

DOCKAGE

1/31/92

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between CENTRAL BROWARD WATER CONTROL DISTRICT, a political subdivision of the State of Florida, hereinafter referred to as "District", and _____ and _____, hereinafter referred to as "Property Owners".

WITNESSETH:

WHEREAS, District is a political subdivision of the State of Florida charged with the responsibility of effecting drainage and water management within its geographical boundaries and approving all subdivision plats and development plans affecting lands within its geographical boundaries; and

WHEREAS, Property Owners are the owners of the property described in Exhibit "A" attached hereto and incorporated herein in its entirety, hereinafter referred to as "Subject Property" and which is further identified by Broward County Property Appraiser Folio No. _____; and

WHEREAS, Subject Property lies completely within the geographical boundaries of District; and

WHEREAS, a lake maintenance/drainage easement dedicated to the District is located on the Subject Property which is adjacent to a lake/water body over which by the District has a flowage easement, lake easement, and/or other easement rights and which the District has the right to maintain, and

WHEREAS, District has established, in accordance with its rule making authority, that no improvements can be placed or constructed in or over any lake, maintenance easement, drainage easement, flowage easement, or other property owned by the District or over which the District has permitting authority (hereinafter collectively referred to as "easement") without approval and authorization by the District; and

WHEREAS, District has established, in accordance with its rule making authority, a minimum building set back of twenty (20) feet (hereinafter referred to as "setback") from any waterway, lake, canal, or flowage easement lying within District; and

WHEREAS, Property Owners desire approval from District for themselves, their successors, assigns and heirs for the purpose of obtaining a permit to construct a wood deck and/or dock (hereinafter referred to as "Improvements"), within the easement; and

WHEREAS, as a condition of approval of the Improvements within the easement and setback, District requires that certain minimum criteria be complied with and that Property Owners enter into a hold harmless agreement indemnifying District from any and all claims, losses, damage and expenses, arising out of the construction of the Improvements within the easement and setback; and

WHEREAS, District has determined and approved by Central Broward Water Control District Resolution No. 92-1 that Property Owners owning property adjacent to lakes and certain other water bodies within the District may obtain a permit without Board approval for construction of Improvements within the District's easement and setback so long as the Improvements comply with all of the following criteria:

A. Property Owners submit a copy of warranty deed or other acceptable document stating that Property Owners are the owners of Subject Property.

B. Property Owners submit a current survey dated no earlier than one (1) year prior to submittal date of the permit/approval request. This survey shall show for the Easement and Subject Property at a minimum, the following data:

i. Edge of water on date of survey.

ii. Elevation of water on date of survey and water control elevation for the affected water body.

iii. Drawings, plat, or other acceptable documentation for all platted and recorded easements according to the Broward County Public Records within ten (10) feet of the proposed improvements.

iv. All structures located on or within the easement and setback which the improvements are proposed to be constructed within.

v. All underground drainage culverts and other utilities which have been constructed within the easement and setback.

vi. Top of bank for adjacent lake with elevation of top of bank.

C. Property Owners shall submit a sketch of the proposed Improvements which shows the Subject Property, easement and setback.

D. The Improvements must further comply with the following criteria:

i. Maximum dimensions of twenty (20) feet along the water and twelve (12) feet wide.

ii. The Improvements shall not extend beyond more than four (4) feet beyond the water side of the shoreline as shown by the survey. However, in no event shall the location of the Improvements be based on a shoreline which is lower than two (2) feet below the established control elevation for the lake or water body that the Improvements are constructed over.

iii. The lowest horizontal structural member shall be a minimum of three (3) feet above the water elevations shown by the survey.

iv. The Improvements shall not be constructed closer than ten (10) feet to any side yard property line.

v. No encroachments of the Improvements shall be allowed over any platted and/or recorded easements, except as provided by this agreement and shown on the attached drawing/sketch.

vi. No part of the Improvements structure shall extend above the floor surface except handrails or built-in seating.

vii. Only material approved by the Broward County edition of the South Florida building Code and the District will be allowed for the Improvements.

WHEREAS, District and Property Owners are desirous of entering into an agreement to provide for approval of a permit for construction of the Improvements within the easement and setback; and

NOW, THEREFORE, in consideration of the premises and Ten and No/100 (\$10.00) Dollars and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by District and Property Owners, each intending to be legally bound, do hereby represent, warrant, covenant and agree as follows:

1. The foregoing statements are true and correct and are incorporated herein by reference as though set forth verbatim.

2. District agrees to issue a permit and approval to Property Owners permitting construction of Improvements within the easement and setback, provided Property Owners first submit to District for approval, construction plans which are in substantial compliance with the minimum engineering design specifications and criteria established by District and as stated above. The proposed plans or sketch for these Improvements are attached to this agreement as Exhibit "B".

3. All subsequent owners of Subject Property shall be bound by this Agreement which shall be a covenant running with the land.

4. Property Owners do hereby agree for themselves and their successors, assigns and heirs, with respect to Subject Property on which the Improvements are constructed within the easement and setback, to indemnify District and hold it harmless from any claims, losses, damages or expenses, specifically and exclusively arising out of the construction of the Improvements within the easement and setback and also following construction of the Improvements. This indemnification includes, but is not limited to any and all personal injuries which may be suffered by any individuals or property damage which may be incurred by any individuals or entities as a result of the construction of the Improvements within the easement and setback. Property Owners agree to indemnify District from any and all liability, loss or damage District may suffer as a result of such claims, demands, costs or judgments and further agree to take over and defend any such claims brought or actions filed against District with respect to the subject of the indemnity contained in this Agreement. The foregoing indemnity shall include reasonable attorney's fees and court costs incurred by District including court costs and reasonable attorney's fees incurred at the trial and all appellate levels. Nothing contained herein shall be deemed, however, to constitute a waiver by District of any limitations of its liability that may be accorded District by virtue of Section 768.28 Florida Statutes, or any subsequently enacted similar law.

5. Property Owners shall on the easement, setback and lake property adjacent to Subject Property, restore the lake bank to its original condition or District criteria as it exists on the date of this Agreement should construction of the Improvements within the easement and setback result at any time in the collapse of the lake bank or any other damage to the lake bank. In the event the Property Owners fail to restore the lake bank within thirty (30) days of receiving written notice from District, then District may undertake to perform such lake bank restoration as may be deemed by it to be necessary and Property Owners shall fully reimburse District for the cost of all such lake bank restoration work within thirty (30) days of receiving a bill.

6. Property Owners agree that during and following construction of the Improvements within the easement and setback, they shall take all reasonable and necessary steps to prevent pollution or damage to the adjacent lake as a result of said construction. In addition, Property Owners agree to be responsible for and reimburse District for all expenses arising out of pollution or damage to the adjacent lake resulting from said construction.

7. Property Owners agree to maintain the Improvements built by Property Owners or with their permission, in or on the easement and setback and Property Owners agree to fully and completely indemnify and hold harmless District, its successors and assigns for damages because of bodily injury or death resulting therefrom, sustained by any person or persons, or because of any damage to real property or personal property of District or of any entity due to any act or omission of Property Owners, their employees, subcontractors, designees, or agents and in or on the easement and setback.

8. In is the intent of Paragraph No. 7 of this Agreement that if the improvements approved and permitted by this Agreement deteriorate to a condition which requires maintenance or repairs, in the sole discretion of the District, that Property Owner will restore and repair the improvements to at least the condition as originally approved and permitted by the District. If the repairs are not completed within sixty (60) days following notification by District, the District may remove the improvements as provided by this Agreement.

9. Property Owners agree that in the event District shall have a reasonable permanent use of the easement and setback area, that within thirty (30) days notice by District, Property Owners shall remove the Improvements within the easement and setback and constructed pursuant to this agreement. In this event, the lake bank shall be restored to its original condition or District criteria as it exists on the date of this agreement. Notwithstanding the foregoing, in the event there is not a permanent need for said property but there is a temporary basis which need is reasonable for reasonable use of the easement District shall use all reasonable means to avoid the necessity of removing any part of the Improvements. If after attempts to use said property temporarily without removing the Improvements fail or are reasonably determined to be impossible or unreasonably inconvenient, then and in that event, upon the giving of thirty (30) days notice to the then owner of Subject Property, Property Owners shall remove so much of the Improvements as may be reasonably necessary to permit District to effectuate the temporary use. Thereafter, and upon notice from District that said temporary need or use has been fulfilled and is no longer necessary, Property Owners shall be permitted to replace so much of the Improvements which were removed, so long as the construction necessary to complete the replacement complies with District's criteria and requirements of this agreement.

10. Notwithstanding the provisions of Paragraph No. 9 of this Agreement, if an emergency condition or situation arises, as solely determined by the District, District may effect such repairs or remove such portion of the Improvements as required to alleviate said emergency condition or situation without being liable to the Property Owner for any damage which may occur to the improvements.

Notwithstanding the foregoing, District shall make a reasonable effort to contact the Property Owners to give Property Owners the opportunity to effect said repairs or removal of the Improvements.

11. Property Owners agree that if it is necessary for District to remove the Improvements constructed pursuant to this agreement and to restore the lake bank, that Property Owners will reimburse District for any and all costs incurred to effect said removal and restoration, including attorney's fees and costs expended in connection with such removal and restoration.

12. Any expenses including reasonable attorney's fees incurred by District as a result of the indemnification contained in this agreement and/or in removing the Improvements and restoring the lake bank shall be paid to District by Property Owners within thirty (30) days after receiving a bill. In the event payment is not received within thirty (30) days of billing, then the District shall be entitled to file a lien in the Broward County Public Records upon Subject Property for all expenses including reasonable attorney's fees, together with interest thereon at 18 percent per year or the highest nonusurious rate allowed by law, whichever is less and all costs of collection, including reasonable attorney's fees at all trial and appellate levels. In the further event that District is required to foreclose its lien, then and in such event, District will be entitled additionally to receive its reasonable attorney's fees and costs expended in connection with such foreclosure or collection procedure.

13. Property Owners by signing this agreement acknowledge that District is only permitting occupancy of the easement and setback by the Improvements, that District has not reviewed and will not review, acknowledge, or comment on the structural integrity or sufficiency of the Improvements and that Property Owners are solely responsible for the structural integrity and sufficiency of the Improvements.

14. Property Owners further acknowledge that the Improvements will be constructed in substantial compliance with the sketch or plans attached to this Agreement as Exhibit "B".

15. No changes, additions, or modifications to the Improvements as approved by this Agreement shall be permitted without approval of the District Board of Commissioners.

16. All notices of request, demand, and other communications hereunder shall be addressed to the parties as follows:

As to District

Central Broward Water Control District
Attn: District Manager/Secretary
8020 Stirling Road
Hollywood, Florida 33024

with copy to:

John C. Rayson
2400 E. Oakland Park Blvd.
Ft. Lauderdale, FL 33306

As to Property Owners:

Name:

Address:

and/or to the record owner of Subject Property according to the Broward County Property Appraiser's Office if the original Property Owner is no longer the owner of the Subject Property; unless the address is changed by the party by notice given to the other parties. Notice shall be in writing, mailed certified mail, return receipt requested, postage prepaid and shall be deemed delivered when mailed or upon hand delivery to the address indicated. Notwithstanding the foregoing, notices, requests, or demands or other communications referred to in this agreement may be sent by telegraph or private courier, but shall be deemed to have been given when received.

17. No waiver of any provision of this agreement shall be effective unless it is in writing, signed by the party against whom it is asserted and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

18. This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which will constitute one and the same agreement.

19. This agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors, assigns, and grantees.

20. This agreement shall be construed and interpreted according to the laws of the State of Florida and the venue with respect to any litigation with respect to this Agreement shall be Broward County, Florida.

21. All terms and words used in this agreement, regardless of the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require.

22. This agreement shall not be modified (and no purported modification thereof shall be effective unless in writing and signed by the party to be charged.

23. The exhibits hereto contain additional terms of this agreement. Typewritten or handwritten provisions inserted in this agreement or exhibit (and initialed by the parties) shall control all printed provisions in conflict therewith.

24. Whenever approvals of any nature are required by either party to this agreement, it is agreed that same shall not be unreasonably withheld.

25. This agreement shall be severable and if any part or portion of this agreement shall be found to be invalid or unenforceable, such findings shall not affect the remainder of this agreement.

26. Property Owners shall reimburse District and pay for any and all costs incurred by District incidental to entering into the terms of this agreement, including but not limited to engineering fees, surveying costs, attorney's fees, recording costs, and any other necessary expenses.

27. This agreement merges and supersedes any and all previous agreements on this subject matter between the parties, whether oral or written, and constitutes the entire agreement between the parties.

28. This agreement shall be recorded in the public records of Broward County, Florida with Property Owners to pay the full cost thereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written

Signed, sealed, and delivered
in the presence of:

PROPERTY OWNERS

WITNESS

SIGNATURE

Print Name

Print Name

WITNESS

SIGNATURE

Print Name:

Print Name:

AS TO PROPERTY OWNER

STATE OF FLORIDA)
)§
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____
by _____, who has produced (type of identification): _____
and who did take an oath.

WITNESS my hand and official seal in the county and state last aforesaid this ____ day of _____
_____, 20 ____.

Notary Public:

My Commission Expires:

STATE OF FLORIDA)
)§
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____
by _____, who has produced (type of identification): _____
_____ and who did take an oath.

WITNESS my hand and official seal in the county and state last aforesaid this ____ day of _____
_____, 20____.

Notary Public:

My Commission Expires:

Signed, sealed, and delivered

“DISTRICT”
(CENTRAL BROWARD WATER CONTROL DISTRICT)

WITNESS

By: _____
SIGNATURE

Print Name:

PRINT NAME