



Interoffice Memorandum

AGENDA ITEM

April 10, 2018

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director
Community, Environmental and Development Services
Department

CONTACT PERSON: Carol L. Knox, Manager, Zoning Division
407-836-5585

SUBJECT: May 8, 2018 - Consent Item
Hold Harmless and Indemnification Agreement for
Melissa L. Merklinger and Rhonda K. Morgan

On February 20, 2018, the Board approved the recommendation of the Board of Zoning Adjustment (BZA) regarding Case VA-18-02-164, zoning variance request for Melissa L. Merklinger and Rhonda K. Morgan to construct a lanai no closer than 40 feet and a pool with enclosure no closer than 25 feet from the normal high water elevation of Lake Sheen.

The BZA's recommendation was conditioned on the recording of a Hold Harmless and Indemnification Agreement, which protects Orange County from any claims filed against it resulting from the County's granting of the variance on February 20, 2018.

ACTION REQUESTED: Approval and execution of Hold Harmless and Indemnification Agreement Parcel ID: 32-23-28-1874-00-250 by and between Melissa L. Merklinger and Rhonda K. Morgan and Orange County to construct a lanai and pool with enclosure at 10042 Lone Tree Lane, Orlando, FL 32836. District 1.

JVW/CLK:pew

Attachment

BCC Mtg. Date: May 8, 2018

Instrument prepared by:
Melissa L. Merklinger and Rhonda K. Morgan
10042 Lone Tree Lane
Orlando, Florida 32836-6537

Return to:
Orange County Attorney's Office
P.O. Box 1393
Orlando, Florida 32802

**HOLD HARMLESS AND
INDEMNIFICATION AGREEMENT**
Parcel ID: 32-23-28-1874-00-250

This Hold Harmless and Indemnification Agreement (the "Agreement") is made by and between Melissa L. Merklinger and Rhonda K. Morgan whose mailing address is 10042 Lone Tree Lane, Orlando, Florida 32836-6537, (the "Homeowners") and Orange County, a charter county and political subdivision of the State of Florida, whose mailing address is c/o Orange County Administrator, P.O. Box 1393, Orlando, Florida 32802-1393 (the "County").

WITNESSETH:

WHEREAS, the Homeowners hold fee simple title to property located at 10042 Lone Tree Lane, Orlando, Florida 32836-6537, as joint tenant in common with right of survivorship, which is more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Homeowners desire to construct a pool and deck enclosure and a lanai (collectively the "Improvements") no closer than twenty-five (25) feet and forty (40) feet, respectively, from the normal high water elevation ("NHWE") of Lake Sheen in lieu of the fifty (50) foot setback; and

WHEREAS, the Homeowners sought a variance from the County to address construction of the Improvements; and

WHEREAS, on February 1, 2018, the County's Board of Zoning Adjustment ("BZA") approved the requested variance and required the Homeowners to record a Hold Harmless Agreement prior to the issuance of a building permit for the Improvements; and

WHEREAS, on February 20, 2018, the Board of County Commissioners (the "Board") approved the BZA's decision and granted approval of the Homeowners' requested variances subject to the conditions ratified or established by the Board; and

WHEREAS, the Homeowners understand and agree that placing the Improvements within the fifty (50) foot setback area may significantly increase the likelihood of damage to structures, shoreline, and associated assets, and in spite of these risks the Homeowners desire to place the Improvements within this setback area; and

WHEREAS, because this Agreement will be executed and recorded in the Official Records of Orange County, this Agreement serves as notice that the Improvements may be constructed or may have been constructed within the fifty (50) foot setback from the normal high water elevation of Lake Sheen, as authorized by a variance approved with conditions ratified or established by the Board on February 20, 2018.

NOW, THEREFORE, in consideration of these premises, the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Homeowners and the County hereby agree as follows:

1. **RECITALS.** The above recitals are true and correct and are hereby incorporated as a material part of this Agreement by this reference.

2. **HOLD HARMLESS AND INDEMNIFICATION.** The Homeowners, on

behalf of themselves and their successors, assigns, heirs, grantees, representatives, invitees, and permittees, hereby assume sole and entire responsibility for any and all damage to property sustained as a result of the County's granting of the variance request #VA-18-02-164 on February 20, 2018. The Homeowners hereby agree to release, indemnify, defend (with legal counsel acceptable to the County), and hold harmless the County, its Board members, officers, employees, contractors, agents, and elected and appointed officials from and against any and all claims, suits, judgments, demands, liabilities, damages, costs, and expenses (including, but not limited to, attorneys' fees, paralegals' fees, consultants' fees and costs at all administrative, pretrial, trial, and appellate levels) of any kind or nature whatsoever, including without limitation damage to property, arising out of or related in any way to the activities or operations on or use of the Improvements resulting from the County's granting of the variance request #VA-18-02-164 on February 20, 2018.

3. **COVENANTS RUNNING WITH THE LAND.** This Agreement shall run with the Property, and shall be binding on all parties having any right, title or interest in the Property described herein or any portion thereof, their heirs, representatives, successors and assigns.

4. **AMENDMENT/TERMINATION.** This Agreement may be amended or terminated only by express written instrument approved by the Board and the Homeowners.

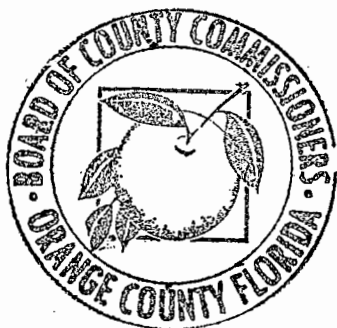
5. **APPLICABLE LAW.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

6. **RECORDATION.** An executed original of this Agreement shall be recorded, at the Homeowners' expense, in the Official Records of Orange County, Florida.

7. **EFFECTIVE DATE.** This Agreement shall become effective on the date of

execution by the County or the date of execution of the Homeowners, whichever is later.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.



ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: Kate Smith
Deputy Clerk

Date: MAY 08 2018

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: A. J. Lake and
Teresa Jacobs
Orange County Mayor

Date: 5.8.18

[REMAINING SIGNATURES ON FOLLOWING PAGES]

Signed, sealed and delivered in our presence as witnesses:

Signature: [Signature]

Printed Name: Jeff Villella

Signature: [Signature]

Printed Name: Valerie Charron

HOMEOWNER:

By: [Signature]
Melissa L. Merklinger

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 2 day of April, 2018, by Melissa L. Merklinger, who is personally known to me or who has produced personally known, as identification.

[Signature]
Notary Public, State of Florida At Large
Notary Public State of Florida
KURI JEAN HARLOW
My Commission GG 109757
Expires 06/16/2021
Notary Printed Name or Stamp

My Commission Expires: 06/16/2021

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Signed, sealed and delivered in our presence as witnesses:

Signature: [Signature]

Printed Name: Jeff Villella

Signature: [Signature]

Printed Name: Valerie Charron

HOMEOWNER:

By: [Signature]
Rhonda K. Morgan

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 2 day of April, 2018, by Rhonda K. Morgan, who is personally known to me or who has produced personally from, as identification.

[Signature]
Notary Public, State of Florida
My Commission GG 109757
Expires 06/16/2021

Notary Name Printed or Stamp

My Commission Expires: 06/16/2021

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel ID: 32-23-28-1874-00-250

CYPRESS SHORES FIRST ADDITION T/56 LOT 25 & THAT PT OF LOT 10 IN CYPRESS SHORES R/43 DESC AS COMM AT SW COR OF LOT 26 RUN E 140.40 FT FOR POB CONT E 60 FT TH S 12 DEG W TO WATERS EDGE OF LAKE SHEEN TH WLY ALONG WATERS EDGE TO A PT LYING S OF POB TH N TO POB