PALM BEACH COUNTY **BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

	/===n=================================		
Meeting Date:	December 4, 2007	Consent [X]	Regular []

Public Hearing []

Submitted By: Submitted For: **Water Utilities Department Water Utilities Department**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A Repair, Replacement and Indemnity Agreement (Agreement) between Penske Automotive Group, Inc. (Penske) and Palm Beach County.

Summary: In accordance with the Water Utilities Department (WUD) Uniform Policies and Procedures Manual (UPAP), the Board of County Commissioners (Board) delegated to the County Administrator or designee the authority to execute various types of documents, including Indemnity Agreements. Penske's proposed car dealership project (State Road 80, east of SR 7) installed a non-standard concrete driveway over a PBCWUD potable water main, making the access to the pipe for Operation and Maintenance purposes costly and difficult. The Board's Approval is sought for this Agreement since the unique design conditions necessitate the inclusion of repair and replacement terms to further protect and indemnify the County. District 6 (MJ)

Background and justification: On January 10, 2007, PBCWUD approved Potable Water and Wastewater design plans for the proposed United Auto Dealership Project (WUD 06-106). During construction, Penske installed a non-standard reinforced concrete driveway over a water main, within an exclusive utility easement recorded in Plat Book 110 Pages 171 and 172. PBCWUD agreed to this revision, subject to an indemnification, repair and replacement conditions. The conditions require Penske to remove and replace (at no cost to the County) the concrete surface if PBCWUD requires access to the utility facilities. Furthermore, the Agreement Indemnifies and holds the County harmless against any and all liabilities, damages and losses as a result of the concrete driveway encroachment within the easement.

Attachment:

1. Repair, Replacement and Indemnity Agreement

2. Location Map

Recommended By: **Department Director**

Approved By:

Assistant County Administrator

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures External Revenues Program Income (County) In-Kind Match County	0 0 0 0	<u>0</u> <u>0</u> <u>0</u> <u>0</u>	<u>0</u> <u>0</u> <u>0</u>	<u>0</u> <u>0</u> <u>0</u> <u>0</u>	<u>0</u> <u>0</u> <u>0</u> <u>0</u>
NET FISCAL IMPACT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Budget Account No.:	Fund	Dept	Unit	Object	
Is Item Included in Current Budget? Yes No					
		Reporting (Category <u>N/</u>	<u>A</u>	
B. Recommended Sources of Funds/Summary of Fiscal Impact:					
		No Fiscal	Impact		
C. Department Fisca	l Review: _	Llel	uam w	ist	-i

III. REVIEW COMMENTS

A.	OFMB Fiscal and/or Contract Develop	nent and Control Comments:
B.	OFMB Legal Sufficiency: Assistant County Attorney	Contract Development and Cont This Contract complies with our contract review requirements.
C.	Other Department Review:	

This summary is not to be used as a basis for payment.

Department Director

Prepared by and return to:
Palm Beach County Water Utilities Department
P.O. Box 16097
West Palm Beach, Florida 33416-6097

REPAIR, REPLACEMENT AND INDEMNITY AGREEMENT

(Encroachment)

WITNESSETH

WHEREAS, Owner holds title to a certain parcel of real property legally described in Exhibit "A" attached hereto: (hereinafter referred to as the "Property"); and

WHEREAS, the Property is encumbered by that certain Palm Beach County Utility Easement set forth in the <u>PAG Royal Palm Automotive Park</u> Plat, found at Plat Book <u>IIO</u>, Page <u>I7I</u> in the Public Records of Palm Beach County, Florida (hereinafter referred to as the "Easement") for the purpose of providing the County with a utility easement; and

WHEREAS, Owner desires to install a concrete driveway over all or a portion of the Easement and an existing County potable water line ("Water Line") pursuant to the terms and conditions described herein (said concrete driveway hereinafter referred to as "Encroachment").

NOW THEREFORE, for and in consideration of the covenants set forth herein, Owner hereby agrees as follows:

- 1. The foregoing recitals are true and correct and are incorporated herein by reference.
- County hereby consents to the installation by Owner of the Encroachment over the Easement and Water Line, subject to the terms herein.
- In consideration of County's consent to the installation of the Encroachment over the Easement and Water Line, Owner agrees as follows:

- A. Owner shall immediately remove said Encroachment upon the request of County or, in the event that County determines, in its sole and exclusive discretion that it is necessary or desirable to construct, maintain, repair, remove or replace the Water Line or any facilities of County's property (including but not limited to transmission lines, valves, pumps, meters, and appurtenances) located under, over, or upon the Easement, and such work requires the removal, repair, replacement and/or relocation of the Encroachment or the relocation of County's facilities in whole or in part, such removal, repair, replacement and/or relocation shall be done by County or its assigns and any and all expenses or damages incurred as a result of the removal of said Encroachment shall be at the sole cost and expense of the Owner
- 4. In the event Owner has actual knowledge the Water Line has been damaged or in need of repair, the parties shall take the following actions:
 - a. Owner shall notify the County within five (5) working days of its knowledge that the Water Line has been damaged or in need of repair.
 - b. Upon receipt of Owner's notification, the County shall turn off service to the Water Line and notify Owner service to the Water Line has been suspended.
 - c. Owner shall remove the Encroachment, at its sole cost and expense.
 - d. Upon receipt of written notice from Owner the Encroachment has been removed, the County shall repair or service the Water Line at its cost and expense.
 - e. Upon receipt of written notice from the County the Water Line has been serviced or repaired, Owner shall replace the Encroachment at its sole cost and expense.
 - f. Upon receipt of written notice from Owner that the replacement of the Encroachment is completed, the County shall resume Water Line service.
- 5. Owner, its successors, heirs, or assigns, hereby agrees to indemnify and hold County harmless from and against any and all liabilities, business losses, damages, penalties, claims, costs and expenses whatsoever, including attorneys' fees at all levels, which may be imposed upon or asserted against County as a result of or in any way connected to the Encroachment within the Easement or its removal or any occurrence upon said Encroachment, including but not limited to, fire, inconvenience, interruption of service, on-site vehicular circulation or flooding.
- This Agreement shall be binding upon the Owner, its heirs, successors, legal representatives and assigns. This Agreement will run with the land and shall be recorded in the Public Records of Palm Beach County, Florida.

IN WITNESS WHEREOF, County and the Owner have executed this Agreement as of the date first above written.

ATTEST:

SHARON R. BOCK, CLERK AND COMPTROLLER	PALM BEACH COUNTY, BY ITS BOARD OF COUNTY COMMISSIONERS
By: Deputy Clerk (SEAL)	By:Addie L. Greene, Chairperson
APPROVED AS TO FORM AND LEGAL SUFFICIENCY	APPROVED AS TO TERMS AND CONDITIONS
By:County Attorney	By:
AS TO OWNER:	
WITNESSES:	OWNER:
Signed, sealed and delivered in the presence of: Withess Signature Print Name Witness Signature	PENSKE AUTOMOTIVE GROUP, INC., a Delaware corporation Print Name: Roger S. Penske, Jr. Its: President
Print Name	

NOTARY CERTIFICATE

STATE	OF	Horic	la_	
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COUNTY OF PAIM BEACH

The foregoing instrument was a	cknowledged before me this 11 day of
Ortober, 2007 by Proner S. Pens	ike Ir. as President
of PENSKE AUTOMOTIVE GROUP, INC	a Delaware corporation, who is personally
	as identification.
11.0	3011)60
My Commission	Concert
Expires: May 6, 2009	Signature of Notary
	Denise L. Westbrook
Jack to the said and	Typed Printed or Stamped Name of Notary

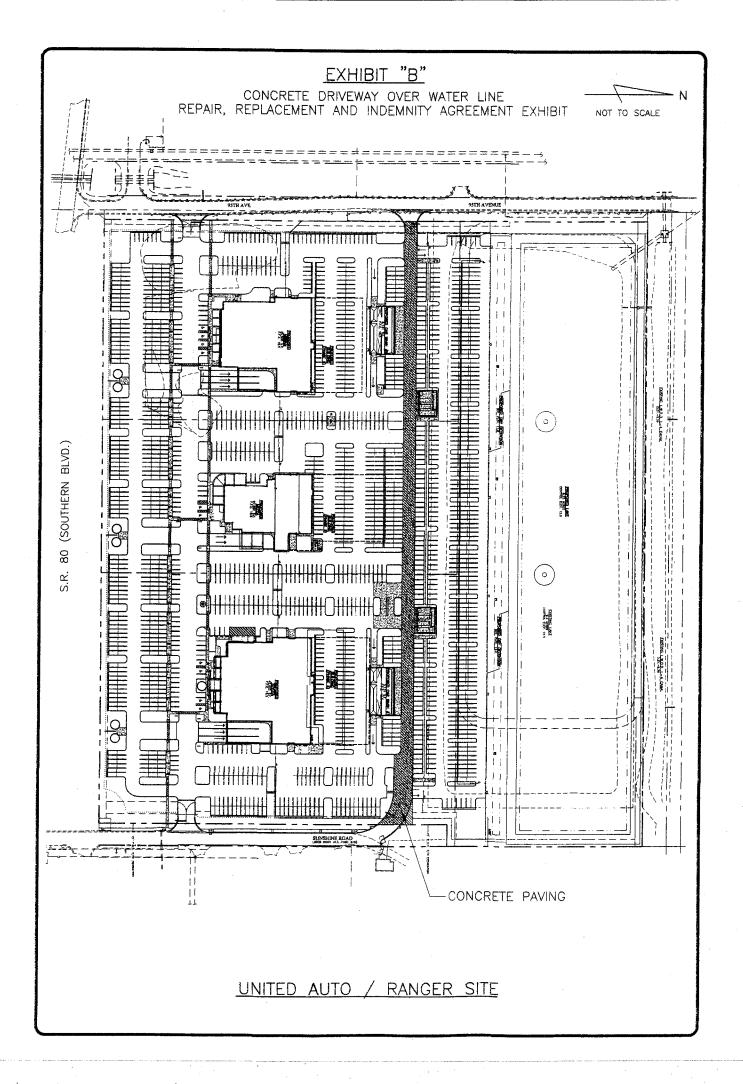


EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

THE PLAT OF UAG ROYAL PALM AUTOMOTIVE PARK, AS RECORDED IN PLAT BOOK 109, PAGE 123 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

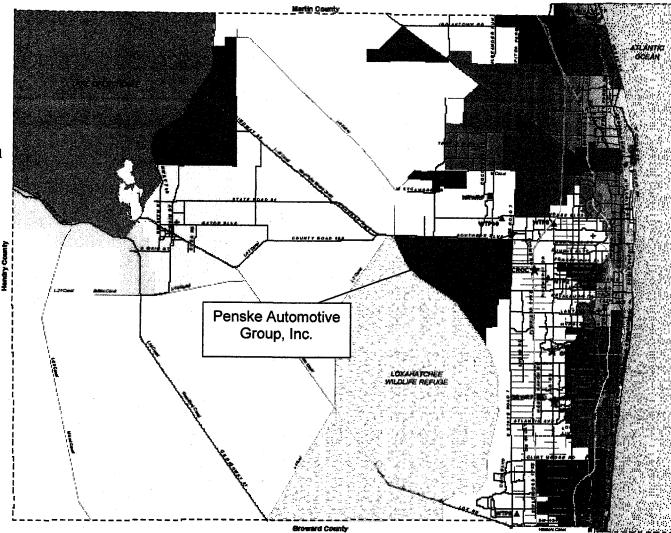
CONTAINING 1,456,545 SQUARE FEET, OR 33.44 ACRES, MORE OR LESS.



LOCATION MAP



Palm Beach County Water Utilities Department Service Area (SA) and Major Facilities



Legeno

P.B.C.W.U.D. SA

---- MANDATORY RECLAMED

🛨 Administratie

Water Recision seen Facility

▲ Water Treatment Fecility

(I) Westand

