

RESOLUTION NO. R-2008- 0930.2

RESOLUTION APPROVING ZONING APPLICATION PDD2007-848
(CONTROL NO. 2004-354)
OFFICIAL ZONING MAP AMENDMENT
TO A PLANNED DEVELOPMENT DISTRICT (PDD)
APPLICATION OF W & W XXIV LLC
BY COTLEUR & HEARING, INC., AGENT
(MERCHANTS WALK)

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 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 PDD2007-848 was presented to the Board of County Commissioners at a public hearing conducted on March 24, 2008; 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 recommendations of the Zoning Commission; and

WHEREAS, this approval is subject to Article 2.E (Monitoring) of the Palm Beach County Unified Land Development Code (ULDC) 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 official zoning map amendment (rezoning) is consistent with the Palm Beach County Comprehensive Plan.
2. This official zoning map amendment (rezoning) is consistent with the stated purpose and intent and requirements of the Palm Beach County Unified Land Development Code. The rezoning request is also consistent with the requirements of all other applicable local land development regulations.
3. This official zoning map amendment (rezoning) is compatible and generally consistent with existing uses and zones surrounding the subject land, and is the appropriate zoning district for the land.
4. This official zoning map amendment (rezoning) does not result in significantly adverse impacts on the natural environment, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
5. This official zoning map amendment (rezoning) will result in a logical, orderly and timely development pattern.
6. This official zoning map amendment is consistent with applicable Neighborhood Plans.
7. This official zoning map amendment (rezoning) complies with Article 2.F (Concurrency) of the Palm Beach County Unified Land Development Code.

8. The applicant has demonstrated that there are sufficient changed conditions or circumstances that require an amendment.

WHEREAS, Article 2.A.1.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 PDD2007-848, the application of W & W XXIV LLC, by Cotleur & Hearing, Inc., agent, for an Official Zoning Map Amendment to a Planned Development District from the Agricultural Residential and the General Commercial Zoning Districts to the Multiple Use Planned Development Zoning 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 as indicated in EXHIBIT B, attached hereto and made a part hereof, was approved on March 24, 2008, 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 Jeff Koons and, upon being put to a vote, the vote was as follows:

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

The Chairperson thereupon declared that the resolution was duly passed and adopted on May 22, 2008.

Filed with the Clerk of the Board of County Commissioners on July 8, 2008.

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

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

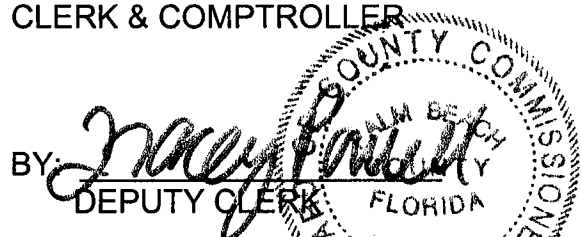
PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

SHARON R. BOCK,
CLERK & COMPTROLLER

BY:


COUNTY ATTORNEY

BY:


DEPUTY CLERK

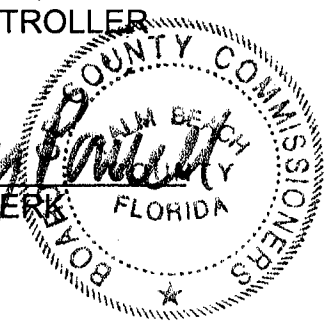


EXHIBIT A
LEGAL DESCRIPTION

PARCEL ONE:

THE SOUTH 285 FEET OF THE NORTH 340.00 FEET, AS MEASURED AT RIGHT ANGLES, OF THE WEST 329.67 FEET, AS MEASURED AT RIGHT ANGLES, OF THAT PART OF LOT 3 LYING WEST OF A LINE PARALLEL TO AND 301.05 FEET WEST OF, AS MEASURED AT RIGHT ANGLES, TO THE EAST LINE OF LOT 3, TRACT 41, ACCORDING TO THE PLAT OF PALM BEACH FARMS COMPANY PLAT NO. 13, AS RECORDED IN PLAT BOOK 6, PAGE 99 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. SUBJECT TO A ROAD AND DRAINAGE EASEMENT ALONG THE EASTERLY 25 FEET, AS MEASURED AT RIGHT ANGLES.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 2.25 ACRES, MORE OR LESS.

PARCEL TWO:

THE SOUTH 300 FEET OF THE NORTH 340.00 FEET, AS MEASURED AT RIGHT ANGLES, OF THE EAST 400.00 FEET, AS MEASURED ALONG THE NORTH PROPERTY LINE OF LOT 4, TRACT 41, ACCORDING TO THE PLAT OF PALM BEACH FARMS COMPANY PLAT NO. 13, AS RECORDED IN PLAT BOOK 6, PAGE 99 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

LESS, HOWEVER, A STRIP OF LAND, 20 FEET IN DEPTH ALONG THE SOUTHERLY SIDE OF LANTANA ROAD, WHICH STRIP HAS BEEN OFFERED FOR DEDICATION TO PALM BEACH COUNTY.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 2.57 ACRES, MORE OR LESS.

EXHIBIT B
VICINITY SKETCH

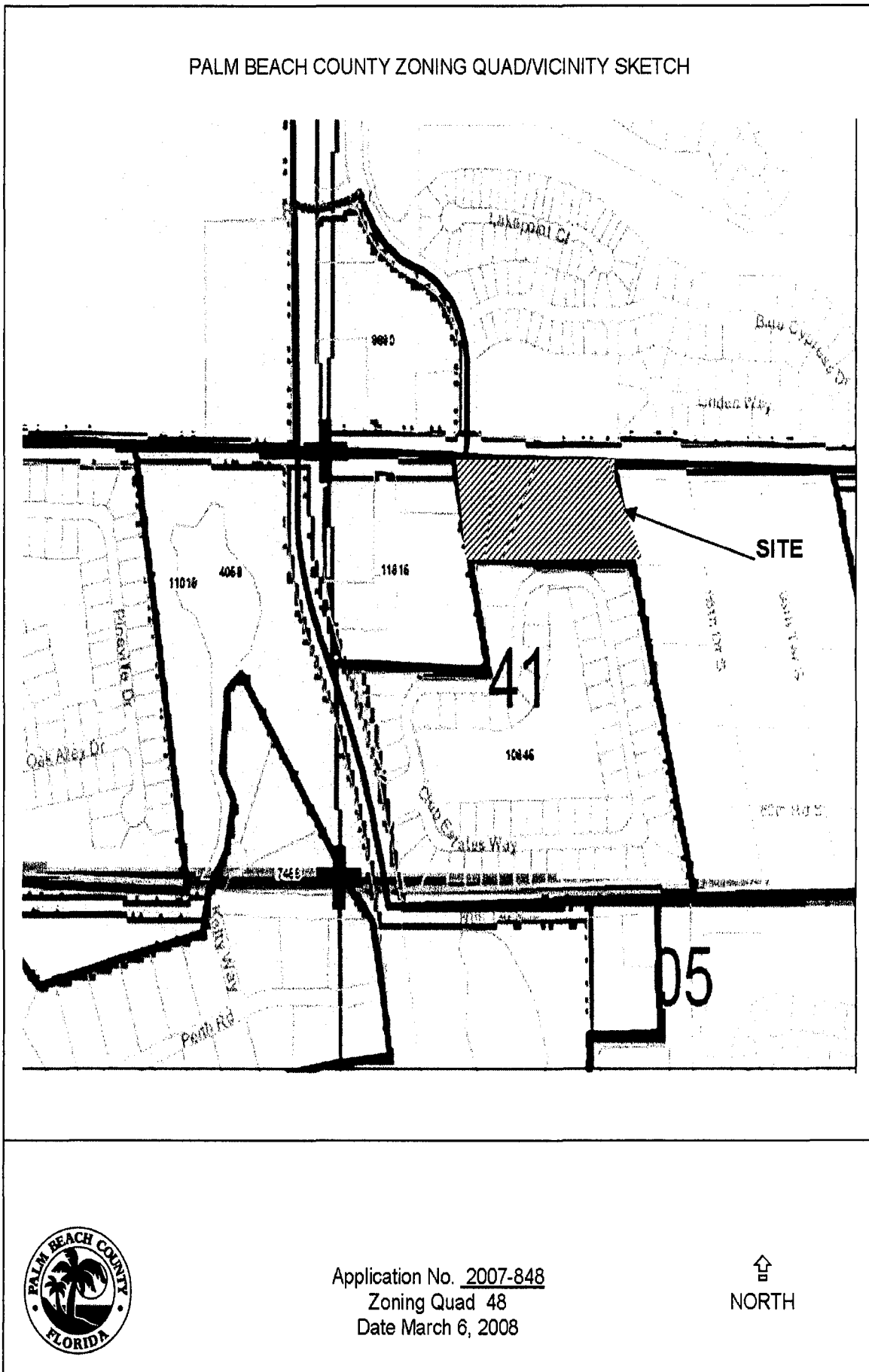


EXHIBIT C

CONDITIONS OF APPROVAL

ALL PETITIONS

1. Development of the site is limited to the site design approved by the Board of County Commissioners. The approved Preliminary Site Plan is dated December 14, 2007. All modifications must be approved by the Board of County Commissioners or Zoning Commission unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC. (DRO: ZONING - Zoning)

ARCHITECTURAL REVIEW

1. At time of submittal for final Development Review Officer (DRO) approval, the architectural elevations previously approved on December 18, 2007, for O.G.S. & P Architecture-Interior Design, Inc, shall be revised to incorporate conditions of approval contained herein. Construction of this 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)
2. The Financial Institution ATM located in the drive-thru median shall be painted in earth tone color compatible with the building colors or one of those colors used in the building. (BLDG: ARCH REVIEW-Zoning)
3. Downspouts shall be located on the side and/or rear elevations of all buildings. Rear elevations of Buildings A and C, as shown on the site plan, are those sides facing Lantana Road in such cases downspouts shall be hidden behind pilasters or any other acceptable manner and approved by the architectural review section. All other downspouts shall be situated at the edges and/or corners of buildings and shall be painted the same color as the building in order to camouflage them. (BLDG: ARCH REVIEW-Zoning)
4. The roof material shall be revised to incorporate barrel tile where previously depicted as standing seem metal. (DRO: ARCH Review -Zoning).
5. The exterior elevations of all buildings shall include exterior colors that are consistent with the Boynton Beach Turnpike Corridor Study (i.e. light and neutral building colors: white, off-white, cream, tan, grays, earth tones and pastels.) (DRO: ARCH Review -Zoning).
6. The maximum height for all structures including air conditioning, mechanical equipment and satellite dishes shall not exceed thirty-five (35) feet. All heights shall be measured from finished grade to highest point. (DRO: ARCH Review -Zoning).

ENGINEERING

1. 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, 2011. 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)
 - b. Building Permits for more than 5,700 square feet of gross leasable floor area shall not be issued until contract has been awarded for the construction of the Hypoluxo Road crossing over the Florida Turnpike which will provide for

paved continuity from Lyons Road to Hagen Ranch Road. (BLDG PERMIT: MONITORING-Eng)

2. Prior to the issuance of a building permit the property owner shall provide to Palm Beach County Land Development Division by warranty deed additional right of way for the construction of a right turn lane on Lantana Road at the project's entrance road. This right-of-way shall be a minimum of 280 feet in storage length, 67 feet from center line of Lantana Road and a taper length of 50 feet or as approved by the County Engineer. 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. The Property Owner shall not record these required easements or related documents. After final acceptance of the location, legal sketches and dedication documents, Palm Beach County shall record all appropriate deeds and documents (BLDG PERMIT: MONITORING-Eng)

3. The Property owner shall construct:
 - a. 86th Drive South from Lantana Road, south to a point 50 feet south of the project's entrance onto 86th Drive South.
 - b. right turn lane west approach on Lantana Road at the project's entrance road. 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 and acquisition of any additional required right-of-way.
 - c. Permits required from Palm Beach County for this construction shall be obtained prior to the issuance of the first Building Permit. (BLDG PERMIT: Monitoring-Eng)
 - d. Construction shall be completed prior to the issuance of the first Certificate of Occupancy. (CO: MONITORING-Eng)

4. Landscape Within the Median of Lantana Road
 - a. The Property Owner shall design, install and perpetually maintain the median landscaping within the median of all abutting right of way of Lantana Road. This landscaping and irrigation shall strictly conform to the specifications and standards for the County's Only Trees, Irrigation, and Sod (OTIS) program. Additional landscaping beyond OTIS requires Board of County Commissioners approval. Median landscaping installed by Property Owner shall be perpetually maintained by the Property Owner, his successors and assigns, without recourse to Palm Beach County, unless the Property Owner provides payment for maintenance as set forth in Paragraph D below. (ONGOING: MONITORING-Eng)
 - b. The necessary permit(s) for this landscaping and irrigation shall be applied for prior to the issuance of the first building permit. (BLDG PERMIT: MONITORING-Eng)
 - c. All installation of the landscaping and irrigation shall be completed prior to the issuance of the first certificate of occupancy. (CO: MONITORING -Eng)
 - d. At Property Owner's option, when and if the County is ready to install OTIS on the surrounding medians of this roadway adjacent to the Property Owner installed landscaping, payment for the maintenance may be provided to the County. The payment shall be in the amount and manner that complies with the schedule for such payments that exists on the date payment is made. Once payment has been provided, Palm Beach County shall assume the maintenance responsibility for the OTIS landscaping and irrigation that has

- been installed by the Property Owner. The Property Owner shall first be required to correct any deficiencies in the landscaping and irrigation. This option is not available to medians with additional landscaping beyond OTIS standards, unless those medians are first brought into conformance with OTIS standards by the Property Owner. (ONGOING: MONITORING-Eng)
- e. Alternately, at the option of the Property Owner, and prior to the issuance of a Building Permit, the Property Owner may make a contribution to the County's Only Trees Irrigation and Sod, OTIS program, unincorporated thoroughfare beatification program. This payment, for the County's installation of landscaping and irrigation on qualifying thoroughfares shall be based on the project's front footage along Lantana Road. This payment shall be in the amount and manner that complies with the schedule for such payments as it currently exists or as it may from time to time be amended. (ONGOING: MONITORING-Eng)

LANDSCAPING – STANDARDS

1. Prior to the issuance of a building permit, the property owner shall submit a Landscape Plan and/or an Alternative Landscape Plan to the Landscape Section for review and approval. The Plan(s) shall be prepared in compliance with all landscape related conditions of approval as contained herein. (BLDG PERMIT: LANDSCAPE - Zoning)
2. All palm or pine trees required to be planted on the property by this approval shall meet the following minimum standards at installation:
 - a. heights: twelve (12) feet clear trunk;
 - b. clusters: staggered heights twelve (12) to eighteen (18) feet; and,
 - c. credit may be given for existing or relocated palms or pines provided they meet current ULDC requirements. (BLDG PERMIT: LANDSCAPE - Zoning)
3. A group of three (3) or more palms may not supersede the requirement for a canopy tree in that location, unless specified herein. (BLDG PERMIT: LANDSCAPE-Zoning)
4. The Landscape focal point with special planting treatment shall be provided at the main entrance to Building B and on the east side of Building C. The planting shall consist of the following:
 - a. a minimum of three (3) Royal Palms, Canary Palms, Phoenix Palms, Medjool Palms, or other specimen palm that is acceptable to the Landscape Section for each focal point; and,
 - b. a bench and trash receptacle. (BLDG PERMIT: LANDSCAPE - Zoning)
5. Prior to final approval by the Development Review Officer (DRO), the plan shall be revised to show:
 - a. a minimum of one (1) trellis/shaded structure over the divider median central to the site in front of Building B; and
 - b. the trellis/shaded structure shall be a minimum length of 30 feet, and minimum width of 6 feet.
 - b. special paver treatment for the main entryway extending from Lantana Road to Building B.
 - c. the design and location of these improvements shall be subject to review and approval by the Architectural Review Section. (DRO: ARCH REVIEW - Zoning)
6. Field adjustment of berm and plant material locations may be permitted to provide pedestrian sidewalks/bike paths and to accommodate transverse utility or drainage easements crossings and existing vegetation. (BLDG PERMIT: LANDSCAPE - Zoning)

LANDSCAPING ALONG THE NORTH AND EAST PROPERTY LINES (FRONTAGE OF LANTANA ROAD AND 86th DRIVE SOUTH)

7. In addition to the code requirements, landscaping along the north and east property lines shall be upgraded to include:
 - a. a minimum two (2) to three (3) foot high continuous undulating berm with an average height of two and half (2.5) feet. Berm shall be required for the Lantana Road frontage only; and,
 - b. one (1) palm for each for each thirty (30) linear feet of the property line with a maximum spacing of sixty (60) feet between clusters. (BLDG PERMIT: LANDSCAPE - Zoning)

LANDSCAPING ALONG THE SOUTH PROPERTY LINE (ABUTTING RESIDENTIAL)

8. In addition to the code requirements along the south property line, landscaping shall be upgraded to include:
 - a. a minimum twenty (20) foot wide landscape buffer strip. No width reduction or easement encroachment shall be permitted;
 - b. one (1) continuous row of Areca palm shall be planted along the south property line. The Areca palms may substitute for the ULDC required large shrubs. Areca palm shall be a minimum of six (6) feet at installation and shall be maintained at a minimum of six (6) feet at maturity. (BLDG PERMIT/ONGOING: LANDSCAPE - Zoning)
9. Landscaping for the main (western) ATM divider median in the drive-thru lane of the Financial Institution shall be upgraded as follows:
 - a. a minimum width of five (5) feet excluding curb. This median shall extend a minimum distance of five (5) feet beyond the north and south boundaries of the overhead canopy;
 - b. the north and south extensions of this median beyond the overhead canopy shall be planted with a palm having a minimum grey wood height of ten (10) feet and appropriate ground cover; and,
 - c. the remaining portions of this median lying beneath the overhead canopy shall be surfaced with brick, precast paving block, or other decorative paving surface. (BLDG PERMIT: LANDSCAPE - Zoning)
10. Prior to final approval by the Development Review Officer (DRO), the property owner shall provide a focal point at the southeastern corner of Building C. Design details for this focal point(s) shall be in the form of a plaza, fountain, arcade, or any other site element or similar pedestrian oriented public area that is acceptable to the Zoning Division. The design and location of this element(s) shall be subject to review and approval by the Architectural Review Section. (DRO: ARCH REVIEW - Zoning)

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 is required. (PLAT: ENG-Palm Tran)

SIGNS

1. Freestanding signs fronting on Lantana Road shall be limited as follows:
 - a. maximum sign height, measured from finished grade to highest point ten (10) feet;
 - b. maximum sign face area per side - 100 square feet;
 - c. maximum number of signs - two (2);
 - d. style - monument style only;
 - e. location - within fifty (50) feet of the access point measured from edge of pavement; and
 - f. monument sign to have the name of development only. (BLDG PERMIT: BLDG- Zoning)
2. Prior to Final Development Review Officer (FDRO) approval the Master Sign Plan needs to be revised to comply with the Technical Manual and Article 8 requirements.

UTILITIES

1. Prior to water/sewer utility plan approval, the Property Owner shall grant to Palm Beach County Water Utilities Department (PBCWUD) in a format acceptable to PBCWUD a Utility Easement over the proposed 25' wide access parcel along the east property line of the project. (ONGOING: WUD -WUD)
2. If any relocation/modifications to the County's existing facilities are required that are a direct or indirect result of the development, the developer shall pay for the complete design and construction costs associated with these relocations/modifications. (ONGOING: WUD -WUD)

USE LIMITATIONS

1. All single user tenants shall be less than 65,000 square feet (large scale development) as defined Article 1 of the ULDC. (ONGOING: BLDG – Zoning).
2. Parking shall not be permitted on the 0.74 acre crosshatched/retention area on the southeast corner of the site. The 2.0 foot overhang on the north boundary of the restricted area is permitted. (ONGOING: DRO-Zoning)

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. 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 a 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 Article 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)