MAJOR CONDITIONAL USE MJ-13-01

RESOLUTION NO. 14-02-11

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST BY 81001 OVERSEAS HIGHWAY, LLC FOR MAJOR CONDITIONAL USE APPROVAL FOR THE DEVELOPMENT OF A 22,237 SQUARE FOOT SUPERMARKET ON PROPERTY LOCATED AT 81001 HIGHWAY ON UPPER MATECUMBE KEY, AS LEGALLY DESCRIBED IN EXHIBIT “A;” WITHIN THE HIGHWAY COMMERCIAL (HC) ZONING DISTRICT; PROVIDING FOR THE TRANSMITTAL OF THIS RESOLUTION TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Preferred Income Partners, LLC (collectively, the “Owner”) is the owner of property located at 81001 Overseas Highway on Upper Matecumbe Key, with Real Estate Number 00397810-000000 and as legally described in Exhibit “A” (the “Property”); and

WHEREAS, pursuant to Section 30-696(d)(1) of the Code of Ordinances (the “Code”) of Islamorada, Village of Islands, Florida (the “Village”), any permitted use greater than 5,000 square feet except restaurants within the Highway Commercial (HC) Zoning District shall be reviewed as a Major Conditional Use; and

WHEREAS, 81001 Overseas Highway, LLC, as the contract purchaser of the 81001 Property (the “Applicant), has applied to the Village for Major Conditional Use approval for the development of a supermarket and accessory uses and structures on the Property; and

WHEREAS, pursuant to Code Chapter 30, Article IV, Division 2, the Owner has applied for Major Conditional Use Approval (MJ-13-01) for the development of a 22,237-square-foot
supermarket and accessory uses and structures (the “Request”); and

WHEREAS, the Village Development Review Committee (the “DRC”) reviewed the Request on August 6, 2013 and recommended denial of the Request to the Director of Planning and Development Services (the “Director”); and

WHEREAS, pursuant to the applicable provisions of the Code, the Director in his Council Communication dated February 13, 2014, recommended to the Village Council that the Request be denied; and

WHEREAS, the Village Council has considered the Request, the relevant support materials, the DRC's and the Director's recommendations, public testimony and evidence given at a properly advertised public hearing held on February 13, 2014 (the “hearing”).

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true, correct, and incorporated herein by this reference.

Section 2. Findings of Fact. The Village Council, having considered the Request, the relevant support materials, the DRC's and Director's recommendations, public testimony and evidence given at the hearing, does hereby find and determine:

1. The Applicant submitted the Request on June 20, 2013.

2. The Request consists of a Site Plan (Exhibit “B”) depicting the Request’s configuration, layout and level of impacts.

3. The Property is located within the Mixed Use (MU) Future Land Use Map (FLUM) category.

4. The Property is located within the Highway Commercial (HC) Zoning District.
5. The Request complies with the standards of Code Section 30-216(d) for considering conditional uses.

6. The Request complies with the Concurrency Management and other applicable requirements of Code Chapter 30, *Land Development Regulations* (the “LDRs”).

7. The Request is consistent with the purposes, goals, objectives and policies of the Village Comprehensive Plan, including standards for building and structural intensities and densities, and intensities of use.

**Section 3. Conclusions of Law.** Based upon the above Findings of Fact, the Village Council does hereby make the following Conclusions of Law:

1. The Request has been processed in accordance with the applicable provisions of the Village Comprehensive Plan and LDRs, and will not be detrimental to the community as a whole.

2. In rendering its decision as reflected in this Resolution, the Village Council has:
   (a) Accorded procedural due process;
   (b) Observed the essential requirements of the law; and
   (c) Supported its decision by competent substantial evidence of record.

3. The Request is hereby **APPROVED**, subject to the conditions imposed below.

**Section 4. Conditions Imposed.** Granting of the Request is subject to the following conditions:

1. Pursuant to Section 166.033, Florida Statutes, all applicable state and federal permits must be obtained before commencement of the development. Issuance of a development permit by a municipality 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 municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill
the obligations imposed by a federal or state agency or undertakes actions that result in a violation of state or federal law.

2. A temporary six-foot-high chain link construction fence shall be required around the perimeter of the Property during construction of the Request.

3. The eight (8) foot wall between the single-family residence and the Request along the southwest property line and the eight (8) wall located to the interior of the 30 foot wide Class E bufferyard along Old Highway shall be constructed and completed prior to the demolition of the existing building on site and any site preparation work.

4. The twenty (20) foot wide Class D bufferyard between the SR zoning district and the Request along the southwest property line and the thirty (30) foot wide Class E bufferyard along the Old Highway shall be installed and completed prior to the demolition of the existing building on site and any site preparation work.

5. The quantities of vegetation as shown on LP-1.05 is required and cannot be reduced. Species shall only be substituted with the prior written approval of the Village Biologist.

6. Pursuant to Code Section 30-215(d)(20)(n), the Applicant shall install improvements to the Florida Keys Overseas Heritage Trail multi-use path directly in front of the Property consisting of including installation of standard "Share the Road" or "Bike Route" signage, pavement markings, striping, colored asphalt and widening to at least the minimum standard width where sufficient right-of-way and clearance exists, at their expense. All improvements shall be completed prior to issuance of any certificate of occupancy associated with the Request. The Applicant shall be responsible for installing one-time improvements to the Florida Keys Overseas Heritage Trail multi-use path.
7. The Applicant shall obtain all FDOT permits necessary to construct the required Overseas Highway improvements, which include a dedicated center southbound one way left turn lane providing access to the site entrance, new northbound and southbound bus stop pull outs, as depicted on the approved site plan, and a driveway spacing standard variance between the access drive serving the subject Property and the access drive serving the Morada Parcel, prior to issuance of any building permit. All improvements shall be completed by the Applicant at its sole expense. All improvements shall be accepted by FDOT prior to the issuance of a certificate of occupancy.

8. The Applicant shall apply to FDOT for a new striped mid-block pedestrian crossing with raised pavement markings around the center island, as depicted on their site plan, and shall use their best effort to secure the FDOT permit.

9. A certificate of occupancy for the Request shall not be issued until all certificates of occupancy for the required off-site two (2) affordable residential dwelling units, with each unit consisting of at least three-bedrooms, a minimum of 900 square feet in total floor area, and housing a minimum of five (5) persons, are issued.

10. Pursuant to Code Section 30-852(a)(1), the Applicant shall submit a fully-executed and effective Cross Access and Parking Agreement to the Village within sixty (60) days of the effective date of the Major Conditional Use Approval, providing for vehicular and pedestrian access and ingress and egress over and upon the Access Areas or portions of the Morada Parcel as depicted in Exhibit “C” of the Cross Access and Parking Agreement, including but not limited to entrances, exits, driveways, roadways, parking areas, walkways, and travel lanes, for vehicular and pedestrian access and ingress and egress between the Parcels, to and
from the abutting public street or right-of-way (Overseas Highway) and shall be reviewed and approved in form by the Village Attorney.

11. The ten (10) dedicated off-street parking spaces on the Morada Parcel shall be designated with signage that clearly indicates the parking is for the 81001 parcel, as approved by the Director of Planning.

12. Signage indicating the ten (10) dedicated off-street parking spaces on the Morada Parcel shall be installed on the 81001 Parcel, as approved by the Director of Planning.

13. A pedestrian pathway between the Morada Parcel and the 81001 Parcel shall be provided to ensure access from the ten (10) dedicated off-street parking on the Morada Parcel to the subject Property, as approved by the Director of Planning.

14. The pedestrian pathway immediately adjacent to off-street parking space number 43 shall be increased to six (feet) in width and shifted away from off-street parking space number 43, as approved by the Director of Planning.

15. All rooftop equipment shall be properly screened pursuant to Code Section 30-215(20)h., and shall be located a minimum of twenty-five (25) feet away from the southwest façade to mitigate aesthetic and noise impacts with the adjacent residential dwelling.

16. The generator shall be located to the northeast of the building.

17. No drive-thru shall be permitted on the subject Property.

Section 5. Conflicting Provisions. In the event the conditions or time limitations contained herein, and any conditions or time limitations of any subsequent development approval granted by the Village or the LDRs are in conflict, the more restrictive shall apply.

Section 6. Violation of Conditions. The Owner understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements
of the Village or other governmental agencies before it may commence construction or operation
of any use authorized herein. In accordance with Code Section 30-224, this approval may be
revoked by the Village Council upon a determination that the Owner or its successor or designee
is in non-compliance with this Resolution or the Code. Failure to adhere to the terms and
conditions of approval contained herein is a violation of the Code and persons found violating
the conditions shall be subject to the penalties prescribed by the Code.

Section 7. Effective Date. This Resolution shall not take effect until after (a) thirty (30) days
following the date it is filed with the Village Clerk, during which time the Request herein shall
be subject to appeal as provided in the Code; and (b) following the thirty (30) days, this
Resolution shall not be effective or acted upon by the Owner until forty-five (45) days following
the rendition to the Florida Department of Economic Opportunity (the “DEO”), pursuant to
Chapter 73C-44.003 of the Florida Administrative Code. During those forty-five (45) days, the
DEO may appeal this Resolution to the Florida Land and Water Adjudicatory Commission and
such an appeal will stay the effectiveness of this instrument until such appeal is resolved by
agreement or order.

Section 8. Term. This Development Order shall become null and void, with no further
notice required by the Village, unless a complete building permit application for site preparation and
building construction is submitted to the Village Building Official within the time frame specified in
the Village’s Land Development Regulations (“LDRs”). Commencement of development shall
occur within three (3) years of the date of this Development Order unless a time extension is granted
by the Director or the Village Council, pursuant to Section 30-225 of the Village’s Code of
Ordinances. If the Development Order is appealed under the LDRs or by the DCA, the above time
limits shall be tolled until the appeals are resolved.
The foregoing Resolution was offered by Councilman Philipson, who moved for its adoption. This motion was seconded by Councilman Forster, and upon being put to a vote, the vote was as follows:

FINAL VOTE AT ADOPTION
VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Ted Blackburn  NO
Vice Mayor Deb Gillis  YES
Councilman Mike Forster  YES
Councilman Ken Philipson  YES
Councilman Dave Purdo  NO

PASSED AND ADOPTED THIS 13TH DAY OF FEBRUARY, 2014.

[Signature]
TED BLACKBURN, MAYOR

ATTEST:

[Signature]
SYNTHIA LANKFORD, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF ISLAMORADA,
VILLAGE OF ISLANDS ONLY

[Signature]
ROGET V. BRYAN, VILLAGE ATTORNEY

This Resolution was filed in the Office of the Village Clerk on this 3rd day of March, 2014.

[Signature]
Synthia Lankford, Village Clerk
CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished to the Owner, via U.S. certified mail, return receipt requested, addressed to 81001 Overseas Highway, LLC, 2903 Rigsby Lane, Safety Harbor, FL 34695, this 4th day of March, 2014.

[Signature]
Synthia Lankford, Village Clerk
Legal Description for Parcel # 00397810-000000

Tract B, Palm Harbor, on Upper Matecumbe Key, according to the plat thereof recorded in Plat Book 2 at Page 111 of the public records of Monroe County, Florida. Also described as follows:

A parcel of land in Section 32, Township 36 S, Range 37 E, Upper Matecumbe Key, Monroe County, Florida, said parcel being a portion of Lot 5 of a survey for Lee Pinder by George L. MacDonald, according to the plat thereof recorded in Plat Book 1 at Page 41 of public records of Monroe County, Florida, more particularly described as follows:

Begin at the intersection of the southeasterly right of way line of State Road No. 5 (US Highway No. 1) with the southerly line of said Lot 5, thence run southeasterly along said right of way line and along the southerly line of Tract D, Palm Harbor according to the plat thereof recorded in Plat Book 2 at Page 111 of public records, Monroe County, Florida, for 266.95 feet to an intersection with the boundary line common to Palm Harbor as recorded in Plat Book 2 at Page 111 and Meininger Art Colony as recorded in Plat Book 2 at Page 84, all according to public records, Monroe County, Florida, thence deflect 104 degrees 5 minutes 30 seconds right and run southeasterly along said common boundary line for 391.55 feet to the northwest right of way line of County Road (Old State Rd. No. 4A) according to the plat of Palm Harbor as recorded in Plat Book 2 at Page 111 of public records, Monroe County, Florida, thence deflect 90 degrees 51 minutes 30 seconds right and run southeasterly along said right of way line for 0.18 feet to the Point of Curvature of a circular curve, concave to the southeast, having for its elements a Central Angle of 5 degrees 42 minutes 20 seconds and a Radius of 1825 feet; thence southerly along the arc of said curve and along said right of way line for 181.47 feet to the Point of Tangency of said curve; thence continue southerly along said right of way line, tangent to said curve, for 99.53 feet to an intersection with the southerly boundary line of Tract B of Palm Harbor, Plat Book 2, Page 111, also being the southerly line of Lot 5, George L. MacDonald Plat, Plat Book 1, Page 41, all according to public records, Monroe County, Florida; thence deflect 98 degrees 30 minutes 0 seconds right and run northwesterly along said southerly line of said Lot 5 and said Tract B for 341.96 feet to the Point of Beginning, containing 97702 Square Feet or 2.2429 Acres, more or less.