RESOLUTION NO. 07-64

A RESOLUTION OF THE CITY COUNCIL OF MARCO ISLAND, FLORIDA, RELATING TO THE CONSTRUCTION AND FUNDING OF WASTEWATER IMPROVEMENTS IN THE MACKLE PARK ASSESSMENT AREA; RATIFYING AND CONFIRMING THE INITIAL ASSESSMENT RESOLUTION; DETERMINING THAT CERTAIN REAL PROPERTY WILL BE SPECIALLY BENEFITED BY THE WASTEWATER IMPROVEMENTS; ESTABLISHING THE METHOD OF ASSESSING THE COSTS OF THE IMPROVEMENTS AGAINST THE REAL PROPERTY THAT WILL BE SPECIALLY BENEFITED THEREBY; ESTABLISHING OTHER TERMS AND CONDITIONS OF THE ASSESSMENTS; APPROVING THE ASSESSMENT ROLL; PROVIDING THE METHOD OF COLLECTION; DIRECTING THE PROVISION OF NOTICE IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, AS FOLLOWS:

SECTION 1. AUTHORITY. This Resolution of the City of Marco Island, Florida (the "City") is adopted pursuant to City Ordinance No. 99-1 (as amended from time to time and codified in the City Code in Sections 2-281 through 2-379, the "Assessment Ordinance"), City Resolution No. 07-57 (the "Initial Assessment Resolution"), Chapter 197, Florida Statutes, and other applicable provisions of law.

CITY OF MARCO ISLAND, FLORIDA

MACKLE PARK ASSESSMENT AREA
FINAL ASSESSMENT RESOLUTION

Adopted November 5, 2007

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FINAL ASSESSMENT RESOLUTION

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SECTION 2. DEFINITIONS.

(A) This Resolution is the Final Assessment Resolution. All capitalized terms in this Resolution shall have the meanings defined in the Assessment Ordinance and the Initial Assessment Resolution.

(B) All references in this Resolution and the Initial Assessment Resolution to City Ordinance No. 2003-19, as amended, refer to and shall be deemed to also refer to City Ordinance No. 2004-06, as amended, and as same is codified in Chapter 52, Division 2, of the City of Marco Island Code of Ordinances.

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared that:

(A) The findings provided in Section 1.03 of the Initial Assessment Resolution are hereby ratified, confirmed, and incorporated as if set forth fully herein.

(B) On October 1, 2007, the Council adopted the Initial Assessment Resolution, proposing the construction and funding of the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements, describing the method of assessing the cost of such improvements against the real property that will be specifically benefited thereby, establishing a public hearing to consider imposition of the proposed assessments, and directing preparation of the preliminary Assessment Roll and provision of the notices required by the Assessment Ordinance.

(C) Pursuant to Section 2-326 of the Assessment Ordinance, the Council is required to repeal or confirm the Initial Assessment Resolution, with such amendments as the Council deems appropriate, after hearing concerns and receiving comments or objections of interested parties.

(D) The Assessment Roll has heretofore been filed at the offices of the City Clerk, 50 Bald Eagle Drive, Marco Island, Florida, and made available for public inspection.

(E) As required by the terms of the Initial Assessment Resolution, notice of a public hearing has been published and mailed to each property owner proposed to be assessed notifying such property owner of the opportunity to be heard; the proof of publication and an affidavit of mailing are attached hereto as Appendices A and B respectively.

(F) A public hearing has been duly held and comments and objections of all interested persons have been heard and considered as required by law.

(G) The Assessments imposed pursuant to this Resolution will be imposed by the Council, not the Property Appraiser or Tax Collector. Any activity of the Property Appraiser or Tax Collector under the provisions of this Resolution shall be construed solely as ministerial.

(H) The benefits derived from the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements exceed the cost of the Assessments

levied and imposed hereunder. The Assessment for any Tax Parcel within the Mackle Park Assessment Area does not exceed the proportional benefits that such Tax Parcel will receive compared to any other Tax Parcel within such area.

(I) The Council hereby finds and determines that the Assessments to be imposed in accordance with this Resolution provide an equitable method of funding the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements by fairly and reasonably allocating the cost to specially benefited property.

SECTION 4. RATIFICATION AND CONFIRMATION OF PRIOR ACTIONS AND INITIAL ASSESSMENT RESOLUTION.

(A) The City is a coastal community initially developed as an unincorporated subdivided area by the Collier family interests and Elliot Mackle, Robert Mackle and Frank Mackle, Jr. through the Deltona Corporation in the 1960's and 1970's, characterized by a predominance of similarly sized lots on sea-walled canals initially developed for the most part without central wastewater utilities. In 2003, the City purchased the only substantial central water and wastewater utility system on the island from Florida Water Services and is proceeding to extend wastewater collection facilities and expand, upgrade and modernize its wastewater treatment facilities in order to serve both existing customers and much of the unsewered areas of Marco Island.

(B) Although it would be legally permissible for the City to recover the entirety of all capital improvements for extending its wastewater collection facilities and expanding, upgrading and modernizing its wastewater treatment facilities through its utility rates, the City Council, in an attempt to more equitably distribute the costs associated with such overall expansion activities, has chosen to employ a combination of methods to fund such costs. For example, the prorata costs for Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements are equitably anticipated to be recovered through the special assessments similar to those imposed hereunder; new users not included in Assessment Areas are equitably required to pay comparable wastewater system related capital facilities fees (impact fees) for the cost of capital improvements necessary to serve their properties; and, all customers, new and old alike through their monthly utility rates, share in funding a real and substantial portion of the capital costs necessary to extend collection facilities and expand, up-grade and modernize wastewater treatment facilities not otherwise funded by special assessments or impact fees. The use of such an approach is a fair and reasonable means to equitably share the cost of such capital facilities amongst all of the wastewater utility system users, both present and future.

(C) All actions taken by the Council at its meeting commenced on October 1, 2007 are hereby ratified and confirmed. This Resolution reflects modifications to City Ordnance No. 2003-19, as amended, to set wastewater system capital facilities fees at $4,610

per ERC and eliminates certain roadway paving costs from the calculation of Capital Cost. The Initial Assessment Resolution, as supplemented and modified by this Resolution, is hereby ratified and confirmed.

SECTION 5. APPROVAL OF ASSESSMENT ROLL. The Assessment Roll, which is on file with the City Clerk, is hereby approved.

SECTION 6. ASSESSMENTS.

(A) The Tax Parcels located within the Mackle Park Assessment Area and described in the Assessment Roll are hereby found to be specially benefited by construction of the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements based upon an estimated Capital Cost[1] for each ERC of $15,962.26for Wastewater Collection Improvements and $4,610.00 for Wastewater Treatment Capacity Improvements, and an estimated Project Cost[2] for each ERC of $16,977.46 for Wastewater Collection Improvements and $4,903.20 for Wastewater Treatment Capacity Improvements.

(B) Affected property owners shall have the option of prepaying this combined principal Capital Cost amount before the issuance of Obligations. If the total amount is not prepaid, a non-ad valorem assessment will be imposed pursuant to the

[1] Based upon an estimated Capital Cost for Wastewater Collection Improvements allocated to the Mackle Park Assessment Area of $12,299,208.34 and an estimated Capital Cost for Wastewater Treatment Capacity Improvements allocated to the Mackle Park Assessment Area of $3,039,419.10.

[2] Based upon an estimated Project Cost for Wastewater Collection Improvements allocated to the Mackle Park Assessment Area of $13,081,437.99 and an estimated Project Cost for Wastewater Treatment Capacity Improvements allocated to the Mackle Park Assessment Area of $3,232,726.15

Assessment Ordinance and Section 197.3632, Florida Statutes. This will permit the Project Cost to be amortized over a period of twenty (20) years.

(C) In order to provide extraordinary alternative payment options, affected Property Owners shall also have the opportunity to enter into a Deferred Payment Agreement pursuant to Section 3.09 or 3.10 of the Initial Assessment Resolution. The City shall advance and fund, on behalf of the owner of such property, the Assessment otherwise attributable to that property, and the Deferred Payment Agreement shall in turn provide for the alternative consensual special assessment of the benefited property which shall be collected separate and apart from any other Assessments imposed as a result hereof.

(D) The methodology for determining ERCs described in Section 3.03 of the Initial Assessment Resolution, as supplemented herein, is hereby approved and adopted. A special assessment computed in the manner described in the Initial Assessment Resolution, as supplemented and modified by this Final Assessment Resolution, is hereby levied and imposed on all Tax Parcels described in the Assessment Roll in order to finance and collect Assessments for Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements, and unless prepaid, shall be collected by a series of non-ad valorem assessments over a period of twenty (20) years. It is anticipated that collection under the Uniform Assessment Act shall commence with the ad valorem tax bill to be mailed in November 2009. Accordingly,

property located within the Mackle Park Assessment Area shall be subject to Assessments for Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements at a rate per ERC as provided in subsection (A) hereof.

(E) Following adoption of this Final Assessment Resolution but prior to the date on which the Assessment Roll is certified for collection, the City Manager and City Attorney are directed and authorized to promptly institute proceedings pursuant to Chapter 75, Florida Statutes, for validation of any Obligations secured by the Assessments. The imposition and collection of Assessments as provided herein is contingent upon a favorable outcome for the City in the validation proceeding. Any Obligations issued by the City shall contain a covenant by the City to adopt an Annual Assessment Resolution imposing Assessments for each Fiscal Year until the Obligations have been paid in full.

(F) Upon adoption of the Annual Assessment Resolution for each Fiscal Year, the Assessments shall constitute a lien against assessed property equal in rank and dignity with the liens of all state, county, City or municipal taxes and other non-ad valorem assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other liens, titles and claims, until paid. The lien shall be deemed perfected upon validation of the Obligations and adoption by the Council of the Annual Assessment Resolution and shall attach to the property included on the Assessment Roll as of the prior January 1, the lien date for ad valorem taxes.

SECTION 7. COLLECTION OF ASSESSMENTS. The Assessments shall be collected pursuant to the provisions of the Initial Assessment Resolution and Uniform Assessment Collection Act. Upon adoption of the Annual Assessment Resolution for each Fiscal Year, the City Manager shall cause the certification and delivery of the Assessment Roll to the Tax Collector by September 15, in the manner prescribed by the Uniform Assessment Collection Act.

SECTION 8. EFFECT OF FINAL ASSESSMENT RESOLUTION. The adoption of this Final Assessment Resolution shall be the final adjudication of the issues presented herein and in the Initial Assessment Resolution (including, but not limited to, method by which the Assessments will be computed, the Assessment Roll, the maximum annual Assessment, the levy and lien of the Assessments and the terms for prepayment of the Assessments), unless proper steps are initiated in a court of competent jurisdiction to secure relief within twenty (20) days from the date of City Council's adoption of this Final Assessment Resolution.

SECTION 9. ASSESSMENT NOTICE. Upon validation and issuance of the Obligations, the City Manager is hereby directed to record a general notice of the Assessments in the Official Records in the office of the Collier County Clerk of Courts. Such notice shall be in substantially the form attached hereto as Appendix C. The preliminary Assessment Roll and each annual Assessment Roll shall be retained by the City Manager and shall be available for public inspection. The foregoing shall not be

construed to require that the Assessment Roll be in printed form if the amount of the Assessment for each Tax Parcel can be determined by use of a computer terminal or internet access available to the public.

SECTION 10. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

DULY ADOPTED this 5th day of November, 2007.

CITY COUNCIL OF MARCO ISLAND, FLORIDA

By: _____
Michael F. Minozzi, Jr., Chairman

(SEAL)

ATTEST:

_____
Laura M. Litzan, City Clerk

Approved as to Form:

_____
Alan L. Gabriel, City Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.

APPENDIX A

PROOF OF PUBLICATION

APPENDIX B

AFFIDAVIT OF MAILING

APPENDIX C

FORM OF ASSESSMENT NOTICE

NOTICE OF ASSESSMENTS FOR WASTEWATER IMPROVEMENTS

NOTICE IS HEREBY GIVEN that on November 5, 2007, the City Council of Marco Island, Florida (the "City") adopted Resolution No. [07-____], which levied and imposed special assessments against property located within the Mackle Park Assessment Area, described in Exhibit A attached hereto, to collect non-ad valorem assessments for Wastewater Collection Improvements in an initial principal Capital Cost of [$15,962] per ERC and Wastewater Treatment Capacity Improvements in an initial principal Capital Cost amount of [$4,610] per ERC necessary to finance a portion of the wastewater improvements being constructed within the City. Resolution No. [07-____] provided for the levy and imposition of such non-ad valorem assessments upon validation and issuance of obligations secured by the assessments. This notice has been filed upon validation and issuance of obligations secured by the assessments pursuant to Chapter 75, Florida Statutes. A list of the affected tax parcel numbers and property owners (as shown on the Collier County ad valorem tax assessment roll as of the effective date of Resolution No. [07-____]) and the number of ERCs attributable to each parcel is available by contacting the City Clerk at [address] or at [phone #]. Assessments will commence with the ad valorem tax bill to be mailed in November 2009. The method of computing the annual assessment for any parcel of property to which the Property Appraiser has assigned a distinct ad valorem property tax identification number is set forth in Resolution No. [07-____]. The assessment roll, which identifies the number of ERCs attributable to each parcel of property is on file with the City Manager and is open to public inspection. [Additional information can be obtained on the internet at www.[City Name].gov.] Exclusive of collection costs and any amount allowed by law as the maximum discount for early payment of ad valorem taxes and non-ad valorem assessments, Resolution No. [07-____] established a maximum annual assessment each year for a maximum of twenty (20) years.

This notice is recorded at the direction of the City Council of Marco Island, Florida, pursuant to its Resolution No. [07-____], in order to provide constructive notice of the levy and imposition of non-ad valorem assessments to landowners of property located within the Mackle Park Assessment Area.

The City Council will adopt an annual assessment resolution for each fiscal year. Upon adoption of each annual assessment resolution, assessments shall constitute a lien against assessed property equal in rank and dignity with the liens of all state, county, City or municipal taxes and other non-ad valorem assessments. The lien shall be deemed perfected upon adoption of each annual assessment resolution and shall attach to the property included on the assessment roll as of the prior January 1, the lien date for ad valorem taxes. This notice does not and shall not be construed to require that individual liens or releases be filed in the Official Records.

Dated this _____ day of _____, 2007

_____

[NAME], City Manager

STATE OF FLORIDA
COUNTY OF COLLIER

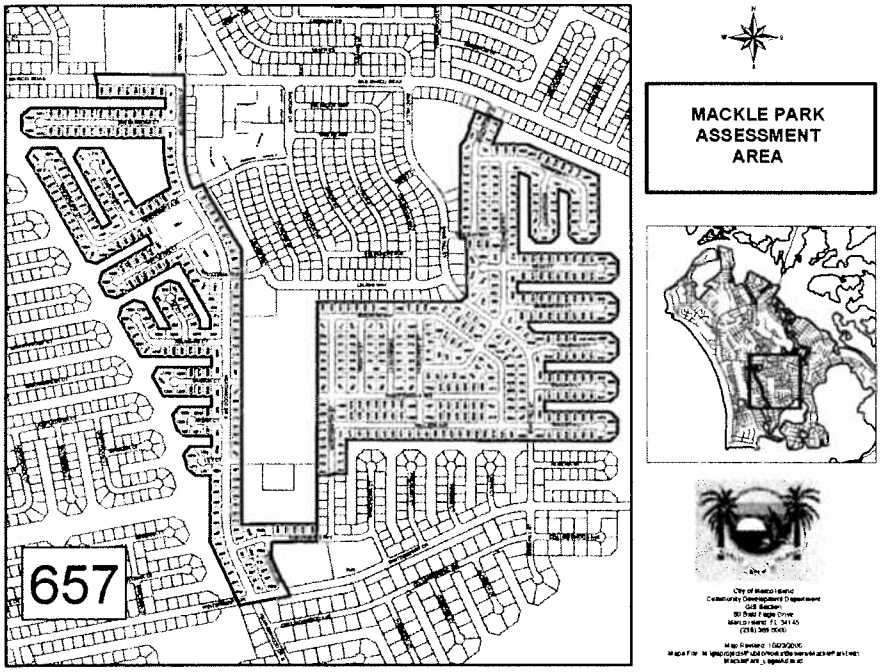
The foregoing instrument was acknowledged before me by A. William Moss as City Manager of the City Council of Marco Island, Florida, who is personally known to me or has produced _____ as identification and who did/did not take an oath, this _____ day of _____ 2007.

_____

Printed/Typed Name: _____
Notary Public-State of _____

Commission Expires:_____

NOTICE OF HEARING TO IMPOSE AND PROVIDE FOR COLLECTION OF NON-AD VALOREM ASSESSMENTS IN THE MACKLE PARK ASSESSMENT AREA



Notice is hereby given that the City Council of the City of Marco Island will conduct a public hearing to consider the collection of special assessments within the Mackle Park Assessment Area, as shown above, through the imposition of non-ad valorem assessments for the construction of wastewater collection and wastewater treatment capacity improvements. The hearing will be held at 5:30 PM on November 5, 2007, at the Community Meeting Room, 51 Bald Eagle Drive, Marco Island, Florida, for the purpose of receiving public comment on the proposed assessment area, special assessments and improvements. All affected property owners have a right to appear at the hearing and to file written objections with the City Council within twenty (20) days of this notice. If a person decides to appeal any decision made by the City Council with respect to any matter considered at the hearing, such person will need a record of the proceedings and may need to ensure that a verbatim record is made, including the testimony and evidence upon which the appeal is to be made. In accordance with the Americans with Disabilities Act, persons needing a special accommodation or an interpreter to participate in this proceeding should contact the City Clerk at 50 Bald Eagle Drive, Marco Island, Florida, at least forty-eight (48) hours prior to the date of the hearing.

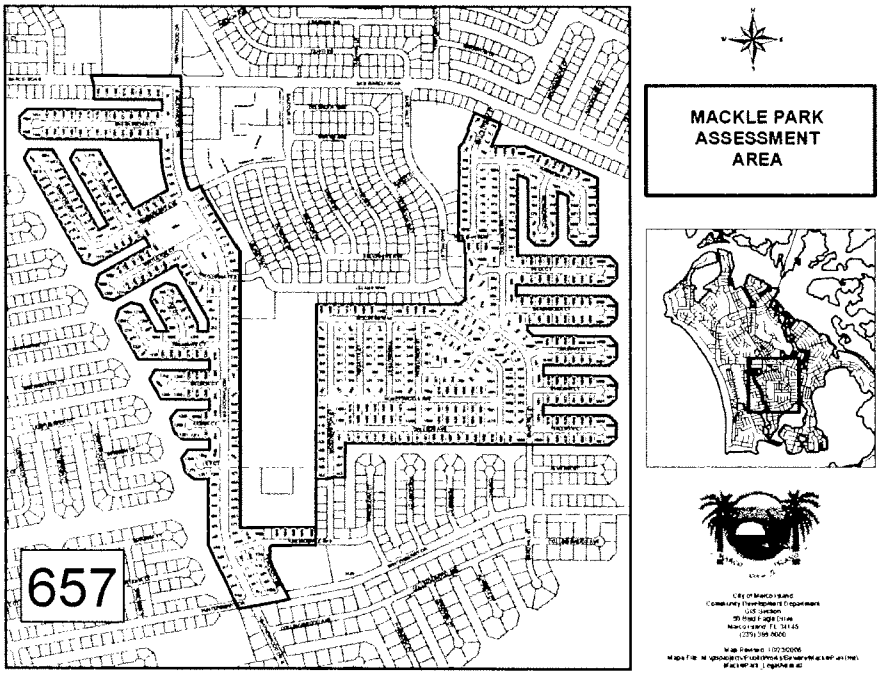
The assessment for each parcel of property will be based upon the total number of equivalent residential connections on each improved tax parcel on the date the assessment is imposed. A more specific description of the improvements and the method of computing the assessment for each parcel of property are set forth in the Initial Assessment Resolution for the Mackle Park Assessment Area adopted by the City Council on October 1, 2007. Copies of the Initial Assessment Resolution and the preliminary Assessment Roll are available for inspection at the office of the City Clerk.

Commencing in November 2009, the assessments are anticipated to be collected on the ad valorem tax bill by the Collier County Tax Collector, as authorized by Section 197.3632, Florida Statutes. Failure to pay the assessments will cause a tax certificate to be issued against the property which may result in a loss of title. Failing prepayment of the applicable special assessments, the City Council intends to collect the assessments in twenty (20) annual installments.

If you have any questions, please contact the City Clerk at (239) 389-5000.

CITY COUNCIL OF MARCO ISLAND, FLORIDA

NOTICE OF HEARING TO IMPOSE AND PROVIDE FOR COLLECTION OF NON-AD VALOREM ASSESSMENTS IN THE MACKLE PARK ASSESSMENT AREA



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