RESOLUTION 16-69

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA APPROVING A CONDITIONAL USE TO ALLOW FOR OFFICES OF REAL ESTATE AGENTS AND BROKERS IN UNITS 103 AND 104, SAN MARCO RESIDENCES, A CONDOMINIUM, AS DESCRIBED IN OFFICIAL RECORDS BOOK 814, PAGES 1440-1580, PUBLIC RECORDS OF COLLIER COUNTY AT 291 SOUTH COLLIER BOULEVARD; MAKING FINDINGS; PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR FAILURE TO COMPLY WITH THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, an application has been submitted to permit, as a Conditional Use, Offices of Real Estate Agents and Brokers on the Subject Property located at 291 South Collier Boulevard within the City;

WHEREAS, the Offices of Real Estate Agents and Brokers is defined by NAICS-531210 as follows:

> This industry comprises establishments primarily engaged in acting as agents and/or brokers in one or more of the following: (1) selling real estate for others; (2) buying real estate for others; and (3) renting real estate for others;

WHEREAS, the Subject Property is located in the "resort Residential" land use area in the City's Comprehensive Plan and the Residential Tourist (RT) zoning district in the City's Land Development Code ("LDC");

WHEREAS, the area on the Future Land Use Map series adopted in Objective 1.1 of the Future Land Use Element depicts areas designated "Resort Residential" includes the Subject Property;

WHEREAS, the Data & Analysis, which is not a part of the Comprehensive Plan but which was adopted simultaneously with the Comprehensive Plan, is a document which assists in interpreting the Comprehensive Plan;

WHEREAS, Section I.F.2. of the Data & Analysis, which discusses future land use categories, states:

> **Resort Residential**: Residential dwellings shall be limited to multifamily structures. Hotels and motels, timeshare facilities, and family care facilities are permitted. <u>Non-residential uses permitted within this district are limited to</u>

> those uses that are compatible and/or support the residential resort character of the area. The non-residential uses contemplated include: parks, open space, recreational uses, and other related essential services as defined in the LDC. A density of less than or equal to sixteen (16) dwelling units per gross acre are permitted, and a density less than or equal to twenty-six (26) hotel/motel or timeshare units per gross acre is permitted.

(emphasis supplied);

WHEREAS, the City Council finds that limited commercial uses that are compatible with the residential resort character of the area, and that are support services as provided in the LDC, are consistent with the future land use map series;

WHEREAS, Section 30-161 states that "the RT district corresponds with and implements the Resort Residential area designated area on the future land use map of the city comprehensive plan";

WHEREAS, the intent and purpose of the RT zoning district as provided in Section 30-161, Code of Ordinances of the City of Marco Island, is as follows:

> The purpose and intent of the residential tourist district (RT) is to provide lands for tourist accommodations and support facilities, and multiple-family uses. The RT district corresponds with and implements the resort residential designated area on the future land use map of the city comprehensive plan;

WHEREAS, the RT zoning district generally envisions commercial uses that are "support facilities" for other permitted and Conditional Uses, and if any commercial uses are permitted or allowed as Conditional Uses, they should be limited so as not to disrupt the character of the RT zoning district;

WHEREAS, Section 30-164 of the LDC provides Conditional Uses permitted in the RT zoning district;

WHEREAS, Section 30-164(9) of the LDC permits "any use which is consistent with the city's comprehensive plan and is approved pursuant to the conditional use process set forth in section 30-64 of" LDC requiring compatibility with the character of the RT zoning district and surrounding areas;

WHEREAS, the manner in which these uses may be permitted in the RT zoning district is through the Conditional Use procedure in Section 30-64 of the Land Development Code, and through an individualized analysis of the proposed Conditional Use resulting in various limited commercial uses;

WHEREAS, consistent with the concept of allowing limited uses through the Conditional Use process, this Resolution provides for the permitting as a Conditional Use on the Subject Property, certain limited commercial uses as defined by the North American Industry Classification System (NAICS) (1997 ed.), including the Offices of Real Estate Agents and Brokers (NAICS Group 531210);

WHEREAS, Objective 1.1 of the Future Land Use ("FLU") Element of the Comprehensive Plan states:

> Objective 1.1: New, revised, or redeveloped uses of land shall be consistent with the designations shown on the Future Land Use Map (FLUM) presented in Exhibit 2.1. The Future Land Use Map and companion Future Land Use designations are hereby adopted as amended (2008) and shall be binding on all development orders approved by the City of Marco Island. The Future Land Use Map is a visual representation of land use designations that are planned to reasonably occur within the prescribed short and long range planning periods, between 2008 and 2013, and between 2013 and 2018, respectively;

WHEREAS, the Offices of Real Estate Agents and Brokers (NAICS Group 531210), could be compatible with the residential resort character of the area, if constitutes an essential service and is found to be compatible with the residential resort character of the area and with adjacent uses;

WHEREAS, careful analysis of compatibility is the centerpiece of the Conditional Use permitting process as explicated in Section 30-64(3)d., LDC;

WHEREAS, pursuant to the LDC, the City of Marco Island growth management staff has reviewed and recommended approval of the Conditional Use for Offices of Real Estate Agents and Brokers (NAICS Group 531210) on the Subject Property;

WHEREAS, on July 3, 2016, the Planning Board reviewed and approved the Conditional Use application for the Subject Property; and

WHEREAS, consistent with Objective 1.1 of the FLU Element and Sections 30-64(3) and 30-164(9), approval on the Subject Property of the Conditional Use for Offices of Real Estate Agents and Brokers (NAICS Group 531210) is found to consistent with the City's Comprehensive Plan and compatible with the surrounding area and the Resort Residential character of the area.

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

SECTION 1. Recitals; Definitions.

(a) The foregoing "Whereas" clauses are hereby ratified and confirmed as being true, correct and incorporated into this Resolution.

(b) 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:

(1) "City" means the City of Marco Island, a Florida Municipal Corporation.

(2) "Conditional Use" means "a use that would not be appropriate generally or without restriction throughout a zoning district, but which if controlled as to number, area, location, or relation to the neighborhood would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or the general welfare. Such uses may be permissible in a zoning classification or a district as a Conditional Use if specific provision for such a Conditional Use is made in this land development code. *See* Section 30-10 of the LDC.

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

(4) "LDC" means the Land Development Code as embodied in Chapter 30 of the City's Code of Ordinances.

(5) "NAICS" means the North American Industry Classification System (1997).

(6) "Owner/Developer" means with regard to Apartment 103, James K. McGregor and Mari-Lynn McGregor, husband and wife, and with regard to Apartment 104, Donna Kay Lahr and Scott Walter, as Joint Tenants, their respective successors and assigns, as owner(s) in fee simple of the Subject Property, or as developer(s) to which Development rights have been assigned.

(7) "Subject Property" is real property situate and lying in the State of Florida, County of Collier, City of Marco Island, to-wit: Apartments 103 and 104, San Marco Residences, according to the Declaration of Condominium thereof, as recorded in Official Records Book 814, Pages 1440 through 1580, Public Records of Collier County, and amendments thereto, together with an undivided interests in the common elements appurtenant thereto.

SECTION 2. Conditional Use in Substantial Compliance. That it finds that the Conditional Use for Offices of Real Estate Agents and Brokers, as described in NAICS 531210, for the Owner/Developer on the Subject Property is in substantial compliance with the requirements of Sections 30-64 (Conditional Use approval process) and 30-164 (Conditional Uses in the RT zoning district) of the LDC.

SECTION 3. Conditional Use Approval. That it hereby approves the Conditional Use for the Offices of Real Estate Agents and Brokers, as described in NAICS 531210 for the Owner/Developer on the Subject Property.

SECTION 4. Condition of Approval. That the following conditions shall apply to this approval:

(1) All applicable state and federal permits shall be obtained before commencement of the Development subject to this approval.

(2) This Conditional Use permit is also based on the location of the use, the number, design, configuration, and/or methods of operation, massing of structures, intensity of development, on-site and off-site traffic estimates, amount of landscaping, amount of impervious areas, compatibility with adjacent uses, and other factors as described in Section 30-64 of the LDC for the grant of a Conditional Use permit. Any expansion to an approved Conditional Use and any addition to or expansion of an existing Conditional Use requires application, review, and approval as required for the approval of the original Conditional Use. Minor changes in the design details consistent with the standards and conditions apply to a Conditional Use and which do not result in additional external impacts may be made with the approval of the City Manager. A "minor change" includes: (i) an increase in the intensity of any use of less than 10% in usable floor area; (ii) a decrease of less than 10% in any setback; (iii) an increase in structure height of the Conditional Use of not greater than 2 feet; (iv) a change of 10% or less in the number of adjacent accessory parking spaces; or (v) an increase of less than 10% in traffic generation.

SECTION 5. Approval Does Not Create A Vested Right. 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.

SECTION 6. Failure to Adhere to Resolution. 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 7. Effective Date. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was adopted this 1st day of August 2016.

ATTEST:

Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: Robert C. Brown, Chairman

Approved as to form and legal sufficiency:

Alan L. Gabriel, City Attorney