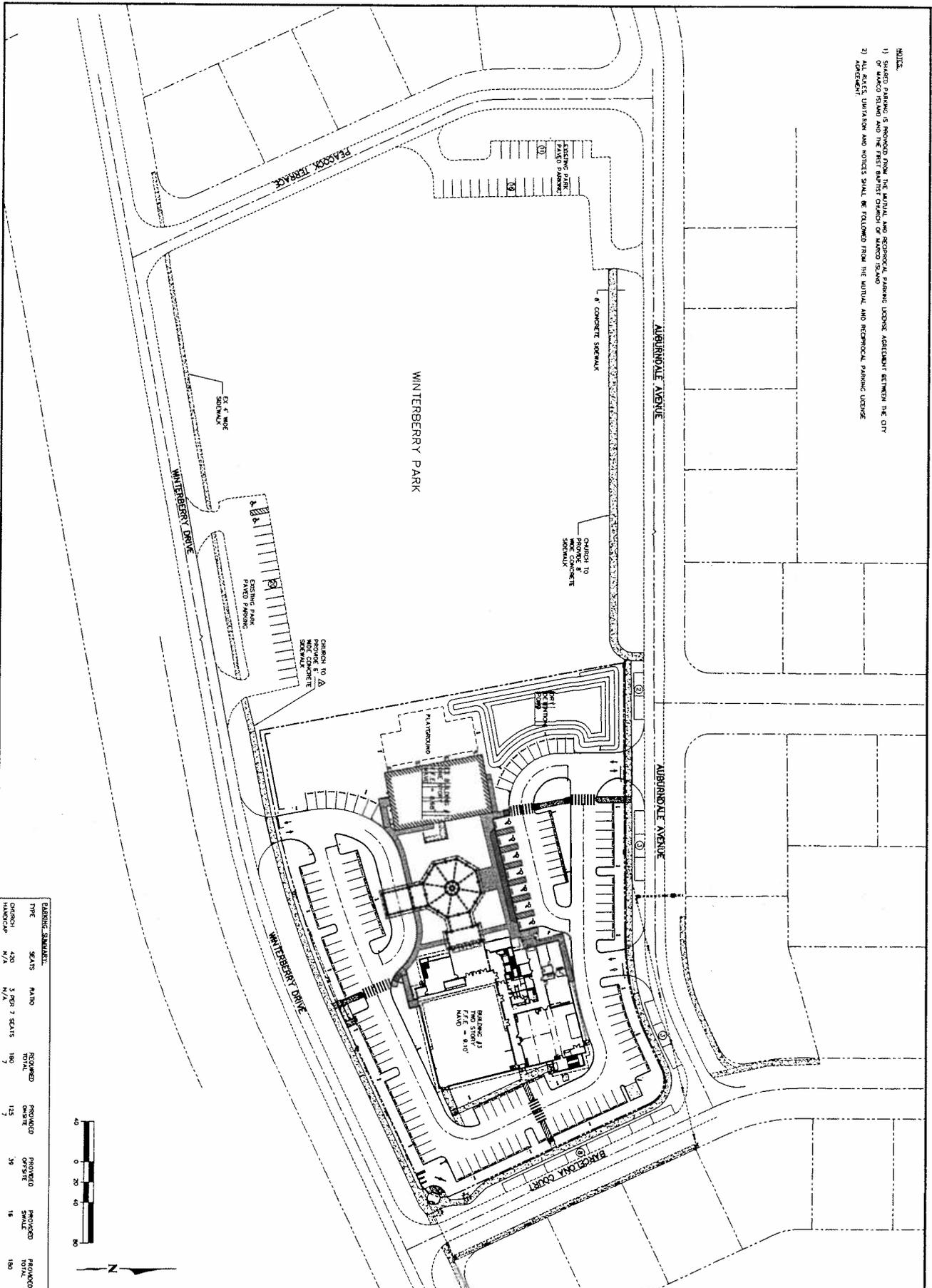
Laura Litzan, City Clerk

Approved as to form and legality:



Richard D. Yovanovich, City Attorney

- NOTES:
- 1) SHARED PARKING IS PROVIDED FROM THE MUTUAL AND RECIPROCAL PARKING LICENSE AGREEMENT BETWEEN THE CITY OF MARCO ISLAND AND THE FIRST BAPTIST CHURCH OF MARCO ISLAND
 - 2) ALL ADULT, UNIFORM AND NOTES SHALL BE FOLLOWED FROM THE MUTUAL AND RECIPROCAL PARKING LICENSE AGREEMENT.



EXISTING SURVEY		PROPOSED		TOTAL	
TYPE	SEATS	TYPE	SEATS	TYPE	SEATS
CHURCH	420	CHURCH	180	CHURCH	600
HANDICAP	N/A	HANDICAP	7	HANDICAP	7
		PROPOSED OFFSITE	39	PROPOSED OFFSITE	39
		PROPOSED SWALE	15	PROPOSED SWALE	15
		PROPOSED TOTAL	180	PROPOSED TOTAL	180

COASTAL ENGINEERING CONSULTANTS, INC. A CECI GROUP COMPANY Serving Florida Since 1977 3106 S. Horseshoe Drive Naples, Florida 34104 Phone: (239) 843-2324 Fax: (239) 843-1143 www.coastalengineering.com E-Mail: engco@ceci.com	CLIENT: FIRST BAPTIST CHURCH OF MARCO ISLAND 1450 WINTERBERRY DRIVE TITLE: EXHIBIT "A" OFFSITE PARKING PLAN	SHEET NO. 05029 OF 17 DATE: 10/04/2006 ACAD NO. 05029 OFFSITE PARKING.DWG
	COASTAL ENGINEERING CONSULTANTS, INC. FLORIDA CERTIFICATE OF AUTHORIZATION NO. 2464 CLAYTON R. MILLER, PE FLORIDA REG. NO. 46972 DATE:	CHECKED: [Signature] PROJ. NO. 05019 P.E. No. [Blank] SCALE: AS SHOWN SEC. TWP. RNC: [Blank] NAD 83 13S 28E DATE TO 04/2006 PER CITY CONTRACT # 21/02/2007 REVISED 10/04/2006

MUTUAL AND RECIPROCAL PARKING LICENSE AGREEMENT

THIS MUTUAL AND RECIPROCAL PARKING LICENSE AGREEMENT (this "Agreement") is entered into and made effective this 18th day of September, 2006, by and between CITY OF MARCO ISLAND, a Florida municipal corporation ("City") and FIRST BAPTIST CHURCH OF MARCO ISLAND, INC., Florida not-for-profit corporation ("FBC"), sometimes hereafter jointly referred to as the "parties".

WITNESSETH:

WHEREAS, the City is the owner of that certain real property located in Collier County, Florida, more particularly described in Exhibit A attached hereto and made a part hereof (the "City Parcel"). The City Parcel is commonly known as Winterberry Park; and

WHEREAS, FBC is the owner of that certain real property located adjacent to the City Parcel, more particularly described in Exhibit B attached hereto and made a part hereof (the "FBC Parcel"). The City Parcel and the FBC Parcel are sometimes collectively referred to herein as the "Parcels"; and

WHEREAS, the parties are desirous of establishing a mutual and reciprocal license to permit each other the use of their parking areas and drives at certain times for their mutual benefit.

NOW, THEREFORE, in consideration of the premises and the rights and obligations as are hereinafter set forth as well as other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein.
2. **FBC Parking License.** FBC hereby grants to the City and its patrons, employees, guests, customers, invitees and licensees a non-exclusive license for pedestrian and vehicular ingress, egress and parking over and across such parking areas, curb cuts, traffic lanes, drives and sidewalks as may exist from time to time upon the FBC Parcel (the "FBC Parking Area") during only those hours that are not Operating Hours of the FBC Parcel. For purposes of this Agreement, "Operating Hours" shall mean and refer to those periods of time commencing one (1) hour before the scheduled starting time of an Operating Activity and ending one (1) hour after the conclusion of such Operating Activity. The scheduled starting time for a particular Operating Activity shall be as determined by FBC and published for the public and made available to the City from time to time. For purposes of this Agreement, an "Operating Activity" shall mean and refer to those types of religious, educational, enrichment, community and social events (whether public or private) customarily conducted on the FBC Parcel, including without limitation, church services, school activities, day care, weddings, funerals, concerts, assemblies, receptions and conventions.
3. **City Parking License.** The City hereby grants to FBC and its patrons, employees, guests, customers, invitees and licensees a non-exclusive license for pedestrian and vehicular ingress, egress, and parking over and across such parking areas, curb cuts, traffic lanes, drives and sidewalks as may exist from time to time upon the City Parcel (the "City Parking Area") during the following periods of time:

EXHIBIT "B"

Days

Times

Sunday

7:00 a.m. to 3:00 p.m.

Notwithstanding the foregoing, FBC shall have limited access to the City Parking Area during days and times other than as set forth above (the "Limited Access Parking"). If FBC desires to use the Limited Access Parking, then FBC shall submit to the City a written request for such use no later than one (1) week prior to the Operating Activity for which such Limited Access Parking will be used. If all or any portion of the City Parking Area is available, then FBC shall be entitled to the use of such available portion of the City Parking Area for that particular Operating Activity, notwithstanding the day and/or time during which such Operating Activity is scheduled, subject only to the condition that FBC shall not cause any buses, trucks, commercial vehicles or equipment to be located on the City Parking Area and, that FBC shall not cause any vehicles or equipment to be located on City athletic fields.

The City Parking Area and the FBC Parking Area are hereinafter collectively referred to as the "Parking Areas."

4. **Parking Area Maintenance.** FBC shall be solely responsible for the maintenance, repair and replacement of the FBC Parking Area and any improvements located thereon to a standard equal to or greater than the current condition thereof, including without limitation the regular removal of trash and shall bear all costs relating thereto including any costs of landscaping. The City shall be solely responsible for the maintenance, repair and replacement of the City Parking Area and any improvements located thereon to a standard equal to or greater than the current condition thereof, including without limitation the regular removal of trash and shall bear all costs relating thereto including any costs of landscaping. Nothing in this Agreement shall be construed to impose any additional duty of maintenance whatsoever upon either party.

5. **Alteration of Parking Areas.** Neither FBC nor City shall use, alter or modify the respective Parking Areas in any way that would materially and adversely affect the rights of access and use granted herein without the prior written consent of either party, which consent shall not be unreasonably withheld. As to any modifications by FBC, nothing contained in this Agreement shall be interpreted to relieve FBC of the obligation to comply with all applicable City ordinances which require submittal to the City for site development plan approval or site development plan modification.

6. **No Barriers.** Except as approved by the City through the site development plan process, no walls, fences or barriers of any sort or kind shall be constructed or maintained on the Parking Areas, or any portion thereof, which shall prevent or impair the use or exercise of any of the licenses granted herein, or the free access and movement of pedestrian and vehicular traffic between the various Parcels.

7. **Limitation on Use of Parking Areas.** Neither FBC nor City shall be entitled to use any portion of the Parking Areas for any purpose other than use as a parking lot with related improvements, such as drives, curb cuts and walkways.

8. **Indemnification.** Each of the respective owners of the Parcels shall as licensees, in the event of litigation, defend, indemnify and save the other owner of the other Parcel and their respective successors in interest, assigns and agents, harmless, from any and all claims (including attorney's fees at trial and appellate levels) for injury or death to persons or damage to or loss of property arising out of or alleged to have arisen out of or occasioned by the use by the licensee, its patrons, employees, guests, customers, invitees and licensees, of the improvements, parking areas, driveways, curb cuts, traffic lanes, sidewalks and landscaped areas on such owner's respective Parcel, unless such damage or injury shall

have been due to the negligence of the owner of the other Parcel or its respective successors, assigns, agents, tenants or invitees.

9. **Term.** The term of this Agreement shall commence on the effective date hereof, and shall continue until the date that is ten (10) years after the effective date ("Initial Term"). This Agreement shall automatically be renewed for successive five (5) year periods following the Initial Term unless sooner terminated by either party as provided herein. Either party may no less than one hundred eighty (180) prior to the expiration of the then-current term furnish written notice to the other party of its intention to terminate this Agreement and this Agreement shall terminate and expire at the end of the then-current term. On the expiration date of this Agreement, this Agreement and all licenses, covenants, duties, rights and liabilities created hereunder shall terminate and the parties hereto shall have no further obligation or rights hereunder. Upon such expiration, FBC shall make other provisions for any parking required under the ordinances of the City for the uses and structures on the FBC Parcel.

10. **License Only.** It is expressly stipulated that this Agreement is a license and that this Agreement shall not operate to create or to vest any property right whatsoever in either party.

11. **Recording.** Upon the request of either party, the parties shall properly execute and record a reasonably acceptable Memorandum of this Agreement, which Memorandum may be recorded by either party in the Public Records of Collier County, Florida.

12. **Insurance.** City shall at all times throughout the term hereof, maintain commercial general liability insurance against any and all claims for bodily injury and property damage occurring in or about the City Parcel, and all claims for bodily injury, property damage, or indemnification arising under this Agreement and/or the use by City of the FBC Parking Area pursuant to this Agreement. Such insurance shall have the combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence per location with a Two Million Dollars (\$2,000,000) aggregate limit. FBC shall at all times throughout the term hereof, maintain commercial general liability insurance against any and all claims for bodily injury and property damage occurring in or about the FBC Parcel, and all claims for bodily injury, property damage, or indemnification arising under this Agreement and/or the use by FBC of the City Parking Area pursuant to this Agreement. Such insurance shall have the combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence per location with a Two Million Dollars (\$2,000,000) aggregate limit.

13. **Assignment.** The licenses created hereunder shall not be assigned by either party without the advance written consent of the other party, such consent to not be unreasonably withheld.

14. **Subordination.** This Agreement shall be subordinate to all easements, mortgages and leases, and all renewals, extensions, amendments or modifications thereof and such subordination shall be self-operative and no further instruments of subordination shall be required. In confirmation of such subordination, either party upon request of the other party shall promptly execute such evidence of this subordination that may be requested by any existing or potential holder of any easement, mortgage of lease.

15. **Notices.** Any notice, request, demand, instruction or other communication to be given to any party hereunder shall be in writing and either hand delivered, delivered by overnight courier, facsimile transmission, or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to City:

City of Marco Island
Attn: A. William Moss, City Manager

50 Bald Eagle Drive
Marco Island, Florida 34145
Phone: (239) 389-5000
Facsimile: (239) 389-4359

If to City:

First Baptist Church of Marco Island
Attn: Rev. Timothy L Neptune
1415 Winterberry Drive
Marco Island, Florida 34145
Phone: (239) 394-1646
Facsimile: (239) 394-1007

Any notice demand, request or other communication shall be deemed to be given upon actual receipt in the case of hand delivery, facsimile transmission, or delivery by overnight courier, or three (3) business days after depositing the same in a letter box or by other means placed within the possession of the United States Postal Service, properly addressed to the party in accordance with the foregoing and with the proper amount of postage affixed thereto. In the event of any notice via facsimile transmission, a hard copy shall be sent via regular mail on the day of such transmission. Any such transmission received after 5:00 p.m. Eastern Standard Time (or Daylight Savings Time, whichever then applicable) shall be deemed to have been given on the next following business day.

The addressees and addresses for the purpose of this Section may be changed by any 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. Phone numbers are provided in this Section for the mere convenience of the parties.

16. **Captions.** The captions appearing within the body of this Agreement have been inserted as a matter of convenience and for reference only and in no way shall the same be construed to define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.

17. **Damages.** Except as provided in Sections 8 and 12 herein, in the event of a default hereunder, either party shall be entitled to pursue any remedy available to it under applicable law, provided in no event shall either party be entitled to any consequential, punitive, exemplary or special damage awards.

18. **Governing Law.** The validity, application, and construction of this Agreement, and any conflicts arising out of this Agreement shall be governed by the laws of the State of Florida.

19. **Severability.** The invalidity in whole or in part of any covenant, restriction, paragraph, clause, phrase or word or other provision of this Agreement shall not effect the remaining portions hereof.

20. **Attorneys' Fees.** If either party institutes litigation to enforce the terms and covenants of this Agreement, then the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and costs, including fees and costs on appeal.

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

FBC:

FIRST BAPTIST CHURCH OF MARCO ISLAND, INC.,

a Florida not-for-profit corporation

WITNESSES:

Elizabeth J. Carr
(Print Name: Elizabeth J. Carr)

Eric W. [Signature]
(Print Name: Eric W. [Signature])

By: Timothy L. Neptune

Name: TIMOTHY L. NEPTUNE

Title: SR. PASTOR

STATE OF Fl)
COUNTY OF Collier) ss.

The foregoing instrument was acknowledged before me, this 13th of Oct, 2006 by T. Neptune, as Sr Pastor of FIRST BAPTIST CHURCH OF MARCO ISLAND, INC., a Florida not-for-profit corporation, who is () personally known to me or () has produced _____ as evidence of identification.

(SEAL)



Nancy J. Paton
MY COMMISSION # DD261944 EXPIRES
January 3, 2008
BONDED THRU TROY FAIN INSURANCE, INC.

Nancy Paton
NOTARY PUBLIC
Name: Nancy Paton
(Type or Print)
My Commission Expires: 1/3/08

EXHIBIT "A"
CITY PARCEL (WINTERBERRY PARK)- LEGAL DESCRIPTION

Tract "A" of Marco Beach, Unit 8, according to the plat thereof as recorded in Plat Book 6, Pages 63 through 68 of the Public Records of Collier County, Florida.

EXHIBIT "B"
FBC PARCEL - LEGAL DESCRIPTION

Tract "B" of Marco Beach, Unit 8, according to the plat thereof as recorded in Plat Book 6, Pages 63 through 68 of the Public Records of Collier County, Florida.