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**Fifth Third Bank
5070 W. Atlantic Avenue
Delray Commons
Master Development Plan Waivers
Justification Statement**

KP Delray, LLC ("Applicant"), is the owner of +/- 8.37-acres of land known as the Delray Commons Shopping Mall. It is comprised of two parcels with addresses of 5024 West Atlantic Avenue and 5070 West Atlantic Avenue and Parcel Control Numbers of 12424614240010000 and 12424614240020000 (collectively the "Property"). Located on the southwest corner of the intersection of West Atlantic Avenue and South Military Trail in the City of Delray Beach ("City"), the Property has a future land use map ("FLUM") designation of General Commercial ("GC") and base zoning designation of Planned Commercial ("PC") and overlay zoning designation of the Four Corners Overlay District. These zoning designations mean the Property is subject to a master development plan.

The shopping center is going through significant improvements with a new Sprouts Farmers Market and adjacent commercial spaces already approved and under construction serving as the anchor of the facility, and a fairly new, existing Taco Bell drive thru restaurant on the north side of the site as an outparcel. In addition, Applicant has entered into a lease with Fifth Third Bank to develop a new, 1,820 square foot bank branch with a small drive thru on a vacant grassy area on the north side of the shopping center directly west of the Taco Bell outparcel. To allow for the development of the Fifth Third Bank, Applicant must obtain approval of a site plan for the bank area and an amendment to the "Delray Commons Master Development Plan."

In association with the master development plan amendment, Applicant has identified the need to request two related waivers from the City's Land Development Regulations ("Code"). Due to site constraints and challenges created by renovating an old shopping center, Applicant must request the following waivers:

- 1.) from Code Section 4.4.9 (G)(3)(e)(1)(a) to allow for 22.83% pervious area where the Code calls for 25% pervious area in the Four Corners Overlay District; and
- 2.) from LDR Section 4.4.9 (F)(3)(c)(1) to allow for impervious lot coverage of 77.17% where the Code caps lot coverage/impervious area within the Four Corners Overlay District to 75%.

These waivers are necessary because the Applicant is redeveloping an old shopping center property with various existing site constraints, nonconformities, and established adjacent development, access points, and driveway configurations. It is commonly the case for renovation of an old commercial site to have certain site features that create challenges with coming into full Code compliance. In this case, Applicant is requesting relief to develop a new Fifth Third bank branch which will cause the master development plan to have slightly more lot coverage and slightly less landscaped area than permitted by Code. These waivers should be granted because they will help facilitate the further redevelopment of this shopping center, promote business activity in the Four Corners Overlay District, and the requested relief is minor and being mitigated with enhanced landscaping throughout the shopping center.

Per Section 2.4.7(B)(5) of the Code, Applicant must demonstrate compliance with the below criteria to receive approval for a waiver request. Each of the criteria are listed below in bold with Applicant's responses in italics. Both waivers are discussed together as they are interrelated.

1. The waiver request shall not adversely affect the neighboring area;

The proposed waivers will not adversely affect the neighboring area. The plans show the master development plan with have slightly more impervious area and slightly less pervious area than allowed per Code. The difference will not be appreciable or visible, as the site is an existing shopping center that is undergoing a massive upgrade with brand new landscaping throughout. If anything, neighboring areas will be positively affected by the overall project and associated waivers as they will pave the way for redevelopment of a thriving new shopping center with a drive thru bank, which collectively are neighborhood serving uses. From a technical perspective, the marginal reduction of required pervious area will not create any stormwater drainage issues, as Petitioner will address all drainage requirements on site.

2. The waiver request shall not significantly diminish the provision of public facilities;

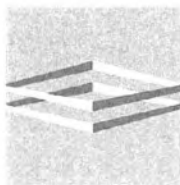
Similar to above, the proposed waivers will not significantly diminish the provision of public facilities. The minor deviation from required pervious and impervious areas will simply not have a meaningful impact on public facilities. The site is undergoing redevelopment which includes demolishing the prior shopping center on site. With the redevelopment, the new structures on site will have either a similar or reduced draw on public facilities such as water and sewer demand as the redevelopment will allow for new, modern structures.

3. The waiver request shall not create an unsafe situation;

The waiver requests will not create an unsafe situation. The miniscule difference in open space and lot coverage will not create any safety issues. Proposed vehicular use areas and pedestrian spaces will meet Code and provide for safe access. The proposed master plan will provide for landscaping islands and numerous tree plantings to help reduce the heat island effect in the parking lot. Overall, the master plan shows over 80,000 square feet of pervious, landscaped areas.

4. The waiver request does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

Granting the waiver requests will not result in the grant of a special privilege in that similar waivers would be granted under similar circumstances to other property owners. In fact, similar waivers have been granted for other projects. Granting these waivers will help foster conditions for redevelopment and reinvestment in an aging shopping center, which is certainly a worthwhile policy approach. Waivers such as this would likely be granted to other older shopping centers as a way to help encourage their improvement or redevelopment. As this shopping center is constrained in size and space by other existing adjacent development, allowing for minor flexibility with specific dimensional requirements such as maximum impervious space and minimum pervious space is reasonable under the circumstances and should not be viewed as a special privilege.



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**Fifth Third Bank
5070 W. Atlantic Ave.
Delray Commons
Master Development Plan Modification, Class V Site Plan &
Master Development Plan Waivers
Justification**

KP Delray, LLC ("Applicant"), is the owner of a +/- 1.18-acre parcel of land at 5070 W. Atlantic Ave. (PCN: 12424614240020000) ("Property"), which is located near the southwest corner of the intersection of W. Atlantic Avenue and S. Military Trail in the City of Delray Beach ("City"). The Property has a future land use map ("FLUM") designation of General Commercial ("GC") and is zoned Planned Commercial ("PC"). The Property is currently developed with a 2,053 square foot Taco Bell restaurant and is located within the Delray Commons Shopping Center. The Applicant is proposing to develop a 1,820 square foot bank building with a drive-thru facility on the vacant portion of the parcel located to the west of the existing Taco Bell restaurant.

The Property is within the boundaries of the Four Corners Overlay District which was created for the intersection of South Military Trail and West Atlantic Ave. All of the property within the Four Corners Overlay District is governed by a Master Development Plan ("MDP") that consists of approximately 73,801 square feet of retail and restaurant use. With this proposal, the Applicant is requesting to amend the Master Development Plan to allow a 1,820 square foot bank building. With this amendment, the Applicant is requesting the following Master Development Plan Waivers: 1.) from LDR Section 4.4.9 (G)(3)(e)(2) to allow the construction of a building within the Four Corners Overlay District to have a floor area that is less than 4,000 square feet; 2.) from LDR Section 4.4.9 (F)(3)(d)(1)(a) to allow a front yard landscape buffer of 9.5' rather than 30' as required by Code; and 3.) from LDR Section 4.4.9(F)(3)(d)(1) to allow the east perimeter landscape buffer to be 5' rather than a minimum of 10' as required by Code. Additionally, the Applicant is submitting a Class V Site Plan application with the MDP amendments.

Waiver Requests

Per Section 2.4.7(B)(5), the Applicant must demonstrate compliance with the below criteria to receive approval for a waiver request. Each of the criteria are listed below in bold with Applicant's responses in italics.

1. The waiver request shall not adversely affect the neighboring area;

The proposed waiver request to allow a building floor area of less than 4,000 square feet will not adversely affect the surrounding area. The proposed 1,820 square foot bank building with a drive-thru facility is consistent with the existing surrounding uses with drive-thru facilities and a smaller building

floor area. Directly to the east, located on the same parcel is a 2,053 square foot Taco Bell restaurant. Located to the west of the Property is a Jiffy Lube and across the street to the north of the Property is a Pollo Tropical and bank; each with a drive-thru facility and a building floor area less than 4,000 square feet. To the south of the Property is the Delray Commons Shopping Center containing various commercial uses that are compatible with the proposed bank use.

Additionally, the reduced perimeter landscape buffer waiver requests will not adversely affect the surrounding properties. The front yard landscape buffer is an existing condition, with a 9.5' landscape buffer along the property line and a two-way vehicular drive aisle between the building and the landscape buffer. The Applicant is constrained to this landscape buffer width along the front property to maintain the existing vehicular access into and out of the Property along W. Atlantic Ave. Extending the width of the front yard perimeter landscape buffer would require removing the access drive aisle, impacting the proposed bank building and the existing adjacent Taco Bell restaurant. The east perimeter landscape buffer reduction will not adversely impact the adjacent Taco Bell restaurant as there is an existing landscape and parking spaces adjacent to the east property line, with no impact on the customers entering the building.

2. The waiver request shall not significantly diminish the provision of public facilities;

The proposed waiver requests will not diminish the provision of public facilities. The Property has an existing infrastructure system with utility and drainage connections. The proposed bank use will not significantly increase the demand for public facilities. Furthermore, the decreased building size and reduced landscape area will have a decreased demand on public facilities that what would be required for a larger building and additional landscape area to meet code as a larger building would require more water and sewer demand and additional landscape area would require more irrigation.

3. The waiver request shall not create an unsafe situation;

To the contrary, the proposed waiver requests will allow the Applicant to develop the Property in a manner that will maintain the existing vehicular drive-aisle and entry and exit points onto the Property. This design will allow the existing safe vehicular access conditions to maintain intact.

4. The waiver request does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

Granting the waiver request will not result in the grant of special privileges that could not be granted to other property owners under similar conditions. As stated above, the Property is surrounded by similar uses with a building floor area of less than 4,000 square feet. Granting these waiver requests would allow the Property to be developed with a use that is similar to the uses in the surrounding area.