

RESOLUTION 16-43

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, APPROVING A SITE IMPROVEMENT PLAN FOR PROPERTY COMMONLY KNOWN AS "ISLAND PLAZA SHOPPING CENTER" LOCATED AT 664 BALD EAGLE DRIVE MARCO ISLAND FLORIDA, 34145; PROVIDING FOR CONDITIONS OF APPROVAL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article IX, Site Development and Site Improvement Plan Standards, of the Marco Island Land Development Code, provides standards and regulations for the review and approval of site development plans; and

WHEREAS, Island Plaza Investments, LLC, a Delaware Limited Liability Company, 655 Third Street Suite 301 Beloit, WI 53511 ("Petitioner") submitted Site Improvement Plan (SIP 16-001166) for the renovation of Island Plaza Shopping Center located at 664 Bald Eagle Drive Marco Island Florida 34145; and

WHEREAS, the City of Marco Island staff has reviewed and recommend approval of the Site Improvement Plan, SIP 16-001166; and

WHEREAS, the City's Planning Board reviewed and recommended approval of the Site Improvement Plan, SIP 16-001166 on May 6, 2016; and

WHEREAS, City Council does hereby approve Site Improvement Plan (SIP 16-001166), subject to the conditions of approval as set forth in this Resolution.

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 this reference. As used herein, unless the context or City Code of Ordinances requires to the contrary, the following terms will be defined as set forth below:

(a) "Development" is defined as set forth in Section 163.3164, Florida Statutes.

(b) "Development Permit" is defined as set forth in Section 163.3164, Florida Statutes.

(c) "Owner/Developer" means Island Plaza Investments, LLC, a Delaware Limited Liability Company, its successors and assigns, as owners in fee simple of the Subject Property.

(d) "Site Improvement Plan" classified by the City of Marco Island as SIP 16-001166, is 43 pages in length and includes: (1) a 3 page set of documents entitled Site Improvement Plans for Island Plaza prepared by Hole Montes, Inc. of Naples, FL, under Project No. 2013.084, including Sheet 1, dated April, 2016 with last date of revision dated April, 2016, Sheets 2 and 3 (Demolition Plan) dated March, 2016 and with last date of revision being April, 2016; (2) a 4 page document entitled Island Plaza Site Development Plan (SDP) Parking Lot Lighting Plans prepared by Treblicock Planning and Engineering of Naples, FL, prepared with no Project No., and no date of preparation and revision and marked issue for permit date 4-29-2016; all for Sheets L-1, L-2, L-3, and L-4; (3) a 10 page Island Plaza Renovations – A Hendricks Commercial Properties Development – Landscape Architectural Plans, prepared by Mariano Corral of Miami, FL, under Project No. 122014-R, dated 4-6-16 with no date of revision, all for Sheets LC (cover sheet), LD-0, LD-1, LD-2, LP-0, LP-1, LP-2, LP-3, LP-4, and IR-1; (4) a 26 page set of architectural plans entitled Site Improvement Plan Submission, prepared by Architects Unlimited of Naples, FL, marked as submitted on May 6, 2016 with no date of revision for Sheets Cover, A001, A002, A100-A105, inclusive, A201-204, inclusive, A401-A406, inclusive, and A501-A507, inclusive. (This legal description was excerpted from the Special Warranty Deed recorded on October 1, 2013, in Official Records Book 4970, Page 2512, Public Records of Collier County, FL. This legal description has neither been reviewed or examined by the City of Marco Island, a Florida Municipal Corporation, its officers and staff or by Alan Gabriel and Paul Gougelman, Weiss Serota Helfman, Cole & Bierman, P.L.)

(e) "Subject Property" which is also referred to herein as the "Island Plaza Shopping Center" or as "Island Plaza" is real property lying and situate in the State of Florida, County of Collier, City of Marco Island, to-wit:

Lots 14, 15, 16, and 17, Block 782, Replat of a Portion of Marco Beach Unit Eleven, A subdivision according to the plat thereof, as recorded in Plat Book 12, Page 24 to 26, Public Records of Collier County, Florida.

SECTION 2. Adoption and Approval. Site Improvement Plan (SDP 16-001166) with respect to Island Plaza , located at 664 Bald Eagle Drive, Marco Island, Florida 34145 is hereby approved, subject to the below conditions.

SECTION 3. Conditions of Approval. Approval of the Site Improvement Plan is made subject to the following conditions:

(a) Consistent with Section 166.033, Florida Statutes, prior to the commencement of development on site, the Owner/Developer/Petitioner must obtain any and all required approval from the Florida Department of Environmental Protection, and Florida Fish and Wildlife Conservation Commission, and all other applicable state or federal permits. Issuance of a development permit by the City of Marco Island does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the City of Marco Island for issuance of the permit, if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.

(b) The Owner/Developer/Petitioner is required to resubmit construction documents to the City of Marco Island Building Department for review and approval, a copy of the approved Site Improvement Plan must be included as part of the submittal.

(c) Pedestrian Node.

(1) Within not more than 270 days after the approval (assuming the City or other force beyond the Owner/Developer's control has not stopped work) of the Site Improvement Plan, a pedestrian node is required to be created and constructed as provided in Section 30-624(s), of the Land Development Code. The pedestrian node shall be provided at the intersection of North Collier and Bald Eagle Drive as shown on the Site Improvement Plan. The pedestrian node shall be a minimum of 300 square feet in size and consist of landscaping, grass, brick pavers, and two benches, subject to City staff review and approval. The node shall be designed to be contiguous with a portion of the right-of-way contiguous to the intersection and shall be developed at a level grade. At least one long boundary of the pedestrian node shall be substantially contiguous with the public right-of-way, and the pedestrian node shall access the public right-of-way at least along said boundary.

(2) An easement is required as provided in Section 30-624(s), s of the Land Development Code, for a pedestrian node. The Owner/Developer shall provide an easement on the subject property for such node, for use by the general public, and for ingress to and egress from said node by the general public. The ingress/egress shall be adjacent and contiguous to the perimeter landscape buffer. A connection(s) with the perimeter sidewalk shall be provided. (See illustration 4.19, on file in the office of the City Clerk.) By not later than 180 days after approval of the Site Improvement Plan, the aforementioned features shall be installed or erected. The amenities will be continuously and promptly maintained consistent with the Code of Ordinance of Marco Island and shall at all times be free of graffiti, peeling or faded paint, exposed stucco, faded exterior facades; or facades in disrepair. All maintenance shall be at the cost and expense of the Owner/Developer of the subject property. Developer /Owner to hold city harmless that the City is not liable on easement area this applies only to developer's property in easement area.

(3) The easement for the pedestrian node and for ingress to and egress from the node shall be conveyed to the City of Marco Island, a Florida Municipal Corporation. Prior to recording of the easement, the easement document must be submitted to the City Attorney for review as to form and substance. At the time of said review, the Owner/Developer shall give the City an attorney's title opinion and survey as to the pedestrian node property, both of which shall be addressed to and for reliance by the City, all in form acceptable to the City Attorney. Final approval of the easement shall be given after execution shall be by appropriate parties and in the form required by the City Attorney. The Owner/Developer shall pay the cost and fees of the City Attorney's review, which shall be at a cost rate to the City. In reviewing the easement and associated title work, title opinion, easement document and survey, the Owner/Developer recognizes and agrees that the City Attorney is not representing the Owner/Developer and is representing the City. The Owner/Developer shall indemnify the City, its officer and employees in their official and individual capacity against any liability for injury

(including but not limited to death) and property damage claims or suits from individuals using the Subject Property or any of its tenants.

(4) All title or other impediments to the use of any easement provided to be conveyed by this Site Improvement Plan approval shall be removed prior to the time of conveyance. The easement conveyance shall be joined in and consented to by all mortgagee or other holder of a security interest of the land affected. Any easement to be conveyed pursuant to this Site Improvement Plan approval shall be subject to a covenant by the grantor in favor of the grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said easement; that the grantor does hereby fully warrant the title to the said easement and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except the encumbrances listed.

(5) After approval of the easement by the City Attorney, the delivery of the easement to the City of Marco Island shall be scheduled for City Council agenda approval. Within not more than 180 days after the approval of the Site Improvement Plan, the Owner/Developer shall submit the fully executed easement to the City for City Council acceptance and approval.

(6) Upon City Council approval of the delivery and acceptance of the easement, the Owner/Developer shall record the easement in the Public Records of Collier County. The Owner/Developer shall be responsible for and promptly pay for any costs related to acquisition of the easement, the cost of recording said easement in the Public Records of Collier County, payment of any documentary stamp or other tax related to the conveyancing, survey of the easement location, and required title work. The easement(s) shall be conveyed for Minimal Consideration.

(d) Tree Fund. Staff will administratively provide a reserve fund for landscaping. The fund must be in place within not more than 120 days after the approval of the Site Improvement Plan. Prior to the issuance of a building permit for improvements permitted by the approved site improvement plan, the City shall be compensated a total of \$16,590 dollars by the Owner/Developer for Landscape deficiency prior to issuance of building permit, and the funds shall be used for landscape beautification on public property within the City off-site of the Island Plaza Shopping Center parcel in locations at the discretion of the City.

(e) Clock Tower. Owner/Developer to ensure the clock tower is operational and in good working order all day every day, must provide City will a copy of the maintenance agreement for the clock. If clock is not accurate for more than Five (5) calendar days, the City will enforce fines.

(f) CLUZC Certificate. The Owner/Developer acknowledges tenants are required to have valid Commercial Land Use and Zoning Certificates... Restaurant tenants must provide the City with a seating chart with the location of any bars, counters, pool tables, free standing games, stages, any architectural features such as columns, dividing walls, private dining

areas, waiting areas, drawn to scale (1/8" scale) all shown on the diagram. The diagram must accurately depict dimensions, maximum seating capacity in both indoor and outdoor areas

(g) Other Permits. Prior to the commencement of actual construction or repair work authorized by the Site Improvement Plan, the Owner/Developer must obtain any and all approvals from federal and state governmental agencies, including but not limited to the Department of Environmental Protection and Florida Fish and Wildlife Conservation Commission, if applicable.

(h) Marco Island Civic Association. The Owner/Developer is responsible for compliance with any private deed restriction approvals with the Marco Island Civic Association, if applicable.

(i) Off-Site Parking Herb Savage Way. Staff recommends approval of the proposed off-site parking under the following conditions:

(1) The parking surface must be asphalt, landscape buffer must meet current code, if buffer does not meet code a solid screen wall must be provided in addition storm water management issues associated with this parking must be addressed if necessary, parking spaces are open to the public with a three hour time limit. Staff's recommendation of approval is based on several factors that are *specific to this alley* such as a voluntary improvement, width of alley, existence of two way traffic, existing landscape buffers, property abutters, daily delivery's patterns, and existence of maneuverability of emergency vehicles. The same conditions may not apply to other alleys within the City Limits.

(2) If the off-site parking proposed to be constructed, maintain and paid for by the Owner/Developer is approved by the City Council, Section 30-488(4)d., Code of Ordinance of the City of Marco Island, will be submitted to the City Council by City staff for amendment to permit credit for off-street parking credit on the Herb Savage Way alley, however such parking shall not be utilized to increase density.

(3) A maintenance agreement between the City and the Owner/Developer, on its behalf and that of its successors and assigns, will be required for the off-site parking along Herb Savage Way. City staff will work with the Owner/Developer and the City Attorney to finalize the maintenance agreement. The City Attorney shall draft/review the proposed agreement as to form and substance. The Owner/Developer shall pay the cost and fees of the City Attorney's review, which shall be at a cost rate to the City. In drafting/reviewing the maintenance agreement, the Owner/Developer recognizes and agrees that the City Attorney is not representing the Owner/Developer and is representing the City.

(4) The maintenance agreement shall be recorded in the Collier County Public Records and shall run with the title to the Island Plaza Shopping Center. The agreement shall: (A) be developed within 120 days after Site Improvement Plan approval; (B) require that the parking spaces shall at all times be free of graffiti, peeling or faded paint, that all City-required signage or signage provided by the Owner/Developer and permitted by the City, shall be maintained so as not to be faded or marred or having graffiti, that parking space

landscaping shall be as required by the City and maintained in a healthy, living condition and properly irrigated; (C) recognize that this Site Improvement Plan approval is contingent on the maintenance agreement being entered into which agreement specifies construction and maintenance standards; (D) describe specifically how many parking spaces are being permitted on the Herb Savage Alleyway (with a drawing where the parking spaces are to be located, their dimensions as required by City Code, and numbering the parking spaces); (E) provide that the agreement extends a license to the Owner/Developer and its successors and assigns for use of the public parking spaces and provides the grounds for termination or suspension of the use of the parking spaces; (F) contain the obligation that the maintenance agreement and its provisions shall run with the title to the Island Plaza Shopping Center parcel; (G) provide that a failure to comply with the maintenance agreement provisions constitutes a code enforcement violation applicable to the Island Plaza Shopping Center parcel or that the agreement may be enforced in equity or at law in a court; (H) provide that the prevailing party in any action to enforcement of the agreement may obtain payment of its costs and attorneys'/paralegals' fees; (I) provide that the maintenance agreement has been voluntarily entered into by the Owner/Developer; (J) provide that upon a notice to the Owner/Developer, its successors and assigns as fee owners of the Island Plaza Shopping Center parcel that construction is improper or incomplete or that maintenance of the Herb Savage Way parking area is needed, if the Island Plaza Shopping Center parcel Owner/Developer, or its successors and assigns, don't comply by correcting the deficiency within 60 days after notice, the City may undertake action to correct the construction deficiency or maintain the parking and bill the Owner/Developer, or its successors and assigns of the Island Plaza Shopping Center parcel. If the bill is not paid within 30 days of billing, interest will accrue at the then highest rate permitted by law and a lien may be filed against the Island Plaza Shopping Center parcel; and (K) all maintenance and repair of the parking spaces shall be at the cost and expense of the Owner/Developer.

(5) The maintenance agreement shall be joined in and consented to by all mortgagees or other holders of a security interest of the Island Plaza Shopping Center parcel. Upon execution of the Agreement by the Owner/Developer and all mortgagees and City Council approval of the maintenance agreement, the Owner/ Developer shall record the agreement in the Public Records of Collier County. The Owner/Developer shall be responsible for and promptly pay for the cost of recording said easement in the Public Records of Collier County, and payment of any documentary stamp or other tax related to the conveyancing. Easements shall be conveyed for Minimal Consideration. The maintenance agreement must be fully executed and recorded in the Public Records of Collier County, within not more than 180 days after the approval of the Site Improvement Plan.

(j) That issuance of this approval by the City does not in any way create any right on the part of an Owner/Developer to obtain a permit from a state or federal agency and does not create any liability on the part of the City for issuance of the approval, if the Owner/Developer fails to obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in the violation of state or federal law. All applicable state and federal permits must be obtained before commencement of the Development. This condition is included pursuant to Section 166.033, Florida Statutes, as amended.

(k) That failure to adhere to the approval terms and conditions contained in this Resolution shall be considered a violation of this Resolution and the City Code, and persons

found violating this Resolution shall be subject to the penalties prescribed by the City Code, including but not limited to the revocation of any of the approval(s) granted in this Resolution and any other approvals conditioned on this approval. The Owner/Developer understands and acknowledges that it must comply with all other applicable requirements of the City Code before it may commence construction or operation, and that the foregoing approval in this Resolution may be revoked by the City at any time upon a determination that the Owner/Developer is in non-compliance with the City Code.

SECTION 4. Effective Date. This Resolution shall be effective immediately upon adoption by the City Council.

Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 16th day of May 2016.

CITY OF MARCO ISLAND, FLORIDA

By: Robert C. Brown
Robert C. Brown, Chairman

ATTEST:

Laura M. Litzan
Laura M. Litzan, City Clerk

Reviewed for legal sufficiency:

Alan L. Gabriel
Alan L. Gabriel, City Attorney

