

Meeting Date: 10/27/09

Agenda Item 2

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration Workshop

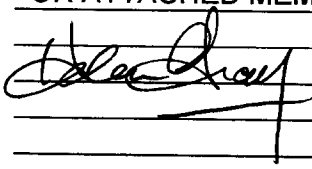
SHORT TITLE OR MOTION: APPROVAL OF A REVOCABLE LICENSE AGREEMENT BETWEEN THE CITY AND
AND AMP IV – HIDDEN HARBOUR LLC TO ALLOW FOR THE PLACEMENT OF
DECORATIVE STREET LIGHTS WITHIN THE PUBLIC RIGHT OF WAY FOR
NE 23RD AVENUE NORTH OF NE 14TH STREET CAUSEWAY

Summary of Purpose and Why:

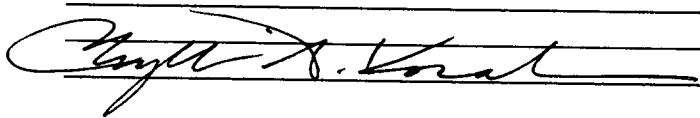
The property developed by Hidden Harbour Marina is located in the 1400 block of NE 23rd Avenue. The project includes decorative street lights within the NE 23rd Avenue right of way. This Revocable License Agreement provides for the privately owned, operated, and maintained lights to occupy public right of way adjacent to the property. The lights do not pose a hazard to the general public or interfere with existing public utilities. This Revocable License Agreement provides for the decorative street lights while retaining the City's right upon a future determination that the right of way is needed for some public purpose.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Staff
- (2) Primary staff contact: Helen Gray, PE Ext. 4738
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: n/a

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
Engineering	<u>10/16/09</u>	Approved	

- Advisory Board
- Development Services Director
- Interim City Manager



ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
2nd Reading			

RESOLUTION NO. 2009-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A REVOCABLE LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND AMP IV – HIDDEN HARBOUR, LLC; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement between the City of Pompano Beach and AMP IV – Hidden Harbour, LLC, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and AMP IV – Hidden Harbour, LLC.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2009.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

REVOCABLE LICENSE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2009, by

and between:

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, hereinafter referred to as "CITY",

and

AMP IV – HIDDEN HARBOUR, LLC, a Florida limited liability company, hereinafter referred to as "LICENSEE."

WITNESSETH:

WHEREAS, LICENSEE desires to obtain from CITY a license to use certain CITY right-of-way property for the purpose of installing, operating and maintaining street lighting and appurtenances.

WHEREAS, inasmuch as the use of said CITY property by LICENSEE for this restricted purpose will not interfere with the rights enjoyed by the public and will be without cost to the public either directly or indirectly.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, it is agreed by the parties hereto as follows:

1. CITY hereby grants to LICENSEE and LICENSEE hereby accepts from CITY a license to use a portion of right-of-way property for the purpose of installing, operating and maintaining street lighting and appurtenances in and under the property shown on the site plan and description attached hereto and designated as Exhibit "A" and incorporated in this License Agreement. It is expressly agreed and understood between the parties that no other above-

ground rights are granted to LICENSEE except for the lighting fixtures and when installing, maintaining and monitoring the associated wiring.

2. This license shall continue from day to day commencing on the date of execution hereof by all parties for ten (10) years or until terminated in accordance with provisions hereinafter stated.

3. LICENSEE agrees to pay CITY as compensation for this License the sum of One (\$1.00) Dollar per annum. Receipt of the first payment of One (\$1.00) Dollar is hereby acknowledged.

4. This license may, at the option of LICENSEE with the consent to CITY, be renewed from year to year after the initial term upon payment by LICENSEE to CITY of the sum of One (\$1.00) Dollar per annum.

5. As further consideration of this License Agreement, LICENSEE further agrees to pay any taxes of whatever nature which may validly be levied against the premises or pursuant to this Agreement during the continuance of this Agreement.

6. This license may be terminated by CITY at any time for no express reason, upon giving thirty (30) days' written notice to LICENSEE by certified mail as further provided in paragraph 14 herein. Upon termination, LICENSEE agrees to remove at its sole expense all encroachments lying in, along and under the licensed portion of the right-of-way and to restore the pavement and any modification made by LICENSEE to the licensed premises to its former condition as determined in the sole discretion of the Public Works Administrator.

7. LICENSEE specifically agrees that it will use the CITY right-of-way pursuant to this license only for the purpose of installing, maintaining and utilizing street lighting and

appurtenances described herein. Further, that it will not suffer or permit the premises or any part thereof to be used for any other purpose without the express consent of CITY.

8. It is further expressly agreed by LICENSEE that it shall not make any alteration other than normal repairs and maintenance to the street lighting permitted herein by way of increasing the size or capacity of said well or any other substantial alteration without the express written consent of CITY.

9. It is expressly understood and agreed that no real or personal property is leased to LICENSEE; that it is a LICENSEE, not Lessee; that the LICENSEE's right to occupy the right-of-way is subordinate to CITY's (or any franchisee of CITY) use of said licensed premises, and should any relocation of any public utility be necessitated at any time in the future, then LICENSEE shall relocate subject to approval of relocation plans by the City, if practicable, or terminate its use of the licensed premises at its own expense. Any relocation must also be completed within thirty (30) days' written notice to Licensee.

10. LICENSEE assumes all risks in the operation, installation and maintenance of the street lighting, the term of this License and any renewal located along and under the licensed premises and shall be solely responsible and answerable in damages for all accidents or injuries to person or property arising out of or caused in the performance of any of the work done pursuant to the Agreement, or arising out of the operation and/or maintenance of said street lighting and appurtenances. LICENSEE further covenants and agrees to indemnify and keep harmless CITY and its officers and employees from any and all claims (which shall include, but not be limited to, the defense of any claim and any and all costs in any judicial or quasi-judicial proceedings and for any and all damages or penalties of any kind or nature), suits, losses, damage or injury to person or property of whatsoever kind and nature, whether direct or indirect,

arising out of the installation, operation and maintenance of said street lighting or the carelessness, negligence or improper conduct of LICENSEE or any servant, agent or employee of LICENSEE.

11. LICENSEE shall procure at its own cost and expense Comprehensive General Liability Insurance coverage in an amount not less than One Million (\$1,000,000.00) Dollars combined single limit in addition to any other insurance or bond CITY may require, which insurance will protect LICENSEE, CITY, and their officers and employees from any claims for damages to property and for personal injuries, including death, which may arise on said property during the term of this agreement and any renewals. The insurance policy shall contain a sixty (60) day cancellation clause period and a Certificate of Insurance shall be furnished the CITY, naming the City of Pompano Beach as an additional insured pursuant to this Agreement, said Certificate of Insurance to be approved by the CITY's Risk Manager prior to execution of this Agreement. A copy of said Certificate is attached hereto and designated as Exhibit "B".

12. LICENSEE is not permitted to assign, transfer, convey or otherwise dispose of this license to any other person or corporation without the previous written consent of CITY. In the event of an attempt to assign, transfer, convey or otherwise dispose of this license to any person not specifically a party to this Agreement and license, then this license shall be null and void and terminated without notice to LICENSEE.

13. Any notice required under the terms of this License Agreement must be in writing and must be sent by certified mail to the address of the party to whom the notice is to be given.

Addresses of the parties are as follows:

FOR CITY: City of Pompano Beach
Post Office Box 1300
Pompano Beach, Florida 33061-1300

FOR LICENSEE: AMP IV– Hidden Harbour, LLC
2890 NE 187th Street
Aventura, Florida 33180

14. Modifications to the approved plans and specifications set forth in Exhibit "A" shall not be made without the approval of the City Engineering Division.

15. As-built drawings of all construction shall be submitted to the City Engineering Division within one (1) month of completion of construction. The As-built drawings shall be supplied on Autocad compatible format with horizontal control based on NAD 1983 state plan coordinate system. The As-builts shall depict the city's right-of-way boundary.

IN WITNESS WHEREOF, the parties to this License Agreement have set their hands and seals on the day and year first above written.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By:

LAMAR FISHER, MAYOR

By:

**PHYLLIS A. KORAB
INTERIM CITY MANAGER**

Attest:

**MARY L. CHAMBERS
CITY CLERK**

(SEAL)

Approved by:

**GORDON B. LINN, ESQ.
CITY ATTORNEY**

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2009 by **LAMAR FISHER** as Mayor, **PHYLLIS A. KORAB** as Interim City Manager, and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"LICENSEE":

Witnesses:

AMP IV – HIDDEN HARBOUR, LLC
a Florida limited liability company

Jesse DeForrest

Jessie Jacobs

By: _____
Andrew Sturner

Typed or Printed Name

Title: _____
CEO

(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

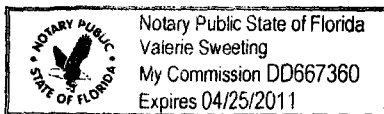
The foregoing instrument was acknowledged before me this 2ND day of OCTOBER, 2009 by ANDREW STURNER as CEO of AMP IV – Hidden Harbour, LLC, a Florida limited liability company, on behalf of the company. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA
Valerie Sweeting

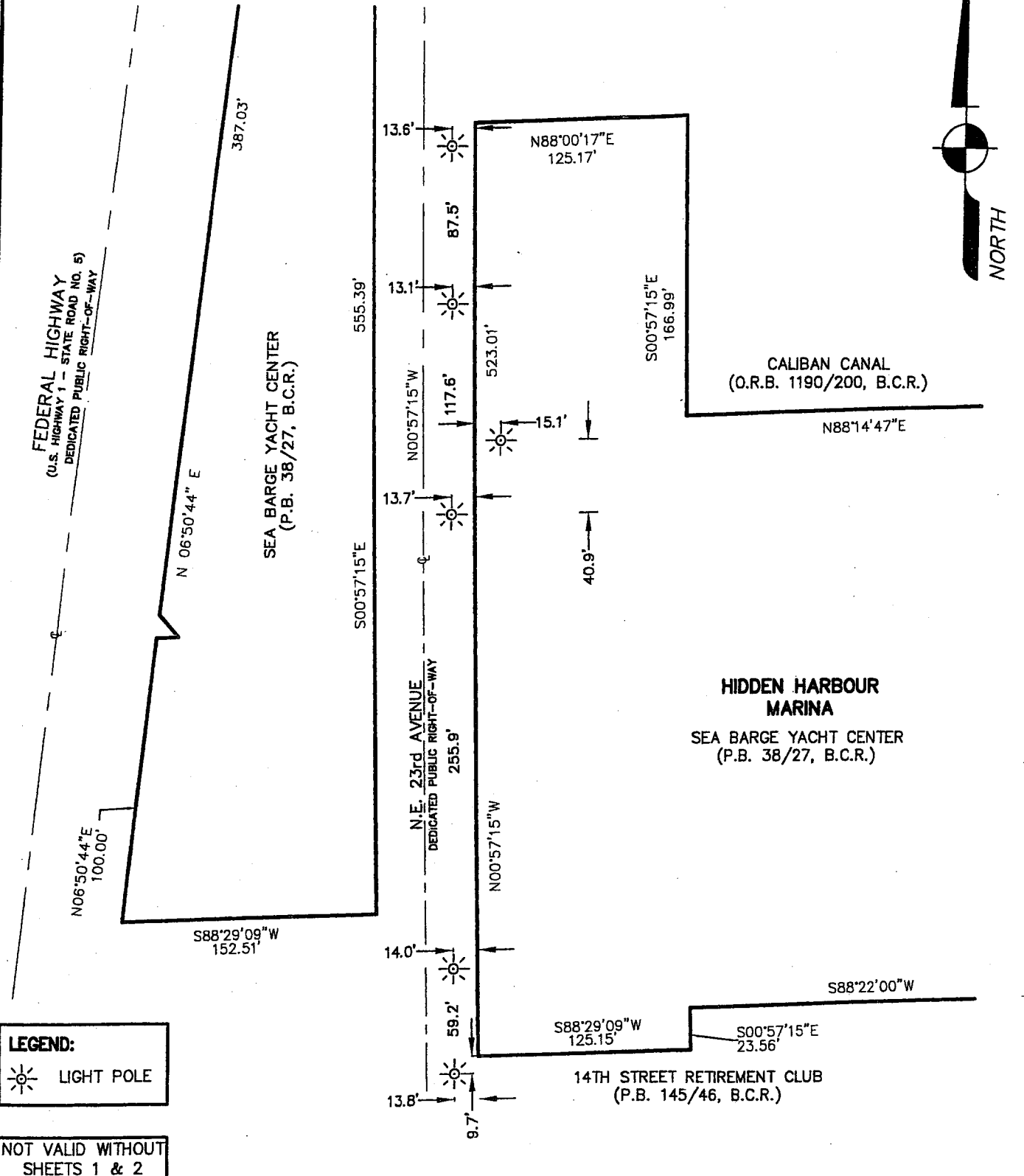
(Name of Acknowledger Typed, Printed or Stamped)
DD667360


Commission Number



GBL/jrm
9/1/09
l:agmt/engr/2009-1938

**LIGHT POLE
AS-BUILT
HIDDEN HARBOUR MARINA**



LEGEND:
 LIGHT POLE

**NOT VALID WITHOUT
SHEETS 1 & 2**

REVISIONS



**AVIROM & ASSOCIATES, INC.
SURVEYING & MAPPING**
 50 S.W. 2ND AVENUE, SUITE 102
 BOCA RATON, FLORIDA 33432
 TEL. (561) 392-2594, FAX (561) 394-7125
 www.AVIROM-SURVEY.com
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JOB NO.	7184-12
SCALE	1" = 80'
DATE	08/24/2009
BY	J.B.
CK'D.	D.E.B.
F.B.	1457 PG. 35
SHEET	1 OF 2

**LIGHT POLE
AS-BUILT
HIDDEN HARBOUR MARINA**

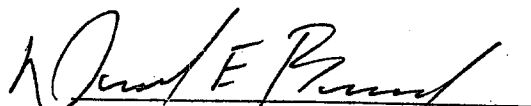
SURVEYOR'S NOTES:

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. No underground improvements were located.
4. Bearings shown hereon are based on the plat with the centerline of N.E. 23rd. Avenue having a bearing of $N00^{\circ}57'15''W$.
5. Data shown hereon was compiled from instrument(s) of record and does not constitute a boundary survey.
6. Abbreviation Legend: L.B.= Licensed Business; PG.= Page; P.L.S.= Professional Land Surveyor; O.R.B.= Official Records Book; P.B.= Plat Book; B.C.R. Broward County Records; C = Centerline.


CERTIFICATION:

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

Date: 8/27/09


 DAVID E. BREAUX, Jr., P.L.S.
 Florida Registration No. 5957
 AVIROM & ASSOCIATES, INC.
 L.B. No. 3300

NOT VALID WITHOUT
SHEETS 1 & 2

REVISIONS 	 <p>AVIROM & ASSOCIATES, INC. SURVEYING & MAPPING 50 S.W. 2ND AVENUE, SUITE 102 BOCA RATON, FLORIDA 33432 TEL. (561) 392-2694, FAX (561) 394-7125 www.AVIROM-SURVEY.com <small>© 2009 AVIROM & ASSOCIATES, INC. all rights reserved. This sketch is the property of AVIROM & ASSOCIATES, INC. and should not be reproduced or copied without written permission.</small></p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>JOB NO.</td><td>7184-12</td></tr> <tr><td>SCALE</td><td>1" = 80'</td></tr> <tr><td>DATE</td><td>08/24/2009</td></tr> <tr><td>BY</td><td>J.B.</td></tr> <tr><td>CK'D.</td><td>D.E.B.</td></tr> <tr><td>F.B.</td><td>1457 PG. 35</td></tr> <tr><td>SHEET</td><td>2 OF 2</td></tr> </table>	JOB NO.	7184-12	SCALE	1" = 80'	DATE	08/24/2009	BY	J.B.	CK'D.	D.E.B.	F.B.	1457 PG. 35	SHEET	2 OF 2
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