

**CITY OF MIRAMAR  
PROPOSED CITY COMMISSION AGENDA ITEM**

**Meeting Date:** November 4, 2020

**Presenter's Name and Title:** Salvador Zuniga, Asst. City Engineer, on behalf of Engineering and Strategic Development.

**Temp. Reso. Number:** R7289

**Item Description:** Temp. Reso. No. R7289, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PROPOSED BUFFER WALL MAINTENANCE AGREEMENT BETWEEN THE CITY OF MIRAMAR AND SILVER SHORES HOMEOWNERS ASSOCIATION, INC. FOR THE MAINTENANCE OF THE BUFFER WALL LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY OWNED BY THE CITY, ADJACENT TO THE SILVER SHORES DEVELOPMENT ALONG PEMBROKE ROAD (Asst. City Engineer Salvador Zuniga)

Consent     Resolution     Ordinance     Quasi-Judicial     Public Hearing

**Instructions for the Office of the City Clerk:** The Agreement to be signed on the dais.

**Public Notice** – As Required by the Sec. \_\_\_\_\_ of the City Code and/or Sec. \_\_\_\_\_, Florida Statutes, public notice for this item was provided as follows: on \_\_\_\_\_, in a \_\_\_\_\_ ad in the \_\_\_\_\_; by the posting the property on \_\_\_\_\_ and/or by sending mailed notice to property owners within \_\_\_\_\_ feet of the property on \_\_\_\_\_. (Fill in all that apply)

**Special Voting Requirement** – As required by Sec. \_\_\_\_\_, of the City Code and/or Sec. \_\_\_\_\_ Florida Statutes, approval of this item requires a \_\_\_\_\_ (unanimous 4/5ths etc. vote of the City Commission).

**Fiscal Impact:** Yes  No

**REMARKS:**

**Content:**

- **Agenda Item Memo from the City Manager to City Commission**
- **Resolution TR No. R7289**
  - **Exhibit A: Buffer Wall Maintenance Agreement**
- **Attachment(s)**
  - **Attachment 1: Location Map**
  - **Attachment 2: Memorandum of Understanding**



**CITY OF MIRAMAR  
INTEROFFICE MEMORANDUM**

**TO:** Mayor, Vice Mayor, & City Commissioners

**FROM:** Vernon E. Hargray, City Manager 

**BY:** Bissy Vempala, City Engineer

**DATE:** October 29, 2020

**RE:** Temp. Reso. No. R7289, approving and authorizing the City Manager to execute the proposed Buffer Wall Maintenance Agreement with Silver Shores Homeowners Association, Inc.

**RECOMMENDATION:** The City Manager recommends approval of Temp. Reso. No. R7289, approving and authorizing the City Manager to execute the proposed Buffer Wall Maintenance Agreement between the City of Miramar and Silver Shores Homeowners Association, Inc. (the "Association") for the maintenance of the buffer wall (the "Wall") located within the public right-of-way owned by the City, adjacent to the Silver Shores development along Pembroke Road.

**ISSUE:** City Commission approval is required to approve and authorize the City Manager to execute the proposed Buffer Wall Maintenance Agreement. Cumulative

**BACKGROUND:** On January 2011, Broward County conducted a Noise Study Report that warranted the construction of the Wall along the south side of Pembroke Road adjacent to the Silver Shores development, to mitigate the noise impact from the Pembroke Road Expansion project from SW 145<sup>th</sup> Avenue to Dykes Road.

On November 13, 2012, the Association entered into a Memorandum of Understanding (the "MOU") with the City, agreeing that the Association shall be responsible for the maintenance of the Wall upon the completion of its construction.

On February 2016, a portion of the Wall east of Silver Shores Boulevard was completed. Subsequently on June 5, 2016, the Association entered into a Maintenance Agreement for the portion east of Silver Shores Boulevard.

The remaining portion of the Wall west of Silver Shores Boulevard was later built as part of the Pembroke Road expansion project that was completed in the Spring of 2020.

The Association has provided and agreed to execute the proposed Buffer Wall Maintenance Agreement to assume the maintenance responsibilities of the entire Wall to the east and west of Silver Shores Boulevard.

The Project Manager for this Project is Salvador Zuniga, Assistant City Engineer.

**DISCUSSION:** City shared the construction cost of the buffer wall in conjunction with Broward County, Pembroke Pines and FDOT, as part of the Pembroke road expansion from SW 145<sup>th</sup> Avenue to Dykes Road. Prior to the start of construction, the Association agreed pursuant to a MOU to maintain the buffer wall upon completion of construction by entering into the subject buffer wall maintenance agreement. A portion of the wall was completed in 2016 and the Association entered into a maintenance agreement for that portion. The remaining portion was completed in 2020. This new agreement will include the Association maintenance responsibilities for the entire wall; and will terminate the previous agreement.

**ANALYSIS:** The Association will bear the costs to maintain the wall on both sides, to keep in good condition and in compliance with City and County Codes.

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10/28/20

**CITY OF MIRAMAR  
MIRAMAR, FLORIDA**

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

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PROPOSED BUFFER WALL MAINTENANCE AGREEMENT BETWEEN THE CITY OF MIRAMAR AND SILVER SHORES HOMEOWNERS ASSOCIATION, INC. FOR THE MAINTENANCE OF THE BUFFER WALL LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY OWNED BY THE CITY AND ADJACENT TO THE SILVER SHORES DEVELOPMENT ALONG PEMBROKE ROAD; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, On January 2011, Broward County conducted a Noise Study Report that warranted the construction of a buffer wall (the "Wall") along the south side of Pembroke Road adjacent to the Silver Shores development; and

**WHEREAS**, on November 13, 2012, the City and Silver Shores Homeowners Association, Inc. (the "Association") entered into a Memorandum of Understanding (the "MOU") regarding the maintenance responsibilities of the Wall; and

**WHEREAS**, pursuant to the MOU, the Association has agreed to maintain the Wall upon completion of its construction; and

**WHEREAS**, the Association has agreed and executed a Buffer Wall Maintenance Agreement (the "Agreement") to assume the maintenance responsibilities of the Wall; and

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**WHEREAS**, the City Manager recommends that the City Commission approve and authorize the City Manager to execute the Agreement with the Association, in the form attached hereto as Exhibit “A”; and

**WHEREAS**, the City Commission deems it to be in the best interest of the citizens and residents of the City of Miramar to approve and authorize the City Manager to execute the Agreement with the Association, in the form attached hereto as Exhibit “A”.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA AS FOLLOWS:**

**Section 1:** That the foregoing “**WHEREAS**” clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

**Section 2:** That the City Manager is authorized to execute the Agreement between the City and the Association, in the form attached hereto as Exhibit “A”, together with such non-substantive changes as are deemed acceptable to the City Manager and approved as to form and legal sufficiency by the City Attorney.

**Section 3:** That the appropriate City officials are authorized to do all things necessary and expedient in order to carry out the aims of this Resolution.

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**Section 4:** That this Resolution shall take effect immediately upon adoption.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Mayor, Wayne M. Messam

\_\_\_\_\_  
Vice Mayor, Maxwell B. Chambers

ATTEST:

\_\_\_\_\_  
City Clerk, Denise A. Gibbs

I HEREBY CERTIFY that I have approved  
this RESOLUTION as to form:

\_\_\_\_\_  
City Attorney  
Austin Pamies Norris Weeks Powell, PLLC

<b><u>Requested by Administration</u></b>	<b><u>Voted</u></b>
Commissioner Winston F. Barnes	_____
Vice Mayor Maxwell B. Chambers	_____
Commissioner Yvette Colbourne	_____
Commissioner Alexandra P. Davis	_____
Mayor Wayne M. Messam	_____

Reso. No. \_\_\_\_\_

**BUFFER WALL MAINTENANCE AGREEMENT  
BETWEEN  
THE CITY OF MIRAMAR, FLORIDA  
AND  
SILVER SHORES MASTER ASSOCIATION, INC.**

**THIS AGREEMENT** (the "Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Miramar (the "City"), a Florida Municipal Corporation, and Silver Shores Master Association, Inc. (the "Association"), a Florida Non-Profit Corporation, individually referred to as a "Party" and collectively referred to as the "Parties".

**WHEREAS**, pursuant to an agreement between the City, the City of Pembroke Pines ("Pembroke Pines"), and Broward County, Florida (the "County"), the City and Pembroke Pines have agreed to share the cost of the Pembroke Road expansion project from SW 160<sup>th</sup> Avenue to Silver Shores Boulevard (the "Project"); and

**WHEREAS**, pursuant to said agreement, the County has agreed to undertake, administer, and oversee the construction of the Project; and

**WHEREAS**, the Project includes the installation of a buffer wall located along the South side of Pembroke Road as shown on the attached Exhibit "A" (the "Buffer Wall"); and

**WHEREAS**, a portion of the Buffer Wall have been constructed, and a portion of the Buffer Wall remains to be constructed; and

**WHEREAS**, the Buffer Wall currently exists along the South side of the Pembroke Road right-of-way in the actual right-of-way adjacent to Parcel LB 23, Silver Shores, according to the plat thereof, as recorded in Plat Book 163, Page 26, Public Records of Broward County, Florida; and

**WHEREAS**, the Buffer Wall currently exists adjacent to Lots C48 through C77, Silver Shores, according to the plat thereof, as recorded in Plat book 163, Page 26, Public Records of Broward County, Florida; and

**WHEREAS**, the Buffer Wall to be constructed shall be located on the South side of the Pembroke Road right-of-way in the actual right-of-way adjacent to Parcel LB 22, Silver Shores, according to the plat thereof, as recorded in Plat Book 163, Page 26, Public Records of Broward County, Florida;

**WHEREAS**, the Buffer Wall to be constructed will be located adjacent to Lots B6 through B33, Silver Shores, according to the plat thereof, as recorded in Plat book 163, Page 26, Public Records of Broward County, Florida;

**WHEREAS**, on November 13, 2012, the Parties entered into a Memorandum of Understanding (the "MOU") regarding the installation and maintenance of the Buffer Wall; and

**WHEREAS**, pursuant to the MOU, the Association has agreed to maintain the Buffer Wall upon the completion of its construction; and

**WHEREAS**, the location of the Buffer Wall as stated in the MOU was relocated from the real property owned by the Association to the adjacent public right-of-way owned by the City; and

**WHEREAS**, the granting of an easement by the Association as stated in the MOU is no longer required; and

**WHEREAS**, a Buffer Wall Maintenance Agreement was entered into for the portion of the Buffer Wall adjacent to Parcel LB 23, and Lots C48 through C77, Silver Shores, according to the plat thereof, all as recorded in Plat Book 163, Page 26, Public Records of Broward County, Florida; and

**WHEREAS**, the aforesaid Buffer Wall Maintenance Agreement was recorded on September 12, 2016 as Official Records Instrument 113925832, Public Records of Broward County, Florida (the "Buffer Wall Maintenance Agreement"); and

**WHEREAS**, the parties deem it to be in the best interests of all parties to terminate the MOU and the Buffer Wall Maintenance Agreement, thereby intended that all responsibilities for all portions of the Buffer Wall will be set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual terms and conditions, promises and covenants set forth herein, the City and Association agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Buffer Wall maintenance.

(a) The Association shall be responsible, at its sole cost and expense, for the maintenance and repair of both sides of and all segments of the Buffer Wall once each segment is constructed, the portions of which are shown in the attached Exhibit "A," which is incorporated herein by this reference. Maintenance of each portion of the Buffer Wall shall include keeping the Buffer Wall in good repair and in compliance with all City and County building Codes; performing routine repairs on the Buffer Wall as required; and maintaining hazard, liability, flood and windstorm insurance with respect to the Buffer Wall. The Association shall undertake maintenance or repair as needed in its individual discretion, or within sixty (60) days of notice from the City. The City reserves the right to explicate what maintenance or repair is needed and the maintenance or repair should be accomplished. Removal of all or portions of the Buffer Wall or replacement of any portions of the Buffer Wall due to a motor vehicle accident or other catastrophe shall be at the expense of the City. The parties shall hold each other harmless for maintenance, repair, or removal work that each party undertakes.

(b) In the event that the Association undertakes any maintenance or repair work on the Buffer Wall, the Association shall obtain commercial general liability insurance (or builder's risk insurance if so determined by the City) [herein: "insurance" or "commercial general liability insurance"] which insurance shall be Occurrence Form, to the extent that such form of insurance is available on commercially reasonable terms. Coverage shall include, as a minimum: (i) Premises Operations, (ii) Personal Injury Liability, (iii) Products and Completed Operations, and (iv) Incidental Contractual Liability in both the primary and any umbrella policy coverage. The minimum limits acceptable shall be not less than \$3,000,000 per occurrence for bodily injury or death of one or more persons and not less than \$5,000,000 per occurrence for property damage in aggregate, all with respect to the Association's maintenance and repair of the Buffer Wall or arising out of the maintenance or repair thereof, and naming the City as an "additional insured". The use of an excess/umbrella liability policy of no less than the maximum coverage provided by the commercial general liability insurance to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Commercial General Liability policy. The policy of insurance shall not have a deductible of more than \$10,000, shall be with an insurance company licensed by the State of Florida Insurance Commissioner, or said Commissioner's successor, to issue the policy presented, issued by a company having an A.M. Best's Rating Guide financial strength rating of A or better and a financial size category of VII or better. In the event that A.M. Best's Rating Guide is discontinued, the City and the Association shall amend this Agreement to provide a successor rating service and ratings, which in the City's reasonable judgment is similar to what is required by this Agreement.

(c) The City will be included as an "Additional Insured" on the Association's commercial general liability and any umbrella liability. The Association's insurance policy will provide that it is primary over any and all insurance available to the City, whether purchased or not, and must be non-contributory. The terms and conditions of all policies may not be less restrictive than those contained in the most recent edition of the policy forms, as revised from time to time, issued by the Insurance Services Office (ISO) or the National Council on Compensation Insurance (NCCI). If ISO or NCCI issues new policy forms during the policy term of the required insurance, the Association will not be required to comply with the new policy forms until the expiration date of the insurance policy affected by the change.

(d) Upon this Agreement becoming effective, satisfactory evidence of the required insurance shall be provided to the City by the Association. Satisfactory evidence shall be either: (a) a copy of the declaration page certified by the insurer to the City designating the City as a "loss payee" or "additional insured" as appropriate with an endorsement reasonably acceptable to the City; or (b) a certified copy of the actual insurance policy. The City, at its sole option, may from time to time request a certified (by the insurer) copy of the insurance policy required by this Agreement. The Association, in the manner provided in this Agreement for giving notice, shall forward to the City any of the instruments required hereunder within thirty (30) days of request by the City or, on a

yearly basis, not later than the effective date of any policy or policy renewal. Use of a certificate of insurance shall not be acceptable proof that the insurance is in force. If the Association does not furnish proof of insurance as set forth in this section within thirty (30) days of the receipt of a request therefore from the City or on a yearly basis, or if the Association fails to at all times maintain adequate insurance as required herein, the City may, but shall not be obligated to obtain insurance to, purchase said insurance, bill the Association, and the Association shall be responsible for the cost thereof. In such event, the City shall invoice the Association for the costs and premiums attributable to such insurance at the rate of interest as defined from time to time as "prime" by the Bank of America, N.A., in Miramar, Florida; provided, that in no event shall that rate of interest ever exceed the highest legal rate of interest permitted by Florida law. The Association shall pay to the City, within ten (10) days after the Association's receipt of the invoice, all such insurance costs and premiums. In the event that the Bank of America, N.A., shall merge with another bank, the successor bank shall define the "prime" rate. In the event that the Bank of America, N.A., or the interest rate defined as "prime", shall cease to exist, the City shall name a replacement banking institution or replacement interest rate.

3. Termination of the Agreement. This Agreement shall automatically terminate and be of no further force or effect upon elimination or destruction of all of the Buffer Wall (in compliance with all applicable codes and laws). It is the intent of the parties that the MOU is hereby terminated, and it is the intent of the parties that the Buffer Wall Maintenance Agreement recorded on September 12, 2016 as Official Records Instrument 113925832, Public Records of Broward County, Florida, is hereby terminated.

4. Recording. This Agreement shall be recorded in the Public Records of Broward County, Florida, and shall be binding upon and benefit the City and the Association's successors and assigns in interest and title.

5. Dispute Resolution. In the event that a claim or dispute arises between the Parties relating to any term or provision of this Agreement or relating to the Buffer Wall, the Parties shall have 60 days from the date a claim or dispute arises between them to attempt to resolve the matter through mediation in Broward County. If the Parties are unable to resolve such claim or dispute through mediation, such claim or dispute shall be settled through neutral binding arbitration in Broward County. The award shall be based on the greater weight of the evidence and will state findings of fact and the authority on which it is based. If the parties agree to use discovery, it will be in accordance with the Florida Rules of Civil Procedure and the arbitrator will resolve all discovery-related disputes. Arbitration will be in accordance with the rules of the American Arbitration Association or other arbitrator agreed on by the Parties. Each Party to arbitration shall pay its own fees, costs and expenses, including attorneys' fees, and will equally split the arbitrators' fees and administrative fees of arbitration. Any decision or award that results from such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator

experienced in municipal construction matters and shall include a written record of the arbitration proceeding.

6. Entire Agreement. This Agreement, and any exhibits attached hereto, constitute the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement, and supersedes all prior discussions, correspondence, oral and written agreements, commitments or understandings, restrictions, representations or warranties among the parties to the Agreement concerning the subject matter of this Agreement other than those set forth herein or herein provided for.

7. Notice. The notices sent to any person pursuant to this Agreement shall be in writing and transmitted by hand delivery, certified U.S. mail, return receipt requested, postage prepaid, facsimile or telegram, and shall be mailed or delivered as follows:

As to City:                   Vernon E. Hargray  
  City Manager  
  City of Miramar  
  2300 Civic Center Place  
  Miramar, FL 33025  
  Telephone: (954) 602-3115  
  Facsimile: (954) 602-3672

With a copy to:             City Attorney  
  Austin Pamies Norris Weeks Powell, PLLC  
  401 North Avenue of the Arts  
  Fort Lauderdale, FL 33311  
  Telephone: (954) 768-9770  
  Facsimile: (954) 768-9790

As to the Master Association:

SILVER SHOES MASTER ASSOC.  
MORRIS J. HATCHER  
15412 SW 18<sup>th</sup> STREET MIRAMAR, FL 33027

Telephone:  
Facsimile:  
Attn.: MORRIS J. HATCHER

Any of the foregoing parties may, by notice in writing given to the other, designate any further or different persons or addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or facsimile transmission, or three days after the date mailed.

8. Binding Agreement. This Agreement shall be a covenant running with the land and shall be binding upon the Association and the City, their successors and assigns.

9. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

10. Amendments and Waivers. No amendment, supplement, modifications or waiver of this Agreement shall be binding unless executed in writing by the Parties. No waiver of any of these provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

11. Assignment. The Association shall not assign its obligations and benefits hereunder without the prior written consent of the City, which consent shall not be unreasonably withheld. Should the City agree to such assignment, the assignment shall not be valid unless and until a fully executed Agreement is entered into between the City and assignee.

12. Headings, conflicts, waiver and breach. Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement. In the event of conflict between the terms of this Agreement and any terms or conditions contained in any referenced documents, the terms in this Agreement shall prevail. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision, and no waiver shall be effective unless made in writing.

13. Severability. If any provision of this Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

14. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

[Intentionally Left Blank]

**BUFFER WALL MAINTENANCE AGREEMENT BETWEEN THE CITY OF MIRAMAR, FLORIDA AND SILVER SHORES MASTER ASSOCIATION, INC.**

**IN WITNESS WHEREOF**, the Parties have made and executed this Agreement on the respective dates under each signature.

CITY OF MIRAMAR, a Florida  
Municipal Corporation

Sign: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Sign: \_\_\_\_\_  
Print Name: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Denise A. Gibbs, City Clerk

By: \_\_\_\_\_  
Vernon E. Hargray  
City Manager

Dated: \_\_\_\_\_ day of \_\_\_\_\_, 2020

Approved as to form and legal  
sufficiency for the use of and  
reliance by the City of Miramar  
only:

(CITY SEAL)

By: \_\_\_\_\_  
City Attorney  
Austin Pamies Norris Weeks  
Powell, PLLC

STATE OF FLORIDA     )  
                                  ) ss:  
COUNTY OF BROWARD )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Vernon E. Hargray, as City Manager, and Denise A. Gibbs, as City Clerk, of the City of Miramar, a Florida Municipal Corporation, on behalf of the municipal corporation. They are personally known to me or have produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public  
State of Florida At Large



**EXHIBIT "A"**

Sketch of Buffer Wall Location within Pembroke Road Right-of-Way

**EXHIBIT A**  
LOCATION OF BUFFER WALL



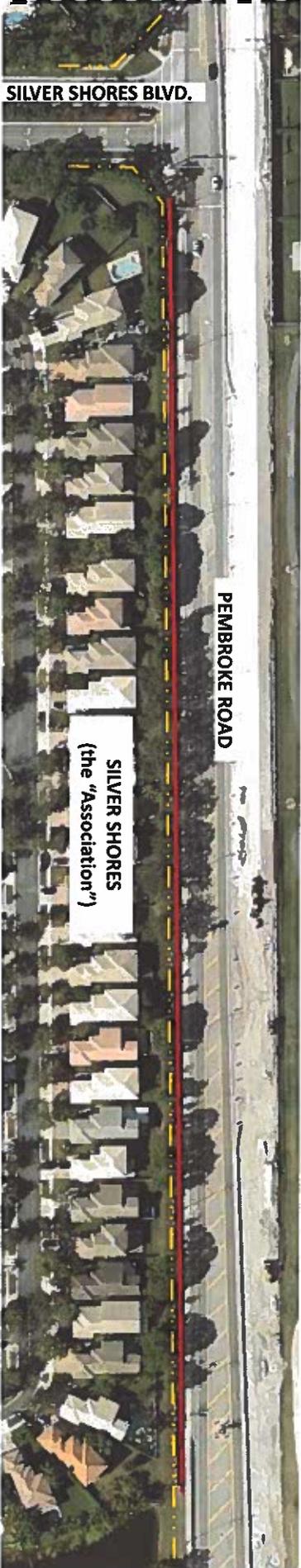
SILVER SHORES PARK



SILVER SHORES BLVD.

SEE BELOW LEFT FOR CONTINUATION

SEE ABOVE RIGHT FOR CONTINUATION



SILVER SHORES BLVD.

**LEGEND**

- RIGHT-OF-WAY
- BUFFER WALL



# LOCATION MAP

## BUFFER WALL

ATTACHMENT 1



**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE CITY OF MIRAMAR, A FLORIDA MUNICIPAL CORPORATION AND  
SILVER SHORES HOMEOWNERS ASSOCIATION, INC.,  
A FLORIDA NON-PROFIT CORPORATION**

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is made as of this 13<sup>th</sup> day of Nov, 2012 by and between the undersigned representatives of the City of Miramar, a Florida municipal corporation, (the "City") and Silver Shores Homeowners Association, Inc., a Florida non-profit corporation, (the "Association")

**BACKGROUND:**

**WHEREAS**, Broward County, a political subdivision of the State of Florida (the "County"), the City of Miramar, and the City of Pembroke Pines, a Florida municipal corporation ("Pembroke Pines") entered into that certain Agreement for Improvement to Pembroke Road From SW 136 Avenue to SW 160 Avenue, dated June 3, 2003, as amended by that certain First Amendment to Agreement between Broward County, City of Pembroke Pines, and City of Miramar for Improvement to Pembroke Road From Silver Shores Boulevard To S.W. 145th Avenue (collectively, the "Improvement Agreement") whereby the County, the City, and Pembroke Pines agreed to widen certain roadways within the County according to the terms as set forth therein (the "Improvements");

**WHEREAS**, County's consultant has conducted a noise study along Pembroke Road from S.W. 160 Avenue to S.W. 145 Avenue and found that noise walls are warranted along the south side of Pembroke Road behind all the residential units located east of S.W. 160 Avenue;

**WHEREAS**, FDOT, the County, and the City shall be responsible for the costs of design and the construction of the Buffer Wall, as defined herein, in the manner set forth in that certain Agreement Between Broward County and the City of Miramar for Joint Funding of Buffer Wall Construction Along the South Side of Pembroke Road from Approximately 50 Feet East of the Centerline of Silver Shores Boulevard - To Approximately 1360 Feet East (the "Buffer Wall Agreement");

**WHEREAS**, the City has agreed to undertake the design and installation of a buffer wall from Silver Shores Park to approximately 1360 feet east of Silver Shores Boulevard ("Buffer Wall") in the area more specifically shown in Exhibit "A" attached hereto (the "Buffer Wall Area"); and plans to solicit bids for the Buffer Wall in accordance with CITY procurement procedures and the Buffer Wall Agreement;

**WHEREAS**, a portion of the Buffer Wall is to be constructed on real property owned by the Association in an area shown on Exhibit "B" attached hereto (the "Association Property"); and

**WHEREAS**, the Association has agreed to grant the City an easement for the construction of the portion of the Buffer Wall to be constructed on the Association Property, and the Association has agreed to maintain the entire Buffer Wall upon the completion of the construction thereof in accordance with the terms of this MOU.

**TERMS:**

1. Subject to the terms hereof, the City shall undertake the construction of the Buffer Wall. The Buffer Wall shall be constructed in accordance with all existing agreements between the County, and the City and all applicable building requirements.
2. The Association shall grant an easement (the "Easement") attached hereto as Exhibit "C", in favor of the City allowing the City access to the Association Property for the purpose of constructing the portion of the Buffer Wall which will be situated on the Association Property, and if necessary, performing repairs to or maintaining the Buffer Wall subsequent to construction thereof. The Association shall provide written confirmation, evidenced by a title report from a licensed title underwriter, that it owns the Association Property free and clear of all liens
3. Upon the completion of the construction of the Buffer Wall, the City shall transfer ownership of the portion of the Buffer Wall located on the Association Property to the Association by way of a bill of sale. The Association shall be responsible for the maintenance of the entire Buffer Wall including the portion east of Silver Shore Boulevard as per the Exhibit A. Maintenance of the Buffer Wall shall include keeping the Buffer Wall in good repair (in compliance with all City and County building codes), performing routine repairs on the Buffer Wall as required, and maintaining hazard, liability, flood, and windstorm insurance with respect to the Buffer Wall.
4. This MOU reflects the current understanding and intent of the City and the Association (each a "Party", collectively the "Parties") with respect to the matters described herein; nevertheless, it shall not create any binding obligations between them as to the Buffer Wall or the Easement and is merely intended to provide the framework to enter a subsequent agreement setting forth the maintenance obligations of the Association and the obligation of the City to construct the Buffer Wall. The Parties shall enter into a permanent agreement setting forth the Buffer Wall maintenance requirements and their respective obligations within eighteen (18) months from the date hereof.
5. In the event a claim or dispute shall arise between the Parties relating to any term or provision of any agreement relating to the Buffer Wall, such claim or dispute shall be settled by binding arbitration in the state of Florida. The Parties shall have thirty (30) days from the date a claim or dispute arises between them to attempt to resolve the matter through mediation, failing which the parties will

resolve the dispute through neutral binding arbitration in Broward County. The award will be based on the greater weight of the evidence and will state findings of fact and the contractual authority on which it is based. If the parties agree to use discovery, it will be in accordance with the Florida Rules of Civil Procedure and the arbitrator will resolve all discovery-related disputes. Arbitration will be in accordance with the rules of the AAA or other arbitrator agreed on by the Parties. Each Party to any arbitration will pay its own fees, costs and expenses, including attorneys' fees, and will equally split the arbitrators' fees and administrative fees of arbitration. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in municipal construction matters and shall include a written record of the arbitration hearing.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the day and year first written above by their duly authorized representatives.

**SIGNATURE PAGES FOLLOW**

CITY:

CITY OF MIRAMAR, a Florida municipal corporation

By: [Signature]  
Robert A. Payton, City Manager

Date: 11/13/2012

ATTEST:

[Signature]  
Yvette McLeary, City Clerk

Approved as to form and legal sufficiency for the use of and reliance by the City of Miramar only:

[Signature] Dec 11/2/12  
City Attorney  
Weiss Serota Helfman Pastoriza  
Cole & Boniske, P.L.

WITNESSES:

[Signature]  
Print Name: Steven Martel

[Signature]  
Print Name: Anisa Kumar

SILVER SHORES HOMEOWNERS ASSOCIATION, INC. a Florida non-profit corporation

By: [Signature]  
Name: Morris Hatcher  
Title: President

STATE OF FLORIDA )  
COUNTY OF Broward ) SS:

The foregoing instrument was acknowledged before me this 18 day of October, 2012, by Kai Martin, as President of Silver Shores Homeowners Association, Inc., a Florida non-profit corporation, who (check one)  is personally known to me or  has produced \_\_\_\_\_ as identification.

[Signature]

My Commission Expires:

Notary Public, State of Florida

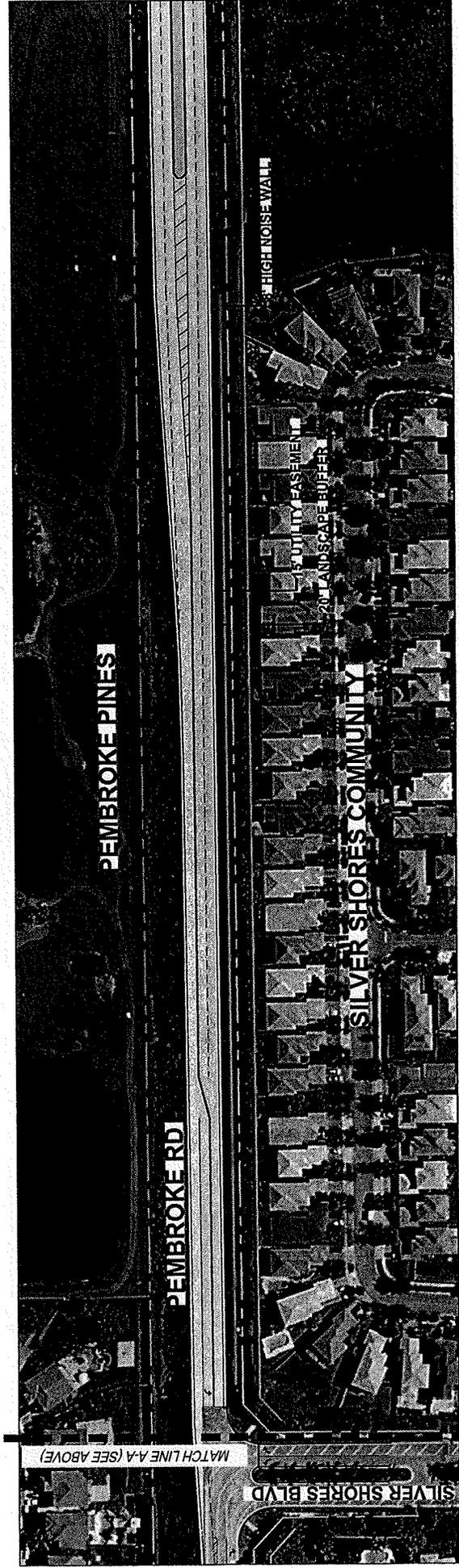
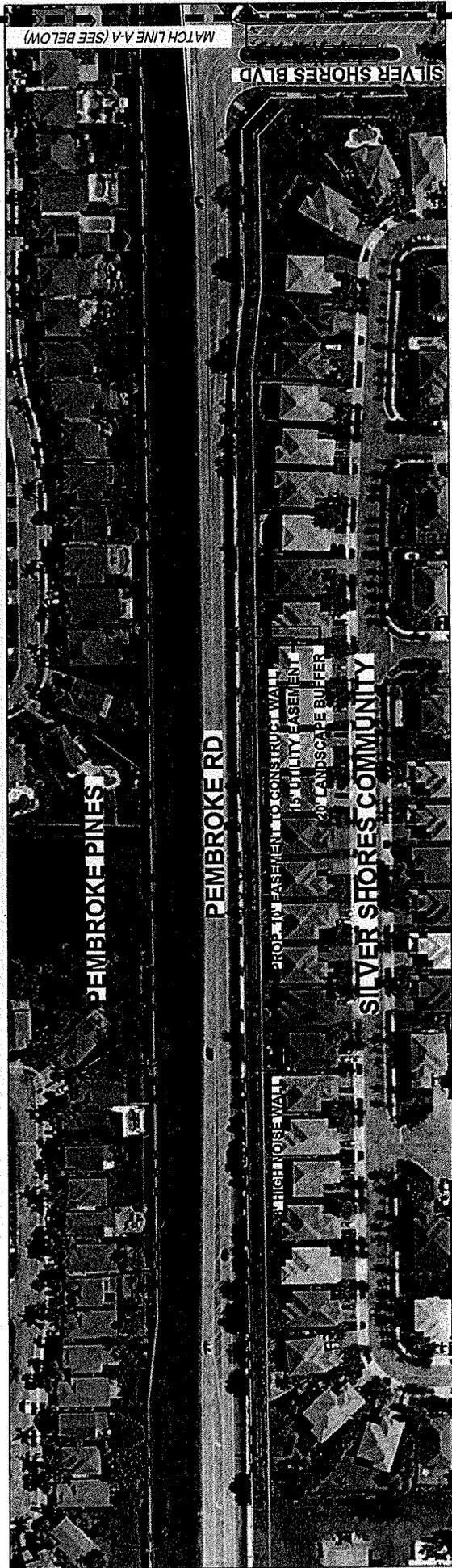
Print Name: DotE Da Costa Robinson



EXHIBIT A  
BUFFER WALL AREA

# EXHIBIT "A"

## PEMBROKE ROAD OVERPASS PROJECT - NOISE WALL CONSTRUCTION



PROPOSED 8' HIGH NOISE WALL (APPROX .1,360 FT.) EAST OF SILVER SHORES BOULEVARD.  
NOISE WALL WILL BE CONSTRUCTED WITHIN CITY'S RIGHT-OF-WAY.

PROPOSED 8' HIGH NOISE WALL (APPROX .1,700 FT.) WEST OF SILVER SHORES BOULEVARD.  
NOISE WALL TO BE CONSTRUCTED WITHIN LANDSCAPE BUFFER (OWNED BY SILVER SHORES HOA) & 15' PUBLIC UTILITY EASEMENT.

**EXHIBIT B**  
**ASSOCIATION PROPERTY**



# EXHIBIT "B"

## PEMBROKE ROAD OVERPASS PROJECT - NOISE WALL CONSTRUCTION




 PROPOSED AREA WITHIN LANDSCAPE BUFFER (OWNED BY SILVER SHORES HOA) & 15' PUBLIC UTILITY EASEMENT,  
 TO CONSTRUCT 8' HIGH NOISE WALL

# EXHIBIT "C"

**EASEMENT**  
THIS EASEMENT (the "Easement"), is made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by Silver Shores Homeowners Association, Inc., a Florida non-profit corporation, as GRANTOR whose address is \_\_\_\_\_ to and in favor of the CITY OF MIRAMAR, a municipality organized under the laws of the Florida whose Post Office address is 2300 Civic Center Place, Miramar, Florida 33025 as GRANTEE;

WHEREAS, Broward County, a political subdivision of the State of Florida (the "County"), the City of Miramar, and the City of Pembroke Pines, a Florida municipal corporation ("Pembroke Pines") entered into that certain Agreement for Improvement to Pembroke Road From SW 136 Avenue to SW 160 Avenue, dated June 3, 2003, as amended by that certain First Amendment to Agreement between Broward County, City of Pembroke Pines, and City of Miramar for Improvement to Pembroke Road From Silver Shores Boulevard To S.W. 145th Avenue (collectively, the "Improvement Agreement") whereby the County, the Grantee, and Pembroke Pines agreed to widen certain roadways within the County according to the terms as set forth therein (the "Improvements");

WHEREAS, County's consultant has conducted a noise study along Pembroke Road from S.W. 160 Avenue to S.W. 145 Avenue and found that noise walls are warranted along the south side of Pembroke Road behind all the residential units located east of S.W. 160 Avenue;

WHEREAS, FDOT, the County, and the Grantee shall be responsible for the costs of design and the construction of the Buffer Wall as defined herein, in the manner set forth in that certain Agreement Between Broward County and the City of Miramar for Joint Funding of Buffer Wall Construction Along the South Side of Pembroke Road from Approximately 50 Feet East of the Centerline of Silver Shores Boulevard To Approximately 1360 Feet East (the "Buffer Wall Agreement");

WHEREAS, the Grantee has agreed to undertake the design and installation of a buffer wall from Silver Shores Park to approximately 1360 feet east of Silver Shores Boulevard ("Buffer Wall") in the area more specifically shown in Exhibit "A" attached hereto (the "Buffer Wall Area"); and plans to solicit bids for the Buffer Wall in accordance with City of Miramar procurement procedures and the Buffer Wall Agreement;

WHEREAS, a portion of the Buffer Wall is to be constructed on real property owned by the Grantor in an area shown on Exhibit "B" attached hereto (the "Easement Property");

WHEREAS, the Grantee desires to obtain an easement from the GRANTOR to access the Easement Property for the purpose of constructing the Buffer Wall; and

in order to enforce the terms hereof, then the prevailing party in such suit shall be entitled to receive reasonable attorney's fees and court costs in addition to any other award that the Court might make, from the non-prevailing party.

7. **Covenant Running with the Land.** This Easement and all conditions and covenants set forth herein are intended and shall be construed as covenants running with the land, binding upon and insuring to the benefit of Grantor or Grantee, as the case may be, and their respective heirs, successors and/or assigns, including, without limitation, all subsequent owners of the Easement Property and all persons claiming by, through and under them.

**IN WITNESS WHEREOF**, Grantor has executed and delivered this Grant of Easement on the day and year written in the first paragraph of this Easement.

**GRANTOR:**

WITNESSES:

SILVER SHORES HOMEOWNERS  
ASSOCIATION, INC. a Florida non-profit  
corporation

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title: President

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF FLORIDA            )  
  SS:  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, as President of Silver Shores Homeowners Association, Inc., a Florida non-profit corporation, who (check one) [ ] is personally known to me or [ ] has produced \_\_\_\_\_ as identification.

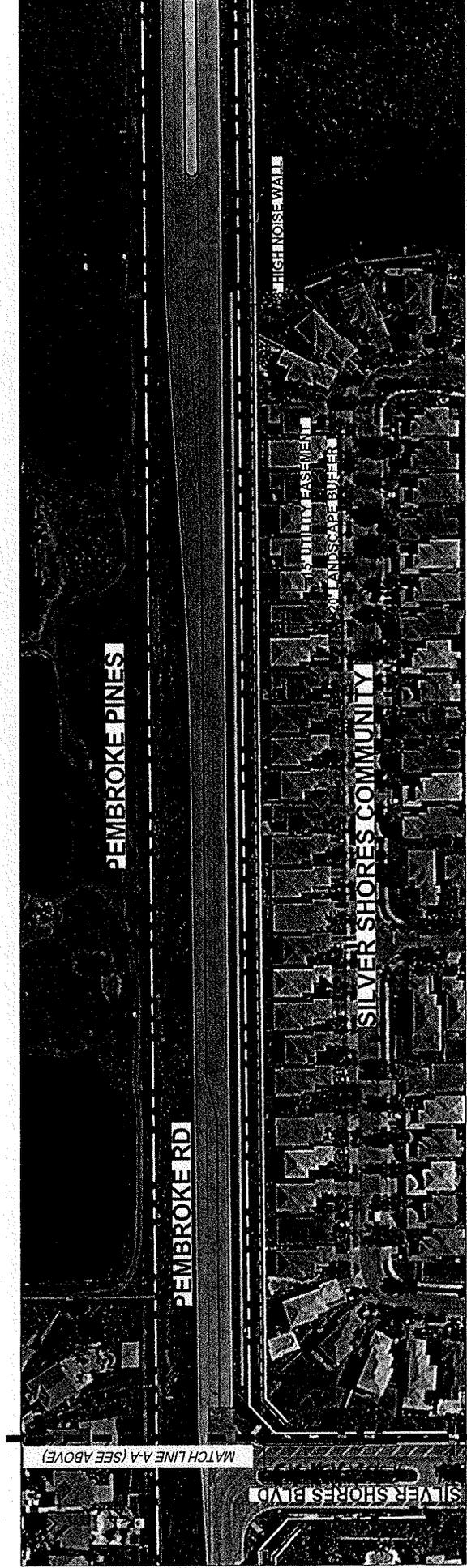
My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Florida  
Print Name: \_\_\_\_\_

**EXHIBIT A**  
**BUFFER WALL AREA**

# EXHIBIT "A"

## PEMBROKE ROAD OVERPASS PROJECT - NOISE WALL CONSTRUCTION

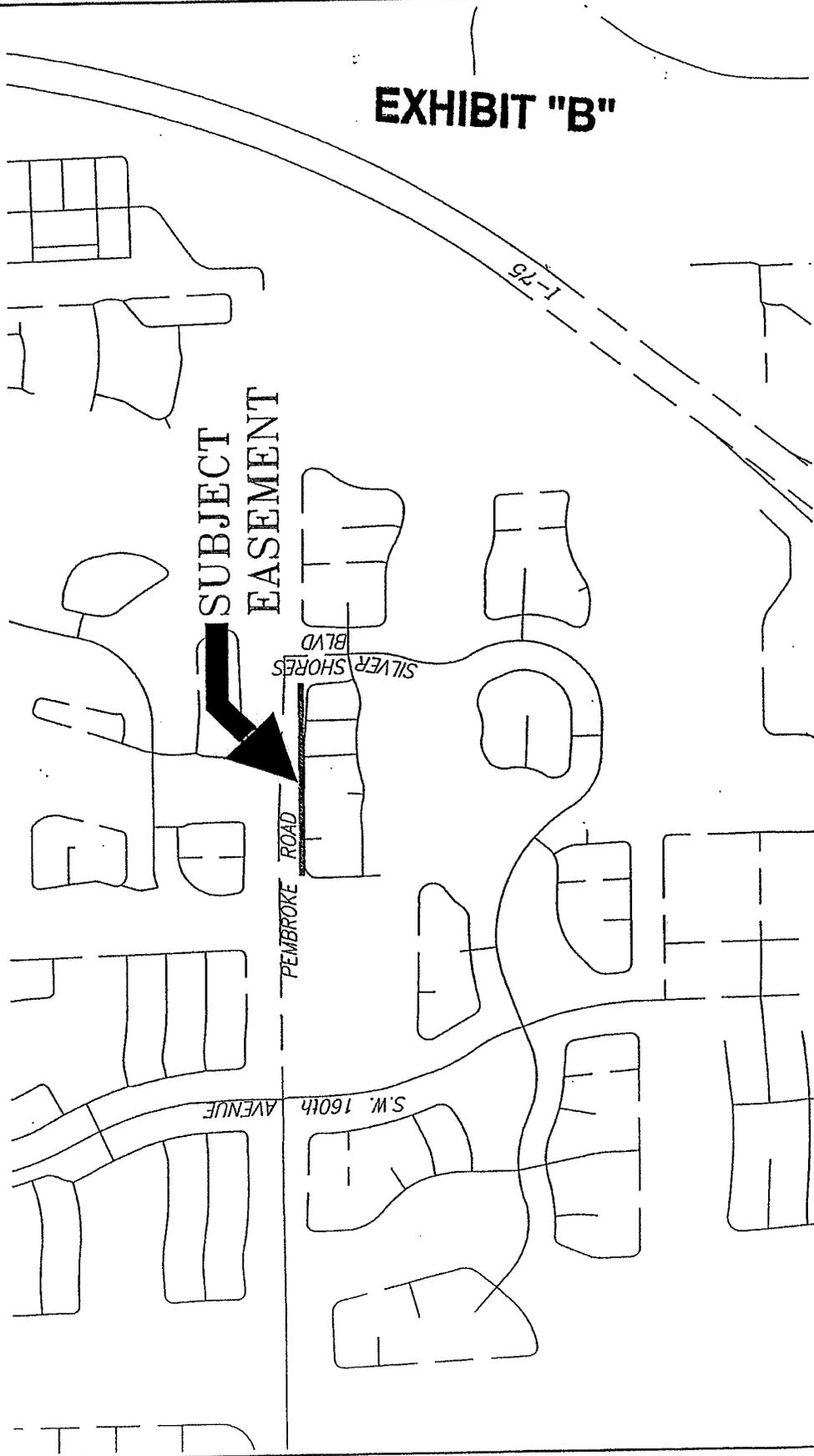


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**EXHIBIT B**  
**EASEMENT PROPERTY**

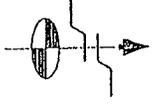
**SKETCH TO ACCOMPANY LEGAL DESCRIPTION**



SCALE 1"=1000'  
SHEET 1 OF 6 SHEETS

REVISIONS

*Schwabke-Shiskin & Associates, Inc.*  
 LAND SURVEYORS-ENGINEERS-LAND PLANNERS - 3240 CORPORATE WAY-MIRAMAR, FL 33025  
 PHONE No. (954)435-7010 FAX No. (954)438-3288  
 ORDER NO. 200163 DATE: 08/02/2012  
 PREPARED UNDER MY SUPERVISION:  
 MARK STEVEN JOHNSON SECY & TREAS.  
 FLORIDA PROFESSIONAL LAND SURVEYOR No. 4775

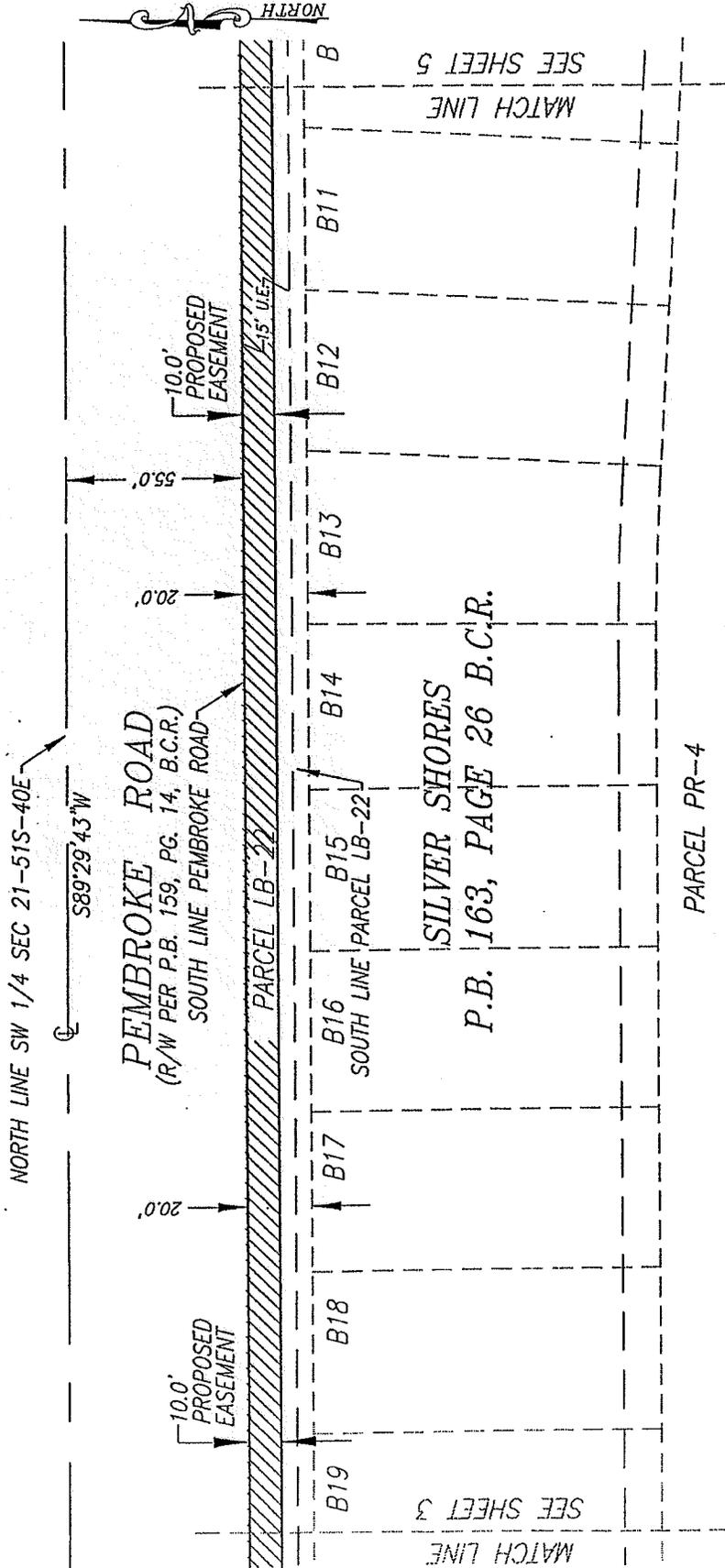


THIS IS NOT A "BOUNDARY SURVEY"  
 CERTIFICATE OF AUTHORIZATION No. LB-87





# SKETCH TO ACCOMPANY LEGAL DESCRIPTION



## EXHIBIT "B"

SCALE 1"=50'  
SHEET 4 OF 6 SHEETS

REVISIONS	

<p><b>Schweble-Shiskin &amp; Associates, Inc.</b>          LAND SURVEYORS-ENGINEERS-LAND PLANNERS - 3240 CORPORATE WAY-MIRAMAR, FL 33025          PHONE No. (954)438-7010          FAX No. (954)438-7289          ORDER NO. 200163          DATE: 08/02/2012</p>	<p>PREPARED UNDER MY SUPERVISION:            MARK STEVEN JOHNSON          FLORIDA PROFESSIONAL LAND SURVEYOR No. 4775</p>
<p>THIS IS NOT A "BOUNDARY SURVEY"          CERTIFICATE OF AUTHORIZATION No. LB-87</p>	<p>SECY &amp; TREAS.          FLORIDA PROFESSIONAL LAND SURVEYOR No. 4775</p>

# SKETCH TO ACCOMPANY LEGAL DESCRIPTION

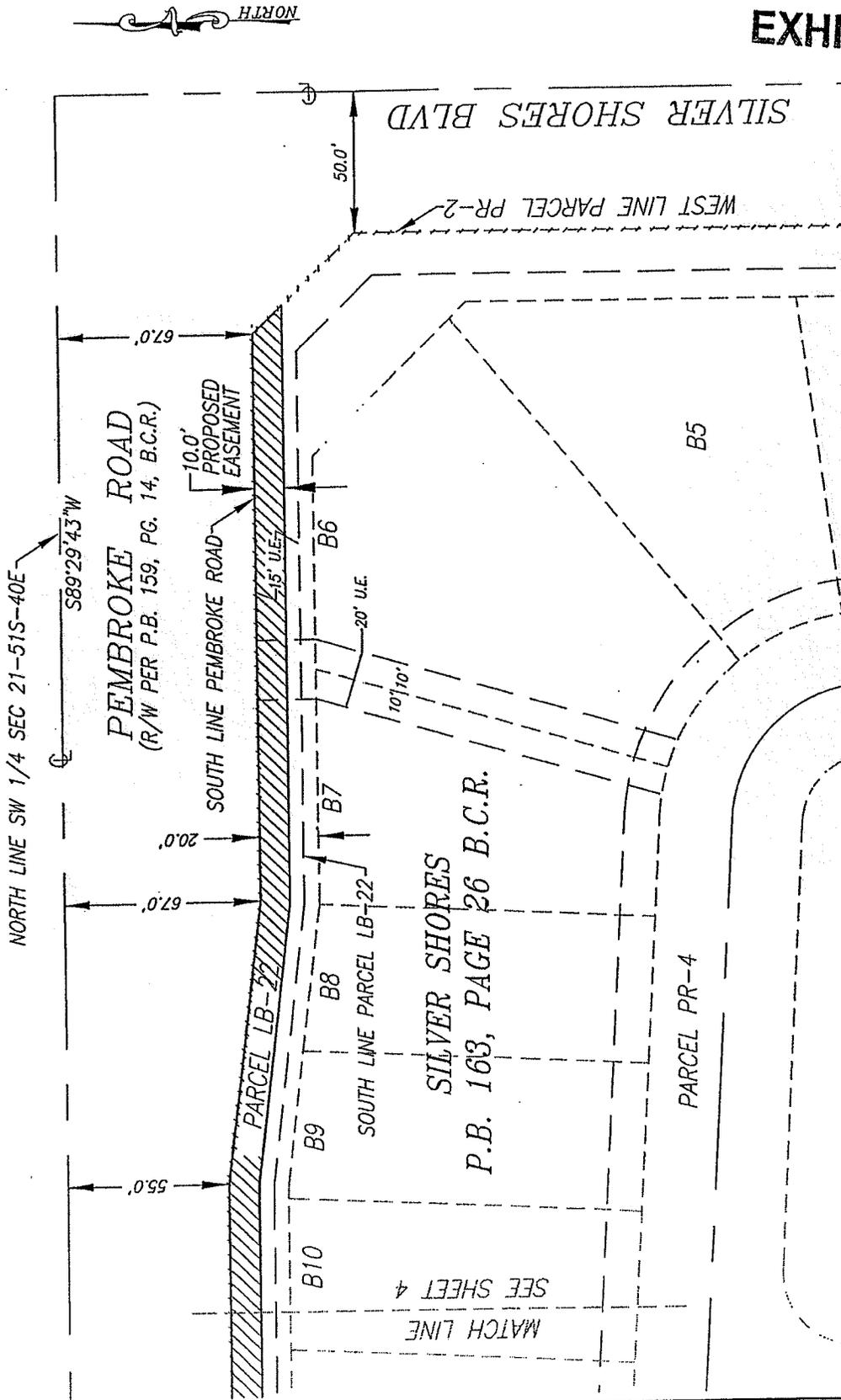


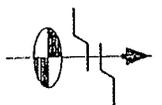
EXHIBIT "B"

SCALE 1"=50'  
SHEET 5 OF 6 SHEETS

REVISIONS

**Schwabke-Shiskin & Associates, Inc.**  
 LAND SURVEYORS-ENGINEERS-LAND PLANNERS - 3240 CORPORATE WAY-MIRAMAR, FL 33025  
 PHONE No. (954)435-7010 FAX No. (954)438-7389  
 ORDER NO. 200163 DATE: 08/02/2012  
 THIS IS NOT A "BOUNDARY SURVEY"  
 CERTIFICATE OF AUTHORIZATION No. LB-87

PREPARED, UNDER MY SUPERVISION:  
*Mark Steven Johnson*  
 MARK STEVEN JOHNSON SECY & TREAS.  
 FLORIDA PROFESSIONAL LAND SURVEYOR No. 4775



# LEGAL DESCRIPTION TO ACCOMPANY SKETCH

THE NORTH 10 FEET OF PARCEL LB-22, LYING BETWEEN THE EAST LINE OF PARCEL P-1 (PARK SITE) AND THE WESTERLY LINE OF PARCEL PR-2 (THE WESTERLY LINE OF SILVER SHORES BOULEVARD), ACCORDING TO THE PLAT OF "SILVER SHORES", AS RECORDED IN PLAT BOOK 163 AT PAGE 26 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA. LYING AND BEING IN SECTION 25, TOWNSHIP 51 SOUTH, RANGE 40 EAST, CITY OF MIRAMAR, BROWARD COUNTY, FLORIDA.

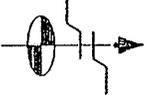
NOTES:

- 1) BEARINGS SHOWN HEREON REFER TO AN ASSUMED BEARING OF S 89°29'43" W ALONG THE NORTH LINE OF THE SW 1/4 OF SECTION 21-51S-40E.
- 2) ORDERED BY: CITY OF MIRAMAR
- 3) AUTHENTIC COPIES OF THIS SKETCH AND LEGAL DESCRIPTION MUST BEAR THE EMBOSSED SEAL OF THE ATTESTING PROFESSIONAL LAND SURVEYOR.

**LEGEND:**

-  DENOTES CENTER LINE
-  P.B. DENOTES PLAT BOOK
-  PG. DENOTES PAGE
-  B.C.R. DENOTES BROWARD COUNTY RECORDS
-  DENOTES PROPOSED EASEMENT AREA

**EXHIBIT "B"**

	<p style="text-align: center;"><i>Schwabke-Shiskin &amp; Associates, Inc.</i>                  LAND SURVEYORS—ENGINEERS—LAND PLANNERS — 3240 CORPORATE WAY, MIRAMAR, FL 33025                  PHONE No. (954) 435-7010      FAX No. (954) 438-2789                  ORDER NO. 200163      PREPARED UNDER MY SUPERVISION:                  DATE: 08/02/2012      <i>Mark Steven Johnson</i>                  THIS IS NOT A "BOUNDARY SURVEY"                  CERTIFICATE OF AUTHORIZATION No. LB-87      MARK STEVEN JOHNSON      SECY &amp; TREAS.                  FLORIDA PROFESSIONAL LAND SURVEYOR No. 4775</p>						
	<p>REVISIONS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="height: 20px;"> </td></tr> </table>						