

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

**Application No.:** PDD/DOA-2020-01117  
**Application Name:** Plaza Delray  
**Control No./Name:** 2016-00078 (Plaza Delray MUPD) (FKA Seneca Property)  
**Applicant:** Pebb Atlantic LLC  
**Owners:** Pebb Atlantic LLC  
**Agent:** WGINC - Edwin Muller  
**Telephone No.:** (561) 687-2220  
**Project Manager:** Timothy Haynes, Senior Site Planner

**TITLE:** an Official Zoning Map Amendment **REQUEST:** to allow a rezoning from the Agricultural Reserve (AGR) Zoning District to the Multiple Use Planned Development (MUPD) Zoning District.  
**TITLE:** a Development Order Amendment **REQUEST:** to reconfigure the Site Plan to add land area and parking spaces; reconfigure building and Type 2 Restaurant square footage; and, reduce overall square footage.

**APPLICATION SUMMARY:** Proposed is a Rezoning and a Development Order Amendment (DOA) for the Plaza Delray MUPD development. The 0.33-acre site was originally approved by the Board of County Commissioners (BCC) on April 27, 2017 to allow a rezoning from the Agricultural Reserve (AGR) Zoning District to the Multiple Use Planned Development (MUPD) Zoning District, with Class A Conditional Uses for a Type 1 Restaurant with a Drive Through and Type 2 Restaurants. The subject site is currently under construction.

The Applicant is proposing to rezone a 0.33-acre parcel (along the east property line), and to modify the Preliminary Site Plan (PSP) to add the aforementioned 0.33-acres, 36 parking spaces, and a pedestrian walkway; reconfigure the area between buildings B and C to add a outdoor plaza feature; reconfigure the square footage (sq. ft.) for buildings and uses, resulting in reduction of overall square footage; and, other minor modifications.

The Preliminary Site Plan (PSP) indicates a total of 30,478 sq. ft. (-218 sq. ft.) in four buildings, which includes a 2,000 sq. ft. Type 1 Restaurant, 11,818 sq. ft. for five Type 2 Restaurants, and 16, 650 sq. ft. of Retails Sales; 184 parking spaces; with no change to the primary (shared) access to Atlantic Avenue, and an additional cross access to the west, allowing for further connectivity to Lyons Road.

**SITE DATA:**

Location:	South side of Atlantic Avenue, approximately 415 feet east of Lyons Road.
Property Control Number(s)	00-42-46-20-01-000-0141
Existing Future Land Use Designation:	Agricultural Reserve (AGR)
Proposed Future Land Use Designation:	Agricultural Reserve (AGR)
Existing Zoning District:	Agricultural Reserve District (AGR)
Proposed Zoning District:	MUPD
Total Acreage:	4.83 acres
Affected Acreage:	4.83 acres
Tier:	Agricultural Reserve
Overlay District:	N/A
Neighborhood Plan:	N/A
CCRT Area:	N/A
Municipalities within 1 Mile	N/A
Future Annexation Area	N/A

**RECOMMENDATION:** Staff recommends approval of the request subject to the Conditions of Approval as indicated in Exhibit C-1 and C-2.

**PUBLIC COMMENT SUMMARY:** At the time of publication, Staff had received 0 contacts from the public regarding this application.

**PROJECT HISTORY:**

The subject site was approved by the Board of County Commissioners (BCC) on April 27, 2017, for a rezoning from the Agricultural Reserve Zoning District to the Multiple Use Planned Development District pursuant to Resolution R-2017-0501. The site received subsequent approvals for a Type 1 Restaurant with a drive-through (Resolution R-2017-0502), along with a Type 2 Restaurant (Resolution R-2017-0503) associated with the rezoning request. The subject property received the last BCC approval on July 27, 2017 for a Corrective Resolution R-2017-0966 associated with the rezoning request via resolution, R-2017-0501 to delete an Engineering Condition of Approval that was inadvertently added to the Resolution approving the rezoning but left out of the staff report.

**SURROUNDING LAND USES:**

**NORTH (Across Atlantic Avenue):**

FLU Designation: Agricultural Reserve (AGR)  
Zoning District: Agricultural Reserve Planned Unit Development (AGR-PUD)  
Supporting: Agricultural (Valencia Cove AGR-PUD, Control No. 2004-00369)

**EAST:**

FLU Designation: Agricultural Reserve (AGR)  
Zoning District: Agricultural Reserve Planned Unit Development (AGR-PUD)  
Supporting: Vacant (Sussman AGR-PUD, Control No. 2000-00032)

**SOUTH:**

FLU Designation: Agricultural Reserve (AGR)  
Zoning District: Multiple Use Planned Development (MUPD)  
Supporting: Vacant (N/A Control No. N/A)

**WEST:**

FLU Designation: Commercial Low, with an underlying Agricultural Reserve (CL/AGR)  
Zoning District: Multiple Use Planned Development (MUPD)  
Supporting: Vacant (Feurring Commercial MUPD, Control No. 2013-00213)

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**FINDINGS:**

Staff analysis will consolidate the findings of the Rezoning standards and three (3) separate Development Order Amendment (DOA) requests throughout each section of the report.

Conditional Uses, Official Zoning Map Amendment to a PDD or TDD and Development Order Amendment:

When considering a Development Order application for a Rezoning to a PDD or a TDD, a Conditional Use, excluding Conditional Use requests for Density Bonus pursuant to Art. 5.G.1, Workforce Housing Program (WHF), or a Development Order Amendment, the BCC and ZC shall utilize the Standards a – h listed in Article 2.B.7.B, Standards. The Standards and Staff Analyses are indicated below. A Conditional Use, Rezoning to PDD or TDD, or Development Order Amendment that 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:* Should the BCC approve the Future Land Use Amendment (LGA- 2021-00006), then 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 *Concurrent and Prior Land Use Amendments:* The site is the subject of a Future Land Use Atlas (FLUA) amendment known as Plaza Delray AGR LGA-2021-006. The request seeks to amend the Future Land Use from Agricultural Reserve (AGR) to Commercial Low with an underlying Agricultural Reserve (CL/AGR) on a 0.33-acre portion that is to be added to the overall 4.838-acre

Plaza Delray MUPD for the purposes of providing additional parking to the MUPD. The amendment was transmitted, with a vote of 7-0, by the BCC January 25, 2021 with the following condition:

- 1. The Commercial Low Future land use designation shall have no intensity or square footage.

The previously approved 4.509-acre eastern portion of the site was the subject of a Future Land Use Atlas (FLUA) amendment known as Seneca Commercial LGA-2017-001. The request amended the land use from Agricultural Reserve (AGR) to Commercial Low with an underlying Agricultural Reserve (CL/AGR) via Ordinance 2017-006 and contained one condition:

- 1. Development of commercial retail and/or office uses on the site are limited to a maximum of 38,538 square feet total.

The current request proposes only parking and a drive isle in the added land area and a total of 30,478 square feet of commercial uses (on the western portion only), which complies with both FLUA amendment conditions. Both conditions will be carried forward with the Zoning application.

Relevant Policies: Agricultural Reserve Commercial and Mixed Use Developments (AGR MUPD) are subject to Ag Reserve Design Elements as outlined in FLUE Policy 1.5.1-r as follows.

- 1. A minimum of 5% usable open space as defined by the Introduction and Administration Element, prominently located within the project to act as a community gathering place;
- 2. Landscaped, pervious surfaces that incorporate native landscape species in the site design, with an emphasis along roadway frontages, at entry features, and the provision of exceptional landscape buffers to ensure compatibility with adjacent residential or agricultural properties;
- 3. Interconnected, well landscaped pedestrian systems that link buildings with useable open space, sidewalks and other trail systems, to promote pedestrian circulation and encourage pedestrians to walk between uses;
- 4. Building placement designed to foster pedestrian connectivity with surrounding parcels;
- 5. Compatible building heights consistent with the character of the community; and
- 6. Public amenities such as sidewalks, lighting, seating, signage, gathering space, water features, landscaping, public art, and provisions for outdoor dining and merchant display.

The subject request provides each of these criteria through as follows: a 0.40 acres of Usable Open Space in the form of a central gathering area and larger facades along the storefronts; 1.035 acres of pervious landscaped areas, a pedestrian sidewalk system that connects throughout this site and to the adjacent parcels, pedestrian gathering areas, and widened sidewalks with extra landscaping provided. These are detailed on Regulating Plan FRP-2.

- *Intensity:* The maximum Floor Area Ratio (FAR) of 0.20 is allowed for a project with the CL FLU and AGR-MUPD zoning designation in the Agricultural Reserve Tier. However, the site is limited by two land use conditions resulting in a maximum of 38,538 square feet permitted (Ord. 2017-006) and no intensity can be utilized from the additional eastern 0.33-acres (LGA-2021-006). The request for a total of 30,478 square feet equates to a FAR of approximately 0.16 (30,478 square feet / 196,412 square feet or 4.509 acres = 0.155), and is consistent with both the FLUA amendment conditions as well as the allowable FAR.
- *Special Overlay District/ Neighborhood Plan/Planning Study Area:* The subject property is not located within any overlays, neighborhood plans, or study areas.

**b. Consistency with the Code** - *The proposed amendment is not in conflict with any portion of this Code, and is consistent with the stated purpose and intent of this Code.*

Zoning and Land Development Staff correspondence researched existing deeds and tax records of the subject site along with the adjacent properties to determine the legal lot of record status of the parcel. The 1953 Warranty Deed for the Plaza Delray site inadvertently excluded the east 23+/- feet of tracts 14, 19, 46 and 51 of the subject site. Further, lots 13, 20, 45 and 52 were conveyed in 1971 Warranty Deed for the adjacent property to the west (Sussman AGR Planned Unit Development (PUD) and also excluded the 23+/- feet, which further confirms these lots existed prior to the 1973 Subdivision Ordinance. Therefore, it was determined that the remainders of tracts 14, 19, 46 and 51 to be lots of record, since they were created prior to the subdivision ordinance.

The proposed request seeks to rezone the northern half of a 0.71-acre site containing 0.33-acres from Agricultural Reserve (AGR) to Multiple Use Planned Development (MUPD). The Development Order Amendment will add the top half, 0.33-acre portion of the subject site to the land area for the approved Plaza Delray development directly west. The Zoning District of the bottom half of the subject site will remain AGR with an AGR Future Land Use (FLU) designation and will not be included in the request. As stated in the Consistency with the Plan section above, the rezoning request consistent with the proposed FLU designation per Table 3.A.3.C – FLU Designation and Corresponding Planned Development Districts (1).

- *Nonconformities:* The entire parcel measures 23.41 ft. in width and extends approximately 634.51 ft. south to 152<sup>nd</sup> Place South. The lot itself does not meet the minimum acreage, frontage, lot width, or lot depth standards for a MUPD pursuant to Table 3.E.3.D – MUPD Property Development Regulations (PDR). However, once combined to the Plaza Delray site adjacent to the west, the overall development parcel will exceed the minimum PDR requirements. Due to the nature of the request, the proposed land area to be added will further the nonconformity of the existing subject sliver parcel which will remain, requiring additional variances.

With the addition of the 0.33-acres of land area to the overall Plaza Delray site along the east property line, a remnant 0.35-acre parcel will remain located to the south-east of the subject site. This parcel is considered nonconforming, as it does not meet the minimum width and lot area requirements for a parcel within the AR Zoning District. It should be noted that prior to the 0.33-acres being added, this parcel was already a nonconforming parcel. Should the landowner for this remnant parcel choose to develop, they will be required to either merge these lands with the properties to either the east and/or west, or, seek variances to allow for a lot that does not meet the aforementioned PDR requirements.

The Final Site Plan for the parent parcel for Plaza Delray (FKA Seneca Property) was approved April 27, 2017 with onsite egress access within the boundary of the western property line. The site was not approved with onsite ingress access, however. Ingress access for Plaza Delray was approved outside the western property line on the adjacent Feurring site. The approved Final Site Plan (FSP) clearly shows the existing nonconformity which does not contain ingress and egress access on site and will therefore be vested for what has been shown on the approved Site Plan.

- *Property Development Regulations:* The existing gross land area of parent parcel contains 4.51 acres. The 0.33-acre subject site will be added to create a 4.84-acre parcel. 4.00-acres will remain after Lake Worth Drainage District dedication. The lot width and frontage will be 309.70 ft. with a lot depth of 659.45 ft. This exceeds the 3-acre minimum lot size, 200 ft. width and frontage and lot depth requirements. The legal descriptions for both Resolutions approving both the Type 1 Restaurant with Drive Through (R-2017-0502) and Type 2 Restaurant (R-2017-0503) will have to be updated to reflect the newly added land area.

The additional land included with the existing Plaza Delray site will bring the property into further conformance with the PDR standards of the Code in terms of frontage and width, the side setback, and buffering on the east property line. The required side building setback for a property with a commercial use within the MUPD Zoning District with a corresponding Commercial Low (CL) FLU is 15 ft. The approved FSP provides a side setback of 36 ft. The modified PSP shows Building B and C will maintain a side setback of 58 ft. from the new extended eastern property line. Further, the proposed development will add additional landscaping within the affected area by providing an 8 ft. compatibility buffer on the east side of the proposed parking spaces. The approved plans provide a 5 ft. compatibility buffer per Code at the time of approval. This additional land area provides a larger buffer and setback from the adjacent property to the east.

- *Exemplary Design:* Staff has analyzed the rezoning request and proposed minor site modifications for 36 additional parking spaces along with minor building square footage changes and it has been determined that the proposed development meets the Design Objectives and Performance Standards for a Planned Development District (PDD) pursuant to Article 3.E.1.C, as it relates to site elements including but not limited adequate lot frontage and dimensions, pedestrian and vehicular circulation and connectivity, cross, access, and site design. The Applicant has acknowledged and addressed each of the PDD and MUPD requirements within the justification statement.

The Applicant seeks to continue to maintain exemplary design standards and functionality of the site by adding to the public realm for the pedestrian with the reconfigured useable open space. Modifications in the site design include a flush planter and seating area, extended decorative cross walk, and a 15 ft. by 15 ft. green wall all of which will be located between buildings B and C.

Pedestrian and vehicular circulation and connectivity will be maintained through the use of paved crosswalks, one way drive aisle aligning the proposed parking area, and the extension of future cross access on the north east portion of the site.

- *Architectural Review:* The Applicant requested the review for architectural elevations be done at Building Permit submission to remain consistent with the Plaza Delray approval.

- *Parking:* The MUPD requires a minimum of 4/1000 and a maximum of 6/1000 parking spaces. The existing 148 parking spaces exceed the minimum and is below the maximum required number of spaces for the MUPD. The Applicant proposes 36 addition angled parking spaces along the eastern property line which will be oriented to the rear of Buildings B and C. The 184 total parking spaces will remain consistent the maximum number of spaces required for an MUPD.

The Preliminary Site Plan (PSP) indicates a one-way 20 ft. wide drive aisle separating the proposed parking area from the adjacent buildings. The drive aisle width and angled parking space dimensions conforms with Table 6.B.3.A – Minimum Parking Dimensions for Non-Residential Uses and Residential Uses with Shared Parking Lots, of the Unified Land Development Code (ULDC).

- *Landscape/Buffering:* The PSP provides an 8 ft. compatibility buffer on the east side of the proposed parking area which meets Art. 7.C.2.B Compatibility Buffer, standards for adjacent lots with compatible Future Land Use Designations.

- *Signs:* There are no proposed sign modifications associated with the request. The Preliminary Master Sign Plan (PMSP) has been updated to reflect the change in building square footages only. No new signage is being proposed as part of this request as depicted in Figure 7.

**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.*

The proposed development will remain compatible with the surrounding uses. The Zoning designation for the properties adjacent to the subject site are consistent with the PDD Zoning District. The parcel directly to the north contains an AGR-PUD zoning designation and supports agricultural use (Valencia Cove AGR-PUD Control No. 2004-00369). The property to the northwest of the site (Dells Suburban Marketplace Control No. 1980-00039) has a Zoning classification of Community Commercial (CC). At the northwest intersection of Lyons Road and Atlantic Avenue is the Delray Marketplace development which is within the Traditional Marketplace Development (TMD) and maintains mixed use commercial, retail, and office areas that function as town activity center serving residents in the vicinity. The property to the south is a vacant site that is within the AGR Zoning District. The property to the east (Sussman ARG-PUD Control No. 2000-00032) has an AGR-PUD zoning designation and is currently vacant as well. To the west of the site is the Feurring Commercial MUPD development (Control No. 2013-00213) which also is within the MUPD Zoning District.

The Plaza Delray site was approved with both commercial and retail components in the development and the modifications to add land area for additional parking and minor square footage changes will share compatibility with the properties to the directly adjacent to the site. The sites compatibility with the surrounding area is further indicated with the approved 5 ft. compatibility buffers on the east and south sides of the Plaza Delray FSP. The Applicant is proposing an 8 ft. compatibility buffer to remain consistent with approved development in the area.

**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 project is bordered by compatible PDD and Commercial land uses on all sides and is compatible with the surrounding area. The existing 10 ft. R-O-W buffer will provide screening along Atlantic Avenue while the surrounding 5 ft. compatibility buffer on the west and south sides of the

property will provide additional visual buffering for potentially adverse functions of the site. Further, the Applicant proposes and 8 ft. compatibility buffer on the east property line of the affected area add additional screening of the site. The proposed Rezoning and DOA request use is not only compatible with the surrounding uses, but the buffering, minor modifications in building square footage and site design conceals all site elements to eliminate adverse impacts.

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

ENVIRONMENTAL RESOURCE MANAGEMENT COMMENTS:

VEGETATION PROTECTION: The site is supports primarily exotic vegetation.

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.*

The proposed rezoning request will remain consistent with the development patter of area. The Applicant proposes to provide additional parking to further accommodate the approved multi-use development, without exceeding maximum parking calculations. The subsequent request proposes minor adjustments to building square footage while ultimate decreasing the amount of square footage overall. To allow the best and most practical use of the land that is otherwise undevelopable, the Applicant’s request to utilize the additional land area for parking and deminimis building modification will remain a logical and orderly development pattern.

- g. **Adequate Public Facilities** – *The proposed amendment complies with Art. 2.F, Concurrency (Adequate Public Facility Standards).*

ENGINEERING COMMENTS: The Property Owner shall reconfigure this property into a legal lot of record prior to the issuance of the building permit.

PALM BEACH COUNTY HEALTH DEPARTMENT: This project has met the Florida Department of Health's requirements.

FIRE PROTECTION: Staff has reviewed this application and have no comment.

SCHOOL IMPACTS: Staff has reviewed this application and have no comment.

PARKS AND RECREATION: This is a non-residential project, therefore Parks and Recreation Department ULDC requirements do not apply.

- h. **Changed Conditions or Circumstances** – *There are demonstrated changed site conditions or circumstances provided by the Applicant’s Justification Statement that necessitate the amendment.*

The proposed MUPD is consistent with the new FLU designation and will serve the needs of the growing population surrounding the site, while maintaining consistency with developing commercial uses along the Atlantic Avenue corridor. The site has been vacant due to the land area inadvertently being left out of the legal description on previous deeds. However, historical tax records and deed

information has confirmed the parcel is an existing nonconforming legal lot of record. Although the site is unable to be developed on its own, the request to utilize the added sliver as parking area will sufficiently benefit the approved Plaza Delray MUPD development.

**CONCLUSION:** Staff has evaluated the standards listed under 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 are recommending approval as per the Conditions of Approval in Exhibits C-1 and C-2.

## CONDITIONS OF APPROVAL

### **EXHIBIT C-1: Official Zoning Map Amendment (to a Planned Development District)**

#### **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

#### ALL PETITIONS

1. Previous ALL PETITIONS Condition 1 of Resolution R-2017-501, Control No.2016-00078, which currently states:

The approved Preliminary Site Plans and Regulating Plan are dated January, 23 2017. 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.

#### Is hereby amended to read:

The approved Preliminary Site Plan is dated February 8, 2021. 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)

2. All previous Conditions of Approval applicable to the subject property, as contained in Resolution R-2017-0501 (Control 2016-00078), 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)

#### ARCHITECTURAL REVIEW

1. At time of Building Permit, the Architectural Elevations for Building C shall be submitted for review and approval by the Zoning Division. Architectural Elevations shall comply with the standards indicated in Article 5.C of the Unified Land Development Code (ULDC). Development shall be consistent with the approved Architectural Elevations, the DRO approved Final Plan, all applicable Conditions of Approval, and all ULDC requirements. (BLDGPM: ZONING - Zoning) [Note: COMPLETED] (Previous ARCHITECTURAL REVIEW Condition 1 of Resolution R-2017-501, Control No.2016-00078)

#### ENGINEERING

1. 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, 2021. 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) (Previous ENGINEERING Condition 1 of Resolution R-2017-501, Control No.2016-00078)

2. Prior to the issuance of the first building permit, the Property Owner shall provide to Florida Department of Transportation (FDOT) by deed additional right of way for the construction of a right turn lane on Atlantic Avenue at the project's entrance road. This right of way shall be a minimum of 280 feet in storage length, a minimum of twelve feet in width and a taper length of 50 feet or as approved by FDOT. The right of way shall be continued across the project entrance and shall be free and clear of all encumbrances and encroachments. Property Owner shall provide FDOT with sufficient documentation, including, at minimum, sketch and legal description of the area to be conveyed, copy of the site plan, a Phase I Environmental Site Assessment, status of property taxes, statement from Tax Collector of delinquent and pro-rata daily taxes, full owner name(s) of area to be conveyed and one of the following: title report, attorney's opinion of title, title commitment or title insurance policy, or as otherwise required and acceptable to FDOT. The Property Owner must warrant that the property being conveyed to FDOT 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 and FDOT 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. Thoroughfare Plan Road right of way conveyances shall be consistent with Palm Beach County's Thoroughfare Right of Way Identification Map and shall include where appropriate, as determined by the County Engineer, additional right of way for Expanded Intersections and corner clips. The Property Owner shall coordinate conveyance of right of way directly with FDOT and shall provide evidence to Palm Beach County Land Development Division once conveyance has been completed. [Note: COMPLETED] (Previous ENGINEERING Condition 2 of Resolution R-2017-501, Control No.2016-00078)

3. Prior to issuance of the first Certificate of Occupancy, the Property Owner shall construct and receive a satisfactory final inspection from FDOT for a right turn lane west approach on Atlantic Avenue at the project entrance. This construction shall be concurrent with the paving and drainage improvements for the site. Any and all costs associated with the construction shall be paid by the Property Owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way. (BLDGPM/CO: MONITORING - Engineering) (Previous ENGINEERING Condition 3 of Resolution R-2017-501, Control No.2016-00078)

4. Prior to issuance of the first building permit, the Property Owner shall provide to Palm Beach County sufficient public road drainage easement(s) through the project's internal drainage system, as required by and approved by the County Engineer, to provide legal positive outfall for runoff from those segments of Atlantic Avenue along the property frontage; and a maximum of an additional 800 feet of these adjacent roadway(s), unless FDOT deems this additional drainage to be unnecessary and the condition can be marked complete. The limits of this additional 800 feet of drainage shall be determined by the County Engineer. Said easements shall be no less than 20 feet in width. Portions of such system not included within roadways or waterways dedicated for drainage purposes will be specifically encumbered by said minimum 20 foot drainage easement from the point of origin, to the point of legal positive outfall. The drainage system within the project shall have sufficient water quality, water quantity and, when necessary, compensating storage capacity within this project's system as required by all permitting agencies, as well as conveyance capacity to meet the storm water discharge and treatment requirements of Palm Beach County, the applicable Drainage District, and the South Florida Water Management District, for the combined runoff from the project to accommodate the ultimate Thoroughfare Plan Road Section(s) of the included segment. Specifically, one through lane must be open during the 25-year, 3-day storm and the elevation for the 3-year, 1-day storm event shall provide sufficient freeboard to allow for efficient roadway drainage system design. If required and approved by the County Engineer, the Property Owner shall construct within the proposed drainage easements a minimum of 24 inch closed piping system and appropriate wingwall or other structures as required by and approved by the County Engineer. Elevation and location of the entire drainage system shall be approved by the County Engineer. Any and all excess fill material from excavation by Palm Beach County within said easements shall become the property of Palm Beach County which at its discretion may use this fill material. The Property Owner shall not record these required easements or related documents. After final acceptance of the location, legal sketches and dedication documents, Palm Beach County shall record all appropriate deeds and documents. (BLDGPM/CO: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 4 of Resolution R-2017-501, Control No.2016-00078)

5. The Property Owner shall design, install and perpetually maintain median landscape within the median of all abutting right of way of Atlantic Avenue. This landscaping and irrigation shall strictly conform to the specifications and standards for the County's Only Trees, Irrigation, and Sod (OTIS) program. Additional landscaping beyond OTIS requires County Engineer approval. Median landscaping installed by Property Owner shall be perpetually maintained by the Property Owner, his successors and assigns, without recourse to Palm Beach County, unless the Property Owner provides payment for maintenance as set forth in Paragraph c below.

a. The necessary permit(s) for this landscaping and irrigation shall be applied for from the Florida Department of Transportation prior to the issuance of the first building permit. (BLDGPM/CO: ENGINEERING - Monitoring) [Note: COMPLETED]

b. All installation of the landscaping and irrigation shall be completed prior to the issuance of the first certificate of occupancy. (BLDGPM/CO: ENGINEERING - Monitoring) [Note: COMPLETED]

c. Alternately, at the option of the Property Owner or if the construction of the required landscape and irrigation is not possible due to physical constraints, the Property Owner may make a contribution to

Palm Beach County's Only Trees Irrigation and Sod, OTIS program, unincorporated thoroughfare beautification program prior to the issuance of the first Building Permit. This payment option is only available if the roadway segment is included in the County's current OTIS Master Plan and shall be based on the project's front footage along Atlantic Avenue. This payment shall be in the amount and manner that complies with the schedule for such payments as it currently exists or as it may from time to time be amended. (BLDGPMPT: ENGINEERING - Monitoring) [Note: COMPLETED] (Previous ENGINEERING Condition 5 of Resolution R-2017-501, Control No.2016-00078)

6. Prior to issuance of the first building permit the Property Owner shall configure the property into a single lot of record in accordance with provisions of Article 11 of the Unified Land Development Code. (BLDGPMPT: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 6 of Resolution R-2017-501, Control No.2016-00078)

7. Prior to approval by the Development Review Officer, the Property Owner shall either provide copies of the executed shared cross access easement for access onto Atlantic Avenue or provide a conceptual approval from FDOT to allow a separate access point directly into this property. (DRO: ENGINEERING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 7 of Resolution R-2017-501, Control No.2016-00078)

8. No Building Permits shall be issued until the Property Owner makes a proportionate share payment of \$377,121.60 to widen Atlantic Ave from SR-7 to Lyons Rd from a 2-lane facility to a 4-lane divided facility . Note that while this proportionate share payment is based on proportionate cost of a specific roadway improvement, the County, in its sole discretion may apply such payment to one or more mobility improvements to regionally significant transportation facilities. The proportionate share payment shall be adjusted at the time of payment by the escalator calculation set forth in Condition 9. Any road impact fees paid by the Developer on this project prior to this proportionate share payment will be applied as a credit toward the proportionate share payment. The proportionate share payment is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility in the area.  
(BLDGPMPT: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 8 of Resolution R-2017-501, Control No.2016-00078)

9. In recognition that construction prices may change over the life of the project, the proportionate share payments included in Condition 8 above shall be subject to the following escalator calculation:

Adjusted Payment (when payment is being made) = Original Payment Amount x Cost Adjustment Factor

Where,

Original Payment Amount = Proportionate Share Payment amount specified in the Proportionate Share Agreement

Cost Adjustment Factor = (Producer Price Index (PPI) for Commodities Code ID WPUIP2312301 (month of payment))/(Producer Price Index (PPI) for Commodities Code ID WPUIP2312301 (month of Prop Share Execution))

The Bureau of Labor Statistics Producer Price Index (PPI) for Commodities (Series ID: WPUIP2312301), can be found at <http://data.bls.gov/timeseries/WPUIP2312301>.

If at the time a Proportionate Share payment is due, the Commodities Code ID WPUIP2312301 is no longer used by the United States Bureau of Labor Statistics, the Adjusted Payment will be based on the Producer Price Index for non-residential commodities then in effect. In the event such an index is no longer in use, the Adjusted Payment will be based on the United States Bureau of Labor Statistics Consumer Price Index then in effect.

(ONGOING: ENGINEERING - Engineering) (Previous ENGINEERING Condition 9 of Resolution R-2017-501, Control No.2016-00078)

10. No Building Permits for Phase II of the development (anything besides the 2,000 sf fast food restaurant with drive-through) shall be issued until the contracts have been let for the Assured

Construction improvements to widen Lyons Road from Atlantic Ave to Clint Moore Rd from 2 lanes to 4 lanes divided. (BLDGPMPT: MONITORING - Engineering) (Previous ENGINEERING Condition 10 of Resolution R-2017-501, Control No.2016-00078)

11. Prior to the issuance of the first building permit, the Property Owner shall configure the property into a legal lot of record in accordance with provisions of Article 11 of the Unified Land Development Code or as otherwise approved by the County Engineer. (BLDGPMPT: MONITORING - Engineering)

**LANDSCAPE - GENERAL**

1. A minimum of three (3) Royal Palms or a similar specie that is acceptable to the Landscape Section shall be planted adjacent to the access point along Atlantic Avenue. Palms shall have a minimum of six (6) foot of grey wood at installation. (BLDGPMPT: ZONING - Zoning) [Note: COMPLETED] (Previous LANDSCAPE - GENERAL Condition 1 of Resolution R-2017-501, Control No.2016-00078)

**PLANNING**

1. Previous PLANNING Condition 1 of Resolution R-2017-501, Control No.2016-00078, which currently states:

Per LGA-2017-001, Ordinance 2017-006 Condition 1: Development of commercial and/or office uses on the site are limited to a maximum of 38,538 square feet total.

**Is hereby amended to read:**

For the western 4.509-acre portion of the site: Per LGA-2017-001, Ordinance 2017-006 Condition 1: Development of commercial retail and/or office uses on the site are limited to a maximum of 38,538 square feet total. (ONGOING: PLANNING - Planning)

2. For the eastern 0.33-acre portion of the site: Per LGA-2021-006, Condition 1: The Commercial Low Future land use designation shall have no intensity or square footage. (ONGOING: PLANNING - Planning)

**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.

### Figure 1 - Land Use Map

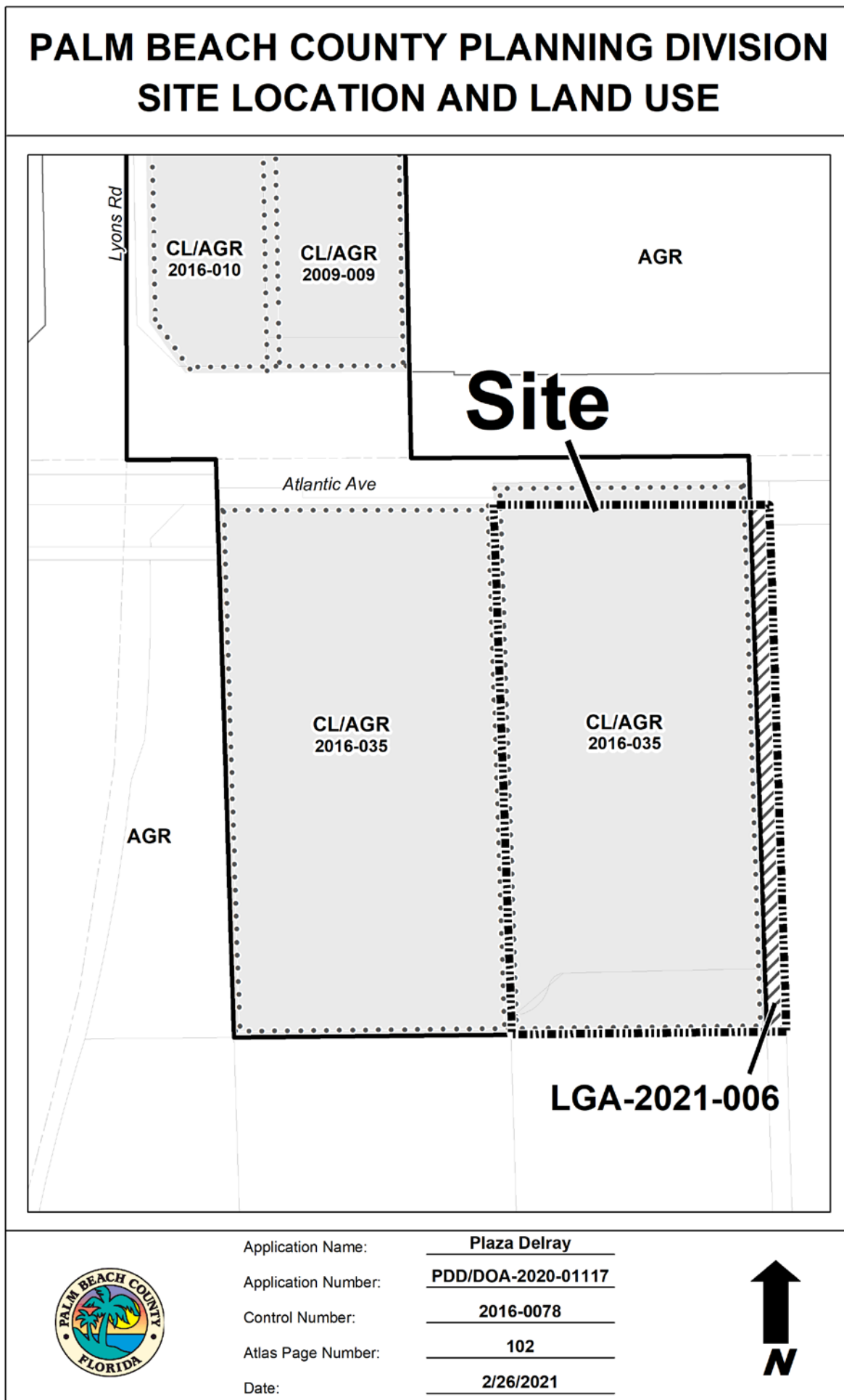
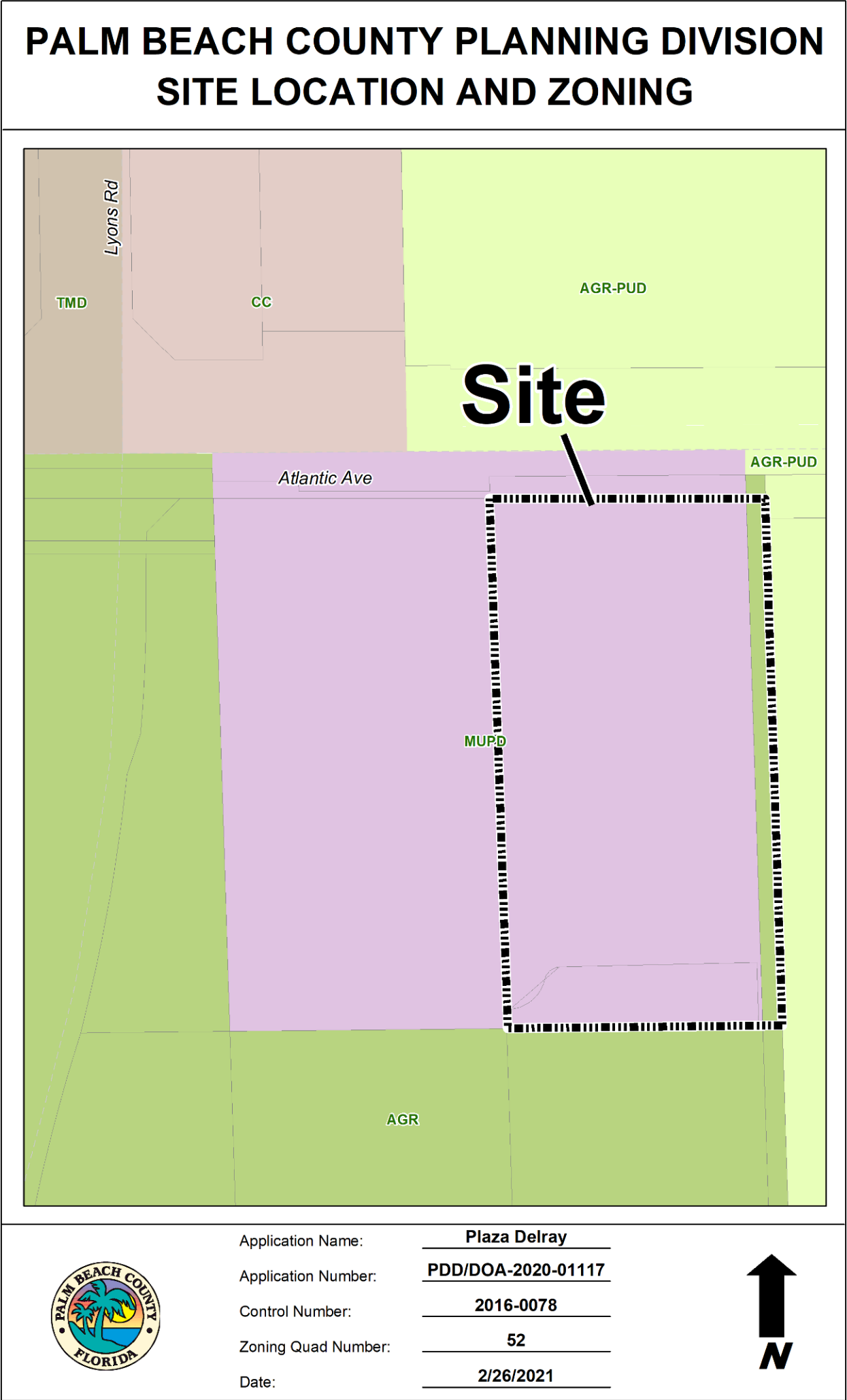


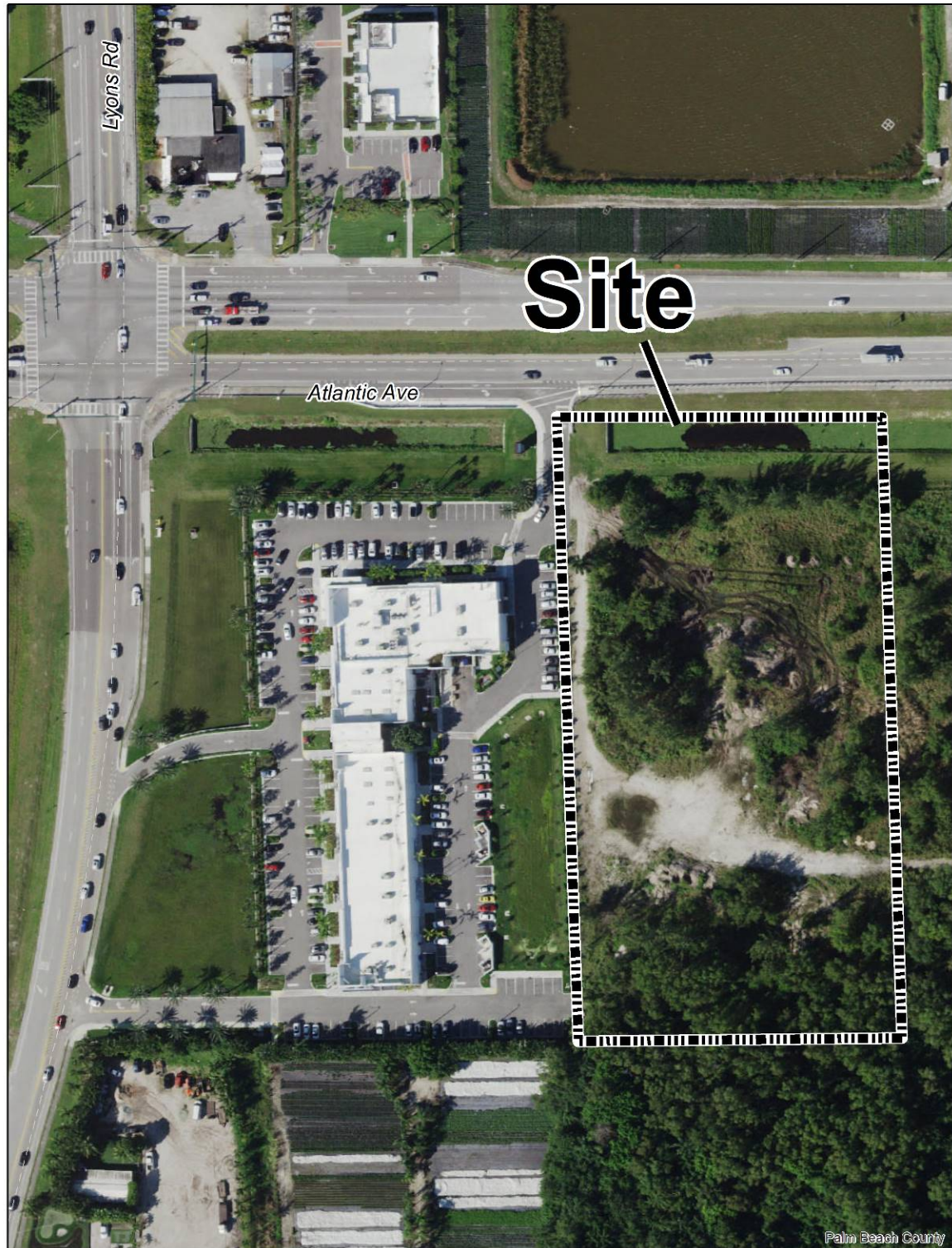
Figure 2 - Zoning Map





### Figure 3 - Aerial

## PALM BEACH COUNTY PLANNING DIVISION SITE LOCATION

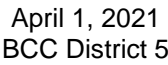


Application Name:	<u>Plaza Delray</u>
Application Number:	<u>PDD/DOA-2020-01117</u>
Control Number:	<u>2016-0078</u>
Atlas Page Number:	<u>102</u>
Date:	<u>2/26/2021</u>

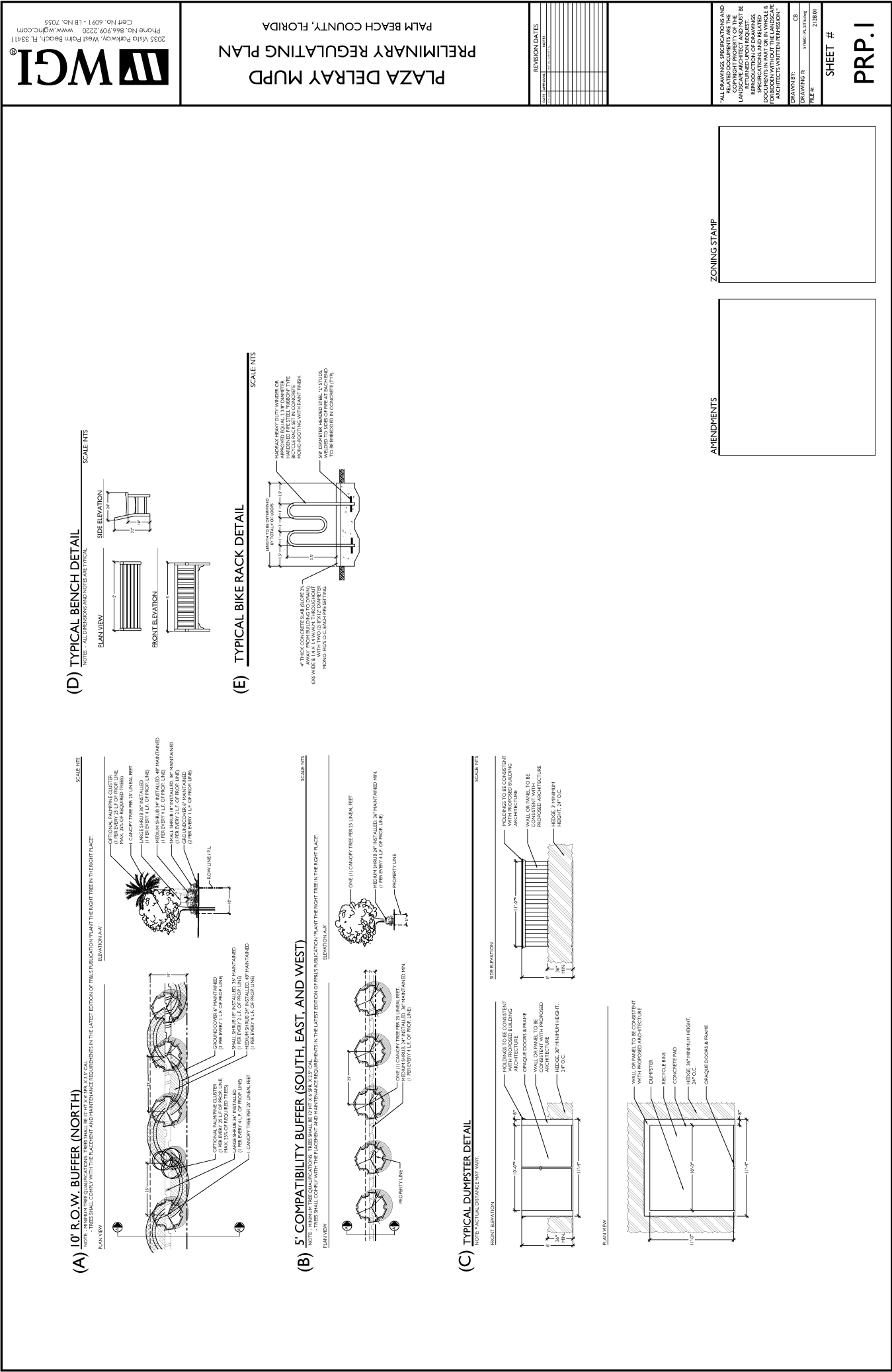




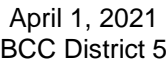
Zoning Commission  
Application No. PDD/DOA-2020-01117  
Plaza Delray



Zoning Commission  
Application No. PDD/DOA-2020-01117  
Plaza Delray

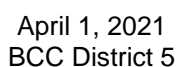


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Plaza Delray

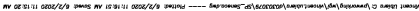




Zoning Commission  
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Plaza Delray



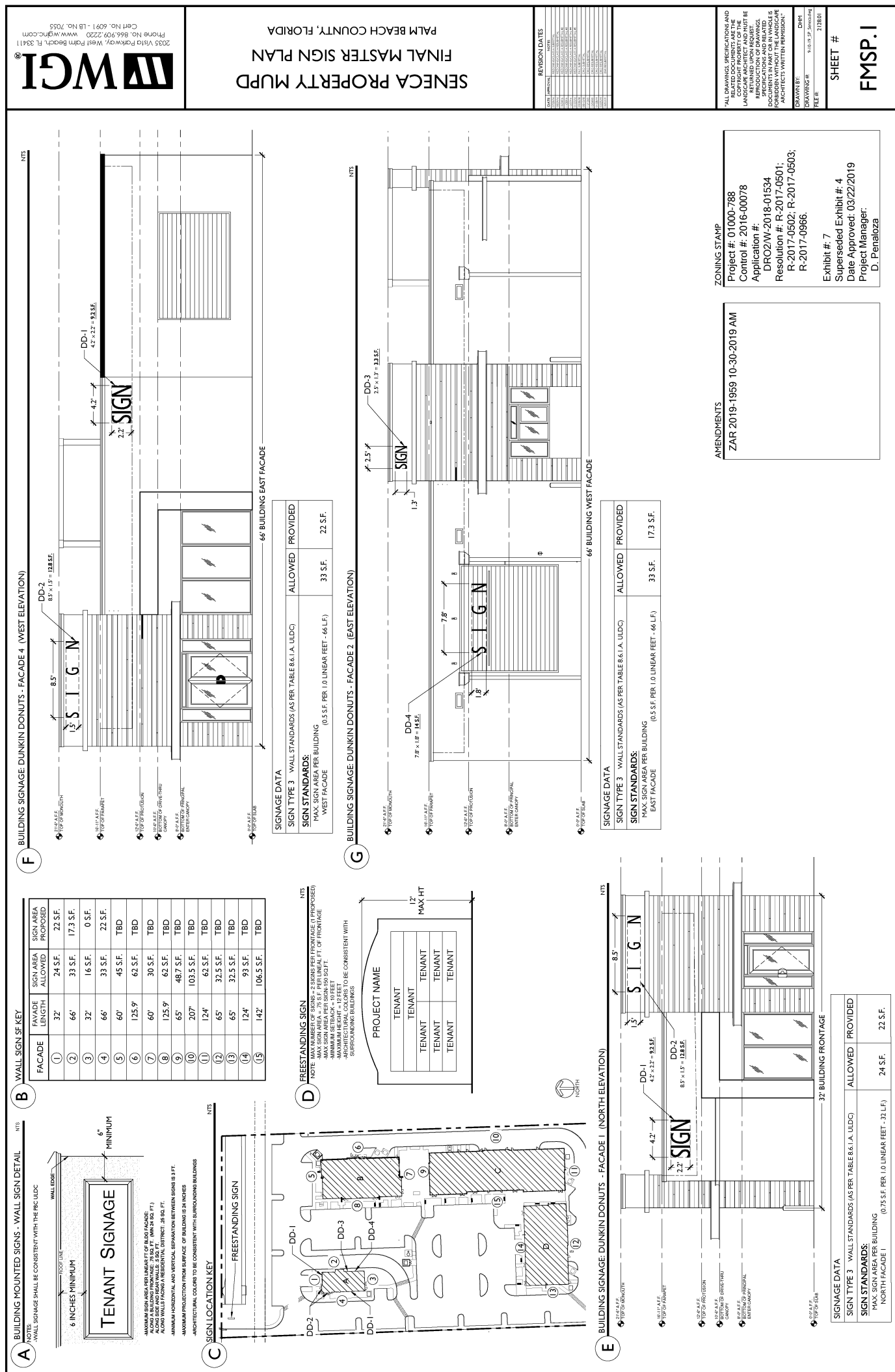
Zoning Commission  
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Plaza Delray



Zoning Commission  
Application No. PDD/DOA-2020-01117  
Plaza Delray



Zoning Commission  
Application No. PDD/DOA-2020-01117  
Plaza Delray





**Figure 12 – Approved Final Phasing Plan Sheet 1 of 1 dated October 1, 2019**

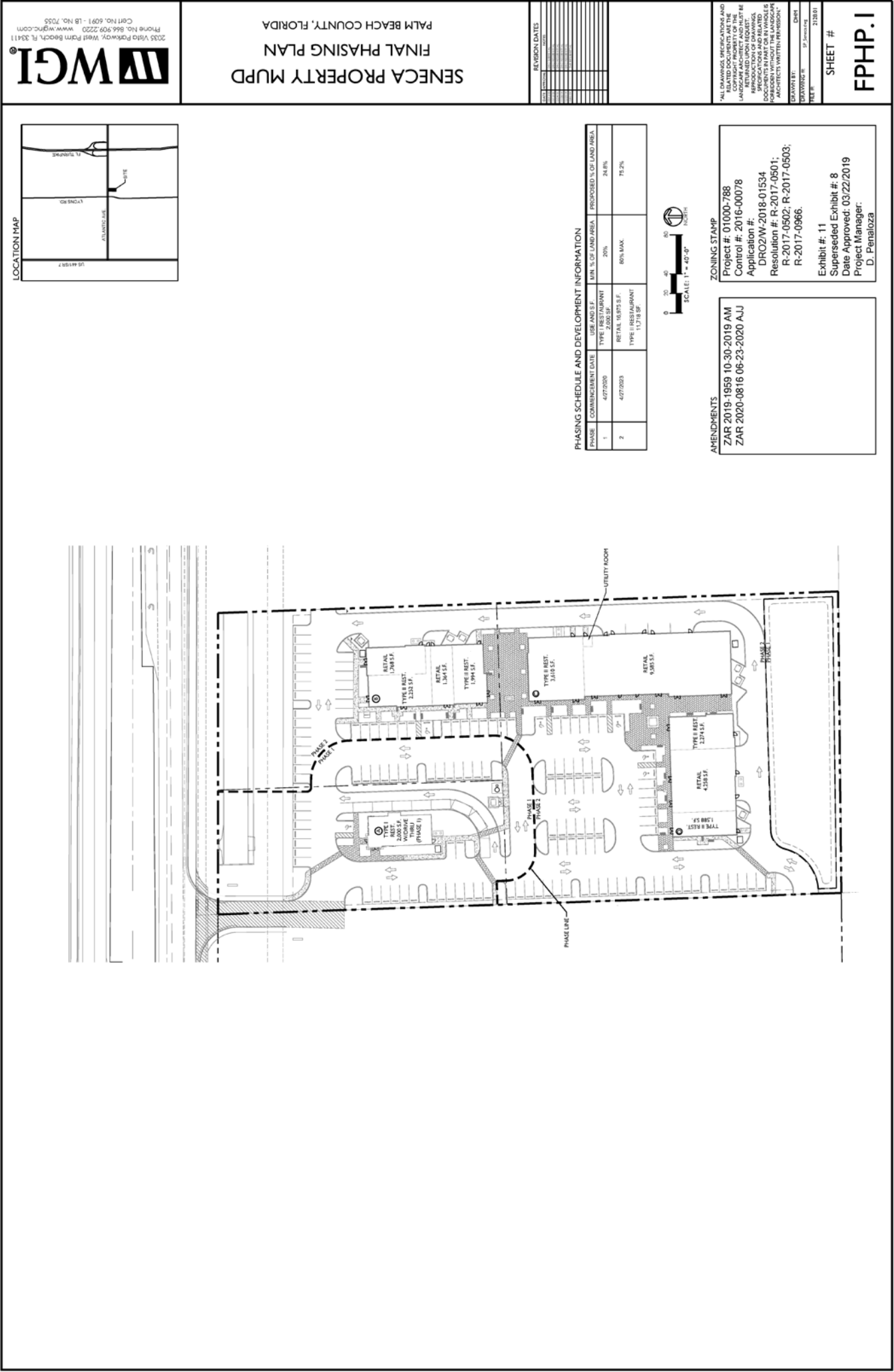


Exhibit D – Disclosure of Ownership

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 Ian Wiener Weiner, 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 *[position - e.g., president, partner, trustee]* of PEBB ATLANTIC, 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: 7900 Glades Road, Suite 600  
Boca Raton, FL 33434
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.


  
Ian Weiner, Affiant  
(Print Affiant Name)

NOTARY PUBLIC INFORMATION:

STATE OF FLORIDA  
COUNTY OF PALM BEACH

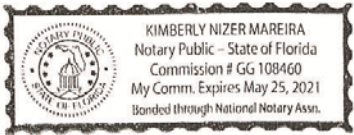
The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 4<sup>th</sup> day of June, 2020 by Ian Weiner (name of person acknowledging). He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification and did/did not take an oath (circle correct response).

Kim Mareira  
(Name - type, stamp or print clearly)

  
(Signature)

My Commission Expires on: 5/25/21

NOTARY'S SEAL OR STAMP



**EXHIBIT "A"****PROPERTY****LEGAL DESCRIPTION:**

A PORTION OF TRACT 14 OF SECTION 20, THE PALM BEACH FARMS COMPANY PLAT NO. 1, AS RECORDED IN PLAT BOOK 2, PAGE 26, ALL OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID SENECA PROPERTY MUPD; THENCE N.01°59'11"W., ALONG THE EAST LINE THEREOF, A DISTANCE OF 634.81 FEET TO A POINT OF INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF THE LAKE WORTH DRAINAGE DISTRICT L-34 CANAL, AS RECORDED IN OFFICIAL RECORD BOOK 6495, PAGE 761 OF SAID PUBLIC RECORDS, SAID RIGHT-OF-WAY LINE LYING 52.48 FEET SOUTH OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE NORTH LINE OF SECTION 20, TOWNSHIP 46 SOUTH, RANGE 42 EAST; THENCE S.89°58'57"E., ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 23.41 FEET TO A POINT OF INTERSECTION WITH THE EAST LINE OF AFORESAID TRACT 14 OF SECTION 20; THENCE S.01°51'46"E. ALONG SAID EAST LINE OF TRACT 14 OF SECTION 20, A DISTANCE OF 634.51 FEET TO THE SOUTHEAST CORNER OF SAID TRACT 14 OF SECTION 20; THENCE S.89°23'06"W. ALONG THE SOUTH LINE OF SAID TRACT 14 OF SECTION 20, A DISTANCE OF 22.04 FEET TO THE POINT OF BEGINNING. SAID LANDS SITUATE IN SECTION 20, TOWNSHIP 46 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA.

CONTAINING 14,416 SQUARE FEET/0.3309 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.

Name

Address

NONE



DISCLOSURE OF OWNERSHIP INTERESTS – APPLICANT

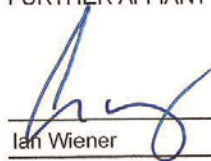
[TO BE COMPLETED AND EXECUTED ONLY WHEN THE APPLICANT IS NOT THE OWNER OF THE SUBJECT PROPERTY]

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 Ian Wiener Weiner, 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 ☒ Project Manager PEBB ATLANTIC, LLC [position—e.g., president, partner, trustee] of PEBB ATLANTIC, 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: 7900 Glades Road, Suite 600  
Boca Raton, FL 33434
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.

  
\_\_\_\_\_  
Ian Wiener, Affiant  
(Print Affiant Name)

NOTARY PUBLIC INFORMATION:

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☒ physical presence or  
☐ online notarization, this 4<sup>th</sup> day of June, 20 20 by  
Ian Weiner (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).

Kim Mareira  
(Name - type, stamp or print clearly)

  
(Signature)

My Commission Expires on: 5/25/21

NOTARY'S SEAL OR STAMP



## EXHIBIT "A"

## PROPERTY

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Name	Address
NONE	