

RESOLUTION NO. 2009 – 081

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING AN AGREEMENT WITH SOUTH BROWARD DRAINAGE DISTRICT FOR IRRIGATION INTAKE LINES IN CANAL/CANAL MAINTENANCE EASEMENT AT THE COUNTRY ESTATES FISHING HOLE PARK; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR AND TOWN ATTORNEY TO ENTER INTO AN AGREEMENT IN SUBSTANTIALLY THE SAME FORM AS ATTACHED HERETO AS EXHIBIT "A"; AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE INTENT OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town acquired the Country Estates Fishing Hole property in November of 2004 for the purpose of creating a public park; and

WHEREAS, the acquisition of the Property in "as is" condition included an existing unpermitted irrigation system; and

WHEREAS, the Town has contracted with a professional nursery service provider under a two (2) year agreement to maintain the nursery, sell trees, and plant trees on public properties; and

WHEREAS, the process of preparing the trees for sale and/or planting on public property includes a period of time in which root pruned plant material must "harden off" under irrigation; and

WHEREAS, the operation of an irrigation system at the property requires permitting from both the South Florida Water Management District (SFWMD) and the South Broward Drainage District (SBDD); and

WHEREAS, the SBDD permit requires the execution of an Agreement for Irrigation Intake Lines In Canal/Canal Maintenance Easement; and

WHEREAS, it is in the best interest of the Town to comply with the required permitting of the existing irrigation system in order to maintain and service the nursery stock.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

Section 1. The above-referenced recitals are true and correct and are incorporated herein by reference.

Section 2. The Town Council hereby approves the Agreement for Irrigation Intake Lines In Canal/Canal Maintenance Easement, in substantially the same form as attached hereto and incorporated herein as Exhibit "A".

Section 3. The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into an agreement in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and/or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

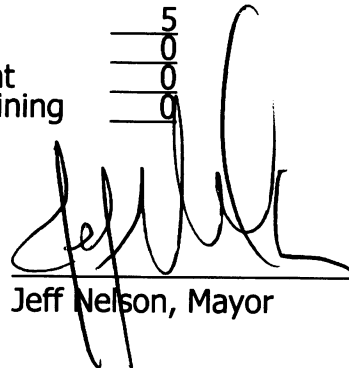
Section 4. The Town Council authorizes the appropriate Town officials to execute any and all documents necessary to effectuate the intent of this Resolution.

Section 5. That this Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED ON this 3rd day of September 2009, on a motion made by Council Member Knight and seconded by Council Member McKay.

Nelson	<u>YES</u>
Breitkreuz	<u>YES</u>
Fisikelli	<u>YES</u>
Knight	<u>YES</u>
McKay	<u>YES</u>

Ayes	<u>5</u>
Nays	<u>0</u>
Absent	<u>0</u>
Abstaining	<u>0</u>



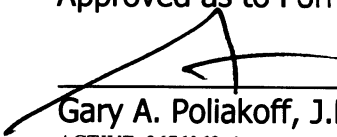
Jeff Nelson, Mayor

ATTEST:



Debra Doré-Thomas, CMC, Town Clerk

Approved as to Form and Correctness:



Gary A. Poliakoff, J.D., Town Attorney
ACTIVE: 2676069_1

Prepared by: SOUTH BROWARD DRAINAGE DISTRICT
6591 SOUTHWEST 180 AVENUE
SOUTHWEST RANCHES, FLORIDA 33331

Return to: SOUTH BROWARD DRAINAGE DISTRICT
6591 SOUTHWEST 180 AVENUE
SOUTHWEST RANCHES, FLORIDA 33331

FOLIO #: 50 39 25 020 060

AGREEMENT
IRRIGATION INTAKE LINES IN CANAL/CANAL MAINTENANCE EASEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, by and between SOUTH BROWARD DRAINAGE DISTRICT, a political subdivision of the State of Florida, hereinafter referred to as "District", and Town of Southwest Ranches, 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. 50 39 25 020 060; and

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

WHEREAS, a canal maintenance easement dedicated to the District is located on the Subject Property which is adjacent to a canal owned/operated by the District or over which the District has a canal maintenance easement and/or other easement rights and which the District either maintains or 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 canal/canal maintenance easement, or other property owned by the District or over which the District has permitting authority without approval and authorization by the District; and

WHEREAS, Property Owners desire an approval from District for themselves, their successors, assigns and heirs for the purpose of obtaining a permit to construct and place an irrigation line 3 inches in diameter, hereinafter referred to as "Improvements", within the canal/canal maintenance easement; and

WHEREAS, as a condition of approval of the improvements within the canal/canal maintenance easement, 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 canal/canal maintenance easement; and

WHEREAS, the District's rules, regulations and criteria and the standard permit form issued by District provide that if construction of the improvements are permitted within the canal/canal maintenance easement, the Property Owners shall remove that portion of the improvements which interfere with the operations of the District upon request by the District; and

WHEREAS, nothing contained herein shall be interpreted or construed as deleting or modifying any other condition of the District's permit to property owners or the District's rules, regulations and criteria, unless specifically provided for in this agreement; and

WHEREAS, as a condition of allowing the improvements to be constructed within the canal/canal maintenance easement, District requires 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 canal/canal maintenance easement; and

WHEREAS, District has determined that Property Owners owning property adjacent to and including water bodies within the District may obtain a permit for construction of improvements within the District's canal/canal maintenance easements so long as the improvements comply with all of the following criteria:

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

B. Property Owners shall submit a current survey dated no earlier than one (1) year prior to submittal date of the permit/approval request unless the District's Director determines that a current survey is not required. This survey, if required, shall show the canal/canal maintenance easement on the property owner's property.

C. Property Owners shall submit a sketch of the proposed Improvements which shows the property owner's property and canal/canal maintenance easement.

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

i. 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.

ii. Only material approved by the Broward County edition of the South Florida Building Code or the applicable local government (Broward County, City or Town that the Improvements are located in) and the District will be allowed for the Improvements.

iii. If required by the District, the County, City or Town that the Improvements are located in must sign off or approve the Improvements to be in accordance with the County, City or Town building code.

iv. If required by the District, Property Owner shall submit for review and approval an engineering report and drawings which describe and show how the Improvements will be constructed and what precautions are being taken to prevent the Improvements from adversely affecting the District's drainage system.

WHEREAS, District and Property Owners are desirous of entering into an agreement to permit the construction of the Improvements within the canal/canal maintenance easement;

NOW, THEREFORE, in consideration of the premises and Ten and No/100 Dollars (\$10.00) and other good and valuable considerations from each to the other, the receipt and sufficiency of which are hereby acknowledged by District and Property Owners, each intending to be legally bound, do hereby represent, warrant and 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 permits to Property Owners permitting construction of the Improvements within the canal/canal maintenance easement, provided Property Owners first submit to District for approval, plans describing the location of the irrigation intake lines. 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 canal/canal maintenance easement, 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 canal/canal maintenance easement 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 canal/canal maintenance easement. 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 attorneys' fees and court costs incurred by District including court costs and reasonable attorneys' 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 § 768.28 Florida Statutes, or any subsequently enacted similar law.

5. Property Owners shall on the canal/canal maintenance easement adjacent to or a part of property owner's property, restore the canal 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 result at any time in the collapse of the canal bank or any other damage to the canal bank. In the event that Property Owners fail to restore the canal bank within ten (10) working days of receiving written notice from District, then District may undertake to perform such canal bank restoration as may be deemed by it to be necessary and Property Owners shall fully reimburse District for the cost of all such canal 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 canal/canal maintenance easement, they shall take all reasonable and necessary steps to prevent pollution or damage to the adjacent canal 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 canal resulting from said construction.

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of which will constitute one and the same agreement.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

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

22. 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.

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

24. 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.

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

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:

"DISTRICT" (South Broward Drainage District)

Witness Signature

By: _____
Scott Hodges, Chairperson

Print Witness Name

Witness Signature

Print Witness Name

Attest:

Witness Signature

By: _____
Robert E. Goggin IV, Secretary

Print Witness Name

Witness Signature

Print Witness Name

STATE OF FLORIDA)
)§
COUNTY OF BROWARD)

The foregoing Agreement was acknowledged before me this ____ day of _____, _____, by Scott Hodges and Robert E. Goggin IV as Chairperson and Secretary, respectively of the SOUTH BROWARD DRAINAGE DISTRICT, a political subdivision of the State of Florida, on behalf of SOUTH BROWARD DRAINAGE DISTRICT. They are personally known to me.

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

[NOTARY SEAL OR STAMP]

Notary Public:
State of Florida at Large

Juanita Romance
Witness Signature

Juanita Romance
Print Witness Name

Gissella Esposito
Witness Signature

GISSELLA ESPOSITO
Print Witness Name

Peter J. Dessert
Witness Signature

Peter J. Dessert
Print Witness Name

Approved as to Form and Correctness

Gary A. Poliakoff, J.D., Town Attorney

TOWN OF SOUTHWEST RANCHES
"Property Owner(s)"

By: [Signature]
Signature

Jeff Nelson, Mayor
Print Name

By: [Signature]
Signature

Charles H. Lynn, Town Administrator
Print Name

By: [Signature]
Signature

Debra Doré-Thomas, CMC, Town Clerk
Print Name

STATE OF FLORIDA :
COUNTY OF BROWARD :

The foregoing instrument was acknowledged before me this 17th day of September, 2009, by JEFF NELSON, who is personally known to me, or produced _____ as identification, and she did/did not take an oath. If no type of identification is indicated, the above-named person is personally known by me.



KEITH POLIAKOFF
Commission DD 637070
Expires February 6, 2011
Bonded thru Troy Fair Insurance 800-365-7019

[Signature]
Notary Public

My Commission Expires:

STATE OF FLORIDA :
COUNTY OF BROWARD :

The foregoing instrument was acknowledged before me this 17th day of September, 2009, by CHARLES H. LYNN, who is personally known to me, or produced _____ as identification, and he did/did not take an oath. If no type of identification is indicated, the above-named person is personally known by me.

[Signature]
Notary Public

My Commission Expires:

ACTIVE: 2690411_1



KEITH POLIAKOFF
Commission DD 637070
Expires February 6, 2011
Bonded thru Troy Fair Insurance 800-365-7019