

# MEMORANDUM

Agenda Item No. 14(A)(3)

**TO:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**DATE:** July 23, 2019

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Resolution authorizing the County Mayor to execute a joinder and a consent to a non-exclusive Easement Agreement between Martin Fine Villas, LLC, The Gallery at River Parc, LLC and Brisas del Rio Apartments, LLC which among other things, grants a non-exclusive Easement between these entities and the residents for vehicular and pedestrian ingress and egress over, across and through the driveways and walkways constructed from time to time within the project, and for parking within and throughout the project

The accompanying resolution was prepared by the Public Housing and Community Development Department and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins.



Abigail Price-Williams  
County Attorney

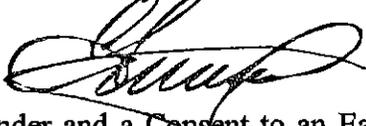
APW/uw

# Memorandum



**Date:** July 23, 2019

**To:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor 

**Subject:** Execution of a Joinder and a Consent to an Easement Agreements between  
Martin Fine Villas, LLC, The Gallery at River Parc, LLC and Brisas del Rio  
Apartments, LLC

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## **Recommendation**

It is recommended that the Board of County Commissioners (Board) authorize the County Mayor or the County Mayor's designee to execute the joinder and consent to the Easement Agreement between Martin Fine Villas, LLC, The Gallery at River Parc, LLC and Brisas del Rio Apartments, LLC, which among other things, grants a non-exclusive easement between the before-mentioned entities and the residents for vehicular and pedestrian ingress and egress over, across and through the driveways and walkways constructed from time to time within the project, and for parking within and throughout the project.

## **Scope**

Martin Fine Villas is located at 780 NW 13th Court, The Gallery at River Parc will be located approximately at the NW corner of the intersection of NW 13th Court and NW 7th Street, and Brisas del Rio Apartments will also be located at the Senior Campus site, which is represented by Commissioner Eileen Higgins, District 5.

## **Fiscal Impact/Funding Source**

Execution of the joinder and consent has no fiscal impact on the County's General Fund.

## **Track Record/Monitor**

Public Housing and Community Development (PHCD) is the entity overseeing this project and the person responsible for monitoring the project is PHCD Director Michael Liu.

## **Background**

On November 15, 2011, the Board adopted Resolution No. R-1026-11, which, among other things, awarded site control through a ground lease to Related Urban Development Group, LLC (RUDG), for the redevelopment of Haley Sofge, Robert King High and Martin Fine Villas (collectively referred to as the Senior Campus). Subsequently, on April 8, 2014, the Board adopted Resolution No. R-331-14, which authorized the execution of Master Development Agreements and all necessary mixed-finance agreements and documents related to the development of the Senior Campus, including, but not limited to, amendments, agreements, ground leases and amendments, subject to the U.S. Department of Housing and Urban Development (HUD) approval. On November 19, 2018, HUD granted the County's request to amend the existing disposition approval for Martin Fine Villas for the purpose of utilizing a vacant land on the existing Martin Fine Villas site to construct a new development

project known as The Gallery at River Parc. HUD's approval letter is attached to this memorandum as Exhibit 1.

RUDG has requested that the County, as the landlord and a lender, execute a joinder and a consent to an easement agreement between Martin Fine Villas, LLC, The Gallery at River Parc, LLC and Brisas del Rio Apartments, LLC for the purpose of granting non-exclusive easements to these entities and the residents for vehicular and pedestrian ingress and egress over, across and through the driveways and walkways constructed from time to time within the entire Senior Campus, and for parking within and throughout such project. The easement area is more fully described in Attachments A, B and C, which are attached to the resolution. Accordingly, PHCD recommends that the Board authorize the County Mayor or the County Mayor's designee to execute the joinder and the consent attached to the easement agreement.

Attachment



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Maurice L. Kemp  
Deputy Mayor



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Special Applications Center  
 77 W. Jackson Blvd., Room 2401  
 Chicago, Illinois 60604-3507  
 Phone: (312) 353-6236 Fax: (312) 913-8892

OFFICE OF PUBLIC HOUSING

November 19, 2018

Mr. Michael Liu  
 Executive Director  
 Miami Dade Public Housing and Community Development  
 701NW 1<sup>st</sup> Court, 16<sup>th</sup> Floor  
 Miami, Florida 331136- 3601

Dear Mr. Liu:

On September 27, 2018, the U. S. Department of Housing and Urban Development's (Department) Special Applications Center (SAC) received the Miami Dade Public Housing and Community Development's (MDPHCD) request via email and letter to amend the previously approved disposition approval for Site 240, FL005000835 and Site 241, FL005000835. Supplemental information was received through October 16, 2018.

**Approval History**

On January 4, 2017, the Department approved the MDPHCD's disposition request via the Inventory Management System/Public and Indian Housing Information Center (IMS/PIC) system application DDA0006982, as identified below:

Site 240, FL005000835				
Approved for Disposition: Buildings: 1 dwelling and 7 non-dwelling buildings, Units: 50, Acres: 4.32				
Total Units to be Redeveloped 104	Less than 80% of Area Median Income			
	ACC	Non-ACC	PBV	Market Rate
Rental	50	54	-	-
Acquiring Entity (Rental Units)	Martin Fine Villas, LLC			
Lease Price	\$1.00 per year with a one-time capitalized lease payment of \$500,000.			
Purpose	Development of Mixed-Income			
Building Number Per PIC: 1439				
Non-dwelling structures not in PIC addresses: 1401 NW 7th Street, Buildings: A, B, C, D, E, F, and G				
Lot Information: Exhibit A				

Site 241, FL005000836*				
Approved for Disposition: Acres: 1.17				
Total Units to be Redeveloped See site 240	Less than 80% of Area Median Income			
	ACC	Non-ACC	PBV	Market Rate
Rental (see Site 240)	-	-	-	-
Acquiring Entity (Rental Units)	Martin Fine Villas, LLC			

Visit our World Wide Web Site <http://www.hud.gov/offices/pih/centers/sac/>

Lease Price	See Site 240
Purpose	Development of Mixed-Income
<b>Lot Information: Exhibit A</b>	

\* The development of the new dwelling structure will be built on the vacant portions of Site 240 and Site 241

### Current Request

In the current request, MDPHCD is seeking an amendment to the January 4, 2017 approval to maximize an opportunity to further develop affordable, workforce, and public housing at the Martin Fines site. With the completion of the originally approved development, the MDPHCD wishes to utilize 3.66 acres of vacant land on the existing site to construct 150 additional residential units in a new tax credit development.

The MDPHCD proposed the disposition via a negotiated sale at less than FMV to the Gallery at River Parc, LLC, via a 75-year ground lease at \$1.00 per year with a one-time capitalized lease payment of \$375,000. The Department allows disposition of property for less than FMV (where permitted by law), if the activity provides commensurate public benefits to the community, the PHA or the federal government. The eleven-story residential building will have 40 studio units, 70 1-bedroom units and 40 2-bedroom units. A total of 30 units will be covered under the ACC Contract, 45 units will be at or below 80% AMI, and the remaining 75 units will be workforce units at or below 140% of AMI. The 30 additional public housing units will serve as replacement units where preference will be given to public housing tenants residing at Robert King High Towers or Hale Sofge, which are located at the same site. At the financial closing of the Gallery at River Parc, the existing declaration of restrictive covenants, ground lease, regulatory and operating agreement will be released from the Gallery at Parc site (but will remain over the balance of the Martin Fine Site). Simultaneously, a new declaration of restrictive covenants, ground lease, regulatory and operating agreement will be executed with respect to the Gallery at River Parc, so that the site will continue to be encumbered by long-term public housing use restrictions. The MDPHCD's Board of Commissioners approved the submission of the amendment on April 8, 2014, via Resolution Number R-331-14. Abbey Ogunbola from the Office of Urban Revitalization (URD) concurred on the proposed disposition amendment.

MDPHCD will receive a one-time capitalized lease payment of \$375,000. The MDPHCD proposes to use the disposition proceeds to rehabilitate and/or develop affordable housing, which includes housing units under an ACC.

### Current Approval

The SAC has completed its review and based on the information provided by the MDPHCD your request to amend the disposition approval, as identified below, is hereby approved.

<b>Site 240, FL005000835 and Site 241, FL005000836</b>	
<b>Approved for Disposition: Acres: 3.66</b>	
Total Units to be Redeveloped 150	Less than 80% of Area Median Income

	ACC	Non-ACC	PBV	Workforce Housing at or below 40% AMI
Rental	30	45	-	75
Acquiring Entity (Rental Units)	The Gallery at River Parc, LLC			
Lease Price	\$1.00 per year for 75 years with a one-time capitalized lease payment of \$375,000.			
Purpose	Development of Mixed-Income Housing			
<b>Lot Information: Exhibit A</b>				

The HUD Miami OPH, with concurrence from the HUD Office of the General Counsel (OGC) and Office of Public Housing Investments (OPHI) or their designees, if required, must approve all acquiring entities, terms and conditions in the conveyance of real property, whether in whole or in part, described in this approval. If there are previous land and/or use agreements or encumbrances, other than the Declaration of Trust (DOT), disposition approval and release of the DOT does not circumvent or supersede those obligations.

Notwithstanding this approval, the MDPHCD shall not enter into any long-term ground lease or deed of sale for this disposition without the Department's prior written approval of the evidentiary submission for a mixed-finance transaction as set forth in 24 CFR part 905, Subpart F. All of the evidentiary documents required to be submitted to HUD pursuant to 24 CFR part 905, Subpart F must be reviewed and approved by HUD prior to any formal disposition action (deed or ground lease execution). The MDPHCD should work with the Department's Office of Public Housing Investments (OPHI) and the HUD Miami OPH to facilitate the completion of this process.

The MDPHCD must enter into any and all forms of mixed finance documents (e.g., Declaration of Restrictive Covenants (DORC), Mixed Finance ACC Amendment, and Regulatory & Operating Agreement (R&O)) required to ensure that the property will be used as 30 ACC public housing units for a period of not less than 40 years in accordance with 24 CFR part 905 and the DORC. The MDPHCD has indicated that the existing building will be placed under the DORC and R&O will include the operation of the existing building as public housing during the construction period. In addition, MDPHCD shall ensure that 45 units of other housing are developed on the property and operated as affordable and reserved for families at or below 60 percent of AMI for a period of not less than 30 years.

These use restrictions requiring that Martin Fines Villa, LLC develop and operate the properties as 30 public housing units for 40 years, and 45 units affordable at incomes at or below 80 percent of AMI for 30 years, must be enforced by use agreements, or other legal mechanisms as determined by the HUD Miami OPH. Such use restriction documents must be recorded in a first priority position against the properties, prior to any financing documents or other encumbrances, and remain in effect even in the event of default or foreclosure on the properties.

- The Gallery at River Parc, LLC, shall maintain ownership and operation of the property during the use restriction period. The owner shall not convey, sublease or transfer the property approved for this disposition without prior approval from the MDPHCD and the Department at any point during the period of use restriction;

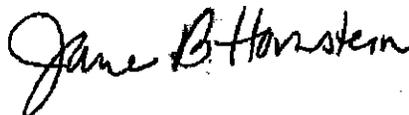
- The use restrictions shall be covenants that run with the land, and shall bind and inure to the benefit of the parties, their successors and assigns, and every party now or hereafter acquiring any right, title, or interest therein or in any part thereof;
- Certain involuntary transfers of the property, such as to a secured lender upon default under the security documents, or pursuant to foreclosure, may occur, with the use restrictions surviving the transfer. Any subsequent transfers shall require prior written approval from the MDPHCD and HUD; and
- The MDPHCD is responsible for monitoring and enforcing these use restrictions during the period they are in effect.

The MDPHCD may realize \$375,000 in proceeds and may only expend the funds on authorized uses under Section 18 of the U.S. Housing Act of 1937. The agency states that the proceeds will be used for the future development of more public or affordable housing units; although the proposed use is an eligible use, the use of proceeds is not approved at this time. Prior to obligation and/or use of disposition proceeds (gross or net); MDPHCD must obtain written approval from the HUD Miami OPH, with concurrence from the Office of the General Counsel (OGC). The proceeds must be held by MDPHCD in an account subject to an escrow agreement and/or HUD depository agreement, if required by the Miami OPH.

All other conditions of the original approval dated January 4, 2017, that were not specifically addressed in this letter remain as stipulated in those documents. Notwithstanding this, if there are any inconsistencies or ambiguities between this letter and the Department's previous approval, this letter shall control.

A copy of this modification will be forwarded to the HUD Miami OPH for their records. If you have any questions regarding this modification, please contact [SACTA@hud.gov](mailto:SACTA@hud.gov).

Sincerely,



Jane B. Hornstein  
Director

cc: Miami OPH



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**DATE:** July 23, 2019

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 14(A)(3)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 14(A)(3)  
7-23-19

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE A JOINDER AND A CONSENT TO A NON-EXCLUSIVE EASEMENT AGREEMENT BETWEEN MARTIN FINE VILLAS, LLC, THE GALLERY AT RIVER PARC, LLC AND BRISAS DEL RIO APARTMENTS, LLC WHICH AMONG OTHER THINGS, GRANTS A NON-EXCLUSIVE EASEMENT BETWEEN THESE ENTITIES AND THE RESIDENTS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS OVER, ACROSS AND THROUGH THE DRIVEWAYS AND WALKWAYS CONSTRUCTED FROM TIME TO TIME WITHIN THE PROJECT, AND FOR PARKING WITHIN AND THROUGHOUT THE PROJECT

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:**

**Section 1.** This Board adopts the foregoing recital as if fully set forth herein.

**Section 2.** This Board authorizes the County Mayor or the County Mayor's designee to execute the joinder and the consent, in substantially the form attached to the Easement Agreement between Martin Fine Villas, LLC, The Gallery at River Parc, LLC and Brisas del Rio Apartments, LLC, which is attached hereto as Attachment "A," and incorporated herein by reference, which among other things, grants a non-exclusive easement between these entities and the residents for vehicular and pedestrian ingress and egress over, across and through the driveways and walkways constructed from time to time within the project, and for parking within and throughout the project.

The foregoing resolution was offered by Commissioner \_\_\_\_\_,  
who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and  
upon being put to a vote, the vote was as follows:

- |                                |                      |
|--------------------------------|----------------------|
| Audrey M. Edmonson, Chairwoman |                      |
| Rebeca Sosa, Vice Chairwoman   |                      |
| Esteban L. Bovo, Jr.           | Daniella Levine Cava |
| Jose "Pepe" Diaz               | Sally A. Heyman      |
| Eileen Higgins                 | Barbara J. Jordan    |
| Joe A. Martinez                | Jean Monestime       |
| Dennis C. Moss                 | Sen. Javier D. Souto |
| Xavier L. Suarez               |                      |

The Chairperson thereupon declared the resolution duly passed and adopted this 23<sup>rd</sup> day of July, 2019. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Terrence A. Smith

**This Instrument Was Prepared By:**

Patricia K. Green, Esq.  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler St., Suite 2200  
Miami, Florida 33130

Record and Return To:  
Patricia K. Green, Esq.  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler St., Suite 2200  
Miami, Florida 33130

**EASEMENT AGREEMENT**  
(Martin Fine, River Parc and Brisas del Rio)

This Easement Agreement (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019 by and between:

MARTIN FINE VILLAS, LLC, a Florida limited liability company ("MFV");

THE GALLERY AT RIVER PARC, LLC, a Florida limited liability company ("Gallery"); and

BRISAS DEL RIO APARTMENTS, LLC, a Florida limited liability company ("Brisas")

each having its principal office located at 315 South Biscayne Boulevard, Miami, FL 33131.

**RECITALS**

A. MFV is the owner of a leasehold interest in the property legally described on Exhibit "A" attached hereto and made a part hereof (the "MFV Property") pursuant to that certain lease by and between MFV, as lessee, and Miami-Dade County, a political subdivision of the State of Florida (the "County") as lessor, a Memorandum of which is recorded in Official Records Book 30118, at Page 2354, of the Public Records of Miami-Dade County, Florida.

B. Gallery is the owner of a leasehold interest in the property legally described on Exhibit "B" attached hereto and made a part hereof (the "Gallery Property") pursuant to that certain Ground Lease dated as of \_\_\_\_\_, 2019 by and between the County, as lessor, and Gallery, as lessee.

C. Brisas is the owner of a leasehold interest in the property legally described on Exhibit "C" attached hereto and made a part hereof (the "Brisas Property") pursuant to that certain Ground Lease dated as of November 2, 2018, by and between the County, as lessor, and Brisas, as lessee.

D. MFV, Gallery and Brisas are sometimes herein collectively referred to as the "Parties" and each, individually, as a "Party". The MFV Property, the Gallery Property and the Brisas Property are sometimes herein collectively referred to as the "Properties" and each, a "Property".

E. For good and valuable consideration, each of the Parties has agreed to grant to the other Parties as an appurtenance to their respective properties, the non-exclusive easements described herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are incorporated as if fully set forth herein.

2. Access, Walkway, Parking, Recreational and Utility Easements.

a. MFV hereby grants to each of Brisas and Gallery, for their use and benefit, and the use and benefit of their respective successors and assigns who acquire an interest in the Brisas Property or the Gallery Property, as applicable, and their tenants, agents, employees, customers and invitees, a non-exclusive easement (i) for vehicular and pedestrian ingress and egress over, across and through the driveways and sidewalks constructed from time to time within the MFV Property, (ii) for the purpose of access and connection to public or private utilities that do not have direct connections to the Brisas Property or Gallery Property, as applicable, (iii) for the use and enjoyment of the exterior recreational amenities constructed on the MFV Property now or in the future, including but not limited to car care areas, playgrounds, and similar exterior amenities (collectively, the "Recreational Facilities") and (iv) for parking in the spaces which are located on the MFV Property from time to time.

b. Gallery hereby grants to each of Brisas and MFV, for their use and benefit, and the use and benefit of their respective successors and assigns who acquire an interest in the Brisas Property or the MFV Property, as applicable, and their tenants, agents, employees, customers and invitees, a non-exclusive easement (i) for vehicular and pedestrian ingress and egress over, across and through the driveways and sidewalks constructed from time to time within the

Gallery Property, (ii) for the purpose of access and connection to public or private utilities that do not have direct connections to the Brisas Property or MFV Property, as applicable, (iii) for the use and enjoyment of the exterior Recreational Facilities constructed on the Gallery Property now or in the future and (iv) for parking in the spaces which are located on the Gallery Property from time to time.

c. Brisas hereby grants to each of Gallery and MFV, for their use and benefit, and the use and benefit of their respective successors and assigns who acquire an interest in the Gallery Property or the MFV Property, as applicable, and their tenants, agents, employees, customers and invitees, a non-exclusive easement (i) for vehicular and pedestrian ingress and egress over, across and through the driveways and sidewalks constructed from time to time within the Brisas Property, (ii) for the purpose of access and connection to public or private utilities that do not have direct connections to the Gallery Property or MFV Property, as applicable, (iii) for the use and enjoyment of the exterior Recreational Facilities constructed on the Brisas Property now or in the future and (iv) for parking in the spaces which are located on the Brisas Property from time to time.

3. Maintenance. Each of the Parties agrees to maintain the driveways, sidewalks, parking spaces and Recreational Facilities within their respective Properties for the joint use thereof by the Parties hereto, in working condition and free of material defects, subject to occasional interruption of service due to (i) ordinary wear and tear and use thereof, (ii) routine or extraordinary maintenance or (iii) events beyond the reasonable control of each granting Party; ; provided, however, that any Party exercising the easement rights granted hereunder in any negligent or willful manner, which causes damage to or disturbance of the applicable Property shall be responsible for any extraordinary maintenance or repair associated with such damage or disturbance. Each Party shall have the right to perform all such maintenance and repairs itself through its management company, or to select the contractor(s) of its choice in connection with all aspects of maintenance, repair and operation of the driveways, sidewalks, parking spaces and Recreational Facilities.

4. Common Driveway and Driveway Extension; Shared Maintenance.

a. That portion of the MFV Property which is depicted as the "Common Driveway" on Exhibit "D" attached here may be used by all of the Parties to access their respective Properties. MFV agrees to maintain the Common Driveway for the joint use thereof by the Parties hereto, in working condition and free of material defects, subject to occasional interruption of service due to (i) ordinary wear and tear and use thereof, (ii) routine or extraordinary maintenance or (iii) events beyond the reasonable control of MFV. MFV shall have the right to perform all such maintenance and repairs itself through its management company, or to select the contractor(s) of its choice in connection with all aspects of maintenance, repair and operation of the Common Driveway.

b. That portion of the River Parc Property which is depicted as the "River Parc Driveway Extension", and that part of the MFV Property which is depicted as the "MFV Driveway Extension on Exhibit "D" attached here may be used solely by Brisas to access the Brisas Property. Brisas agrees to maintain the River Parc Driveway Extension and the MFV Driveway Extension in working condition and free of material defects, at its sole expense.

c. Upon completion of the respective housing communities to be constructed on each Property, each of the Parties shall pay one third (1/3) of the operating and maintenance costs of the Common Driveway, including routine and extraordinary expenses of such maintenance and repair ("Operating Costs"); provided, however, that (a) any party using the Common Driveway in any negligent or willful manner, which causes damage to or disturbance of the Common Driveway shall be responsible for any extraordinary maintenance or repair associated with such damage or disturbance, and (b) neither Brisas nor Gallery shall have no obligation to contribute its share prior to receipt of a Certificate of Occupancy for its project to be constructed on its Property (and if Certificates of Occupancy are issued for two of the Properties, they shall each pay for one half (1/2) of the Operating Costs, pending the issuance of the Certificate of Occupancy for the third Property). MFV shall provide the other Parties with copies of all maintenance contracts and service agreements entered into that will generate fixed costs, and shall provide notice to the other parties prior to incurring any extraordinary costs for unanticipated service or repairs. MFV shall invoice the other Parties for all routine and extraordinary aspects of the use, maintenance or repair of the Common Driveway, and payment shall be made to MFV within ten (10) days following the date of any invoice for Operating Costs associated with the Common Driveway. Invoices shall include copies of all bills and statements pertaining to the Common Driveway for the billing period in question. MFV shall use reasonable efforts to tender invoices on a semi-annual basis but reserves the right to alter the billing period in any manner consistent with its bookkeeping procedures. In the event MFV discovers that any previously tendered invoice was in an amount which was insufficient to cover the other Parties' respective shares of Operating Costs for any billing period, payment shall be made within ten (10) days following receipt of a supplemental invoice therefor.

5. Exercise of Utility Easements. With regard to the respective grants of easement rights for the purpose of access and connection to public or private utilities that do not have direct connections to the property owned by a Party, no Party shall exercise such rights in any way that will disturb any buildings, structures or other permanent improvements on the other Party's property or otherwise unduly interfere with the other Party's use and enjoyment of its own property. Any temporary disturbance of the surface required to install utility equipment shall be promptly repaired by the Party causing such disturbance, at its own expense.

6. Indemnity. Each of the Parties hereto agrees to indemnify the other and hold it harmless from and against any and all loss, cost, expense, claims or damages suffered by a Party as a result of the negligent or willful act or omission of the other, its employees, agents and contractors, as a result of the exercise of the rights and obligations of the Parties under this Agreement, except for any such liability, loss, damage, cost or expense as may arise in whole or

in part from the acts of the Party seeking indemnification. Each Party shall obtain and maintain commercial general liability insurance which provides coverage for acts occurring not only on its own property but also on the other Properties in connection with the exercise of any of the easement rights granted herein, and shall name the other Parties as an additional insured. Further, each Party agrees to indemnify the others and hold them harmless from and against any and all loss, cost, expense, claims or damages arising from any construction liens placed on the other Properties by any subcontractors or materialmen providing services or materials to them, respectively.

7. Successors and Assigns; No Merger. This Agreement shall bind, and the benefit thereof shall inure to, the respective successors and assigns of the Parties hereto. It is expressly intended that there shall be no merger of the interests created by this Agreement arising as a result of any future common ownership of any of the Properties.

8. No Public Dedication. Nothing contained in this Agreement shall, in any way, be deemed or constituted a gift of or dedication of any portion of any lands described herein to the general public or for the benefit of the general public whatsoever, it being the intention of the Parties hereto that this Agreement shall be limited to and utilized for the purposes expressed herein and only for the benefit of the persons herein named.

9. Remedies. Upon a default by any Party hereto the non-defaulting Party shall have any and all remedies available at law or in equity; provided, however, that no Party shall have the right to invoke any equitable remedy which would deny another Party physical access to its property.

10. Enforcement. In the event it becomes necessary for any Party including the holder of any mortgage lien to defend or institute legal proceedings as a result of the failure of either Party to comply with the terms, covenants and conditions of this Agreement, the prevailing Party in such litigation shall recover from the other Party all costs and expenses incurred or expended in connection therewith, including, without limitation, reasonable attorneys' fees and costs, at all levels.

11. Notices to Mortgagees and Investor Members. Each of the Parties agrees to furnish duplicate copies of any notices of default delivered to the other, to the holder of any mortgage lien encumbering their respective properties, provided that the identity and address of such mortgagees have been made known to the Party sending any such notice. Copies of such notices shall also be delivered to the respective investor members of the Parties, provided that the identity and address of such members have been made known to the Party sending any such notices.

12. Amendment. The Parties hereto agree that this Agreement may not be amended, released or terminated without the prior written consent of (i) respective investor members of the Parties and (ii) the holder of any mortgage encumbering the property to be affected by such amendment.

13. Third Party Beneficiary. So long as any mortgage loan remains outstanding with respect to any Property, or any amounts are owed to the holder(s) of such mortgages, such holder(s) shall be deemed an intended third-party beneficiary hereof and entitled to enforce the provisions hereof. In addition, the respective investor members of the Parties, together with their partners, members or shareholder, as applicable, shall be deemed an intended third-party beneficiary hereof and entitled to enforce the provisions hereof.

14. No Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so in this Agreement.

15. Interpretation. No provision of this Agreement will be interpreted in favor of, or against, either of the Parties hereto by reason of the extent to which any such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single document.

17. Notices. All notices, demands, requests or other communications required or permitted to be given hereunder shall be deemed delivered and received upon actual receipt or refusal to receive same, and shall be made by United States certified or registered mail, return receipt requested, by nationally recognized overnight courier service such as Federal Express, or by hand delivery, and shall be addressed to (a) the respective Parties at the addresses set forth in the preamble to this Agreement, (b) the investor members of the Parties, as specified in Section 10 above, and (c) the holder of any mortgage lien encumbering their respective properties, as provided in Section 10 above.

18. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto relating in any manner to the subject matter of this Agreement. No prior agreement or understanding pertaining to same shall be valid or of any force or effect, and the covenants and agreements herein contained cannot be altered, changed or supplemented except in writing and signed by the Parties hereto.

19. Severability. If any clause or provision of this Agreement is deemed illegal, invalid or unenforceable under present or future laws effective during the term hereof, then the validity of the remainder of this Agreement shall not be affected thereby and shall be legal, valid and enforceable.

20. Venue; Jurisdiction. This Agreement shall be governed and construed in all respects in accordance with the laws of the State of Florida, without regard to its conflicts of laws provisions. Further, all Parties hereto agree to avail themselves of and submit to the personal jurisdiction of the Courts of the State of Florida in Miami-Dade County.

21. Bankruptcy. In the event of any bankruptcy affecting any Party hereto this Agreement shall, to the maximum extent permitted by law, run with the land and not be capable of rejection by the bankrupt debtor.

SIGNATURES APPEAR ON FOLLOWING PAGES







**Exhibit "A"**

**MARTIN FINE VILLAS--PORTION REMAINING  
AFTER RELEASE OF GALLERY AT RIVER PARC**

A PARCEL OF LAND BEING A PORTION OF TRACT "A", MIAMI RIVER COMPLEX FLORIDA, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 92, AT PAGE 39, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, AND ALSO BEING A PORTION OF LOTS 7 AND 8, OF CORRECTED PLAT OF RIVERMONT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK B, AT PAGE 95 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SE CORNER OF SAID TRACT "A", THENCE RUN S88°50'45"W, ALONG THE SOUTHERLY LINE OF SAID TRACT "A", FOR A DISTANCE OF 301.87 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S88°50'45"W, ALONG SAID SOUTHERLY LINE OF TRACT "A", FOR A DISTANCE OF 24.00 FEET; RUN N00°00'00"W FOR A DISTANCE OF 335.42 FEET; THENCE RUN N67°21'34"W FOR A DISTANCE OF 21.92 FEET; THENCE RUN S00°38'51"W FOR A DISTANCE OF 85.95 FEET; THENCE RUN S90°00'00"W FOR A DISTANCE OF 159.45 FEET; THENCE RUN S00°06'04"W FOR A DISTANCE OF 6.11 FEET; THENCE N69°13'36"W, FOR A DISTANCE OF 184.77 FEET; THENCE RUN N23°53'09"E FOR A DISTANCE OF 293.03 FEET; THENCE RUN S67°46'32"E FOR A DISTANCE OF 233.63 FEET; THENCE RUN S00°38'51"W FOR A DISTANCE OF 127.17 FEET; THENCE RUN S67°21'34"E FOR A DISTANCE OF 47.61 FEET; THENCE RUN S00°00'00"E FOR A DISTANCE OF 350.93 FEET TO THE POINT OF BEGINNING.

**Exhibit "B"**

**THE GALLERY AT RIVER PARC**

**GALLERY AT RIVER PARC**

A PARCEL OF LAND BEING A PORTION OF TRACT "A", MIAMI RIVER COMPLEX FLORIDA, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 92, AT PAGE 39, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, AND ALSO BEING A PORTION OF LOTS 7 & 8, OF CORRECTED PLAT OF RIVERMONT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK B, AT PAGE 95 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**PARCEL "1-A":**

COMMENCE AT THE SE CORNER OF SAID TRACT "A", THENCE RUN S88°50'45"W, ALONG THE SOUTHERLY LINE OF SAID TRACT "A", FOR A DISTANCE OF 24.51 FEET, TO THE POINT OF BEGINNING; THENCE CONTINUE S88°50'45"W, ALONG THE SOUTHERLY LINE OF SAID TRACT "A", FOR A DISTANCE OF 277.36 FEET; THENCE RUN N00°00'00"W FOR A DISTANCE OF 350.93 FEET; THENCE RUN N67°21'34"W FOR A DISTANCE OF 47.61 FEET; THENCE RUN N00°38'51"E FOR A DISTANCE OF 127.17 FEET; THENCE RUN S67°46'32"E FOR A DISTANCE OF 76.28 FEET; THENCE RUN S00°02'31"E FOR A DISTANCE OF 159.48 FEET; THENCE RUN N89°58'31"E FOR A DISTANCE OF 273.45 FEET; THENCE S00°01'30"E, FOR A DISTANCE OF 277.61 FEET, TO A POINT OF TANGENCY OF A CIRCULAR CURVE CONCAVE TO THE NORTHWEST; THENCE ALONG THE ARC OF SAID CIRCULAR CURVE, HAVING FOR ITS ELEMENTS A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 88°52'15", FOR AN ARC DISTANCE OF 38.78 FEET TO THE POINT OF BEGINNING.

**AND PARCEL "1-B":**

COMMENCE AT THE SE CORNER OF SAID TRACT "A", THENCE RUN S88°50'45"W, ALONG THE SOUTHERLY LINE OF SAID TRACT "A", FOR A DISTANCE OF 325.87 FEET, TO THE POINT OF BEGINNING; THENCE CONTINUE S88°50'45"W, ALONG THE SOUTHERLY LINE OF SAID TRACT "A", FOR A DISTANCE OF 181.15 FEET; THENCE RUN N00°06'04"E FOR A DISTANCE OF 261.56 FEET; THENCE RUN N90°00'00"E FOR A DISTANCE OF 159.45 FEET; THENCE RUN N00°38'51"E FOR A DISTANCE OF 85.95 FEET; THENCE RUN S67°21'34"E FOR A DISTANCE OF 21.92 FEET; THENCE S00°00'00"E, FOR A DISTANCE OF 335.42 FEET TO THE POINT OF BEGINNING.

EXHIBIT "C"

BRISAS DEL RIO

A PARCEL OF LAND BEING A PORTION OF TRACT "A", MIAMI RIVER COMPLEX FLORIDA, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 92, AT PAGE 39, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, AND ALSO BEING A PORTION OF LOT 7, OF CORRECTED PLAT OF RIVERMONT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK B, AT PAGE 95 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SE CORNER OF SAID TRACT "A", THENCE RUN N00°01'30"W, ALONG THE EASTERLY LINE OF SAID TRACT "A", FOR A DISTANCE OF 614.19 FEET, TO THE POINT OF BEGINNING; THENCE CONTINUE N00°01'30"W, FOR A DISTANCE OF 281.58 FEET; THENCE RUN N65°04'34"W FOR A DISTANCE OF 357.30 FEET; THENCE RUN S24°55'26"W FOR A DISTANCE OF 251.97 FEET; THENCE RUN N67°46'03"W FOR A DISTANCE OF 61.13 FEET; THENCE RUN S22°13'57"W FOR A DISTANCE OF 311.47 FEET; THENCE S67°46'03"E FOR A DISTANCE OF 30.11 FEET; THENCE RUN N23°53'09"E FOR A DISTANCE OF 40.94 FEET; THENCE RUN S67°46'32"E FOR A DISTANCE OF 225.85 FEET; THENCE RUN N22°35'15"E FOR A DISTANCE OF 246.55 FEET; THENCE RUN S67°24'44"E FOR A DISTANCE OF 277.86 FEET TO THE POINT OF BEGINNING.

EXHIBIT "D"

DEPICTION OF COMMON DRIVEWAY AND DRIVEWAY EXTENSION

#7426952 v3  
30364-1078

**JOINDER TO EASEMENT AGREEMENT  
BY MFV FIRST MORTGAGEE  
(Bond Loan; Martin Fine Villas)**

The undersigned, as Mortgagee under that certain Mortgage, Security Agreement and Assignment of Rents, Leases and Profits (Leasehold) dated as of March 1, 2017, from Martin Fine Villas, LLC, a Florida limited liability company, as mortgagor, to the Housing Finance Authority of Miami-Dade County (Florida), as mortgagee, recorded on March 6, 2017, in Official Records Book 30445, Page 4534; and as assigned by Assignment of Mortgage and Security Documents dated as of March 1, 2017, by the Housing Finance Authority of Miami-Dade County (Florida), as assignor, to The Bank of New York Mellon Trust Company, N.A., as Trustee, as assignee, recorded on March 6, 2017, in Official Records Book 30445, Page 4596, all of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Easement Agreement does hereby acknowledge that the terms of the Easement Agreement are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**MORTGAGEE:**

The Bank of New York Mellon Trust Company,  
N.A., as Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_, Vice President

STATE OF FLORIDA)  
COUNTY OF DUVAL)

The foregoing instrument was acknowledged before me this \_\_\_ of \_\_\_\_\_, 2019, by \_\_\_\_\_ as Vice President of The Bank of New York Mellon Trust Company, N.A.

- Personally Known
- Produced Drivers License No. \_\_\_\_\_
- Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**JOINDER BY SECOND MORTGAGEE**

**(County Loan)**

The undersigned, as Mortgagee under that certain Leasehold Mortgage and Security Agreement and Assignment of Leases, Rents and Profits dated March 3, 2017, by Martin Fine Villas, LLC, a Florida limited liability company, as mortgagor, in favor of Miami-Dade County, as mortgagee, recorded on March 6, 2017, in Official Records Book 30445, Page 4612, of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Easement does hereby acknowledge that the terms of the Easement shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**MORTGAGEE:**

Approved as to  
form and legal sufficiency:

MIAMI-DADE COUNTY, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
Asst. County Attorney

By: \_\_\_\_\_  
Maurice L. Kemp, Deputy Mayor

STATE OF FLORIDA        )  
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this \_\_\_ of \_\_\_\_\_, 2019, by Maurice L. Kemp, Deputy Mayor of Miami-Dade County, a political subdivision of the State of Florida

- Personally Known
- Produced Drivers License No. \_\_\_\_\_
- Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**JOINDER BY THIRD MORTGAGEE  
(City Loan)**

The undersigned, as Mortgagee under that certain Leasehold Mortgage and Security Agreement for Martin Fine Villas, LLC dated as of February 23, 2017, by Martin Fine Villas, LLC, a Florida limited liability company, as mortgagor, to the City of Miami, as mortgagee, recorded on March 6, 2017, in Official Records Book 30445, Page 4671 of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Easement does hereby acknowledge that the terms of the Easement are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Approved as to  
form and legal sufficiency:

By: \_\_\_\_\_  
Victoria Mendez, City Attorney

Attest:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF FLORIDA        )  
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2019, by \_\_\_\_\_ as \_\_\_\_\_ of City of Miami, a municipal corporation of the State of Florida

- Personally Known
- Produced Drivers License No. \_\_\_\_\_
- Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

CONSENT BY FEE OWNER

MIAMI-DADE COUNTY, a political subdivision of the State of Florida, as the owner of fee simple title to the Property, hereby consents to the foregoing Easement and agrees to be bound thereby upon the expiration or termination of any applicable ground lease of any of the Parties. Nothing herein shall be deemed to alter the terms of any of the respective the ground leases between the County and the respective Parties.

Attest:  
Harvey Ruvin, County Clerk

MIAMI-DADE COUNTY, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Maurice L. Kemp  
Deputy Mayor

Approved for legal sufficiency:

By: \_\_\_\_\_  
Terrence Smith  
Assistant County Attorney

STATE OF FLORIDA                    )  
  ) SS:  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by Maurice L. Kemp as Deputy Mayor of MIAMI-DADE COUNTY, a political subdivision of the State of Florida. He is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No.:  
My Commission Expires:

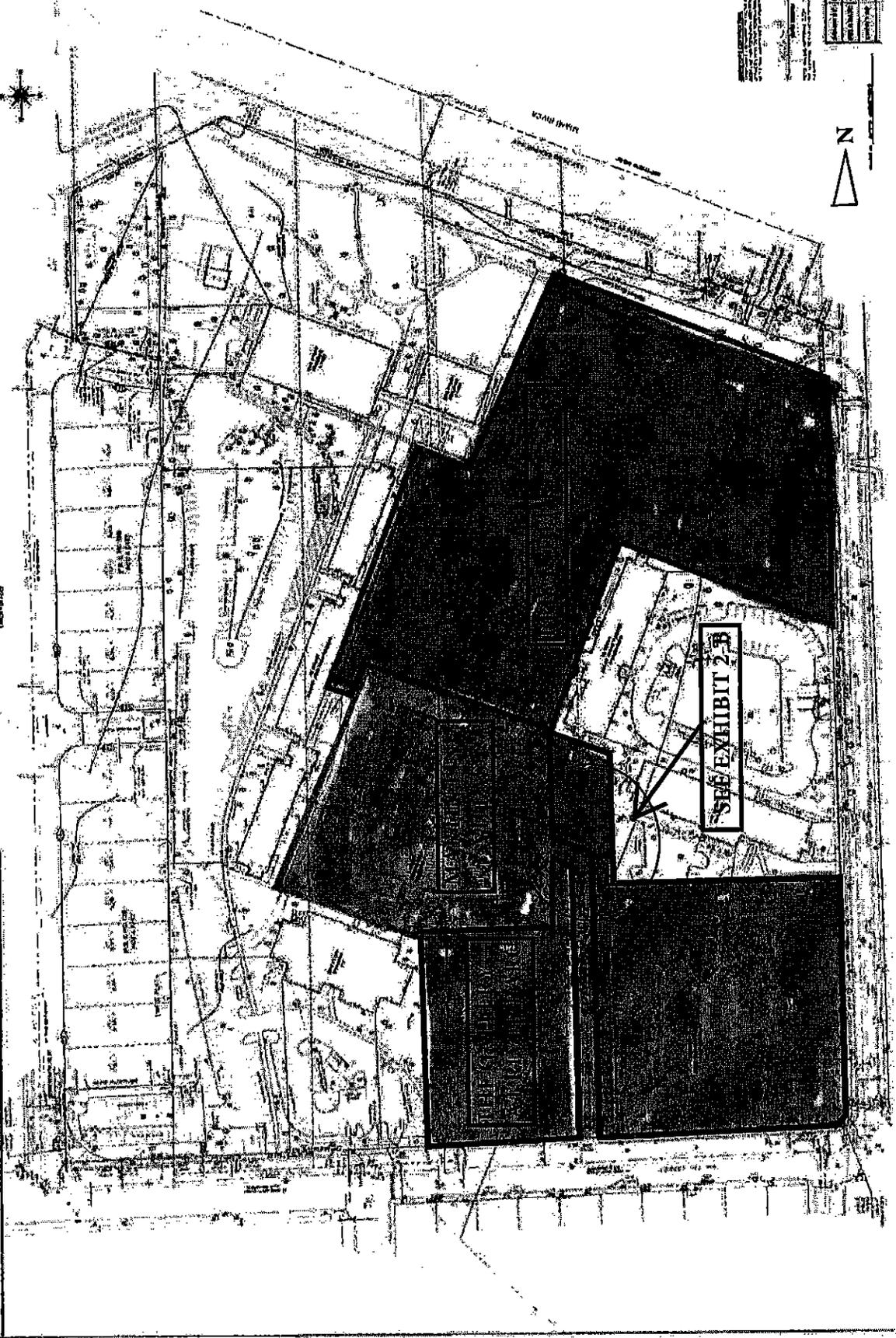
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ATTACHMENT B

MAP OF BOUNDARY AND TREE SURVEY

**JFA**

JOHN BARBARA & ASSOCIATES, INC.  
 PROFESSIONAL LAND SURVEYORS & MAP MAKERS  
 10000 W. 10th Avenue, Suite 100  
 Denver, CO 80202  
 Phone: 303.751.1100  
 Fax: 303.751.1101  
 www.jfa.com



1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20



ATTACHMENT C



COMMON DRIVEWAY



River Parc Driveway Extension



MFV Driveway Extension

