



Interoffice Memorandum

APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS  
OCT 20 2015 *[Signature]*

REAL ESTATE MANAGEMENT ITEM 3

**DATE:** October 1, 2015

**TO:** Mayor Teresa Jacobs  
and the  
Board of County Commissioners

**THROUGH:** Ann Caswell, Manager *[Signature]*  
Real Estate Management Division

**FROM:** Virginia G. Williams, Senior Title Examiner *[Signature]*  
Real Estate Management Division

**CONTACT PERSON:** Ann Caswell, Manager

**DIVISION:** Real Estate Management  
Phone: 836-7082

**ACTION REQUESTED:** APPROVAL AND EXECUTION OF BOAT DOCK RESTRICTION AGREEMENT BETWEEN DWELL NONA PLACE, LLC, F/K/A DWELL AT LAKE NONA, LLC AND ORANGE COUNTY WITH SUBORDINATION OF MORTGAGE FROM CITIZENS BANK OF PENNSYLVANIA AND AUTHORIZATION TO RECORD INSTRUMENT

**PROJECT:** Dwell at Lake Nona  
District 4

**PURPOSE:** To meet requirements of County Boat Dock Permit # BD-15-06-076.

**ITEM:** Boat Dock Restriction Agreement with Subordination of Mortgage

**APPROVALS:** Real Estate Management Division  
County Attorney's Office  
Environmental Protection Division

**REMARKS:**

County Boat Dock Permit # BD-15-06-076 (Permit) issued by Orange County Environmental Protection Division requires this Boat Dock Restriction Agreement (Agreement). The Agreement states that the Permit allows construction of a semi-private boat dock and cites County Code Section 15-344 which requires the owner to restrict the construction of additional boat docks on the Subject Property that would exceed the maximum allowed for private docks under Article IX, Chapter 15 thereof. The County is executing this document to reflect approval of its terms and conditions.

Dwell Nona Place, LLC to pay recording fees.

**A file labeled "BCC Agenda Backup" containing a copy of this agenda item and all supporting documentation is in the top drawer of the BCC file cabinet in the supply room adjacent to Commissioner Thompson's office.**

OCT 20 2015 JK/BS

**Prepared by and Return to:**

Georgiana Holmes, Assistant County Attorney  
County Attorney's Office  
P. O. Box 1393  
Orlando, FL 32802-1393

**Project: Dwell at Lake Nona**

**Permit # BD-15-06-076**

**BOAT DOCK RESTRICTION AGREEMENT**

This BOAT DOCK RESTRICTION AGREEMENT ("Agreement") is given by Dwell Nona Place, LLC, a Florida limited liability company, f/k/a Dwell at Lake Nona, LLC, a Florida limited liability company (the "Owner") (which has a mailing address c/o the Klein Company, 1735 Market Street, Suite 4010, Philadelphia, Pennsylvania 19103, in favor of Orange County, a charter county and political subdivision of the State of Florida (which has a mailing address at Post Office Box 1393, Orlando, Florida 32802-1393) (the "County"), (collectively, the "Parties").

Recitals

1. The Owner is the fee simple owner of certain real property located in Orange County, Florida, viz:

Lot 2, Dwell at Lake Nona, according to the plat thereof as recorded in Plat Book 84, Page 88, Public Records of Orange County, Florida, (the "Property");

Property Appraiser's Parcel Identification Number:  
20-24-31-1690-02-000

2. Owner desires to construct a semi-private boat dock on a portion of the Property in accordance with Orange County Semi-Private Boat Dock Construction Permit, Application BD-15-06-076 (the "Permit").

3. Orange County Code Section 15-344 requires the Owner to restrict the construction of additional boat docks on the Property that would exceed the maximum allowed for private docks under Article IX, Chapter 15 thereof.

4. In order to comply with Orange County Code Section 15-344, this Agreement is given in favor of the County and, at the request of the County, will be recorded in Public Records of Orange County, Florida.

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5. The effective date of this Agreement (the "Effective Date") shall be the date when the last one of the Parties has properly executed this Agreement as determined by the date set forth immediately below the respective signatures of the Owner and the County.

Agreement

ACCORDINGLY, in consideration of the above recitals, agreements, mutual covenants, terms, conditions and restriction contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows.

1. No boat dock other than the semi-private boat dock associated with the Permit shall be constructed, approved or allowed on the Property.

2. The covenants, terms, conditions and restrictions set forth in this Agreement shall be binding upon and inure to the benefit of the Parties and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

3. This Agreement may be amended only in writing, formally executed in the same manner as this Agreement.

4. **Limitation of Remedies.** County and Owner expressly agree that the consideration, in part, for each of them entering into this Agreement is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Agreement.

(a) *Limitations on County's remedies.* Upon any failure by Owner to perform its obligations under this Agreement, County shall be limited strictly to only the following remedies:

- (i) action for specific performance or injunction; or
- (ii) the withholding of development permits and other approvals or permits in connection with the Property; or
- (iii) any combination of the foregoing.

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(b) *Limitations of Owner's remedies.* Upon any failure by County to perform its obligations under this Agreement, Owner shall be limited strictly to only the following remedies:

- (i) action for specific performance or injunction; or
- (ii) action for declaratory judgment regarding the rights and obligations of Owner; or
- (iii) any combination of the foregoing.

Both parties expressly waive their respective rights to sue for damages of any type for breach of, or default under, this Agreement by the other. Both parties expressly agree that each party shall bear the cost of its own attorney fees for any action arising out of or in connection with this Agreement. Venue for any actions initiated under or in connection with this Agreement shall be in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

5. Attached hereto as Exhibit "A" and incorporated herein by reference is a Subordination of Mortgage executed by Dwell Nona Place's current mortgage lender with respect to the Property.

6. ***Applicable Law.*** This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida without regard to the principles of conflict of laws.

[Signature Pages Follow]

Project: Dwell at Lake Nona

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

DWELL NONA PLACE, LLC, a Florida limited liability f/k/a Dwell at Lake Nona, LLC, a Florida limited liability company

BY: James J. Tomaino

Name: James J. Tomaino

Title: Manager

Date: 9-11-15

Witness: Cindy Harris

Printed Name: Cindy Harris

Witness: Diane Stinson

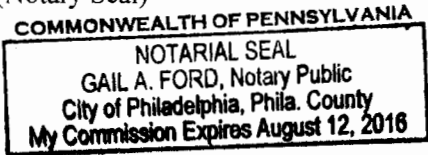
Printed Name: DIANE STINSON

STATE OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA

The foregoing instrument was acknowledged before me this 11TH day of SEPTEMBER, 2015, by JAMES J. TOMAINO, as MANAGER of Dwell Nona Place, LLC, a Florida limited liability company, f/k/a Dwell at Lake Nona, LLC, a Florida limited liability company. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

Witness my hand and official seal this 11TH day of SEPTEMBER, 2015.

(Notary Seal)



Gail A. Ford  
Notary Signature

GAIL A. FORD  
Printed Notary Name

Notary Public in and for  
the County and State aforesaid

My commission expires: 8-12-16

Project: Dwell at Lake Nona



ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: *Teresa Jacobs*  
Teresa Jacobs, Orange County Mayor

Date: 10.20.15

Attest: Martha O. Haynie, Orange County Comptroller  
as Clerk of the Board of County Commissioners

By: *Martha O. Haynie*  
for Deputy Clerk

Martha O. Haynie  
Printed Name

Project: Dwell at Lake Nona

Exhibit A

SUBORDINATION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, CITIZENS BANK OF PENNSYLVANIA, a Pennsylvania banking corporation, whose address is 1701 John F. Kennedy Boulevard, Suite 2200, Philadelphia, PA 19103 ("Mortgagee"), is the owner and holder of the following described loan documents executed by Dwell at Lake Nona, LLC, a Florida limited liability company, now known as Dwell Nona Place, LLC ("Mortgagor") to and in favor of Mortgagee: (i) that certain Mortgage, Assignment of Rents and Leases, and Security Agreement dated July 17, 2014 and recorded on July 23, 2014 in Official Records Book 10778, Page 6387, (ii) that certain Assignment of Leases and Rents dated July 17, 2014 and recorded on July 23, 2014 in Official Records Book 10778, Page 6409, and (iii) that certain UCC Financing Statement recorded July 23, 2014 in Official Records Book 10778, Page 6422, (iv) that certain Amendment to UCC Financing State recorded June 25, 2015 in Official Records Book 10942, Page 2838, all of the Public Records of Orange County, Florida (collectively, the "Loan Documents"); and

WHEREAS, the Loan Documents encumber the Subject Property described in the within and foregoing Boat Dock Restriction Agreement executed by Mortgagor, to which this Subordination is attached and of which it forms a part (the "Agreement"); and

WHEREAS, the parties to the Agreement have requested Mortgagee to consent to the Agreement and subordinate the lien and encumbrance of the Loan Documents to the Agreement;

NOW THEREFORE, in consideration of the premises hereof and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagee hereby consents to the Agreement, subordinates the lien and encumbrance of the Loan Documents to the Agreement, and agrees that the Agreement shall survive any foreclosure of the Loan Documents.

IN WITNESS WHEREOF, Mortgagee has caused these presents to be executed in manner and form sufficient to bind it as of the date of the Easement.

[See following page for signature)



Project: Dwell at Lake Nona

CITIZENS BANK OF PENNSYLVANIA, a  
Pennsylvania banking corporation

BY: [Signature]

Name: Edmund H. Terry

Title: Senior Vice President

STATE OF PENNSYLVANIA

COUNTY OF PHILADELPHIA

The foregoing instrument was acknowledged before me this 11TH day of SEPTEMBER, 2015 by EDMUND H. TERRY, as SENIOR VICE PRESIDENT of Citizens Bank of Pennsylvania, a Pennsylvania banking corporation, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

[Signature: Gail A. Ford]

Notary Public

Name Printed: GAIL A. FORD

Commission No: 1052040

My Commission Expires: 8-12-16

(NOTARY PUBLIC SEAL OF PENNSYLVANIA)

NOTARIAL SEAL  
GAIL A. FORD, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires August 12, 2016

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL  
GAIL A. FORD, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires August 12, 2016