

RESOLUTION NO. R-2009- 0893

RESOLUTION APPROVING ZONING APPLICATION ABN/DOA-2009-01358  
(CONTROL NUMBER 1988-00029)  
DEVELOPMENT ORDER AMENDMENT  
APPLICATION OF PBM Associates Ltd  
BY Land Design South, Inc., AGENT  
(Palm Beach Market Place)

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, as amended, is authorized and empowered to consider applications relating to zoning; and

WHEREAS, the notice and public hearing requirements, as provided for in Article 2 (Development Review Process) of the Palm Beach County Unified Land Development Code (Ordinance 2003-067, as amended) have been satisfied; and

WHEREAS, Zoning Application ABN/DOA-2009-01358 was presented to the Board of County Commissioners at a public hearing conducted on May 28, 2009; and

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

WHEREAS, this approval is subject to Article 2.E (Monitoring), 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 has considered the findings in the staff report and the following findings of fact:

1. This Development Order Amendment is consistent with the purposes, goals, objectives and policies of the Palm Beach County Comprehensive Plan, including standards for building and structural intensities and densities, and intensities of use.
2. This Development Order Amendment complies with relevant and appropriate portions of Article 4.B (Supplementary Use Standards) of the Palm Beach County Unified Land Development Code. This Development Order Amendment also meets applicable local land development regulations.
3. 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.
4. The proposed design, with conditions as adopted, minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.
5. This Development Order Amendment has a concurrency determination and complies with Article 2.F (Concurrency - Adequate Public Facility Standards) of the ULDC.
6. 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.

7. This Development Order Amendment, with conditions as adopted, will result in logical, timely and orderly development patterns.
8. This Development Order Amendment, with conditions as adopted, complies with standards imposed on it by all other applicable provisions of the Palm Beach County Unified Land Development Code for use, layout, function, and general development characteristics.
9. This Development Order Amendment, with conditions as adopted, is consistent with applicable Neighborhood Plans.
10. The applicant has demonstrated sufficient justification that there are changed circumstances, which would require the Development Order Amendment.

WHEREAS, Article 2.K.3.b (Action by BCC) 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 Application ABN/DOA-2009-01358, the application of PBM Associates Ltd, by Land Design South, Inc., agent, for a Development Order Amendment to to delete Conditions of Approval (Use Limitations) 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 May 28, 2009, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Marcus moved for the approval of the Resolution.

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

Commissioner John F. Koons, Chairman	¥	Aye
Commissioner Burt Aaronson, Vice Chairman	¥	Aye
Commissioner Karen T. Marcus	¥	Aye
Commissioner Shelley Vana	¥	Aye
Commissioner Steven L. Abrams	¥	Aye
Commissioner Jess R. Santamaria	¥	Aye
District 7	¥	

The Chairperson thereupon declared that the resolution was duly passed and adopted on May 28, 2009.

Filed with the Clerk of the Board of County Commissioners on June 16th, 2009.

This resolution is effective when filed with the Clerk of the Board of County Commissioners.

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

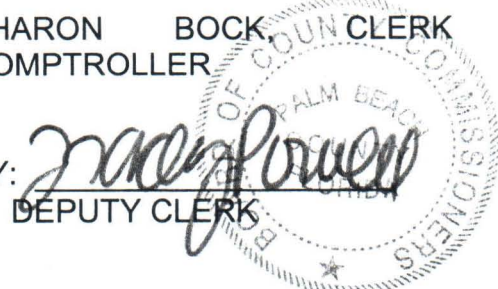
PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

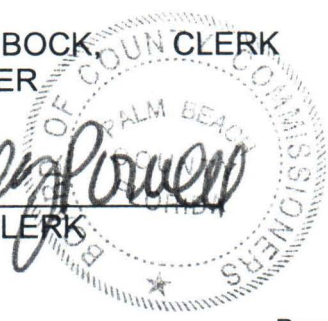
SHARON BOCK &  
COMPTROLLER

BY:

  
COUNTY ATTORNEY

BY:

  
DEPUTY CLERK



## EXHIBIT A

### LEGAL DESCRIPTION

#### PROPERTY DESCRIPTION:

PARCEL I Lot 1) according to the Plat of SMITHVIEW, as recorded in Plat Book 23, page 112, Public Records of Palm Beach County, Florida

Together with

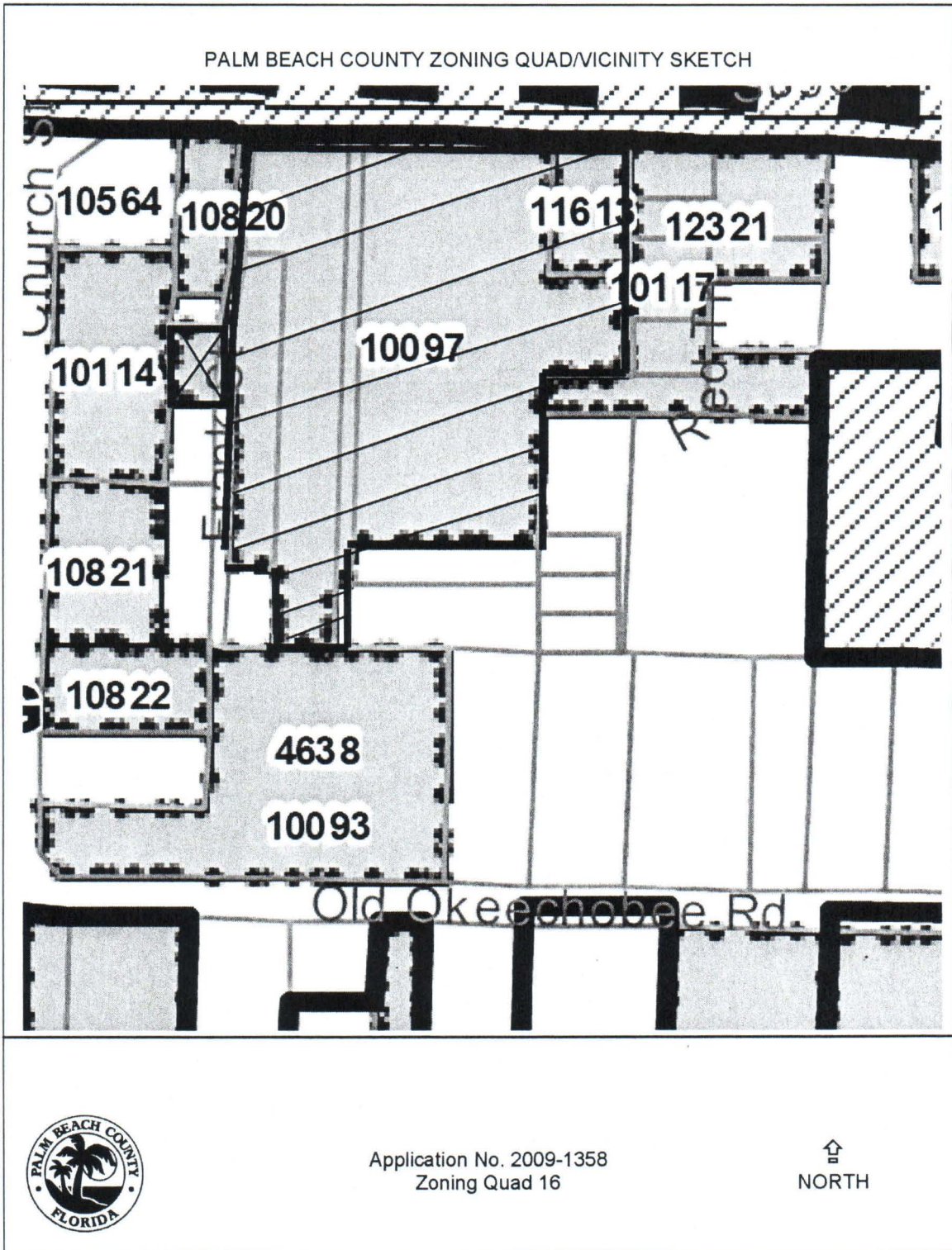
PARCEL II A parcel of land in the Northeast Quarter of the Northwest Quarter of Section 29, Township 43 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

Commencing at the intersection of the East line of the Plat of MADRID PARK, as recorded in Plat Book 13, page 78, Public Records of Palm Beach County, Florida, with the North line of said Section 29; thence South 88°45'36" East along the North line of said Section 29 (the North line of, said Section 29 is assumed to bear South 88°45'36" East and all other bearings are relative thereto) a distance of 293.01 feet to the point of intersection with the northerly extension of the East line of Frank Street as shown on the Plat of Smithview, as recorded in Plat Book 23, page 112, Public Records of Palm Beach County, Florida; thence South 03° 37'04" West along said extension a distance of 15.00 feet to a point on the South right of way line of Okeechobee Boulevard as shown in Road Plat Book 4, page 221, Public Records of Palm Beach County, Florida and the POINT OF BEGINNING of the herein after described parcel of land; thence continue South 03°37'04" West along the East line of Frank Street a distance of 192.78 feet; thence South 10°11'09" West a distance of 77.00 feet; thence South 01°55'44" West a distance of 300.00 feet to the south west corner of Lot 6 of said Plat of Smithview; thence South 88°04'16" East along the South line of said Lot 6 a distance of 60.00 feet to the south east corner thereof; thence South 01°55'44" West along the East line of Lot 5 of said Plat of Smithview a distance of 100.00 feet to the south east corner thereof and to a point on the north line of a parcel of land described in Deed Book 931, page 380, Public Records of Palm Beach County, Florida; thence South 88°43'36" East along the aforementioned north line a distance of 76.46 feet; thence North 01°44'54" East along the West line of a parcel of land described in Deed Book 861, page 542, Public Records of Palm Beach County, Florida a distance of 84.43 feet; thence South 88°45'36" East parallel with the North line of said Section 29 a distance of 20.00 feet; thence North 01°44'54" East parallel with the East line of said plat of Madrid Park a distance of 50.00 feet; thence South 88°45'36" East parallel with the North line of said Section 29 a distance of 235.00 feet; thence North 01°44'54" East parallel with the East line of said plat of Madrid Park a distance of 216.00 feet; thence South 88°45'36" East parallel with the North line of said Section 29 a distance of 98.00 feet; thence North 01°44'54" East parallel with the East line of said plat of Madrid Park a distance of 124.00 feet; thence North 88°45'36" West parallel with the North line of said Section 29 a distance of 98.00 feet; thence North 01°44'54" East parallel with the East line of said plat of Madrid Park a distance of 195.00 feet to a point on the south right of way line of Okeechobee Boulevard; thence North 88°45'36" West along said right of way line a distance of 372.62 feet to the Point of Beginning.

LESS AND EXCEPT right-of-way for Okeechobee Boulevard as described in Official Record Book 7416, Page 1470, Public Records of Palm Beach County, Florida.

Containing in all 5.352 acres more or less.  
Subject to easements and rights-of-way of record.

EXHIBIT B  
VICINITY SKETCH



## EXHIBIT C

### CONDITIONS OF APPROVAL

#### ALL PETITIONS

1. Condition A.1 of Resoltuion R-1994-004, Control 1988-029 which currently states:

All previous conditions of approval contained in Resolutions R-89-956 and R-91-368 applicable to the subject property have been consolidated as contained herein. The petitioner shall comply with all previous conditions of approval, any deadlines established pursuant to Section 5.8 of the ULDC, as amended, unless expressly modified. (MONITORING)

Is hereby amended to read:

All previous conditions of approval applicable to the subject property, as contained in Resolution R-1994-004 (Control 1988-029), have been consolidated as contained herein. The property owner shall comply with all previous conditions of approval and deadlines previously established by Article 2.E of the Unified Land Development Code (ULDC) and the Board of County Commissioners, unless expressly modified. (ONGOING: MONITORING - Zoning)

#### ENGINEERING

1. Prior to June 1, 1995, the petitioner 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 consist of a minimum of one (1) fourteen (14) foot tall native tree for each thirty (30) linear feet of the adjacent median to be planted and appropriate ground cover. Trees may be planted singly or in clusters. All landscaping and maintenance shall be subject to the standards as set forth by the Palm Beach County Engineering and Public Works Department. All landscape material shall be selected for the following list:

Trees:	Ground cover:
Laurel Oak	Wedilia
Live Oak	Bahia Grass
Slash Pine	Sabal Palmetto

- a. Alternative species may be allowed subject to approval by the County Engineer. All plant material shall be installed and selected according to xeriscape principles and shall conform with the following:

1. All plants shall be container grown or field collected and transplanted from the project site.
2. All plantings shall be done in accordance with detailed planting plans and specifications to be submitted and approved by the County Engineer concurrent with Site Plan certification. (DATE:MONITORING - Eng) (Previous Condition F.1.a of Resolution R-1994-004, Control No. 1988-029)

- b. All required median landscaping, including watering, shall be the perpetual maintenance obligation of the petitioner and its successors, legal heirs or assignees or duly established Property Owner's Association and/or Homeowners's Association, and shall be installed on or before August 1, 1995. (DATE:MONITORING - Engineering) (Previous Condition F.1.b of Resolution R-1994-004, Control No. 1988-029)

- c. Declaration of Covenants and Restriction Documents shall be established or amended as required, prior to June 1, 1995 to reflect this obligation. Maintenance shall be in accordance with the issued permits. (DATE:MONITORING - County Attorney) (Previous Condition F.1.c of Resolution R-1994-004, Control No. 1988-029) [Note:Completed]

## HEALTH

1. Previous Condition Health 1. of Resolution R-1994-004; Control 1988-029 which states:

Generation and disposal of hazardous effluents into sanitary sewerage system shall be prohibited unless adequate pretreatment facilities approved by the Florida Department of Environmental Regulation (FDER) and Agency responsible for sewage works are constructed and used by project tenants or owners generating such effluents.

Is hereby amended to read:

Owners and operators of facilities generating hazardous, industrial, or toxic wastes shall not deposit or cause to be deposited any such wastes into the sanitary sewer system unless adequate pretreatment facilities approved by the Florida Department of Environmental Protection (FDEP), the Palm Beach County Health Department and the agency responsible for sewage works are used. (ONGOING: CODE ENF-Health)

2. Previous Condition Health 2. of Resolution R-1994-004; Control 1988-029 which reads:

Sewer service is available to the property. Therefore, no septic tank shall be permitted on this site. All existing onsite sewage disposal systems must be abandoned in accordance with Chapter 10D-6 FAC and Palm Beach County ECR-I.

Is hereby deleted. [Reason: Code Requirement]

3. Previous Condition Health 3. of Resolution R-1994-004; Control 1988-029 which reads:

Water service is available to the property. Therefore, no well shall be permitted on the site to provide potable water. All existing onsite potable water supply systems must be abandoned in accordance with Palm Beach County ECR-II.

Is hereby deleted. [Reason: Code Requirement]

4. Previous Condition Health 4. of Resolution R-1994-004; Control 1988-029 which currently states:

The owner, occupant or tenant of the facility shall participate in an oil recycling program which insures proper re-use or disposal of waste oil. (ONGOING: HEALTH-Health)

Is hereby deleted. [REASON: No longer required]

Condition F.2 of Resolution R-94-004, Control 1988-029 which currently states:

LANDSCAPE - GENERAL-THE FOLLOWING CONDITIONS SHALL BE MET PRIOR TO JANUARY 25, 1991:

1. The petitioner shall install, maintain, irrigate and replace all trees and landscape material on the entire subject property in accordance with Section 500.35.I (Installation, Maintenance, Irrigation and Replacement) of the Landscape Code. (ZONING)

Is hereby deleted. [REASON: Code Requirement]

LANDSCAPE – GENERAL

2. The landscape strip along the southeast boundary of the property, where the site abuts residential uses, shall be supplemented with four (4) fourteen foot native canopy

trees and a continuous opaque hedge. Hedge material shall be installed at thirty-six (36) inches in height and shall be maintained at a minimum height of forty-eight (48) inches within one year of installation. (Previous Condition F.3 of Resolution R-94-004, Control 1988-029) (ZONING)

3. The hedge along the entire south and east perimeters of the entire subject property shall be maintained at a minimum height of forty-eight (48) inches. (Previous Condition F.4 of Resolution R-94-004, Control 1988-029) (ZONING)

4. Trees shall be allowed to reach a minimum height of fifteen (15) feet and shall be maintained according to Arbor Society Standards and Landscape Code requirements. (Previous Condition F.5 of Resolution R-94-004, Control 1988-029) (ZONING)

#### LIGHTING

1. Condition G.1 of Resolution R-94-004, Control 1988-029 which currently states:

Outdoor lighting used to illuminate the premises shall be low intensity, shielded and directed away from adjacent properties and streets. (CODE ENF)

Is hereby deleted. {REASON: Code Requirement}

#### PALM TRAN

1. Mass Transit Condition 1 of Resolution 2005-1794, Control No. 1986-114 which currently states:

The location of an easement for a Bus Stop Boarding and Alighting Area, subject to the approval of Palm Tran shall be shown on the final site plan prior to final approval of the DRO. The purpose of this easement is for the future construction of mass transit infrastructure in a manner acceptable to Palm Tran. (DRO: PALM TRAN-Palm Tran)

Is hereby deleted. [REASON: Code Requirement]

2. Mass Transit Condition 2 of Resolution 2005-1794, Control No. 1986-114 which currently states:

Prior to Plat Recordation or issuance of the first Building Permit, whichever shall first occur, the property owner shall convey and or dedicate to Palm Beach County an easement for a Bus Stop Boarding and Alighting Area in a form with terms and conditions approved by Palm Tran. Supporting documentation, including but not limited to, a location sketch, legal description, affidavit of ownership, attorney title opinion and other related documents as deemed necessary by Palm Tran. (PLAT/BLDG PERMIT: MONITORING-Eng)

Is hereby deleted. [REASON: Code Requirement]

#### PLANNING

1. Prior to Site Plan approval or December 26, 1990, the petitioner shall revise the Concurrency Reservation for this project to reflect the actual capacity needed for the proposed project. This Concurrency Reservation application (90-07-18-009C) should be reduced by 3,825 square feet. (Previous Condition J.4 of Resolution R-94-004, Control 1988-029) (PLANNING) [NOTE: COMPLETE]

#### SIGNS

1. No off-premise signs shall be permitted on site. (Previous Condition I.2 of Resolution R-94-004, Control 1988-029) (CODE ENF)

2. Prior to site plan certification, the petitioner shall provide signage information on the site plan which specifies the existing signs' locations and sizes. No additional pole, monument or point of purchase signs shall be allowed on site. (Previously Condition I.3 of Resolution R-91-368) (ZONING) (NOTE: COMPLETE)

#### SITE DESIGN-DUMPSTERS

1. Condition B.1 of Resolution R-1994-004, Control 1988-029 which currently states:

All garbage and refuse receptacles shall be confined to a designated area. Dumpsters or other trash collection devices shall be concealed behind an enclosure having an architectural treatment compatible with the principal building. The open end of the enclosure shall have an obscuring, opaque gate. (ONGOING / BLDG PERMIT: BLDG / CODE ENF)

Is hereby deleted. [REASON: Code requirement]

#### SITE DESIGN

2. Condition J.1 of Resolution R-94-004, which currently states:

Prior to certification, the site plan shall be amended to indicate the following:

- a. The location of the loading zone and the bay doors for the existing auto care facility,
- b. The location of the sign that designates the parking spaces on the west side of Frank Street for employee and auto care only,
- c. The relocation or elimination of the loading space on the east side of the 15,795 square foot building,
- d. The relocation of all dumpsters to designated areas,
- e. The correct number of parking spaces and interior islands for the row of parking fronting on Okeechobee Boulevard,
- f. The one-way designation for the access aisle on the west side of the existing auto care facility,
- g. The on-site access aisle for the auto care facility that is located on the east side of the proposed restaurant, and
- h. The adjacent land uses.

Is hereby deleted. [REASON: Code Requirement]

3. No outdoor speaker or public address systems which are audible from the exterior of the site, shall be permitted. (Previously Condition J.2 of Resolution R-91-368)

4. All new mechanical and air-conditioning equipment shall be roof mounted and screened within parapets or be contained within an enclosed loading and service area. (Previous Condition J.3 of Resolution R-94-004, Control 1988-029) (BUILDING)

5. Vehicle parking shall be limited to the parking spaces designated on the approved site plan. No parking of vehicles shall be allowed in landscaped areas, rights-of-way or interior drives. (Previous Condition J.6 of Resolution R-94-004, Control 1988-029) (ZONING)

#### SOLID WASTE AUTHORITY

1. The property owner shall participate in a recycling program when available in the area. The program shall include paper, plastic, metal and glass products, as programs are available. (Previously condition H.1 of Resolution R-91-368) (SWA)



## USE LIMITATIONS

1. The petitioner shall either relocate the proposed west to east access point which serves the 5,000 proposed building to the south, or be restricted from utilizing the following uses, convenience store, cafeteria, liquor store, lounge, video rental, drive-up financial institution, a fast food restaurant. (Previous Condition K.1 of Resolution R-94-004, Control 1988-029) (ZONING)

2. Condition K.2 of Resolution R-94-004, Control 1988-0029 which currently states:

The auto care facility shall be limited to the sale and installation of cellular phones, alarms, or car stereos.

Is hereby deleted. [REASON: Use abandoned by ABN/DOA2009-1358]

3. Condition K.3 of Resolution R-94-004, Control 1988-0029 which currently states:

No outside storage of disassembled vehicles or parts thereof shall be permitted on site. (CODE ENFORCEMENT)

Is hereby deleted. [REASON: Use abandoned by ABN/DOA2009-1358]

4. Condition K.4 of Resolution R-94-004, Control 1988-0029 which currently states:

All auto service work shall be conducted indoors. (CODE ENFORCEMENT)

Is hereby deleted. [REASON: Use abandoned by ABN/DOA2009-1358]

5. Condition K.5 of Resolution R-94-004, Control 1988-0029 which currently states:

The petitioner shall clearly mark the parking spaces located across from the street to the west as employee and auto care service parking only. All cars being serviced shall be parked in this area, additional spaces in the rear of the center shall be labelled as employee parking only. (Previously condition 7 of Resolution R-89-956) (CODE ENFORCEMENT)

Is hereby deleted. [REASON: Use abandoned by ABN/DOA2009-1358]

## UTILITIES

1. Condition D.1 of Resolution R-94-004, Control 1989-029 which currently states:

When irrigation quality water is available within 500 feet of the property, the petitioner shall connect to the system subject to permitting and/or requirements of the Florida Department of Environmental Regulations and/or the South Florida Water Management District. The cost for connection shall be borne by the property owner.

Is hereby deleted. Reason: Code Requirement.

## ZONING COMPLIANCE

1. Condition L.1 of Resolution R-1994-004, Control 1988-029 which currently states:

As provided in the Palm Beach County Zoning Code, Sections 400.2 and 402.6, failure to comply with any of these conditions of approval at any time may result in:

a. The denial or revocation of a building permit; the issuance of a stop work order; the denial of a Certificate of Occupancy on any building or structure; or the denial or revocation of any permit or approval for any developer-owner, commercial-owner, lessee, or user of the subject property; and/or

b. The revocation of the Special Exception and any zoning which was approved concurrently with the Special Exception as well as any previously granted certifications of concurrency or exemptions therefrom; and/or

c. A requirement of the development to conform with updated standards of development, applicable 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.

Appeals of any departmental-administrative actions hereunder may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Palm Beach County Zoning Code. Appeals of any revocation of Special Exception, Rezoning, 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 deleted. [REASON: Superseded by new Compliance Conditions]

2. Condition L.2 of Resolution R-1994-004, Control 1988-029 which currently states:

Failure to comply with the conditions herein may result in the denial or revocation of a building permit; the issuance of a stop work order; the denial of a Certificate of Occupancy on any building or structure; or the denial or revocation of any permit or approval for any developer-owner, commercial-owner, lessee, or user of the subject property. Appeals from such action may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Palm Beach County Zoning Code. Violations of the conditions herein shall constitute violation of the Palm Beach County Zoning Code.

Is hereby deleted. [REASON: Superseded by new Compliance Conditions]

3. 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)

4. 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; revocation of any concurrency; 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.

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Special Master to schedule a Status Report before the body which approved the Conditional Use, Type II Variance, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval. (ONGOING: MONITORING - Zoning)