Agenda Item: 3L1

# PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

# AGENDA ITEM SUMMARY

Meeting Date: January 23, 2 Department Submitted By:	( ) Workshop	( ) Workshop ( ) Public Hearing			
Submitted For:	Environmental Resources Manag Environmental Resources Manag	<u>ement</u> <u>ement</u>			
	I. EXECUTIVE BRIEF				
Motion and Title: Staff recommends motion to approve: South Cove Pedestrian Pier Facility Easement Agreement (Easement) with Holy Trinity Properties, Inc., a Florida limited liability company (Grantor), at no cost to Palm Beach County for an non-exclusive perpetual easement including riparian rights for the existing South Cove Pedestrian Pier Facility.					
the uplands for ingress and maintenance or modification t	is required by the Florida Depart es Palm Beach County with the ned egress and allowing for repair, r to the existing South Cove Pedestr ands adjacent to the Grantor's pro	cessary riparian rights to replacement, operation, rian Pier Facility located			
Background and Justification: The Easement is being requested by FDEP as it relates to the settlement agreement approved by the Board of County Commissioners (BCC) on October 6, 2015 (R2015-1368), and the subsequent resolution authorized by the BCC on July 11, 2017 (R2017-0904). The settlement agreement required the County to obtain a permit from FDEP on behalf of Grantor to construct a marina. As part of the permitting process the FDEP is requiring the County and Grantor enter into the attached Easement. The Easement is at no cost to the County and provides rights to continue to operate, repair, maintain, replace or modify, but not to enlarge the footprint of the pedestrian pier.					
Attachment:	Facility Easement Agreement				
Recommended by: 12/28/17 Department Director Date					
Approved by:	aunty Administrator	15/18			

#### **II. FISCAL IMPACT ANALYSIS**

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	-	·		-	A-100-100-100-100-100-100-100-100-100-10
Operating Costs					·····
External Revenues					
Program Income (Cour	nty)		·		
In-Kind Match (County)					
NET FISCAL IMPACT					
# ADDITIONAL FTE POSITIONS (Cumulativ	ve)			·	<u></u>
ls Item Included in Cur	rent Budget?	Yes _		No	
Does this item include	the use of fed	leral funds?	Yes	No	
Budget Account No.:					
Fund Department	Unit	_Object	_ Program		
There is no	nded Sources ofiscal impact nt Fiscal Revie	•	-	iscal Impac	t:
	III. REVI	IEW COMME	NTS		
A. OFMB Fise OFMB Spil2 B. Legal Suff	cal and /or Co	Wis d	) - · J.	Comments:  Justin  prinent and (	1/5/je
<u>Onne</u> Assistant	Nelson t County Attorn	<i>5- </i> 8 ney			
C. Other Dep	artment Revie	w:			
 Departmen	nt Director				

### ATTACHMENT 1

#### PREPARED BY AND RETURN TO:

Robert S. Yerkes, Esquire Foerster, Isaac & Yerkes, P.A. 2468 Atlantic Boulevard Jacksonville, Florida 32207

Space above this line for recorder's use only

# SOUTH COVE PEDESTRIAN PIER FACILITY EASEMENT AGREEMENT AND RIPARIAN LINE AGREEMENT

THIS SOUTH COVE PEDESTRIAN PIER FACILITY EASEMENT AGREEMENT AND RIPARIAN LINE AGREEMENT (hereinafter Agreement) is made as of the date set forth below by and between Holy Trinity Properties, Inc., a Florida limited liability company ("Grantor"), whose address is 211 Trinity Place, West Palm Beach, Florida 33401, Palm Beach County, a political subdivision of the State of Florida ("Grantee"), whose address is 2300 North Jog Road, 4<sup>th</sup> Floor, West Palm Beach, Florida 33411, for the following uses and purposes.

#### **RECITALS:**

- A. This Easement Agreement concerns that certain tract or parcel of real property lying and being in Palm Beach County, Florida, depicted as the "South Cove Pedestrian Pier Facility Easement" and more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property").
- B. Grantee desires to obtain, and Grantor has agreed to convey, at no cost to the Grantee, a non-exclusive perpetual easement, as described in Exhibit A, including riparian rights for the sole purpose of allowing Grantee to operate, repair, maintain, replace or modify, but not to enlarge the footprint of a pedestrian pier and other improvements (the "South Cove Pedestrian Pier Facility") upon sovereign submerged lands located on the Property and sovereign submerged lands pursuant to a Letter of Consent to use Sovereign Submerged Lands between Grantee and the Board of Trustees of the Internal Improvement Trust Fund ("Board of Trustees"). Grantor reserves any and all other property rights in the property described in Exhibit A not conveyed by this non-exclusive easement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby covenant and agree as follows:

1. <u>Recitals</u>: The recitals set forth above are true and correct, and shall constitute and be construed as an integral part of this Easement Agreement and not merely as recitals hereto.

#### 2. Grant of Easement:

- a. Grantor hereby grants and conveys to Grantee, the following easement (hereinafter the "Easement") over, upon and across the Property:
- (i) A non-exclusive perpetual easement, at no cost to the Grantee, for ingress, egress, and utilities including riparian rights, upon, over and across the Property for the sole purpose of allowing Grantee to construct, repair, operate ,maintain, repair or modify, but not to enlarge the footprint of the South Cove Pedestrian Pier Facility currently located on the Property and on sovereign submerged land pursuant to a Letter of Consent to use Sovereign Submerged Lands between Grantee and the Board of Trustees;
- 3. <u>Purpose of Easement</u>. The easement granted hereby is for the express purpose of providing Grantee with the necessary riparian rights to the uplands and necessary rights for ingress and egress, and for the purpose of allowing Grantee to construct, repair, operate, maintain, or modify the South Cove Pedestrian Pier Facility located on the Property and sovereign submerged lands pursuant to a Letter of Consent to use Sovereign Submerged Lands between Grantee and the Board of Trustees. Grantor reserves all other property rights in the property described in Exhibit A, attached hereto.
- 4. <u>Pier</u>. Grantee shall have complete and total responsibility for the construction, repair, maintenance and operation of the South Cove Pedestrian Pier Facility. Grantee shall be responsible for obtaining, at Grantee's cost all necessary, local, state, and federal permits and approvals that may be required from time to time for purposes of constructing, modifying, (but not to enlarge the footprint of) repairing, operating and maintaining the South Cove Pedestrian Pier Facility.
- 5. <u>Maintenance, Repair, and Improvements</u>. Grantee shall, at its sole cost and expense, timely perform all maintenance, repair and replacement of the South Cove Pedestrian Pier Facility and shall at all times maintain the South Cove Pedestrian Pier Facility in a safe condition.
- 6. Easement Running with the Land. This Easement shall be deemed to be an easement appurtenant to and running with the ownership of the Property, or any portion thereof.
- 7. <u>Termination of Easement</u>. This Easement Agreement may be terminated upon written mutual agreement by the Grantor and Grantee. This Easement Agreement may also be terminated if the Letter of Consent to use Sovereign Submerged Lands or any similar document between the Grantee and the Board of Trustees that is required for the operation of the South Cove Pedestrian Pier Facility Improvements is terminated and is not replaced or renewed.
- 8. <u>Taxes</u>. Grantor shall pay all ad valorem taxes and assessments, if any, levied or assessed by any lawful authority against the Easement Property before the same becomes

delinquent, and Grantee shall pay all tangible personal property taxes, if any, on the South Cove Pedestrian Pier Facility or any other property or equipment owned by Grantee.

- 9. <u>Permitted Encumbrances</u>. This Easement is conveyed subject to the following liens, and encumbrances (the "Permitted Encumbrances"):
- a. Ad valorem taxes and assessments assessed against the Property when the same shall become due and payable, which shall be paid by the Grantor.
- b. Existing easements, restrictions, and mineral reservations, if any, which are not hereby reimposed.
- 10. <u>Riparian Line Agreement</u>. Grantor and Grantee, respective successors and assigns, do hereby unconditionally and forever establish the location of the Riparian Rights Line as shown on Exhibit A and disclaim any assertion of riparian rights, irrespective of whether such claim arises by statute or common law, inconsistent with the Riparian Rights Line established by this Agreement, including without limitation, the waiver of setback requirements set forth in Paragraph 11.
- 11. <u>Waiver of Setback</u>. The parties, for themselves and their respective successors and assigns, hereby waive the setback requirements on either side of the parties' Riparian Rights Line as set forth in the Trustees' Rule 18-21.004(3)(d), Florida Administrative Code.
- 12. <u>Use of Agreement</u>. The execution of this Agreement shall serve as the letter of concurrence referenced in Trustees' Rule 18-21.004(3)(d), Florida Administrative Code. The parties, their heirs, and assigns shall not contest the agreed upon Riparian Rights Line shown on Exhibit A. This Agreement may be presented to any governmental agency and be relied upon for purposes of establishing: (i) the Riparian Rights Line; (ii) the waiver of the riparian setback areas; and (iii) the non-objection of Grantor.
- 13. <u>General</u>. All rights, powers and privileges herein reserved and given to either party shall inure to the benefit of and be held by the respective successors, heirs, and assigns of the parties hereto, and likewise, all liabilities and obligations imposed upon each shall be binding upon the respective successors, heirs and assigns of the parties, hereto.
- 14. <u>Entire Agreement</u>. This Agreement constitutes the entire agreement of the parties and may not be amended except by written instrument executed by all parties hereto.
- 15. <u>Venue and Choice of Law</u>. This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida. In the event any litigation to enforce or interpret this Agreement, the parties agree that the exclusive forum thereof shall be the Circuit Court of Palm Beach County, Florida.
- 16. <u>Partial Invalidity</u>. The provisions of this Agreement are intended to be independent, and in the event any provision hereof shall be declared by a court of competent jurisdiction to be

illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the remainder of this Agreement.

- 17. <u>Headings.</u> The paragraph headings are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope or content of this Agreement or any provision hereof.
- 18. <u>Merger</u>. No prior or present agreements or representations shall be binding upon any of the parties hereto unless incorporated in this Agreement.
- 19. <u>Amendments</u>. No modifications or change of this Agreement shall be valid or binding upon the parties unless in writing, executed by the parties to be bound thereby.
- 20. <u>Assignment</u>. This Agreement shall be binding upon, and inure to the benefit of the successors and assigns of the parties hereto.
- 21. No Third Party Beneficiary. No provision of this Agreement is intended to, or shall be construed to create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the Grantee and/or Grantor.
- 22. <u>Waiver of Costs or Compensation</u>. Grantee and Grantor agree that Grantee shall not be liable for any costs or payment of compensation to Grantor prior to the date of this Agreement for placement of the South Cove Pedestrian Pier Facility located on the Property.

DATED	this	of December, 2	01′	7.

Witness Witness	HOLY TRINITY PROPERTIES, INC.  Mule James  Dr. Linda Fraser, President
STATE OF FLORIDA COUNTY OF DUVAL	
Sworn to and subscribed before me this	ERTIES, INC., who is personally known to
ACKNOWLEDGMENT, ACCEPTANCE O AGREEM	
Palm Beach County, by the execution of thi	s Acknowledgment, Acceptance of Easement
and Riparian Line Agreement, agrees to the terms s	set forth above and agrees to be bound and
abide by these terms.	
ATTEST: Sharon R. Bock, Clerk & Comptroller	PALM BEACH COUNTY, BY ITS BOARD OF COUNTY COMMISSIONERS:
By: Deputy Clerk	By:
Approved as to terms and conditions:	Approved as to form and legal sufficiency:
By: All Department Director  EXHIBIT	By:Assistant County Attorney IT A

### EXHIBIT A

#### EXHIBIT "A"

# SOUTH COVE PEDESTRIAN PIER FACILITY UPLAND RIPARIAN EASEMENT

#### THE EAST 10.00 FEET OF THE FOLLOWING DESCRIBED PROPERTY:

PROPERTY AS DESCRIBED IN OFFICIAL RECORD BOOK 852, PAGE 984

PARCEL NO.1 AS SHOWN ON PLAT OF PELICAN LODGE, ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, IN PLAT BOOK 16, PAGE 21, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

DESCRIBED AS FOLLOWS:

BEGINNING AT THE DRILL HOLE IN THE TOP OF A CONCRETE POST LOCATED IN THE EASTERN BOUNDARY OF DLIVE ST., SAID DRILL HOLE MARKING THE SOUTHWEST CORNER OF THAT CERTAIN TRACT OF LAND DEEDED BY HENRY PETTIT TO ANNIE C. PHIPPS UNDER DATE OF APRIL 24. A.D. 1912 AND RECORDED IN DEED BOOK 24, AT PAGE 4. OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, SAID DRILL HOLE BEING 701.07 FEET NORTH OF THE SOUTH LINE SAID SECTION 22 AFORESAID: THENCE NORTHERLY ALONG THE EASTERN BOUNDARY OF DLIVE ST. A DISTANCE OF 125.02 FEET TO A POINT; THENCE EASTERLY, MAKING AN ANGLE WITH THE LAST DESCRIBED COURSE OF 90°46′, MEASURED FROM SOUTH TO EAST. A DISTANCE OF 357.61 FEET, MORE OR LESS TO A POINT IN THE WESTERN BOUNDARY OF FLAGLER DRIVE; THENCE NORTHERLY ALONG THE WESTERN BOUNDARY OF FLAGLER DRIVE, MAKING AN ANGLE WITH THE LAST DESCRIBED COURSE. OF 120.02 FEET TO A CONCRETE MONUMENT; THENCE EASTERLY, MAKING AN ANGLE OF 120.02 18′30″, WITH THE LAST DESCRIBED COURSE. MEASURED FROM NORTH TO EAST. A DISTANCE OF 62.91 FEET, MORE OR LESS TO A POINT IN THE NORTH LINE OF THE WATERS OF LAKE WORTH I THENCE SOUTHERLY ALONG THE WATERS OF LAKE WORTH THENCE SOUTHERLY ALONG THE WATERS EDGE OF LAKE WORTH A DISTANCE OF 146.16 FEET. MORE OR LESS. TO A POINT IN THE NORTH LINE OF THE LANDS OF THE HOLY TRINITY EPISCOPAL CHURCH A DISTANCE OF 129.13 FEET MORE OR LESS TO A CONCRETE MONUMENT; THENCE CONTINUING WESTERLY ALONG THE NORTH LINE OF THE LANDS OF THE HOLY TRINITY EPISCOPAL CHURCH A DISTANCE OF 129.13 FEET MORE OR LESS TO A CONCRETE MONUMENT; THENCE CONTINUING WESTERLY ALONG THE NORTH LINE OF THE LANDS OF THE HOLY TRINITY EPISCOPAL CHURCH DEFLECTING TO THE NORTH LINE OF THE LANDS OF THE HOLY TRINITY EPISCOPAL CHURCH A DISTANCE OF 129.13 FEET MORE OR LESS TO A CONCRETE MONUMENT; THENCE CONTINUING WESTERLY ALONG THE NORTH LINE OF THE LANDS OF THE HOLY TRINITY EPISCOPAL CHURCH A DISTANCE OF 129.13 FEET MORE OR LESS TO A CONCRETE MONUMENT THENCE CONTINUING WESTERLY ALONG THE NORTH LINE OF THE LANDS OF THE HOLY TRINITY EPISCOPAL CH

PROJECT 20	OF:	SHEET:
1 8 0 7	တ	
12-(		

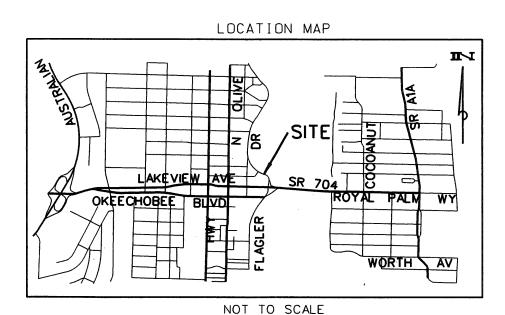
PEDESTRIAN PIER
FACILITY - UPLAND
RIPARIAN EASEMENT

DESIGN FILE NAME
S-17-3878.DGN S-1-17-3878

1	DATE CHE	APPROV	SCALE:	NO.	REVISION	BY	DATE	۱
	CHECKED: G. DATE DRAWN:11/2	S.	[					
	W.M. 1/17FIELD	DOK P	-					The second named in column 2 is not a se

PALM BEACH COUNTY
ENGINEERING AND PUBLIC WORKS
ENGINEERING SERVICES

2300 NORTH JOG ROAD
WEST PALM BEACH, FL 33411



#### SURVEYOR'S NOTES

SAID EASEMENT CONTAINS 1,460 SQUARE FEET.

BEARINGS ARE BASED ON AN ASSUMED BEARING OF NORTHERY ALONG THE EASTERN BOUNDARY OF OLIVE STREET AS DESCRIBED IN OFFICIAL RECORDS BOOK 852, PAGE 984 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND AS SHOWN ON THIS DRAWING AND ALL OTHER BEARINGS ARE RELATIVE THERETO.

NO SEARCH OF THE PUBLIC RECORDS HAS BEEN MADE BY THE SIGNING SURVEYOR.

THIS IS NOT A SURVEY.

IT IS POSSIBLE THAT THERE ARE DEEDS OF RECORD, UNRECORDED DEEDS, EASEMENTS, OR OTHER INSTRUMENTS WHICH COULD AFFECT THE SUBJECT PROPERTY, WHICH ARE UNKNOWN TO THE SIGNING SURVEYOR.

THIS INSTRUMENT PREPARED BY GLENN W. MARK, P.L.S. IN THE OFFICE OF THE COUNTY ENGINEER @ VISTA CENTER 2300 NORTH JOG ROAD, WEST PALM BEACH, FLORIDA 33411-2745.

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

I HEREBY CERTIFY THAT THE LEGAL DESCRIPTION AND SKETCH SHOWN HEREON MEETS THE FLORIDA STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN RULE 5J-17.050-.052, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.

GLENN W. MARK, P.L.S. FLORIDA CERTIFICATE #5304 12/14/17 DATE

