



## FUTURE LAND USE ATLAS AMENDMENT STAFF REPORT AMENDMENT ROUND 21-A

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### BCC ADOPTION PUBLIC HEARING, JANUARY 25, 2021

## A. Application Summary

### I. General

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<b>Project Name:</b>	<b>Military Hypoluxo Commercial (LGA 2021-002)</b>
<b>Request:</b>	<b>To revise conditions of approval on a site with CH/5</b>
<b>Acres:</b>	24.02 acres
<b>Location:</b>	Northeast corner of Military Trail and Hypoluxo Road
<b>Project Manager:</b>	Melissa Michael, Senior Planner
<b>Applicant/Owner:</b>	Paul Okeen, Morningstar Nursery, Inc.
<b>Contract Purchaser:</b>	Hypoluxo Village LLC
<b>Agent:</b>	Lauren McClellan & Jennifer Morton, JMorton Planning & Landscape Arch.
<b>Staff Recommendation:</b>	Staff recommends <b>approval</b> based upon the following findings and conclusions found in this report.

### II. Assessment & Conclusion

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The applicant proposes to modify conditions of approval on a site with a Commercial High with an underlying 5 units per acre (CH/5) future land use designation. The site was approved for the CH/5 designation in 2008 with a series of conditions related to mixed use development and design with a maximum of 366,200 square feet of commercial uses. The site is located at the predominately commercial intersection of Military Trail and Hypoluxo Road with residential designations of MR-5 (up to 5 units per acre) and HR-8 (up to 8 units per acre) surrounding the commercial.

The amendment proposes to eliminate conditions that were adopted in 2008 which intended to foster a mixed-use project with pedestrian/vehicular connections to the adjacent properties to the north. Subsequently, the site to the north has been developed with a school, and the conditions of approval are no longer necessary.

The amendment does not change the future land use designation, density, or intensity allowed on the site. The amendment revises conditions of approval related to design that are no longer warranted. There is an adequate justification for the amendment, the amendment is compatible with surrounding land uses, and the amendment meets the applicable policies in the Comprehensive Plan.

### III. Hearing History

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**Local Planning Agency:** *Approval with conditions*, motion by Lori Vinikoor, seconded by Dagmar Brahs, passed in a 11 to 0 vote (with Jim Knight abstaining) at the September 18, 2020 public hearing. Under Board discussion, the PLC questioned the removal of the conditions. County staff explained the previous condition of approval was for connectivity and that the amendment will remove the condition requiring connection to the 67th Place (a private right of way), and the remainder of the conditions were not necessary. Two members of the public spoke in support of removal of this condition, and expressed concern for flooding in the area.

**Board of County Commissioners Transmittal Public Hearing:** *Transmit*, motion by Vice Mayor Weinroth, seconded by Comm. Bernard passed in a 6 to 0 vote with Commissioner Berger absent at the October 28, 2020 public hearing. There was minimal discussion and no public comment.

**State Review Comments:** The State Land Planning Agency reviewed this amendment under Round 20-09ESR and issued a letter dated December 2, 2020 stating that the Agency had no comment on the proposed amendment. There were no negative comments received from state agencies.

**Board of County Commissioners Adoption Public Hearing:**

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## B. Petition Summary

### I. Site Data

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#### Current Future Land Use

<b>Current FLU:</b>	Commercial High with an underlying 5 units per acre (CH/5)
<b>Existing Land Use:</b>	Produce Stand & Vacant
<b>Current Zoning:</b>	Multiple Use Planned Development (MUPD) and Agricultural Residential (AR)
<b>Current Dev. Potential Max:</b>	Commercial uses up to 366,200 s.f. (by condition of approval), and up to 30 dwelling units

#### Proposed Future Land Use Change

<b>Proposed FLU:</b>	CH/5 (amendment proposes to revise conditions of approval)
<b>Proposed Use:</b>	Commercial and Residential
<b>Proposed Zoning:</b>	Multiple Use Planned Development (MUPD)
<b>Dev. Potential Max/Conditioned:</b>	Commercial uses up to 366,200 s.f. (by condition of approval), and up to 30 dwelling units

#### General Area Information for Site

<b>Tier/Tier Change:</b>	Urban/Suburban Tier – No Change
<b>Utility Service:</b>	Palm Beach County Water Utilities Department
<b>Overlay/Study:</b>	None
<b>Comm. District:</b>	District 3, Mayor Dave Kerner

# Future Land Use Atlas Amendment

## Military / Hypoluxo Commercial (LGA 2021-02)



### Site Data

Size: 24.02 acres  
 Existing Use: Vacant  
 Proposed Use: Commercial & Residential  
 Current FLU: CH/5  
 Proposed FLU: CH/5

### Future Land Use Designations

LR-3 Low Residential, 3 units/acre  
 MR-5 Medium Residential, 5 units/acre  
 HR-8 High Residential, 8 units/acre  
 CL/3 Commercial Low, underlying LR-3  
 CL/5 Commercial Low, underlying MR-5  
 CH/5 Commercial High, underlying MR-5

Date: 7/27/20  
 Contact: PBC Planning  
 Filename: Amend/21-A/Site/21-02  
 Note: Map is not official, for presentation purposes only.



Site

140 0 140 280 Feet



Planning, Zoning & Building  
 2300 N. Jog Rd, WPB, FL 33411  
 Phone (561) 233-5300





## C. Introduction & Review

### I. Intent of the Amendment

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This privately proposed amendment is for a 24.02 acre site located at the northeast corner of Military Trail and Hypoluxo Road within the Urban Suburban Tier. The site consists of two parcels, a farmers market on the southern parcel and vacant land on the northern parcel.

**Proposed Amendment:** The amendment proposes to modify conditions of approval on a site with Commercial High with an underlying 5 units per acre (CH/5) future land use designation. The conditions of approval were adopted via Ord. 2008-020 as Planning staff determined that without conditions maximum intensity exceeded acceptable level of service standards. Thus the site was conditioned to a maximum of 366,200 square feet of commercial uses and incorporated into a mixed-use project with pedestrian/vehicular connections to the adjacent properties to the north. The aforementioned adjacent properties to the north at the time were expected to develop as high density residential but instead a charter school was developed. The applicant's request is to modify the 2008 conditions of approval in order to delete the conditions relating to the mixed-use project with pedestrian/vehicular connections to the adjacent properties to the north.

**Background.** The site has been subject to multiple future land use amendments, with the most recent amendment being adopted in 2008. In 2000, the 19.18 acre northern portion of the subject site known as Parcel 1, was the subject of a Future Land Use Atlas (FLUA) amendment from MR-5 to Multiple Land Use (MLU - CL-O, CH-O and INST/5) (Ord. 2000-044). This MLU project was anticipated to develop with amenities such as offices, a bank, a day care facility, and a congregate living facility. Following the adoption of this amendment, the parcel was rezoned to Multiple Use Planned Development (MUPD).

This parcel was then the subject of a subsequent land use request, Military Hypoluxo MLU II (LGA 2003-028) to combine with the parcel on the southeast corner (parcel 5060) for a mixed-use project with the MLU FLU designation. Staff and the Local Planning Agency recommended approval, however the applicant withdrew the request prior to the BCC Transmittal public hearing. In 2004, the southern portion of the subject site known as Parcel 2, was the subject of an amendment application (Military Hypoluxo Walmart LGA 2004-032) to change the future land use designation from MR-5 to CH/5. Staff recommended denial of that request. The applicant withdrew the application prior to the BCC Transmittal public hearing. A subsequent amendment application for the same FLU change was submitted as Military Hypoluxo Walmart II (LGA 2005-007) in Amendment Round 05-1. The application was postponed at the BCC Transmittal public hearing at the request of the applicant. It was then resubmitted in Amendment Round 05-2. Staff recommended denial of this request as well. The motion to approve the applicant's request failed in a 3-3 vote at the July 20, 2005 BCC transmittal hearing, therefore the applicant's request was not transmitted.

Finally, in 2008 the future land use designation on both parcels was changed from MLU/5 and MR-5 to CH/5 with conditions via LGA 2008-004 (Ord. 2008-020). The intent of the amendment was to combine the subject site with the parcel on the hard corner of Military Trail and Hypoluxo Road to develop big box super-center retail. Planning staff determined that this proposal without conditions exceeded acceptable level of service standards thus the site was conditioned to a maximum of 366,200 square feet of commercial uses and incorporated into a mixed-use project with pedestrian/vehicular connections to the adjacent properties to the north.

**Zoning Application.** There is no concurrent zoning application.

## II. Data and Analysis Summary

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This section of the report provides a summary of the consistency of the amendment with the County's Comprehensive Plan. The sections in Exhibit 2 detail the consistency of the amendment with Plan policies, including justification, compatibility, public facilities impacts, intergovernmental coordination, and consistency with specific overlays and plans.

**Overview of the Area.** The subject site is located on the east side of Military Trail, north of Hypoluxo Road in the eastern central part of the County within the Urban/Suburban Tier. The site is part of an existing suburban commercial area, with commercial high and low future land use designations at the corners of the intersection and low, medium, and high density residential in the immediate vicinity.

**Appropriateness of the Amendment.** The area consists of a mix of land uses with low, medium, and high residential adjacent to the commercial intersection. The amendment proposes to eliminate conditions that were adopted in 2008 which intended to foster a mixed-use project with pedestrian/vehicular connections to the adjacent properties to the north. Subsequently, the site to the north has been developed with a school, and some of the conditions of approval are no longer warranted (as detailed in Exhibit 1).

- **Compatibility.** Directly north of the site is High Residential, 8 units per acre (HR-8), to the east is Medium Residential, 5 units per acre (MR-5), to the south across Hypoluxo Road is MR-5 and Commercial High with an underlying MR-5 (CH/5), and to the west is also CH/5. The proposed amendment will not change the current CH/5 future land use designation which is consistent with the surrounding uses.

**Assessment and Recommendation.** The amendment does not change the future land use designation, density, or intensity allowed on the site. The amendment revises conditions of approval related to design that are no longer warranted. There is an adequate justification for the amendment, the amendment is compatible with surrounding land uses, and the amendment meets the applicable policies in the Comprehensive Plan. See Exhibit 2 for additional detail.

Staff recommends **approval with conditions** based upon the findings within this report.

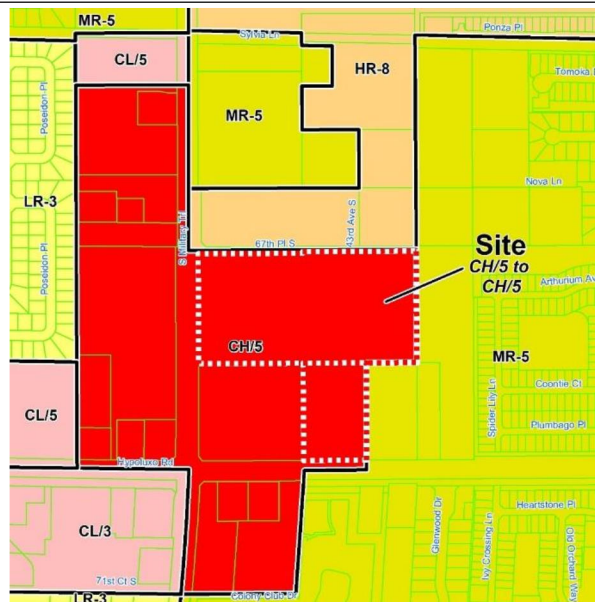
Exhibits	Page
1. Future Land Use Map & Legal Description	E-1
2. Consistency with Comprehensive Plan	E-5
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4. Applicant's Public Facility Impacts Table	E-22
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## Exhibit 1

<b>Amendment No:</b>	<b>Military Hypoluxo Commercial (LGA 2021-002)</b>
<b>FLUA Page No:</b>	82
<b>Future Land Use:</b>	Commercial High with an underlying 5 units per acre (CH/5)
<b>Amendment:</b>	To revise conditions of approval adopted by Ord. 2008-020 as shown below with deleted text struck out and added text underlined, and to delete the master plan.
<b>Location:</b>	Northeast corner of Military Trail and Hypoluxo Road
<b>Size:</b>	24.02 acres
<b>Property No:</b>	00-42-45-01-00-000-5071 & 00-42-45-01-00-000-5030

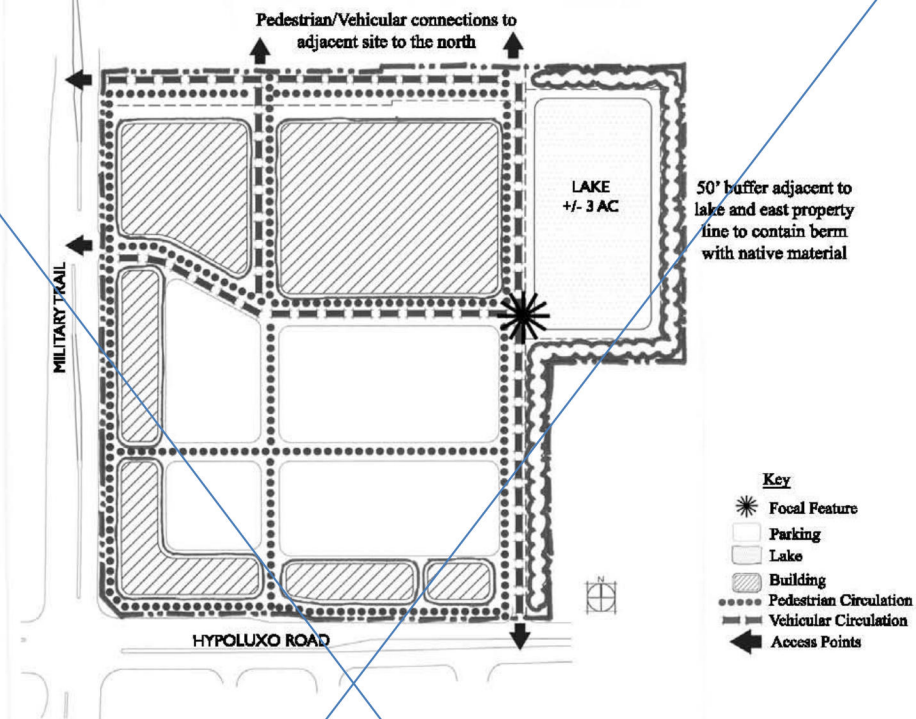
**Conditions:** To revise conditions of approval adopted by Ord. 2008-020 with the deleted text struck out and text underlined.

1. Development under the Commercial High future land use designation is ~~The subject site shall be limited to a maximum of 366,200 square feet of commercial retail development or up to the equivalent number of daily trips;~~
2. ~~The subject site shall be developed with a minimum of 30 Live/Work and/or residential units on site;~~
3. ~~A master plan shall be provided with shows vehicular/pedestrian circulation throughout the subject site with a true cross access easement and a minimum of two (2) vehicular and two (2) pedestrian connections to the adjacent site to the north. The master plan requires approval by the Planning Division to ensure it demonstrates superior design and a functional integration of uses with sidewalks, shade trees and streetlights;~~
4. ~~The master plan and the final site plan for this property shall clearly indicate cross access easements with the proposed commercial development to the north (Application LGA 2008-008) and a shared access road to Military Trail along the property line separating the two developments, at the general locations shown on the master plan;~~
5. ~~A portion of the site (approx. 3.04 acres) along the eastern property line shall be restricted to water retention and landscaping only.~~



Delete the Master Plan and notes

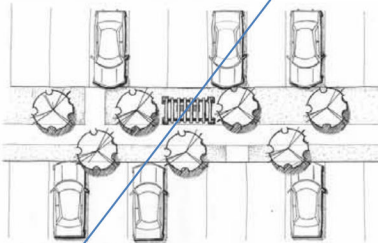
### Military Trail and Hypoluxo Master Plan



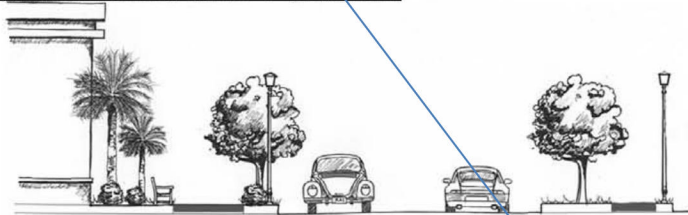
#### Conditions

1. The subject site of LGA (2008-0004) shall be limited to maximum of 366,200 square feet (Necessary for consistency with Policy 3.5-d).
2. A minimum of 30 Live/ Work and/ or residential units, which shall be provided on the subject site.
3. A master plan shall be provided which shows vehicular pedestrian circulation throughout the subject site with a true cross access easement and a minimum of two (2) vehicular and two (2) pedestrian connections to the adjacent site to the north. The master plan shall be presented to the Planning Division for review and should demonstrate a functional mix of uses.
4. The master plan and final site plan for this property (Application LGA 2008-004) shall clearly indicate cross access easements with the proposed residential development to the north (Application LGA 2008-008) and a shared access road to Military Trail along the property line separating the two developments, at the general locations shown on the master plan.

#### Typical Pedestrian Walkway Through Parking Lot, Plan View



#### Typical Cross Section of Main Internal Roads



#### Pedestrian Walkway Section





## Legal Description

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### PARCEL 1

THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER, LESS AND EXCEPT RIGHT-OF-WAY FOR STATE ROAD 809 (MILITARY TRAIL) AND ORDER OF TAKING RECORDED IN OFFICIAL RECORDS BOOK 6074, PAGE 1822, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY AND THE NORTH 40 FEET, AND THE NORTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER, LESS THE NORTH 30 FEET, SECTION 1, TOWNSHIP 45 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA.

### PARCEL 3

THE WEST 370 FEET OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 1, TOWNSHIP 45 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, LESS AND EXCEPT RIGHT-OF-WAY FOR HYPOLUXO ROAD.

AREA OF PROPERTY SURVEYED IS 24.023 ACRES, MORE OR LESS.

## Exhibit 2

### Consistency with Comprehensive Plan

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This Exhibit examines the consistency of the amendment with the County's Comprehensive Plan, Tier Requirements, applicable Neighborhood or Special Area Plans, and the impacts on public facilities and services.

#### A. Consistency with the Comprehensive Plan - General

1. **Justification: FLUE Policy 2.1-f:** *Before approval of a future land use amendment, the applicant shall provide an adequate justification for the proposed future land use and for residential density increases demonstrate that the current land use is inappropriate. In addition, and the County shall review and make a determination that the proposed future land use is compatible with existing and planned development in the immediate vicinity and shall evaluate its impacts on:*

1. *The natural environment, including topography, soils and other natural resources; (see Public Facilities Section)*
2. *The availability of facilities and services; (see Public Facilities Section)*
3. *The adjacent and surrounding development; (see Compatibility Section)*
4. *The future land use balance;*
5. *The prevention of urban sprawl as defined by 163.3164(51), F.S.;*
6. *Community Plans and/or Planning Area Special Studies recognized by the Board of County Commissioners; and (see Neighborhood Plans and Overlays Section)*
7. *Municipalities in accordance with Intergovernmental Coordination Element Objective 1.1. (see Public and Municipal Review Section)*

The applicant has prepared a Justification Statement (Exhibit 3) which is summarized as follows:

- The adopted design related conditions of approval are no longer appropriate as they anticipated the development of higher density residential uses on the property to the north, and were put in place to implement a multiple use project developed as a Lifestyle Center.
- The adopted design related conditions limiting the eastern portion of the property to retention and landscaping are not appropriate as the parcel will likely be developed in the future as a residential subdivision or planned unit development.

**Staff Analysis:** This policy is the umbrella policy over the entire FLUA amendment analysis and many of the items are addressed elsewhere in this report as identified above. The amendment proposes to maintain the current CH/5 future land use designation and modify conditions of approval that were implemented in 2008 via Ord. 2008-020. The change will not result in additional future land use intensity or density, as there is no change to the underlying residential designation and the site will retain the maximum commercial square footage condition of approval.

With regards to the justification, the intent of the current conditions was to ensure an acceptable level of service standards and interconnectivity with future high density residential development to the north. The adjacent properties to the north never developed with high density residential as envisioned but instead developed as a charter school. The

conditions related to the mixed use project that the applicant proposes to delete include a master plan and pedestrian/vehicular connections to the adjacent properties to the north. These conditions are no longer warranted as the envisioned mix-use project is no longer planned. In addition, the school does not access the right of way between the two properties. Therefore, this amendment has met the requirements for an adequate justification.

2. **County Directions – FLUE Policy 2.1-g:** *The County shall use the County Directions in the Introduction of the Future Land Use Element to guide decisions to update the Future Land Use Atlas, provide for a distribution of future land uses in the unincorporated area that will accommodate the future population of Palm Beach County, and provide an adequate amount of conveniently located facilities and services while maintaining the diversity of lifestyles in the County.*

**Staff Analysis:** The following County Directions are relevant to the proposed amendment:

**Direction 2. Growth Management.** *Provide for sustainable communities and lifestyle choices by: (a) directing the location, type, intensity, timing and phasing, and form of development that respects the characteristics of a particular geographical area; (b) requiring the transfer of development rights as the method for most density increases; (c) ensuring smart growth, by protecting natural resources, preventing urban sprawl, providing for the efficient use of land, balancing land uses; and, (d) providing for facilities and services in a cost efficient timely manner.*

**Direction 4. Land Use Compatibility.** *Ensure that the densities and intensities of land uses are not in conflict with those of surrounding areas, whether incorporated or unincorporated.*

**Staff Analysis:** The proposed amendment deletes conditions of approval relating to a mixed use project, but would maintain the condition of a maximum square footage of commercial development. This condition ensures that the amount of commercial development does not affect the character of the corridor. The proposed amendment would not detract from any of the County directions, thus there are no policy implications regarding the County Directions with regards to this amendment.

3. **Piecemeal Development - Policy 2.1-h:** *The County shall not approve site specific Future Land Use Atlas amendments that encourage piecemeal development or approve such amendments for properties under the same or related ownership that create residual parcels. The County shall also not approve rezoning petitions under the same or related ownership that result in the creation of residual parcels.*

**Staff Analysis:** The definition of piecemeal development in the Comprehensive Plan describes “A situation where land, under single ownership or significant legal or equitable interest (by a person as defined in Section 380.0651[4] F.S.) is developed on an incremental basis, or one piece at a time, with no coordination or overall planning for the site as a whole.” The intent of the amendment is to revise conditions on the subject site with no change in future land use. All three of the parcels on the northeast corner of Hypoluxo Road and Military Trail, including the two included in the subject site, are under the same ownership and have the same future land use designation. Therefore, this amendment does not represent piecemeal development or the creation of a residual parcel.

4. **Residual Parcel – FLUE Policy 2.1-i:** *As a means of promoting appropriate land development patterns the County shall discourage the creation of residual parcels within or adjacent to a proposed development. If such a situation is identified, and the residual parcels cannot be eliminated, then the development shall be designed to allow for inter-connectivity with the residual parcels through various techniques including, but not limited to, landscaping and pedestrian and vehicular access. In addition, the future land use designation and/or zoning district of the residual parcel shall also be considered by the Board of County Commissioners, concurrently with the development, to ensure that an incompatibility is not created.*

**Staff Analysis:** The Comprehensive Plan's Introduction and Administration Element defines residual parcel as “a property under the same or related ownership that has been left out of a development area, resulting in a parcel which has limited development options and connections to surrounding properties.” The intent of the amendment is to revise conditions on the subject site with no change in future land use. Revising the conditions will essentially allow the subject site to develop similarly to the adjacent CH/5 corner parcel that is under the same ownership. This amendment does not affect access nor create a residual parcel. Therefore, the amendment is consistent with this policy.

4. **Strip Commercial – FLUE Policy 2.2.2-d:** *The County shall not designate additional commercial areas on the Future Land Use Atlas that would result in or encourage the proliferation of strip commercial development.*

**Staff Analysis:** The proposed amendment does not exhibit any of the characteristics of strip commercial development, and would not result in or encourage the proliferation of strip commercial development. The intersection of Hypoluxo Road and Military Trail is a commercial node and commercial development of the subject site would be consistent with the surrounding development pattern.

## **B. Consistency with Urban/Suburban Tier Requirements for the Specific FLU**

Future Land Use Element Objective 1.1, Managed Growth Tier System, states that “Palm Beach County shall implement the Managed Growth Tier System strategies to protect viable existing neighborhoods and communities and to direct the location and timing of future development within 5 geographically specific Tiers.....”

1. **Policy 1.2-a:** *Within the Urban/Suburban Tier, Palm Beach County shall protect the character of its urban and suburban communities by:*
1. *Allowing services and facilities consistent with the needs of urban and suburban development;*
  2. *Providing for affordable housing and employment opportunities;*
  3. *Providing for open space and recreational opportunities;*
  4. *Protecting historic, and cultural resources;*
  5. *Preserving and enhancing natural resources and environmental systems; and,*
  6. *Ensuring development is compatible with the scale, mass, intensity of use, height, and character of urban or suburban communities.*

**Staff Analysis:** The proposed amendment would allow for a development that is compatible with surrounding land uses and is compatible with the scale, mass, and intensity of use with the area. Therefore, this amendment is consistent with this policy.



### C. Compatibility

Compatibility is defined as a condition in which land uses can co-exist in relative proximity to each other in a stable fashion over time such that no use is negatively impacted directly or indirectly by the other use.

The surrounding land uses immediately abutting the site are the following:

**North:** North of the subject site, beyond 67<sup>th</sup> Place South, is Trails Charter School, Control Number 2013-085. The 67,662 square foot charter school was built in 2014. Just east of the charter school, adjacent to the subject site, are two large-lot single family residential homes, 6720 43rd Avenue South and 4212 Nova Lane. All three parcels have a High Residential, 8 units per acre future land use designation.

**East:** Adjacent to the eastern border of the subject site is a 7.87 acre vacant parcel and a single family home on 1.77 acres, both have a Medium Residential, 5 units per acre future land use designation. East of that property is the 27.75 acre Boynton Estates II PUD (aka Vineyards at Palm Beach) which was built in 1995 and has 137 units.

**South:** Adjacent to the subject site to the south is a single family home on 3.92 acres. Further south, beyond Hypoluxo Road is the Hypoluxo Trail Center (Control Number 1985-013) with a Commercial High with an underlying 5 units per acre future land use designation. The site includes fast food, restaurants, retail, self-storage, and a bank. East of the shopping center is the Colony Club Apartments PUD. The 214 unit apartment complex was built in 2003 and has a Medium Residential, 5 units per acre future land use designation.

**West:** To the west, across Military Trail, is the Walmart plaza with a Commercial High with an underlying 5 units per acre future land use designation. The plaza was built in 1990 and today has 4 out parcels which were built from 1990-2005 and include a gas station, fast food, auto repair, and retail shops.

**FLUE Policy 2.1-f states that** *“the County shall review and make a determination that the proposed future land use is compatible with existing and planned development in the immediate vicinity.”* And **FLUE Policy 2.2.1-b** states that *“Areas designated for Residential use shall be protected from encroachment of incompatible future land uses and regulations shall be maintain to protect residential areas from adverse impacts of adjacent land uses. Non-residential future land uses shall be permitted only when compatible with residential areas, and when the use furthers the Goals, Objectives, and Policies of the Plan.”*

**Applicant’s Comments:** The applicant has stated that the proposed amendment does not seek to change the commercial future land use designation and that the proposed amendment is compatible with nearby residential and non-residential uses.

**Staff Analysis:** Regarding compatibility, staff concurs that the proposed amendment would be compatible with surrounding land uses as the site is not only adjacent on the west and south with Commercial High future land use designations, but is currently designated commercial and is part of a commercial node at the intersection. The proposed modification of conditions will maintain the condition for a maximum of 366,200 square feet of commercial space on the subject site to ensure acceptable level of service standards.

**D. Consistency with County Overlays, Plans, and Studies**

1. **Overlays – FLUE Policy 2.1-k** states *“Palm Beach County shall utilize a series of overlays to implement more focused policies that address specific issues within unique identified areas as depicted on the Special Planning Areas Map in the Map Series.”*

**Staff Analysis:** The proposed amendment is not located within any overlay.

2. **Neighborhood Plans and Studies – FLUE Policy 4.1-c** states *“The County shall consider the objectives and recommendations of all Community and Neighborhood Plans, including Planning Area Special Studies, recognized by the Board of County Commissioners, prior to the extension of utilities or services, approval of a land use amendment, or issuance of a development order for a rezoning, conditional use or Development Review Officer approval.....”*

**Staff Analysis:** The proposed amendment is not located within any Community Plan, Neighborhood Plan, or Planning Area Special Study.

**E. Public Facilities and Services Impacts**

The proposed amendment will maintain the current CH/5 future land use designation and modify conditions of approval related to design. There is no future land use change and no change to the intensity or density governed by the future land use designation. The amendment proposes to retain a maximum of 366,200 sf (.42 FAR) as previously adopted. Public facilities impacts are detailed in the table in Exhibit 4.

1. **Facilities and Services – FLUE Policy 2.1-a:** *The future land use designations, and corresponding density and intensity assignments, shall not exceed the natural or manmade constraints of an area, considering assessment of soil types, wetlands, flood plains, wellfield zones, aquifer recharge areas, committed residential development, the transportation network, and available facilities and services. Assignments shall not be made that underutilize the existing or planned capacities of urban services.*

**Staff Analysis:** The proposed amendment was distributed to the County service departments for review. There are adequate public facilities and services available to support the amendment, and the amendment does not exceed natural or manmade constraints. Staff sent a request for departmental review of the proposed amendment to various County departments and external agencies for review of public facility impacts. No adverse comments were received from the following departments and agencies regarding impacts on public facilities:

Mass Transit (Palm Tran), Potable Water & Wastewater (Seacoast Utilities), Environmental (Environmental Resource Management), Historic Resources (PBC Archaeologist), Parks and Recreation, Office of Community Revitalization (OCR), ULDC (Zoning), Land Development (Engineering), School Board, Health (PBC Dept. of Health), Fire Rescue, Lake Worth Drainage District.

2. **Long Range Traffic - Policy 3.5-d:** *The County shall not approve a change to the Future Land Use Atlas which:*

- 1) *results in an increase in density or intensity of development generating additional traffic that significantly impacts any roadway segment projected to fail to operate at adopted level of service standard "D" based upon cumulative traffic comprised of the following parts a), b), c) and d):.....*

**Staff Analysis:** There was no traffic analysis required as there is no future land use change and no change to the intensity or density governed by the future land use designation. The amendment proposes to retain a maximum of 366,200 sf (.42 FAR) as previously adopted. Public facilities impacts are detailed in the table in Exhibit 4.

## **II. Public and Municipal Review**

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The Comprehensive Plan Intergovernmental Coordination Element **Policy 1.1-c** states that *"Palm Beach County will continue to ensure coordination between the County's Comprehensive Plan and plan amendments and land use decisions with the existing plans of adjacent governments and governmental entities....."*

- A. Intergovernmental Coordination:** Notification was sent to the County's Intergovernmental Plan Amendment Review Committee (IPARC), a clearing-house for plan amendments, on August 28, 2020. At the time of the printing of the Planning Commission Report no municipal correspondence had been received.
- B. Other Notice:** Public notice by letter was mailed to the owner of properties within 500' of the perimeter of the site on August 28, 2020. Also on August 28, 2020, the Planning Division notified the following interested parties: George Homrich, Ray Marcinkoski, and Coalition of Boynton West Residential Associations. At the time of the printing of the Planning Commission Report no public or interested parties correspondence had been received. Correspondence received is added to the exhibits during the course of the amendment process.
- C. Informational Meeting:** The Planning Division hosted a meeting for area residents and interested parties to relay information regarding the amendment and development approval process on September 8, 2020. Five members of the public attended the meeting. One adjacent property owner expressed concerns about access onto 67<sup>th</sup> Place South (the private road along the northern edge of the subject site) and a physical barrier to keep users of the subject site from accessing the private road. At the time of the printing of the Planning Commission report, no correspondence had been received. Correspondence received is added to the exhibits during the course of the amendment process.

## Exhibit 3

### Applicant's Justification

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#### Consistency with the Comprehensive Plan and Florida Statutes

##### Introduction

On behalf of the Applicant, JMorton Planning & Landscape Architecture is requesting a Comprehensive Plan Future Land Use Atlas amendment for the property located at the northeast corner of Military Trail and Hypoluxo Road ("Property") to delete the Master Plan and revise the conditions of approval imposed by Ordinance 2008-020.

##### **I. PROPOSED FLUA MAP AMENDMENT**

The Applicant is requesting a Future Land Use Amendment to delete the adopted Master Plan and modify the following conditions imposed by Ordinance 2008-020.

##### Description of Site Vicinity

The Property is located at the northeast corner of Military Trail and Hypoluxo Road and has a Future Land Use designation of Commercial High with an underlying 5 units per acre (CH/5). To the north of the Property is the Trails Charter School. To the east of the Property is a single family residence and undeveloped property. To the south of the Property are commercial uses which include in-line retail, a fast food restaurant and self-storage facility. To the west of the Property are commercial uses including a Wal-Mart and gas station.

Land uses directly abutting the Property include the following:

Adjacent Property	Land Use Designation	Zoning Designation	Existing Use	Control Number
North	HR-8	RM	Trails Charter School	2013-085
South	CH/5 & MR-5	CG & PUD	Hypoluxo Trail Center (including fast food restaurant, drycleaners, and other commercial uses) & Colony Club Apartments PUD	85-013 & 2001-029
East	MR-5	AR	Single Family Residence & vacant property	N/A
West	CH/5	CG	Wal-Mart Plaza (including gas station)	1980-173

##### History

The Property has been the subject of several previous comprehensive plan amendment applications between 2000 and 2008. The first adopted future land use application amended the future land use designation from Medium Residential, 5 units per acre (MR-5) to Multiple Land Use (MLU). This adopted Ordinance No. 2000-044 included multiple conditions of approval regarding site design, maximum permitted density and maximum permitted intensity. Several comprehensive plan amendment applications were submitted when Wal-Mart desired to develop a new Supercenter on the Property rather than redevelop their existing store to the west. These applications were ultimately withdrawn by the applicant and/or not transmitted by the Board of County



Commissioners. Finally, in 2008 the County approved Ordinance No. 2008-020. This approved a future land use amendment from MLU to Commercial High but retained and/or modified some of the conditions of approval related to site design, maximum density and maximum intensity. Since the adoption of this amendment, changes have occurred in the area. The Property to the north was not developed with multi-family residential as originally anticipated but rather with a charter school. The lifestyle center mandate has been widely unsuccessful especially those that require development of live/work units. The Property has remained undeveloped through all of the past future land use amendments and changes to the surrounding properties.

### **G.1 Justification**

Each proposed FLUA amendment must be found to be consistent with the Goals, Objectives, and Policies (GOPs) of the Comprehensive Plan. Future Land Use Element Policy 2.1.f requires that adequate justification for the proposed future land use be provided. Further, the justification statement must demonstrate that a change is warranted and demonstrate the following two factors:

**1. The proposed use is suitable and appropriate for the subject site.**

*Response: The Applicant is not proposing to amend the existing future land use designation of Commercial High, with an underlying 5 units per acre (CH/5). The conditions of approval and Master Plan were originally imposed on the Property when a Multiple Land Use (MLU) project was proposed. This previous MLU was a mixed use project that was intended to have multiple, large commercial users while providing on-site housing options (live/work). Conditions were also imposed to ensure connectivity to adjacent properties that were anticipated to be developed with complimentary uses.*

*The Property's location at the major intersection of Military Trail and Hypoluxo Road is appropriate for the Commercial High future land use designation. The existing conditions of approval are no longer appropriate as they were put in place to implement a Multiple Land Use (MLU) project, developed as a Lifestyle Center. The MLU was reviewed as a land use designation. Although only a few lifestyle centers have been built in Palm Beach County, they have all struggled to retain commercial tenants, attract homebuyers and other residents. Examples of such projects include Delray Marketplace, Legacy Place, CityPlace and Downtown at the Gardens. Deleting the existing conditions imposed by the previous ordinances would not change the suitability of the Property for the Commercial High Future Land Use designation.*

**2. There is a basis for the proposed FLU change for the particular subject site based upon one or more of the following:**

**a. Changes in FLU designations on adjacent properties or properties in the immediate area and associated impacts on the subject site.**

*Response: The original conditions of approval anticipated the development of higher density residential uses on the property to the north. The parcel to the north was not developed with higher density residential uses as anticipated but was developed with a charter school instead. The conditions of approval regarding connections to the adjacent parcel to the north are no longer relevant however the existing Commercial High with underlying 5 units per acre (CH/5) still remains appropriate for the Property.*

*This intersection of Palm Beach County has significantly changed since the conditions of approval were originally imposed. Several residential projects have been developed in recent years. These residential projects are composed of single-family, townhouse and multi-family units. The commercial projects on the other corners of the intersection have experienced changes since the conditions of approval were imposed on the Property. Overall, the retail market has experienced a downturn and strip shopping center owners have been looking for ways to rejuvenate and revive dying plazas. It is anticipated that the Property will be developed with a mix of commercial and residential uses. Most likely, the other commercial projects at this intersection will also incorporate a mix of uses in the future should the retail market continue to decline.*

**b. Changes in the access or characteristics of the general area and associated impacts upon the subject site.**

***Response:*** N/A

**c. New information or change in circumstances which affect the subject site.**

***Response:*** *The existing conditions and Master Plan requirement were originally imposed on the Property when mixed use developments were a newer concept in the suburban area of Palm Beach County. As development continues to move westward, more intense uses are being developed and constructed in the immediate area as well as to the west. The County Zoning Code is constantly being updated to ensure compatibility between uses and properties.*

*The existing conditions of approval were initially imposed on the Property at the time that the Future Land Use designation was initially amended to the Multiple Land Use (MLU) designation. The previous MLU application was proposed to be developed with a mix of residential and commercial uses which would be vertically integrated. The future land use designation of the Property was later amended and the MLU was removed but the Commercial High and underlying Medium Residential, 5 units per acre remained. The Master Plan included within the previous adopting ordinance is no longer appropriate as the Property no longer has an MLU future land use designation. Additionally, that Master Plan includes area outside of the legal description for Ordinance No. 2008-020.*

*Additionally, external connectivity with the property to the north is no longer appropriate as the property to the north was not developed with residential uses as originally anticipated but rather with a charter school. Pedestrian and vehicular connections are not possible given the location of a fence and right-of-way separating the Property from the charter school.*

*The conditions regarding location of water retention and landscaping (cross-hatching) along the eastern portion of the Property are no longer appropriate as the existing future land use is consistent and compatible with the Medium Residential, 5 units per acre that exists on the Property to the east. The Property will ultimately be designed to give consideration to the surrounding existing and future uses. The condition limiting the eastern portion of the Property to retention and landscaping is not appropriate as the single family residential parcel will likely be developed in the future as a residential subdivision or planned unit development. Any potential compatibility and connectivity*

issues would be addressed during the site plan approval process and not be necessary at the land use level.

*The condition requiring internal connections between residential and commercial uses within the Property are no longer relevant as the Property no longer has an MLU designation. Should the Property be developed with a mix of residential and commercial uses, the Multiple Use Planned Development (MUPD) zoning district requires connections between buildings, open space and different uses.*

*Finally, the conditions requiring live-work units to be developed on the Property is not feasible. Live-work units have not been a viable residential development option while the need for workforce housing has drastically increased. If the Property is developed with residential uses, the developer will be required to abide by the current Workforce Housing Program Ordinance.*

**d. Inappropriateness of the adopted FLU designation.**

**Response:** *The existing Commercial High, with underlying 5 units per acre (CH/5) future land use designation remains appropriate for the Property. As discussed above, the conditions are no longer appropriate. Significant changes in development patterns in the immediate area surrounding the Property as well as current practices within the County's Planning Division have occurred. Mixed use development is now widely encouraged within urban, suburban and rural areas of the County. Policies as well as the County's Land Development Code have been updated to ensure compatibility between uses. Pedestrian and vehicular connections are often required when appropriate as conditions of the site plan approval. The Planning Division has not been imposing conditions of approval related to site design in recent times as these types of conditions have proven to be cumbersome and tend to limit creative development not contemplated at the time the conditions were imposed. Additionally, a Master Plan to be included as part of the adopting ordinance is no longer required by Planning Staff.*

*External connectivity to the property to the north is not appropriate as it has been developed with a charter school rather than a multi-family project originally anticipated when the original MLU ordinance was adopted. At the time of development of the charter school a right-of-way and fence were installed to separate the school from the Property. This eliminates the ability to provide vehicular connectivity between these uses.*

**e. Whether the adopted FLU designation was assigned in error.**

**Response:** *The Master Plan included within this adopting ordinance was an error as it includes land area not identified by the legal description of the ordinance. This Master Plan should be removed from the ordinance as it does not accurately reflect the Property's boundaries.*

## **G.2 Residential Density Increases**

This proposed FLU amendment is not requesting to increase residential density.

## **G.3 Compatibility**

Compatible land uses are defined as those which are consistent with each other in that they do not create or foster undesirable health, safety or aesthetic effects arising from direct association of

dissimilar activities, including the impacts of intensity of use, traffic, hours of operation, aesthetics, noise vibration, smoke, hazardous odors, radiation, and other land use conditions. The definition of “compatibility” under the repealed Rule 9J-5, FAC, is “a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted, directly or indirectly by another use or condition”. With this definition in mind, the requested change would make the subject property more compatible with the surrounding properties which have undergone land use amendments.

To be compatible, it is not necessary that two uses have the exact same function (e.g. residential, commercial, institutional, etc.). Rather, compatibility is attained when uses do not adversely affect each other. Further, two uses whose functions are different can complement and support each other. For example, an industrial use can provide essential services to residents of surrounding neighborhoods, as well as the community at-large. In addition, buffering, screening, setback, height, and landscaping requirements can further enhance compatibility, and reduce the potential negative effects of functionally different land uses.

Several factors lead to the conclusion that the proposed FLUA Amendment designation will be compatible with neighboring uses.

- Primary access is available from Military Trail and Hypoluxo Road, two rights-of-way designated as an Urban Arterial road, thus directing traffic away from local roads in the vicinity.
- The Property is located at a major intersection and at a major transportation node (Military Trail and Hypoluxo Road). Hypoluxo Road is currently developed with a mix of institutional, commercial, residential and agricultural uses. Military Trail is currently developed primarily with commercial uses. The proposed mixed use development will provide for additional services along these important transit corridors of Palm Beach County. On this basis, the proposed development concept at this location is determined to be compatible.
- The proposed use is consistent with the existing development pattern and adjacent uses that have occurred along the Military Trail and Hypoluxo Road corridors.

The above factors, coupled with setbacks, buffers and landscaping requirements will dictate that on-site structure(s) will be compatible with the neighboring properties and not create or foster undesirable health, safety, or aesthetic effects.

#### **G.4 Comprehensive Plan**

The proposed Future Land Use Atlas Amendment is consistent with various goals, objectives, and policies in the Palm Beach County Comprehensive Plan as detailed below.

**Goals** – The proposed FLUA amendment furthers the County’s goals as described below.

- **Strategic Planning** – “...to recognize the diverse communities within the County, to implement strategies to create and protect quality livable communities respecting the lifestyle choices for current residents, future generations, and visitors, and to promote the enhancement of areas in need of assistance.”

***Response:** Approval of this proposed FLU amendment will allow for the development of a commercial, residential or mixed use project. The existing conditions significantly limit development of the Property. The area surrounding the Property is a mix of commercial and residential uses. The Applicant intends to develop a mixed use project that will have*



*residential and commercial uses horizontally integrated within the same project boundary. This type of development has become more desirable than single use types of developments due to the convenience the mix of uses provides.*

- **Land Planning** – “...to create and maintain livable communities, promote the quality of life, provide for a distribution of land uses of various types, and at a range of densities and intensities, and to balance the physical, social, cultural, and environmental and economic needs of the current and projected residents and visitor populations. This shall be accomplished in a manner that protects and maintains a diversity of lifestyle choices, and provides for the timely, cost-effective provision of public facilities.”

***Response:** The Property is located within the Urban/Suburban Tier where services and public facilities are already available. The Property’s location at a major transportation node with access/frontage on Military Trail and Hypoluxo Road contribute to timely, cost effective service provision. The proposed future mixed use project will better serve the immediate and future needs of the community as it will provide additional housing and employment opportunities. As previously mentioned, the proposed development has become a desirable type of project because it ensures that residents are within close proximity of services and employment opportunities.*

**Objectives** – The proposed FLUA amendment furthers the County’s objectives as further described below.

- **FLUE Objective 1.2 Urban/Suburban Tier – Urban Service Area** – “Palm Beach County shall plan to accommodate approximately 90% of the County’s existing and projected population through the long-range planning horizon within the Urban/Suburban Tier. The Urban/Suburban Tier shall include all land within the Urban Service Area, as depicted on the Service Areas Map in the Map Series. These areas have a development pattern generally characterized as urban or suburban, considering the intensity and/or density of development. The Urban/Suburban Tier shall be afforded urban levels of service.”

***Response:** The Property is located within the Urban/Suburban Tier. Services and infrastructure are available to the Property. The proposed amendment to delete the existing conditions will allow for a commercial, residential or mixed use project to be developed at a density/intensity consistent with the existing Commercial High, with underlying 5 units per acre (CH/5) future land use designation as well as the other projects within the immediate area.*

- **FLUE Objective 2.2 Future Land Use Provisions - General** – “Palm Beach County shall ensure development is consistent with the County’s diverse character and future land use designations. All public and private activities concerning the use, development and redevelopment of a property, and the provisions of facilities and services shall be consistent with the property’s future land use designation, and the applicable Goals, Objectives and Policies of this Element.”

***Response:** The Property will retain the existing Commercial High, with underlying 5 units per acre (CH/5) future land use designation. The proposed amendment to delete the conditions of approval will allow for the development of the northeast corner of Military Trail and Hypoluxo Road, a prominent intersection of Palm Beach County where facilities and services are available.*

- **FLUE Objective 3.1 Service Areas - General** – “Palm Beach County shall establish graduated service areas to distinguish the levels and types of services needed within a Tier, consistent with sustaining the characteristics of the Tier. These characteristics shall be based on the land development pattern of the community and services needed to protect the health, safety and welfare of residents and visitors; and, the need to provide cost effective services based on the existing or future land uses.”

*Response: The Property is located within the Urban/Suburban Tier. The proposed amendment will not change the land use designation, rather delete the existing conditions. The Property will eventually be developed with residential, commercial or mixed use which will utilize the existing services and infrastructure already in place.*

- **FLUE Objective 4.4 Mixed and Multiple Use Development** – “Palm Beach County shall encourage the development of a variety of innovative types of mixed use and multiple use projects.”

*Response: The Property will eventually be developed as a Multiple Use Planned Development (MUPD). The County’s zoning code has recently been amended to allow residential uses within MUPDs. The proposal to remove the conditions of approval from the Property remains consistent with this policy as the design of the project is significantly impacted by these conditions related to connections with the property to the north as well as requiring drainage or landscape adjacent to the property to the east. It is foreseeable that the parcel to the east may be included in the proposed project boundaries at some point in the future.*

**Policies** – The proposed FLUA amendment furthers the County’s policies as further described below.

- **FLUE Policy 1.2-b:** “Palm Beach County shall encourage and support sustainable urban development, including restoration, infill and adaptive reuse.”

*Response: The Property is located at the northeast corner of Military Trail and Hypoluxo Road. Much of the surrounding area has already been developed, thus making the Property one of the last undeveloped parcels. The proposed amendment to delete the conditions of approval will ensure that the Property is developed consistent with the surrounding properties as it is effectively an infill parcel.*

- **FLUE Policy 2.2.2-b:** “All new Commercial High future land use designations shall be located on a roadway classified as an arterial on Figure TE 3.1 – Functional Classification of Roads.”

*Response: The Property is already designated as Commercial High on the Future Land Use Atlas. The Property is also located on two major thoroughfares (Military Trail and Hypoluxo Road).*

- **FLUE Policy 2.2.2-d:** “The County shall not designate additional commercial areas on the Future Land Use Atlas that would result in or encourage the proliferation of strip commercial development.”

*Response: The Property is already designated as Commercial High on the Future Land Use Atlas as well as located at a major intersection, thus would not result in or encourage the proliferation of strip commercial development.*

- **FLUE Policy 4.3-g:** “Where appropriate, similar and/or complementary neighboring land uses shall employ access management techniques such as shared entrances (to reduce the number of curb cuts) an vehicular and/or pedestrian cross access between like developments (to encourage inter-connectivity both within and between sites, and reduce the need to use the primary street system to access adjacent sites).

***Response:** The Applicant is requesting to delete the previous conditions of approval as they require connection to the property to the north. Originally, when these conditions were imposed the two uses would have been related and complimentary. However, the property to the north was not developed as intended by the conditions, but rather with a charter school. It is no longer appropriate that the uses have interconnectivity.*

- **FLUE Policy 4.3-k:** “The County shall require, where feasible, that commercial land uses employ access management techniques, such as shared entrances and vehicular cross access, between adjacent existing and proposed commercial land uses.”

***Response:** The Applicant is requesting to delete the previous conditions of approval as they require connection to the property to the north. Originally, when these conditions were imposed, the two uses would have been related and complimentary. However, the property to the north was not developed as intended by the conditions, but rather with a charter school. It is no longer appropriate that the uses have interconnectivity. There are no other commercial uses adjacent to the Property, thus the connectivity requirement is moot.*

- **FLUE Policy 4.4-b:** “All proposed mixed use and multiple use projects shall demonstrate that the land uses included on site are functionally integrated. Mixed use and multiple use projects with a residential component shall demonstrate functional integration through the use of connected open spaces, pedestrian systems, and street network in order to foster a sense of community by creating a stronger pedestrian orientation through design, placement and organization of buildings connected to a common public space of spaces.”

***Response:** The Property will eventually be developed as a Multiple Use Planned Development (MUPD). The County’s zoning code has recently been amended to allow residential uses within MUPDs. The proposal to remove the conditions of approval from the Property remains consistent with this policy as the design of the project is significantly impacted by these conditions related to connections with the property to the north as well as requiring drainage or landscape adjacent to the property to the east. It is foreseeable that the parcel to the east may be included in the proposed project boundaries at some point in the future.*

- **FLUE Policy 4.4.7-b:** “MUPD Design Objectives – The Multiple Use Planned Development (MUPD) shall be subject to the following design objectives:

1. Provide innovative building location and orientation;
2. Protect adjacent residential uses from potential adverse impacts;
3. Provide interconnection between uses in and adjacent to the project; and
4. Allows for both residential and non-residential uses within a single project designed in a manner that fosters compatibility within the project and with adjacent properties.

***Response:** The Applicant is proposing to delete and modify the conditions of approval. Most of the existing conditions are related to site design. This policy requires innovative*

*site design as well as interconnectivity between uses within and adjacent to the proposed MUPD. Once the Applicant decides to move forward with the MUPD site plan, the site design will be thoroughly vetted through the development review process.*

### **G.5 Florida Statutes**

Data and analysis demonstrating that the proposed development can be supplied by necessary services without violating adopted LOS standards are presented in Attachment H (Traffic Letter and Study), J (Drainage Statement), K (Fire Rescue Letter), and I (Water and Wastewater Provider Letter). Data and analysis discussing environmental and historical resources impacts are presented in Attachments J (Drainage Statement), M (Wellfield Zone), L (Natural Features Inventory and Map) and N (Historic Resource Evaluation Letter). No negative environmental impacts are identified.

The primary indicators that a plan or plan amendment does not discourage the proliferation of urban sprawl are listed below along with the applicant's descriptions. The evaluation of the presence of these indicators shall consist of an analysis of the plan or plan amendment within the context of features and characteristics unique to each locality in order to determine whether the plan or plan amendment discourages urban sprawl.

- Promotes, allows, or designates for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single use development or uses.
  - **Response:** *The applicant is requesting to delete previous conditions of approval regarding site design. The existing future land use designation is Commercial High, with an underlying 5 units per acre (CH/5). The Applicant intends to develop a mixed use project in the future with commercial and multi-family residential uses as the Property is located at the intersection of Military Trail and Hypoluxo Road, a prominent intersection in the southern part of Palm Beach County.*
- Promotes, allows, or designates significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while not using undeveloped lands that are available and suitable for development.
  - **Response:** *The Property is located within the Urban/Suburban Tier, which is not rural and urban services such as police, fire rescue and water/wastewater/drainage utilities exist in the immediate area.*
- Promotes, allows, or designates urban development in radial, strip, isolated, or ribbon patterns generally emanating from existing urban developments.
  - **Response:** *The Property is surrounded by development and would be considered infill development at a major intersection and transportation node within the Urban/Suburban Tier.*
- Fails to adequately protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, lakes, rivers, shorelines, beaches, bays, estuarine systems, and other significant natural systems.
  - **Response:** *This amendment does not fail to protect and conserve natural resources as the proposed development will have no negative impact on any other significant natural system. The Property does not support any environmentally sensitive areas. No listed species were located on the property and it is located outside of any wellfield protection*

zone. As required by the ULDC, any native plant material will be addressed during the zoning approval process.

- Fails to adequately protect adjacent agricultural areas and activities, including silviculture, active agricultural and silvicultural activities, passive agricultural activities, and dormant, unique, and prime farmlands and soils.
  - **Response:** *The Property is located within the Urban/Suburban Tier. Although it is currently utilized for a farmer's market and other small agriculture uses, the Property is located at a major intersection and surrounded by other intense commercial and residential uses.*
- Fails to maximize use of existing public facilities and services.
  - **Response:** *Reports and letters are provided with this application to show the availability of roadway capacity, water/sewer service, drainage outfall and fire response. The Property is located within the Urban Service Area (USA) and will not negatively impact public facilities and services.*
- Fails to maximize use of future public facilities and services.
  - **Response:** *Reports and letters are provided with this application to show the availability of roadway capacity, water/sewer service, drainage outfall and fire response. The Property is located within the Urban Service Area (USA) and will not negatively impact public facilities and services.*
- Allows for land use patterns or timing which disproportionately increase the cost in time, money, and energy of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater management, law enforcement, education, health care, fire and emergency response, and general government.
  - **Response:** *Public services and facilities are already available in the immediate vicinity. The proposed amendment will provide for infill development and fit in with the existing land use pattern.*
- Fails to provide a clear separation between rural and urban uses.
  - **Response:** *The Property is located well within the Urban/Suburban Tier and Urban Service Area (USA). The Property is not adjacent to the Rural Tier or the Agricultural Reserve Tier therefore, the proposal discourages the proliferation of Urban Sprawl by locating goods, services and employment in close proximity to where people live.*
- Discourages or inhibits infill development or the redevelopment of existing neighborhoods and communities.
  - **Response:** *This amendment will allow for infill development as development surrounds the Property on all sides. Future development on the Property will serve the current and future needs for the surrounding communities.*
- Fails to encourage a functional mix of uses.
  - **Response:** *Approval of this proposed amendment will allow the development of a mixed use/multiple use project consistent with the County Land Development Code and Comprehensive Plan. The proposed amendment to delete the conditions of approval will allow and encourage the mix of uses.*
- Results in poor accessibility among linked or related land uses.
  - **Response:** *The proposed development will be designed with pedestrian connections as required through the site plan approval process.*
- Results in the loss of significant amounts of functional open space.

- **Response:** *This amendment does not result in a loss of any functional open space as the subject property is currently not utilized as functional open space.*

**Florida Statutes, Section 163.3177.(6).(a).9.b:** Of those criteria listed in this section the subject property will meet the following criteria which shows that it will discourage the proliferation of urban sprawl:

- Directs or locates economic growth and associated land development to geographic areas of the community in a manner that does not have an adverse impact on and protects natural resources and ecosystems.
  - **Response:** *This amendment does not fail to protect and conserve natural resources as the property is vacant of natural resources. The site is currently undeveloped and it is located outside of any wellfield protection zone. As required by the ULDC, any native plant material will be addressed during the zoning approval process.*
- Promotes the efficient and cost-effective provision or extension of public infrastructure and services.
  - **Response:** *The request for a FLUA amendment will maximize the use of future public facilities and services existing and within the Urban/Suburban Tier. No facilities would be required to be installed in rural or sparsely populated areas, thereby maximizing the use of the existing facilities. Therefore, the proposal discourages the proliferation of Urban Sprawl by locating goods, services and employment adjacent to existing public infrastructure.*
- Promotes walkable and connected communities and provides for compact development and a mix of uses at densities and intensities that will support a range of housing choices and a multimodal transportation system, including pedestrian, bicycle, and transit, if available.
  - **Response:** *The future development will be designed meeting the requirements for a multiple use planned development (MUPD) project which includes pedestrian connections, bike racks, transit stops, if needed, and other elements that support a compact development.*
- Creates a balance of land uses based upon demands of the residential population for the nonresidential needs of an area.
  - **Response:** *Approval of this proposed amendment will allow the development of a mixed use project within an area of the County that has historically only been developed with low intensity/density residential development. The future MUPD project will contribute to a functional mix of uses within the Military Trail and Hypoluxo Road corridors. The proposed uses will better serve the surrounding community as it will provide for additional housing opportunities, services and employment opportunities.*

### **Conclusion**

As described above, the proposed FLU amendment to amend the conditions of approval associated with the previous Multiple Land Use is consistent with the Goals, Objectives, and Policies of Palm Beach County's Comprehensive Plan and the Florida State Statutes. The proposed amendment is also compatible with the surrounding area. The proposed amendment does not contribute to urban sprawl. The amendment is consistent with the Comprehensive Plan and will not negatively impact service provision.

**Exhibit 4**  
**Applicant's Public Facility Impacts Table**

A. Traffic Information		
	Current	Proposed
Max Trip Generator	General Commercial (ITE # 820)	General Commercial (ITE # 820)
Maximum Trip Generation	As conditioned – 9,782 trips per day At maximum – 12,977 trips per day	12,977 Trips per day
Net Daily Trips:	+3,195 trips per day (maximum minus current conditioned)	
Net PH Trips:	238 AM, 931 PM (conditioned) 359 AM, 1,244 PM (maximum) 359 AM, 1,244 PM (proposed)	
Significantly impacted roadway segments that fail Long Range	None.	None.
Significantly impacted roadway segments for Test 2	None.	None.
Traffic Consultant	None. Not Applicable.	
B. Mass Transit Information		
Nearest Palm Tran Route (s)	Route 3 & Route 71	
Nearest Palm Tran Stop	Routes 3 & 71 – Stop 1191 – Located on Military Trail, immediately adjacent to Property Route 71 – Stop 6821 – Located on Hypoluxo Road, immediately adjacent to Property	
Nearest Tri Rail Connection	Boynton Beach Tri-Rail Station – Via Palm Tran Route 71	
C. Portable Water & Wastewater Information		
Potable Water & Wastewater Providers	Palm Beach County Water Utilities Department. Sufficient capacity is available for the proposed development. Upgrades and extensions to the existing infrastructure may be required. See Attachment I for letter from Palm Beach County Water Utilities Department.	



<b>Nearest Water &amp; Wastewater Facility, type/size</b>	A 10" potable waster main and a 12" wastewater forcemain are located within the Military Trail right-of way adjacent to Property.
<b>D. Drainage Information</b>	
The proposed Application for elimination of conditions of application will not affect the drainage system. The previously approved drainage statements indicate that legal positive outfall is available to the Property via connections to the existing drainage system in place within Military Trail and Hypoluxo Road. The on-site stormwater drainage system will consist of conventional inlet catch basin and culvert type system with exfiltration as well as on-site detention/retention. See Attachment J for copies of previously provided and approved Drainage Statements.	
<b>E. Fire Rescue</b>	
<b>Nearest Station</b>	Station # 43 – 5970 S. Military Trail
<b>Distance to Site</b>	1.75 miles
<b>Response Time</b>	6:31 minutes
<b>Effect on Resp. Time</b>	The proposed change will have minimal impact on Fire-Rescue facilities. See Application Attachment K for letter from Fire-Rescue Department.
<b>F. Environmental</b>	
<b>Significant habitats or species</b>	A majority of the Property has previously been cleared and utilized for agricultural purposes (pastureland, a nursery and produce stand).
<b>Flood Zone*</b>	The Property is located within Flood Zone X. Flood Zone X represents areas outside of the 500-year flood plain with less than 0.2% annual probability of flooding.
<b>Wellfield Zone*</b>	The Property is not located within a Wellfield Protection Zone. See Application Attachment M for Wellfield Zone Map.
<b>G. Historic Resources</b>	
There are no significant structures or identified historic or architecturally significant resources within 500 feet of the Property. See Application Attachment N for Historic Resources Letter.	

## Exhibit 6

### Water & Wastewater Provider LOS Letter

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**Water Utilities Department  
Engineering**

8100 Forest Hill Blvd.  
West Palm Beach, FL 33413  
(561) 493-6000  
Fax: (561) 493-6085  
www.pbcwater.com



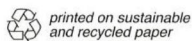
**Palm Beach County  
Board of County  
Commissioners**

Dave Kerner, Mayor  
Robert S. Weinroth, Vice Mayor  
Hal R. Valeche  
Gregg K. Weiss  
Mary Lou Berger  
Melissa McKinlay  
Mack Bernard

**County Administrator**

Verdenia C. Baker

*"An Equal Opportunity  
Affirmative Action Employer"*



March 23, 2020

Morton  
3910 RCA Boulevard  
Palm Beach Gardens, FL 33410

RE: NE Corner of Hypoluxo Road & Military Trail  
PCN 00-42-45-01-00-000-5071, 00-42-45-01-00-000-5060 & 00-42-45-01-00-000-5030  
Service Availability Letter

Dear Ms. McClellan:

This is to confirm that the referenced property is located within Palm Beach County Utility Department (PBCWUD) utility service area. PBCWUD has the capacity to provide the level of service required for the existing future land use designation of Commercial High with underlying 5 units per acre (CH/5). The proposed land use change will allow for the maximum development of 696,524 SF of commercial uses. Upgrades and extensions to the existing infrastructure may be required.

A 10" potable water main and a 12" wastewater forcemain are located within Military Trail right of way adjacent to the subject property. Please note that this letter does not constitute a final commitment for service until the final design has been approved by PBCWUD.

If you have any questions, please give me a call at (561)493-6116.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jackie Michels".

Jackie Michels, P.E.  
Plan Review Manager

## Exhibit 7

## Disclosure of Ownership Interests

FORM # 09

#### 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  
Paul Okean \_\_\_\_\_, 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 [X] President [position - e.g., president, partner, trustee] of Morningstar Nursery 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: 505 South Flagler Drive  
Suite 1100  
West Palm Beach, FL 33401
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.

  
Paul Okean, Affiant  
 (Print Affiant Name)

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of April, 2020, by Paul Okean, [ ☒ ] who is personally known to me or [ ☐ ] who has produced \_\_\_\_\_ as identification and who did take an oath.

  
 Notary Public

Lauren McClellan  
 (Print Notary Name)

NOTARY PUBLIC

State of Florida at Large

My Commission Expires: 2/28/21



**EXHIBIT "A"**

**PROPERTY**

**PARCEL 1**

THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER, LESS AND EXCEPT RIGHT-OF-WAY FOR STATE ROAD 809 (MILITARY TRAIL) AND ORDER OF TAKING RECORDED IN OFFICIAL RECORDS BOOK 6074, PAGE 1822, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY AND THE NORTH 40 FEET, AND THE NORTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER, LESS THE NORTH 30 FEET, SECTION 1, TOWNSHIP 45 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA.

**PARCEL 3**

THE WEST 370 FEET OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 1, TOWNSHIP 45 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, LESS AND EXCEPT RIGHT-OF-WAY FOR HYPOLUXO ROAD.

AREA OF PROPERTY SURVEYED IS 24.023 ACRES, MORE OR LESS.

**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.

<b>Name</b>	<b>Address</b>
<u>Paul Z. Okean Trust</u>	<u>203 Via Vizcaya, Palm Beach, FL 33480</u>
<u>Blane M. Okean Trust</u>	<u>203 Via Vizcaya, Palm Beach, FL 33480</u>
<u>Alexandra P. Okean Trust</u>	<u>203 Via Vizcaya, Palm Beach, FL 33480</u>
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**DISCLOSURE OF OWNERSHIP INTERESTS – APPLICANT**

*[TO BE COMPLETED AND EXECUTED ONLY WHEN THE APPLICANT IS NOT THE OWNER OF THE SUBJECT PROPERTY]*


**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 Laurent Morali, 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 ☒ Authorized Signatory [position—e.g., president, partner, trustee] of Hypoluxo Village Owner LLC [name and type of entity - e.g., ABC Corporation, XYZ Limited Partnership], (hereinafter, "Applicant"). Applicant seeks Comprehensive Plan amendment or Development Order approval for real property legally described on the attached Exhibit "A" (the "Property").
2. Affiant's address is: 767 Fifth Avenue, 50th Floor  
New York, NY 10153
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 Applicant. 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 Applicant's application for Comprehensive Plan amendment or Development Order approval. Affiant further acknowledges that he or she is authorized to execute this Disclosure of Ownership Interests on behalf of the Applicant.
5. Affiant further acknowledges that he or she shall by affidavit amend this disclosure to reflect any changes to ownership interests in the Applicant 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.




  
\_\_\_\_\_  
Laurent Morali, Affiant  
(Print Affiant Name)

NOTARY PUBLIC INFORMATION:

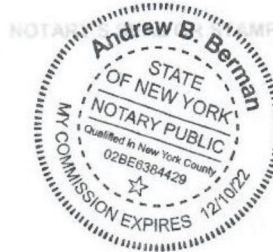
STATE OF ~~FLORIDA~~ New York  
COUNTY OF ~~PALM BEACH~~ New York

The foregoing instrument was acknowledged before me by means of [ ☒ ] physical presence or  
[ ☐ ] online notarization, this 28 day of December, 20 20 by  
Laurent Morali (name of person acknowledging). He/she is personally  
known to me or has produced \_\_\_\_\_ (type of identification) as  
identification and did/did not take an oath (circle correct response).

Andrew Berman  
(Name - type, stamp or print clearly)

  
(Signature)

My Commission Expires on: 12/10/22



**EXHIBIT "A"****PROPERTY****PARCEL 1**

THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER, LESS AND EXCEPT RIGHT-OF-WAY FOR STATE ROAD 809 (MILITARY TRAIL) AND ORDER OF TAKING RECORDED IN OFFICIAL RECORDS BOOK 6074, PAGE 1822, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY AND THE NORTH 40 FEET, AND THE NORTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER, LESS THE NORTH 30 FEET, SECTION 1, TOWNSHIP 45 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA.

**PARCEL 2**

THE SOUTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 1, TOWNSHIP 45 SOUTH, RANGE EAST 42 EAST, PALM BEACH COUNTY, FLORIDA, LESS AND EXCEPT THE RIGHT-OF-WAY FOR MILITARY TRAIL AND LESS AND EXCEPT THE RIGHT-OF-WAY FOR HYPOLUXO ROAD.

**PARCEL 3**

THE WEST 370 FEET OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 1, TOWNSHIP 45 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, LESS AND EXCEPT RIGHT-OF-WAY FOR HYPOLUXO ROAD.

AREA OF PROPERTY SURVEYED IS 31.98 ACRES, MORE OR LESS.

## EXHIBIT "B"

## DISCLOSURE OF OWNERSHIP INTERESTS IN APPLICANT

Affiant must identify all entities and individuals owning five percent or more ownership interest in Applicant's corporation, partnership or other principal, if any. Affiant must identify individual owners. For example, if Affiant is the 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
KFF Hypoluxo Village LLC (100% of Applicant)	767 Fifth Avenue, 50 Floor, New York, NY 10153
K Hypoluxo LLC (50% of KFF Hypoluxo Village LLC)	767 Fifth Avenue, 50 Floor, New York, NY 10153
The Dara Orbach GST Trust (20% of K Hypoluxo LLC)	767 Fifth Avenue, 50 Floor, New York, NY 10153
The Nicole Meyer GST Trust (20% of K Hypoluxo LLC)	767 Fifth Avenue, 50 Floor, New York, NY 10153
The Joshua Kushner GST Trust (20% of K Hypoluxo LLC)	767 Fifth Avenue, 50 Floor, New York, NY 10153
The Seryl LLC (20% of K Hypoluxo LLC)	767 Fifth Avenue, 50 Floor, New York, NY 10153
Charles Kushner (10% of K Hypoluxo LLC)	767 Fifth Avenue, 50 Floor, New York, NY 10153
Seryl Kushner (10% of K K Hypoluxo LLC)	767 Fifth Avenue, 50 Floor, New York, NY 10153
M Group Lake Worth 100, LLC (25% of KFF Hypoluxo Village LLC)	115 Front Street, Suite 300, Jupiter, FL 33477
Nicholas A. Mastroianni, II, 2012 Irrevocable Trust (69.9% of M Group)	115 Front Street, Suite 300, Jupiter, FL 33477
George Gellert (25% of KFF Hypoluxo Village LLC)	146 Two Town Road, Craryville, New York 12521

**Exhibit 8**  
**Correspondence**

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