

RESOLUTION NO. R-98- 873

RESOLUTION APPROVING ZONING PETITION DOA95-63(A)
DEVELOPMENT ORDER AMENDMENT
PETITION OF APPLES AND ORANGES INC.
BY ROBERT BASEHART, AGENT
(BOCA CONGRESS CENTER)

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, and the Palm Beach County Unified Land Development Code, is authorized and empowered to consider petitions relating to zoning; and

WHEREAS, the notice and hearing requirements, as provided for in Article 5 of the Palm Beach County Unified Land Development Code, have been satisfied; and

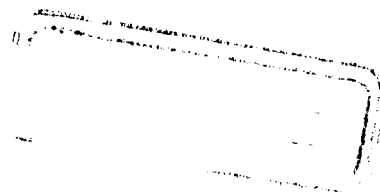
WHEREAS, Zoning Petition DOA95-63(A) was presented to the Board of County Commissioners at a public hearing conducted on May 28, 1998; and

WHEREAS, the Board of County Commissioners has considered the evidence and testimony presented by the petitioner and other interested parties, and the recommendations of the various county review agencies; and

WHEREAS, this approval is subject to Article 5, Section 5.8 (Compliance with Time Limitations), of the Palm Beach County Unified Land Development Code and other provisions requiring that development commence in a timely manner; and

WHEREAS, the Board of County Commissioners made the following findings of fact as to the conditions which were approved to be modified or deleted:

1. This Development Order Amendment is consistent with the Palm Beach County Comprehensive Plan.
2. This Development Order Amendment complies with the relevant and appropriate portions of Article 6, Supplementary Use Standards; of the Palm Beach County Unified Land Development Code.
3. This Development Order Amendment is consistent with the requirements of the Palm Beach County Unified Land Development Code.
4. This Development Order Amendment, with conditions as adopted, is compatible as defined in the Palm Beach County Unified Land Development Code and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.
5. This Development Order Amendment, with conditions as adopted, complies with the standards imposed on it by applicable provisions of the Palm Beach County Unified Land Development Code for use, layout, function, and general development characteristics.
6. This Development Order Amendment meets applicable local land development regulations.
7. This Development Order Amendment, with conditions as adopted, minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.



8. This Development Order Amendment has a concurrency determination and complies with Article 11 (Adequate Public Facility Standards) of the Palm Beach County Unified Land Development Code.
9. This Development Order Amendment, with conditions as adopted, minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment.
10. This Development Order Amendment, with conditions as adopted, will result in logical, timely and orderly development patterns.

WHEREAS, Article 5 of the Palm Beach County Unified Land Development Code 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 Petition DOA95-63(A), the petition of Apples and Oranges Inc., by Robert Basehart, agent, for a Development Order Amendment (DOA) to modify Conditions B.2, F.2, E.1, E.2, E.9, E.13, 1.1 and to delete Conditions E.5, E.6, E.10, E-12 of Resolution R-95-1733, on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch attached as EXHIBIT B, attached hereto and made a part hereof, was approved on June 25, 1998, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner McCarty moved for the approval of the Resolution.

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

Burt Aaronson, Chair	--	Aye
Maude Ford Lee, Vice Chair	--	Aye
Ken Foster	--	Aye
Karen T. Marcus	--	Aye
Mary McCarty	--	Aye
Warren Newell	--	Absent
Carol A. Roberts	--	Aye

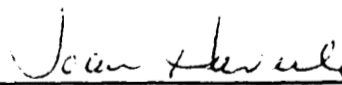
The Chair thereupon declared that the resolution was duly passed and adopted on June 25, 1998.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

DOROTHY H. WILKEN, CLERK

BY: 
COUNTY ATTORNEY

BY: 
DEPUTY CLERK

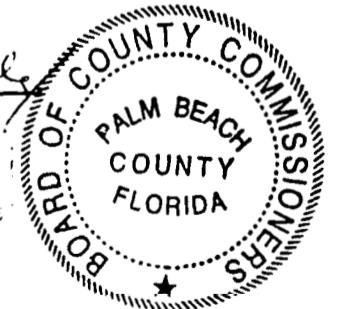


EXHIBIT A

LEGAL DESCRIPTION

LAND DESCRIPTION:

A parcel of land in the Southwest One-Quarter (SW 1/4) and the Southeast One-Quarter (SE 1/4) of Section 31, Township 46 South, Range 43 East, Palm Beach County, Florida, more particularly described as follows:

COMMENCE at the southwest corner of said Section 31; thence N89°11'28"E, along the south boundary of said section, 990.00 feet to a point on the easterly right-of-way line of Congress Avenue as described in Official Records Book 1883, Page 580, of the Public Records of Palm Beach County, Florida, said point being coincident with the northwest corner of CONGRESS CORPORATE CENTRE as recorded in Plat Book 55, Page 123 of the Public Records of Palm Beach County, Florida and also being the POINT OF BEGINNING; thence N00°50'32"W, along said easterly right-of-way line, 250.11 feet; thence northeasterly, along the arc of a tangent curve being concave to the southeast, having a radius of 1849.86 feet, a delta of 47°41'01", an arc distance of 1539.52 feet; thence tangent to said curve N46°50'29"E, 645.22 feet (the last three courses described being coincident with said easterly right-of-way line) to a point on the east top of bank as depicted on the Easement Deed as recorded in Official Records Book 5483, Page 1795 of the Public Records of Palm Beach County, Florida, said point also being an the east boundary of that parcel described in the Quit Claim Deed recorded in Official Record Book 6472, Page 441, of said Public Records; thence S06°47'05"W, 740.76 feet; thence S00°55'24"W, 287.91 feet; thence S08°53'47"E, 378.37 feet (the last three courses described being coincident with east top of bank and east boundary); thence S89°11'28"W, along a line parallel with said south boundary of Section 31, a distance of 420.56 feet; thence S06°51'20"E, 660.00 feet to a point on said south boundary; thence S89°11'28"W, along said boundary, 676.00 feet to the POINT OF BEGINNING.


Said lands lying in Palm Beach County, Florida, containing 27.88 acres, more or less.

NOTES:

1. Reproductions of this Sketch are not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.
2. No Title Opinion or Abstract to the subject property has been provided. It is possible that there are Deeds, Easements, or other instruments (recorded or unrecorded) which may affect the subject property. No search of the Public Records has been made by the Surveyor.
3. The land description shown hereon was prepared by the Surveyor.
4. Bearings shown hereon are based on the Universal Transverse Mercator, (NAD 27), Florida East Zone. Grid North furnished by Palm Beach County with the south line of Section 31-46-43 being N89°11'28"E.
5. Data shown hereon was compiled from instrument(s) of record and does not constitute a boundary survey.
5. Abbreviation Legend: C = Centerline; Δ = Delta Angle; ESM'T = Easement; F.L. = Florida Power & Light Company; L = Arc Length; L.B. = Licensed Business; L.W.D.D. = Lake Worth Drainage District; O.R.B. = Official Records Book; P.B.C.R. = Palm Beach County Records; P.L.S. = Professional Land Surveyor; P.O.B. = Point of Beginning; P.O.C. = Point of Commencement; R = Radius; R/W = Right-of-Way, SEC. = Section.

CERTIFICATION:

I HEREBY CERTIFY that the attached Sketch and Description of the hereon described property is true and correct to the best of my knowledge and belief as prepared under my direction on March 13, 1998. I FURTHER CERTIFY that this Sketch and Description meets the Minimum Technical Standards set forth in Chapter 61G17-6, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.



MICHAEL S. AVROM, P.L.S.
 Florida Registration No. 3238
 AVROM & ASSOCIATES, INC.
 L.B. NG. 3300

EXHIBIT B

VICINITY SKETCH

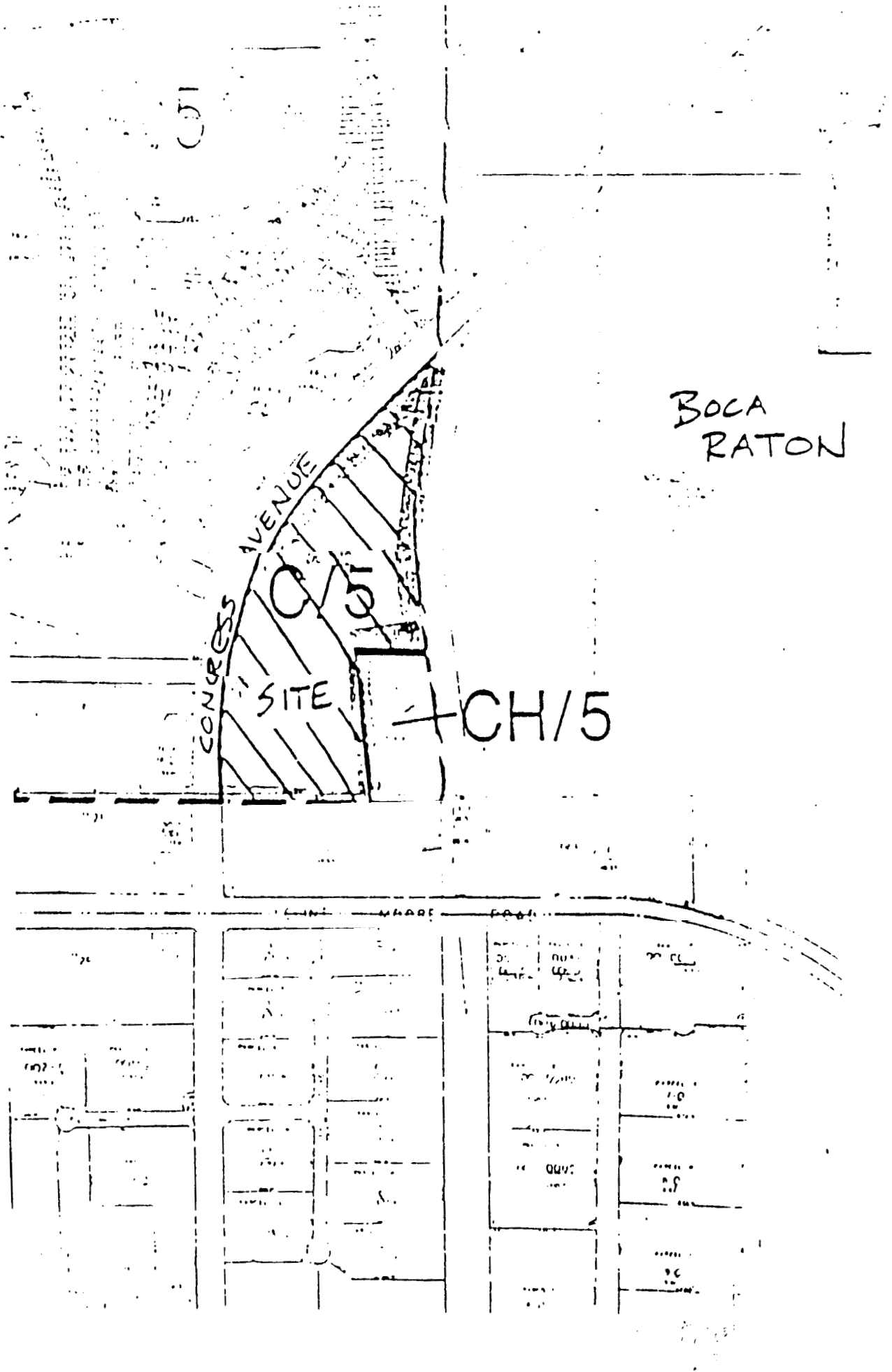


EXHIBIT C

CONDITIONS OF APPROVAL

NOTE: All previous conditions of approval are shown in BOLD and will be carried forward with this petition unless expressly modified.

A. ALL PETITIONS

1. **All** previous conditions of approval applicable to the subject property, as contained in Resolution R-95-1733 (Petition 95-63), have been consolidated as contained herein. The petitioner shall comply with all previous conditions of approval and deadlines previously established by Section 5.8 of the ULDC and the Board of County Commissioners, unless expressly modified. (ONGOING: MONITORING-Zoning)

2. Condition A.1 of Resolution R-95-1733, Petition 95-63 which currently states:

Development of the site is limited to the uses and site design **dated** October 4, 1995 as approved by the Board of County Commissioners. **All** modifications must be approved by the Board of County Commissioners unless the proposed changes are required to meet conditions of approval or are in accordance with the **ULDC** or conditions of approval.

Is hereby amended to read:

Development of the site is limited to the uses and site design as approved by the Board of County Commissioners. The approved site plan is dated June 15, 1998. All modifications must **be** approved by the Board of County Commissioners unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC. (ONGOING: ZONING)

B. BUILDING AND SITE DESIGN

1. Total **gross** floor area of any individual tenant shall **be** limited to a maximum of **60,000** square feet. (Previously Condition D.1 of Resolution R-95-1733, Petition 95-63) (DRC: BLDG - Zoning)

2. **A** maximum of three (3) out-parcels shall be permitted on-site. **A** maximum of one (1) out-parcel may have vehicular circulation on all four (4) sides. (Previously Condition D.2 of Resolution R-95-1733, Petition 95-63) (DRC: BLDG - Zoning)

3. **All** structures shall be consistent in architectural design, details, **colors** and materials. (Previously Condition D.3 of Resolution R-95-1733, Petition 95-63) (BLDG. PERMIT: BLDG - Zoning)

4. Similar architectural character and treatment, such as color, material and roof treatment, shall be provided on **all** sides of the **buildings**. Canopies and awnings shall not be required along **the** sides and rear of the **two** primary buildings. (Previously Condition **D.4** of Resolution R-95-1733, Petition 95-63) (BLDG. PERMIT: BLDG - Zoning)

5. All ground level air conditioning and mechanical equipment shall be screened from view on all sides by a visually opaque barrier consistent with the color, character and architectural style of the principle structure or equivalent landscape material. The roof line shall be extended to the height necessary to fully screen from view all roof mounted equipment on all sides. (Previously Condition D.5 of Resolution R-95-1733, Petition 95-63) (BLDG. PERMIT: BLDG - Zoning)
6. **Overnight** storage or parking of delivery vehicles or trucks shall not be permitted on site, except within designated loading and delivery areas along the eastern property line. (Previously Condition D.6 of Resolution R-95-1733, Petition 95-63) (ONGOING: CODE ENF)
7. **All** areas or receptacles for the storage and disposal of trash, garbage or vegetation, such as dumpsters and trash compactors, shall be screened from view on all sides in a manner consistent with the color, character and architectural style of the principle structure and shall be confined to areas designated on the site plan. (Previously Condition D.7 of Resolution R-95-1733, Petition 95-63) (DRC: BLDG - Zoning)
8. The petitioner shall submit plans to the City of Boca Raton Community Appearance Board for informal review and advisory comments. (Previously Condition D.8 of Resolution R-95-1733, Petition 95-63) (Condition satisfied by Petitioner on November 28, 1995)
9. **No drive in/drive** through restaurants shall be permitted. **Out parcels** restaurants shall not be permitted indoor or outdoor play areas. **Out parcels** restaurants shall not have outdoor seating. (Previously Condition D.9 of Resolution R-95-1733, Petition 95-63) (ZONING / BLDG - Zoning)
10. **No** vehicular use, parking, landscaping or other improvements shall be located within the LWDD easements along the south and east property lines, unless permitted by the LWDD. (Previously Condition D.10 of Resolution R-95-1733, Petition 95-63) (ZONING)
11. The petitioner shall vary the front facade of all structures with the use of such features as archways, canopies and building off-sets so that there is no more than 300 feet between these distinguishing architectural features, such as those shown on the preliminary architectural elevations date November 20, 1995. The purpose of this requirement is to prevent the perception of a long, straight building with no architectural relief. (Previously Condition D.11 of Resolution R-95-1733, Petition 95-63) (BLDG. PERMIT: BLDG - Zoning)
12. There shall be no external rain leaders on any building except on the east side of the two primary buildings. (Previously Condition D.12 of Resolution R-95-1733, Petition 95-63) (BLDG. PERMIT: BLDG - Zoning)
13. There shall be no external ladders mounted on any building. (Previously Condition D.13 of Resolution R-95-1733, Petition 95-63) (BLDG. PERMIT: BLDG - Zoning)

14. The petitioner shall provide an on site, covered dropoff ~~area~~ **area** to accommodate public transportation. The covered dropoff area ~~shall~~ have consistent architectural and landscape treatment as the remainder of the shopping center. (Previously Condition D.14 of Resolution R-95-1733, Petition 95-63) **(BLDG. PERMIT: BLDG - Zoning)**

C. ENVIRONMENTAL RESOURCES MANAGEMENT

1. Prior to DRC certification of the site plan, the petitioner shall **submit** to ERM for review and approval a Preservation and Relocation Plan. This plan shall:
 - a. Demonstrate how significant native vegetation is **incorporated** into the site design.
 - b. Identify by number all native vegetation relocated to the preservation areas, buffer areas, and parking islands.
 - c. Detail tree protection procedures and guidelines for **excavating** and dewatering within fifty **(50)** feet of preserved vegetation,,
 - d. Provide for selective pruning of tree branches less than **fifteen (15)** feet in height overhanging proposed vehicular **circulation** areas. **No** removal of these branches shall occur without prior approval from ERM. (Previously Condition C. 1 of Resolution R-95-1733, Petition 95-63) (DRC: ERM)
2. Prior ~~to~~ DRC certification of the site plan, the petitioner shall **submit** to ERM for review and approval a Listed Species Relocation Plan. This plan shall:
 - a. Demonstrate how the listed species are incorporated into the site design.
 - b. Identify by name and quantity the listed species relocated to ~~the~~ preservation areas ~~or~~ other designated receiver sites. (Previously Condition C.2 of Resolution R-95-1733, Petition 95-63) (DRC: ERM)
3. Prior to DRC certification of the site plan, the petitioner shall submit to ERM for review and approval a Tree Well and ~~Aerator/Feeder~~ Plan. This plan shall:
 - a. Detail the construction of each tree well including well **size**, width, depth, material composition, and safety measures ~~to~~ protect the public.
 - b. Detail the placement of each ~~aerator/feeder~~ including tree **size**, distance from tree, depth, number required and topological and finish grade elevations. (Previously Condition C.3 of Resolution R-95-1733, Petition 95-63) (DRC: ERM)
4. Prior to **DRC** certification of the site plan, the petitioner shall submit ~~the~~ Landscape plan to ERM and the Zoning Division for review ~~and~~ approval. This plan shall:

- a. Incorporate the relocated and preserved vegetation **within** the construction areas and assigned tree survey numbers.
 - b. Denote any changes or deviation approved by ERM from the Preservation and Relocation Plan. (Previously Condition C.4 of Resolution R-95-1733, Petition 9543) (DRC: ERM/ZONING)
5. Prior to DRC certification of the site plan, the petitioner shall **submit** to **ERM** for review and approval the Preserve Management Plan. (Previously Condition C.5 of Resolution R-95-1733, Petition 9543) (DRC: ERM)

D. LANDSCAPE

- 1. **All** landscaping shall be installed and maintained in accordance with the cross sections, buffer widths and landscape design **concepts** represented in the Regulating Plan dated July **25, 1995** and revised November **20,1995**, except as modified below:
 - a. The landscape buffer, north of the FP&L substation, shall become a Type A landscape **buffer/Area 1**.
 - b. The eastern buffer abutting the **E4** canal shall be a Type **B/Area 4** buffer except where adjacent to preserve areas where **it** will become a Type **A/Area 1**.
 - c. Type D landscape **buffer/Areas 1 and 2** (Congress Ave.)
 - (1) Minimum four (**4**) foot high visual screen at **time** of installation measured from the sidewalk grade consisting of layered plantings and berming. (Previously Condition **F.1** of Resolution R-95-1733, Petition 95-63) (LANDSCAPE-Zoning)
- 2. Condition **F.2** of Resolution R-95-1733, Petition 9543 which currently states:

The Congress Avenue buffer shall be completed prior to the issuance of the first certificate of occupancy for the shopping center. (CO: MONITORING-Zoning)

Shall hereby be amended to read:

The Congress Avenue buffer shall be completed for each phase of the shopping center prior to the issuance of the first certificate of occupancy for that phase. (CO: MONITORING -Zoning)
- 3. Landscaping on Congress Avenue (exclusive of preserve and/or vegetation relocation receiving zones) shall consist of the following:
 - a. Total quantity of trees shall average one tree per **200** square feet of buffer area.
 - b. The total quantity of required trees under Table **6.8-3** of the ULDC (one tree per **300 sq.ft.** of **buffer** area shall comply with the following minimum tree height and canopy **requirements**:

- i) **Fifty (50)** Percent twelve **(12)** foot high with six **(6)** foot canopy;
 - ii) **Forty (40)** percent fourteen **(14)** foot high with seven foot **(7)** foot canopy; and
 - iii) **Ten (10)** percent sixteen **(16)** foot high with eight **(8)** foot canopy.
 - c. Remainder of trees provided shall be a minimum ten **(10)** Foot high with four **(4)** foot canopy to allow flexibility in the proposed Alternative Landscape Betterment Plan. Palms may be substituted as permitted per ULDC requirements.
 - d. Minimum twenty **(20)** foot width. (Previously Condition F.3 of Resolution R-95-1733, Petition 95-63) (LANDSCAPE-Zoning)
- 4. Landscaped divider medians with at grade bicycle and pedestrian cuts shall be provided in the center of all driveways over thirty **(30)** feet in width providing ingress and egress to the site. The minimum width of this median shall be six **(6)** feet. The minimum length of this median shall be twenty five **(25)** feet. A minimum width of five **(5)** feet of landscaped area shall be provided. One tree and appropriate ground cover shall be planted for each twenty **(20)** linear feet of the divider median. (Previously Condition F.4 of Resolution R-95-1733, Petition 95-33) (CO: LANDSCAPE-Zoning)
- 5. The petitioner shall provide an eight **(8)** foot visual screen consisting of a berm or fence with landscaping along the west side of the existing FPL transmission poles located in the rear of the shopping center. (Previously Condition F.5 of Resolution R-95-1733, Petition 95-63) (CO: BLDG - Zoning)
- 6. Planting design along Congress Avenue shall include flowering trees. (Previously Condition F.6 of Resolution R-95-1733, Petition 95-63) (CO: LANDSCAPE-Zoning)

E. ENGINEERING

- 1. Condition E.1 of Resolution R-95-1733, Petition 95433 which currently states:

Prior to the issuance of a building permit the property owner shall convey to Palm Beach County Land Development Division by road right-of-way warranty deed additional right of way for the construction of a right turn lane along Congress Avenue at the project's middle entrance. This right-of-way shall be a minimum of **280** feet in storage length, twelve feet in width and a taper length of **50** feet or as approved by the County Engineer and shall be in addition to the standard **120'** Right-of-way. This additional right of way shall be free of all encumbrances and encroachments and shall include "Corner Clips;" where appropriate as determined by the County Engineer. Property owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments. (BLDG). PERMIT: BLDG - Eng)

Is hereby amended to read:

Prior to the issuance of any building permits, including the proposed ~~A.TM~~, ~~the~~ property owner shall convey to Palm Beach County Land Development Division by road right-of-way warranty deed additional right of way for the construction of a right turn lane along Congress Avenue at the project's middle entrance. This right-of-way shall be a minimum of 280 feet in storage length, twelve feet in width and a taper length of 50 feet or as approved by the County Engineer and shall be in addition to the standard 120' Right-of-way. This additional right of way shall be free of all encumbrances and encroachments and shall include "Corner Clips" where appropriate as determined by the County Engineer. Property owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments. (BLDG. PERMIT: MONITORING - Eng)

2. Condition E.2 of Resolution R-95-1733, Petition 95-63 which currently states:

The Property owner shall construct a right turn lane south approach on Congress Avenue at the project's middle entrance. This construction shall be concurrent with the paving and drainage improvements for the site. Any and all costs associated with the construction shall be paid by the property owner. These costs shall include, but are not limited to, utility relocations.

- a) **Permits required by Palm Beach County for this construct on shall be obtained prior to the issuance of the first Building Permit.**
- b) **Construction shall be completed prior to the issuance of the first Certificate of Occupancy. - Eng)**

Is hereby amended to read:

Property Owner shall construct a right turn lane south approach on Congress Avenue at the project's middle entrance. This construction shall be provided concurrent with the paving and drainage improvements for building permits greater than 35,000 square feet. Any and all costs associated with this turn lane construction shall be paid by the Property Owner. These costs shall include, but are not limited to, utility relocations.

- a). Permits required by Palm Beach County for this construction shall be obtained prior to the issuance of the first Building Permit for paving and drainage improvements for building permits greater than 35,000 square feet. (BLOG. PERMIT: MONITORING - Eng)
- b). Construction shall be completed prior to the issuance of Certificates of Occupancy for more than 35,000 square feet of building area. (CO: MONITORING - Eng)

The Property Owner may elect to proceed with turn lane construction (and/or driveway turn-out and/or median improvement construction in accordance with the approved Site Plan) for the Project at an earlier date in conjunction with the six-laning improvements for Congress Avenue (by others), subject to compliance with County's access management standards and permitting requirements. It shall be the property owners responsibility to contract with Palm Beach County's Roadway Production Division and Peninsula

Park/Carr to affect the inclusion of the required plan changes in the design and construction of the Congress Avenue Road widening project.

3. The property owner shall pay a Fair Share Fee in the amount and manner required by the "Fair Share Contribution for Road Improvements Ordinance" as it presently exists or as it may from time to time be amended. The Fair Share Fee for this project, Zoning Petition 95-63, which is to be paid at the time of issuance of the Building Permit presently is \$502,150.00 (9,130 trips X \$55.00 per trip) (Previously Condition E.3 of Resolution R-95-1733, Petition 95-63) (BLDG PERMIT: IMPACT FEE COORD)
4. The Property Owner shall fund the cost of signal installation if warranted as determined by the County Engineer at the project's entrance road (across from the main entrance to the Boca Golf and Tennis Club) and Congress Avenue. Should signalization not be warranted after 36 months of the final Certificate of Occupancy this property owner shall be relieved from this condition. (Previously Condition E.4 of Resolution R-95-1733, Petition 95-63) (ONGOING: ENG - Bldg)
5. Condition E.5 of Resolution R-95-1733, Petition 95-63 which currently states:

Building permits shall not be issued for more than **1050** net external trips per day (**12,250** square feet of general retail or equivalent land uses as approved by the County Engineer) until a contract(s) for the following improvements at the intersection of Yamato Road/Congress Ave. has been let:

- a) right turn lane east approach (scheduled to be accomplished by others)
- b) Conversion of striped out lane to third left turn lane on north approach and appropriate receiving lanes on Yamato Road to provide for a triple left turn. Widen the eastbound receiving lanes on Yamato Rd. to accommodate the triple left turn if required by the Florida Department of Transportation (FDOT). (BLDG PERMIT: BLDG - Eng)

Is hereby deleted. [REASON: no longer required]

6. Condition E.6 of Resolution R-95-1733, Petition 95-63 which currently states:

The Property Owner shall post surety for the work in 5 (b), including required signal modifications, prior to June 4, 1996 if these improvements have not been assured by some other developer or governmental entity prior to that time.

Is hereby deleted. [REASON: included in Revised Condition E.9]

7. Prior to June 4, 1996, the Property Owner shall make a voluntary contribution to the County of \$ 100,000 to assist in funding other road improvements in the area. (Previously Condition E.7 of Resolution R-95-1733, Petition 95-63) (DATE: MONITORING - Eng)

8. Building permits shall not be issued for more than **1180** net **external** trips per day (**14,750** square feet of general retail **or** equivalent land uses as approved **by** the County Engineer) until a contract has been let for the construction **of** Military Trail from West Atlantic Avenue to Clint Moore Road to a 6-lane divided section, including the **following** improvements (and signal modifications to accommodate **these** improvements) at the intersection of Military Trail/ Clint Moore **Rd.:**

a) second left turn lane, south approach; and

b) second left turn lane, north approach

NOTE: These improvements are scheduled in Palm Beach County's **5-** Year Road Program for FY **1996/97**. (Previously Condition **E.8** of Resolution R-95-1733, Petition 95-63) (BLDG PERMIT: BLDG - Eng)

9. Condition E.9 of Resolution R-95-1733, Petition **95-63** which currently states:

a) Building permits shall not be issued for more than **1633** net external trips per day (24,650 square feet of general **retail** or equivalent land uses as approved by the County Engineer) **until** Yamato Road is under construction to a 6-lane divided section between Congress Ave. to Military Trail.

b) The Property Owner shall post surety for this **work** prior to June 4, 1996. Surety shall be 110% of the estimated cost prepared **by** the Property Owner's engineer and approved **by** the **County** Engineer. The Property Owner shall prepare the plans, obtain **all** permits and let a contract for construction of this project. **Traffic** impact fee credit shall be provided for this **work**. (BLDG PERMIT: BLDG - Eng)

Is hereby amended to read:

a) Property Owner shall have entered into a Public Facilities Agreement ("PFA") with Palm Beach County prior to approval of Zoning Petition 95-63(A). The **PFA** shall govern the project phasing based upon the following criteria and subject to agreements included in the **PFA**. (ENGINEERING)

b) This project shall be phased as follows:

building permits shall not be issued for more than 1633 net **external** trips per day (24,650 square feet of general retail or equivalent **land** uses as approved by the County Engineer) until a contract has **been** let for construction of Yamato Road as a 6-lane divided **section** between Congress Ave. to Military Trail. The mix of allowable **uses**, as permitted by the Zoning Division, listed above may be adjusted **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. (REVISED TRAFFIC STUDY: MONITORING; Eng)

c) The Property Owner shall post surety for the Yamato Road construction with the Office of the Land Development' Division in accordance with the terms of PFA (anticipated to be July 25, 1998.

Surety shall be in the amount of ~~\$1.29608~~ million dollars. (DATE: MONITORING-Eng)

- d) Traffic impact fee credit shall be provided in the amount ~~of~~ \$1.5 million dollars. This amount reflects the funding provided for in condition 9(c) above and the funds previously expended by the property owner. (DATE: MONITORING - Zoning)

10. Condition ~~E.10~~ of Resolution R-95-1733, Petition 95-63 which currently states:

Prior to June 4, 1996, the Property Owner shall provide surety in the amount of **\$600,000** for the design, permitting, and construction of the 6-lane widening of Congress Ave. from Clint Moore Rd. north to the ~~-95~~ / Congress Ave. interchange.

- a) **If**, at any time, prior to the occupancy **of 80%** of the project (including outparcels), the County Engineer determines that the projected traffic will exceed the Traffic Performance Standard within the following year, then he may begin to draw against the surety for the preparation of plans.
- b) **If** the County Engineer determines that the Traffic Performance Standard requires the 6-lane construction of Congress Ave. **prior to** occupancy of **80%** of the project (including outparcels), **then** the surety may be drawn by the County and the County shall accomplish the construction.
- c) Traffic impact fee credit shall be provided for the above work. Any work accomplished by the Property Owner on **Congress Ave.** in excess of the site-related construction which is **approved** by the County Engineer as being compatible with the ultimate 6-lane section shall reduce the surety posted for Congress Ave.
- d) The County Engineer may require the Property Owner to **provide** a traffic study **of** Congress Ave. between Clint Moore Rd. and ~~the~~ **I-95/Congress Ave. Interchange** within 90 days **of** his **written** request at any time prior to **80%** occupancy of the project. **The** purpose of this study is to determine if the Traffic Performance Standards will require the 6-lane construction of Congress Ave. The traffic study shall be based upon the most recent traffic counts available at that time and shall be acceptable to the County Engineer.
- e) **If** the 6-lane construction is accomplished by others prior to **80%** occupancy, then this condition is relieved and all **remaining** surety shall be released.
- f) Once the **80%** occupancy of the project has been reached, Property Owner shall have the right to submit a traffic study **for** approval of the County Engineer in pursuit **of** the release of the remaining surety. The traffic study shall provide an **existing** traffic count(s) on Congress Ave. Entrance which reflects at least **80%** occupancy of the shopping center **and is** adjusted **as** required for seasonal variations to yield a number(s) which can be compared against the Traffic Performance Standards. **If the**

Traffic Performance Standards are shown not to be exceeded on this segment of Congress Ave. upon 80% occupancy of the project, then the Property Owner is relieved from this condition and all remaining surety shall be released.

Is hereby deleted.

11. In addition to the conditions related to offsite roadway requirement!!; set forth above, Property Owner shall be solely responsible for the cost of design, permitting, and construction of turn lane improvements along Congress Ave. necessary to provide direct access to the project site in conjunction with proposed project development activities. (Previously Condition E.11 of Resolution R-95-1733, Petition 95-63) (ONGOING: ENG)
12. Condition E.12 of Resolution R-95-1733, Petition 95-63 which currently states:

Property Owner may elect, in its sole discretion, to assist County Engineer in expediting scheduled construction of Military Trail (between Clint Moore Rd. and Linton Blvd.) by advancing the funds (currently estimated at approximately \$2 million) for the design, permitting, and construction of roadway improvements prior to the County's scheduled funding of such work. However, County shall be obligated to accept Property Owner's offer only if it is feasible for the County to expedite the Military Trail construction at the time of the request. If construction is expedited in this manner, County shall then refund Property Owner's advance payments for improvements in accordance with a specific schedule, with the understanding that such refunds will not include any interest payments to Property Owner For such advance funds. (ONGOING: ENG)

Is hereby deleted. [REASON: no longer required]

13. Condition E.13 of Resolution R-95-1733, Petition 95-63 which currently states:

LANDSCAPE WITHIN MEDIAN

- A. Prior to issuance of a building permit, the property owner shall apply to the Palm Beach County Engineering and Public Works Department for a permit to landscape all adjacent median(s) of all abutting rights-of-way. When permitted by Palm Beach County Department of Engineering and Public Works, landscaping shall, at a minimum, consist of the "Low Cost Planting Concept" outlined in the Palm Beach County Engineering and Public Works Department March 1994 Streetscape Standards. All landscape material, installation, and maintenance requirements shall be subject to the standards set forth by the Streetscape Standards. If all xeriscape material is utilized, the watering of the plant material during the initial healing-in period shall be the responsibility of the property owner. Alternative species other than those listed in the County standards may be allowed subject to approval by the County Engineer. (BLDG - Eng)

- B. **All** required median landscaping, including an irrigation **system** if required shall be installed at the property owners **expense**. **All** landscape material shall also be the perpetual **maintenance** obligation of the petitioner and its successors, heirs; or assignees or duly established Property Owner's **Association** and/or Homeowner's Association. Perpetual **maintenance** includes, but is not limited to, pruning, fertilizing, irrigation, and alternate watering **of** Xeriscape material during periods of drought in order to maintain healthy plant material. **All** landscape material shall be installed on or before the issuance of a Certificate of Occupancy. (BLDG - Eng)
- C. Declaration of Covenants and Restriction Documents shall be established or amended as required, prior to issuance of a certificate of occupancy to reflect this obligation. (BLDG - Co Atty)

Is hereby amended to read:

13. LANDSCAPE WITHIN MEDIAN

- A. Prior to issuance of a building permit for more than 1000 square feet of commercial area, the property owner shall apply to the Palm Beach County Engineering and Public Works Department for a permit to landscape all adjacent median(s) of Congress Avenue right-of-way and shall comply with all permit requirements, including but not limited to indemnifying Palm Beach County. The property owner shall also be responsible to supplement any existing landscape material previously planted in this median and all new landscape material shall be consistent with the landscaping theme adopted for this roadway. When permitted by Palm Beach County Department of Engineering and Public Works, landscaping shall, at a minimum, consist of the "Low Cost Planting Concept" outlined in the Palm Beach County Engineering and Public Works Department March 1994 Streetscape Standards and shall be consistent with the landscaping theme adopted for this roadway. (BLDG PERMIT: MONITORING - Eng)
- B. **All** required median landscaping, including an irrigation system if required shall be installed at the property owners expense. **All** landscape material shall also be the perpetual **maintenance** obligation of the petitioner and its successors, heirs or assignees or duly established Property Owner's Association and/or Homeowner's Association. Perpetual maintenance includes, but is not limited to, pruning, fertilizing, irrigation, and alternate watering of **Xeriscape** material during periods of drought in order to maintain healthy plant material. **All** landscape material shall be installed on or before the issuance of a Certificate of Occupancy for more than 1000 square feet of commercial area. (Previously Condition E.13.b of Resolution R-95-1733, Petition 95-63) (BLDG - Eng)
- C. Declaration of Covenants and Restriction Documents shall be established or amended as required, prior to issuance of a certificate of occupancy for more than 1000 square feet of commercial area. (Previously Condition E.13.c of Resolution R-95-1733, Petition 95-63) (BLDG - Co Atty)

14. Prior to the issuance of a building permit, the property owner shall convey to Palm Beach County a 10' wide (typical) temporary and non-exclusive roadway construction easement along the project's entire Congress Avenue frontage. Construction within this easement by County (and/or its agents) shall conform to Palm Beach County Standards and shall be consistent with project Development Order conditions including, but not limited to: ERM restrictions; landscaping and berm requirements; and, **any** obligations with regard to existing easement rights of others. County (and/or its agents) shall be responsible for: a) Protecting all native vegetation, landscaping, irrigation, utilities, drainage, sidewalk, paving, signage, fencing and/or other above/below ground improvements within said easement area; b) Taking all reasonable precautions to prevent the discharge of hazardous materials/wastes within/adjacent to the easement area; and, c) Providing for the repair, replacement or reconstruction (as appropriate) of any damage to existing native vegetation, landscaping and/or other facilities within/adjacent to the easement as impacted by the proposed construction activities. (BLDG PERMIT: MONITORING - Eng).

F. LIGHTING

1. All outdoor lighting used to illuminate the subject property and identification signs shall be of low intensity, shielded and directed down and away from adjacent properties and streets. Low intensity back lighted or interior lighted signs may be permitted. (Previously Condition G.1 of Resolution R-95-1733, Petition 95-63) (BLDG PERMIT: BLDG / CODE ENF - Zoning)
2. All outdoor lighting fixtures shall be "shoe-box" style and thirty (30) feet in height, measured from finished grade to highest point. All lighting fixtures shall be directed downward at ninety (90) degree; or less. (Previously Condition G.2 of Resolution R-95-1733, Petition 95-63) (BLDG PERMIT: BLDG - Zoning)
3. All outdoor lighting shall be extinguished no later than 12:00 p.m., excluding security lighting only. (Previously Condition G.3 of Resolution R-95-1733, Petition 95-63) (ONGOING: CODE ENF)
4. All lighting fixtures shall be of a consistent source. (Previously Condition G.4 of Resolution R-95-1733, Petition 95-63) (BLDG PERMIT: BLDG - Zoning)
5. Wall mounted security lights shall be of a design that does not project light onto adjacent property or public right-of-ways. (Previously Condition G.5 of Resolution R-95-1733, Petition 95-63) (BLDG PERMIT: BLDG - Zoning)

G. MUPD

1. Prior to site plan certification, the petitioner shall record in the public records covenants ensuring architectural compatibility between buildings and signage for the entire subject property. The covenants shall be in a form acceptable to the County Attorney and shall not be removed, altered, changed or amended without written approval from the County. (Previously Condition B.1 of Resolution R-95-1733, Petition 95-63) (DRC: COUNTY ATTORNEY-Zoning)

2. Condition 8.2 of Resolution R-95-1733, Petition 9563 which currently states:

Total gross floor area shall be limited to a maximum of 246,900 square feet. (DRC: ZONING)

Shall hereby be amended to read:

Total gross floor area shall be limited to a maximum of **246,900** square feet and construction may be implemented by Developer in **two** phases. **Phase-I** development shall consist of construction of an unmanned, remote "ATM" banking facility in a 1.37 +/- acre area along with associated landscaping, paving and signage as identified on the Preliminary Development Plan as set forth on exhibits identified as the Boca Congress Center Master Plan and Site Plan, as last revised by Winston Lee & Associates on June 15, 1998. (DRC: ZONING)

Phase-I development activities, as referenced in the previous paragraph, shall constitute the initial, but not necessarily the ultimate, construction improvements within the Phase-I area, and shall include:

- a. Construction and landscaping of the perimeter berm along Congress Avenue conforming to previous approvals and limited to an area extending from the south side of the entrance drive to the north boundary of the FPL Easement Area;
- b. Compliance with requirements of the previous County Environmental Resource Management approvals to the minimum extent necessary to complete Phase-I development;
- c. Easements as may be required, both within and outside the Phase-I area, to provide for public utility improvements and/or drainage facilities; and,
- d. No water or sewer service requirements since Phase-I facilities will not be manned.

Developer shall within fifteen (15) days of County's amendment of Development Order conditions apply for, and DRC shall thereafter expeditiously process final certification of exhibits identified as the Boca Congress Center Master Plan and Site Plan, as last revised by Winston Lee & Associates on June 15, 1998, reflecting the proposed Phase -I development activities. The Phase-I ATM shall be operational no later than March 31, 1999, and shall remain operational until replaced by any future development.

Developer shall have three years in which to commence development of a subsequent phase or phases of Project development following the first building inspection of Phase-I as set forth in Section 5.8, Table 5.8-1, Planned Development District: Non-Planned Unit Development. (DRC/DAT E: ZONING/MONITORING - Code Enf/Zoning)

3. Condition 8.3 of Resolution R-95-1733, Petition 95-63 which currently states:

To ensure consistency with the site plan dated October 4, 1995 presented to the Board of County Commissioners, no more than ten (10) percent of the total approved square footage shall be administratively relocated.

Is hereby amended to read:

To ensure consistency with the site plan dated June 15, 1998 presented to the Board of County Commissioners, no more than ten (10) percent of the total approved square footage shall be administratively relocated. (DRC:ZONING)

H. SIGNS

1. All point of purchase, free standing, entry and out parcel identification signs shall conform to the recommendation by the City of Boca Raton Community Appearance Board as referenced in the letter provided by the petitioner dated December 4, 1995. All freestanding signs shall not exceed a maximum of twelve (12) feet in height measured from finished grade to highest point. (Previously Condition H.1 of Resolution R-95-1733, Petition 95-63) (BLDG. PERMIT: BLDG - Zoning)
2. There may be a maximum of three free standing project identification signs and total of two freestanding outparcel identification signs. (Previously Condition H.2 of Resolution R-95-1733, Petition 95-63) (BLDG PERMIT: BLDG - Zoning)
3. The buildingsigns shall be designed as a unified sign program for the entire project, utilizing consistent size and placement. (Previously Condition H.3 of Resolution R-95-1733, Petition 95-63) (BLDG PERMIT: BLDG - Zoning)
4. Signs may only advertize the business name. No product identification shall be allowed on signs. (Previously Condition H.4 of Resolution R-95-1733, Petition 95-63) (BLDG PERMIT: BLDG - Zoning)
5. Signs may not utilize exposed neon, nor shall exposed neon be allowed as an architectural feature. (Previously Condition H.5 of Resolution R-95-1733, Petition 95-63) (BLDG PERMIT: BLDG - Zoning)

I. WATER UTILITIES

1. Condition 1.1 of Resolution R-95-1733, Petition 95-63, which currently states:

The developer shall contribute on an equitable fair share basis toward the cost of construction of an Emergency Water Interconnect on Congress Avenue when constructed by Palm Beach County and/or City of Boca Raton. (ONGOING: PBCWU)

Is hereby amended to read:

The Property Owner shall provide for the cost of design, preparation/dedication of easement(s), permitting, construction, inspection, testing, and certification of an Emergency Water Interconnect ("EWI") - including associated water main extensions - between PBCWUD and City

of Boca Raton ("City") potable water systems, within or adjacent to the eastern right-of-way line of Congress Avenue expected to cost in the excess of \$100,000.00.

- a). Developer's obligations shall include the preparation/granting of a utility easement (approximately 20' by 20') to PBCWUD and/or City along the Project's Congress Avenue frontage at a location acceptable to PBCWUD and City that does not impair development or the limits/scope of improvements shown on the approved Site Plan. (ONGOING: PBCWUD)
- b). Developer shall complete construction of the EWI in conjunction with the proposed six-laning improvements to Congress Avenue (to be provided by others) and prior to the issuance of the first certificate of occupancy for the shopping center, unless construction of the EWI is delayed or canceled by PBCWUD and/or the City, or as a result of delays associated with construction of the six-lane section of Congress Avenue. (CO: MONITORING - PBCWUD)
- c). Developer shall not be entitled to any credits against the Project's PBCWUD Developer's Agreement fees for costs associated with the EWI, and shall not be entitled to any main "oversizing" credits associated with required EWI main extensions. (ONGOING: PBCWUD)
- d). The EWI facilities shall consist of:
 - 1) The extension of the existing PBCWUD 12" water main, located to the north of the northern driveway entrance to the Boca Golf & Tennis Club from the west side of Congress Avenue east and south to the northeast corner of the Project and proposed interconnection location as agreed by PBCWUD and the City;
 - 2) The extension of the existing City 16" water main, located in the approximate center of Congress Avenue, to the proposed interconnection location;
 - 3) Interconnection of the PBCWUD 12" water main and the existing City 16" water main, along with the installation of metering devices; and,
 - 4) Installation of fencing and/or landscaping improvements as may be required around the water system interconnect easement area. (ONGOING: PBCWUD)

J. COMPLIANCE

1. In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the petitioner 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: MONITORING - Zoning)
2. Condition A.1 of Resolution R-95-1733, Petition 95-63 which currently states:

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; 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 **ULDC** 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; and/or
- d. Referral to code enforcement; and/or
- e. Imposition of entitlement density or intensity.

Appeals of any departmental administrative actions hereunder may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Unified Land Development Code (ULDC), as amended. Appeals of any revocation of an Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, or other actions based on a Board of County Commission decision shall be by petition for writ of certiorari to the Fifteenth Judicial Circuit.

Is hereby amended to read:

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; 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 ULDC at the time of the finding of noncompliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions; 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 a majority vote of the Code Enforcement Board 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 5.8 of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval.

Appeals of any departmental administrative actions hereunder may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Unified Land Development Code (ULDC), as amended. Appeals of any revocation of an Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment or other actions based on a Board of County Commission decision shall be by petition for writ of certiorari to the Fifteenth Judicial Circuit. (MONITORING)



**Department of Planning,
Zoning & Building**

100 Australian Avenue

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**INTER-OFFICE COMMUNICATION
PALM BEACH COUNTY
PLANNING, ZONING AND BUILDING**

TO: Willa Oswalt, Minutes Clerk

FROM: L. Martin Hodgkins, Zoning Director

LmH by me

DATE: July 1, 1998

RE: Amended Conditions from the June 25, 1998 BCC

The conditions of these resolutions are true and correct and reflect the changes approved by the Board of County Commissioner on **June 25, 1998.**

The following petitions were amended:

DOA95-63(A)


Boca Congress Center

W/CA97-91

AYOW-3 Tower

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