

TEMPORARY CONSTRUCTION EASEMENT

This Temporary Construction Easement 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 _____, (address) whose parcel identification number is _____ and more particularly shown and/or described as Exhibit "A" (hereafter, the "Property").

WITNESSETH:

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

Whereas, Owner and County desire to construct a protective dune to mitigate against future tidal flooding on the Property (hereafter, the "Protective Dune"); and

Whereas, Owner's Property is located within an area of the County's beaches which is the most at risk for catastrophic loss; 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 install the Protective Dune is extremely urgent for Owner; 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, because the beaches of the County are a primary draw 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 Protective Dunes will have a direct, beneficial impact on the local economy; and

Whereas, there is a paramount public purpose in expedited installation of the Protective Dunes to prevent neighborhood flooding and damage resulting from the presently fragile and vulnerable state of the dunes; and

Whereas, the Owner will own and maintain the Protective Dune once installed, and the County seeks to have no ownership interest or maintenance responsibility in the Protective Dune once installed.

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.
2. **GRANT OF TEMPORARY EASEMENT.** The Owner does hereby grant, and the County accepts a temporary, non-exclusive easement for the benefit of the County, its successors and assigns over, under, upon and across the following described lands of the Owners situated in Flagler County, Florida and being more particularly shown and described as set forth in Exhibit "A" attached hereto (the "Easement Property"), for the purpose of designing, permitting and constructing Protective Dunes to protect the Owner's property and homeowner's landward of them from oceanic flooding by attempting to restore as much of the previous dune as is practicable and is funded, which dune was lost during Hurricane Mathew that hit Flagler County on October 7, 2016.
3. **PROTECTIVE DUNE CONSTRUCTION.** The construction of the Protective Dune shall be in accordance with the dune/beach profile attached hereto as Exhibit B and in accordance with any terms and conditions of the FDEP permit issued for this construction on the Property. Owner understands and approves the attached dune/beach profile plans and hereby authorizes the County to construct the project per these plans and permits.
4. **TERMS AND CONDITIONS OF TEMPORARY CONSTRUCTION EASEMENT.** The temporary easement is being granted by the Owner pursuant to this Agreement for the installation of a Protective Dune, including its design, permitting, construction and inspection. Accordingly, the temporary easement granted to the County by the Owner(s) pursuant to this Agreement shall be released, vacated and automatically terminated without further action by the parties upon the consequential occurrence of the final approval of the Protective Dune construction by the Florida Department of Environmental Protection (FDEP). Upon the final approval of the Protective Dune by FDEP, an undivided fee simple ownership of the Protective Dune as provided by Florida Law shall be vested in the Owner to the extent the Protective Dune is on the Owner's Property. The County shall have no property interest whatsoever in that portion of the Protective Dune installed on the Owner's Property. The Owner shall be solely responsible for the cost of repairing, maintaining or replacing any future dune improvements or facilities placed upon the Easement Property.
5. **HARMONIOUS USE BY OWNER.** During the installation of the Protective Dune, the Owner reserves 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.

6. **WARRANTY.** Execution of this Agreement constitutes a certification by the County that the project will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. The County will 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. The County will certify in writing to FDEP that the installation of the Protective Dune was completed in accordance with the plans and specifications as designed by the County's Engineer of Record. County's liability shall be limited to Protective Dune 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 Protective Dune to the Owner.

7. **TERM.** The term of this Agreement shall commence immediately and shall terminate upon completion of the installation of the Protective Dune until final approval of the construction by FDEP as described in paragraph 3 above. The County agrees to complete the project on or before the expiration of all Florida Department of Environmental Protection permits necessary for the project.

8. **PROTECTIVE DUNE COSTS.** The County through its funds and grants from FDEP agrees to bear the cost of any Protective Dune construction it undertakes pursuant to this Agreement.

9. **POWER OF ATTORNEY FOR PROTECTIVE DUNE.** By signature herein, the owner hereby grants the COUNTY the power of attorney to enter into permits, contracts, and other legal documents as necessary to carry out the installation of the Protective Dune.

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

11. **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.

12. **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.

13. **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 held to be illegal or in conflict with any law of the State of Florida or the

United States by a court of competent jurisdiction, 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.

14. **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.

15. **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 either delivered or given by way of the United States Postal Service, first class mail, postage prepaid, addressed to the following addresses of record:

Owner:

County:

Name: _____

Flagler County

Address: _____

ATTN: Craig Coffey, County Administrator

1769 East Moody Blvd., Bldg. 2

Bunnell, FL 32110

Phone: _____

Phone: 386.313.4001

Email: _____

Email: ccoffey@flaglercounty.org

16. **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 effect whatsoever on this Agreement.

17. **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. There are no third party beneficiaries for this Agreement.

18. **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.

Attest:

**Flagler County Board
of County Commissioners**

Tom Bexley, Clerk of the Circuit
Court and Comptroller

Nate McLaughlin, Chairman

Date

Date

Approved As To Form:

Al Hadeed, County Attorney

Witness

Owner

Signature

Signature

Printed Name

Printed Name

Date

Date

Witness

(Signature)

(Print or Type Name)

Date

STATE OF FLORIDA)
COUNTY OF FLAGLER)

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

SEAL:

Notary Public

EXHIBIT A
EASEMENT PROPERTY DESCRIPTION

EXHIBIT B
DUNE/BEACH PROFILE