

RESOLUTION NO. R-2023- 1421

RESOLUTION APPROVING ZONING APPLICATION DOA/CA/W-2022-00995
(CONTROL NO. 2005-00452)
a Development Order Amendment
APPLICATION OF KT Boynton Tropical LLC
BY Cotleur & Hearing, Inc., AGENT
(Tropical World Nursery)

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/CA/W-2022-00995 the Application of KT Boynton Tropical LLC, by Cotleur & Hearing, Inc., Agent, for a Development Order Amendment to reconfigure the Master and Site Plans; add and delete uses; and to modify Conditions of Approval on 8.94 acres; a Class A Conditional Use to allow a Congregate Living Facility on 8.94 acres; and a Type 2 Waiver to reduce the separation between Congregate Living Facilities on 8.94 acres was presented to the Board of County Commissioners at a public hearing conducted on September 28, 2023;

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 Processes) 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/CA/W-2022-00995, the Application of KT Boynton Tropical LLC, by Cotleur & Hearing, Inc., Agent, for a Development Order Amendment to reconfigure the Master and Site Plans; add and delete uses; and to modify Conditions of Approval on 8.94 acres, 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 September 28, 2023, subject to the Conditions of Approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Marino moved for the approval of the Resolution.

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

Commissioner Gregg K. Weiss, Mayor	- Aye	Aye
Commissioner Maria Sachs, Vice Mayor	- Aye	
Commissioner Maria G. Marino	- Aye	
Commissioner Michael A. Barnett	- Aye	
Commissioner Marci Woodward	- Aye	
Commissioner Sara Baxter	- Aye	
Commissioner Mack Bernard	- Aye	

The Mayor thereupon declared that the resolution was duly passed and adopted on September 28, 2023.

Filed with the Clerk of the Board of County Commissioners on October 17th, 2023

This resolution shall not become effective until the Small Scale Land Use Amendment No. SCA-2023-00013 is effective.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

JOSEPH ABRUZZO,
CLERK & COMPTROLLER

BY: 
COUNTY ATTORNEY

BY: 
DEPUTY CLERK


EXHIBIT A

LEGAL DESCRIPTION

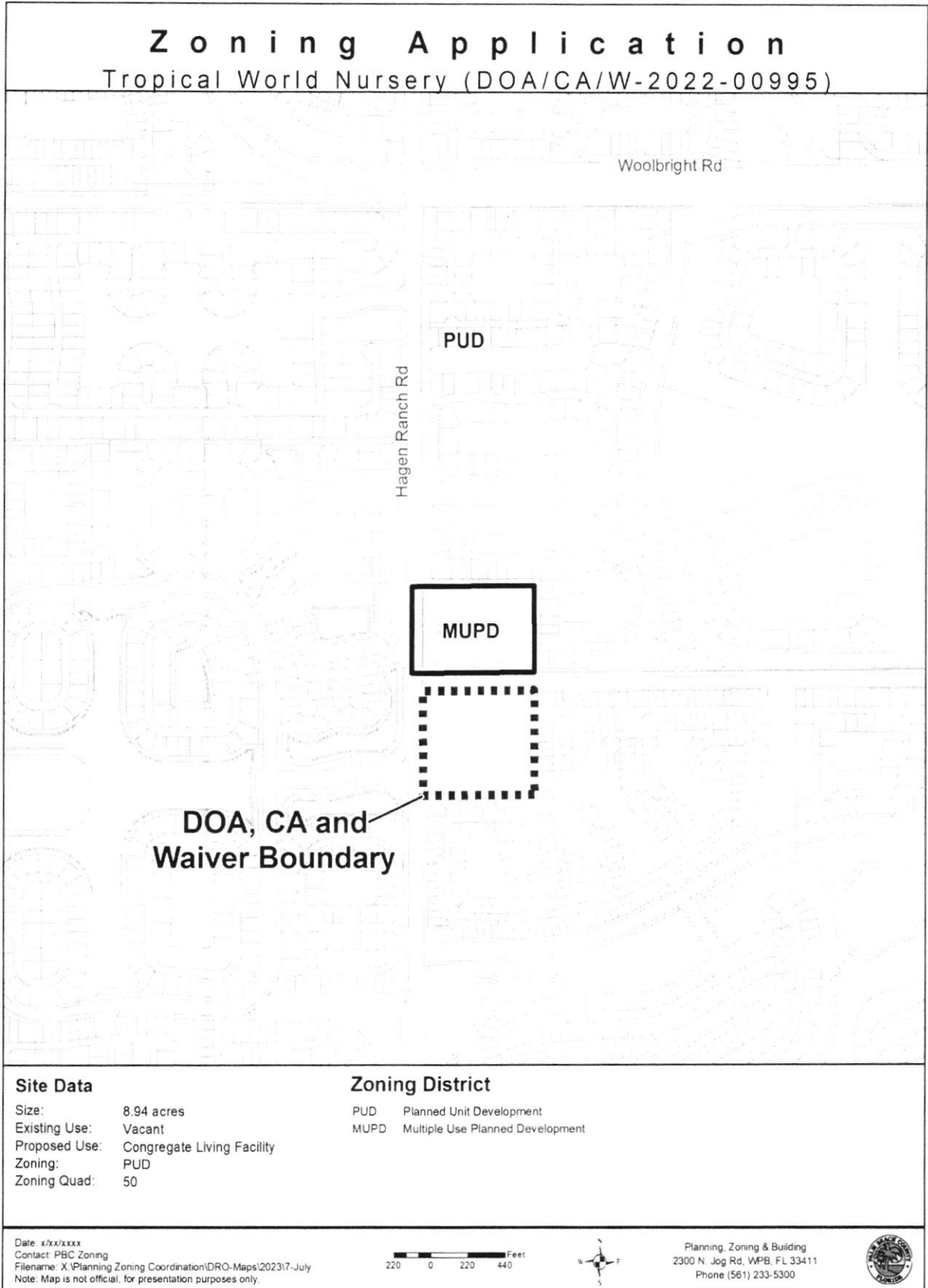
TRACTS 72, 71 AND THE WEST 30 FEET OF TRACT 70, INCLUSIVE, BLOCK 58, PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. LESS AND EXCEPT THE NORTH 70 FEET THEREOF AND THE WEST 30 FEET OF SAID TRACT 72, BLOCK 58.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA.

CONTAINING 389,421 SQUARE FEET OR 8.939 ACRES MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS, COVENANTS, AND RIGHTS-OF-WAY OF RECORD.

EXHIBIT B
VICINITY SKETCH



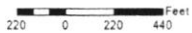
Site Data

Size: 8.94 acres
 Existing Use: Vacant
 Proposed Use: Congregate Living Facility
 Zoning: PUD
 Zoning Quad: 50

Zoning District

PUD Planned Unit Development
 MUPD Multiple Use Planned Development

Date: x/xx/xxxx
 Contact: PBC Zoning
 Filename: X:\Planning Zoning Coordination\DR0-Maps\2023\7-July
 Note: Map is not official, for presentation purposes only.



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



EXHIBIT C

CONDITIONS OF APPROVAL

Development Order Amendment

ALL PETITIONS

1. Previous ALL PETITIONS Condition 1 of Resolution R-2010-673, Control No.2005-00452, which currently states:

All previous conditions of approval applicable to the subject property, as contained in Resolution R-2006-0522 (Control 2005-452), and R-2006-0742 (Control 2005-452) 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 (ULDC) and the Board of County Commissioners or Zoning Commission, unless expressly modified.

Is hereby amended to read:

All previous conditions of approval applicable to the subject property, as contained in Resolution R-2010-0673 (Control 2005-452) 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 (ULDC) and the Board of County Commissioners unless expressly modified. (ONGOING: MONITORING - Zoning)

2. Previous ALL PETITIONS Condition 2 of Resolution R-2010-673, Control No.2005-00452, which currently states:

The approved preliminary master plan is dated January 15, 2010. Modifications to the development order inconsistent with the conditions of approval, or changes to the uses or site design beyond the authority of the DRO as established in the ULDC, 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 August 24, 2023, and the Preliminary Regulating Plan is dated May 22, 2023. Modifications to the development order inconsistent with the conditions of approval, or changes to the uses or site design beyond the authority of the DRO as established in the ULDC, must be approved by the Board of County Commissioners. (ONGOING: ZONING - Zoning)

ARCHITECTURAL REVIEW

1. Previous ARCHITECTURAL REVIEW Condition 1 of Resolution R-2010-673, Control No.2005-00452, which currently states:

Prior to final approval by the Development Review Officer (DRO), architectural elevations for any project school bus shelter, gazebo, and cabana/pool area shall be submitted for review and approval by the Architectural Review section.

Is hereby amended to read:

Prior to final approval by the Development Review Officer (DRO), architectural elevations for any gazebo, and cabana/pool area shall be submitted for review and approval. (DRO: ZONING - Zoning)

ENGINEERING

1. Previous ENGINEERING Condition 1 of Resolution R-2010-673, Control No.2005-00452, which currently states:

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

No Building Permits for the site may be issued after January 1, 2009. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Article 2, Section E of the Unified Land Development Code. (DATE: MONITORING-Eng)
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, 2014. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Article 2, Section E of the Unified Land Development Code. (DATE: MONITORING-Eng)

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, 2026, or as amended. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Art. 2.E of the Unified Land Development Code. (DATE: MONITORING - Engineering)

2. Previous Condition E2 of Resolution R-2006-522, Control No. 2005-452, which currently states:

On or before June 1, 2007 the property owner shall convey to Palm Beach County sufficient 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 Hagen Ranch Road along the property frontage; and a maximum 800 feet of these adjacent roadway(s). 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 retention/detention, Compensating storage within this projects retention system as required by all permitting agencies, and conveyance capacity to meet the storm water discharge and treatment requirements of Palm Beach County and the applicable Drainage District, as well as 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. 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. (DATE:MONITORING-Eng)

Is hereby deleted. [Reason: No Longer Required] (DATE: MONITORING - Engineering)
[Note: COMPLETED] (Previous ENGINEERING Condition 2 of Resolution R-2010-673, Control No.2005-00452)

3. Landscape Within the Median of Hagen Ranch Road

a. The property owner shall design, install and perpetually maintain the median landscaping within the median of all abutting right of way of Hagen Ranch Road. 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 Board of County Commissioner's 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 property owner provides payment for maintenance as set forth in Paragraph d below.

b. The necessary permit(s) for this landscaping and irrigation shall be applied for prior to the issuance of the first building permit. (BLDG PERMIT: MONITORING-Eng)

c. All installation of the landscaping and irrigation shall be completed prior to the issuance of the first certificate of occupancy. (CO: MONITORING -Eng)

d. At the property owner's option, when and if the County is ready to install OTIS on the surrounding medians of this roadway adjacent to the property owner installed landscaping, payment for the maintenance may be provided to the County. The payment shall be in the amount and manner that complies with the schedule for such payments that exists on the date payment is made. Once payment has been provided, Palm Beach County shall assume the maintenance responsibility for the OTIS landscaping and irrigation that has been installed by the property owner. The property owner shall first be required to correct any deficiencies in the landscaping and irrigation. This option is not available to medians with additional landscaping beyond OTIS standards, unless those medians are first brought into conformance with OTIS standards by the property owner.

e. Alternately, at the option of the property owner, and prior to the issuance of a Building Permit, the property owner may make a contribution to the County's Only Trees Irrigation and Sod, OTIS program, unincorporated thoroughfare beautification program. This payment, for the County's installation of landscaping and irrigation on qualifying thoroughfares shall be based on the project's front footage along Hagen Ranch Road. 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. [Note: COMPLETED] (Previous ENGINEERING Condition 3 of Resolution R-2010-673, Control No.2005-00452)

4. Prior to technical compliance for the first plat, the property owner shall convey a roadway construction easement to Palm Beach County. This roadway construction easement shall contain an isosceles trapezoid connecting the required corner clips across this property owners road right of way. Construction within this easement shall conform to Palm Beach County Standards. (TC: ENGINEERING - Engineering) [Note: COMPLETED] (Previous ENGINEERING Condition 4 of Resolution R-2010-673, Control No.2005-00452)

5. Any and all costs associated with the signal modification at Valencia Lakes Way/Tropical World Way and Hagen Ranch Rd intersection 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. Construction shall be completed prior to the issuance of the first Certificate of Occupancy.

a. No Building Permits shall be issued until the Property Owner provides acceptable surety to the Traffic Division in an amount as determined by the Director of the Traffic Division. (BLDGPMT: MONITORING - Engineering)

b. Signal modifications shall be completed prior to the issuance of the first Certificate of Occupancy (BLDGPMT/CO: MONITORING - Engineering)

c. In order to request release of the surety for the traffic signal modifications at the above intersection, the Property Owner shall provide written notice to the Traffic Division stating that the signal modifications have been completed and requesting that a final inspection be conducted. After final inspection and acceptance, the Traffic Division shall return the surety within 30 days. (ONGOING: ENGINEERING - Engineering)

6. 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. (BLDGPMT: MONITORING - Engineering)

HEALTH

1. Previous HEALTH Condition 1 of Resolution R-2010-673, Control No.2005-00452, which currently states:

Prior to the issuance of a Building Permit, the property owner shall provide written verification issued by the Florida Department of Environmental Protection affirming that environmental contamination assessment and if necessary cleanup of the site are satisfactorily addressed, thus reducing the potential for exposure of construction workers and future residents to any contaminated soil or polluted water.

Is hereby amended to read:

Prior to the issuance of a Building Permit, the property owner shall provide written documentation that the property owner is addressing or has addressed requirements of the Florida Department of Environmental Protection (FDEP) pursuant to the FDEP letter dated July 24, 2023, provided that if residual arsenic concentrations remain above levels that are protective for workers, a soil management plan and health and safety plan will be prepared and implemented to provide protective measures. (BLDGPMT: MONITORING - Health Department)

2. Prior to the issuance of a Building Permit, the property owner must submit results of an asbestos containing materials (ACM) survey to the Palm Beach County Health Department. (BLDGPMT: MONITORING - Health Department) [Note: COMPLETED] (Previous HEALTH Condition 2 of Resolution R-2010-673, Control No.2005-00452)

3. Prior to the final plan approval by the Development Review Officer, the property owner must submit all Site Assessment Reports and Remedial Action Plan(s) to the Palm Beach County Health Department. All such reports and plans must be signed and sealed by the appropriate registered professional pursuant to Rule 62770.690, FAC (DRO: HEALTH DEPARTMENT - Health Department) [Note: COMPLETED] (Previous HEALTH Condition 3 of Resolution R-2010-673, Control No.2005-00452)

LANDSCAPE - GENERAL

1. 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 shall be prepared in compliance with all landscape related conditions of approval as contained herein. (BLDGPMT: ZONING - Zoning) (Previous LANDSCAPE - GENERAL Condition 1 of Resolution R-2010-673, Control No.2005-00452)

2. A minimum of seventy-five (75) percent of canopy trees to be planted in the landscape buffers shall be native and meet the following minimum standards at installation:

- a. tree height: fourteen (14) feet;
- b. trunk diameter: to meet grade and standards;
- c. canopy diameter: seven (7) feet diameter shall be determined by the average canopy radius measured at three (3) points from the trunk to the outermost branch tip. Each radius shall measure a minimum of three and one-half (3.5) feet in length; and,
- d. credit may be given for existing or relocated trees provided they meet ULDC requirements. (BLDGPMT: ZONING - Zoning) (Previous LANDSCAPE - GENERAL Condition 2 of Resolution R-2010-673, Control No.2005-00452)

3. A group of three (3) or more palms may not supersede the requirement for a canopy tree in that location, unless specified herein. (BLDGPMT: ZONING - Zoning) (Previous LANDSCAPE - GENERAL Condition 3 of Resolution R-2010-673, Control No.2005-00452)

4. Field adjustment of berm and plant material locations may be permitted to provide pedestrian sidewalks/bike paths and to accommodate transverse utility or drainage easements crossings and existing vegetation. (BLDGPMT: ZONING - Zoning) (Previous LANDSCAPE - GENERAL Condition 4 of Resolution R-2010-673, Control No.2005-00452)

LANDSCAPE - PERIMETER-ZONING - LANDSCAPING ALONG THE WEST PROPERTY LINE (ABUTTING HAGAN RANCH ROAD)

5. (Previous LANDSCAPE - PERIMETER Condition 5 of Resolution R-2010-673, Control No.2005-00452) which currently states:

In addition to code requirements and the proposed landscaping buffer along the west property line shall be upgraded to include:

- a. a continuous three (3) foot high berm;
- b. an opaque concrete wall to be located on the plateau of the berm. Both sides of the wall shall be given a finished architectural treatment that is consistent with the color and style of the principal structure. Shop drawings of the wall shall be reviewed and approved by the Arch Review/Landscape Section prior to the issuance of a building permit. (BLDG/PMT: ZONING - Zoning)

Is hereby deleted: [Reason - Redesign of the site].

LANDSCAPE - PERIMETER-ZONING – LANDSCAPING ALONG THE PERIMETER OF THE PROPERTY

6. In order to implement policies for a sustainable land use pattern, where palms or pines are required, pursuant to Article 7, no more than 25% shall be planted as Palms. The Property Owner shall use Pines or canopy trees. (ONGOING/BLDG PERMIT: ZONING – Zoning)

PALM TRAN

1. Prior to Plat Recordation or issuance of the first Building Permit, whichever shall first occur, the property owner shall convey and/or dedicate to Palm Beach County an easement for a Bus Stop Boarding and Alighting Area in a form with terms and conditions approved by Palm Tran. Supporting documentation, including but not limited to a location sketch, legal description, affidavit of ownership, attorney title opinion and other related documents as deemed necessary by Palm Tran is required. (PLAT: ENGINEERING - Palm-Tran) (Previous PALM TRAN Condition 1 of Resolution R-2010-673, Control No.2005-00452)

2. The location of an easement for a Bus Stop Boarding and Alighting Area, subject to the approval of Palm Tran shall be shown on the Master Plan and/or site plan prior to final approval of the Development Review Officer (DRO). The purpose of this easement is for the future construction of mass transit infrastructure in a manner acceptable to Palm Tran. (DRO: PALM-TRAN - Palm-Tran) (Previous PALM TRAN Condition 2 of Resolution R-2010-673, Control No.2005-00452)

PARKING

1. At time of Final approval by the Development Review Officer, the site plan shall be revised to indicate a minimum of forty parking spaces, as grass parking spaces. (DRO: ZONING - Zoning)

2. Prior to Final approval by the Development Review Officer, the plan shall be revised to delete the four parking spaces that are adjacent to the northwest property line. (DRO: ZONING - Zoning)

PLANNING

1. Per SCA-2023-013, condition 1. Development of the site as a Congregate Living Facility is limited to a maximum of 256 beds/ residents. Any other residential use is limited to the Low Residential, 3 units per acre (LR-3) designation. (ONGOING: PLANNING - Planning)

2. Per SCA-2023-013, condition 2. Development of the site shall be limited to a maximum of three stories in height. (ONGOING: PLANNING - Planning)

SCHOOL BOARD

1. Previous SCHOOL BOARD Condition 1 of Resolution R-2010-673, Control No.2005-00452, which currently states:

Prior to the issuance of the first Certificate of Occupancy (CO), the school bus shelter shall

be constructed by the petitioner in a location and manner acceptable to the Palm Beach County School Board. Provisions for the bus shelter shall include, at a minimum, a covered area, continuous paved pedestrian and bicycle access from the subject property or use, to the shelter. Maintenance of the bus shelter(s) shall be the responsibility of the residential property owner. (CO: MONITORING - School Board)

Is hereby deleted. [REASON: This site is a CLF and is not the typical residential development that would require a school bus shelter.]

2. Previous SCHOOL BOARD Condition 2 of Resolution R-2010-673, Control No.2005-00452, which currently states:

The property owner shall post a notice of annual boundary school assignments for students from this development. A sign 11" X 17" shall be posted in a clear and visible location in all sales offices and models with the following:

"NOTICE TO PARENTS OF SCHOOL AGE CHILDREN"

School age children may not be assigned to the public school closest to their residences. School Board policies regarding levels of service or other boundary policy decisions affect school boundaries. Please contact the Palm Beach County School District Boundary Office at (561) 434-8100 for the most current school assignment(s). (Previous Condition SCHOOL BOARD 2 of Resolution R-2006-0522, Control No. 2005-452)
(ONGOING: SCHOOL BOARD - School Board)

Is hereby deleted. [REASON: This site is a CLF and is not the typical residential development that would generate K-12 public school students.]

UTILITIES

1. If any relocations/modifications to the County's existing facilities are required that are a direct or indirect result of the development, the developer shall pay for the complete design and construction costs associated with these relocations/modifications. (ONGOING: PBC WATER UTILITIES - PBC Water Utilities) (Previous UTILITIES Condition 1 of Resolution R-2010-673, Control No.2005-00452)

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: ZONING - 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: ZONING - Zoning)

DISCLOSURE

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