

**TEMPORARY EASEMENT AND VOLUNTARY
ASSESSMENT AGREEMENT**

This Temporary Easement and Voluntary Assessment Agreement (hereafter, the "Agreement") is entered into by and between the Flagler County Board of County Commissioners, a political subdivision of the State of Florida, whose address is 1769 East Moody Blvd., Bldg. 2, Bunnell, FL 32110 (hereafter, the "County") and _____, the owner of certain real property (hereafter, the "Owner") located at _____ Oceanshore Boulevard SR A1A, Flagler Beach, FL 32136 whose parcel identification number is _____ (hereafter, the "Property"). The County and Owner are hereafter collectively, the "Parties."

WITNESSETH:

Whereas, in October 2016 Hurricane Matthew struck coastal Flagler County, resulting in the eroding of the sand and dunes, destroying portions of State Road A1A, and causing significant damage to public and private properties; and

Whereas, the Owner's Property is located within an area of the County's beaches which was significantly impacted by Hurricane Matthew and which is most at-risk for future catastrophic loss; and

Whereas, the Property suffered extensive damage and erosion as a direct result of Hurricane Matthew leaving it extremely vulnerable to waves and tidal action; and

Whereas, the damaged dune system of the entire coast line of the County including the precarious situation of the Owner's Property and that of Owner's neighbors are the primary reasons the County continues to declare a State of Local Emergency to this date; and

Whereas, due to the variable and unpredictable nature of the ocean and the storms it brings, coupled with the ensuing hurricane and sea turtle nesting seasons, the need to protect the Property and County beaches is extremely urgent; and

Whereas, the Parties desire to construct a seawall on the Property to mitigate against further loss of land and structures on the Property as well as the County beaches (the "Seawall"); and

Whereas, constructing the Seawall serves a paramount public purpose in avoiding further erosion and loss of property, preventing contamination of the beach

from collapsing debris and structures, and averting a hazardous condition on public beaches; and

Whereas, because the beaches of the County are a primary attraction for tourists and residents and a prime generator of economic activity, the stabilization of the dunes and beaches as a result of the installation of the Seawalls will have a direct, beneficial impact on the local economy; and

Whereas, the public will additionally realize the benefit of higher property values and a stronger tax base with the protection of the Seawall; and

Whereas, the Parties desire to jointly work together in providing for the financing and the design, construction and inspection of the Seawall pursuant to the terms of this Agreement.

NOW THEREFORE, for the mutual covenants herein granted, the parties agree as follows:

1. **FINDINGS.** The above recitals are true and correct and are incorporated as if set out fully herein.

1. **PURPOSE.** The Parties are entering into this Agreement to set forth each party's rights and obligations related to the financing, design, construction and inspection of the Seawall.

2. **SEAWALL PROJECT.**

(a) **County's Responsibilities.** The County agrees to:

- i. Obtain any and all local, state and federal permits for the Seawall and be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the Owner for any loss incurred in connection therewith.
- ii. Complete the Seawall on or before the expiration of any permit(s).
- iii. Certify in writing that the installation of the Seawall was completed in accordance with the plans and specifications as designed by the County's Engineer of Record.

- iv. County's liability shall be limited to installing the Seawall according to the design and specifications of the County's Engineer of Record. County shall not be liable for any negligent design or any negligent maintenance by Owner subsequent to the transfer of ownership of the Seawall to the Owner.
- v. Levy a voluntary non-ad valorem special assessment on the Property, pursuant to section 197.3632, Florida Statutes, to finance the design, construction and inspection of the Seawall.
- vi. Apportion the cost of the Seawall among the benefitted properties on a linear foot basis or another methodology as determined by the County, which is fair and reasonable.

(b) Owner's Responsibilities. The Owner agrees to:

- i. Grant to County, including but not limited to its employees, agents or entities who are acting under a contract with the County, the right to enter upon the Property and perform such functions pursuant to the terms within this Agreement.
- ii. Upon completion, to accept ownership of the Seawall and to be solely responsible for the cost of repairing, maintaining or replacing any future facilities placed upon the Easement Property.
- iii. Be responsible for maintaining the Seawall upon transfer of ownership to the Owner.
- iv. Maintain the Seawall in the condition required by the permit(s) issued from the regulatory agencies.
- v. Make any and all repairs to the Seawall in accordance with any permits and/or applicable laws, rules, regulations and ordinances of the appropriate federal, state and local governments.
- vi. Be responsible for obtaining any additional permits or other applicable regulatory authorizations necessary to affect those repairs required to maintain the Seawall.
- vii. To voluntarily accept the imposition of a non-ad valorem special assessment pursuant to section 197.3632, Florida Statutes, to finance the design, construction and inspection of the Seawall on the Property.

4. GRANT OF TEMPORARY EASEMENT. The Owner hereby grants, and the County accepts, a temporary, non-exclusive easement for the benefit of the County, its employees, agents, successors and assigns (including those parties that have entered into a contract with the County to provide the Project contained herein), over, under, upon and across the following described lands of the Owner situated in Flagler County, Florida and being more particularly described as set forth in Exhibit A attached hereto (the "Easement Property"), for the purpose of designing, constructing and inspecting the Seawall.

5. SEAWALL CONSTRUCTION - The construction of the Seawall shall be in accordance with the design plans and specifications attached hereto and in accordance with any terms and conditions of the FDEP permit issued for construction on the property based on the attached plans and specifications. The Owner understands and approves the proposed design plans and specifications and hereby authorizes the County to construct the Seawall per these plans, specifications and permits.

Seawall construction costs shall include but shall not be limited to: all costs related to the Seawall including but not limited to permit costs, seawall caps, anchoring, pilings, and the proportionate share of the seawall returns for termination or stability shared among all other participating owners. Additionally, seawall cost will include any backfill, planting on the backfill, surveying for construction, "as built" surveys, construction inspection, any financial procurement and finance costs, inspection costs and engineers certification, plus all labor and all other costs associated with the Seawall construction.

6. TERMS AND CONDITIONS OF TEMPORARY EASEMENT. The temporary easement being granted by the Owner is for the installation of a Seawall, including its design, permitting, construction and inspection. Accordingly, the temporary easement granted to the County by the Owners pursuant to this Agreement shall be released, vacated and automatically terminated without further action by the parties upon the consequential occurrence of the following events:

(a) Completion of construction of the Seawall as evidenced by the delivery of as-built drawings from the County to the Owner.

(b) Delivery by the County to the Owner of a Certificate of Completion, certifying that the Seawall has been completed in accordance with the design and specifications of the Engineer of Record and which will include final approval of the construction by FDEP.

Flagler County
 Project: Painter's Hill Seawall
 Project No: C2016-079

Prepared by: M. Doll, E.I.
 Date: 3/6/2017
 Reviewed by: H. Verkerk, P.E.
 K. Knight, P.E.

Engineer's Preliminary Estimate of
 Probable Cost Worksheet

PAINTER'S HILL SEAWALL					
ITEM	DESCRIPTION	UNITS	QTY	UNIT COST	TOTAL COST
LUMP SUM					
001	Insurance	LS	1	\$ 12,000.00	\$ 12,000.00
002	Mobilization and Demobilization	LS	1	\$ 76,000.00	\$ 76,000.00
003	Environmental Protection and Erosion Control	LS	1	\$ 46,000.00	\$ 46,000.00
004	Construction, Payment, and As-Built Surveys	LS	1	\$ 46,000.00	\$ 46,000.00
005	Backfill	LS	1	\$ 104,950.00	\$ 104,950.00
006	Vinyl Sheetpile	LS	1	\$ 499,200.00	\$ 499,200.00
007	Helical Anchors	LS	1	\$ 386,000.00	\$ 386,000.00
008	Concrete Cap	LS	1	\$ 231,100.00	\$ 231,100.00
009	Return Wall - Vinyl Sheetpile	LS	1	\$ 197,600.00	\$ 197,600.00
010	Return Wall - Concrete Cap	LS	1	\$ 91,500.00	\$ 91,500.00
011	Earthwork for Access Ramp	LS	1	\$ 10,000.00	\$ 10,000.00
LUMP SUM TOTAL					\$ 1,700,350.00
Construction Cost (Items 5-10)					\$ 1,520,350.00
-30%					\$ 1,190,000.00
GRAND TOTAL					\$ 1,700,350.00
30%					\$ 2,210,000.00

Construction Cost Per Linear Foot					
001	Seawall	LF	1	\$ 1,081.90	\$ 1,081.90
002	Return Wall	LF	1	\$ 688.55	\$ 688.55

*Items 1-4 were distributed between seawall and return wall based on ratio of respective lengths

NOTES:

- 1 This cost opinion is based on survey and understanding of the work and is subject to change.
- 2 The estimated materials and unit costs represent Taylor Engineering, Inc. best judgment as a professional design firm familiar with the type of construction proposed. Taylor Engineering, Inc. has no control over the availability or cost of labor, equipment or materials, market conditions, or the Contractor's methods of pricing. Accordingly, Taylor Engineering, Inc. makes no warranty, express or implied, that the actual bids or negotiated prices will not vary from this Preliminary Opinion of Probable Cost.
- 3 All quantities estimated as in-place quantities.
- 4 Construction Cost may change due to fluctuations in the prices of steel, concrete, and petroleum.
- 5 This project does not anticipate encountering hazardous material.

Upon the occurrence of both (a) and (b) above, undivided fee simple ownership of the Seawall shall be vested in the Owner, and the County shall have no property interest whatsoever in the Seawall.

7. HARMONIOUS USE BY OWNER. The Owner reserves unto himself the right and privilege to use the Easement Property for any purpose consistent with and subservient to the County's use or enjoyment thereof, including the right to use portions of the Easement Property for access to Owner's property adjacent to the Easement Property, so long as such access otherwise complies with any postings of the County's contractor and applicable governmental regulations.

8. VOLUNTARY ASSESSMENT. The Owner agrees to participate in the financing of the Seawall Project to the extent of their pro-rata share. The Owner hereby consents to the County levying a non-ad valorem assessment on the Property and to use the uniform method of collecting non-ad valorem special assessments for the collection of the assessment against the Property. The non-ad valorem assessment shall be for the cost of providing design, construction and inspection of the Seawall on Owner's Property (the "Assessment").

(a) Acknowledgments by Owner. The Owner acknowledges that construction of the Seawall will provide a special benefit to the Property and that payment of the Assessment on the tax bill provides an additional special benefit by allowing the Owner the ability to finance the Seawall over a term of years and have the Assessment remain with the Property in the event of sale of the Property. The Owner acknowledges that all terms of this Agreement are fair and reasonable in relation to the special benefits thus described. The Owner acknowledges and agrees that the cost of the Seawall is equal to or less than the benefits to be received by the Owner.

(b) Enabling Ordinance and Resolution. The Parties agree to approve and keep in effect such resolutions and ordinances necessary to approve the Assessment.

(c) Assessment Amount. The total project cost will vary depending on the number of participants in the Voluntary Assessment Program, the exact number of which is not known as of this time. The Seawall project costs will be paid with annual assessments over a fifteen (15) year period and are estimated and set as provided in Section 11.

(d) Payment of Assessment. The Owner hereby freely and willingly agrees to pay the Assessment pursuant to the terms of this Agreement and

acknowledges that the failure to pay the Assessment will cause a tax certificate to be issued against the property which may result in a loss of title.

(e) Default. Failure to pay the Assessment will cause a tax certificate to be issued against the Property which may result in a loss of title.

9. TERM. The term of this Agreement shall commence when the last party hereto executes this Agreement and shall terminate upon full satisfaction of all Assessment payments by Owner.

10. FUNDING of VOLUNTARY ASSESSMENT. Seawall construction costs are expected to be between \$800 and \$1250 dollars per linear foot of ocean property frontage. Each owner entering into this Agreement and signing the Maximum Seawall cost agreement will include as part of voluntary assessment seawall district and will be obligated to pay the cost of Seawall Construction as a special assessment. The district will be created by the County prior to December of 2017 and the annual assessment will be on the FY 2018/19 tax bills that will be sent out in October 2018. The district will be established for 15 years and will include a maximum annual assessment that will be established as part of the district. The amount owed shall be established per lot and may be paid off at any time. This Agreement shall serve as prima face evidence of the Owner's concurrence with the voluntary assessment district.

11. SEAWALL COST – Prior to construction each property owner will be presented a Maximum Seawall Cost Agreement based on engineer's estimate of probable costs and taking into account all of the requirements herein. Estimates of financing, district fees (tax collector/property appraiser), prorated costs of seawall returns and contingency may be included. This shall serve as the maximum cost of the Seawall construction for the Property and shall be signed for concurrence by the owner.

12. POWER OF ATTORNEY FOR SEAWALL - By signature herein, the Owner hereby grants the County the power of attorney to enter into permits, contracts, financing and other legal documents necessary to carry out the construction of the seawall. The Owner warrants that it is empowered to bind the Property to the terms of this Agreement and it is acting on behalf of any individual or entity that has an interest in the Property and will hold the County harmless from any other individual or entity that claims an interest in the Property in the performance of this Agreement.

13. PUBLIC RECORDS. The Owner acknowledges and agrees that this Agreement and any other documentation connected herewith, including correspondence with the County, are public records subject to public inspection pursuant to Chapter 119, Florida Statutes.

14. FURTHER DOCUMENTATION. The Owner agrees that at any time following a request by the County, the Owner shall execute and deliver to the County such further documents and instruments, in form and substance reasonably necessary to confirm and/or effectuate the obligations of the Owner hereunder and the consummation of the design and construction of the Seawall as contemplated hereby.

15. GOVERNING LAW AND VENUE. The exclusive jurisdiction and venue for any action to interpret and/or enforce the terms of this Agreement shall be in the Seventh Judicial Circuit in and for Flagler County, Flagler. In the event of a dispute, this Agreement shall be interpreted under Florida Law except its conflict of laws provisions.

16. JOINT AUTHORSHIP. This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

17. SEVERABILITY. All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on any other provision of this Agreement. It is understood by the parties hereto that, if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

18. WAIVER. Failure of the Parties to insist upon strict performance of any of the covenants, terms, provisions or conditions of this Agreement, or to exercise any right or option herein contained, shall not be construed as a waiver or a relinquishment for the future of any such covenant, term, provision, condition or right of election, but same shall remain in full force and effect.

19. NOTICE. The parties hereto agree and understand that written notice, mailed or delivered to the last known mailing address, shall constitute sufficient notice to the County and the Owner. All notices required and/or made pursuant to this Agreement to be given to the County and the Owner shall be in writing and given by way of the United States Postal Service, first class registered mail, postage prepaid, addressed to the following addresses of record:

Owner:

X
Y

County:

Flagler County
ATTN: Craig Coffey, County Administrator
1769 East Moody Blvd., Bldg. 2

20. ENTIRE AGREEMENT. This Agreement, including referenced exhibits and attachments hereto, constitutes the entire Agreement between the parties and shall supersede replace and nullify any and all prior Agreements or understandings; written or oral, relating to the matters set forth herein, and any such prior Agreements or understandings shall have no force or affect whatsoever on this Agreement.

21. BINDING ON SUCCESSORS. This Agreement shall be binding not only upon the parties but also upon their respective heirs, legal representatives, assigns and other successors in interest.

22. COVENANTS RUNNING WITH THE LAND. All of the covenants, terms, agreements and restrictions set forth in this Agreement are intended to be, and are construed as, covenants running with the land, and shall be binding upon, and inure to the benefit of the County and Owner, and their respective successors in interest, devisees, grantees, heirs, personal representatives and assigns.

23. REPRESENTATIONS AND WARRANTIES. Owner is authorized to enter into this Agreement and has secured any approvals necessary to enter into this Agreement. By executing this Agreement, Owner certifies that nothing prevents Owner from entering into this Agreement and that no encumbrance would impede or prohibit the installation of the Seawall as described herein.

24. INDEMNIFICATION. The Owner agrees to indemnify, defend, protect, and hold harmless the County and any and all agents, officers, employees, and consultants, from and against all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with (A) the Assessment, (B) the Seawall, or (D) any other fact, circumstance or event related to the subject matter of this Agreement, regardless of whether such losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) accrue before or after the date of this Agreement.

25. COUNTERPARTS. This Agreement may be signed in counterparts each of which, taken together, shall be deemed an original hereof. Counterpart signatures may be scanned in PDF format and sent to the other party by email, and this shall be as effective as original signatures.

26. MODIFICATION. The covenants, terms and provisions of this Agreement may be modified by way of a written instrument, mutually accepted by the parties hereto. In the event of a conflict between the covenants, terms and/or provisions of this Agreement and any written Amendment(s) hereto, the provisions of the latest executed instrument shall take precedence.

27. RECORDATION. This Agreement shall be recorded in the Public Records of Flagler County, Florida, and all lands subject hereto shall be held, released, conveyed and/or encumbered in accordance with, and subject to, the terms and conditions of this Agreement.

28. TIME OF THE ESSENCE. Time is of the essence of each and every covenant of this Agreement.

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

**Flagler County Board
of County Commissioners**

Nate McLaughlin, Chairman

Attest:

Date

Tom Bexley, Clerk of the Circuit
Court and Comptroller

Approved as to Form:

Al Hadeed, County Attorney

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Owner

XXXXXXXXXXXXXXXXXXXX

Witness

Date

(Signature)

(Print or Type Name)

Witness

(Signature)

(Print or Type Name)

STATE OF FLORIDA)
COUNTY OF FLAGLER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017,
by _____, who is personally known to me or who has produced a
driver's license as identification.

SEAL:

Notary Public