

**PALM BEACH COUNTY  
PLANNING, ZONING AND BUILDING DEPARTMENT  
ZONING DIVISION**

**Application No.:** ZV/DOA/CA-2019-00950  
**Application Name:** Town Commons MUPD 2  
**Control No./Name:** 2004-00248 (Town Commons MUPD 2)  
**Applicant:** Lynx Zuckerman at Fort Myers, LLC  
**Owners:** Lynx Zuckerman at Fort Myers LLC  
 DR Horton, Inc.  
**Agent:** WGINC - Jerrod Purser  
**Telephone No.:** (561) 687-2220  
**Project Manager:** Carrie Rechenmacher, Senior Site Planner

**TITLE:** Type 2 Variance **REQUEST:** to eliminate parking required at the rear or side of each building it is intended to serve. **TITLE:** a Development Order Amendment **REQUEST:** to reconfigure the Site Plan; add/delete building square footage and add buildings; modify uses; relocate an access point; modify Conditions of Approval; and, restart the Commencement of Development Clock. **TITLE:** a Class A Conditional Use **REQUEST:** to allow a Type 1 Restaurant with a Drive-Through.

**APPLICATION SUMMARY:** Proposed is a Development Order Amendment (DOA) for the Town Commons Multiple Use Planned Development (MUPD) #2. The vacant 3.10-acre site was originally approved by the Board of County Commissioners (BCC) on April 28, 2005 to rezone from the Agricultural Residential to the MUPD Zoning District, to allow a 5,000 square foot (sq. ft.) Business or Professional Office and September 29, 2008 to increase to 26,000 sq. ft. and change the use from Professional Office to Medical Office. The 3.10-acre parcel is part of a 40-acre parcel, which was approved by the BCC on December 2, 1998 as a Multiple Land Use Designation (MLU) with a mix of commercial and residential uses.

The Applicant is requesting a DOA to delete an unconstructed 26,000 square foot (sq. ft.) Medical Office to allow for the development of 10,140 sq. ft. of Retail Sales, an 1,830 sq. ft. Type 1 Restaurant with a Drive-Through, a 1,750 sq. ft. Type 1 Restaurant, a 2,120 Type 2 Restaurant, and 392 sq. ft. of outdoor dining areas. In addition, the Applicant is requesting a Type 2 Variance to eliminate parking required to be located at the rear or side of each building it is intended to serve, instead of the 10% required by Code.

The Preliminary Site Plan indicates two buildings totaling of 16,232 sq. ft. (including outdoor dining areas) with 75 parking spaces. One access point to the site will remain from Town Commons Drive. This Application was reviewed for consistency with Unified Land Development Code (ULDC), Ord. 2003-067, Supplement 25.

**SITE DATA:**

<b>Location:</b>	Northeast corner of Town Commons Drive and Hypoluxo Road, approximately 0.25 miles east of Lyons Road.
Property Control Number(s)	00-42-45-08-10-001-0010; 00-42-45-08-11-002-0000; 00-42-45-08-11-018-0000; 00-42-45-07-12-018-0000
Existing Future Land Use Designation:	Commerical Low/two units per acre - CL/2
Proposed Future Land Use Designation:	No Proposed Change
Existing Zoning District:	Multiple Use Planned Development (MUPD)
Proposed Zoning District:	No Proposed Change
Total Acreage:	3.1 acres
Affected Acreage:	3.1 acres
Tier:	Urban/Suburban
Overlay District:	N/A
Neighborhood Plan:	West Boynton Community Plan
CCRT Area:	N/A
Municipalities within 1 Mile	N/A

Future Annexation Area	N/A
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**RECOMMENDATION:** Staff recommends approval of the requests subject to the Conditions of Approval as indicated in Exhibits C-2 and C-3.

**ACTION BY THE ZONING COMMISSION (ZC):** At the January 8, 2020 ZC Hearing, this item was on the Consent Agenda. There was one person from the Villaggio Residential Planned Development who spoke in favor of the request, but also requested that the traffic remain similar to the previously approved medical offices that were never constructed. He also requested an additional traffic light in front of his development. There was no discussion among the Commissioners. Commissioner Caliendo made a motion to recommend approval, seconded by Commissioner Beatty. The motion carried by a vote of 8-0.

**PUBLIC COMMENT SUMMARY:** At the time of publication, staff had received 4 letters in opposition from the public regarding this project. The letters indicated the request would generate too much traffic and noise disturbing the surrounding residential area. Staff also received two letters in support, which includes: A letter from Villaggio HOA President David Tucker, indicated that the Applicant agreed not to construct “Gas Stations, Storage Facilities, or Fast Food Restaurants.” Note, as the proposed Type 1 Restaurants are similar to “Fast Food Restaurants”, staff have notified Mr. Tucker and the Applicant of this discrepancy. Another letter of support was also received by Staff from Valencia Shores HOA representative Howard Chaiet.

**PROJECT HISTORY:**

Application No.	Request	Resolution	Approval Date
PDD-2004-00298	Official Zoning Map Amendment from the Agricultural Residential (AR) Zoning District to the MUPD Zoning District.	R-2005-0819	April 28, 2005
DOA-2007-00896	Development Order Amendment (DOA) to reconfigure the site plan; to increase square footage; and, to modify the use.	R-2008-0004	January 03, 2008
DOA/EAC-2008-01178	An Expedited Application to extend the commencement of development.	R-2008-1700	September 29, 2008
DOA/EAC 2013-02126	An Expedited Application to delete a Condition of Approval (Engineering)	R-2013-1764	December 5, 2013

**SURROUNDING LAND USES:**

**NORTH:**

FLU Designation: Multiple Land Use (MLU)  
 Zoning District: Residential Planned Unit Development (PUD)  
 Supporting: Residential (Town Commons PUD, Control No 2004-00247)

**SOUTH:**

FLU Designation: Low Residential (LR-2)  
 Zoning District: Agricultural Residential (AR)  
 Supporting: Residential (Villages of Windsor PUD, Control No 1996-00081)

**SOUTH:**

FLU Designation: Commercial Low, with an underlying LR-2 (CL/2)  
 Zoning District: Residential Planned Unit Development (PUD)  
 Supporting: Residential (Villages of Windsor PUD, Control No 1996-00081)

**EAST:**

FLU Designation: Multiple Land Use (MLU)  
 Zoning District: Residential Planned Unit Development (PUD)  
 Supporting: Residential (Town Commons PUD, Control No 2004-00247)

**WEST:**

FLU Designation: Multiple Land Use (MLU)

**TYPE 2 VARIANCE SUMMARY:** At the January 8, 2020 ZC Hearing this the following Variance was approved:

ULDC Article	Required	Proposed	Variance
Art. 3.E.1.C.2.h.5), Location – Non-Residential PDDs	A minimum of ten (10) percent of the required parking shall be located at the side or rear of the building it is intended to serve.	No parking located at the rear or side of each building	100%

**FINDINGS:**

Conditional Uses, Requested Uses and Development Order Amendments:

When considering a Development Order application for a Conditional or Requested Use, or a Development Order Amendment, the BCC and ZC shall consider Standards a-h listed in ULDC Article 2.B.7.B,2, Standards. The Standards and Staff Analyses are indicated below. A Conditional or Requested Use or Development Order Amendment which fails to meet any of these standards shall be deemed adverse to the public interest and shall not be approved.

**a. Consistency with the Plan** – *The proposed use or amendment is consistent with the purposes, goals, objectives and policies of the Plan, including standards for building and structural intensities and densities, and intensities of use.*

**o Consistency with the Comprehensive Plan:** *The proposed use or amendment is consistent with the Goals, Objectives and Policies of the Comprehensive Plan, including previous Land Use Amendments, densities and intensities of use.*

**o Prior Land Use Amendment:** The site was the subject of a Large Scale Land Use amendment known as Town Commons MLU, LGA 2018-18, Ord. 2018-30, that amended the land use from Multiple Land Use (MLU) with Commercial High, Commercial High Office and Low Residential, 2 units per acre to Multiple Land Use (MLU) with Commercial High and Low Residential, 2 units per acre. The amendment was adopted with conditions as follows:

**A. Land Use Matrix:** The matrix is shown below with an additional column to the far right that shows how the request is consistent with the parameters of the matrix.

**B. Conceptual Plan (Exhibit 2):** The plan has been carried forward with the zoning application.

**C. Conditions:**

1. Development of the site shall comply with the Conceptual Master Plan.

2. A minimum of 4 acres must be committed to useable open space. These 4 acres shall not be applied to the recreation and/or parks requirements or any other required dedication of land. Water retention, lakes, drainage, and canals shall not be considered useable open space. The usable open space requirements shall be located within one or more of the Areas identified (1, 2, or 3).

3. Additional density is allowed pursuant to Future Land Use Element Policy 4.4.2-b.1 (a) (TDR, WHP, AHP).

**D. Delete the Design Guidelines**

The request is generally consistent with the Land Use Amendment matrix as depicted below, and conditions as follows: the Conceptual Land Use Master Plan has been submitted with the Zoning request; the Master Plan Exhibit depicts 6.7 acres of Usable Open Space as defined by the Comprehensive Plan Introduction and Administration Element; and, the amendment conditions will be carried forward in the Zoning process as it was approved by the BCC.

Zoning Control Number	Land Use	Acres	Intensity/Density <sup>1</sup>		Zoning Approvals
		Min. - Max	Minimum	Maximum	
2000-39	Commercial High (CH) (Area 1)	14.3	N/A	94,900 SF	DOA-2004-296 94,400SF
2004-248	Commercial High (CH/2) (Area 2)	3.10	N/A	30,000 SF*	DOA-2019-950 16,232SF
2004-247	Low Residential 2 units per acre (LR-2) (Area 3)	10.8 – 25.7	60 units	80 units (see Condition 3)	ZAR-2018-2389 132 units
For all	Usable Open Space <sup>3</sup>	40 – no max	N/A		6.70
	Total	40	N/A		

\*Or, uses allowed under CH or LR-2 future land use up to the equivalent number of trips per day.

*Intensity:* The subject site is within Area 2, which is limited by the conditions and Land Use Matrix Table contained within the Amendment to a maximum of 30,000 square feet, or, uses allowed under CH or LR-2 future land use UQ to the equivalent number of trips per day. Therefore, the request for a total of 15,840 square feet is consistent with the conditions of the amendment and equates to a FAR of approximately 0.12 (15,840 / 134,905 square feet or 3.097 acres = 0.117). However, the maximum Floor Area Ratio(FAR), without the limitation of the Land Use Condition, would be 0.50 for the CH FLU designation (with PDD Zoning) in the Urban Suburban Tier (134,905 square feet or 3.097 acres x .50 maximum FAR = 67,452.66 square feet maximum).

*Special Overlay District/ Neighborhood Plan/Planning Study Area:* The site is not located within any neighborhood plans, overlays or plan study area as identified in the Comprehensive Plan.

**b. Consistency with the Code** - *The proposed use or amendment complies with all applicable standards and provisions of this Code for use, layout, function, and general development characteristics. The proposed use also complies with all applicable portions of Article 4.B, SUPPLEMENTARY USE STANDARDS.*

o With the change from, Commercial High- Office to Commercial High pursuant to LGA 2018-018 adopted October 31, 2018 allowed more flexibility and opportunities and proposed uses for the site. Additionally this FLU amendment deleted the outdated Design Guideline requirements. Therefore the revisions comply with all applicable standards and provisions of this Code for use, layout, function, and general development characteristics and applicable portions of Article 4.B. Supplementary Use Standards.

o Subsequent to certification it was determined that a portion of Tract R of Town Commons Drive, which is contained in the overall legal description of the 3.10 acres, is owned by D.R.Horton. Staff is requesting additional information on this transaction with documentation of sale to demonstrate ownership, disclosures, and consent in regard to this Development Order application.

o Condition Modification and Deletion of the Design Guideline requirements: As a result of the FLU amendment to delete the Design Guideline requirements, a request for modification of conditions to remove the condition references to the Design requirements is included. The Findings of the Future Land Use Ordinance LGA 2018-018 Staff Report explains that in 2005, the Comprehensive Plan requirements for the 40 acre MLU contained lengthy requirements, including requirements for design guidelines and a Pedestrian Oriented Zone.

The subject site incorporated those requirements into the 2005 amendment ordinance. Subsequently in 2009, the County adopted amendments to the MLU Policies to simplify the requirements and to allow for greater flexibility and applicability. The Design Guidelines adopted with the amendment were initially developed in 1996, and were determined to be out dated and no longer appropriate and these requirements have been removed with the Ordinance adopted October 31, 2018.

o Pedestrian Connections: The current development proposal provides for a continuous, non-vehicular circulation system that connects all buildings within the site, as well as to the existing pedestrian network surrounding the site. The internal pedestrian circulation system will connect to the proposed sidewalk fronting Hypoluxo Road.

**A. 1000 foot radius** - from intersection of Town Commons Drive and Hypoluxo Road- indicating no other Type 1 Restaurants with a Drive-Through within this distance.

**B. 500 foot Separation** – Indicating no other Type 1 Restaurants with a Drive-Through.



o Type I Restaurant: The 2,120 sq. ft. Type 1 Restaurant with a drive-through is proposed on the interior of the site adjacent to Hypoluxo Road. A Type 1 Restaurant with a drive-through is subject to the Location Criteria of a maximum of two Type 1 Restaurants with a drive-through permitted at an intersection or within 1,000 feet of the intersection, and must be in compliance with the location and Intersection Criteria of 5.E.2.B. There are no other existing Type I Restaurants with a drive through within 1,000 feet of the proposed use, and therefore the Restaurant complies with the Location Criteria of Article 5. The second Type 1 Restaurant and the Type 2 Restaurant do not have drive-throughs and are exempt from this standard.

A Type 1 Restaurant without a drive-through is allowed subject to administrative DRO approval provided the GFA including outdoor dining areas does not exceed 5,000 sq. ft. A Type 1 Restaurant without a drive-through including outdoor dining areas and where the use is allowed, and that does not exceed 1,500 sq. ft. is permitted by right.

o Hours of Operation: The Applicant is not proposing extended hours of operation and shall comply with ULDC requirements of operations limited to 6:00 a.m. to 11:00 p.m. daily.

o Architectural Review: The Applicant indicates that a request to obtain architectural review approval will be submitted at time of application for Building Permits for the proposed structures. No Architectural elevations have been provided at this time.

o Parking: A Type 2 Variance is required to address parking standards in Article 3 and Article 6 of the ULDC requiring a minimum of ten percent of the required parking to be located at the rear or side of each building it is intended to serve. In this case none of the parking will be in the rear or side of the structures due to the layout of the site. Therefore to address this code provision, a concurrent Type 2 Variance was approved by the ZC on January 8, 2020 to address this issue. A total of 75 parking spaces have been provided of which four have been designated as ADA accessible spaces.

o Landscape/Buffering: The Applicant is requesting amendments to Landscape Condition 4 along the south property line Hypoluxo Road frontage. The amendment to the condition will allow a 12 foot dedication of R-O-W into the 50 foot buffer to allow a right turn lane. Also the Design Guideline requirement of this condition has been removed per approved FLU amendments of LGA 2018-018, Ord. 2018-030.

o A Type 2 Incompatibility buffer is indicated on the site plan along the east property line and is consistent with previous conditions. A 15 foot buffer is also indicated on the adjacent residential portion of the site along with an open space tract providing over 30 feet of buffer area. The Zoning Division determined that the 15 foot buffer on the subject site would be vested per Article 1 and the previous resolutions and Conditions of Approval, for the perimeter of the site. Determination of previous approvals for the LMU configuration also supported the consideration that the amendment does not require a Type 3 Incompatibility buffer in this location.

**c. Compatibility with Surrounding Uses** – *The proposed use or amendment is compatible and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.*

o The site is designed to provide the buffers necessary along the north, south, east and west property lines to ensure that the proposed Commercial development is consistent and compatible with the surrounding proposed residential and existing commercial uses to the east. The Site was previously approved with a 15 foot Incompatibility buffer. The ULDC requires a 20 ft. Type 3 Incompatibility buffer for residential adjacent to an MUPD. However as the overall 40 acres is approved as an MLU with existing conditions it was determined the proposed buffer would remain as previously approved. Additionally, a 15 foot buffer is also adjacent to the PUD side with an open space track providing 50 foot separation from residential uses.

o The area surrounding the subject site is part of the overall Town Commons Development, which is currently developed as commercial to the west and proposed residential to the east. Moreover, the previous approval, which allowed for over 26,000 sq. ft. of Medical Office use needed to be modified to provide a more viable use for the site. The proposed modifications will be complementary to the existing and proposed residential community.

**d. Design Minimizes Adverse Impact** – *The design of the proposed use minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.*

The proposed design minimizes adverse impacts, including visual impact and intensity of the proposed use on adjacent lands. The Applicant states the site is designed to be compatible with proposed residential uses within the Town Commons PUD to the north and east of the site and compatible with uses along Hypoluxo Road and the surrounding area. The development is also designed to meet the ULDC required dimensional and landscaping components to the maximum extent possible, which ensure that the DOA is aesthetically pleasing and compatible with other uses in the area.

The subject site locates the retail and restaurant uses in close proximity to the residents in need of these services. In addition, the Preliminary Site Plan is designed to locate the greater intensity along Hypoluxo Road and provide a significant buffer. The Applicant affirms that the variance requests are minimal, and the project will be compatible with the surrounding land uses.

**e. Design Minimizes Environmental Impact** – *The proposed use and design minimizes environmental impacts, including, but not limited to, water, air, storm water management, wildlife, vegetation, wetlands and the natural functioning of the environment.*

**ENVIRONMENTAL RESOURCE MANAGEMENT COMMENTS:**

**VEGETATION PROTECTION:** The property only supports some landscape trees.

**WELLFIELD PROTECTION ZONE:** The property is not located within a Wellfield Protection Zone.

**IRRIGATION CONSERVATION CONCERNS AND SURFACE WATER:** All new installations of automatic irrigation systems shall be equipped with a water sensing device that will automatically discontinue irrigation during periods of rainfall pursuant to the Water and Irrigation Conservation Ordinance No. 93 3. Any non stormwater discharge or the maintenance or use of a connection that results in a non stormwater discharge to the stormwater system is prohibited pursuant to Palm Beach County Stormwater Pollution Prevention Ordinance No. 93 15.

**ENVIRONMENTAL IMPACTS:** There are no significant environmental issues associated with this petition beyond compliance with ULDC requirements.

**f. Development Patterns** – *The proposed use or amendment will result in a logical, orderly and timely development pattern.*

While the site is currently undeveloped, the site is bordered by commercial to the west, and proposed and existing residential developments to the north and east. The Applicant requests to diminish the medical office/commercial office use, as the current request shifts away from such uses to provide a more low-density commercial development 15,840 sq. ft. with 392 sq. ft. of outdoor pedestrian amenities and dining on site. As a result, the proposed development is consistent and compatible with the previously approved request and surrounding uses and will result in a logical, orderly and timely development pattern.

**g. Adequate Public Facilities** – *The extent to which the proposed use complies with Art. 2. F, Concurrency.*

**ENGINEERING COMMENTS:**

The proposed modification to an approved, but unbuilt medical office development site plan by replacing it with retail and restaurant uses is expected to generate an additional 198 net daily, a reduction of 3 net AM and no change in net PM peak hour trips. Build-out of the project is expected to be by 2024.

There are no additional improvements to the roadway system required for compliance with the Traffic Performance Standards, since the project will have lesser impact compared to the already approved development.

An east approach right turn lane on Hypoluxo Rd at Town Commons Dr will be constructed.

**ADJACENT ROADWAY LEVEL OF SERVICE (PM PEAK)**

Traffic volumes are in vehicles per hour

Segment: Hypoluxo Rd from Lyons Rd to Hagen Ranch Rd

Existing count: Eastbound=1167, Westbound=1263

Background growth: Eastbound=226, Westbound=245

Project Trips: Eastbound=0, Westbound=0

Total Traffic: Eastbound=1393, Westbound=1508

Present laneage: 2 in each direction

Assured laneage: 2 in each direction

LOS "D" capacity: 1960 per direction

Projected level of service: LOS D or better in each direction

The Property Owner shall record a line-of-sight easement and obtain an onsite drainage review from Land Development prior to the issuance of the building permit.

**PALM BEACH COUNTY HEALTH DEPARTMENT:** This project meets The Florida Department of Health's requirements

**FIRE PROTECTION:** The Fire Department Staff reviewed the request and found no issues with the proposed project at this time.

**SCHOOL IMPACTS:** This is a nonresidential project, therefore Palm Beach County School standards do not apply.

**PARKS AND RECREATION:** This is a nonresidential project, therefore Park and Recreation Department ULDC standards do not apply.

**h. Changed Conditions or Circumstances** – *There are demonstrated changed conditions or circumstances that necessitate a modification.*

The site had approval for Commercial High Office and LR-2, under the adopted MLU designation LGA approved 1998. The subject site had been approved, but undeveloped since 2014, for a medical office complex that included one 26,000 sq. ft. building in anticipation of facilities to accommodate the Bethesda West Hospital located approximately 4 miles southwest of the subject site. Since this time, a number of medical office buildings have been constructed to support the Bethesda West Hospital.

The FLU amendment adopted October 30, 2018 increased the development options for the site by changing the CH-O pod to CH to allow commercial uses other than office and modify the square footages in the Land Use Matrix and Conceptual Plan, and allowed modifications by the deleting the Design Guidelines standards. The proposed revisions to the subject site will provide a transition from the highly travelled and intense Hypoluxo Road R-O-W to the residential uses to the west and will expand upon the goods and services currently provided along this commercial corridor.

**CONCLUSION:** Staff has evaluated the standards listed under Article 2.B.7.E.6, Standards for Zoning or Subdivision Variance and Article 2.B.7.B.2. Standards, and determined that there is a balance between the need for change and the potential impacts generated by this change. Therefore, Staff is recommending approval of the requests. Staff has also determined that any of the potential impact and incompatibility issues will be adequately addressed subject to the recommended Conditions of Approval as indicated in Exhibits C-1 and C-2.



## CONDITIONS OF APPROVAL

### EXHIBIT C-1 - Type 2 Variance - Concurrent

#### ALL PETITIONS

1. The approved Preliminary Site Plan is dated November 12, 2019. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Board of County Commissioners or the Zoning Commission. (ONGOING: ZONING - Zoning)

#### VARIANCE

2. At time of application for a Building Permit, the Property Owner shall provide a copy of this Variance approval along with copies of the approved Plan to the Building Division. (BLDG/PMT/ONGOING: BUILDING DIVISION - Zoning)

3. Prior to the submittal for Final Approval by the Development Review Officer, the approved Variance(s) and any associated Conditions of Approval shall be shown on the Preliminary Site Plan. (DRO/ONGOING: ZONING - Zoning)

#### COMPLIANCE

1. In Granting this Approval, the Zoning Commission relied upon the oral and written representations of the Property Owner/Applicant both on the record and as part of the application process. Deviations from or violation of these representations shall cause the Approval to be presented to the Zoning Commission for review under the Compliance Condition of this Approval. (ONGOING: MONITORING - Zoning)

2. Failure to comply with any of the Conditions of Approval for the subject property at any time may result in:

a. The Issuance of a Stop Work Order; the Issuance of a Cease and Desist Order; the Denial or Revocation of a Building Permit; the Denial or Revocation of a Certificate of Occupancy; the Denial of any other Permit, License or Approval to any developer, owner, lessee, or user of the subject property; the Revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; the Revocation of any concurrency; and/or

b. The Revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or

c. A requirement of the development to conform with the standards of the Unified Land Development Code at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing Conditions of Approval; and/or

d. Referral to Code Enforcement; and/or

e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Special Master to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any Condition of Approval. (ONGOING: MONITORING - Zoning)

#### DISCLOSURE

1. All applicable state or federal permits shall be obtained before commencement of the development authorized by this Development Permit.

## CONDITIONS OF APPROVAL

### EXHIBIT C-2 - Development Order Amendment (Planned Development District)

#### ALL PETITIONS

1. Previous ALL PETITIONS Condition 1 of Resolution R-2013-1764, Control No.2004-00248, which currently states:

All previous Conditions of Approval applicable to the subject property, as contained in Resolution R-2008-1700 (Control 2004-00248), have been consolidated as contained herein. The Property Owner shall comply with all previous Conditions of Approval and deadlines previously established by Article 2.E of the Unified Land Development Code and the Board of County Commissioners or Zoning Commission, unless expressly modified. (ONGOING: MONITORING - Zoning)

#### Is hereby amended to read:

All previous Conditions of Approval applicable to the subject property, as contained in Resolution R-2013-1764 (Control 2004-00248), have been consolidated as contained herein. The Property Owner shall comply with all previous Conditions of Approval and deadlines previously established by Article 2.E of the Unified Land Development Code and the Board of County Commissioners or Zoning Commission, unless expressly modified. (ONGOING: MONITORING - Zoning)

2. Previous ALL PETITIONS Condition 2 of Resolution R-2013-1764, Control No.2004-00248, which currently states:

The approved Preliminary Site Plan is dated October 10, 2013. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Board of County Commissioners or the Zoning Commission. (ONGOING: ZONING - Zoning)

#### Is hereby amended to read:

The approved Preliminary Site Plan is dated November 12, 2019. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Board of County Commissioners or the Zoning Commission. (ONGOING: ZONING - Zoning)

3. Previous ALL PETITIONS Condition 4 of Resolution R-2013-1764, Control No.2004-00248, which currently states:

Based on ULDC Article 2.E, this development order meets the requirements to receive a new three (3) year review date from the date of approval of Resolution R2008-004 on January 3, 2008. (ONGOING: MONITORING-Zoning) (Previous Condition All Petitions 3 of Resolution R-2008-1700, Control 2004-00248)

#### Is hereby amended to read:

Based on Article 2.E of the Unified Land Development Code, this development order meets the requirements to receive a new three (3) year review date from the date of approval of this resolution. (DATE/ONGOING: MONITORING - Zoning)

#### ENGINEERING

1. Previous ENGINEERING Condition 1 of Resolution R-2013-1764, Control No.2004-00248, which currently states:

In order to comply with the mandatory Traffic Performance Standards, the Property Owner shall be restricted to the following phasing schedule:

a. No Building Permits for the site may be issued after December 31, 2013. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study, which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Article 2.E of the Unified Land Development Code. (DATE: MONITORING - Engineering)

**Is hereby deleted.** [REASON: Replaced by another build-out condition]

2. Deleted per resolution R-2013-1764 (Previous ENGINEERING Condition 2 of Resolution R-2013-1764, Control No.2004-00248)

3. The concurrency approval is subject to the project aggregation rule set forth in the Traffic Performance Standards Ordinance. (ONGOING: ENGINEERING - Engineering) (Previous ENGINEERING Condition 3 of Resolution R-2013-1764, Control No.2004-00248)

4. Prior to June 1, 2005, the Property Owner shall fund a proportionate share of the cost of signal installation if warranted as determined by the County Engineer at the intersection of Lyons Road and Hypoluxo Road. Signalization shall be a mast arm structure installation. The cost of signalization shall also include any required utility relocation. Should signalization not be warranted after 24 months of the final Certificate of Occupancy this Property Owner shall be relieved from this condition. (DATE: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 4 of Resolution R-2013-1764, Control No.2004-00248)

5. Prior to issuance of the first building permit, the property owner shall provide an acceptable line of sight easement to the Palm Beach County Roadway Production's Right of Way Section, as determined by the County Engineer. (BLDGPM: MONITORING - Engineering)

6. In order to comply with the mandatory Traffic Performance Standards, the Property Owner shall be restricted to the following phasing schedule:

a. No Building Permits for the site may be issued after December 31, 2024, or as amended. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Art. 2.E of the Unified Land Development Code. (DATE: MONITORING - Engineering)

7. The Property Owner shall dedicate by warranty deed additional right of way for the construction of a right turn lane on Hypoluxo Road at the project's entrance road (Town Commons Drive). This right of way shall be a minimum of 200 feet in storage length, a minimum of twelve feet in width and a taper length of 50 feet, or as approved by the County Engineer. Additional width may be required to accommodate paved shoulders. The right of way shall continue across the project entrance. This additional right of way shall be free of all encumbrances and encroachments and shall include Corner Clips where appropriate, as determined by the County Engineer. Property Owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments, including a topographic survey. The Property Owner must further warrant that the property being conveyed to Palm Beach County meets all appropriate and applicable environmental agency requirements. In the event of a determination of contamination which requires remediation or clean up on the property now owned by the Property Owner, the Property Owner agrees to hold the County harmless and shall be responsible for all costs of such clean up, including but not limited to, all applicable permit fees, engineering or other expert witness fees including attorney's fees as well as the actual cost of the clean up. The Property Owner shall not record the required right of way or related documents. After final acceptance of the location, legal sketches and dedication documents, Palm Beach County shall record all appropriate deeds and documents.

After final acceptance of the location, legal sketches and dedication documents, and recordation of appropriate deeds and documents, Palm Beach County shall release the surety bond documents, as stated below, to the Property Owner.

a. Prior to the issuance of the first Building Permit, the Property Owner shall provide to Palm Beach County Right of Way Acquisition Section of Roadway Production Division, documentation of the release of any utility easement along the proposed right of way dedication. (BLDGPM: MONITORING - Engineering)

b. Prior to the issuance of the first Building Permit, the Property Owner shall provide Palm Beach County Right of Way Acquisition Section of Rodway Production Division a surety bond, the amount of which is to be determined by the Property Owner's Engineer and approved by the County Engineer, reflecting the total cost of relocation of all the utility poles required to dedicate the above Right of Way. (BLDGPM: MONITORING - Engineering)

c. Prior to the issuance of the first Certificate of Occupancy, relocation of all the utility poles must be completed by the Property Owner to provide the above Right of Way free and clear. (BLDGPM/CO: MONITORING - Engineering)

8. The Property Owner shall make a payment for the 50% of the full design and construction cost of the right turn lane, east approach, on Hypoluxo Road at project entrance (Town Commons Drive). This turn lane shall be 200 ft in length and 50 ft in taper, or as approved by the County Engineer. Design and Construction cost of the turn lane shall be based upon an acceptable certified Cost Estimate provided by the Property Owner's Engineer and approved by the County Engineer. Payment shall be made prior to the issuance of the first Building Permit. (BLDGPM: MONITORING - Engineering)

### **LANDSCAPE - GENERAL**

1. Previous LANDSCAPE - GENERAL Condition 1 of Resolution R-2013-1764, Control No.2004-00248, which currently states:

Fifty (50) percent of the canopy trees required to be planted in the perimeter buffer shall meet the following minimum standards at installation:

- a. Tree height: fourteen (14) feet;
- b. Trunk diameter: 3.5 inches measured 4.5 feet above grade;
- c. Canopy diameter: seven (7) feet. Diameter shall be determined by the average canopy radius at 3 points measured from the trunk to the outermost branch tip. Each radius shall measure at least 3.5 feet in length; and,
- d. Credit may be given for existing or relocated trees provided they meet current ULDC requirements. (BLDG PERMIT: LANDSCAPE Zoning) (Previous Landscaping Condition 1 of Resolution R-2008-1700, Control 2004-00248)

#### **Is hereby amended to read:**

Fifty (50) percent of the canopy trees required to be planted in the perimeter buffer shall be a minimum of fourteen (14) feet in height at installation. (BLDGPM: ZONING - Zoning)

2. All palms required to be planted on site by this approval shall meet the following minimum standards at installation:

- a. Palm heights: twelve (12) feet clear trunk;
- b. Clusters: staggered heights twelve (12) to eighteen (18) feet; and,
- c. Credit may be given for existing or relocated palms provided they meet current ULDC requirements. (BLDGPM: ZONING - Zoning) (Previous LANDSCAPE - GENERAL Condition 2 of Resolution R-2013-1764, Control No.2004-00248)

3. Field adjustment of plant materials and berm locations may be permitted to accommodate pedestrian sidewalks/bike paths, existing vegetation and traverse utility or drainage easement crossings. (BLDGPM: ZONING - Zoning) (Previous LANDSCAPE - GENERAL Condition 3 of Resolution R-2013-1764, Control No.2004-00248)

### **LANDSCAPE - PERIMETER-ALONG THE SOUTH PROPERTY LINE (HYPOLUXO ROAD FRONTAGE)**

4. Previous LANDSCAPE - PERIMETER Condition 4 of Resolution R-2013-1764, Control No.2004-00248, which currently states:

Landscaping and buffering along the south property line shall be upgraded to include:

- a. a minimum fifty (50) foot wide landscape buffer strip;

- b. a minimum three (3) to four (4) foot high undulating berm with an average height of three and one half (3.5) feet measured from top of curb;
- c. one (1) canopy tree planted for each twenty (20) linear feet of frontage with maximum thirty (30) feet on center spacing;
- d. one (1) palm, pine tree, accent or flowering tree for each thirty (30) linear feet of the property line with a maximum spacing of sixty (60) feet between clusters. Accent and flowering trees shall have minimum overall heights of twelve (12) feet;
- e. additional landscaping such as paths, pedestrian pavilion, focal points and special planting for this buffer shall be in accordance to the Design Guidelines & Standards for Future Development dated June 11, 2004, Ordinance 2004-062 and as indicated on the site plan dated March 17, 2008; and,
- f. all of the details pursuant to Condition C.1.e shall be reflected on the regulating plan prior to the final site plan approval by the Development Review Officer (DRO). (DRO/BLDG PERMIT: LANDSCAPE/Planning Zoning)

**Is hereby amended to read:**

Landscaping and buffering along the south property line shall be upgraded to include:

- a. a minimum fifty (50) foot wide landscape buffer strip, except that a reduction shall be permitted to accommodate a twelve (12) foot dedication of R-O-W for a right turn lane;
- b. a minimum three (3) to four (4) foot high undulating berm with an average height of three and one half (3.5) feet measured from top of curb;
- c. one (1) canopy tree planted for each twenty (20) linear feet of frontage with maximum thirty (30) feet on center spacing;
- d. one (1) accent or flowering tree for each fifty (50) linear feet of the property line with a maximum spacing of seventy-five (75) feet between clusters. Accent and flowering trees shall have minimum overall heights of twelve (12) feet; and,
- e. additional landscaping such as paths, pedestrian pavilion, focal points and special planting for this buffer shall be provided. (BLDGPMT: ZONING - Zoning)

**LANDSCAPE - PERIMETER-ALONG THE EAST PROPERTY LINE (ABUTTING RESIDENTIAL)**

5. Landscape width and berm requirements along the east property line shall be upgraded to include:

- a. a minimum fifteen (15) foot wide landscape buffer strip;
- b. a continuous two (2) foot high berm measured from top of curb;
- c. one (1) canopy tree planted for each twenty (20) linear feet of the property line;
- d. one (1) palm or pine tree for each thirty (30) linear feet of the property line with a maximum spacing of sixty (60) feet between clusters;
- e. one (1) small shrub for each two (2) linear feet of the property line. Shrub shall be a minimum height of twenty-four (24) inches at installation, and,
- f. one (1) medium shrub for each four (4) linear feet of the property line. Shrub shall be a minimum height of thirty-six (36) inches at installation. (BLDGPMT: ZONING - Zoning) (Previous LANDSCAPE - PERIMETER Condition 5 of Resolution R-2013-1764, Control No.2004-00248)

**LANDSCAPE - INTERIOR**

6. Previous LANDSCAPE - INTERIOR Condition 6 of Resolution R-2013-1764, Control No.2004-00248, which currently states:

Foundation planting or grade level planters shall be provided along the front, side and rear facades of all buildings, except in loading areas, to consist of the following:

- a. The minimum width of the required landscape areas shall be eight (8) feet;
- b. The length of the required landscaped areas shall be no less than fifty (50) percent of the total length of each side of the structure or as shown on the site plan dated March 17, 2008; and,
- c. Landscape areas shall be planted with a minimum equivalent of one (1) tree or palm for each twenty (20) linear feet of building faade, shrubs and appropriate ground cover. (DRO/BLDG PERMIT: DRO/LANDSCAPE Zoning)

**Is hereby deleted.** [REASON: Applicant will meet Code Foundation Planting of 8 foot and 40% for front and sides or subject to a Type 1 Waiver.]

**LIGHTING**

1. All pedestrian outdoor lighting fixtures shall not exceed fifteen (15) feet in height measured from finished grade to highest point. (BLDGPM: BUILDING DIVISION - Zoning) (Previous LIGHTING Condition 1 of Resolution R-2013-1764, Control No.2004-00248)

2. All parking lot lighting fixtures shall not exceed twenty-five (25) feet in height measured from finished grade to highest point and shall be setback seventy-five (75) feet from the south property line. Lighting fixtures along the east property line shall not exceed fifteen (15) feet in height measured from finished grade to highest point and shall be setback thirty (30) feet from the east property line. (BLDGPM: BUILDING DIVISION - Zoning) (Previous LIGHTING Condition 2 of Resolution R-2013-1764, Control No.2004-00248)

3. All lighting fixtures except for pedestrian and parking lot lights shall not exceed twenty-five (25) feet in height measured from finished grade to highest point. (BLDGPM: BUILDING DIVISION - Zoning) (Previous LIGHTING Condition 3 of Resolution R-2013-1764, Control No.2004-00248)

4. The lighting conditions above shall not apply to proposed security or low voltage landscape/accent type lights used to emphasize plant material. (ONGOING: CODE ENF - Zoning) (Previous LIGHTING Condition 4 of Resolution R-2013-1764, Control No.2004-00248)

**PARKING**

1. Overnight storage or parking of delivery vehicles or trucks shall not be permitted on site, except within designated loading and delivery areas. (ONGOING: CODE ENF - Zoning) (Previous PARKING Condition 1 of Resolution R-2013-1764, Control No.2004-00248)

**PLANNING**

1. Previous PLANNING Condition 1 of Resolution R-2013-118, Control No.2004-00247, which currently states:

The underlying Commercial High (CH), Commercial High Office (CH-O), and Low Residential 2 (LR-2) land uses for this entire 40 acre MLU, which includes this 15.23 acre portion of the MLU, shall be as follows:

Land Use	Acreage Min. – Max.	Intensity/Density	
		Min.	Max.
Commercial High	14.3 ac.	N/A	94,900 sq. ft.
Com. High-Office	2.7 – 3.3 ac	24,000 sq. ft.	30,000 sq. ft.
Low Residential 2	10.8 – 13.2 ac.	60 units	80 units
Open Space	5.0 ac – no max*	N/A	N/A
Lake Tracts	3.0 – 5.0 ac	N/A	N/A

\* A minimum of 4 acres must be utilized for open space. These four acres shall not be applied to the recreation and/or parks requirements or any other required dedication of land. Water retention, lakes, drainage, and canals shall not be considered usable open space.

Based on the above information, additional development may still be permitted provided the above thresholds are not exceeded. In addition, all future development must comply with the mix of other uses as specified in the proposed amendment, Town Commons MLU II (LGA 2004-00036), Ord. 2004-062. (ONGOING: PLANNING-Planning)

**Is hereby amended to read:**

The site is subject to the conditions identified in Land Use Amendment LGA 2018-18, Ord. 2018-30 as follows:

Land Use	Acres	Intensity/Density <sup>1</sup>
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	<b>Min. - Max</b>	<b>Minimum</b>	<b>Maximum</b>
Commercial High (CH) (Area 1)	14.3	N/A	94,900 SF
Commercial High (CH/2) (Area 2)	3.10	N/A	30,000 SF*
Low Residential 2 units per acre (LR-2) (Area 3)	10.8 – 25.7	60 units	80 units (see Condition 3)
Usable Open Space <sup>3</sup>	40	N/A	
Total	40	N/A	
*Or, uses allowed under CH or LR-2 future land use up to the equivalent number of trips per day.			

(ONGOING: PLANNING - Planning)

2. Previous PLANNING Condition 2 of Resolution R-2013-118, Control No.2004-00247, which currently states:

Development of the overall 40 acre site shall comply with the Conceptual Master Plan. (Exhibit 4 of Ordinance 2004-062) Any changes which affect more than 20% of the land area, and/or which result in the project no longer meeting the intent of the MLU language in the Comprehensive Plan as determined by the Planning Director shall be remanded back to the Local Planning Agency and Board of County Commissioners for public hearings. (ONGOING: PLANNING-Planning)

**Is hereby amended to read:**

Per, LGA 2018-18, Ord. 2018-30, Condition B, development of the overall 40 acre site shall comply with the Conceptual Master Plan. (Exhibit 2 of Ordinance 2018-30) Any changes which affect more than 20% of the land area, and/or which result in the project no longer meeting the intent of the MLU language in the Comprehensive Plan as determined by the Planning Director shall be remanded back to the Local Planning Agency and Board of County Commissioners for public hearings. (ONGOING: PLANNING - Planning)

3. Previous PLANNING Condition 3 of Resolution R-2013-118, Control No.2004-00247, which currently states:

Prior to final site plan approval by the Development Review Officer (DRO), development of the site shall comply with the Design Guidelines and Standards for Future Development (Exhibit 5 of Ord. 2004-062). (DRO: PLANNING- Planning)

**Is hereby deleted.** [REASON: No longer applicable.]

4. Previous PLANNING Condition 4 of Resolution R-2013-118, Control No.2004-00247, which currently states:

All structures requiring a building permit, having frontage on the Pedestrian Oriented Zone, as depicted on the adopted Conceptual Master Plan (Exhibit 4, Ord. 2004-062), shall be subject to the Planning Division's Review for consistency with the Design Guidelines and Standards for Future Development (Exhibit 5 of Ord. 2004-062). (BLDG PERMIT: MONITORING - Planning)

**Is hereby deleted.** [REASON: No longer applicable.]

5. Previous PLANNING Condition 5 of Resolution R-2013-118, Control No.2004-00247, which currently states:

Prior to final master/site plan approval by the Development Review Officer (DRO), architectural elevations for all frontages abutting the Pedestrian Oriented Zone, as depicted on the Conceptual Master Plan, shall be submitted for review to the Planning Division to ensure consistency with the intent of the Design Guidelines. (DRO: PLANNING - Planning)

**Is hereby deleted.** [REASON: No longer applicable.]

6. Previous PLANNING Condition 6 of Resolution R-2013-118, Control No.2004-00247, which currently states:

Prior to Final Master/Site Plan approval by the Development Review Officer (DRO), the Land Use Breakdown table on all plans (Master Plan, Site Plan, Conceptual Master Plan, and land use allocation map) shall be amended to include the following: a note below the table indicating that “a minimum of 4 acres must be utilized for open space. These four acres shall not be applied to the recreation and/or parks requirements or any other required dedication of land. Water retention, lakes, drainage, and canals shall not be considered usable open space”; and the notes under the proposed column that explain the land use breakdown for LR-2 and Open Space shall be of larger font or included below the table in larger font. (DRO: PLANNING - Planning)

**Is hereby amended to read:**

Per, LGA 2018-18, Ord. 2018-30, development of the overall 40-acre site shall comply with the Open Space requirement. The land associated with this requirement shall adhere to the definition for Usable Open Space in the Comprehensive Plan Introduction and Administration Element. (ONGOING: PLANNING - Planning)

7. Previous PLANNING Condition 7 of Resolution R-2013-118, Control No.2004-00247, which currently states:

All landscaping shall be subject to the Boynton Beach Turnpike Interchange Corridor - Design Guidelines and Standards Manual, dated March 10, 2003. All trees within the perimeter landscape buffers shall be provided at a maximum of one per twenty-five (25) linear feet (Section 3.C.1.) and all trees within the Right-of-Way buffers shall be provided at a maximum of one per fifteen (15) linear feet (Section 3.D.1). (ONGOING: LANDSCAPE - Planning)

**Is hereby deleted.** [REASON: No longer applicable.]

8. Previous PLANNING Condition 8 of Resolution R-2013-118, Control No.2004-00247, which currently states:

Prior to Final Master/Site Plan approval by the Development Review Officer (DRO), The property owner shall be required to complete the following:

a. notations stating “Pedestrian connections to Villages of Windsor to be paved to the property line” shall be indicated on the Master/Site Plans for the two pedestrian connections to Villages of Windsor PUD, and at the locations shown on the certified master/site plan dated December 14, 2007 and,

b. these connections shall align with the pedestrian connections in the Villages of Windsor PUD (Petition 96-018B). (DRO: PLANNING - Planning)

**Is hereby deleted.** [REASON: No longer applicable.]

9. Previous PLANNING Condition 9 of Resolution R-2013-118, Control No.2004-00247, which currently states:

Prior to the issuance of a Certificate of Occupation (CO), the property owner shall complete pavement of these required pedestrian connections pursuant to Conditions H.10.a and H.10.b. (CO: MONITORING - Planning)

**Is hereby deleted.** [REASON: No longer applicable.]

10. Prior to the release of the first Building Permit, the property owner shall record in the public records of Palm Beach County a Declaration of Restrictive Covenants, in a form acceptable to the Palm Beach County Attorney, which includes but is not limited to the following:

Guarantees the attainability of all required workforce units required per article 5.G. in the ULDC. These units are to be distributed among the categories (low, moderate 1, moderate 2, and middle)



consistent with the requirements in Article 5.G. in the ULDC. (BLDGPM: MONITORING - Planning) (Previous PLANNING Condition 10 of Resolution R-2013-118, Control No.2004-00247)

11. On an annual basis, beginning January 31, 2015, or as otherwise stipulated in the Declaration of Restrictive Covenants for Workforce Housing, the property owner, master homeowners association or individual Workforce Housing dwelling unit owner, shall submit an annual report/update to the Planning Division and HCD documenting compliance with the Declaration of Restrictive Covenants for Workforce Housing. (DATE/ONGOING: MONITORING - Planning) (Previous PLANNING Condition 11 of Resolution R-2013-118, Control No.2004-00247)

## **SIGNS**

1. Freestanding point of purchase sign fronting Hypoluxo Road shall be limited as follows:

- a. Maximum sign height, measured from finished grade to highest point - eight (8) feet;
- b. Maximum sign face area per side - eighty (80) square feet;
- c. Maximum number of signs for the overall site - one (1);
- d. Style - monument style only. (BLDGPM: BUILDING DIVISION - Zoning) (Previous SIGNS Condition 1 of Resolution R-2013-1764, Control No.2004-00248)

2. Wall signs shall be limited to twenty-four (24) inches high. (CO: BUILDING DIVISION - Zoning) (Previous SIGNS Condition 2 of Resolution R-2013-1764, Control No.2004-00248)

3. Previous SIGNS Condition 3 of Resolution R-2013-1764, Control No.2004-00248, which currently states:

Prior to final site plan approval by the Development Review Officer (DRO), the site plan shall be amended to remove the condition reference to the main entry wall signs as indicated on the certified site plan dated March 17, 2008. (DRO: ZONING-Zoning)

**Is hereby deleted.** [REASON: Condition is no longer applicable with the revised plan.]

## **SITE DESIGN**

1. Prior to approval of the final development plan by the Development Review Officer (DRO), the property owner shall record in the public record a covenant requiring architectural consistency between all buildings, signage and project identification. Consistency shall include, at a minimum, an overall unified image and character created by the use of common elements such as building materials, roof lines, muted colors, fenestration, architectural features, and architectural elements. The covenant shall be recorded in a form and manner acceptable to the zoning Division and County Attorney. The covenant shall not be removed, altered, changed or amended without written approval from the Zoning Director. (DRO: ZONING - County Attorney) (Previous SITE DESIGN Condition 1 of Resolution R-2013-1764, Control No.2004-00248)

2. Prior to approval of the final development plan by the Development Review Officer (DRO), the property owner shall record a covenant in the public record indicating that all structures, uses and parking areas within the project are part of a single unified planned development, regardless of ownership. The covenant shall be recorded in the public record in a manner and form acceptable to the County Attorney. The covenant shall not be removed, altered, changed or amended without written approval from the Zoning Director. (DRO: ZONING - County Attorney) (Previous SITE DESIGN Condition 2 of Resolution R-2013-1764, Control No.2004-00248)

## **COMPLIANCE**

1. In Granting this Approval, the Board of County Commissioners relied upon the oral and written representations of the Property Owner/Applicant both on the record and as part of the application process. Deviations from or violation of these representations shall cause the Approval to be presented to the Board of County Commissioners for review under the Compliance Condition of this Approval. (ONGOING: MONITORING - Zoning)

2. Failure to comply with any of the Conditions of Approval for the subject property at any time may result in:

- a. The Issuance of a Stop Work Order; the Issuance of a Cease and Desist Order; the Denial or Revocation of a Building Permit; the Denial or Revocation of a Certificate of Occupancy; the Denial of any other Permit, License or Approval to any developer, owner, lessee, or user of the subject

- property; the Revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; the Revocation of any concurrency; and/or
- b. The Revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or
  - c. A requirement of the development to conform with the standards of the Unified Land Development Code at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing Conditions of Approval; and/or
  - d. Referral to Code Enforcement; and/or
  - e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Special Master to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any Condition of Approval. (ONGOING: MONITORING - Zoning)

**DISCLOSURE**

- 1. All applicable state or federal permits shall be obtained before commencement of the development authorized by this Development Permit.

## CONDITIONS OF APPROVAL

### Exhibit C-3 - Class A Conditional Use (Type 1 Restaurant with a Drive-through)

#### ALL PETITIONS

1. The approved Preliminary Site Plan is dated November 12, 2019. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Board of County Commissioners. (ONGOING: ZONING - Zoning)

#### COMPLIANCE

1. In Granting this Approval, the Board of County Commissioners relied upon the oral and written representations of the Property Owner/Applicant both on the record and as part of the application process. Deviations from or violation of these representations shall cause the Approval to be presented to the Board of County Commissioners for review under the Compliance Condition of this Approval. (ONGOING: MONITORING - Zoning)

2. Failure to comply with any of the Conditions of Approval for the subject property at any time may result in:

- a. The Issuance of a Stop Work Order; the Issuance of a Cease and Desist Order; the Denial or Revocation of a Building Permit; the Denial or Revocation of a Certificate of Occupancy; the Denial of any other Permit, License or Approval to any developer, Owner, lessee, or user of the subject property; the Revocation of any other permit, license or approval from any developer, Owner, lessee, or user of the subject property; the Revocation of any concurrency; and/or
- b. The Revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or
- c. A requirement of the development to conform with the standards of the Unified Land Development Code at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing Conditions of Approval; and/or
- d. Referral to Code Enforcement; and/or
- e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Special Master to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any Condition of Approval. (ONGOING: MONITORING - Zoning)

#### DISCLOSURE

1. All applicable state or federal permits shall be obtained before commencement of the development authorized by this Development Permit.

2.  
Figure 1- Land Use Map

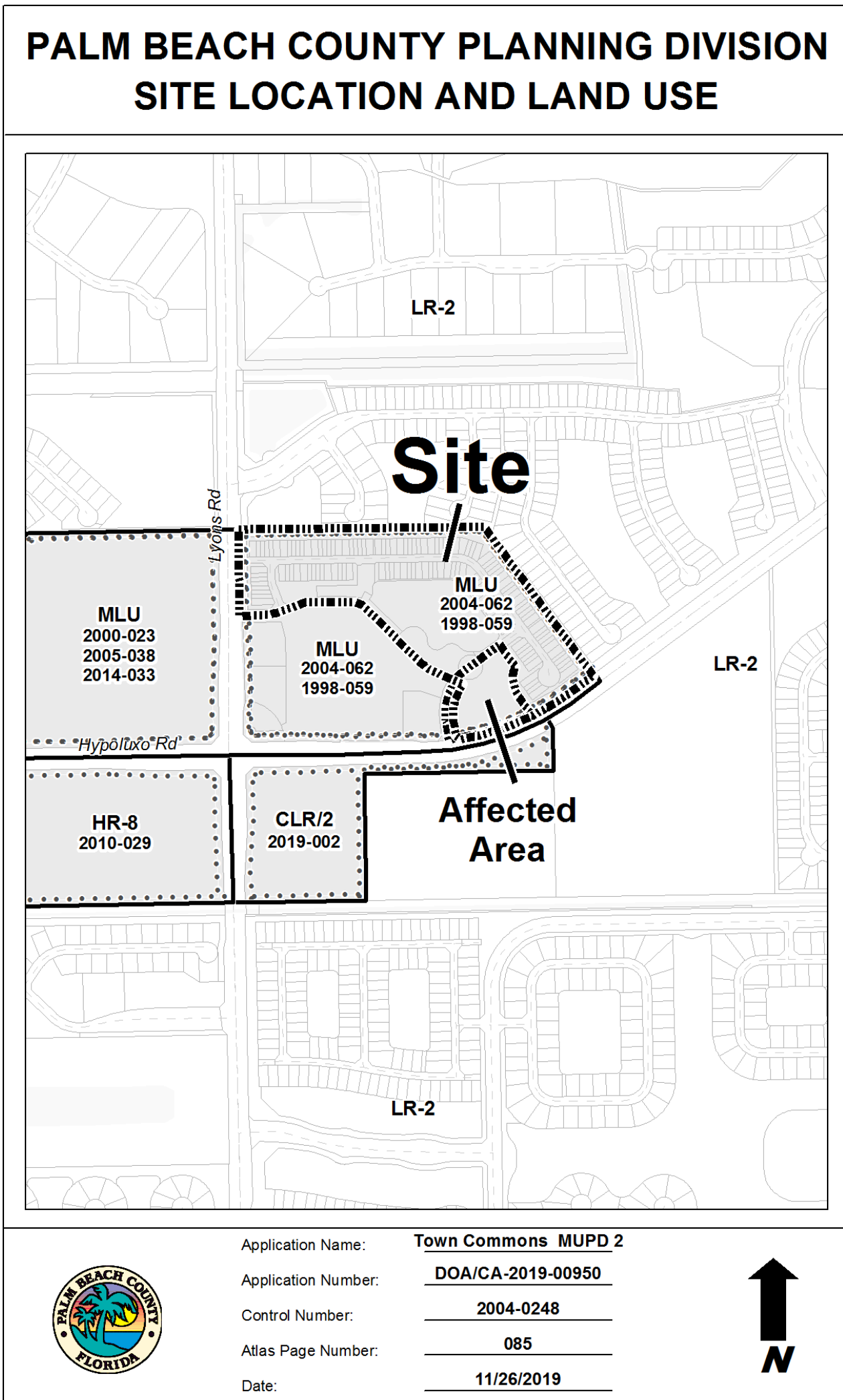


Figure 2- Zoning Map

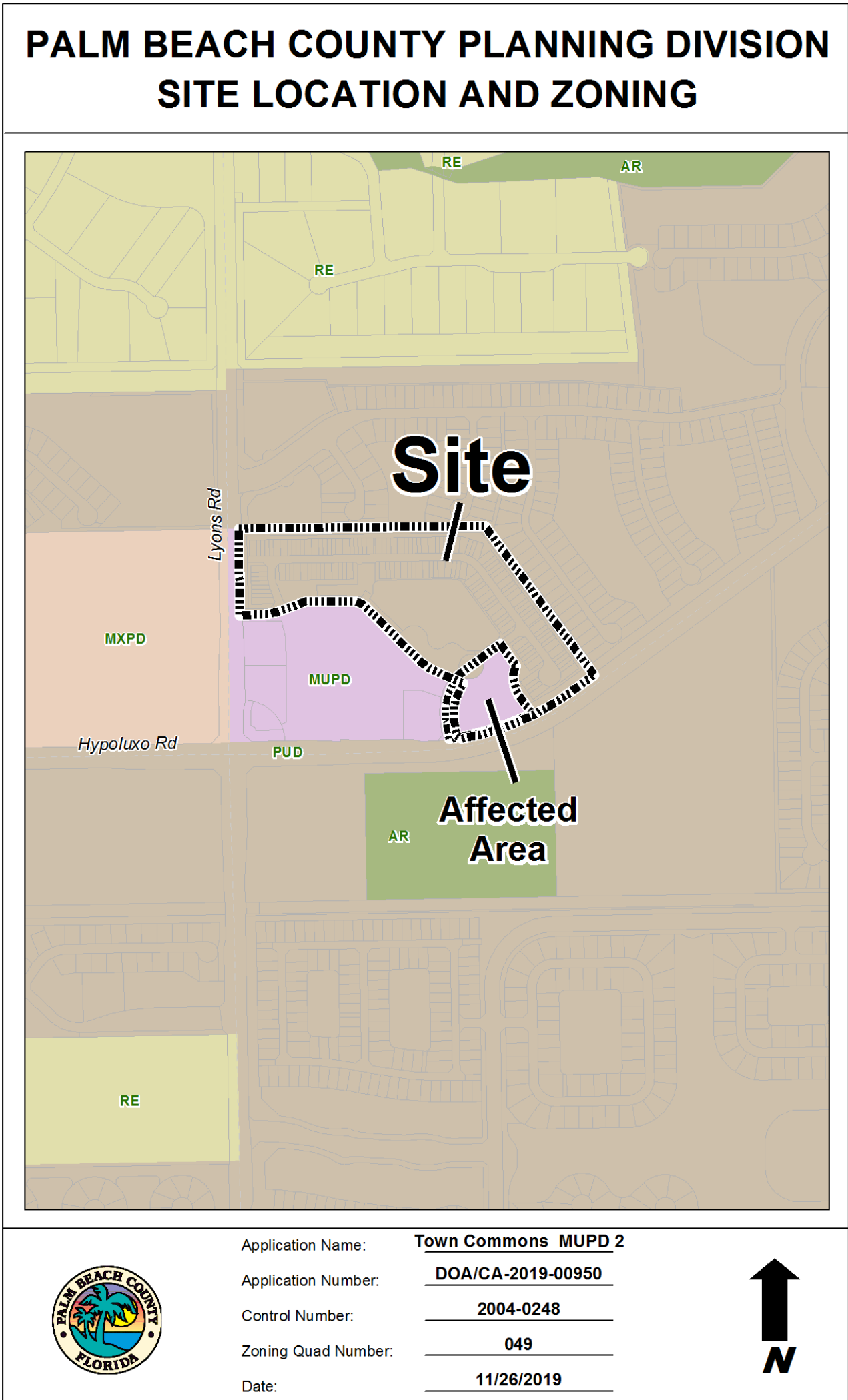


Figure 3 – Aerial

# PALM BEACH COUNTY PLANNING DIVISION SITE LOCATION



Application Name:	<u>Town Commons MUPD 2</u>
Application Number:	<u>DOA/CA-2019-00950</u>
Control Number:	<u>2004-0248</u>
Atlas Page Number:	<u>085</u>
Date:	<u>11/26/2019</u>



Figure 4- Preliminary Multiple Land Use (MLU) Master Plan Dated October 15, 2019

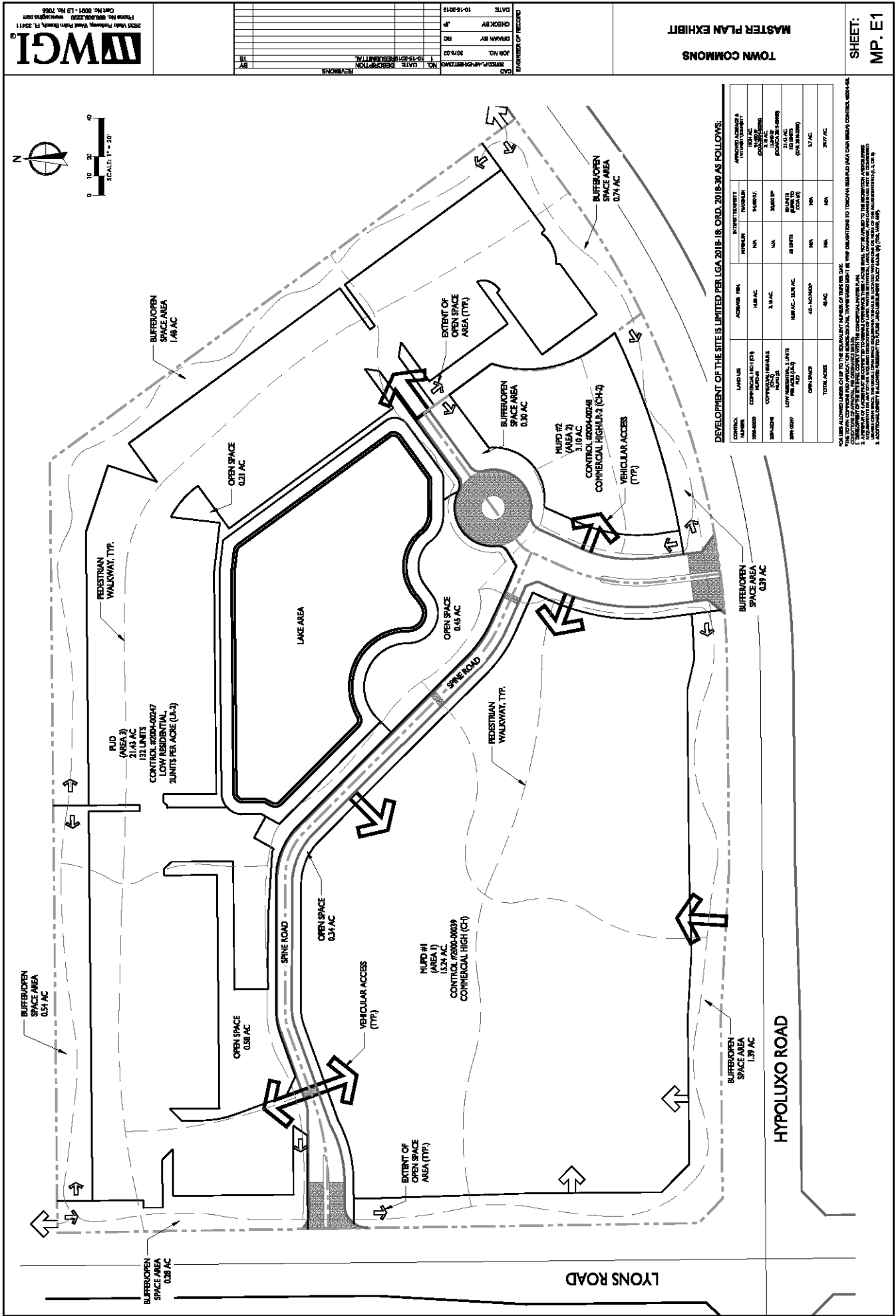


Figure 5- Preliminary Site Plan Dated November 12, 2019

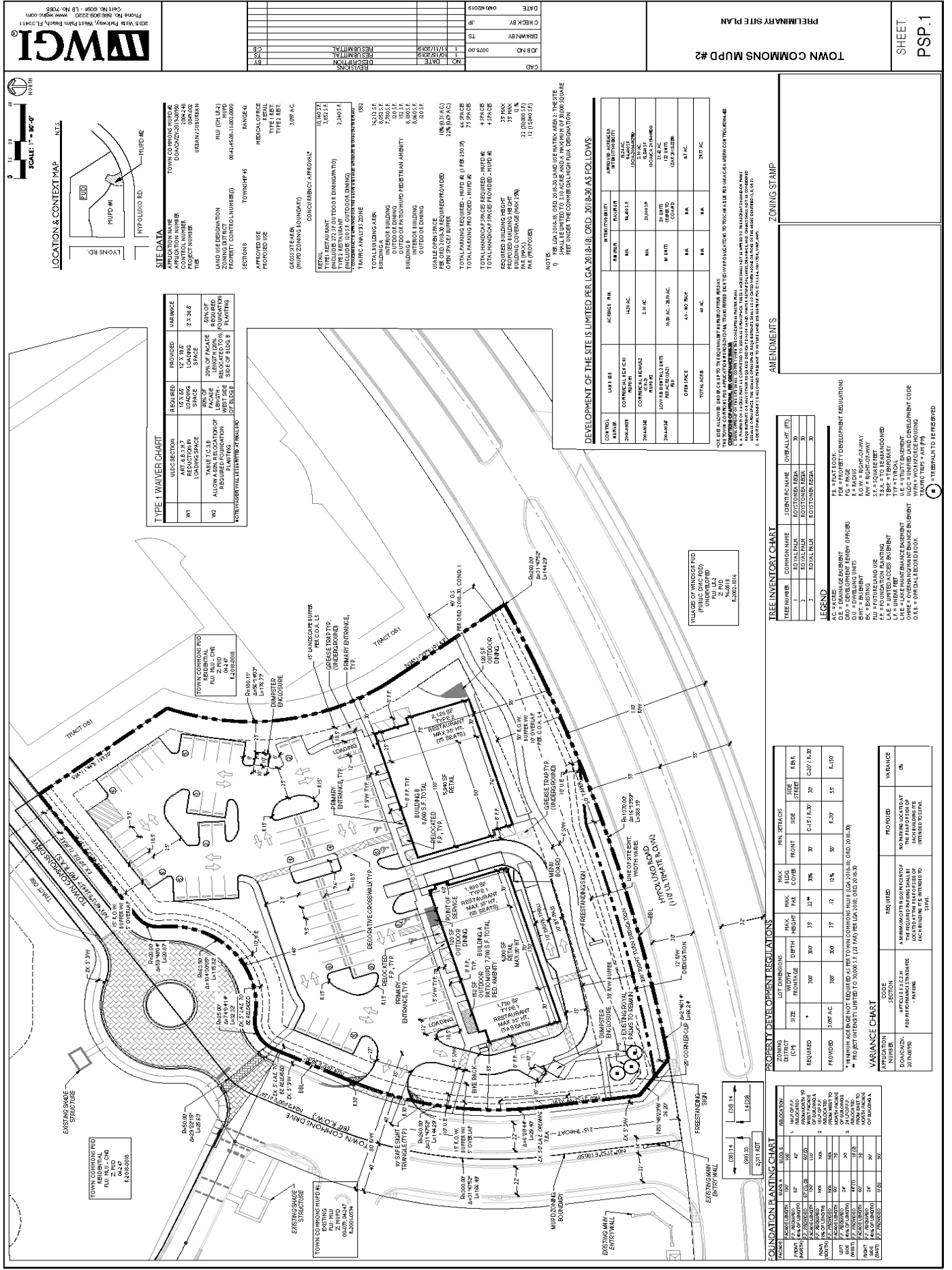






Figure 7- Approved Subdivision Plan dated July 9, 2014

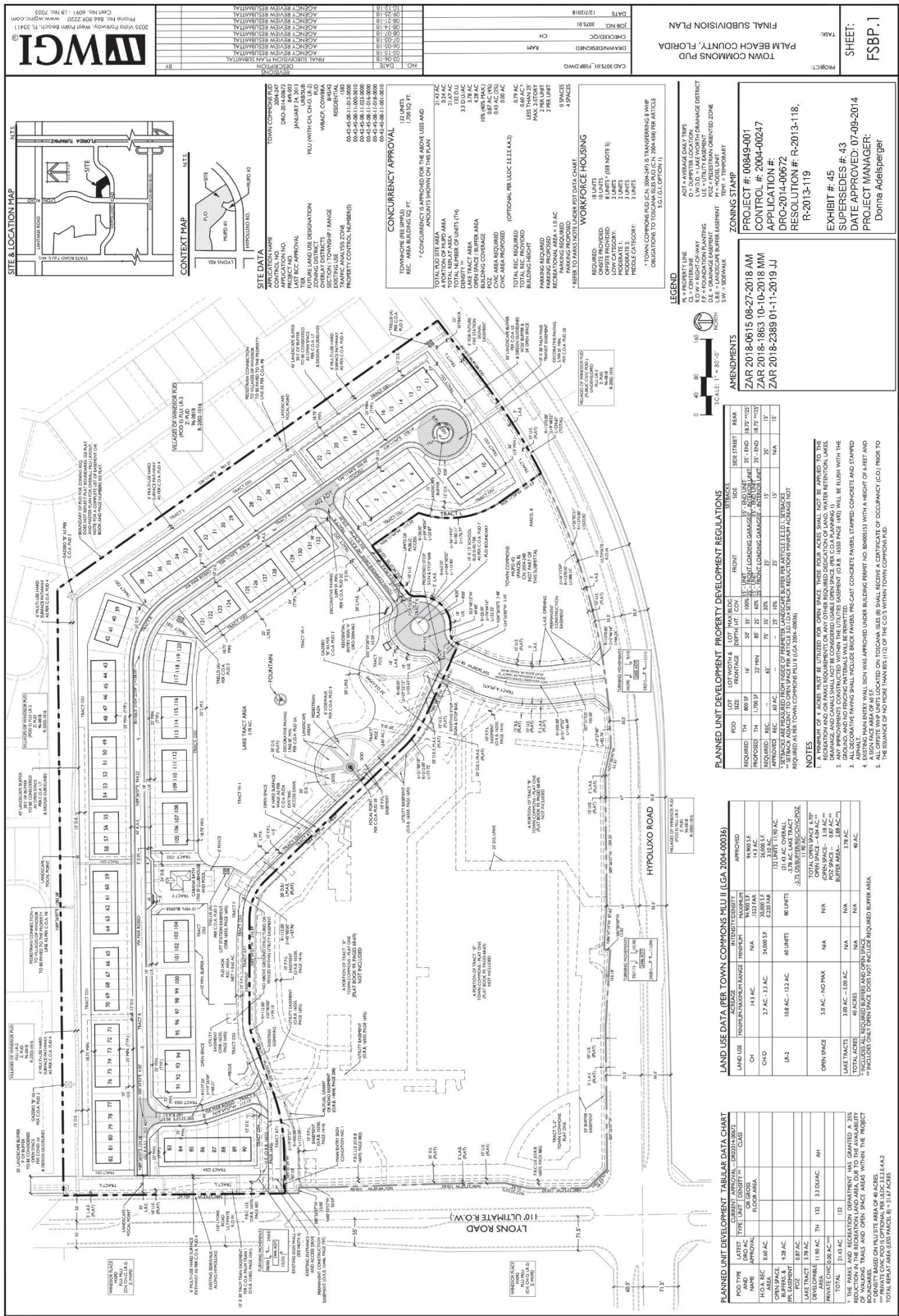


Figure D: Disclosures

DISCLOSURE OF OWNERSHIP INTERESTS – PROPERTY

[TO BE COMPLETED AND EXECUTED BY THE PROPERTY OWNER(S) FOR EACH APPLICATION FOR COMPREHENSIVE PLAN AMENDMENT OR DEVELOPMENT ORDER]

TO: PALM BEACH COUNTY PLANNING, ZONING AND BUILDING EXECUTIVE DIRECTOR, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared Michael McCarty, hereinafter referred to as "Affiant," who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the  Individual or  President Lynx Zuckerman Holding Company, LLC on Behalf of Town Commons Shoppes, LLC [position - e.g., president, partner, trustee] of Town Commons Shoppes, LLC [name and type of entity - e.g., ABC Corporation, XYZ Limited Partnership] that holds an ownership interest in real property legally described on the attached Exhibit "A" (the "Property"). The Property is the subject of an application for Comprehensive Plan amendment or Development Order approval with Palm Beach County.
2. Affiant's address is: 6131 Lyons Road  
Suite 200  
Coconut Creek, FL 33073
3. Attached hereto as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent or greater interest in the Property. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.
4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County policy, and will be relied upon by Palm Beach County in its review of application for Comprehensive Plan amendment or Development Order approval affecting the Property. Affiant further acknowledges that he or she is authorized to execute this Disclosure of Ownership Interests on behalf of any and all individuals or entities holding a five percent or greater interest in the Property.
5. Affiant further acknowledges that he or she shall by affidavit amend this disclosure to reflect any changes to ownership interests in the Property that may occur before the date of final public hearing on the application for Comprehensive Plan amendment or Development Order approval.
6. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

7. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.

Michael McCarty, Affiant  
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of APRIL, 2019, by MICHAEL MCCARTY, [  ] who is personally known to me or [  ] who has produced \_\_\_\_\_ as identification and who did take an oath.

  
\_\_\_\_\_  
Notary Public

**ARLENE LIEBERMAN**  
NOTARY PUBLIC OF NEW JERSEY  
(Print Notary Name) My Commission Expires 10/15/2019  
NOTARY PUBLIC  
State of New Jersey  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**

**PROPERTY**

DESCRIPTION

A PORTION OF TRACT "A", TOWN COMMONS-PLAT ONE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 99, PAGE 68 A ALL OF PARCEL B AND A PORTION OF PARCEL A AND TRACT R, TOWN COMMONS PUD/MUPD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 118, PAGES 6 THROUGH 11 ALL OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL 8; THENCE SOUTHWESTERLY ALONG THE NORTH RIGHT-OF-WAY LINE OF HYPOLUXO ROAD LINE AS SHOWN ON SAID TOWN COMMONS PUD/MUPD PLAT ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE RADIUS POINT BEARS N.26°22'52"W, HAVING A RADIUS OF 1370.00 FEET, A CENTRAL ANGLE OF 19°00'12", AN ARC DISTANCE OF 454.39 FEET TO THE CENTERLINE OF TOWN COMMONS DRIVE, AS SHOWN ON SAID TOWN COMMONS - PLAT ONE; THENCE N.07°21'52"W. ALONG SAID CENTERLINE OF TOWN COMMONS DRIVE, A DISTANCE OF 100.50 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET AND A CENTRAL ANGLE OF 31°47'52"; THENCE NORTHERLY ALONG SAID CENTERLINE OF TOWN COMMONS DRIVE AND THE ARC A DISTANCE OF 166.49 FEET; THENCE N.24°26'00"E. ALONG SAID CENTERLINE OF TOWN COMMONS DRIVE, A DISTANCE OF 61.56 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 29°22'15"; THENCE NORTHEASTERLY ALONG SAID CENTERLINE OF TOWN COMMONS DRIVE AND THE ARC A DISTANCE OF 25.63 FEET; THENCE N.53° 48'15"E. ALONG SAID CENTERLINE OF TOWN COMMONS DRIVE AND ITS EASTERLY PROJECTION, A DISTANCE OF 264.57 FEET; THENCE S.36°11'44"E. ALONG THE NORTHERLY PROJECTION OF THE EASTERLY LINE OF AFORESAID PARCEL 8 AND SAID EAST LINE, A DISTANCE OF 139.70 FEET TO THE POINT OF CURVE OF A NON-TANGENT CURVE TO THE LEFT, OF WHICH THE RADIUS POINT LIES S.69°57'26"E., A RADIAL DISTANCE OF 180.11 FEET; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID PARCEL 8 ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 56° 14'03", A DISTANCE OF 176.77 FEET; THENCE S.36°11'29"E. ALONG THE EASTERLY LINE OF SAID PARCEL B, A DISTANCE OF 101.63 FEET TO THE POINT TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA.

CONTAINING 134,896 SQUARE FEET OR 3.097 ACRES, MORE OR LESS.

LYING IN SECTION 7, TOWNSHIP 45 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA

**EXHIBIT "B"**

**DISCLOSURE OF OWNERSHIP INTERESTS - PROPERTY**

Affiant must identify all entities and individuals owning five percent or more ownership interest in the Property. Affiant must identify individual owners. For example, if Affiant is an officer of a corporation or partnership that is wholly or partially owned by another entity, such as a corporation, Affiant must identify the other entity, its address, and the individual owners of the other entity. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

Name	Address	
Michael McCarty	30 Freneau Ave. Matawan, NJ 07747	100%

**DISCLOSURE OF OWNERSHIP INTERESTS – PROPERTY**

***[TO BE COMPLETED AND EXECUTED BY THE PROPERTY OWNER(S) FOR EACH APPLICATION FOR COMPREHENSIVE PLAN AMENDMENT OR DEVELOPMENT ORDER]***

**TO:** PALM BEACH COUNTY PLANNING, ZONING AND BUILDING EXECUTIVE DIRECTOR, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE


STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared Rafael Roca, hereinafter referred to as "Affiant," who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the  individual or  Vice President \_\_\_\_\_ [position - e.g., president, partner, trustee] of DR Horton, Inc. [name and type of entity - e.g., ABC Corporation, XYZ Limited Partnership] that holds an ownership interest in real property legally described on the attached Exhibit "A" (the "Property"). The Property is the subject of an application for Comprehensive Plan amendment or Development Order approval with Palm Beach County.
  
2. Affiant's address is: 6123 Lyons Road  
Suite 100  
Coconut Creek, FL 33073
  
3. Attached hereto as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent or greater interest in the Property. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.
  
4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County policy, and will be relied upon by Palm Beach County in its review of application for Comprehensive Plan amendment or Development Order approval affecting the Property. Affiant further acknowledges that he or she is authorized to execute this Disclosure of Ownership Interests on behalf of any and all individuals or entities holding a five percent or greater interest in the Property.
  
5. Affiant further acknowledges that he or she shall by affidavit amend this disclosure to reflect any changes to ownership interests in the Property that may occur before the date of final public hearing on the application for Comprehensive Plan amendment or Development Order approval.
  
6. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

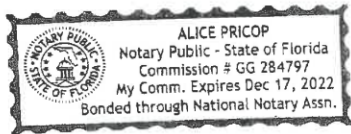
7. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.

  
Rafael J. Roca, Affiant  
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of December, 2019, by Rafael J. Roca, [] who is personally known to me or [ ] who has produced \_\_\_\_\_ as identification and who did take an oath.

  
Notary Public



Alice Pricop  
(Print Notary Name)

NOTARY PUBLIC

State of Florida at Large

My Commission Expires: Dec 17, 2022



**EXHIBIT "A"**

**PROPERTY**

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**Name**

**Address**

N/A - Publicly Traded Company on the New York Stock Exchange

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