

Return recorded copy to:
Real Property Section
Governmental Center, Room 501
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

Prepared by:
Claudia Capdesuner
Assistant County Attorney
Governmental Center, Room 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

Folio Number: 504210900010

**AMENDED AND RESTATED PARK EASEMENT AGREEMENT BETWEEN
BROWARD COUNTY, NURIVER LANDING CONDOMINIUM ASSOCIATION, INC.,
AND CITY OF FORT LAUDERDALE**

This Amended and Restated Park Easement Agreement ("Amended Agreement") is made and entered into by and between Broward County, a political subdivision of the State of Florida, whose address is Governmental Center, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301 ("County"), NuRiver Landing Condominium Association, Inc., a Florida not-for-profit corporation, whose address is 511 Southeast 5th Avenue, Fort Lauderdale, Florida 33301 (NuRiver"), and City of Fort Lauderdale, a municipal corporation of the State of Florida, whose address is 100 North Andrews Avenue, Fort Lauderdale, Florida 33301 ("City"). County, NuRiver, and City are hereby individually referred to as "Party," and collectively referred to as the "Parties."

RECITALS

- A. On June 22, 1998, County, Riverview of Fort Lauderdale, Ltd., and City entered into the Park Easement Agreement ("Agreement"), which was recorded in the Official Records of Broward County, Florida Book 28452, Page 0338.
- B. NuRiver is the successor in interest of Riverview of Fort Lauderdale, Ltd, and the lessee of the Park (as defined in Section 2).
- C. Pursuant to the Agreement, the Parties agreed that County would grant and create, on the terms and conditions set forth in the Agreement, a perpetual nonexclusive easement in favor of the general public for public access for park purposes over and across the Park.
- D. The Parties have agreed to enter into this Amended Agreement to transfer certain responsibilities under the Agreement from NuRiver to City.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AMENDED AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference. All exhibits to this Amended Agreement are hereby deemed a part hereof.
2. Description of Property. County is the fee simple owner of that certain real property commonly known as Smoker Family Park (the "Park") and located at 501 South New River Drive East, Fort Lauderdale, Florida 33301, as more particularly described in **Exhibit A** of this Amended Agreement.
3. Grant of Easement. County hereby grants to City, for public use, a perpetual, nonexclusive easement for park purposes subject to the limitations and restrictions contained herein, as such Park is more particularly described in **Exhibit A** of this Amended Agreement ("Easement").
4. Use of the Premises. The Park shall be used for public park purposes. The regular use of the Park shall be subject to the same rules, regulations, subject to all restrictions stated herein, and laws of City governing all other City parks, and such rules, regulations, and laws shall be enforceable in the same manner and to the same extent as in other City parks.
5. Consent to Grant of Easement. NuRiver consents to the grant of the Easement as provided in this Amended Agreement. The Parties agree that NuRiver shall have no responsibility or rights to the Park other than as a provided to the public at large.
6. Events. City may use the Park for a maximum of twelve (12) Events (as defined herein) per year. Events shall include, but not be limited to, festivals, shows, performances, concerts, rallies, meetings, assemblies, organized gatherings, or other functions in which a person, group, or entity wishes to use, reserve, or occupy the Park for its own use consistent with the terms and conditions contained herein ("Event"). Each Event shall not exceed a period of three (3) consecutive days (twenty-four (24) hour intervals), for a maximum total of thirty-six (36) days per year. City shall schedule no more than one (1) event in the Park per day.
 - a. City shall not use the Park for any other purpose whatsoever without written amendment to this Amended Agreement. City covenants that no nuisance or hazardous trade or occupation shall be permitted or carried on, in, or upon the Park. City covenants and shall ensure that no acts shall be permitted and nothing shall be kept on, in, or upon the Park that will increase the risk of any hazard, fire, or catastrophe, and no waste shall be permitted or committed upon or any damage done to the Park. City shall not permit the Park to be used or occupied in any manner that violates any federal, state, county, or municipal law, statute, ordinance, rule, or regulation.

- b. If City contracts with a person, group, or entity (collectively a "Sponsor") to sponsor or co-sponsor an Event at the Park, City shall require the Sponsor to indemnify, defend, and hold harmless County, its officers, agents, and employees from and against any and all claims, suits, damages, liabilities, expenditures, or causes of action of any kind, cause, or alleged to be caused in whole or in part, by any intentional, reckless, or negligent act or omission of Sponsor, its officers, employees, agents, or servants arising from, relating to, or in connection with any or all uses of the Park. City shall also require the Sponsor to include County as an additional insured on any insurance required to be provided to City by the Sponsor in connection with such Event.
- c. City shall include the following indemnification provision in all contracts with any Sponsor for an Event at the Park:

Sponsor shall indemnify, hold harmless, and defend Broward County and all of Broward County's officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by an person or entity, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act of Sponsor, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Sponsor shall, upon written notice from Broward County, defend each Indemnified Party against such Claim by counsel satisfactory to Broward County, or at Broward County's option, pay for an attorney selected by the Broward County Attorney to defend the Indemnified Party.

- d. A subcontract with a Sponsor shall not relieve City of any obligations under this Amended Agreement.
7. Admission to the Park. City may charge a reasonable fee for admission to or use of the Park during scheduled Events.
8. Maintenance. City agrees to maintain the Park in accordance with the terms and conditions contained herein and in the same manner and to the same extent as with other City parks. In the event that City or County improve the Park or place any personal property upon the Park, the improvement, alteration of the Park, or personal property shall remain the property of said Party and shall be placed upon the Park at said Party's risk. Any maintenance or repair of improvements, alterations, or personal property shall be borne by the Party making said improvement, alteration, or placing the personal property upon the Park.
9. Improvements. Notwithstanding any other provisions of this Amended Agreement to the contrary, City shall have the right to make improvements, alterations, or modifications to the Park not inconsistent with the use of the Park as a public park. County shall have the right to construct improvements and make alterations or modifications to

the Park not inconsistent with the use of the Park as a public park upon prior written approval of City, which shall not be unreasonably withheld.

10. Indemnification. To the fullest extent permissible under applicable law , City agrees to indemnify, defend, and hold harmless County, its officers, agents, and employees from and against any and all claims, suits, damages, liabilities, expenditures, or causes of action of any kind, caused, or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of City, its officers, employees, agents, or servants, arising from, relating to, or in connection with any or all uses of the Park.

11. Insurance. City is an entity subject to the limitations of Section 768.28, Florida Statutes. City shall maintain a fiscally sound risk management program with regard to its obligations under this Amended Agreement pursuant to Section 768.28, Florida Statutes. City shall furnish County with written verification of liability protection required under this section, which may be through self-insurance, a risk management program, and/or liability insurance in accordance with Chapter 768, Florida Statutes, within thirty (30) days after County's request of such verification.

12. Reservation. County hereby reserves all rights of ownership in and to the Park which are not inconsistent with this Amended Agreement, including, without limitation, the right to grant further easements on, under, over, and across the Park and reserves unto itself and on behalf of any future lessee of the Park, the right to use the Park for all uses not interfering or inconsistent with the uses permitted herein. In the event that further easements are needed for uses not inconsistent with this Amended Agreement, City shall review and approve said easement. Approval shall not be unreasonably withheld or delayed.

13. Miscellaneous.

- a. Construction. The section headings contained in this Amended Agreement are for reference purposes only and shall not affect the meaning or interpretation hereof. The Parties to this Amended Agreement have participated fully in the negotiation of this Amended Agreement, and accordingly, this Amended Agreement shall not be more strictly construed against any Party hereto. In construing this Amended Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, and reference to any particular gender shall be held to include every other and all genders.
- b. Successors and Assigns. This Amended Agreement shall be binding upon the Parties hereto, and their respective heirs, successors, and assigns.
- c. Sovereign Immunity. Nothing in this Amended Agreement shall be interpreted to constitute a waiver of the sovereign immunity of City or County or the terms and limitations contained in Section 768.28, Florida Statutes.

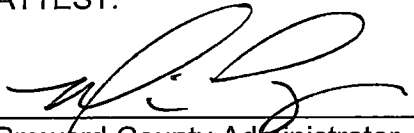
- d. **Law, Jurisdiction, Venue, Waiver of Jury Trial.** This Amended Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Amended Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Amended Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AMENDED AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS ANY PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**
 - e. Amendments; Termination. This Amended Agreement may not be amended, modified, or terminated except by written agreement of the City and County. Further, no modification or amendment shall be effective unless in writing and recorded in the Official Records of Broward County, Florida.
 - f. Entire Agreement. This Amended Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, and arrangements, both oral and written, between the Parties with respect thereto.
 - g. Joint Preparation. This Amended Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against any Party.
 - h. Counterparts and Multiple Originals. This Amended Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
14. Recording. County shall record this Amended Agreement, at its own expense, in the Official Records of Broward County, Florida.

[Signatures on the following pages]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Amended Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 4th day of May, 2021 (Board Agenda Item No. 45), CITY OF FORT LAUDERDALE, signing by and through its Mayor, duly authorized to execute same, and NURIVER LANDING CONDOMINIUM ASSOCIATION, INC., signing by and through its President, duly authorized to execute same.

COUNTY

ATTEST:



for

Broward County Administrator, as ex officio Clerk of the Broward County Board of County Commissioners

BROWARD COUNTY, by and through its Board of County Commissioners

By: Steve Geller Digitally signed by Steve Geller
Date: 2021.05.05 11:46:45
-04'00'
Mayor

5th day of May, 2021



Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By: CLAUDIA CAPDESUNER Digitally signed by
CLAUDIA CAPDESUNER
Date: 2021.04.29
14:58:17 -04'00'
Claudia Capdesuner (Date)
Assistant County Attorney

By: Annika E. Ashton Digitally signed by Annika E.
Ashton
Date: 2021.04.29 14:59:39 -04'00'
Annika E. Ashton (Date)
Deputy County Attorney

CC
Amended and Restated Smoker Park Easement
01/22/2021
#499355v11

EXHIBIT A
LEGAL DESCRIPTION AND SKETCH OF PARK

DESCRIPTION:

A PORTION OF PARCEL B OF BROWARD COUNTY COURTHOUSE PHASE II, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 142, PAGE 21, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL B; THENCE SOUTH A DISTANCE OF 258.46 FEET; THENCE NORTH 89°35'00" WEST A DISTANCE OF 100.00 FEET; THENCE SOUTH A DISTANCE OF 100.00 FEET; THENCE SOUTH 89°35'00" EAST A DISTANCE OF 11.83 FEET, THE LAST FOUR (4) DESCRIBED COURSES BEING COINCIDENT WITH THE EASTERLY BOUNDARY OF SAID PARCEL B; THENCE SOUTH 00°25'00" WEST A DISTANCE OF 55.00 FEET; THENCE SOUTH 89°35'00" EAST, A DISTANCE OF 29.88 FEET; THENCE SOUTH 00°25'00" WEST, A DISTANCE OF 19.56 FEET; THENCE SOUTH 89°35'00" EAST, A DISTANCE OF 49.56 FEET; THENCE SOUTH 00°25'00" WEST, A DISTANCE OF 36.00 FEET; THENCE SOUTH 50°49'52" WEST, A DISTANCE OF 26.68 FEET; THENCE NORTH 89°35'00" WEST, A DISTANCE OF 18.00 FEET; THENCE SOUTH 00°25'00" WEST, A DISTANCE OF 47.44 FEET; THENCE NORTH 89°35'00" WEST, A DISTANCE OF 211.50 FEET; THENCE NORTH 00°25'00" EAST, A DISTANCE OF 204.00 FEET; THENCE NORTH 89°35'00" WEST, A DISTANCE OF 73.56 FEET TO A POINT ON A NORTHERLY BOUNDARY OF SAID PARCEL B, THE NEXT NINE (9) DESCRIBED COURSES BEING COINCIDENT WITH SAID NORTHERLY BOUNDARY; THENCE NORTH 33°41'52" EAST, A DISTANCE OF 12.99 FEET; THENCE NORTH 67°23'44" EAST, A DISTANCE OF 16.01 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 115.50 FEET, A CENTRAL ANGLE OF 31°53'27", AND AN ARC LENGTH OF 64.29 FEET TO A POINT OF TANGENCY; THENCE NORTH 35°30'18" EAST A DISTANCE OF 94.82 FEET; THENCE NORTH 35°27'15" EAST A DISTANCE OF 69.38 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 191.50 FEET, A CENTRAL ANGLE OF 12°33'29", AND AN ARC LENGTH OF 41.97 FEET TO A POINT OF TANGENCY; THENCE NORTH 47°50'44" EAST A DISTANCE OF 91.32 FEET; THENCE NORTH 48°29'23" EAST A DISTANCE OF 32.85 FEET; THENCE NORTH 51°44'45" EAST A DISTANCE OF 70.50 FEET TO THE POINT OF BEGINNING.

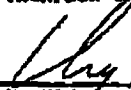
SAID LANDS LYING IN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, FLORIDA CONTAINING 2.224 ACRES (96,881 SQUARE FEET) MORE OR LESS.

BEARINGS DESCRIBED HEREIN ARE BASED UPON THE PLAT OF BROWARD COUNTY COURTHOUSE PHASE II, PLAT BOOK 142, PAGE 21 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA. THE EAST LINE OF SECTION 10, TOWNSHIP 50 SOUTH, RANGE 42 EAST BEARS NORTH 00°40'00" EAST.

CERTIFICATE:

WE HEREBY CERTIFY THAT THIS DESCRIPTION AND SKETCH CONFORMS TO CHAPTER 218F-6.06(1), MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA AS ADOPTED BY THE DEPARTMENT OF PROFESSIONAL REGULATION, BOARD OF LAND SURVEYORS IN SEPTEMBER, 1981, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, AND IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

GRAVEN THOMPSON & ASSOCIATES, INC.


WILSON E. WAY
PROFESSIONAL LAND SURVEYOR NO. 2883
STATE OF FLORIDA

SHEET 1 OF 2 SHEETS
JOB NO. 91-0027
DATE: JUNE 14, 1993
REVISED: JUNE 30, 1993
PHI(MMM)

THIS SKETCH IS NOT VALID UNLESS IT
BEARS AN ORIGINAL SIGNATURE AND
AN EMBOSSED SURVEYOR'S SEAL.

JUL 0 1 1993

BK 20452P60354

SKETCH TO ACCOMPANY DESCRIPTION

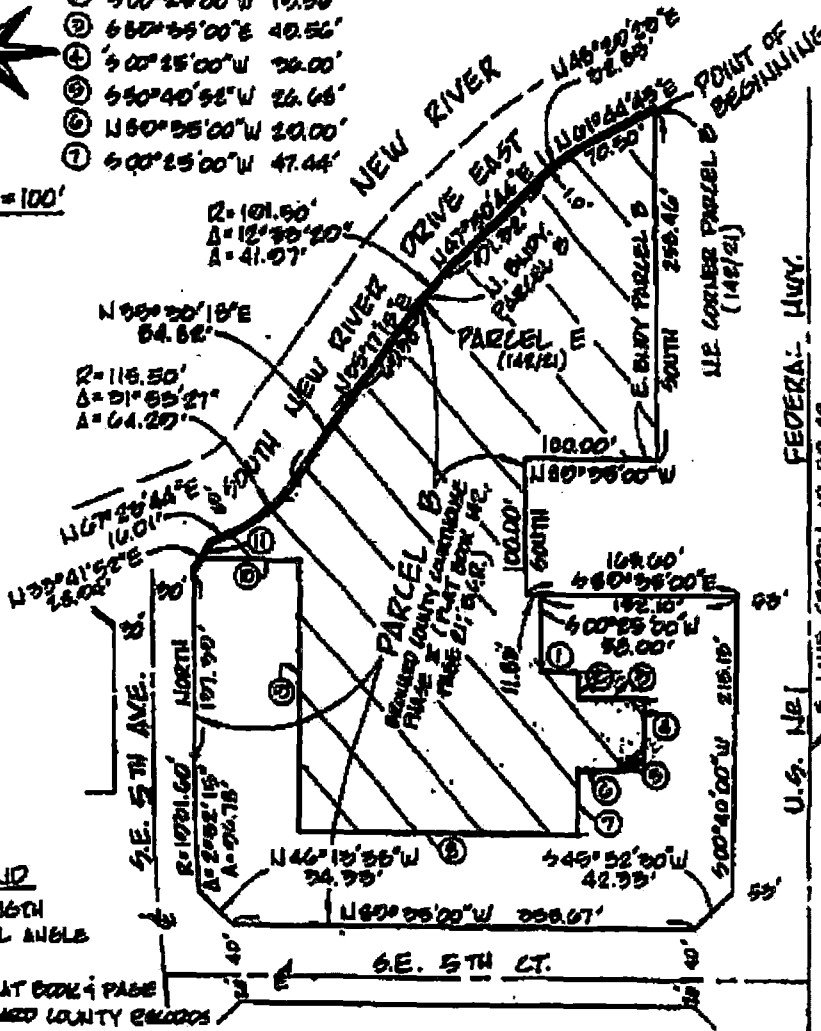
FOR: RIVERVIEW ASSOCIATES

NOTE
THIS IS ONLY A SKETCH OF SURVEY, NOT A GRAPHIC DEPICTION OF THE DESCRIBED SUBJECT PARCELS. THERE HAS BEEN NO FIELD WORK, VIEWING OF THE SUBJECT PROPERTY, OR RECONCILIATION AND IN ACCORDANCE WITH THE PROVISIONS OF THE INFORMATION SHOWN HEREON.



- ① 68°25'00"E 22.88'
- ② 50°25'00"W 19.96'
- ③ 68°25'00"E 40.56'
- ④ 50°25'00"W 72.00'
- ⑤ 50°40'52"W 26.65'
- ⑥ N80°25'00"W 20.00'
- ⑦ 50°25'00"W 47.44'

SCALE: 1" = 100'



LEGEND
 A - ARC LENGTH
 A - CENTRAL ANGLE
 R - RADIUS
 (142/21) - PLAT BOOK & PAGE
 B.C.R. - BROWARD COUNTY RECORDS
 ① - DATA REFERENCE NUMBER



PARCEL A
(142/21)

- ① N50°25'00"W 211.90'
- ② N00°25'00"E 204.00'
- ③ N80°25'00"W 72.96'
- ④ N30°41'52"E 12.90'

RECORDED IN THE OFFICIAL RECORDS BOOK
OF BROWARD COUNTY, FLORIDA
COUNTY ADMINISTRATOR

DATED: JUNE 5TH, 1993

PARK PARCEL

SHEET 2 OF 2

UPDATES and/or REVISIONS	DATE	BY	CHKD
REVISED PARK BOUNDARY	6-20-93	B.F.	

NOTE The undersigned and CRAYTON-BROCKBROOK & ASSOCIATES, INC. make no representation or warranty as to the information reflected herein pertaining to easements, right-of-way, all back taxes, encumbrances, agreements and other similar matters, and hereby, this instrument is not intended to affect or cut back of such matters. Such information should be obtained and verified by others through appropriate due diligence.

NOTE Lines shown herein were not obtained for right-of-way and/or easements of record.

JOB NO. 01-0027	DRAWN BY: B.F.	CHECKED BY: L.A.	P.L. U/A	PL. PG.	FILE NO.
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BR20152PG0355