

RESOLUTION NO. R-2018- 0619

RESOLUTION APPROVING ZONING APPLICATION DOA-2017-02214  
(CONTROL NO. 2005-00506)  
a Development Order Amendment  
APPLICATION OF Pop Delray Commons LLC,  
Tuscan Gardens of Delray Beach Management Company, LLC  
BY WGINC, AGENT  
(Tuscan Gardens of Delray Beach)

WHEREAS, the Board of County Commissioners, as the governing body of Palm Beach County, Florida, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, is authorized and empowered to consider applications relating to zoning;

WHEREAS, the notice and public hearing requirements pursuant to Article 2 (Application Processes and Procedures) of the Palm Beach County Unified Land Development Code, Ordinance 2003-067 as amended (ULDC), have been satisfied;

WHEREAS, Zoning Application DOA-2017-02214 was presented to the Board of County Commissioners at a public hearing conducted on April 26, 2018;

WHEREAS, the Board of County Commissioners has considered the evidence and testimony presented by the Applicant and other interested parties, the recommendations of the various County Review Agencies, and the recommendation of the Zoning Commission;

WHEREAS, the Board of County Commissioners pursuant to Article 2 (Application Processes and Procedures) of the ULDC is authorized and empowered to consider, approve, approve with conditions or deny the request;

WHEREAS, the Board of County Commissioners hereby incorporates by reference the Findings in the staff report addressing the Standards contained in Article 2.B (Public Hearing Process) for a Development Order Amendment;

WHEREAS, this approval is subject to Article 2.E (Monitoring), of the ULDC and other provisions requiring that development commence in a timely manner;

WHEREAS, the issuance of this Development Permit does not in any way create any rights on the part of the Applicant and/or Property Owner to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the Applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law;

WHEREAS, the Palm Beach County Survey Section may administratively correct any scrivener's errors that will not significantly impact the overall boundary of the adopted legal description; and,

WHEREAS, Article 2.B.6.C (Board Action) of the ULDC requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Zoning Application DOA-2017-02214, the Application of Pop Delray Commons LLC, Tuscan Gardens of Delray Beach Management Company, LLC, by WGINC, Agent, for a Development Order Amendment to amend the Master Plan; to modify Conditions of Approval (All Petitions, Engineering); and, to restart the commencement clock, on a parcel of land generally described as shown on the legal description in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch as indicated in EXHIBIT B, attached hereto and made a part hereof, was approved on April 26, 2018, subject to the Conditions of Approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Burdick moved for the approval of the Resolution.

The motion was seconded by Commissioner Berger and, upon being put to a vote, the vote was as follows:

Commissioner Melissa McKinlay, Mayor	- Aye
Commissioner Mack Bernard, Vice Mayor	- Aye
Commissioner Hal R. Valeche	- Aye
Commissioner Paulette Burdick	- Aye
Commissioner Dave Kerner	- Aye
Commissioner Steven L. Abrams	- Aye
Commissioner Mary Lou Berger	- Aye

The Mayor thereupon declared that the resolution was duly passed and adopted on April 26, 2018.

Filed with the Clerk of the Board of County Commissioners on April 27th, 2018.

This resolution is effective when filed with the Clerk of the Board of County Commissioners.

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

SHARON R. BOCK,  
CLERK & COMPTROLLER

BY:   
COUNTY ATTORNEY

BY:   
DEPUTY CLERK



EXHIBIT A

LEGAL DESCRIPTION

LEGAL DESCRIPTION

ALL OF THE PLAT OF TUSCAN GARDENS OF DELRAY BEACH, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 123, PAGES 162 AND 163 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA

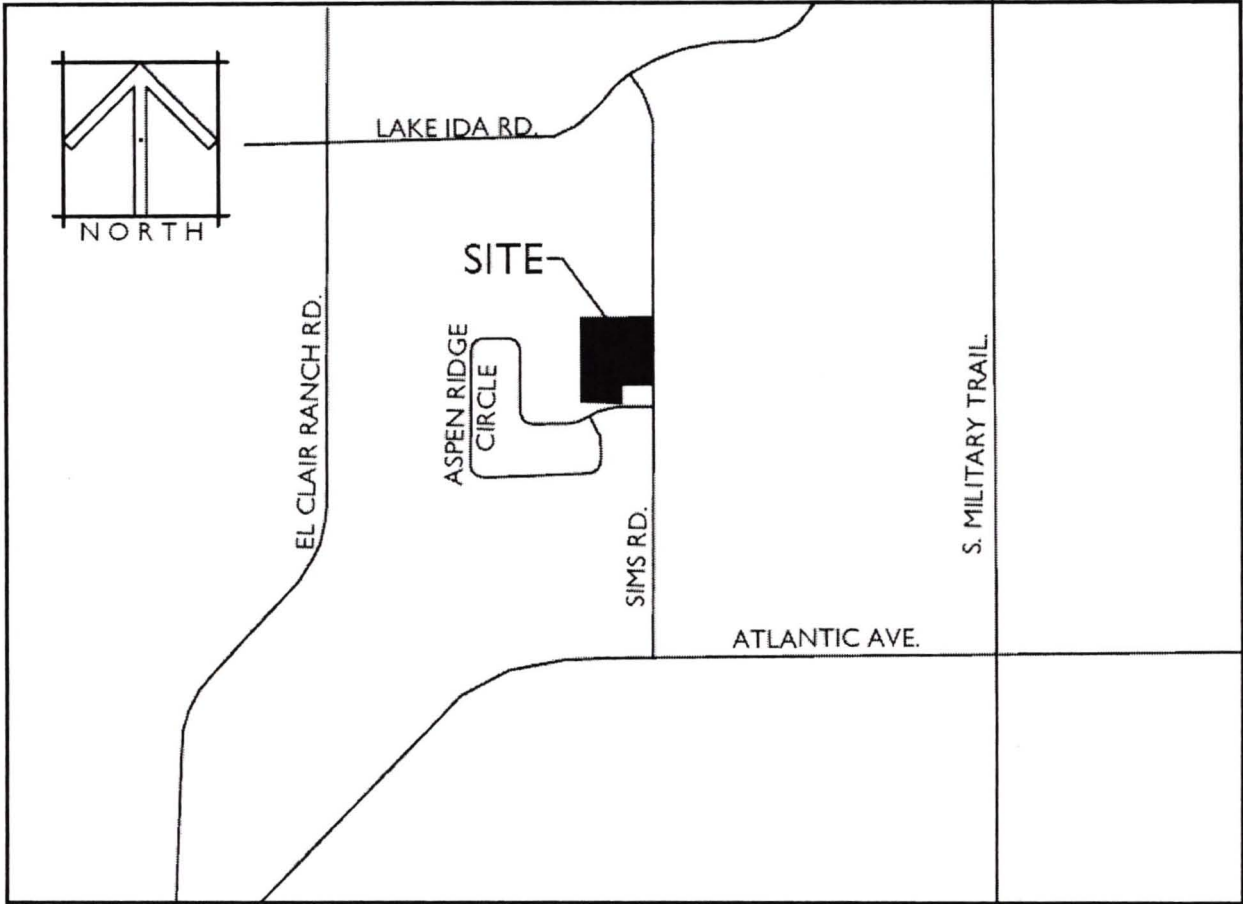
CONTAINING 7.5691 ACRES, MORE OR LESS.

EXHIBIT B

VICINITY SKETCH

LOCATION MAP

N.T.S.



## EXHIBIT C

### CONDITIONS OF APPROVAL

#### **Exhibit C-1 Development Order Amendment**

#### **ALL PETITIONS**

1. Previous ALL PETITIONS Condition 1 of Resolution R-2015-1352, Control No.2005-00506, which currently states:

The approved Preliminary Master Plan is dated July 9, 2015 and the Preliminary Regulating Plan is dated June 22, 2015. 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 Master Plan is dated December 22, 2017 and the Preliminary Regulating Plan is dated December 22, 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. (ONGOING: ZONING - Zoning)

#### **ENGINEERING**

1. Previous ENGINEERING Condition 1 of Resolution R-2015-1352, Control No.2005-00506, which currently states:

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

a. No Building Permits for the site may be issued after December 31, 2020. 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)

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

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, 2022. 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)

2. Prior to issuance of the first building permit the Property Owner shall combine the property into a single lot of record in accordance with provisions of Article 11 of the Unified Land Development Code. (BLDGPMT: MONITORING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 2 of Resolution R-2015-1352, Control No.2005-00506)

3. The Property Owner shall provide to the Palm Beach County Land Development Division a road right of way deed and all associated documents as required by the County Engineer for:

Frost Lane, twenty five (25) feet, measured from centerline of the proposed right of way on

an alignment approved by the County Engineer

All right of way deed(s) and associated documents shall be provided and approved prior to the issuance of the first building permit or within ninety (90) days of a request by the County Engineer, whichever shall occur first. Right of way conveyance shall be along the entire frontage and shall be free and clear of all encroachments and encumbrances. Property Owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments, including a topographic survey. The Property Owner must further warrant that the property being conveyed to Palm Beach County meets all appropriate and applicable environmental agency requirements. In the event of a determination of contamination which requires remediation or clean up on the property now owned by the Property Owner, the Property Owner agrees to hold the County harmless and shall be responsible for all costs of such clean up, including but not limited to, all applicable permit fees, engineering or other expert witness fees including attorney's fees as well as the actual cost of the clean up. 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 not record these required deeds or related documents. Palm Beach County will prepare a tax pro-ration. A check, made payable to the Tax Collector's Office, shall be submitted by the Property Owner for the pro-rated taxes. After final acceptance, Palm Beach County shall record all appropriate deeds and documents. (BLDGPM: MONITORING - Engineering) (Previous ENGINEERING Condition 3 of Resolution R-2015-1352, Control No.2005-00506)

4. The Property Owner shall fund the construction plans and construction of Frost Lane from the west limits of the property to Sims Road to be consistent with Palm Beach County standards for a fifty (50) right of way local street, or as approved by the County Engineer. 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.

a. Permits required for Improvements identified above shall be obtained from Palm Beach County prior to the issuance of the first Building Permit. (BLDGPM: MONITORING - Engineering) [Note: COMPLETED]

b. Construction shall be completed prior to the issuance of the first Certificate of Occupancy. (BLDGPM/CO: MONITORING - Engineering) (Previous ENGINEERING Condition 4 of Resolution R-2015-1352, Control No.2005-00506)

5. Previous ENGINEERING Condition 5 of Resolution R-2015-1352, Control No.2005-00506, which currently states:

Property Owner shall construct a five (5) foot concrete sidewalk along both sides of Frost Lane and the west side of Sims Road along the property's north and east sides, or as approved by the County Engineer. 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. These improvements shall be completed concurrently with the onsite paving and grading and shall be completed prior to the issuance of the first building permit.

**Is hereby amended to read:**

Property Owner shall construct a five (5) foot wide concrete sidewalk along both sides of Frost Lane and the west side of Sims Road along the property's north and east sides, or as approved by the County Engineer. 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. These improvements shall be completed prior to the issuance of the first certificate of occupancy. (BLDGPM/CO: MONITORING - Engineering)

6. Use of Frost Lane by tractor trailers on a regular basis to and from this project shall be prohibited. (ONGOING: ENGINEERING - Engineering)

### **LANDSCAPE - GENERAL**

1. Prior to Final Approval by the Development Review Officer, the Master and Site Plan shall be revised to show, along with other buffer requirements, a Type 2 Incompatibility Buffer along the interior of the recreation pod. (DRO: ZONING - Zoning) [Note: COMPLETED] (Previous LANDSCAPE - GENERAL Condition 1 of Resolution R-2015-1352, Control No.2005-00506)

2. All preserved trees (including canopy trees, pines or palms) are required to be protected with tree barriers during all stages of construction. Permanent tree protection devices including, but not limited to: tree wells, retaining walls, shall be installed for the preservation of trees. (ONGOING: ZONING - Zoning) (Previous LANDSCAPE - GENERAL Condition 1 of Resolution R-2015-1351, Control No.2005-00506)

3. Prior to the issuance of a Building Permit, the Property Owner shall submit a Landscape Plan to the Landscape section for review and approval. The Plan(s) shall be prepared in compliance with all landscape related Conditions of Approval as contained herein. (BLDGPM: BUILDING DIVISION - Zoning) (Previous LANDSCAPE - GENERAL Condition 2 of Resolution R-2015-1352, Control No.2005-00506)

4. A landscaping inspection shall be completed prior to the issuance of any tree removal or building permits to ensure preserved trees are properly marked and protection devices are installed. (BLDGPM: ZONING - Zoning) (Previous LANDSCAPE - GENERAL Condition 2 of Resolution R-2015-1351, Control No.2005-00506)

### **PLANNED DEVELOPMENT**

1. Prior to Final Approval by the Development Review Officer, the Master Plan shall be revised to remove any indication of interior driveways and sidewalks from the Master Plan and relocate the Frost Lane access 90 feet east of the western property line. (DRO: ZONING - Zoning) [Note: COMPLETED] (Previous PLANNED DEVELOPMENT Condition 1 of Resolution R-2015-1352, Control No.2005-00506)

2. Prior to Final Plan approval by the Development Review Officer, the Site Plan shall be revised to relocate the service and emergency access along Frost Lane. The centerline of the access shall be a minimum of 90 feet east of the western property line. (DRO: ZONING - Zoning) (Previous PLANNED DEVELOPMENT Condition 2 of Resolution R-2015-1352, Control No.2005-00506)

### **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) (Previous COMPLIANCE Condition 1 of Resolution R-2015-1351, Control No.2005-00506)

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) (Previous COMPLIANCE Condition 2 of Resolution R-2015-1351, Control No.2005-00506)

**DISCLOSURE**

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