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**Pierre Delray Two - East Atlantic Avenue, Delray Beach, Florida**  
**Waiver Request and Justification – 4.4.13(G)(4)(e)**

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.

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 amend the site plan previously approved for the Property in order to extend the building onto the southern parcel. As part of the revised site plan, Petitioner is now required to provide two hundred one (201) square feet of civic open space. However, Petitioner is proposing to exceed the open space requirement by providing over two hundred ninety six (296) square feet of civic open space. Due to the elongated length of the civic open space and additional square footage provided, Petitioner is also required to provide four (4) canopy trees within the open space pursuant to LDR Section 4.4.13(G)(4)(e), which requires one (1) shade tree per twenty feet (20’) of perimeter of the space. As the area is approximately ten feet (10’) by thirty feet (30’) and canopy trees should be located a minimum of twelve feet (12’) to fifteen feet (15’) apart to provide for adequate growth, it is simply not possible to provide the required four (4) trees within this smaller civic open space area. However, in addition to the ninety five feet (95’) of additional civic open space being provided, Petitioner is also providing additional street trees, including in the area adjacent to the civic open space to make up for this deficiency. As this section of the LDR requires the trees to be installed to provide shade over the walkways and benches, the additional street trees in the vicinity of the civic open space meet the intent of this requirement, even though its not provided within the actual civic open space itself. Despite the proposed waiver, the proposed landscape plan will result in an attractive streetscape and civic space that works with the proposed building and allows for the success of the trees and other landscape material selected. As such, in order to develop the Project, the Applicant is requesting the following landscape waivers:

*Waiver from LDR Section 4.4.13(G)(4)(e) to allow two (2) shade trees within  
the civic open space in lieu of four (4) shade trees 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 Property is bordered to the left by railroad tracks, to the south by a vacant lot, and to the east by an existing vested building with frontage along SE 3<sup>rd</sup> Avenue. Since the Project is a new development, the Project is required to comply with the CBD zoning district regulations. However, since the Project is located in a primarily fully developed area along E. Atlantic Avenue, there are certain elements that make development on the Property challenging – most specifically, the narrow width of the Property and the requisite CBD development standard restrictions.

In order to enhance and improve the pedestrian experience, the Petitioner proposes (and was previously approved) extending the parking garage arcade's height along SE 3<sup>rd</sup> Avenue - this will allow for a consistent and aligned pedestrian area adjacent to the Project along SE 3<sup>rd</sup> Avenue, and will allow utilization of the upper level of the arcade as additional parking for the area instead of wasted space. Thus, the Project's SE 3<sup>rd</sup> Avenue frontage is an improvement for pedestrian access and mobility in the area, and an improvement of parking conditions, that does not exist today, and as such, the Waiver does not adversely affect the neighboring area. Further, through the site plan modification, Petitioner is now required to provide a civic open space, which was not required of the previously approved site plan. More specifically, Petitioner is now required to provide two hundred one (201) square feet of civic open space. However, Petitioner is proposing to exceed the open space requirement by providing over two hundred ninety six (296) square feet of civic open space. Due to the elongated length of the civic open space and additional square footage provided, Petitioner is also required to provide four (4) canopy trees within the open space pursuant to LDR Section 4.4.13(G)(4)(e), which requires one (1) shade tree per twenty feet (20') of perimeter of the space. As the area is approximately ten feet (10') by thirty feet (30') and canopy trees should be located a minimum of twelve feet (12') to fifteen feet (15') apart to provide for adequate growth, it is simply not possible to provide the required four (4) trees within this smaller civic open space area. However, in addition to the ninety five feet (95') of additional civic open space being provided, Petitioner is also providing additional street trees, including in the area adjacent to the civic open space to make up for this deficiency. As this section of the LDR requires the trees to be installed to provide shade over the walkways and benches, the additional street trees in the vicinity of the civic open space meet the intent of this requirement, even though its not provided within the actual civic open space itself. Despite the proposed waiver, the proposed landscape plan will result in an attractive streetscape and civic space that works with the proposed building and allows for the success of the trees and other landscape material selected.

By providing additional civic open space, Petitioner is also burdened with the requirement of additional street trees within this small area. Unlike other parts of the City where canopy trees have larger areas to grow and thrive, the unique conditions of the downtown area and the civic open space create unsuitable conditions for such a large number of trees, as the area is less than three hundred (300) square feet. Rather

than planting to meet the City's requirement and taking away from the pedestrian experience of this open space and dealing with the poor conditions that may result down the road, Petitioner is taking a proactive approach to place trees in areas that will be most ideal for the Project, provide an attractive appearance and create an open and inviting civic space. As the overall landscaping proposed will be better suited for the landscape areas in considering the potential impacts to existing utilities and pedestrian areas, the waivers will not have a negative impact on the neighboring areas.

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

The Applicant's request for a Waiver will not impact the provision of public facilities. The Waiver request is unrelated to the provision of public facilities, and therefore will not diminish the provision of public facilities.

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

The Applicant's request for a Waiver will not create an unsafe situation. As mentioned above, the Property is bordered to the left by railroad tracks, to the south by a vacant lot, and to the east by an existing vested building with frontage along SE 3<sup>rd</sup> avenue. As previously noted, the waiver request is to provide two (2) trees within the two hundred ninety six (296) square foot civic open space in lieu of four (4) trees required. Rather, additional street trees have been provide, creating further shade and canopy in the area of the walkway and enhancing the pedestrian experience, rather than simply placing too many trees within a small area where they will not thrive and will instead impact the pedestrian experience by interfering with walkways and the useability of the civic open space, or by creating hazards from the root systems as the trees will not have sufficient room to grow. As a result of this superior design for the downtown area, and in consideration of tree placement that will be better suited for the civic and pedestrian areas, the landscape waiver are required and will allow for a safe place for customers, residents and visitors of the City to safely navigate from SE 3<sup>rd</sup> Avenue to E. Atlantic Avenue.

*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 previously noted, rather than place the required trees to meet strict Code requirements and deal with potential poor health of the tree species or have the City deal with impacts of root systems encroaching into existing utilities in the future, Petitioner has worked with an ISA certified arborist and City staff to select the most appropriate tree species and locate the trees in areas that will best enhance the pedestrian experience will allowing the trees to thrive. As previously noted, a civic open space was not required based on the property area included in the approved site plan. As Petitioner has not acquired and is able to develop over a larger area, the Project is now required to provide two hundred one (201) square feet of civic open space. However, Petitioner is proposing to exceed the open space requirement by providing over two hundred ninety six (296) square feet of civic open space. Due to the elongated length of the civic open space and additional square footage provided, Petitioner is also required to provide four (4) canopy trees within the open space pursuant to LDR Section 4.4.13(G)(4)(e), which requires one (1) shade tree per twenty feet (20') of perimeter of the space. As the area is approximately ten feet (10') by thirty feet (30') and canopy trees should be located a minimum of twelve feet (12') to fifteen feet (15') apart to provide for adequate growth, it is simply not possible to provide the required four (4) trees within this smaller civic open space area. However, in addition to the ninety five feet (95') of additional civic open space being provided, Petitioner is also providing additional

street trees, including in the area adjacent to the civic open space to make up for this deficiency. As this section of the LDR requires the trees to be installed to provide shade over the walkways and benches, the additional street trees in the vicinity of the civic open space meet the intent of this requirement, even though its not provided within the actual civic open space itself. Despite the proposed waiver, the proposed landscape plan will result in an attractive streetscape and civic space that works with the proposed building and allows for the success of the trees and other landscape material selected.

By providing additional civic open space, Petitioner is also burdened with the requirement of additional street trees within this small area. Unlike other parts of the City where canopy trees have larger areas to grow and thrive, the unique conditions of the downtown area and the civic open space create unsuitable conditions for such a large number of trees, as the area is less than three hundred (300) square feet. Rather than planting to meet the City's requirement and taking away from the pedestrian experience of this open space and dealing with the poor conditions that may result down the road, Petitioner is taking a proactive approach to place trees in areas that will be most ideal for the Project, provide an attractive appearance and create an open and inviting civic space. As such, granting this waiver would not constitute a special privilege, but rather is a more desirable condition than planting a canopy tree that does not have adequate room for its root system to grow without impacting civic and pedestrian areas. As such, Petitioner is respectfully requesting a waiver from the required number of trees within the civic open space. Despite the waivers, the proposed landscape plan will result in a more attractive and usable civic open space and streetscape that works with the proposed building and allows for the success of the trees and other landscape material selected and as a result, will not grant a special privilege to Petitioner.

*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 SE 3<sup>rd</sup> Avenue, which per Figure 4.4.13-5 in the City's CBD regulations, SE 3<sup>rd</sup> Avenue is not a Primary Street. Accordingly, this criterion does not apply to this Waiver request. The pedestrian experience will still be enhanced and maintained along SE 3<sup>rd</sup> Avenue, as the Project includes civic open space above what would otherwise be required for the Project, and additional street trees to provide shade over the walkways and civic open space areas, as intended by LDR Section 4.4.13(G)(4)(e).

*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 will provide better, more direct connectivity for pedestrians along the west side of SE 3<sup>rd</sup> Avenue with landscaping that works with the building and is not simply placed to meet strict code requirements without consideration to the pedestrian experience or existing utilities. The Applicant is proposing an arcade along SE 3<sup>rd</sup> Avenue adjacent to the parking garage to accommodate the fifteen-foot streetscape area with attractive landscaping that will enhance this pedestrian experience and can be maintained in a desirable condition without having expansive root system that impact walkways and existing utilities. This will not create any significant incompatibilities with the surrounding area, as it will provide a Project that creates a unique pedestrian experience that aligns with the recently improved building

to the east. For many years, the Property was a vacant lot without any space activated for pedestrians' use. The plan for the Project is to convert the vacant property currently being used as a surface parking lot into an attractive mixed use building with multiple retail and office uses and a parking garage. By developing the Property and updating the landscaping to better fit with the site constraints, the Property will be activated and be more consistent with the neighboring properties. Further, although Petitioner is requesting to provide fewer canopy trees within the civic space given the small size of this area, the Project actually includes more civic open space than otherwise required by the LDR Section 4.4.13(G)(4)(e) and meets the intent by providing additional street trees beyond LDR requirements to further provide shade along the walkways. 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, but rather, will better activate the SE 3<sup>rd</sup> Avenue street frontage and better align the pedestrian zone along SE 3<sup>rd</sup> Avenue with E. Atlantic Avenue, creating a more continuous and covered pedestrian activity area with an aesthetically compatible and functional building. The waiver will result in the successful placement of trees that will ensure they continue to thrive into the future and provide adequate shade for the civic open space area without otherwise detracting from the pedestrian experience by placing trees too close together or in areas intended to serve as walkways. As a result, the Project will be more inviting and more compatible with the current LDR requirements. Thus, since the trees selected will not impact the street or sidewalk network or negatively impact any adopted bicycle / pedestrian master plan, but rather ensure there are no conflicts with these networks, the Waiver request meets this criterion.

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

The requested Waiver does not negatively impact the quality of civic open spaces. As part of the site plan modification, the Project now requires inclusion of a civic space. More specifically, the Project is now required to provide two hundred one (201) square feet of civic open space. However, Petitioner is proposing to exceed the open space requirement by providing over two hundred ninety six (296) square feet of civic open space. Due to the elongated length of the civic open space and additional square footage provided, Petitioner is also required to provide four (4) canopy trees within the open space pursuant to LDR Section 4.4.13(G)(4)(e), which requires one (1) shade tree per twenty feet (20') of perimeter of the space. As the area is approximately ten feet (10') by thirty feet (30') and canopy trees should be located a minimum of twelve feet (12') to fifteen feet (15') apart to provide for adequate growth, it is simply not possible to provide the required four (4) trees within this smaller civic open space area. However, in addition to the ninety five feet (95') of additional civic open space being provided, Petitioner is also providing additional street trees, including in the area adjacent to the civic open space to make up for this deficiency. As this section of the LDR requires the trees to be installed to provide shade over the walkways and benches, the additional street trees in the vicinity of the civic open space meet the intent of this requirement, even though its not provided within the actual civic open space itself. Despite the proposed waiver, the proposed landscape plan will result in an attractive streetscape and civic space that works with the proposed building and allows for the success of the trees and other landscape material selected. As this tree placement will better ensure the trees thrive within the civic open space once installed, the quality of the civic space will actually improve as the tree will be able to grow into a mature tree that can be appropriately pruned and maintained within this space without impacting walkways or seating areas within the civic open space. Further, the Project focuses on the enhancement of other pedestrian areas with the proposed arcade that will

not only improve connectivity to E. Atlantic Avenue from SE 3<sup>rd</sup> Avenue with a pedestrian-focused area but will also provide a shaded entrance for pedestrians and bicyclists into the parking garage – where the bike racks will be located. Thus, the placement of the canopy trees will further enhance these pedestrian areas is consistent with the surrounding development’s civic open space design. As such, the Waiver request meets this requirement.