Agenda Item: 3F1

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	April 9, 2024	[X]	Consent	1] Regular
Submitted By:	Department of Airports	1 1	Workshop	[] Public Hearing

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a First Amendment (Amendment) to Declaration of Unity of Control and Cross Easements/Architectural Restrictive Covenants (Unity of Control), providing for the release of approximately 407 square feet (0.009 ac.) of land at the northeast corner of Belvedere Road and Military Trail (Right-of-Way Parcel) from the Unity of Control to allow the Right-of-Way Parcel to be dedicated to Palm Beach County (County) as public road right-of-way by the landowner, Murphy Oil USA, Inc.

Summary: The Unity of Control was created in 1999 (R-99-2242) by the owners within a Multiple Use Planned Development (MUPD), consisting of approximately 24.786 acres of land at the northeast corner of Belvedere Road and Military Trail. The Unity of Control included the County as the owner of approximately 12.112 acres of land within the MUPD. The Unity of Control was required as a Condition of Approval of the zoning application approved originally by Resolution 1993-509 and provides for mutual and reciprocal easements for ingress and egress, parking, drainage and utilities, and architectural consistency, for the proper development of the MUPD. The Unity of Control is recorded at Book 11511, Page 1567, of the public records and encumbers all of the properties within the MUPD. The County conveyed approximately 8.525 acres of land to Wal-Mart Stores East, LP, in 2003 (R-2003-0313) and remains the current owner of approximately 3.5 acres of land within the MUPD (Parcel Control Numbers 00-42-43-25-29-001-0000 and 00-42-43-25-31-001-0020), which is located entirely within the Palm Beach International Airport runway protection zone. Murphy Oil USA, Inc. (Murphy) is the owner of approximately 1.45 acres within the MUPD at the corner of Belvedere Road and Military Trail and desires to redevelop its property. In order to redevelop the property, the County's Engineering and Public Works Department is requiring Murphy to dedicate the Right of Way Parcel to the County. The Amendment releases the Right of Way Parcel from the Unity of Control to satisfy a requirement of the title insurance company for the issuance of title insurance for the Right of Way Parcel. The County's remaining property is not affected by the Amendment or the release of the Right of Way Parcel from the Unity of Control. Countywide (AH)

Background and Justification: The Amendment releases the Right of Way Parcel from the Unity of Control to satisfy a requirement of the title insurance company for the dedication of the Right of Way Parcel to the County. The County is required to approve the Amendment as a property owner within the MUPD and party to the Unity of Control. In addition to the County signing the Amendment in its capacity as property owner, the County's Zoning Director will sign the Amendment, as required by the Unity of Control.

Attachments: 1. Amendment (1)	
Recommended B	y: Pw Dus Cubl Department Director	3/12/24 Date
Approved By:	Samu C. Ayallala JACA County Administrator	3/28/24 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summar	y of Fiscal Impact:				
Fiscal Years	2024	2025	2026	2027	2028
Capital Expenditures Operating Costs Operating Revenues Program Income (Couldn-Kind Match (County)					
NET FISCAL IMPACT					
# ADDITIONAL FTE POSITIONS (Cumulati	ve)				
Is Item Included in Cur Does this item include Does this item include	the use of federal	funds? Yes	No	X	
Budget Account No:	Fund Depa Reporting Catego			RSource	
B. Recommended So	urces of Funds/Sum	mary of Fisc	al Impact:		
This item has no fiscal in	mpact.	\			
C. Departmental Fisca	al Review: Ullahu	e) Mcanon	The	3/12/24	
	III. REVIEV	V COMMENT	<u>s</u>		
A. OFMB Fiscal and/o	r Contract Develop	nent and Cor	ntrol Comme	nts:	
	Angelo DiPierro	stally signed by Angele DEFlerro I: DC=org, DC=pbogov, OU=Enterprise, OU= sers, CM=Angele DEFlerra, E=ADlpterr@pbog son; I am the author of this document to: 2024.03.18 18:07:54-04'00'	FMB, OU POLONG	000	
XXXX DELLES	th 3/20/2014		Contract That 3/21	Dev. and Cor	trol 3/4/24
B. Legal Sufficiency:					
Assistant County Att	<u> </u>				
C. Other Department	Review:				
Department Directo	r				

REVISED 9/03 ADM FORM 01

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

Return to: Adams, Howell, Sizemore & Adams, P.A. 1600 Glenwood Ave., Suite 101 Raleigh, NC 27608

FIRST AMENDMENT TO DECLARATION OF UNITY OF CONTROL AND CROSS EASEMENTS/ARCHITECTURAL RESTRICTIVE COVENANTS

THIS FIRST AMENDMENT TO DECLARATION OF UNITY OF CONTROLAND CROSS EASEMENTS/ARCHITECTURAL RESTRICTIVE COVENANTS (this "First Amendment") is made and entered into as of the ____ day of _____, 2024 (the "First Amendment Effective Date"), by and between Murphy Oil USA, Inc., a Delaware corporation ("Murphy"), WAL-MART STORES EAST, LP, a Delaware limited partnership ("Wal-Mart"), M&M N Military, LLC, a Florida limited liability company ("M&M"), and Palm Beach County, a political subdivision of the State of Florida ("Palm Beach County");

WITNESSETH:

WHEREAS, Murphy, Wal-Mart, M&M and Palm Beach County are the record owners (hereinafter, each an "Owner" or collectively, the "Owners") of those certain parcels of real property in Palm Beach County, Florida subject to that certain Declaration of Unity of Control and Cross Easement/Architectural Restrictive Covenants recorded in Official Records Book 11511, Page 1567, of the Public Records of Palm Beach County (the "Unity of Control") (the "Properties"); and

WHEREAS, pursuant to Article IX, Section 11 of the Unity of Control, the Unity of Control may only be modified, amended, terminated or released by a recordable instrument executed by the Owners of all of the Properties and the Palm Beach County Zoning Director ("Zoning Director"); and

WHEREAS, Murphy is the Owner of those certain parcels of real property identified as Palm Beach County Property Appraiser Parcel Identification Numbers 00-42-43-25-31-001-0030 ("Murphy Parcel 1") and 00-42-43-25-31-001-0040 ("Murphy Parcel 2"); and

WHEREAS, Wal-Mart is the Owner of that certain parcel of real property identified as Palm Beach County Property Appraiser Parcel Identification Number 00-42-43-25-31-001-0010 (the "Wal-Mart Parcel"); and

WHEREAS, M&M is the Owner of that certain parcel of real property identified as Palm Beach County Property Appraiser Parcel Identification Number 00-42-43-25-31-001-0060 (the "M&M Parcel"); and

WHEREAS, Palm Beach County is the Owner of that certain parcel of real property identified as Palm Beach County Property Appraiser Parcel Identification Numbers 00-42-43-25-29-001-0000 and 00-42-43-25-31-001-0020 (the "Palm Beach County Parcels"); and

WHEREAS, together, Murphy Parcel 1, Murphy Parcel 2, Wal-Mart Parcel, M&M Parcel and the Palm Beach County Parcels make up all of the Properties subject to the Unity of Control; and

WHEREAS, as part of Murphy's permitting and final development of Murphy Parcel 1, a certain portion of Murphy Parcel 1 must be dedicated to Palm Beach County as a public right-of-way, as shown on Exhibit A, and more particularly described as metes and bounds in Exhibit A-1, attached hereto and incorporated herein by reference (the "Dedicated Property"); and

WHEREAS, in order for Palm Beach County to accept the Dedicated Property as a public right-of-way, Palm Beach County requires the Dedicated Property to be released from the Unity of Control so that the Dedicated Property is no longer subject to the restrictions, covenants, liabilities, assessments, terms and conditions contained therein.

NOW THEREFORE, in consideration of the mutual covenants made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners hereby agree as follows:

- 1. Release of Dedicated Property by the Owners. The Owners agree to amend the Unity of Control, pursuant to the terms therein, to release the Dedicated Property from the Unity of Control and render the Unity of Control inapplicable to the Dedicated Property from and after the First Amendment Effective Date (the "Release"). The Owners acknowledge that upon the Release of the Dedicated Property, the Dedicated Property shall no longer be subject to the restrictions, covenants, liabilities, assessments, terms and conditions set forth in the Unity of Control.
- 2. <u>Consent to Amendment and Release by the Zoning Director</u>. Pursuant to the terms of the Unity of Control, the Zoning Director hereby consents to this First Amendment and the Release of the Dedicated Property from the Unity of Control.
- 3. <u>Effect of Amendment</u>. As expressly amended herein, the Unity of Control is and shall remain in full force and effect and is hereby expressly ratified and confirmed by the Owners hereto. This First Amendment shall not release any other property described in or subject to the Unity of Control.

- 4. <u>Recitals</u>. The recitals set forth above are hereby incorporated herein and made a part of this First Amendment.
- 5. <u>Conflict</u>. In the event of any conflict between the Unity of Control and this First Amendment, the terms of this First Amendment shall govern and control.
- 6. <u>Governing Law</u>. This First Amendment shall be governed by and construed in accordance with the laws of the State of Florida.
- 7. Representations and Warranties. Each Owner hereto represents and warrants that, (i) it has the full capacity, authority and right to enter into this First Amendment, and (ii) this First Amendment is binding on each Owner and its successors and assigns in accordance with the terms herein.
- 8. <u>Headings</u>. The section headings in this First Amendment are for convenience only, shall in no way define or limit the scope or intent of this First Amendment and shall not be considered in any construction or interpretation of this First Amendment or any part hereof.
- 9. <u>Counterparts</u>. This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The electronic transmission of any signed original counterpart of this First Amendment, and the transmission or retransmission of any signed electronic transmission, shall be the same as delivery of an original.
- 10. <u>Entire Agreement</u>. This First Amendment constitutes the entire agreement between the Owners with respect to the subject matter hereof and supersedes any prior written or oral agreements pertaining thereto.
- 11. **Recordation**. This First Amendment shall be recorded in the Office of Recorder of Deeds in and for Palm Beach County, Florida.

[signature pages to follow]

First Amendment to Declaration of Unity of Control and Cross Easements/Architectural Restrictive Covenants Signature Page

IN WITNESS WHEREOF, Murphy has executed this First Amendment as of the day and year first above written.

MURPHY:

First Amendment to Declaration of Unity of Control and Cross Easements/Architectural Restrictive Covenants Signature Page

IN WITNESS WHEREOF, Wal-Mart has executed this First Amendment as of the day and year first above written.

WAL-MART:

WAL-MART STORES EAST, LP a Delaware limited partnership

Print Name: Grasy Without

Print Title: Director Rul Estate

STATE OF ARKANSAS COUNTY OF Benta

The foregoing instrument was acknowledged before me by means of □ physical presence or online notarization, this 21 day of February 2028, by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation.

Personally Known OR Produced Identification

Type of Identification Produced:

(Signature of Notary Public)

(Print, Type, or Stamp Commissioned Name of Notary Public)

My Commission expires:

Affix Notary SEAL

Online Notary:

(Check Box if acknowledgment done by Online Notarization)

KIM TRAYLOR **NOTARY PUBLIC** BENTON COUNTY, ARKANSAS COMM. EXP. 12/01/2027 **COMMISSION NO. 12703326**

First Amendment to Declaration of Unity of Control and Cross Easements/Architectural Restrictive Covenants Signature Page

IN WITNESS WHEREOF, M&M has executed this First Amendment as of the day and year first above written.

M&M: M&M N Military, LLC a Florida limited Nability company 164/1 Print Title: M & . STATE OF Florida COUNTY OF Browned The foregoing instrument was acknowledged before me by means of **physical** presence or \square online notarization, this 13 day of Sotember, 2023, by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation. William D. Matz, Manager Personally Known ♥ OR Produced Identification □ Type of Identification Produced: (Signature of Notary Public) (Print, Type, or Stamp Commissioned Name of Notary Public) My Commission expires: 8/15/2025 KAREN KAY LAVANDOSKY Notary Public - State of Florida Commission # HH 120060 Affix Notary SEAL My Comm. Expires Aug 15, 2025 Bonded through National Notary Assn. Online Notary: ☐ (Check Box if acknowledgment done by Online Notarization)

First Amendment to Declaration of Unity of Control and Cross Easements/Architectural Restrictive Covenants Signature Page

IN WITNESS WHEREOF, Palm Beach County has executed this First Amendment as of the day and year first above written.

ATTEST: JOSEPH ABRUZZO, CLERK OF THE CIRCUIT COURT AND COMPTROLLER	PALM BEACH COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS			
By: Deputy Clerk	By: Maria Sachs, Mayor			
APPROVED AS TO FORM AND LEGAL SUFFICIENCY	APPROVED AS TO TERMS AND CONDITIONS			
By: Onne Odelant County Attorney	By Director, Department of Airports			

<u>First Amendment to Declaration of Unity of Control</u> <u>and Cross Easements/Architectural Restrictive Covenants Signature Page</u>

IN WITNESS WHEREOF, pursuant to the Unity of Control, by signing below, the Palm Beach County Zoning Division Director has consented and agreed to the terms and conditions contained in this First Amendment, as of the day and year first above written.

APPROVED AS TO FORM AND **ZONING DIRECTOR:** LEGAL SUFFICIENCY Print Name: Lisa Amara Print Title: Palm Beach County Zoning **Division Director** STATE OF Florida The foregoing instrument was acknowledged before me by means of A physical presence or \square online notarization, this $\underline{\square}$ day of $\underline{\underline{March}}$, 2024, by Lisa Amara, as Director of the Palm Beach County Zoning Division. Personally Known ⋈ OR Produced Identification □ Type of Identification Produced: (Signature of Notary Public) Dorine Kelley (Print, Type, or Stamp Commissioned Name of Notary Public) My Commission expires: 8/31/2027 Commission # HH 439166 Affix Notary SEAL

Online Notary: ☐ (Check Box if acknowledgment done by Online Notarization)

EXHIBIT A

SKETCH OF DESCRIPTION: PARCEL 101

Legal Description:

A PORTION OF TRACT A-1 OF BMC REPLAT NO. 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 111, PAGES 24-26, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHERNMOST SOUTHWEST CORNER OF TRACT A-1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 111, PAGES 24-26, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE NORTH 43 DEGREES 34 MINUTES 22 SECONDS WEST, A DISTANCE OF 39.53 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF N. MILITARY TRAIL (STATE ROAD 809) ALSO BEING THE WEST LINE OF SAID TRACT A-1; THENCE NORTH 01 DEGREE 22 MINUTES 23 SECONDS EAST, ALONG THE SAID EAST LINE, A DISTANCE OF 12.00 FEET; THENCE DEPARTING SAID LINE RUN SOUTH 43 DEGREES 34 MINUTES 22 SECONDS EAST, A DISTANCE OF 56.52 FEET TO THE SOUTH LINE OF AFORESAID TRACT A-1; THENCE NORTH 88 DEGREES 31 MINUTES 07 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 12.00 FEET TO THE POINT OF BEGINNING.

Abbreviation Legend:

	- 10010110111 = 0	3	
ADA	- AMERICANS WITH DISABILITIES ACT		
(BB)	- BEARING BASIS	FS	 FLORIDA STATUTE
Ċ ´	- CHORD	PBC	 PALM BEACH COUNTY
CB	CHORDCHORD BEARING	PG	- PAGE
	- CENTERLINE	PGS	- PAGES
	CONCRETE	PI	 POINT OF INTERSECTION
Δ	- DELTA	POB	- POINT OF BEGINNING
D/U	- DRAINAGE AND UTILITY	POC	 POINT OF COMMENCEMENT
0,0	EASEMENT	PT	 POINT OF TANGENCY
FSMT	- EASEMENT	R42E	- RANGE 42 EAST
FDOT	- FLORIDA DEPARTMENT OF	RPB	 ROAD PLAT BOOK
1001	TRANSPORTATION	R/W	- RIGHT-OF-WAY
(G)	- GRID (STATE PLANE)	SEC 25	- SECTION 25
(0)	- ARC LENGTH	SQ FT	- SQUARE FEET
LAE	- LIMITED ACCESS FASEMENT	T43S	- TOWNSHIP 43 SOUTH
	1151011555	TYP	- TYPICAL
(M)	MEASUREDNON-TANGENT	UE	 UTILITY EASEMENT
NT		UFO	- UNDERGROUND FIBER OPTICS
OHU	OVERTIEND OTHERT	UNK	- UNKNOWN
ORB	- OFFICIAL RECORDS BOOK	W/	- WITH
(P)	- PLAT	,	****
PB	- PLAT BOOK		

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	TITLE BLOCK ABBREVIATION					
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EXHIBIT A

SKETCH OF DESCRIPTION: PARCEL 101

Surveyor's Notes:

- 1. COPIES OF THIS SKETCH OF DESCRIPTION ARE NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
- 2. ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.
- 3. BEARINGS SHOWN HEREON ARE RELATIVE TO THE WEST LINE OF THE SOUTHERLY PORTION OF TRACT "A-1", OF BMC REPLAT NO. 1, AS RECORDED IN PLAT BOOK 111, PAGES 24 THROUGH 26, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AS BEING N 01*22'23" E (GRID).
- 4. THE "LEGAL DESCRIPTION" HEREON MATCHES THE TITLE COMMITMENT BY CHICAGO TITLE INSURANCE COMPANY, COMMITMENT NUMBER 10879764, DATED 05/18/2023 AT 8:00 A.M., REVISION NUMBER "5" JUNE 7, 2023.
- 5. THIS SKETCH WAS PREPARED FROM INFORMATION FURNISHED TO THE SURVEYOR, AND BASED ON A BOUNDARY AND TOPOGRAPHIC SURVEY PREPARED BY CPH LLC, REVISED 1/18/23, JOB# M3640.
- 6. STATE PLANE INFORMATION SHOWN (GRID) HEREON IS BASED ON THE NORTH AMERICAN DATUM OF 1983 (1990) USING CONTROL POINTS FROM PALM BEACH COUNTY GEODETIC CONTROL POINTS (BRASS DISKS IN CONCRETE) AS FOLLOWS: FLORIDA EAST ZONE
 - a) DESIGNATION # "RUNWAY II" = N 858333.1170 FEET, E 947666.3240 FEET
 - b) DESIGNATION # "MOTOR POOL" = N 858037.0030 FEET, E 951504.3780 FEET
- 7. THE EQUIPMENT USED TO TRANSFER THE STATE PLANE INFORMATION FROM THE ABOVE REFERENCED CONTROL POINTS TO THE SUBJECT SURVEY WAS A TOPCON GPS HIPER V.

STATE PLANE COORDINATE NOTES:

- a. DISTANCES SHOWN HEREON ARE GROUND DISTANCES
- b. SCALE FACTOR USED = 1.0000380
- c. COORDINATE SYSTEM USED = STATE PLANE TRANSVERSE MERCATOR PROJECTION.
- d. ZONE (FLORIDA EAST ZONE)
- e. DATUM NAD 83-1990 ADJUSTMENT
- f. GROUND DISTANCE X SCALE FACTOR = GRID DISTANCE
- g. ALL DISTANCE UNITS ARE IN US SURVEY FEET
- h. ROTATION EQUATION (COUNTER CLOCKWISE) PLAT TO GRID: (PLAT BEARINGS)-00°23'09"= GRID BEARINGS
- 8. BEARINGS SHOWN ON BMC REPLAT NO. 1, AS RECORDED IN PLAT BOOK 111, PAGES 24 THROUGH 26, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY (P), DO NOT MATCH STATE PLANE COORDINATE VALUES PROVIDED PLAT. (G)

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www.cphcorp.com			SKETCH OF D	ESCRIPTIO	V	2 of 4

SKETCH OF DESCRIPTION: PARCEL 101

Surveyor's Certification:

i hereby certify that the attached "SKETCH OF DESCRIPTION" of the hereon—described property is true and correct to the best of my knowledge, information and belief as prepared under my direction on August 2, 2023. I further certify that this "SKETCH OF DESCRIPTION" meets the standards of practice set forth in Rule Chapter 5j—17 of the Florida Administrative Code, pursuant to FS 472.027.

THE ELECTRONIC SIGNATURE HEREON IS IN COMPLIANCE WITH THE FLORIDA ADMINISTRATIVE CODE (FAC) 5J-17.062(3) AND THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY PAUL J. KATREK, PSM, 6233 ON 8/23/2023 PER 5J-17.062(2)

JAMES KANAMEN SE NUMBER NO. BE NUMBER NO. BE NUMBER NO. BE NUMBER NO. BE NO. BE

Digitally signed by Paul J Katrek Date: 2023.08.23

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For the Firm By:

Paul J. Katrek Professional Surveyor and Mapper Florida Registration No. 6233

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