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**Pierre Delray Two - East Atlantic Avenue, Delray Beach, Florida**  
**Waiver Request and Justification – 4.4.13(D)(1)(b)(2)(b)**

Pierre Delray Two LLC (“Applicant”), is the owner of a 0.43-acre parcel of land located on the southwest corner of Atlantic Avenue and SE 3rd Avenue and the 0.11 – acre parcel immediately to its south (collectively referred to herein as the “Property”) within the City of Delray Beach (“City”). The Property has a future land use map (“FLUM”) designation of Commercial Core (“CC”) and is zoned Central Business District (“CBD”). The Property is further located within the Central Core subdistrict of the CBD. The Property is currently developed with a surface parking lot. In an effort to improve the Property and surrounding area in accordance with the City’s redevelopment plan for E. Atlantic Avenue, the Applicant proposes to develop the Property with a three-story mixed-use building comprised of retail and office uses and parking garage (“Project”). On November 19, 2020, the Site Plan Review and Appearance Board approved a Class V Site Plan application (2019-266) for the Project. As part of the Project, the City Commission also approved a number of waivers at its meeting on October 6, 2020, including a waiver to allow a reduced side interior setback for the west side of the Property.

Since obtaining the above noted approvals, the Applicant was able to acquire the 0.11 acre parcel on the south end of the property and is able to incorporate the additional land into the Property, rather than leaving this parcel unusable. As a result, Petitioner is seeking to apply the same waiver previously granted to the southern 0.11 acre portion of the Property in order to extend the garage for the Project.

The Property is particularly unique as it is situated along three (3) rights-of-way including Atlantic Avenue to the north, Southeast 3rd Avenue to the east, and the Florida East Coast (“FEC”) railroad corridor to the west. In addition, the Applicant controls the vacant parcel to the south (PCN#12-43-46-16-01-085-0050) pursuant to a long-term ground lease and intends to only maintain surface parking on this parcel for the forty year term of that ground lease. As such, there are no immediately adjacent parcels that can or will be developed with a building in the foreseeable future. The Property is also unique due to its long, but narrow shape, with a width of only ninety-four (94) feet along the Atlantic Avenue frontage. As such, any development of the Property is fairly constrained.

The Project proposes to meet the City’s Land Development Regulations (“LDR”) to the greatest extent possible. However, due to the existing constraints associated with the size and narrowness of the Property, the Applicant is requesting a waiver from the LDR related to the side interior setback along the west property boundary of the Project. Pursuant to Section 4.4.13(D)(1)(b)(2)(b), “where development may build with no side setback, the following limitations also apply: Buildings with openings, including doors, windows, and glass wall material, facing an interior side property line must be setback a minimum of five feet from the property line.” Accordingly, because the parking garage’s exterior façade along both the west property line provides glass wall material and openings on the upper levels, a five-foot setback is required. The narrowness of the Property largely dictates how proposed structures and uses may be positioned. This is particularly the case with the proposed parking structure. With a parcel width of only approximately ninety-four (94) feet, it becomes difficult for any structured parking to meet the technical design requirements for drive aisles, slopes of ramps within the garage, and associated parking. As the structured

parking cannot be expanded further east without impacting pedestrian areas and is limited in width, in order to comply with the various technical requirements, the structured parking must be expanded to the west, into the required side yard setback. As previously mentioned, with the Property surrounded by three (3) rights-of-way and a parcel with a long-term ground lease controlled by the Applicant, no other parcels will be impacted by the proposed setback along the west property lines. The proposed waiver request is also consistent with the waiver previously granted for the Project. As such, in order to modify the site plan and develop the Property with the Project, Petitioner is requesting the following waiver:

*Waiver from LDR Section 4.4.13(D)(1)(b)(2)(b) to allow a two foot and two and three eighths inch (2'-2 3/8") minimum interior side yard setback along the west property line in lieu of the five-foot (5') interior side yard setback required ("Waiver").*

In support of the Waiver, the Applicant will demonstrate compliance with LDR Section 2.4.7(B)(5) and LDR Section 4.4.13(K)(8)(b)(2) of the City Code. Pursuant to LDR Section 2.4.7(B)(5), the Applicant will demonstrate that the waiver a) will not adversely affect the neighboring area; b) will not significantly diminish the provision of public facilities; c) will not create an unsafe situation; and d) will 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. Further, pursuant to LDR Section 4.4.13(K)(8)(b)2., the Applicant will demonstrate that the waiver a) will not result in an inferior pedestrian experience along a primary street, such as exposing parking garages or large expanses of blank walls; b) will not allow the creation of significant incompatibilities with nearby buildings or uses of land; c) will not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/ pedestrian master plan; and d) will not reduce the quality of civic open spaces provided under the LDR.

*Section 2.4.7(B)(5) Waiver Criteria:*

*a) The waiver will not adversely affect the neighboring area.*

The Applicant's request for the Waiver will not adversely affect the neighboring area. The waiver is consistent with the waiver that was previously approved for the Project and the Applicant is simply requesting to extend the application of the Waiver to the southern portion of the Property that has since been acquired by the Applicant. As previously stated, the Property is situated along three (3) rights-of-way including Atlantic Avenue to the north, Southeast 3rd Avenue to the east, and the FEC railroad corridor to the west. In addition, the Applicant controls the vacant parcel to the south (PCN#12-43-46-16-01-085-0050) pursuant to a long-term ground lease and intends to only maintain surface parking on this parcel for the forty year term of that ground lease. As such, there are no immediately adjacent parcels that can or will be developed with a building in the foreseeable future on the west side of the Property where the Waiver is being requested. Further, the next closest parcel is approximately forty-five (45) feet to the south and one hundred (100) feet west of the Property, providing a sizable natural buffer from the proposed building and structured parking. The Property is also located within the City's Commercial Core area of the CBD. This area is intended as the City's downtown district with higher intensities and buildings that are more tightly knit. The Project will continue this downtown feel, while still providing adequate separation in the rear through the ground leased parcel that will be developed as surface parking. As such the requested Waiver will not adversely affect the neighboring area.

*b) The waiver will not significantly diminish the provision of public facilities.*

The Applicant's request for the Waiver will not impact the provision of public facilities. The Property was subject to a recent FLUM Amendment where the maximum possible intensity of commercial development on the parcel was reviewed for concurrency, including the adequate provision of water, sewer, drainage, emergency services and other public facilities. Findings were made that there were adequate facilities to service the maximum development on the Property. As such, the Project and related Waiver request will not significantly diminish the provision of public facilities. In addition, the Applicant will be responsible for any applicable impact fees that may be used to enhance the provision of public facilities within the City.

*c) The waiver will not create an unsafe situation.*

The Applicant's request for the Waiver will not create an unsafe situation. The waiver is consistent with the waiver that was previously approved for the Project and the Applicant is simply requesting to extend the application of the Waiver to the southern portion of the Property that has since been acquired by the Applicant. Further, there will be a one hundred (100) foot separation on the west side to the next developable parcel due to the existing FEC Railway parcel. In addition, as part of the corresponding site plan review, the City is reviewing the Project for compliance with applicable building and fire codes to ensure no part of the Project will create an unsafe situation. Similarly, the Project is reviewed by police to ensure that acceptable Crime Prevention Through Environmental Design ("CPTED") standards are met. As such, the Project will not create an unsafe situation.

*d) The waiver will 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.*

Approval of the Waiver does not result in the grant of a special privilege. As noted, the waiver is consistent with the waiver that was previously approved for the Project and the Applicant is simply requesting to extend the application of the Waiver to the southern portion of the Property that has since been acquired by the Applicant. As previously discussed, the Property is situated along three (3) rights-of-way including Atlantic Avenue to the north, Southeast 3rd Avenue to the east, and the FEC railroad corridor to the west. In addition, the narrowness of the Property largely dictates how proposed structures and uses may be positioned. This is particularly the case with the proposed parking structure. With a parcel width of only approximately ninety-four (94) feet, it becomes difficult for any structured parking to meet the technical design requirements for drive aisles, slopes of ramps within the garage, and associated parking. As the structured parking cannot be expanded further east without impacting pedestrian areas and is limited in width, in order to comply with the various technical requirements, the structured parking must be expanded west, into the required side setback. As such, the Waiver request is due to extremely unique circumstances that do not generally apply to other applicants or owners within the City.

*Section 4.4.13(K)(8)(b)2. Waiver Criteria:*

*a) The waiver will not result in an inferior pedestrian experience along a Primary Street, such as exposing parking garages or large expanses of blank walls.*

The requested Waiver will not result in an inferior pedestrian experience along a Primary Street as the requested Waiver is located along the west Property line, which does not abut a Primary Street. Further, the Waiver request is related to the side setback of the proposed structured parking to the west, which will not be visible from Atlantic Avenue as the building is adjacent to the FEC Railway, where there exists a

sizeable one hundred (100) foot separation between the next developable parcel to the west. Instead of the existing break from the retail, restaurant and related commercial space that is provided to individuals walking along Atlantic Avenue, the Project has been designed to provide desirable commercial uses along the primary Atlantic Avenue frontage, including lower level retail and upper level office space that will enhance the pedestrian experience along this frontage. As such, the Primary Street will not be exposed to parking garages or large expanses of blank walls as a result of the Waiver. As previously noted, the Property is currently developed with a surface parking lot, which detracts from the pedestrian experience, as there is a significant break from the pedestrian-oriented uses along Atlantic Avenue. Through redevelopment of the Property, the existing unattractive vehicle-oriented use will be eliminated and replaced by a new vibrant development that continues the commercial and pedestrian-oriented character of Atlantic Avenue. The commercial uses will also wrap around to SE 3<sup>rd</sup> Avenue in order to continue the pedestrian experience for the portion of this frontage that is adjacent to Atlantic Avenue. The parking structure will also be designed in accordance with the City's LDR requirements for such structures within the CBD to ensure an appropriate design for this downtown core. As such, the Waiver request will not result in an inferior pedestrian experience.

*b) The waiver will not allow the creation of significant incompatibilities with nearby buildings or uses of land.*

The requested Waiver will not result in incompatibilities with nearby buildings as the envisioned development is structured parking with office and retail components along East Atlantic Avenue and SE 3<sup>rd</sup> Avenue. Rather, the Waiver will allow for development of the Project which will eliminate an incompatibility and allow for a new and vibrant commercial development in its place. As previously noted, the Project has been designed to provide desirable commercial uses along the primary Atlantic Avenue frontage, including lower level retail and upper level office space that will enhance the pedestrian experience along this frontage. In contrast, the Property is currently developed with a surface parking lot, which detracts from the pedestrian experience, as there currently exists a significant break from the pedestrian-oriented uses along Atlantic Avenue. Through redevelopment of the Property, an unattractive existing vehicle-oriented use will be eliminated and replaced by a new vibrant development that continues the commercial and pedestrian-oriented character of Atlantic Avenue. The commercial uses will also wrap around to SE 3<sup>rd</sup> Avenue in order to continue the pedestrian experience for the portion of this frontage that is adjacent to Atlantic Avenue. As such, the existing incompatibilities with the vehicle-oriented use along a primary pedestrian frontage will be eliminated. Further, the Project will be developed similar to other mixed-use buildings within the CBD with attractive and pedestrian-oriented uses being located along the primary façade and parking being tucked away in the rear of the building where it is less visible. The Waiver will allow for the proposed layout, which includes structured parking in the rear to serve the proposed commercial and office uses within the Project. Lastly, the Waiver will not be incompatible with nearby buildings, as the Applicant is proposing to develop the parcel immediately south of the Property with additional surface parking. This will allow for additional separation beyond the ten (10) foot setback requirement between the proposed building and next developable lot. As such, the Waiver will not create significant incompatibilities with nearby buildings or uses of land.

*c) The waiver will not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle/ pedestrian master plan*

The requested Waiver will not erode the connectivity of the street and sidewalk network or negatively impact any adopted bicycle or pedestrian master plan. Rather, the Waiver will allow for development of the Project which will eliminate an incompatibility and allow for a new and vibrant commercial development in its place. As previously noted, the Property is currently developed with a surface parking lot. This is a primarily vehicle-oriented use that significantly detracts from the pedestrian experience along Atlantic

Avenue. In contrast, the Project has been designed to provide desirable commercial uses along the primary Atlantic Avenue frontage, including lower level retail and upper level office space that will enhance the pedestrian experience along this frontage. Through redevelopment of the Property, an existing unattractive vehicle-oriented use will be eliminated and replaced by a new vibrant development that continues the commercial and pedestrian-oriented character of Atlantic Avenue. The commercial uses will also wrap around to SE 3<sup>rd</sup> Avenue in order to continue the pedestrian experience for the portion of this frontage that is adjacent to Atlantic Avenue. The new pedestrian-oriented uses will not negatively impact any sidewalk network or adopted bicycle or pedestrian master plan. Further, by positioning the parking structure to the rear of the Project and away from Atlantic Avenue to the greatest extent possible, the limited interruption for vehicular access to the garage will be located away from the main pedestrian areas, so as not to erode the connectivity of the streets and sidewalks or negatively impact pedestrian or bicycle connectivity.

*d) The waiver will not reduce the quality of civic open spaces provided under this code.*

The requested Waiver does not have an impact on the quality of civic open spaces. Any civic open spaces required for the Project will be located towards the main pedestrian areas, along Atlantic Avenue or SE 3<sup>rd</sup> Avenue in order to ensure that they improve the pedestrian environment, are aesthetically pleasing and serve as an amenity for the City, as well as for occupants of the Project, as required by the LDRs. The civic open spaces are not proposed for the rear of the Project, where the parking structure will be located, or adjacent to the FEC Railway tracks where pedestrian activity may be a hazard. The areas requested for the Waiver are not areas intended for primarily pedestrian activities. As such, the civic open spaces required for the Project will still be designed to meet the requirements of the City's LDRs. The Waiver will not reduce or diminish the quality of civic open spaces. Rather, the Waiver is for a reduction in the five (5) foot setback for the west side of the Project. This will allow for a parking structure that will exceed the needs of the proposed uses within the Project and meet all the technical standards and requirements for structured parking, including for ramps, drive aisles and parking spaces. Further, the parking structure is proposed adjacent to a separate parcel intended for development with a surface parking lot, and not for a larger vertical structure or pedestrian area. As such, the Waiver will not reduce the quality of civic open spaces provided under the LDRs.