

**NON-DISTURBANCE AGREEMENT
BETWEEN
CENTRAL BROWARD WATER CONTROL DISTRICT
AND
BROWARD COUNTY**

This Non-disturbance Agreement ("Agreement") between Central Broward Water Control District, a political subdivision of the State of Florida, whose address is 8020 Stirling Road, Hollywood, Florida 33024 (the "District"), and Broward County, a political subdivision of the State of Florida, whose address is 115 South Andrews Avenue, Room 501, Fort Lauderdale, Florida 33301 ("County"), is entered into and effective as of the date this Agreement is executed by the County ("Effective Date"). The District and County are hereinafter referred to collectively as the "Parties," and sometimes individually referred to herein as a "Party."

RECITALS

WHEREAS, County is the owner of that certain real property, as more particularly described in **Exhibit A** attached hereto and made a part hereof ("Property"); and

WHEREAS, the District holds a certain canal right-of-way over the Property, as more particularly described in **Exhibit B** attached hereto and made a part hereof ("Right-of-Way"); and

WHEREAS, the District holds said Right-of-Way by virtue of a conveyance, recorded on June 23, 1987 in Official Records Book 14557, Page 0510, of the Public Records of Broward County, Florida, from South Florida Water Management District, a public corporation of the State of Florida, of the following "Rights in Reservations":

Saving and reserving unto the said, the Trustees of the Internal Improvement Fund of the State of Florida, and their successors, the right at any time to enter upon the said lands and make or cause to be made and constructed thereon, such canals, cuts, sluice-ways, dikes and other works as may in the judgment of the said Trustees, or their successors, be necessary and needful for needful for the drainage or reclamation of any of the lands granted to the State of Florida, by Act of Congress, approved September 28, 1850, and to take from the said lands hereby conveyed and to use such gravel, stone or earth as may, in the judgment of the said Trustees, or their successors, be necessary to use in the making and construction of said canals, cuts, sluice-ways, dikes and other works upon the said lands for the purpose aforesaid.

And further saving and reserving unto the said, the Trustees of the Internal Improvement Fund of the State of Florida, the right to the exclusive possession, occupation, use and enjoyment of a strip of land running across the above described premises, one hundred and thirty feet on each side of the center line of any canal, cut, sluice-way or dike that may be made and constructed on said land by the said Trustees of the said Internal Improvement

Fund of the State of Florida, or their successors, for the purpose aforesaid, and the exclusive right to take, use, sell, dispose of and enjoy any timber, earth, stone, rock or gravel lying in or upon said strip of land.

WHEREAS, County desires to build a walking path and reconstruct an existing culvert, which will be required to be permitted by the District, that cross the District's Right-of-Way, as more particularly described in **Exhibit C** attached hereto and made a part hereof (the "Trail"); and

WHEREAS, the County has requested the District to acknowledge that it will not disturb the Trail; and

WHEREAS, the District will not release its Rights in Reservations over the Property; and

WHEREAS, the District is agreeable to allowing County to develop the Trail without inference by the District in accordance with the terms hereunder; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of allowing the County to develop the Trail and to commemorate their Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, conditions, and promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals.** The recitals set forth above are true, accurate, and fully incorporated by reference herein.

2. **Term.** This Agreement shall commence upon the Effective Date and continue for a term ending on the twenty-fifth (25th) annual anniversary of the Commencement Date ("Initial Term"). Thereafter, the term shall automatically renew every year upon the same terms and conditions ("Extended Term"). During an Extended Term, either Party may terminate this Agreement by delivering written notice to the other Party at any time during the then-current Term of such Party's intention not to further extend the term of the Agreement ("Termination Notice"). If a Termination Notice is delivered, the Term shall terminate sixty (60) calendar days after the date of the Termination Notice. The Initial Term, and any Extended Term, are collectively referred to herein as the "Term." "Commencement Date" shall mean the date on which the Trail is completed. For the purposes of this Agreement, "completed" as used in the foregoing sentence shall be the date on which the County has any and all approvals, licenses, and permits necessary to build the Trail, has completed construction of the Trail, and the Trail is open for use by members of the public.

3. **Use of Right-of-Way.**

- 3.1 County shall build the Trail over the Right-of-Way in accordance with **Exhibit C.**
- 3.2 District, for itself, its successors, and assigns, agrees that it will not disturb the Trail or otherwise make use of its right to require removal of the Trail.
- 3.3 Except for the Trail, County agrees not to further encroach the Right-of-Way.
- 3.4 If the Trail causes any existing drainage in the Right-of-Way to become inadequate to provide water drainage and flow, and District requires an alternative route, then County shall find alternative routes for water drainage and flow, grant canal easements to District, and pay for all reasonable costs and expenses incurred by District for alternative easements and necessary relocation costs.

4. **Liability.** To the extent permitted by law, and without either Party waiving its sovereign immunity or any limits established by Section 768.28, Florida Statutes, County agrees to indemnify and hold harmless the District from any and all claims, judgments, costs, and expenses that may accrue to the District as a result of the use of the Trail by a third party and caused, either by commission or omission, by the County and its officers, employees, and agents.

5. **Compliance with Laws.** County shall obtain all necessary permits, licenses, and approvals to construct the Trail, including, but not limited to, a permit from the District. County shall comply with all applicable permits, regulations, ordinances, rules and laws of the State of Florida, the United States, any political subdivision, or agency of either in performing its duties, responsibilities, and obligations related to this Agreement.

6. **Severability.** In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

7. **Law, Jurisdiction, Venue, Waiver of Jury Trial.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, DISTRICT AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION**

RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

8. **Notices.** In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail as provided below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this Section.

FOR COUNTY:
Broward County Administrator
Governmental Center
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

FOR DISTRICT:
Mike Crowley, District Manager
Central Broward Water Control District
8020 Stirling Road
Hollywood, Florida 33024

9. **Binding Effect.** This Agreement shall run with the land, and shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns.

10. **Incorporation by Reference.** Attached **Exhibits A, B, and C** are incorporated into and made a part of this Agreement.

11. **Representation of Authority.** Each individual executing this Agreement on behalf of a Party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

12. **Counterparts.** This Agreement may be executed in counterparts. Each executed counterpart will constitute an original document, and all of them, together, will constitute one and the same agreement. It shall not be necessary for every party to sign each counterpart but only that each party shall sign at least one such counterpart.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have made and executed this Agreement on the respective dates under each signature: Central Broward Water Control District, signing by and through its duly authorized representative, and Broward County, through its Board of County Commissioners, signing by and through its Mayor, authorized to execute same by Board action on the _____ day of _____, 20__.

ATTEST:

DISTRICT:



Secretary

CENTRAL BROWARD WATER CONTROL DISTRICT, a political subdivision of the State of Florida

By:  Its Chair

6 day of December, 2017

ACKNOWLEDGMENT

STATE OF FLORIDA)
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 6 day of December, 2017, by Mark Flynt and Michael Crowley Chairperson and Secretary of Central Broward Water Control District, who is personally known to me or who has produced _____ as identification.



Notary Public: Chelsea Cannon
Signature: 
Print Name: Chelsea Cannon

State of Florida
My Commission Expires:
Commission Number:
(SEAL)

NON-DISTURBANCE AGREEMENT BETWEEN CENTRAL BROWARD WATER CONTROL DISTRICT AND BROWARD COUNTY.

COUNTY:

(Official Seal)

BROWARD COUNTY, by and through its Board of County Commissioners

ATTEST:

County Administrator and
Ex-Officio Clerk of the
Board of County Commissioners
of Broward County, Florida

By: _____
Mayor
____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By  _____
Irma Qureshi
Assistant County Attorney

By  _____
Annika E. Ashton
Senior Assistant County Attorney

EXHIBIT A

The Southeast one-quarter (SE 1/4) of the Southwest one-quarter (SW 1/4) of Section 23, Township 50 South, Range 40 East;

AND

The North 603 feet of the Northeast (NE 1/4) of Section 26, Township 50 South, Range 40 East;

LESS The East 1751 feet of the North 540 feet thereof; and also less the South 340 feet of the North 540 feet of the West 640.59 feet of the East 2391.59 feet thereof;

AND

The North 620 feet of the East 670 feet (as measured along the North and East lines) of the Northwest one-quarter (NW 1/4) of Said Section 26;

AND

A strip of land lying in the Northeast one-quarter (NE 1/4) of said Section 26, and being more or less described as follows:

Beginning on the East line of said Section 26 at a point which is 603 feet South of the NE corner thereof; thence run West along the line which is 603 feet South of and parallel with the North line of said Section 26 for a distance of 2641 feet more or less to the West line of the NE 1/4 of said Section 26; thence run South along the West line of the NE 1/4 of said section for a distance of 17 feet; thence run Easterly along the line which is the approximate centerline of an 18 foot wide canal for a distance of 2642 feet more or less to the East line of said Section 26; thence run along the said East line of said Section 26 for a distance of 3 feet to the Point of Beginning.

AND

The South 340 feet of the North 540 feet of the West 640.59 feet of the East 2391.59 feet of the Northeast one-quarter (NE 1/4) of Section 26, Township 50 South, Range 40 East;

AND

The West 136 feet of the East 1751 feet of the North 540.19 feet of the Northeast one-quarter (NE 1/4) of Section 26, Township 50 South, Range 40 East;

Subject to rights of way and easements of record.

Said lands containing 70 acres more or less.

EXHIBIT B

DISTRICT'S RIGHT-OF-WAY

PORTION OF CANAL N-23, IN SECTION 26,
TOWNSHIP 50 SOUTH, RANGE 40 EAST

SECTION
26

TOWNSHIP
50 SOUTH

RANGE
40 EAST

LEGAL DESCRIPTION: The West 80.00 feet of the East one-half (E 1/2) of said Section 26, Township 50 South, Range 40 East, lying north of the South New River Canal right-of-way.

Said lands situate, lying and being in Broward County, Florida.

EXHIBIT C

SKETCH OF SURVEY
BOUNDARY AND LOCATION SURVEY

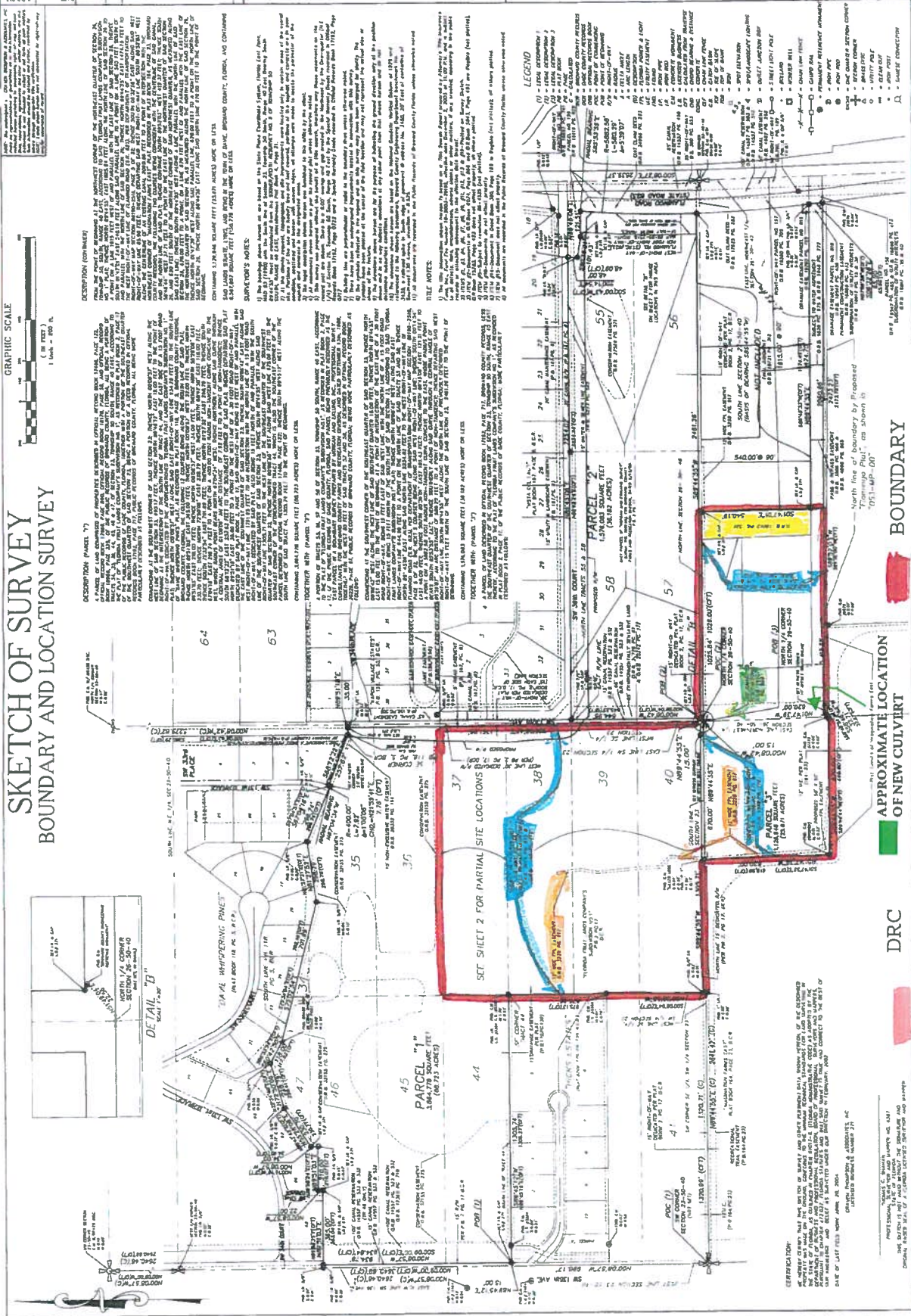


Table with 4 columns: No., Description, Date, and Initials. It lists various survey activities and their completion dates.

ENGINEERS - PLANNERS & SURVEYORS
LONG KEY -
FLAMINGO PARK
BROWARD COUNTY PARKS AND RECREATION
PREPARED FOR
BOUNDARY AND LOCATION SURVEY

PROJECT NO. 02-0114
S-1
SHEET 1 OF 2

DESCRIPTION (continued)
SECTION 27, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 28, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 29, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 30, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 31, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 32, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 33, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 34, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 35, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 36, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 37, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 38, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 39, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
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SECTION 41, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 42, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 43, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
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SECTION 58, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
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SECTION 95, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 96, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 97, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 98, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 99, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.
SECTION 100, TOWNSHIP 17 N., RANGE 28 W., CO. 10, FLA.

BOUNDARY
APPROXIMATE LOCATION
OF NEW CULVERT

LEGEND
1 - 1/4" = 100' (CONTOUR)
2 - 1/4" = 100' (BOUNDARY)
3 - 1/4" = 100' (PROPERTY)
4 - 1/4" = 100' (ADJACENT)
5 - 1/4" = 100' (EXISTING)
6 - 1/4" = 100' (PROPOSED)
7 - 1/4" = 100' (UTILITIES)
8 - 1/4" = 100' (ROADS)
9 - 1/4" = 100' (WATER)
10 - 1/4" = 100' (DRAINAGE)

DESCRIPTION:
THIS SURVEY WAS MADE FOR THE PURPOSE OF DETERMINING THE BOUNDARY AND LOCATION OF THE PROPOSED CULVERT AND THE ADJACENT PARCELS. THE SURVEY WAS MADE BY THE SURVEYOR AND HIS ASSISTANTS ON THE DATE OF THE SURVEY. THE SURVEY WAS MADE IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BOARD OF SURVEYING AND MAPPING, STATE OF FLORIDA.

DATE OF SURVEY: 01/15/2008
SURVEYOR: [Name]
ASSISTANT SURVEYOR: [Name]