

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: May 15, 2007 Consent Regular
Department: Public Hearing
 Ordinance

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- (A) Approve an Agreement between Palm Beach County and Frenchman's Yacht Club Developers, LLC, for resolution of a breach of contract claim arising out of a settlement in the eminent domain matter styled Palm Beach County v. Hartsel Ranch Corp, et al., Case No. 501996CK008184XXXXMB, in the amount of \$100,000, and
- (B) Approve a Budget Amendment of \$100,000 in the County Transportation Trust Fund to recognize the developer contribution and increase the appropriation to fund the Agreement.

Summary: The County acquired Parcels 1, 2, 123, 1E and 2C for improvement to the southeast corner of Prosperity Farms Road and Donald Ross Road pursuant to an Agreed Order of Taking entered on January 28, 1997. A Stipulated Final Judgment (see attached copy) was entered on September 3, 1997, with the stipulation that the County was to install and maintain a fully directional traffic signal, with turn arrows at the existing main entrance to Frenchman's Marina (n/k/a Frenchman's Yacht Club Developers, LLC) on Donald Ross Road. Subsequently, the City of Palm Beach Gardens required that the signal be a mast-arm type, which is considerably more expensive than what the County envisioned (but did not identify) in the Stipulated Final Judgment. The parties have reached a conditional settlement whereby Frenchman's will pay \$100,000 towards the cost of the mast-arm signal, subject to the approval of the Board of County Commissioners. District 1 (AJM)

Background and Justification: The fact that the County and Frenchman's Yacht Club Developers, LLC, will share in the significant costs, and the very difficult case for the County if the dispute were to go to Court, make this a good settlement for the County. In view of the foregoing, Staff recommends approval of the proposed Agreement in the amount of \$100,000 as in the best interests of the County.

Attachments:

- 1. Budget Availability Statement
- 2. Budget Amendment
- 3. Proposed Agreement
- 4. Stipulated Final Judgment of September 3, 1997

Recommended by: Tom Quinn Date 4/21/07
Department Director Date

Approved by: N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	(\$100,000)	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	(\$100,000)	-0-	-0-	-0-	-0-

ADDITIONAL FTE
POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No X
Budget Acct No.: Fund _____ Dept. _____ Unit _____ Object _____
Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

County Transportation Trust Fund
Developer Contributions

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Estimated cost of a mast-arm type signal is \$375,000

[Handwritten signature] 4.26.07
OFMB
4/24/07
CN
4/24/07

[Handwritten signature] 4/30/07
Contract Dev. and Control

B. Approved as to Form and Legal Sufficiency:

[Handwritten signature]
Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

Department Director

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

**INTEROFFICE COMMUNICATION
PALM BEACH COUNTY
BUDGET AVAILABILITY STATEMENT**

DATE: April 17, 2007

TO: Andrew McMahon, Chief Assistant County Attorney
County Attorney's Office
Attn: Jane Reinhart

FROM: Richard Farquhar, Director *RF*
Administrative Services

RE: Prosperity Farms Road and Donald Ross Road
Traffic Signal
Project # N/A
PBC v Hartsel Ranch Corp., et al
Case No: 501996CL008184XXXXMB
Eminent Domain
Frenchman's Yacht Club Developers, LLC
Developer Contribution \$100,000.00

BOARD MEETING DATE: May 15, 2007

FISCAL IMPACT LOCATION: F:\COMMON\WP\AgendaPage2\ 000239

FUNDING STATUS: BUDGET AMENDMENT REQUIRED

A Budget Amendment of \$100,000 in the County Transportation Trust Fund to recognize a Developer Contribution for a traffic signal at Prosperity Farms Road and Donald Ross Road.

Is Item Included in Current Budget? Yes No X

Budget Account No:
Fund 1201 Dept 360 Unit 3224/008 Revenue/Object 6329/6408

Recommended Sources of Funds/Summary of Fiscal Impact:
County Transportation Trust Fund
Developer Contributions

This BAS is valid for up to ninety days from its date of issuance.
F:\ADM_SER\WP50\BAS\Bas07\000239.ROW.Cty Atty

2007- 1000

ACCOUNT NUMBER ACCOUNT

REVENUES

JPA & DEVELOPER AGREEMENTS/TRE

1201-360-3224-6329 Developer Contributi

TOTAL RECEIPTS & BALANCES

EXPENDITURES

JPA & DEVELOPER AGREEMENTS/TRE

1201-360-3224-6408 Signals & Controllers

TOTAL APPROPRIATIONS & EXPENDIT

Engineering & Public Works

Administration / Budget Approval

OFMB Department - Posted

2007- 1000

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY
BUDGET Amendment

FUND County Transportation Trust

BGRV041707-534
BGEX041707-1544

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 04/17/07	REMAINING BALANCE
REVENUES								
JPA & DEVELOPER AGREEMENTS/TRF								
1201-360-3224-6329	Developer Contributions	<u>1,500,000</u>	<u>1,500,000</u>	<u>100,000</u>	<u>0</u>	<u>1,600,000</u>		
TOTAL RECEIPTS & BALANCES		57,918,630	58,567,410	100,000	0	58,667,410		
EXPENDITURES								
JPA & DEVELOPER AGREEMENTS/TRF								
1201-360-3224-6408	Signals & Controllers	<u>1,395,000</u>	<u>1,395,000</u>	<u>100,000</u>	<u>0</u>	<u>1,495,000</u>	<u>1,322,227</u>	<u>172,773</u>
TOTAL APPROPRIATIONS & EXPENDITURES		57,918,630	58,567,410	100,000	0	58,667,410		

Engineering & Public Works
Administration / Budget Approval
OFMB Department - Posted

SIGNATURE

DATE

[Signature]
[Signature]

4/17/09
4/27/07

By Board of County Commissioners
At Meeting of 05/15/07

Deputy Clerk to the
Board of County Commissioners

[Stamp]
Actw
4-24-07

Prepared by and Return to:
Kara K. Baxter, Esq.
Greenberg Traurig P.A.
777 South Flagler Drive, Suite 300 E.
West Palm Beach, Florida 33401
W/C #42

Parcel ID Numbers: 52-43-41-29-00-000-3020
52-43-41-29-22-000-0010
52-43-41-29-23-001-0010

TRAFFIC SIGNAL AGREEMENT

THIS TRAFFIC SIGNAL AGREEMENT ("AGREEMENT"), dated March 27, 2007, by and between Palm Beach County, a political subdivision of the State of Florida, whose address is c/o County Engineer, 301 North Olive Avenue, West Palm Beach, Florida 33401 ("County") and Frenchman's Yacht Club Developers, LLC, a Florida limited liability company ("Frenchman's"), with an address at 201 Alhambra Circle, 12th Floor, Coral Gables, Florida 33134.

RECITALS

1. WHEREAS, Frenchman's is the owner of certain lands located within the corporate limits of Palm Beach Gardens, Florida (the "Owner"), more particularly described in the legal description attached hereto as Exhibit "A" (the "Property") on which it intends to construct a residential community consisting of 113 dwelling units and approximately 9,990 square feet of commercial space, development approval for which has been obtained from the City of Palm Beach Gardens (the "Project").

2. WHEREAS, pursuant to the Stipulated Final Judgment entered in the matter between Palm Beach County and Hartsel Ranch Corp., Case No. CL-96-8184-AD, Circuit Court of the 15th Judicial Circuit, Palm Beach County, Florida, the County is required to install and maintain a “fully directional traffic signal” at the main entrance to the Project when development proceeds.
3. WHEREAS, as part of the City of Palm Beach Garden’s (the “City”) Resolution 152, 2005, approving the Project, attached hereto as Exhibit “B”, Condition No. 3 requires that the “traffic signal shall be installed on painted mast arms (the “Traffic Signal”).” The proposed layout for the Traffic Signal is attached hereto as Exhibit “C.”
4. WHEREAS, the County and Frenchman’s wish to enter into this Agreement, setting forth various understandings and agreements with respect to installation of the Traffic Signal.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the mutual understandings and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, County and Frenchman's hereby covenant and agree as follows:

1. RECITALS. The above recitals are true and correct and are incorporated herein.

2. PAYMENT FOR INSTALLATION OF THE TRAFFIC SIGNAL. County and Frenchman's agree that, in furtherance of the goals of the Final Judgment, it is in the mutual interest of the County and of Frenchman's that the County assume responsibility for the timely installation of the Traffic Signal as set forth below. In return, Frenchman's agrees to reimburse County, \$100,000.00 towards the cost of installation of the Traffic Signal (the "Reimbursement"). Frenchman's shall make payment to the County its \$100,000.00 share of the cost of installation at the time Frenchman's requests the County to issue the Work Order for installation of the Traffic Signal. The County shall be responsible for the remainder of the cost of installation of the Traffic Signal.

3. SCHEDULE. The County and Frenchman's agree that time is of the essence in the completion of each and every provision or condition of this Agreement. Accordingly, the County, in coordination with Frenchman's and the City shall ensure that the Traffic Signal installation is complete in time for issuance of

the first certificate of occupancy for the Project. Based upon information provided by the County, the County's signal contractors have 210 days to complete a mast arm pole installation. Frenchman's will advise the County when the Work Order should be issued to the County's contractors to proceed, based upon Frenchman's development plans. The County agrees to notify the City's Public Works Department at least ten (10) business days prior to commencement of construction. Frenchman's will be at all times advised, at its request, as to the status of work being done by the County and of the details thereof. Either party to this Agreement may request and be granted a conference, to discuss said status.

4. BREACH.

- a. Failure to comply with any provision of this Agreement shall be considered a material breach and a default which shall entitle the Parties to all rights and remedies at equity or law, including but not limited to, suit, termination of the Agreement, and/or return of the Reimbursement.
- b. The County shall be in default hereunder if the County fails to install the Traffic Signal in accordance with the schedule set forth in Paragraph 3, above.
- c. Upon declaration of default, Frenchman's will have the right to enter into agreements with its contractor for the completion of the Traffic Signal.

All costs and charges incurred by Frenchman's as a result of the County's default (including the costs of installing the Traffic Signal) shall be charged against the County and the Reimbursement shall be returned to Frenchman's.

5. ATTORNEYS' FEES. If any dispute relating to this Agreement results in litigation, including mediation proceedings and arbitration, the prevailing party shall be entitled to recover reasonable attorney's fees and costs including costs and expenses of expert witnesses.
6. MODIFICATION. There are no other agreements, promises or undertakings between the parties except as specifically set forth herein. No alterations, changes, modifications or amendments shall be made to this Agreement, except in writing and signed or initialed by the parties hereto.
7. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns and as applicable, the heirs and legal representatives of the parties hereto.
8. FLORIDA CONTRACT. This Agreement shall be deemed a Florida contract and construed according to the laws of such state, regardless of whether this Agreement is being executed by any of the parties hereto in other states or otherwise. This Agreement shall only be enforceable in a court of competent jurisdiction in the State of Florida and not in any other state or otherwise.

9. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

10. SYNTAX. Whenever the context of this Agreement admits or requires, the use of any gender shall include all genders, and the use of the singular shall include the plural and vice-versa.

11. RECORDING. This Agreement shall be recorded in the Official Records of the Clerk of the Circuit Court in and for Palm Beach County, Florida.

12. PREPARATION. The preparation of this Agreement has been a joint effort of each Party's respective counsel, and the resulting document shall not, solely as a matter of judicial rules of construction, be construed more strictly against one of the Parties than the other.

13. ASSIGNMENT. Frenchman's rights under this Agreement may be assigned by Frenchman's to a subsidiary or affiliate company without the necessity of approval by County. County will be notified in writing if such an assignment takes place.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have entered their hands and seals on the date first above written.

WITNESSES:

FRENCHMAN'S YACHT CLUB DEVELOPERS, LLC., a Florida limited liability company

By: Avatar Properties Inc., a Florida corporation, its Managing Member

Maribel G. Pila
Print Name: Maribel G. Pila

By: Patricia K Fletcher
Name: Patricia Kimball Fletcher
Title: Executive Vice President

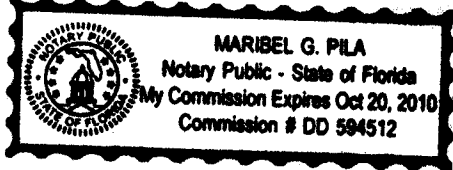
Nora E. Sanchez
Print Name: NORA E. SANCHEZ

{SEAL}

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 28th day of March, 2007 by Patricia Kimball Fletcher as Executive Vice President of Avatar Properties Inc., as Managing Member of Frenchman's Yacht Club Developers, LLC., a Florida Limited Liability Company, who is personally known to me or has produced N/A (Type of identification), as identification and who did/did not take an oath, on behalf of the corporation.

(SEAL)



NOTARY PUBLIC:
Maribel G. Pila
Commission No. _____
My Commission Expires: _____

IN WITNESS WHEREOF, the parties have entered their hands and seals on the date first above written.

PALM BEACH COUNTY FLORIDA,
By its Board of County Commissioners

ATTEST:

COUNTY CLERK

By: _____
Addie L. Greene, Chair

County Attorney's Office
Approved as to form
and legal sufficiency

By: *[Signature]*
Date: 8/23/07

EXHIBIT "A"

PARCEL "B", BEING A PORTION OF TRACT "A", AS SHOWN ON THE PLAT OF FRENCHMAN'S CREEK MARINA (A P.U.D.), RECORDED IN PLAT BOOK 67, PAGES 132 THROUGH 134, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, AND A PORTION OF THE PLAT OF FRENCHMAN'S CREEK YACHT CLUB, A P.U.D., AS RECORDED IN PLAT BOOK 67, PAGES 130 AND 131, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF TRACT "A", AS SHOWN ON THE PLAT OF SAID FRENCHMAN'S CREEK MARINA, A P.U.D.; THENCE SOUTH 18°54'45" EAST ALONG THE EAST LINE OF SAID TRACT "A", A DISTANCE OF 124.12 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF DONALD ROSS ROAD AS DESCRIBED IN OFFICIAL RECORD BOOK 9835, PAGE 429, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL; THENCE SOUTH 18°54'45" EAST CONTINUING ALONG THE EAST LINE OF SAID TRACT "A", A DISTANCE OF 565.38 FEET; THENCE NORTH 88°27'49" WEST, A DISTANCE OF 269.11 FEET; THENCE NORTH 19°54'25" WEST, A DISTANCE OF 88.43 FEET; THENCE NORTH 19°46'19" WEST, A DISTANCE OF 45.75 FEET; THENCE NORTH 18°33'24" WEST, A DISTANCE OF 35.26 FEET; THENCE NORTH 87°30'24" WEST, A DISTANCE OF 156.81 FEET; THENCE NORTH 87°15'29" WEST, A DISTANCE OF 88.33 FEET; THENCE NORTH 87°31'67" WEST, A DISTANCE OF 79.27 FEET; THENCE NORTH 87°29'30" WEST, A DISTANCE OF 416.11 FEET; THENCE NORTH 02°38'14" EAST, A DISTANCE OF 25.14 FEET; THENCE NORTH 87°29'30" WEST, A DISTANCE OF 10.00 FEET; THENCE SOUTH 02°38'14" WEST, A DISTANCE OF 26.14 FEET; THENCE NORTH 87°29'30" WEST, A DISTANCE OF 115.39 FEET; THENCE SOUTH 17°49'09" WEST, A DISTANCE OF 50.16 FEET; THENCE SOUTH 23°55'05" WEST, A DISTANCE OF 36.31 FEET; THENCE SOUTH 31°35'05" WEST, A DISTANCE OF 39.84 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE

TO THE NORTHWEST, HAVING A RADIUS OF 38.52 FEET, A RADIAL BEARING OF NORTH 46°37'17" WEST AND A CENTRAL ANGLE OF 70°07'58"; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 47.16 FEET; THENCE NORTH 64°51'51" WEST, A DISTANCE OF 17.85 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 38.14 FEET, A RADIAL BEARING OF SOUTH 36°01'38" WEST, AND A CENTRAL ANGLE OF 80°17'39"; THENCE WESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 63.44 FEET TO A POINT OF A REVERSE CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 66.00 FEET, A RADIAL BEARING OF NORTH 04°24'54" WEST AND A CENTRAL ANGLE OF 31°32'57"; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 36.34 FEET; THENCE SOUTH 88°53'16" WEST, A DISTANCE OF 26.74 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF PROSPERITY FARMS ROAD AS DESCRIBED IN OFFICIAL RECORD BOOK 9566, PAGE 925, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 635.00 FEET, A RADIAL BEARING OF NORTH 58°02'10" EAST AND A CENTRAL ANGLE OF 48°30'33"; THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND THE ARC OF SAID CURVE, A DISTANCE OF 515.45 FEET TO THE POINT OF TANGENCY; THENCE NORTH 12°32'43" EAST, A DISTANCE OF 117.39 FEET; THENCE NORTH 52°33'10" EAST, A DISTANCE OF 44.53 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF DONALD ROSS ROAD, AS DESCRIBED IN OFFICIAL RECORD BOOK 9835, PAGE 429, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; SAID POINT LYING ON A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 3439.86 FEET, A RADIAL BEARING OF SOUTH 05°29'38" WEST, A CENTRAL ANGLE OF 06°47'58"; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 408.20 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 3580.00 FEET AND A CENTRAL ANGLE OF 04°39'32"; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE AND RIGHT-OF-WAY LINE, A DISTANCE OF 289.47 FEET TO A POINT ON THE WEST LINE OF SAID TRACT "A"; THENCE SOUTH 01°52'43" WEST CONTINUING ALONG SAID RIGHT-OF-WAY LINE AND THE WEST LINE OF SAID TRACT "A", A DISTANCE OF 20.10 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 3580.00 FEET, A RADIAL BEARING OF NORTH 07°38'11" EAST AND A CENTRAL ANGLE OF 07°31'32"; THENCE EASTERLY ALONG SAID ARC AND RIGHT-OF-WAY LINE, A DISTANCE OF 470.22 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 89°59'21" EAST, A DISTANCE OF 64.14 FEET TO THE POINT OF BEGINNING.

CONTAINING 14.64 ACRES MORE OR LESS.

EXHIBIT "B"

Date Prepared: September 22, 2005
As Amended December 1, 2005

RESOLUTION 152, 2005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM BEACH GARDENS, FLORIDA APPROVING THE MASTER DEVELOPMENT PLAN FOR THE APPROXIMATELY 14.54-ACRE PROPERTY LOCATED AT THE SOUTHEAST CORNER OF DONALD ROSS ROAD AND PROSPERITY FARMS ROAD, AS MORE PARTICULARLY DESCRIBED HEREIN, TO ALLOW THE DEVELOPMENT OF 113 MULTIFAMILY DWELLING UNITS AND 9,990-SQUARE FEET OF ANCILLARY OFFICE/RETAIL SPACE FOR USE BY THE MARINA TO BE REFERRED TO AS "FRENCHMAN'S YACHT CLUB"; PROVIDING FOR WAIVERS; PROVIDING FOR CONDITIONS OF APPROVAL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council, as the governing body of the City of Palm Beach Gardens, Florida, pursuant to the authority in Chapter 163 and Chapter 166, Florida Statutes, and the City's Land Development Regulations, is authorized and empowered to consider petitions related to zoning and land development orders; and

WHEREAS, the City has received a request by George Gentile, of Gentile, Holloway, O'Mahoney & Associates, Inc. and Greenberg Traurig, on behalf of Avatar Properties, Inc., for master development plan approval to allow the development of 113 multifamily dwelling units and 9,990 square feet of internal office/retail space for use by the marina to be called the "Frenchman's Yacht Club"; and

WHEREAS, the subject site is contained within the Frenchman's Creek Planned Community Development (PCD) and has an underlying zoning designation of Residential Medium (RM); and

WHEREAS, the Growth Management Department has reviewed said application, has determined that it is sufficient and consistent with the City's Comprehensive Plan and Land Development Regulations, and has recommended its approval; and

WHEREAS, the Planning, Zoning, and Appeals Board reviewed said petition at its August 23, 2005, meeting and recommended its approval by a vote of 5-2; and

WHEREAS, the City Council has considered the evidence and testimony presented by the Applicant and other interested parties and the recommendations of the various City of Palm Beach Gardens review agencies and staff; and

WHEREAS, the City Council has determined that adoption of this Resolution is in the best interest of the citizens and residents of the City of Palm Beach Gardens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BEACH GARDENS, FLORIDA that:

SECTION 1. The foregoing recitals are hereby affirmed and ratified.

SECTION 2. The master development plan application of Mr. George Gentile, of Gentile, Holloway, O'Mahoney & Associates, Inc. and Greenberg Traurig, on behalf of the Applicant, Avatar Properties, Inc., is hereby APPROVED on the following described real property, to permit the development of 113 multifamily dwelling units and 9,980-square feet of internal office/retail space for use by the marina on 14.54 acres of land to be referred to as "Frenchman's Yacht Club," generally located on the southeast corner of Donald Ross Road and Prosperity Farms Road, subject to the conditions of approval contained herein, which are in addition to the general requirements otherwise provided by ordinance:

LEGAL DESCRIPTION:

PARCEL "B", BEING A PORTION OF TRACT "A", AS SHOWN ON THE PLAT OF FRENCHMAN'S CREEK MARINA (A P.U.D.), RECORDED IN PLAT BOOK 67, PAGES 132 THROUGH 134, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, AND A PORTION OF THE PLAT OF FRENCHMAN'S CREEK YACHT CLUB, A P.U.D., AS RECORDED IN PLAT BOOK 67, PAGES 130 AND 131, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF TRACT "A", AS SHOWN ON THE PLAT OF SAID FRENCHMAN'S CREEK MARINA, A P.U.D.; THENCE SOUTH 18°54'45" EAST ALONG THE EAST LINE OF SAID TRACT "A", A DISTANCE OF 124.12 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF DONALD ROSS ROAD AS DESCRIBED IN OFFICIAL RECORD BOOK 9835, PAGE 428, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL; THENCE SOUTH 19°54'45" EAST CONTINUING ALONG THE EAST LINE OF SAID TRACT "A", A DISTANCE OF 555.38 FEET; THENCE NORTH 88°27'48" WEST, A DISTANCE OF 259.11 FEET; THENCE NORTH 19°54'25" WEST, A DISTANCE OF 86.43 FEET; THENCE NORTH 18°46'18" WEST, A DISTANCE OF 45.75 FEET; THENCE NORTH 18°33'24" WEST, A DISTANCE OF 35.28 FEET; THENCE NORTH 87°30'24" WEST, A DISTANCE OF 158.81 FEET; THENCE NORTH 87°15'29" WEST, A DISTANCE OF 68.33 FEET; THENCE NORTH 87°31'57" WEST, A DISTANCE OF 79.27 FEET; THENCE NORTH 87°25'30" WEST, A DISTANCE OF 416.11 FEET; THENCE NORTH 02°35'14" EAST, A DISTANCE OF 25.14 FEET; THENCE NORTH 87°25'30" WEST, A DISTANCE OF 10.00 FEET; THENCE SOUTH 02°35'14" WEST, A DISTANCE OF 25.14 FEET; THENCE NORTH 87°25'30" WEST, A DISTANCE OF 115.39 FEET; THENCE SOUTH 17°49'08" WEST, A DISTANCE OF 60.16 FEET; THENCE SOUTH 23°55'05" WEST, A DISTANCE OF 36.31 FEET; THENCE SOUTH 31°35'05" WEST, A DISTANCE OF 30.84 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE

TO THE NORTHWEST, HAVING A RADIUS OF 38.52 FEET, A RADIAL BEARING OF NORTH 46°37'17" WEST AND A CENTRAL ANGLE OF 70°07'59"; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 47.15 FEET; THENCE NORTH 64°51'51" WEST, A DISTANCE OF 17.85 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 38.14 FEET, A RADIAL BEARING OF SOUTH 36°01'38" WEST, AND A CENTRAL ANGLE OF 80°17'39"; THENCE WESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 53.44 FEET TO A POINT OF A REVERSE CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 65.00 FEET, A RADIAL BEARING OF NORTH 04°24'54" WEST AND A CENTRAL ANGLE OF 31°32'57"; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 36.34 FEET; THENCE SOUTH 86°53'16" WEST, A DISTANCE OF 26.74 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF PROSPERITY FARMS ROAD AS DESCRIBED IN OFFICIAL RECORD BOOK 8588, PAGE 926, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 635.00 FEET, A RADIAL BEARING OF NORTH 58°02'10" EAST AND A CENTRAL ANGLE OF 46°30'33"; THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND THE ARC OF SAID CURVE, A DISTANCE OF 515.45 FEET TO THE POINT OF TANGENCY; THENCE NORTH 12°32'43" EAST, A DISTANCE OF 117.39 FEET; THENCE NORTH 52°33'10" EAST, A DISTANCE OF 44.53 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF DONALD ROSS ROAD, AS DESCRIBED IN OFFICIAL RECORD BOOK 9635, PAGE 429, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; SAID POINT LYING ON A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 3439.96 FEET, A RADIAL BEARING OF SOUTH 05°29'38" WEST, A CENTRAL ANGLE OF 06°47'56"; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 408.20 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 3550.00 FEET AND A CENTRAL ANGLE OF 04°39'32"; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE AND RIGHT-OF-WAY LINE, A DISTANCE OF 289.47 FEET TO A POINT ON THE WEST LINE OF SAID TRACT "A"; THENCE SOUTH 01°52'43" WEST CONTINUING ALONG SAID RIGHT-OF-WAY LINE AND THE WEST LINE OF SAID TRACT "A", A DISTANCE OF 20.10 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 3550.00 FEET, A RADIAL BEARING OF NORTH 07°36'11" EAST AND A CENTRAL ANGLE OF 07°31'32"; THENCE EASTERLY ALONG SAID ARC AND RIGHT-OF-WAY LINE, A DISTANCE OF 470.22 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 89°55'21" EAST, A DISTANCE OF 84.14 FEET TO THE POINT OF BEGINNING.

CONTAINING 14.54, ACRES MORE OR LESS.

SECTION 3. The City Council of the City of Palm Beach Gardens, Florida hereby approves the following six (6) waivers:

1. Section 78-231(F)(1)a, *Right-of-way and easements*, to allow for a 127-foot-wide parkway easement at its narrowest point along Donald Ross Road, as shown on the approved site plan.
2. Section 78-345(d)(1), *Increase of parking spaces allowed*, to allow for a total of 461 parking spaces on site.
3. Section 78-141, *Residential zoning district regulations*, to allow for a 59'10" maximum mean building height on site as reflected on the approved elevations.
4. Section 78-344(I)(1), *Minimum dimensions (of off-street parking)*, to allow for 242 parking spaces within the covered parking structure at nine (9) feet in width and 36 parking spaces along the main drive at nine and one-half (9.5) feet in width.
5. Section 78-285, Table 24, *Permanent signs*, to allow for two (2) residential entry signs at the project's main entrance.
6. Section 78-162, *Illumination of uses and buildings*, to allow for lighting levels within the covered parking structure that are consistent with the lighting standards for parking garages established by the Illuminating Engineering Society of North America (IESNA).

SECTION 4. Said approval is subject to the following conditions, which shall be the responsibility of the Applicant, its successors, or assigns:

Planning and Zoning

1. All openings on site shall be hurricane impact-resistant. (Planning & Zoning)
2. Signage shall be placed on the site that restricts vehicles, with the exception of emergency vehicles, from using the paver access-way adjacent to the marina. (Planning & Zoning)
3. Prior to the issuance of the first Certificate of Occupancy, the traffic signal at the entrance to the subject site shall be installed and operational. The traffic signal shall be installed on painted mast arms. (Planning & Zoning.)
4. There shall be no striped awnings on site. (Planning & Zoning)
5. At the time of platting, the Applicant shall dedicate a 10' x 30' easement along Donald Ross Road for a Palm Tran Bus Shelter. The easement shall not be placed over a utility easement in order to allow the construction of a bus shelter in the future. Within sixty (60) days of the approval of this

Resolution, the Applicant, its successors, or assigns shall submit an application for an administrative amendment to allow for review and approval of the site plan, landscape plan, and building elevations for the bus shelter. The bus shelter design shall be consistent with the City Council's previous approval of such shelters. The bus shelter shall be constructed prior to the issuance of the first Certificate of Occupancy on site, unless another timeframe for completion is established in the administrative approval. (Planning & Zoning)

6. The uses permitted within the retail/office portion of the site shall be limited to uses that serve the residents of the site and the marina. Permitted uses include boat and marina sales, marina office, condominium administrative office, ship store, concession sales, and limited restaurant use for residents and guests of the condominium and users of the marina. There shall be no outdoor seating with wait service; outdoor seating without wait service that is ancillary to the restaurant is permitted. There shall be no commercial signage on Donald Ross Road or Prosperity Farms Road advertising these uses. Signage for these uses shall be subject to City Council approval. Uses not otherwise permitted are specifically excluded. The Applicant shall give notice to Frenchman's Creek, Incorporated, upon such time when an application for a sign package for the site is submitted to the City. (Planning & Zoning)

Landscaping

7. Prior to land alteration, the Applicant shall submit the Florida Power and Light (FPL) and Seacoast Utility Authority (SUA) approved landscape plans for review and approval by the City. Any changes to the landscape plan subsequent to the project's approval that are determined by the Growth Management Administrator to have a substantial negative impact on the project shall require the approval of the City Council. (City Forester)
8. Within six (6) months of the issuance of a permit for land alteration, the Applicant, successors, or assigns shall install the landscaping and irrigation within the median and road shoulder of the portion of Donald Ross Road from Prosperity Farms Road to the Intracoastal Waterway. (City Forester)
9. The Applicant, successors, or assigns shall be responsible for the maintenance of the center island median and southern road shoulder on Donald Ross Road from Prosperity Farms Road to the Intracoastal Waterway. This condition may be amended at any time by a separate agreement between the Applicant and the City of Palm Beach Gardens. (City Forester)

10. The Applicant, successors, or assigns shall maintain the eastern road shoulder of Prosperity Farms Road from Donald Ross Road to the marina. In the event that an irrigation system does not exist within said road shoulder, the Applicant shall install the irrigation system within six (6) months of the issuance of a permit for land alteration. This condition may be amended at any time by a separate agreement between the Applicant and the City of Palm Beach Gardens. (City Forester)
11. All trees or palms designed for preservation or relocation that die as a result of construction or relocation practices shall be replaced using the following schedule: trees shall be replaced one (1) for one (1) with a Live Oak of at least 18 feet in height at planting; palms shall be replaced with like-species one (1) for one (1) with a minimum height of 10 feet clear trunk at planting. (City Forester)
12. Prior to the issuance of the first building permit, the Applicant shall remove all landscape debris and trash from the east property line adjacent to the mangrove preserve. (City Forester)
13. Prior to the first land alteration permit, the Applicant shall plat the property. The plat shall include all existing and proposed easements. The plat shall show, to the satisfaction of the City, (1) the maintenance easement providing pedestrian and vehicular access to and from the Frenchman's Creek Preserve; (2) the existing mangrove wetland area; and (3) the abandonment of the 30-foot-wide utility easement (O.R.B. 6258, PG 109) and the 12-foot-wide access easement (O.R.B. 6779, PG 253; O.R.B. 6814, PG 758; O.R.B. 6821, PG 888) as shown on the plan. (City Forester)

Engineering

14. Prior to the issuance of the first Certificate of Occupancy, the Applicant shall provide the City with a copy of the recorded easement vacation documents. (City Engineer)
15. Prior to construction plan approval and issuance of the first land alteration permit, a public access easement shall be granted for all public sidewalks proposed within the property boundary. (City Engineer)
16. Prior to construction plan approval and issuance of the first land alteration permit, the Applicant shall provide written authorization from the appropriate utility companies (easement holders) allowing landscaping within their respective existing and/or proposed easements. (City Engineer)
17. Prior to construction plan approval and the issuance of the first land alteration permit, the Applicant shall schedule a pre-permit meeting with City staff. (City Engineer)

18. The Applicant shall furnish to the City copies of all complete permit applications, certifications, and approvals for the project, to and from all regulatory agencies. (City Engineer)
19. The Applicant shall comply with all Federal EPA and State of Florida Department of Environmental Protection NPDES permit requirements, including, but not limited to, preparation of a stormwater pollution prevention plan and identification of appropriate Best Management Practices for construction activities, submission of a Notice of Intent to EPA or its designee, implementation of the approved plans, inspection and maintenance of controls during construction, and submission of a Notice of Termination. (City Engineer)
20. Prior to construction plan approval and the issuance of the first land alteration permit, Applicant shall provide a cost estimate for the project, including public infrastructure and all landscaping and irrigation costs for review and approval by the City in order to establish surety. The cost estimate shall be signed and sealed by an engineer and landscape architect registered in the State of Florida. Surety will be based on 110% of the total combined approved cost estimates and shall be posted with the City prior to the issuance of the first building permit. (City Engineer)
21. Prior to construction plan approval and the issuance of the first land alteration permit, Applicant shall provide a cost estimate for the on-site project improvements, not including public infrastructure, or landscaping and irrigation costs for review and approval by the City. The cost estimate shall be signed and sealed by an engineer registered in the state of Florida and shall be posted with the City prior to the issuance of the first land alteration permit. (City Engineer)
22. Prior to the issuance of the first land alteration permit, the Applicant shall submit signed, sealed, and dated construction plans (paving, grading & drainage, and water & sewer) and all pertinent calculations for review and comment. (City Engineer)
23. Prior to the issuance of the first land alteration permit for vertical construction, documents identifying the cross access and maintenance agreement and restrictions as necessary shall be furnished by the Applicant to the City Attorney for review and approval prior to such documents being recorded in the Public Records of Palm Beach County. (City Engineer)
24. Prior to the issuance of the first permit for infrastructure improvements, the Applicant shall provide documentation to the satisfaction of the City Engineer that (1) the sanitary sewer facilities on site are flood-proofed to prevent inflow and ensure that raw sewage does not leak from sanitary sewer facilities during flood events; (2) construction techniques on site will

be consistent with the requirements of the Federal Emergency Management Agency Flood Insurance Program; and (3) best management practices will be used on site to prevent surface run-off from degrading the water quality of Little Lake Worth or the Intracoastal Waterway. (City Engineer, Planning & Zoning)

Police

25. All lighting on site shall be metal halide. (Police)
26. Landscaping, including long-term tree canopy growth, shall not conflict with lighting. (Police)
27. The Applicant shall provide timer clock or photocell sensor engaged lighting above or near entryways to residences and all pedestrian sidewalks. (Police)
28. Pedestrian-scale lighting shall be used for all street and pedestrian walkways. (Police)
29. The entry signs shall be lit at night. (Police)
30. Prior to the issuance of the first building permit, the Applicant shall provide a street address system for emergency response purposes. Address system depiction should be 8-1/2x11 map format. (Police)
31. The Applicant shall strategically place directories with arrow indicators for building addresses at the ingress point at driver eyesight level mounted in a permanent, stationary, and durable manner. These directories shall remain unobstructed at all times from trees, shrubs, or anything that would obscure the view thereof. (Police)
32. Building numbers and exterior numerical addresses shall be illuminated for nighttime visibility, shall be a minimum of 12 inches in letter height, and shall be placed in a conspicuous location. (Police)
33. Sales center, clubhouse, and recreational facilities should be pre-wired for alarm center. (Police)
34. Access to recreation buildings and pools shall be restricted through the use of key card or key. (Police)
35. Anti-lifting auxiliary locks shall be installed on sliding doors and windows. (Police)
36. All exterior doors shall be equipped with security hinges. (Police)

37. Photocell lighting for nighttime use shall be provided above or near entryways to residences. (Police)
38. Elevators shall be equipped with both telephones and alarm buttons connected to resident manager and/or an outside central monitoring station. (Police)
39. Storage rooms should have restricted access that requires a tenant or owner key. (Police)
40. The ceiling within the covered parking structure shall be painted white to increase brightness within the garage. (Police)
41. Prior to the issuance of the first building permit for vertical construction, the Applicant shall work with the Police Department to develop a high-resolution color digital closed-circuit security surveillance system with monitoring and photo printout capabilities. The Police Chief shall have final approval on the required number of cameras and locations thereof within the site. (Police)
42. Prior to the issuance of the first building permit for vertical construction, the photometric plan for the interior of the covered parking structure shall be approved by the City. The lighting within the parking garage shall comply with the lighting standards for parking garages established by the Illuminating Engineering Society of North America. (Police)

Miscellaneous

43. Required digital files of the approved plat, civil design, and architectural drawings shall be submitted to the Planning and Zoning Division prior to the issuance of the first Certificate of Occupancy. (GIS Manager, Development Compliance Officer)
44. Prior to the issuance of the first Certificate of Occupancy, the master condominium owners association documents and restrictions shall be furnished by the Applicant to the City Attorney for review and approval prior to such documents being recorded in the Public Records of Palm Beach County. (City Attorney)
45. There shall be no outdoor sound amplification on site. (Planning & Zoning)

SECTION 5. This Planned Unit Development shall be constructed in compliance with the following plans on file with the City's Growth Management Department:

1. Sheets SP-1 through SP-6: Site Plans and Details, prepared by Gentile, Holloway, O'Mahoney & Associates, Inc., last revised on October 31, 2005, and received and stamped by the City on November 2, 2005.
2. Sheets LP-1 through LP-6: Landscape Plans, Specifications and Details, prepared by Gentile, Holloway, O'Mahoney & Associates, Inc., last revised on, October 31, 2005, and received and stamped by the City on November 2, 2005.
3. Sheets TP-1 through TP-2: Tree Preservation Plan, prepared by Gentile, Holloway, O'Mahoney & Associates, Inc., last revised on September 12, 2005, and received and stamped by the City on November 2, 2005.
4. Sheets A-1 through A-22: Elevations, Floor Plans, and Roof Plans, prepared by ACI Architectural Group, Inc., dated August 5, 2005, and received and stamped by the City on November 2, 2005.
5. Sheets A-1.01 through A-2.01: Pool Cabana Plans, prepared by Gentile, Holloway, O'Mahoney & Associates, Inc., last revised on September 12, 2005, and received and stamped by the City on September 12, 2005.


SECTION 6. This approval shall be consistent with all representations made by the Applicant or Applicant's agents at any workshop or public hearing.

SECTION 7. This Resolution shall become effective immediately upon adoption.

(The remainder of this page left intentionally blank)

PASSED AND ADOPTED this 14th day of December, 2005.

CITY OF PALM BEACH GARDENS, FLORIDA

BY: 
Joseph R. Russo, Mayor

ATTEST:

BY: 
Patricia Snider, OMC, City Clerk

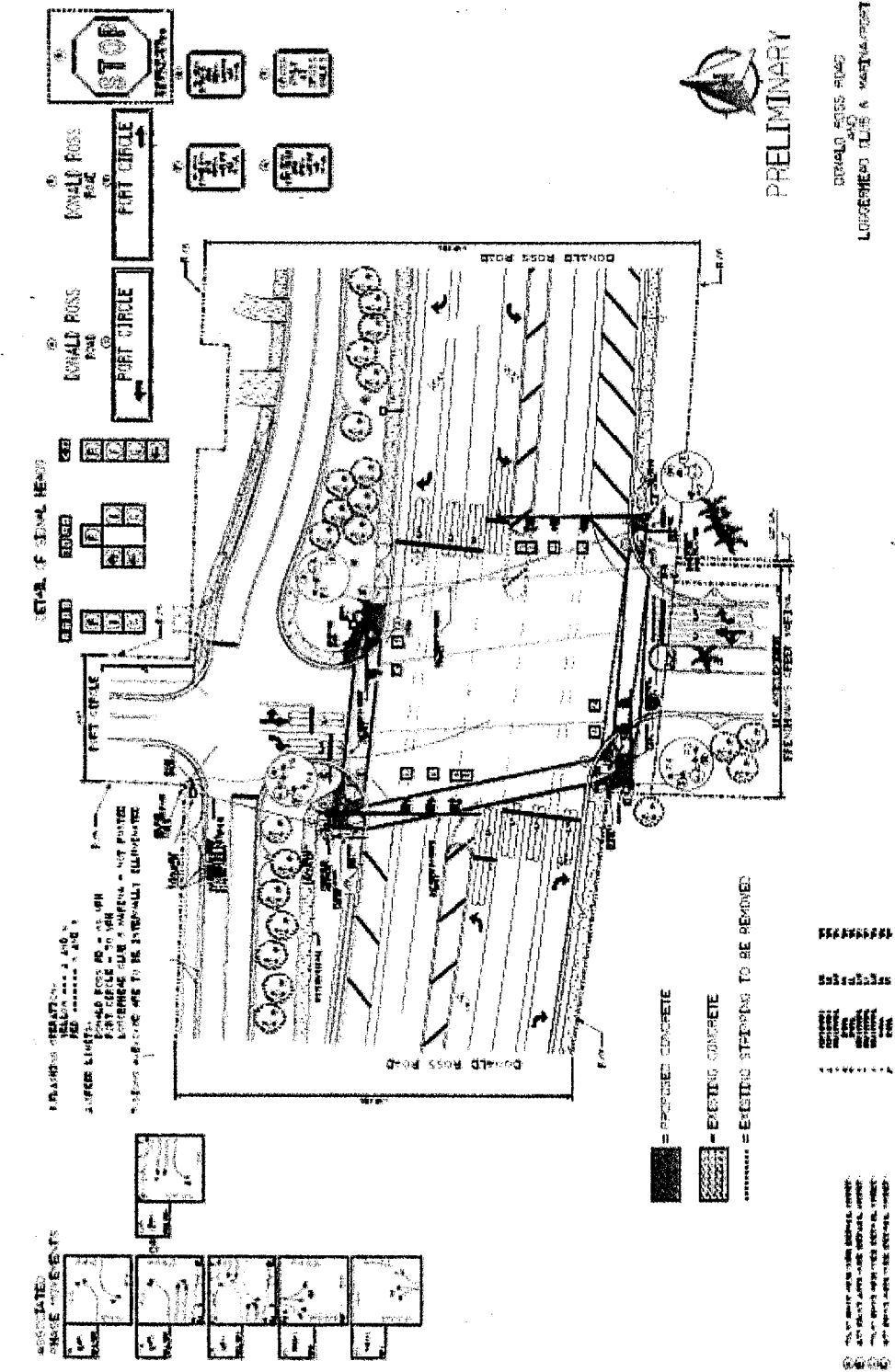
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: 
Christine P. Tatum, City Attorney

VOTE:	AYE	NAY	ABSENT
MAYOR RUSSO	✓	___	___
VICE MAYOR JABLIN	✓	___	___
COUNCILMEMBER LEVY	✓	___	___
COUNCILMEMBER VALECHE	✓	___	___
COUNCILMEMBER BARNETT	✓	___	___



EXHIBIT "C"



FS1\BAXTERK\553183v01\GS6V01_DOC\8/18/05