

PLEASE COMPLETE THIS INFORMATION

RECORDING REQUESTED BY:
SPRING VALLEY LAKE ASSOCIATION

AND WHEN RECORDED MAIL TO:

THIS SPACE FOR RECORDER'S USE ONLY

ARCHITECTURAL IMPROVEMENT AND LICENSE AGREEMENT -- VESSEL LIFT

ADJACENT TO LOT _____ OF TRACT _____,

RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA

[Cover Sheet]

ARCHITECTURAL IMPROVEMENT AND LICENSE AGREEMENT -- VESSEL LIFT

THIS AGREEMENT is made and entered into this ___ day of _____, 19___, by and between SPRING VALLEY LAKE ASSOCIATION, a California Nonprofit Mutual Benefit Corporation (hereinafter referred to as "Association") and _____
(hereinafter referred to as "Owner").*

RECITALS

WHEREAS, Association is a California Nonprofit Mutual Benefit Corporation whose specific and general purposes are recited in the Association's governing document. The primary purposes recited in those governing documents are to provide for the preservation, management, maintenance and care of the common areas and architecture / appearance of a planned residential development known as Spring Valley Lake subdivision, and

WHEREAS, the Association's governing documents and *Corporations Code* § 7210 provide that the activities and affairs of the corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors, subject only to such limitations as are set forth within the governing documents; and

WHEREAS, Association is the owner of that certain body of water, commonly referred to as the "Spring Valley Lake", described in the attached Exhibit A legal description and made a part hereof by this reference (hereinafter referred to as "Lake Property"); and

WHEREAS, Association has power and authority to grant licenses over the Lake Property for the benefit of Owner as described in this Agreement, as long as said licenses do not unreasonably interfere with the intended use and enjoyment of the Lake Property; and

WHEREAS, _____ is/are the Owner(s) of that certain residential lot, legally described as Lot _____ of Tract _____, Official Records of San Bernardino County, California (hereinafter referred to as "Owner's Lot");

WHEREAS, Owner has submitted an application, including plans and specifications, to the Association's Architectural Committee and Board of Directors for the construction of a vessel lift (hereinafter referred to as "Architectural Improvement") adjacent to Owner's lot within Spring Valley Lake subdivision with the common address of _____
Victorville, California, which application shall require the granting of a license to Owner for the benefit of Owner's Lot over the Lake Property to install said Architectural Improvement; and

WHEREAS, for the benefit and protection of Spring Valley Lake subdivision and the individual members thereon, the Association requires that any installation and construction of vessel lifts and other architectural improvements over the Lake Property must meet the standards required by the Association's Architectural Guidelines and Development Standards (hereinafter "architectural guidelines"); and

WHEREAS, the Board and the Architectural Committee have determined that the Architectural Improvement proposed by the Owner is consistent and in harmony with the aesthetics, safety and other requirements of the architectural guidelines;

* ALL OWNERS of record must execute this Agreement before a notary public and have their signatures acknowledged..

WHEREAS, the Association desires to approve the application for installation of the Architectural Improvement and grant a license (hereinafter referred to as the "License ") over the Lake Property, subject to the certain conditions and covenants contained in this Agreement;

AGREEMENT

NOW, THEREFORE, in consideration for the review and approval of Owner's application by the Association, the parties hereto acknowledge, covenant and agree as follows:

1. Association hereby grants to Owner a license over that portion of the Lake Property, described in Exhibit B, attached hereto and made a part hereof by this reference (hereinafter "License Area"), subject to the terms and conditions set forth herein. The License shall be for the purpose of construction, repair, maintenance, use and enjoyment of that certain Architectural Improvement described herein.

2. Installation and/or construction of the Architectural Improvement and attendant improvements shall be:

a. Performed and completed in compliance with all laws and ordinances of the County of San Bernardino; the *Uniform Building Code*; the Association's Design Standards and Specifications; the governing documents; the architectural requirements and regulations related to vessel lifts (attached hereto as Exhibit C and made a part hereof by this reference); and the terms and covenants of this Agreement. Owner shall pay for any building fees, if any, required by the County of San Bernardino.

b. Constructed by a contractor who is licensed by the State of California to perform same. Additionally, if the Contractor will be employing sub-contractors, said subcontractors must also be duly licensed by the State of California to perform the trade for which it has been engaged.

c. Completed within one hundred twenty (120) days of Association's execution of this Agreement.

3. Prior to the commencement of installation and/or construction of the Architectural Improvement, Owner or Owner's contractor shall be required to provide to the Association the following:

a. A certificate from a California-registered civil engineer, certifying that the vessel lift can handle the size and weight of Owner's vessel(s) in a safe manner and will not cause damage to any portion of the Common Area, including the bottom of the Lake Property. (Concerns of seismic activity, windload, and other related factors should be considered by the civil engineer.)

b. Certificates of insurance, naming Owner's contractor as the insured thereof and listing the Association and its employees as additional insureds with respect to operations under this Agreement for:

i. Evidence of Worker's compensation insurance.

ii. Comprehensive general liability insurance for liability protection, bodily injury or property damage with limits of not less than \$300,000 for each person / \$300,000 for each accident.

4. During construction of the Architectural Improvement, Owner shall assure that all trash, debris or scraps shall be cleaned up on a daily basis and removed from the subdivision. (No trash or

debris shall be permitted to remain in the subdivision overnight.) No building materials, equipment, trash, trash bins, trash containers, or any other items used during construction shall be stored on Owner's lot, the Association's Common Area, the streets, or any other area within the subdivision, without the express written consent of the Association.

5. Upon completion of the Architectural Improvement, Owner shall provide certificates of insurance to the Association, naming Owner as the insured thereof and listing the Association and its employees as additional insureds with respect to operations under this Agreement for comprehensive general liability insurance for liability protection, bodily injury or property damage with limits of not less than \$300,000 for each person / \$300,000 for each accident.

6. Owner hereby further covenants and agrees to:

a. Be solely responsible for the maintenance, repair and replacement of the Architectural Improvement, including removal of any weeds or debris in and around the Architectural Improvement. Notwithstanding any language of the Declaration to the contrary, by permitting the Architectural Improvement, Owner hereby covenants and agrees that the Association shall have no maintenance, repair, or replacement responsibility for the Architectural Improvement within the License Area.

b. Repair any aspect of the Common Area of the Association, any portion of the residential lot or any portion of any improvement within the entire subdivision which is damaged by the construction and/or installation of the Architectural Improvement.

c. Be solely responsible for the repair of any damage to the lake bottom by the Architectural Improvement, and Owner hereby covenants and agrees that Association shall have no responsibility for said lake bottom repair costs. All repair procedures shall be:

i. Approved by Association,

ii. Initiated within two (2) weeks of notification that repair of the lake bottom is required;

iii. Certified as Repaired by Association's designated representative within sixty (60) days notification that repair of the lake bottom is required, with any costs for certification borne by Owner;

d. Pay a lift registration fee yearly concurrently with payment of boat registration for the cost of a biennial inspection of the lake bottom beneath the Architectural Improvement. This inspection will be performed by an expert who is retained by the Association, and the resulting evaluation from each inspection shall be part of the file related to this license and variance.

e. Indemnify for himself/herself, as well as for his/her successors and assigns, and covenants and agrees to hold Association harmless from all claims, demands or liability arising out of or encountered in connection with this Agreement, the License Area or the Architectural Improvement, whether such claims, demands or liability are caused by Owner, Owner's agents or employees, or contractors or subcontractors employed in the installation of the Architectural Improvement, their agents or employees, or caused by any products installed by said contractor(s) or subcontractor(s), excepting only such injury or harm as may be caused solely and exclusively by Association's fault or negligence. Such indemnification shall extend to claims, demands or liability for personal injuries occurring during installation, as well as after completion, including, but not limited to, all of Owner's maintenance responsibilities provided herein.

f. Further indemnify and hold the Association harmless from all liability related to any damage to existing improvements (wherever located within the Subdivision) resulting from the installation/construction of the Architectural Improvement.

7. If Owner fails to meet the terms, conditions, and covenants contained herein; fails to cure any default within sixty days' written notice; and/or violates the Association's regulations and guidelines related to vessel lifts two times within any twelve-month period, then:

a. The License granted herein shall automatically terminate, and the Association is hereby authorized to record any Notice terminating the License.

b. From the date of recordation of any such Notice terminating the License (hereinafter "Termination Date"), Owner shall have no further right to encroach on the Association's Lake Property and shall have an immediate obligation to remove the violating Architectural Improvement located thereon.

c. If Owner fails to remove the violating Architectural Improvement within sixty (60) days of Termination Date, Association is authorized to remove it by any legal means, including entering Owner(s)' property for the purpose of its removal and to charge Owner for any costs incurred. Any such removal of the violating Architectural Improvement shall constitute damage to the Common Area, for which Owner is liable pursuant to *Civil Code* § 1367(b), and any costs incurred for its removal shall be considered a special assessment. Payment of said special assessment shall be enforced by lien and foreclosure procedures similar to the collection of regular assessments, pursuant to Section V of the Association's CC&Rs.

d. If Owner fails to initiate or complete repairs to the Architectural Improvement within the time deadlines herein or fails to make repairs in accordance with Association requirements (see Paragraph 6.c. above), Association may perform the same at the expense of Owner. Upon completion of said repairs, Association shall send Owners a demand by first-class mail to reimburse the Association within thirty (30) days. In the event Owners fail to reimburse Association within thirty (30) days, Association shall be entitled to specially assess Owners for all costs of repairs, which shall constitute a lien against Owners' Lot and which may be collected through the foreclosure proceedings as set forth Association's CC&Rs, Section V and *Civil Code* § 1367(b).

e. Owner hereby covenants and agrees that if any issues arise related to safety or interference with other owners' access to the Lake Property due to or associated with the Architectural Improvement, notwithstanding any regulations enumerated in Exhibit C, Association may require removal of the Architectural Improvement upon sixty (60) days' written notice to Owner. Failure to remove the Architectural Improvement on the basis of this provision shall be considered as any other violation under this Agreement, pursuant to this Paragraph 7.

8. This Agreement shall not be modified by any party or oral representations made before or after execution of the Agreement. All modifications must be in writing and signed by all parties.

9. Should arbitration or other legal action be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of cost of suit and not as damages, reasonable attorneys' fees to be fixed by the arbitrator. The prevailing party shall be entitled to recover his/her/its costs of suit, regardless of whether such suit proceeds to final judgment.

10. This Agreement shall not be construed against the party preparing it and shall be construed as if both parties prepared this Agreement and in accordance with the laws of the State of California.

11. If any term or provision of the Agreement or application thereof is held invalid or unenforceable as to any party, the balance of the Agreement shall not be affected, and each remaining term and provision of this Agreement shall be valid and shall be enforced to the fullest extent provided by law.

12. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders. The singular shall include the plural, and *vice versa*.

13. All of the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns and personal representatives of the respective parties.

14. Any claim, controversy or dispute of whatever nature arising out of or concerning this Agreement shall be resolved by final and binding arbitration according to the Judicial Arbitration and Mediation Services (JAMS) Rules of Practice and Procedure then in effect, except that the parties shall be entitled to only such discovery as is permitted by *Code of Civil Procedure* § 1283.05 and any amendment thereto or successor statutes. Judgment on the arbitrator's award may be entered in any court having jurisdiction thereof. Should any party refuse or neglect to appear or participate in arbitration proceedings, the arbitrator is empowered to decide the controversy in accordance with whatever evidence is presented. The arbitrator is authorized to award any party or parties such sums as he shall deem proper for the time, expense, including but not limited to, costs and legal fees, and trouble of arbitration. The arbitration shall be binding on the parties.

15. Subject to Association's right to terminate the license granted herein in the manner set forth above, Owner agrees that this Architectural Improvement Agreement shall be a covenant running with the land as it relates to Owner's Lot and shall bind and be a charge on Owner's Unit and to his/her successors or assigns. This covenant shall be binding on all parties and all persons claiming under it for a period of sixty (60) years from the date this Agreement is executed.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 19__.

OWNER(S)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

ASSOCIATION

SPRING VALLEY LAKE ASSOCIATION
A California Nonprofit Mutual Benefit Corporation

By: _____

EXHIBIT A

LEGAL DESCRIPTION OF LAKE PROPERTY

EXHIBIT B

**PLOT PLAN (DESCRIPTION OF LICENSE AREA)
WHERE VESSEL LIFT IS TO BE LOCATED OR ATTACHED TO LAKE BOTTOM**

EXHIBIT C

REGULATIONS RELATED TO VESSEL LIFTS

[Attached]

VESSEL LIFT INSTALLATION

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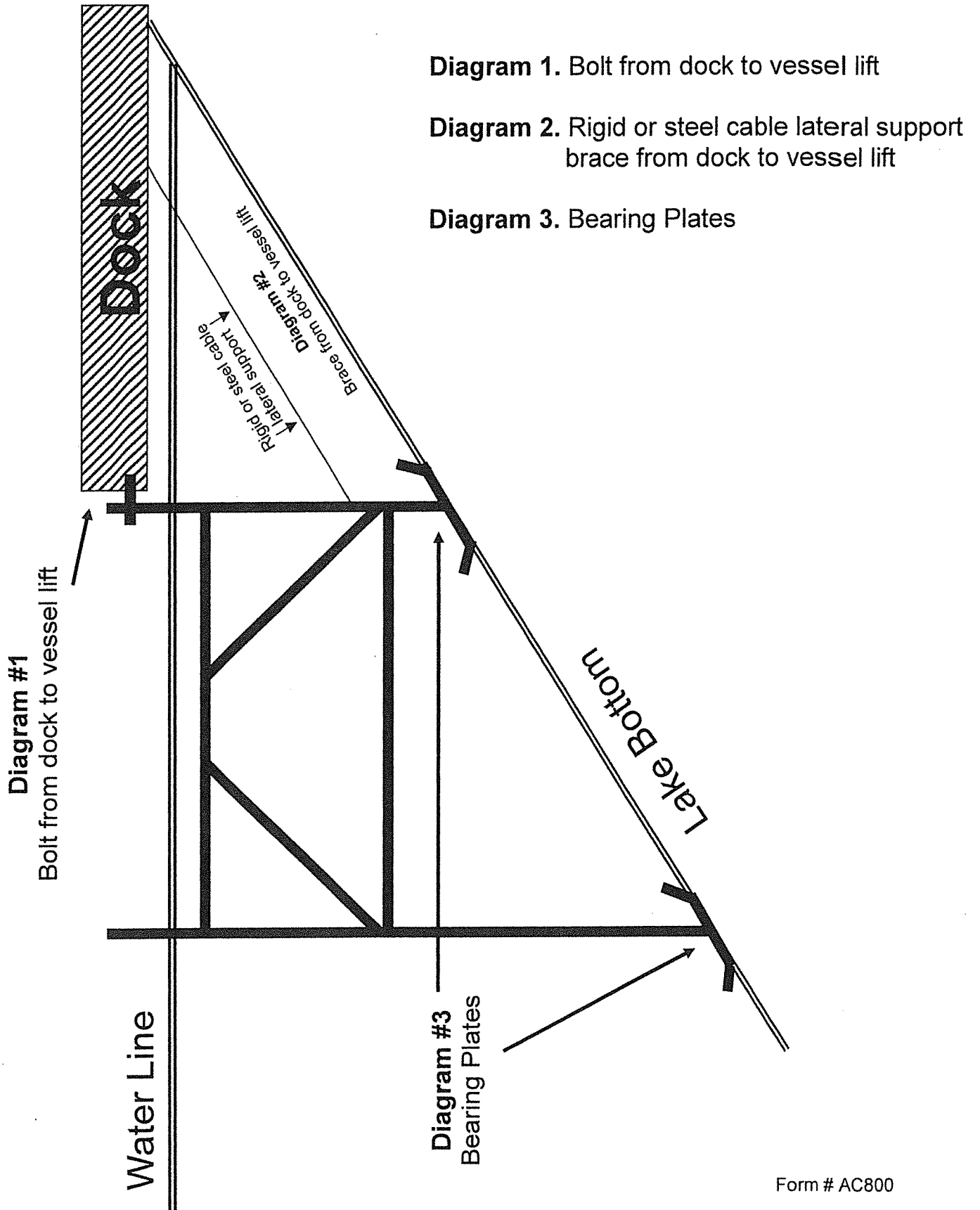


Diagram 1. Bolt from dock to vessel lift

Diagram 2. Rigid or steel cable lateral support brace from dock to vessel lift

Diagram 3. Bearing Plates

VESSEL LIFT INSTALLATION

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