Office of
INDIAN RIVER COUNTY ATTORNEY

Dylan Reingold, County Attorney
William K. DeBraal, Deputy County Attorney
Susan J. Prado, Assistant County Attorney

MEMORANDUM

TO: Board of County Commissioners

FROM: Dylan Reingold, County Attorney

DATE: April 22, 2022

SUBJECT: Calcutta Drive Docks

BACKGROUND.

Calcutta Drive is a County road that runs parallel with a canal and the riparian rights to the canal are purportedly the County's. On May 6, 1985, the then County Attorney Gary M. Brandenburg wrote a memorandum to Art Challacombe, an Environmental Planner stating "that the canals and bulkhead system were placed within the subdivision for the benefit of all of the property owners in the subdivision." He went on to explain that "[a]s a result, the County has adopted the policy in the past of allowing individuals to build docks along the County road within the appropriate setbacks, provided they enter into an agreement to hold the County harmless for any and all damage to the bulkhead system of road." He added that "[t]his permitting has been done on a first-come, first-served basis, exclusively for property owners in Country Club Pointe."

On February 5, 1991, the County staff presented an agenda item to the Indian River County Board of County Commissioners (the "Board") concerning license agreements for these docks. In a memorandum from Roland M. DeBlois, Chief, Environmental Planning, dated January 30, 1991, Mr. DeBlois explained the history of the docks being constructed on a first-come, first served basis, provided that the applicant signed the appropriate waiver. Mr. DeBlois also noted that the approvals have been handled administratively. Mr. DeBlois then went on to explain that in consultation with the County Attorney's Office, that the County should look to entering into license agreements with a new applicant, instead of simply relying on the hold harmless waiver. After some discussion on the provisions of the license agreement, the Board approved the license agreement for $100 per year, subject to the changes requested by the Board. It is important to note that the license agreement included a provision that if the property is sold, that the buyer could execute a similar license within 90 days, and that if the buyer failed to do so, the dock would become the property of the County.

On May 26, 1998, the Board passed Resolution 1998-58, in which the Board delegated the authority to the Community Development Director to execute license agreements pertaining to transferring property utilizing County riparian land for docks within the Country Club Pointe Subdivision. This allowed for a smooth transition for those property owners selling homes that had license agreements.

The license agreements are recorded in the public records and each agreement contains the legal description of the dock/space location as well as the single-family residence that is associated with the dock. If the single-family residence is rented, the tenant is allowed to use the dock and the covenants in the license agreement are to be preserved in the lease. Additionally, no homeowner is allowed to rent the dock/space to third parties; and when the residence sells, the new owner has 90 days from the date of purchase to enter into a similar license agreement or the dock/space and any improvements revert back to the County and made available to the next qualifying person on the waiting list.

Presently there are 20 docks/spaces along Calcutta Drive, and there are three different scenarios that presently exist with regard to these docks: grandfathered; indemnity certificate; and license agreement.

Grandfathered: There are only 2 remaining docks that are grandfathered. No liability insurance is required, and no fees are collected with Grandfathered docks. When the property transfers, the County policy has been to have the new owners enter into a license agreement, thus we then have liability insurance, annual fees paid, and a much better public record of the dock and its association with the residence.

Indemnity Certificate: There is 1 dock that has an indemnification certificate on file (and when the property transfers, the County policy has been to have the new owners enter into a license agreement). Nothing presently is required, except we have the owner's assurance that the County is indemnified.

License Agreement: There are 17 docks with license agreements. Docks/spaces under license agreement are required to annually submit the following items:

1. $300,000 liability insurance naming the County as an additional insured (if a dock has been constructed)
2. $100.00 annual license fee plus the applicable sales tax

There is a long waiting list of residents within the Country Club Pointe subdivision who desire a dock and who do not have their own riparian rights to canal frontage. The monitoring of these docks has proven to be a very time-consuming process and staff is constantly being challenged by several issues from the residents not timely paying, not having the proper insurance, not pulling permits when they repair their docks, disgruntled subdivision residents who complain about docks in disrepair in an attempt to obtain a dock for themselves; realtors who inquire about the docks; title companies and closing agents not giving timely notice of a scheduled closing.

There has been strife in the Country Club Pointe subdivision about the policy of allowing the license agreements to transfer to the new purchaser of a home associated with a dock instead of having the dock go to the next person on the waiting list. Although a new transfer policy would open up opportunities to more residents within the Country Club Pointe subdivision, current property owners with docks may be upset, and potential have legal claims against the County, that they will no longer have the ability to make such transfers.

The County Attorney's Office does not recommend that the Board change the 30 plus year old transfer policy. However, the County Attorney's Office recommends that the Board increase the annual license fee from $100 to $2,000 per year, for any new license agreements. Additionally, the County Attorney's Office recommends implementing a one-time dock license transfer fee of $5,000. The County Attorney's Office and County staff diverts significant time to addressing the various issues pertaining to these docks. With these increased fees, the County Attorney's Office believes that the County could support additional resources to monitoring the payment of fees, submission of insurance, transfer of license agreements and maintenance of the docks. It is believed that a more rigorous program would also assist in opening up more opportunities to others in the Country Club Pointe subdivision.

Additionally, the Public Works Department has requested that the license agreements be updated as follows:

- If a dock falls into disrepair and is not fixed within the applicable time period, the County has the right to remove the dock and lien the property for the costs associated with such removal.

- Licensees be required to have the docks inspected on a five-year cycle by an independent third-party expert and submit that report to the County.

- Termination of license for unpermitted work on the dock, for work that would require a permit.

FUNDING

Revenues collected for dock license agreements are deposited into account 001038-362010 - General Fund/Rents & Royalties.

RECOMMENDATION.

The County Attorney's Office recommends that that the Board increase the annual license fee from $100 to $2,000 per year, for any new license agreements. Additionally, the County Attorney's Office recommends implementing a one-time dock license transfer fee of $5,000. The County Attorney's Office further recommends that the license agreements be updated to include provisions relating to the removal of the docks, five-year inspections, and termination for unpermitted work.

ATTACHMENT.

Aerial of docks
Sample of Current License Agreement

Office of
INDIAN RIVER COUNTY ATTORNEY

Dylan Reingold, County Attorney
William K. DeBraal, Deputy County Attorney
Susan J. Prado, Assistant County Attorney

MEMORANDUM

TO: Board of County Commissioners

FROM: Dylan Reingold, County Attorney

DATE: July 1, 2022

SUBJECT: Calcutta Drive Docks

BACKGROUND.

Calcutta Drive is a County road that runs parallel with a canal and the riparian rights to the canal are purportedly the County's. On May 6, 1985, the then County Attorney Gary M. Brandenburg wrote a memorandum to Art Challacombe, an Environmental Planner stating "that the canals and bulkhead system were placed within the subdivision for the benefit of all of the property owners in the subdivision." He went on to explain that "[a]s a result, the County has adopted the policy in the past of allowing individuals to build docks along the County road within the appropriate setbacks, provided they enter into an agreement to hold the County harmless for any and all damage to the bulkhead system of road." He added that "[t]his permitting has been done on a first-come, first-served basis, exclusively for property owners in Country Club Pointe."

On February 5, 1991, the County staff presented an agenda item to the Indian River County Board of County Commissioners (the "Board") concerning license agreements for these docks. In a memorandum from Roland M. DeBlois, Chief, Environmental Planning, dated January 30, 1991, Mr. DeBlois explained the history of the docks being constructed on a first-come, first served basis, provided that the applicant signed the appropriate waiver. Mr. DeBlois also noted that the approvals have been handled administratively. Mr. DeBlois then went on to explain that in consultation with the County Attorney's Office, that the County should look to entering into license agreements with a new applicant, instead of simply relying on the hold harmless waiver. After some discussion on the provisions of the license agreement, the Board approved the license agreement for $100 per year, subject to the changes requested by the Board. It is important to note that the license agreement included a provision that if the property is sold, that the buyer could execute a similar license within 90 days, and that if the buyer failed to do so, the dock would become the property of the County.

On May 26, 1998, the Board passed Resolution 1998-58, in which the Board delegated the authority to the Community Development Director to execute license agreements pertaining to transferring property utilizing County riparian land for docks within the Country Club Pointe Subdivision. This allowed for a smooth transition for those property owners selling homes that had license agreements.

On May 10, 2022, the Board voted to increase the annual license fee from $100 to $2,000 per year, for any new license agreements and implement a one-time dock license transfer fee of $5,000. The Board also voted to modify the current license agreements to add the following requirements:

- If a dock falls into disrepair and is not fixed within the applicable time period, the County has the right to remove the dock and lien the property for the costs associated with such removal.

- Licensees be required to have the docks inspected on a five-year cycle by an independent third-party expert and submit that report to the County.

- Termination of license for unpermitted work on the dock, for work that would require a permit.

Finally, the Board voted to implement a new policy that if a dock reverts to the County, then that dock will no longer be transferable to the future property owner, but will instead go to the next Country Club Pointe Subdivision property owner on the dock waiting list. The County Attorney's Office has revised the dock license agreements to reflect these changes and a resolution delegating to the Community Development Director the authority to execute the license agreements.

Finally, the dock owners of what is known as Dock Number 14 on the County list, Mr. and Mrs. Cusson, have not responded to letters concerning the disrepair of the dock. The County Attorney's Office requests that the Board authorize the County Attorney's Office to record a termination of the license agreement and then offer this dock to the first person on the wait list. Per the Board direction, this dock will no longer be directly tied to a property within the Country Club Pointe Subdivision.

FUNDING

Revenues collected for dock license agreements are deposited into account 001038-362010 - General Fund/Rents & Royalties.

RECOMMENDATION.

The County Attorney's Office recommends that the Indian River County Board of County Commissioners approve the resolution and the associated form license agreements. The County Attorney's Office also requests that the Board authorize the County Attorney's Office to record a termination of the license agreement for Dock Number 14 (Cusson) and offer this dock to the first person on the wait list.

ATTACHMENT.

Resolution
Form License Agreements

RESOLUTION NO. 2022-____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, DELEGATING AUTHORITY TO THE COMMUNITY DEVELOPMENT DIRECTOR OR DESIGNEE, TO EXECUTE LICENSE AGREEMENTS PERTAINING TO DOCKS UTILIZING COUNTY RIPARIAN LAND WITHIN THE COUNTRY CLUB POINTE SUBDIVISION.

WHEREAS, per Resolution 1998-58, the Indian River County Board of County Commissioners ("Board") delegated to the Community Development Director the authority to execute license agreements pertaining to transferred property utilizing County riparian land for docks within the County Club Pointe Subdivision;

WHEREAS, on May 10, 2022, the Board voted to amend the standard license agreement and also change the process by which docks are transferred within the Country Club Pointe Subdivision; and

WHEREAS, the Board is approving this resolution to the Community Development Director the authority to execute the new license agreements pertaining to the transfer of docks utilizing the County riparian land within the County Club Pointe Subdivision.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, that:

1. The Community Development Director, or designee, is hereby delegated the authority to execute any and all license agreements pertaining to the docks utilizing County riparian land within the County Club Pointe Subdivision.

2. The license agreements shall be insubstantially the same form as that attached hereto as Exhibit "A". One form is for license agreements for docks that are associated with property transfers and the other is for docks unassociated with property transfers.

This Resolution was moved for adoption by Commissioner _____, and the motion was seconded by Commissioner _____, and, upon being put to a vote, the vote was as follows:

Chairman Peter D. O'Bryan	_____
Vice Chairman Joseph H. Earman	_____
Commissioner Susan Adams	_____
Commissioner Joseph E. Flescher	_____
Commissioner Laura Moss	_____

The Chairman thereupon declared this Resolution duly passed and adopted this 12th day of July, 2022.

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

RESOLUTION NO. 2022-_____

By_____
Peter D. O'Bryan, Chairman

Attest: Jeffrey R. Smith, Clerk of Court
and Comptroller

By _____
Deputy Clerk

Approved as to form and
legal sufficiency

By _____
Dylan Reingold, County Attorney

This document was prepared by:
Office of Indian River County Attorney
1801 27th Street
Vero Beach, FL 32960
772-226-1425

LICENSE AGREEMENT

This agreement made and entered into this ____ day of _____, 2022 by and between **INDIAN RIVER COUNTY**, **a political subdivision of the State of Florida**, whose mailing address is 1801 27th Street, Vero Beach, Florida 32960, hereinafter referred to as **"County"** and **_____,** whose mailing address is _____, hereinafter **"Licensee"**.

W I T N E S S E T H :

That, in consideration of the following covenants and agreements, the parties hereto state as follows:

1. Indian River County is presumptively the holder of riparian rights to the canal lying easterly of Calcutta Drive, by virtue of the dedication of Calcutta Drive adjacent to said canal to the public by the Replat of Country Club Pointe, Unit 1 at Plat Book 4, Page 11, Public Records of Indian River County, Florida;

2. **Licensee** is owner of Lot __, Block _, Country Club Pointe, Unit 2, which lot lies _____ (hereinafter the **"PROPERTY"**);

3. **Licensee** has sought permission to utilize the riparian land of **County** along the east right-of-way line of Calcutta Drive, generally described as due east of due east of the north property line of Lot 10, Block 2, Replat of Country Club Pointe Subdivision, Unit 1 AND plus-or-minus 13 feet south of the extension thereof, and running southerly approximately for 25 feet along the canal (and numbered __ on **County's** inventory) for the use of a dock for personal recreational use of themselves and/or occupants of said Lot __, Block _, Country Club Pointe, Unit 2;

4. **County** agrees to allow **Licensee** to utilize said dock for personal recreational uses of themselves and/or the occupants of Lot __, Block _, Country Club Pointe, Unit 2 for so long as they own/occupy the **PROPERTY**. This right shall not be assignable, nor shall **Licensee** rent the dock to third parties other than the occupant (if not **Licensee**) of Lot __, Block _, Country Club Pointe, Unit 2;

5. **Licensee** agrees to pay the County a one-time $5,000 transfer fee and $2,000.00 per year plus applicable sales tax commencing on _____ _____, 2022 and each year thereafter for the exclusive right of **Licensee** and/or occupants of Lot __, Block _, Country Club Pointe, Unit 2, to utilize said dock for the purposes stated herein;

6. **Licensee** agrees to hold **County** harmless from any damages arising out of the use of **County** riparian land for the purposes of accessing the canal lying easterly of the **PROPERTY** by any member of **Licensee's** or occupants' families or their guests. This indemnification shall be by means of an insurance policy naming Indian River County as an additional insured in the amount of $300,000.00 liability insurance. A certificate of insurance must be provided annually to the **County** by the **Licensee** detailing the following language in the Descriptions of Operations/Locations on the certificate: "Indian River County is named as an additional insured with respect to labiality coverage for leased dock at Riparian land as described in Book _____, Page _____ of the public records of Indian River County, Dock No. 17.";

7. **Licensee** agrees that no boat maintained at said dock shall have a clearance of greater than 14 feet above water, said height limitation being related to the clearance of the Indian River Boulevard bridge over the Main Relief Canal. The maximum length of any boat shall not exceed 24 feet (including engines) for the dock identified as number __ on the County's dock inventory;

8. **Licensee** agrees that the County may make annual inspections of the dock facility under license agreement and that this right shall be preserved in any rental agreement

for Lot __, Block _, Country Club Pointe, Unit 2. In addition to such annual inspection, the County may inspect the dock facility due to storm events or complaints submitted to the County by third parties. **Licensee** further agrees to correct any maintenance deficiencies, subject to normal County building permit requirements, within thirty (30) days of notification of any such deficiencies identified. If the dock facility falls into disrepair and is not corrected within the applicable time period, the County has the right to remove the dock and lien the **PROPERTY** for the costs associated with such removal;

9. **Licensee** must apply for a permit with Indian River County, within 60 days of entering into this license agreement, to either repair or demolish and rebuild the dock. Within 120 days from the issuance of the permit, the repairs or rebuilding of the dock must be accomplished and a request to Indian River County for an inspection must be made;

10. Prior to the installation of any electricity to the dock, **Licensee** shall obtain a quote from a licensed electrician familiar with dock designs. **Licensee** shall also provide a copy of the quote and designs to the **County** for review and must receive approval from the **County** before electric work can be installed;

11. Prior to the installation of any water or irrigation service and connection to the dock, **Licensee** shall obtain a quote from a licensed contractor familiar with dock designs. **Licensee** shall also provide a copy of the quote and designs to the **County** for review and must receive approval from the **County** before work can be installed;

12. The parties agree that this license agreement shall terminate upon sale of the **PROPERTY** by the **Licensee**, at which time any dock improvements under this license agreement shall become the property of **County**, unless the then purchaser of the **PROPERTY** enters into a license agreement for the usage of the dock facility containing covenants and agreements similar to this license agreement within ninety (90) days of sale of the **PROPERTY**.

13. **Licensee** is required to have the dock facility inspected on a five-year cycle by an independent third-party expert and to submit that report to the **County**;

14. This license agreement may also be terminated by **County** if condition 4 or covenants 5, 6, 7, 8, 9, 10 or 11 above are violated. County may also terminate this license agreement for unpermitted work on the dock facility, for work that would require a permit. **Licensee** may terminate this agreement upon sixty (60) days' written notice to Indian River County. Any event of termination shall cause any and all dock improvements to become the property of Indian River County; and

15. This license agreement shall be recorded in the Public Records of Indian River County, Florida.

IN WITNESS WHEREOF, **County** and **Licensee** have caused this agreement to be signed in their respective names.

Witnesses:

Signature: _____
Printed Name: _____

Signature: _____
Printed Name: _____

INDIAN RIVER COUNTY, FLORIDA

By: _____
Phillip J. Matson, AICP
Community Development Director

Authority: Resolution No. 2022-_____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2022 by **Phillip J. Matson, AICP, Community Development Director for Indian River County, Florida under authority of the Board of County Commissioners of Indian River County, Florida.** who is ☐ personally known or ☐ produced identification in the form of _____.

NOTARY PUBLIC:

SEAL:

Sign: _____
printed name:
Commission No.:
Commission Expiration:

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Witnesses:

OWNER:

Signature: _____
Printed Name: _____

By: _____
_____

Signature: _____
Printed Name: _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me, by means of □ physical presence or □ online notarization, this ____ day of _____, 2022 by _____, who is □ personally known or □ produced identification in the form of _____.

NOTARY PUBLIC:

SEAL:

Sign: _____
Printed Name:
Commission No.:
Commission Expiration:

This document was prepared by:
Office of Indian River County Attorney
1801 27th Street
Vero Beach, FL 32960
772-226-1425

LICENSE AGREEMENT

This agreement made and entered into this ____ day of _____, 2022 by and between **INDIAN RIVER COUNTY**, **a political subdivision of the State of Florida**, whose mailing address is 1801 27th Street, Vero Beach, Florida 32960, hereinafter referred to as **"County"** and **_____,** whose mailing address is _____, hereinafter **"Licensee"**.

W I T N E S S E T H :

That, in consideration of the following covenants and agreements, the parties hereto state as follows:

1. Indian River County is presumptively the holder of riparian rights to the canal lying easterly of Calcutta Drive, by virtue of the dedication of Calcutta Drive adjacent to said canal to the public by the Replat of Country Club Pointe, Unit 1 at Plat Book 4, Page 11, Public Records of Indian River County, Florida;

2. **Licensee** is owner of Lot __, Block _, Country Club Pointe, Unit 2, which lot lies _____ (hereinafter the **"PROPERTY"**);

3. **Licensee** has sought permission to utilize the riparian land of **County** along the east right-of-way line of Calcutta Drive, generally described as due east of due east of the north property line of Lot 10, Block 2, Replat of Country Club Pointe Subdivision, Unit 1 AND plus-or-minus 13 feet south of the extension thereof, and running southerly approximately for 25 feet along the canal (and numbered __ on **County's** inventory) for the use of a dock for personal recreational use of themselves and/or occupants of said Lot __, Block _, Country Club Pointe, Unit 2;

4. **County** agrees to allow **Licensee** to utilize said dock for personal recreational uses of themselves and/or the occupants of Lot __, Block _, Country Club Pointe, Unit 2 for so long as they own/occupy the **PROPERTY**. This right shall not be assignable, nor shall **Licensee** rent the dock to third parties other than the occupant (if not **Licensee**) of Lot __, Block _, Country Club Pointe, Unit 2;

5. **Licensee** agrees to pay the County a one-time $5,000 transfer fee and $2,000.00 per year plus applicable sales tax commencing on _____ _____, 2022 and each year thereafter for the exclusive right of **Licensee** and/or occupants of Lot __, Block _, Country Club Pointe, Unit 2, to utilize said dock for the purposes stated herein;

6. **Licensee** agrees to hold **County** harmless from any damages arising out of the use of **County** riparian land for the purposes of accessing the canal lying easterly of the **PROPERTY** by any member of **Licensee's** or occupants' families or their guests. This indemnification shall be by means of an insurance policy naming Indian River County as an additional insured in the amount of $300,000.00 liability insurance. A certificate of insurance must be provided annually to the **County** by the **Licensee** detailing the following language in the Descriptions of Operations/Locations on the certificate: "Indian River County is named as an additional insured with respect to labiality coverage for leased dock at Riparian land as described in Book _____, Page _____ of the public records of Indian River County, Dock No. 17.";

7. **Licensee** agrees that no boat maintained at said dock shall have a clearance of greater than 14 feet above water, said height limitation being related to the clearance of the Indian River Boulevard bridge over the Main Relief Canal. The maximum length of any boat shall not exceed 24 feet (including engines) for the dock identified as number __ on the County's dock inventory;

8. **Licensee** agrees that the County may make annual inspections of the dock facility under license agreement and that this right shall be preserved in any rental agreement

for Lot __, Block _, Country Club Pointe, Unit 2. In addition to such annual inspection, the County may inspect the dock facility after storm events or due to complaints submitted to the County by third parties. **Licensee** further agrees to correct any maintenance deficiencies, subject to normal County building permit requirements, within thirty (30) days of notification of any such deficiencies identified. If the dock facility falls into disrepair and is not corrected within the applicable time period, the County has the right to remove the dock and lien the **PROPERTY** for the costs associated with such removal;

9. **Licensee** must apply for a permit with Indian River County, within 60 days of entering into this license agreement, to either repair or demolish and rebuild the dock. Within 120 days from the issuance of the permit, the repairs or rebuilding of the dock must be accomplished and a request to Indian River County for an inspection must be made;

10. Prior to the installation of any electricity to the dock, **Licensee** shall obtain a quote from a licensed electrician familiar with dock designs. **Licensee** shall also provide a copy of the quote and designs to the **County** for review and must receive approval from the **County** before electric work can be installed;

11. Prior to the installation of any water or irrigation service and connection to the dock, **Licensee** shall obtain a quote from a licensed contractor familiar with dock designs. **Licensee** shall also provide a copy of the quote and designs to the **County** for review and must receive approval from the **County** before work can be installed;

12. The parties agree that this license agreement shall terminate upon sale of the **PROPERTY** by the **Licensee**, at which time any dock improvements under this license agreement shall become the property of **County**, this license agreement will not transfer with the transfer of the **PROPERTY**;

13. **Licensee** is required to have the dock facility inspected on a five-year cycle by an independent third-party expert and to submit that report to the **County**;

14. This license agreement may also be terminated by **County** if condition 4 or covenants 5, 6, 7, 8, 9, 10 or 11 above are violated. County may also terminate this license agreement for unpermitted work on the dock facility, for work that would require a permit. **Licensee** may terminate this agreement upon sixty (60) days' written notice to Indian River County. Any event of termination shall cause any and all dock improvements to become the property of Indian River County; and

15. This license agreement shall be recorded in the Public Records of Indian River County, Florida.

IN WITNESS WHEREOF, **County** and **Licensee** have caused this agreement to be signed in their respective names.

Witnesses:

Signature: _____
Printed Name: _____

Signature: _____
Printed Name: _____

INDIAN RIVER COUNTY, FLORIDA

By: _____
Phillip J. Matson, AICP
Community Development Director

Authority: Resolution No. 2022-_____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2022 by **Phillip J. Matson, AICP, Community Development Director for Indian River County, Florida under authority of the Board of County Commissioners of Indian River County, Florida.** who is ☐ personally known or ☐ produced identification in the form of _____.

NOTARY PUBLIC:

SEAL:

Sign: _____
printed name:
Commission No.:
Commission Expiration:

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Witnesses:

OWNER:

Signature: _____
Printed Name: _____

By: _____
_____

Signature: _____
Printed Name: _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me, by means of □ physical presence or □ online notarization, this ____ day of _____, 2022 by _____, who is □ personally known or □ produced identification in the form of _____.

NOTARY PUBLIC:

SEAL:

Sign: _____
Printed Name:
Commission No.:
Commission Expiration:

Office of
INDIAN RIVER COUNTY ATTORNEY

Dylan Reingold, County Attorney
William K. DeBraal, Deputy County Attorney
Susan J. Prado, Assistant County Attorney

MEMORANDUM

TO: Board of County Commissioners

FROM: Dylan Reingold, County Attorney

DATE: August 7, 2022

SUBJECT: Calcutta Drive Docks

BACKGROUND.

Calcutta Drive is a County road that runs parallel with a canal and the riparian rights to the canal are purportedly the County's. On May 6, 1985, the then County Attorney Gary M. Brandenburg wrote a memorandum to Art Challacombe, an Environmental Planner stating "that the canals and bulkhead system were placed within the subdivision for the benefit of all of the property owners in the subdivision." He went on to explain that "[a]s a result, the County has adopted the policy in the past of allowing individuals to build docks along the County road within the appropriate setbacks, provided they enter into an agreement to hold the County harmless for any and all damage to the bulkhead system of road." He added that "[t]his permitting has been done on a first-come, first-served basis, exclusively for property owners in Country Club Pointe."

On February 5, 1991, the Indian River County Board of County Commissioners (the "Board") approved a license agreement for $100 per year. On May 26, 1998, the Board passed Resolution 1998-58, delegating the authority to the Community Development Director to execute license agreements pertaining to transferring property utilizing County riparian land for docks within the Country Club Pointe Subdivision.

On May 10, 2022, the Board voted to increase the annual license fee from $100 to $2,000 per year, for any new license agreements and implement a one-time dock license transfer fee of $5,000. The Board also voted to modify the current license agreements to include additional requirements. The Board also voted to implement a new policy that if a dock reverts to the County, then that dock will no longer be transferred to the future property owner, but will instead go to the next Country Club Pointe Subdivision property owner on the dock waiting list. On July 12, 2022, the Board voted approve the revised dock license agreements to reflect these changes and a resolution delegating to the Community Development Director the authority to execute the license agreements.

The County Attorney's Office is now providing an update to the Board on various docks that have been identified as being in some form of disrepair.

Dock 3 – September 2021 Country Club Pointe Docks Report indicates that dock is in a state of disrepair and not in a functional condition. In December 2021, I sent a letter to the licensee requesting correction of deficiencies. I have had email correspondence with Kevin Ellis over the past couple months and on July 20, 2022, he sent me pictures of the dock improvements that he has made. Based on the photos, County staff is of the position that the dilapidated portions of the dock and stairs have been repaired, and are now in an acceptable condition.

Dock 7 - September 2021 Country Club Pointe Docks Report indicates that dock is in a state of disrepair and not in a functional condition. In December 2021, I sent a letter to the licensee requesting correction of deficiencies. I have had email correspondence with Patrick Savage. Building Department staff has confirmed that a permit application was submitted for this dock and is currently pending Planning and Building approvals.

Dock 8 – I sent a letter to the licensee on May 20, 2022 concerning severely deteriorated pilings. On July 20, 2022, Joey Replogle emailed me stating that he has taken steps to secure the pilings, using snap jackets to secure the pilings. He then sent me pictures, which staff believes demonstrates that the piling issue has been resolved.

Dock 14 - September 2021 Country Club Pointe Docks Report indicates that dock is in a state of disrepair and not in a functional condition. In December 2021, I sent a letter to the licensee requesting correction of deficiencies. After no contact, I sent a follow-up letter in May 2022. On July 12, 2022, the Board voted to terminate the license agreement. Since then, I have had contact with Jeff Cusson. On August 1, 2022, the County received correspondence from William F. McCain, PE, indicating that his firm, W.F. McCain & Associates, Inc. has been retained to design the repair of the dock.

Dock 17 – On April 12, 2022, John Jackson entered into a license agreement for this dock with Indian River County. Per the license agreement, he was required to apply for a license within 60 days and then had another 120 days to make repairs to the dock. I have had email correspondence with Jack Johnson. Building Department staff has confirmed that a permit application was submitted for this dock and is currently pending Planning and Building approvals.

FUNDING

Revenues collected for dock license agreements are deposited into account 001038-362010 - General Fund/Rents & Royalties.

RECOMMENDATION.

Since the deficiencies with Docks 3 and 8 appear to be corrected, the County Attorney's Office recommends that the Indian River County Board of County Commissioners provide guidance as to how to move forward with Docks 7, 14 and 17.