

RESOLUTION NO. R-2007- 2133

RESOLUTION APPROVING ZONING APPLICATION DOA2007-074
(CONTROL NUMBER 1980-041)
DEVELOPMENT ORDER AMENDMENT
APPLICATION OF TA CRESTHAVEN, LLC
BY LAND DESIGN SOUTH, INC., AGENT
(SHOPPES OF CRESTHAVEN MCDONALDS)

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 DOA2007-074 was presented to the Board of County Commissioners at a public hearing conducted on November 29, 2007; 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 DOA2007-074, the application of TA Cresthaven, LLC, by Land Design South, Inc., agent, for a Development Order Amendment to reconfigure site plan and to modify/delete conditions of approval related to Site Design, Landscaping and Lake Worth Drainage District 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 November 29, 2007, 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 Aaronson and, upon being put to a vote, the vote was as follows:

Addie L. Greene, Chairperson	-	Absent
Jeff Koons, Vice Chair	-	Aye
Karen T. Marcus	-	Aye
Robert J. Kanjian	-	Aye
Mary McCarty	-	Aye
Burt Aaronson	-	Aye
Jess R. Santamaria	-	Aye

The Chairperson thereupon declared that the resolution was duly passed and adopted on November 29, 2007.

Filed with the Clerk of the Board of County Commissioners on November 29th, 2007.

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, CLERK &
COMPTROLLER

BY: 
COUNTY ATTORNEY

BY: 
DEPUTY CLERK

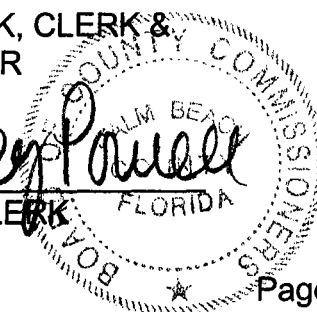


EXHIBIT A
LEGAL DESCRIPTION

PARCEL B OF THE SHOPPES AT CRESTHAVEN, PCD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 70, PAGE 88, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA (THE "FEE PRACEL") TOGETHER WITH THE EASEMENT RIGHTS CREATED AND DESCRIBED IN AND SUBJECT TO THE TERMS OF THAT DECLARATION OF EASEMENT, COVENANTS, AND RESTICTIONS, DATED APRIL 16, 1993, RECORDED APRIL 19, 1993 IN OFFICIAL RECORDS BOOK 7670, PAGE 866, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA RELATING TO THE "OUTPARCEL" AS DEFINED THEREIN (THE "EASEMENT PARCEL").

EXHIBIT B
VICINITY SKETCH

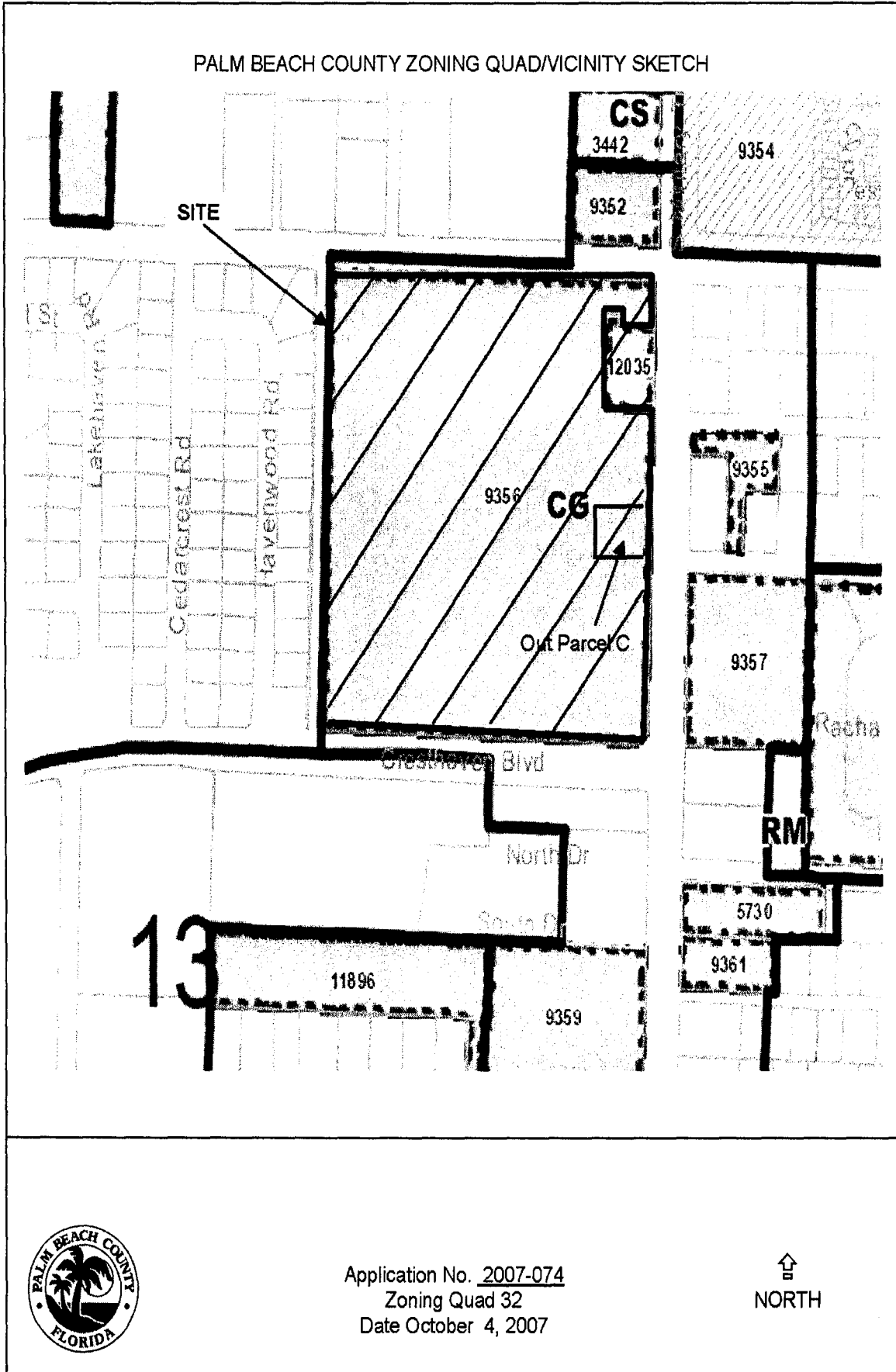


EXHIBIT C

CONDITIONS OF APPROVAL

ALL PETITIONS

1. All previous conditions of approval applicable to the subject property, as contained in Resolutions R-1980-1716 and R-1985-1433 (Control 1980-041), 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 or Zoning Commission, unless expressly modified. (ONGOING: MONITORING - Zoning)
2. Condition 6 of Resolution R-1985-1433, Control 1980-041 which currently states:

The petitioner shall comply with all previous imposed conditions of Zoning Petition No. 80-41 except for Condition No. 9 which has been deleted by the action taken in Petition No. 80-41(A), Condition Nos. 3,4,6,11 and 19 which shall be amended pursuant to Condition Nos, 7,8,9,13 and 24 below.

Is hereby deleted. [REASON: superceded by New Condition All Petitions 1]
3. Development of the site for Out Parcel C, shall be in accordance with the Variance Conditions of Approval as outlined in Resolution ZR-2007-029. (DRO: ZONING – Zoning)

ARCHITECTURAL REVIEW

1. At time of submittal for final approval by the Development Review Officer (DRO), the architectural elevations for the restaurant building shall be submitted simultaneously with the site plan for final architectural review and approval. Elevations shall be designed to be consistent with Article 5.C of the ULDC. Development shall be consistent with the approved architectural elevations, the DRO approved site plan, all applicable conditions of approval, and all ULDC requirements. (DRO: ARCH REVIEW - Zoning)

ENGINEERING

1. Within ninety (90) days of Special Exception approval, petitioner shall convey to Palm Beach County sixty (60) feet from the one-quarter section line of Section 13, Township 44 South, Range 42 East, for the ultimate right-of-way for Military Trail. (DATE: MONITORING – Eng) (Previous Condition 1 of Resolution R-1980-1716, Control 1980-041) [Note: Completed]
2. Petitioner shall close the median opening on Military Trail at:
 - a. Park Road
 - b. Dale Road (ONGOING: ENG – Eng) (Previous Condition 2 of Resolution R-1980-1716, Control 1980-041) [NOTE: Completed]
3. Petitioner shall modify the signal at the intersection of Cresthaven Blvd. and Military Trail as approved by the County Engineer. (ONGOING: ENG – Eng) (Previous Condition 5 of Resolution R-1980-1716, Control 1980-041)

4. Condition 16 of Resolution R-1980-1716, Control 1980-041 which currently states:

A push button pedestrian crossway and painted crosswalks with safe pedestrian crossings should be planned at all exits of the shopping center, including painted crosswalks.

Is hereby deleted. [REASON: Design of the Cresthaven Center did not include a push button crosswalk system at the entrances]

5. A pedestrian sidewalk shall be installed the length of the eastern and southern boundaries of the shopping center. (Previous Condition 17 of Resolution R-1980-1716, Control 1980-041) [NOTE: Completed]

6. Sidewalks on the western side of Military Trail, at all exits and at Cresthaven Blvd. must be aligned for easy pedestrian access. Previous Condition 18 of Resolution R-1980-1716, Control 1980-041) (NOTE: completed)

7. Condition 7 of Resolution R-1985-1433, Control 1980-041 which currently states:

Petitioner shall construct on Military Trail:

- a. continuous right turn lane, north approach, at each of the project's entrances
- b. right turn lane, north approach, at Cresthaven Boulevard
- c. left turn lane, south approach, at the project's main entrance
- d. an extended left turn lane, south approach, at Cresthaven Boulevard
- e. signalization at project's main entrance, when warranted, as determined by the County Engineer."

All concurrent with onsite paving and drainage improvements pursuant to a paving and drainage permit issued from the office of the County Engineer. The issuance of a Certificate of Occupancy shall be conditioned upon subparagraph c and d above being completed either by the Florida Department of Transportation or by petitioner. As an alternative, should this construction not be feasible per the County Engineer's approval, this property owner may substitute a cash payment for the cost of this construction based upon a Certified Cost Estimate per the County Engineer's approval." (CO: ENG – Eng)

Is hereby amended to read:

Petitioner shall construct on Military Trail:

- a. continuous right turn lane, north approach, at the project's center and south entrances
- b. right turn lane, north approach, at Cresthaven Boulevard
- c. left turn lane, south approach, at the project's main entrance
- d. an extended left turn lane, south approach, at Cresthaven Boulevard

All concurrent with onsite paving and drainage improvements pursuant to a paving and drainage permit issued from the office of the County Engineer. The issuance of a Certificate of Occupancy shall be conditioned upon subparagraph c and d above being completed either by the Florida Department of Transportation or by petitioner. As an alternative, should this construction not be feasible per the County Engineer's approval, this property owner may substitute a cash payment for the cost of this construction based upon a Certified Cost Estimate per the County Engineer's approval. (PAVING/CO: ENG – Eng) [Note: Traffic volumes shown in the applicants revised traffic study no longer warrants construction of the right turn lane at the projects north entrance.]

8. Petitioner shall construct on Cresthaven Boulevard:
- a. right turn lane, east approach, at the project's entrance
 - b. left turn lane, west approach, at the project's entrance
 - c. dual left turn lanes, west approach at Military Trail.

All concurrent with onsite paving and drainage improvements pursuant to a paving and drainage permit issued from the office of the County Engineer. As an alternative, should this construction not be feasible per the County Engineer's approval, this property owner may substitute a cash payment for the cost of this construction based upon a Certified Cost Estimate per the County Engineer's approval." (PAVING: ENG – Eng) (Previous Condition 8 of Resolution R-1985-1433, Control 1980-041) [NOTE: Completed]

9. Condition 9 of Resolution R-1985-1433, Control 1980-041 which currently states:

The developer 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 presently is \$425,532." (BLDG PERMIT: ENG – Eng)

Is hereby deleted. [REASON: Impact fees are now a code requirement]

10. Condition 10 of Resolution R-1985-1433, Control 1980-041 which currently states:

Based on the amount of traffic generated by this development, the Developer has agreed to contribute an additional \$212,766 toward Palm Beach County's existing Roadway Improvement Program, these total funds of \$638,298 to be paid at time of issuance of the first building permit.

If the Fair Share Contribution for Road Improvements Ordinance is amended to increase the Fair Share Fee, this additional amount of \$212,766 shall be credited toward the increased Fair Share Fee. (BLDG PERMIT: ENG-Eng)

Is hereby deleted. [REASON: Impact fees are now a code requirement]

11. Condition 11 of Resolution R-1985-1433, Control 1980-041 which currently states:

The property owner shall obtain an onsite Drainage Permit from the Palm Beach County Engineering Department Permit section prior to the issuance of a Building Permit. (BLDG PERMIT: ENG – Eng)

Is hereby deleted. [REASON: Drainage Review is now part of the Building Permit requirements]

12. Condition 12 of Resolution R-1985-1433, Control 1980-041 which currently states:

The property owner shall obtain a Turnout Permit from the Palm Beach County Engineering Department, Permit Section for access onto Cresthaven Boulevard and a permit from the Florida Department of Transportation for access onto Military Trail. (ENG- Eng)

Is hereby deleted. [REASON: Turnout Permits are now part of the Building Permit process]

13. In order to comply with the mandatory Traffic Performance Standards, the Property owner shall be restricted to the following phasing schedule:

- a. No Building Permits for the site may be issued after January 1, 2009. A time extension for this condition may be approved 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. This extension request shall be made pursuant to the requirements of Article 2, Section E of the Unified Land Development Code. (DATE: MONITORING-Eng)

HEALTH

1. The developer will take reasonable precautions during the development of this project to insure that fugitive particulates (dust particles) from the project do not become a nuisance to neighboring properties. (ONGOING: HEALTH - Health) (Previous Condition 7 of Resolution R-1980-1716, Control 1980-041)
2. The developer will employ measures to prevent run-off of pollutants to any adjacent or nearby surface waters during the development of the property. (ONGOING: HEALTH - Health) (Previous Condition 8 of Resolution R-1980-1716, Control 1980-041)
3. Reasonable precautions shall be exercised during site development to insure that unconfined particulates (dust particles) from this property do not become a nuisance to neighboring properties. (ONGOING: HEALTH - Health) (Previous Condition 1 of Resolution R-1985-1433, Control 1980-041)
4. Reasonable measures shall be employed during site development to insure that no pollutants from this property shall enter adjacent or nearby surface waters. (ONGOING: HEALTH - Health) (Previous Condition 2 of Resolution R-1985-1433, Control 1980-041)
5. Any fuel or chemical storage tanks shall be installed with protection against leakage or spillage due to corrosion, breakage, structural failure or other means. The design and installation plans will be submitted to the Health Department for approval prior to installation. (BLDG PERMIT: HEALTH - HEALTH) (Previous Condition 3 of Resolution R-1985-1433, Control 1980-041)
6. Any toxic or hazardous waste generated at this site shall be properly handled and disposed of in accordance with Chapter 17-30, F.A.C. (ONGOING: HEALTH - Health) (Previous Condition 4 of Resolution R-1985-1433, Control 1980-041)
7. The owner of the facility will participate in an oil recycling program which insures proper reuse or disposal of waste oil. (ONGOING: HEALTH - Health) (Previous Condition 5 of Resolution R-1985-1433, Control 1980-041)

ZONING - LANDSCAPING-STANDARD

1. Condition 12 of Resolution R-1980-1716, Control 1980-041 which currently states:
A tree survey will be taken to tag and save the maximum number of trees, as per the Urban Forester's review.

Is hereby deleted. [REASON: condition has been satisfied]
2. Condition 15 of Resolution R-1980-1716, Control 1980-041 which currently states:
All landscaping shall be installed as shown on site plan submitted prior to the issuance of a Certificate of Occupancy and must be maintained in a healthy condition.

Is hereby deleted. [REASON: code requirement]

3. Prior to the issuance of a Building Permit for the Restaurant, Type I for Out Parcel C, the property owner for the shopping center, shall replace all dead and/or missing plant materials on the entire subject property. (BLDG PERMIT: LANDSCAPE - Zoning)

ZONING - LANDSCAPING-ALONG THE WEST PROPERTY LINE

4. A landscaped 35 foot wide buffer strip running north-south the length of the western boundary, between the 15 foot drainage maintenance area and the 6 foot wall (which will be located east of the landscaped buffer). This buffer must be in place before any bulldozing and groundbreaking begins. This is to protect against dust, noise, and other nuisances caused by construction. (CO: LANDSCAPING - Zoning) (Previous Condition 10 of Resolution R-1980-1716, Control 1980-041)
5. The landscaped buffer zone will be maintained by the property owner, and will consist of 2 alternative rows of trees about 18 feet apart. One row of trees will be Java Plums, and the other some type of 8-12 foot shade tree. All existing trees in this area will be incorporated into the buffer zone landscaping. (CO: LANDSCAPE - Zoning) (Previous Condition 11 of Resolution R-1980-1716, Control 1980-041)

ZONING – LANDSCAPING WITHIN MEDIAN ALONG THE WESTERN SIDE OF THE BYPASS LANE FOR OUTPARCEL C

6. Landscaping for divider median shall be provided adjacent to the by pass lane for Out Parcel C and shall consist of the following:
 - a. one (1) flowering or canopy tree for each twenty-five (25) linear feet of the median;
 - b. a continuous hedge between all trees within the median, where applicable. Shrub or hedge materials and groundcover shall be maintained at a maximum height of thirty-six (36) inches. (BLDG PERMIT: LANDSCAPE - Zoning)

LIGHTING

1. Condition 13 of Resolution R-1980-1716, Control 1980-041 which currently states:

Lights on the western side of the center must be low-level (12 feet or less), hooded type, limited in intensity and directed as not to disturb homeowners. These lights must be placed or mounted along the 6 foot wall, thereby shining toward the buildings, and away from the homes.

Is hereby deleted. [REASON: current code more restrictive]

LAKE WORTH DRAINAGE DISTRICT

1. Condition 13 of Resolution R-1985-1433, Control 1980-041 which currently states:

The petitioner shall convey to the Lake Worth Drainage District the eighty (80) foot parcel lying immediately north of the subject parcel for the required right-of-way for Lateral Canal No. 9, by a deed in the form provided by said district, within ninety (90) days of adoption of the resolution by the Board of County Commissioners."

Is hereby deleted. {REASON: Condition has been satisfied per ORB4684/1062}

PALM TRAN

1. 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 Master Plan and/or site plan prior to final approval of the Development Review Officer (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)

2. Prior to Plat Recordation, 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: ENG-Palm Tran)

SIGNS – (OUT PARCEL C only)

1. The sign for Out Parcel C shall be limited as follows:
 - a. maximum sign height, measured from finished grade to highest point –six (6) feet;
 - b. maximum sign face area per side – twenty (20) square feet;
 - c. style - monument style only;
 - d. sign shall be limited to out parcel identification only. (BLDG PERMIT: BLDG - Zoning)

SITE DESIGN

1. Condition 9 of Resolution R-1980-1716, Control 1980-041 which currently states:

The shopping center shall be developed by the accepted plan only. No changes shall be made in the location of the stores and other businesses. Only the types of stores and businesses shown on the plan should be allowed occupancy. No increase in total square footage. Standard modifications as allowed by the Site Plan Review Committee procedure will be permitted.

Is hereby deleted. [REASON: superceded by All Petitions 2]
2. All trash must be kept in locked, enclosed dumpsters. All litter and dumpings must be clear on both sides of the wall. This will lessen the nuisance of rats and any further decrease in property value to the homeowners. Garbage Pickup shall be limited to the hours between 7:00 A.M. and 10:00 P.M. (ONGOING: CODE ENF – Zoning) (Previous Condition 14 of Resolution R-1980-1716, Control 1980-041)
3. Any dumpster enclosures required by Condition 2 above which are missing shall be replaced prior to issuance of Certificate of Occupancy for Out Parcel C. (CO: CODE ENF – Zoning)

USE LIMITATION – OUT PARCEL C

1. Delivery hours shall be limited as follows:
 - a. between the hours of 9:00 AM and 11:00 AM; and
 - b. between the hours of 3:00 PM and 5:00 PM daily. (ONGOING: CODE ENF – Zoning)

COMPLIANCE

1. Condition 14 of Resolution R-1985-1433, Control 1980-041 which currently states:

The petitioner shall present a notarized Affidavit of Disclosure at the Zoning Authority meeting.

Is hereby deleted. [REASON: superceded by new Compliance 3]

2. In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the property owner/applicant 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)
3. 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 Official Zoning Map Amendment, Conditional Use, Requested Use, 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.

Departmental administrative actions made pursuant to this condition may be appealed as 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 Circuit Court, Appellate Division, 15th Judicial Circuit of Florida. (ONGOING: MONITORING - Zoning)