

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

| | | | |
|-----------------------|---|--------------|--------------------|
| Meeting Date: | January 15, 2019 | (X) Consent | () Regular |
| | | () Workshop | () Public Hearing |
| Department: | <u>Environmental Resources Management</u> | | |
| Submitted By: | <u>Environmental Resources Management</u> | | |
| Submitted For: | <u>Environmental Resources Management</u> | | |

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve an Agreement and License for Property Access to Trim Vegetation (Agreement) between Palm Beach County (County) and Seaview at Juno Beach Property Owner’s Association, Inc. (Association) for permit approved trimming of vegetation on County owned beach front property in Juno Beach, for a term of five years beginning upon execution of this Agreement and ending January 15, 2024; and

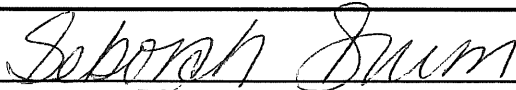

B) authorize the County Administrator, or designee, to sign all future time extensions, task assignments, certifications, and other forms associated with the Agreement, and any necessary minor amendments that do not significantly change the scope of work, terms, or conditions of this Agreement.

Summary: The Association is located on the west side of Highway A1A in Juno Beach immediately south of the Juno Beach Pier. The Agreement allows the Association to trim approximately 200 linear feet of native vegetation on County property along the east side of Highway A1A. The Agreement replaces and terminates an existing trimming Agreement (R2015-0204), set to expire on February 3, 2020. The new Agreement allows the Association to trim approximately 60 additional linear feet and establishes a consistent trim height with neighboring properties. The Association will be responsible for obtaining all local and state permits, and for damages to County property due to trimming. The Agreement provides for monitoring to ensure that trimming will not adversely impact sea turtle nesting activities on the beach nor threaten the viability of the vegetation which helps to stabilize the dune. **No County funds required.** District 1 (AH)

Background and Justification: On February 3, 2015, the Board of County Commissioners approved an Agreement (R2015-0204) to allow the Association to trim approximately 140 linear feet of native vegetation on County property. The new Agreement allows the Association to trim approximately 60 additional linear feet of native vegetation.

Attachments:

- 1. Location Map
- 2. Agreement and License for Property Access to Trim Vegetation (3 Originals)
- 3. Trimming Agreement (R2015-0204)

| | | |
|------------------------|---|----------------|
| Recommended by: | <u></u> | <u>12-6-18</u> |
| | Department Director | Date |
| Approved by: | <u></u> | <u>1/2/19</u> |
| | Assistant County Administrator | Date |

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2019 | 2020 | 2021 | 2022 | 2023 |
|--|-------|------------|-----------|----------|-------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| External Revenues | _____ | _____ | _____ | _____ | _____ |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | _____ | _____ | _____ | _____ | _____ |
| # ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |
| Is Item Included in Current Budget? | | | Yes _____ | No _____ | |
| Does this item include the use of federal funds? | | | Yes _____ | No _____ | |
| Budget Account No.: | | | | | |
| Fund | _____ | Department | _____ | Unit | _____ |
| Object | _____ | Program | _____ | | |

B. Recommended Sources of Funds/Summary of Fiscal Impact: There is no fiscal impact associated with this item.

C. Department Fiscal Review:

S. Neary

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:

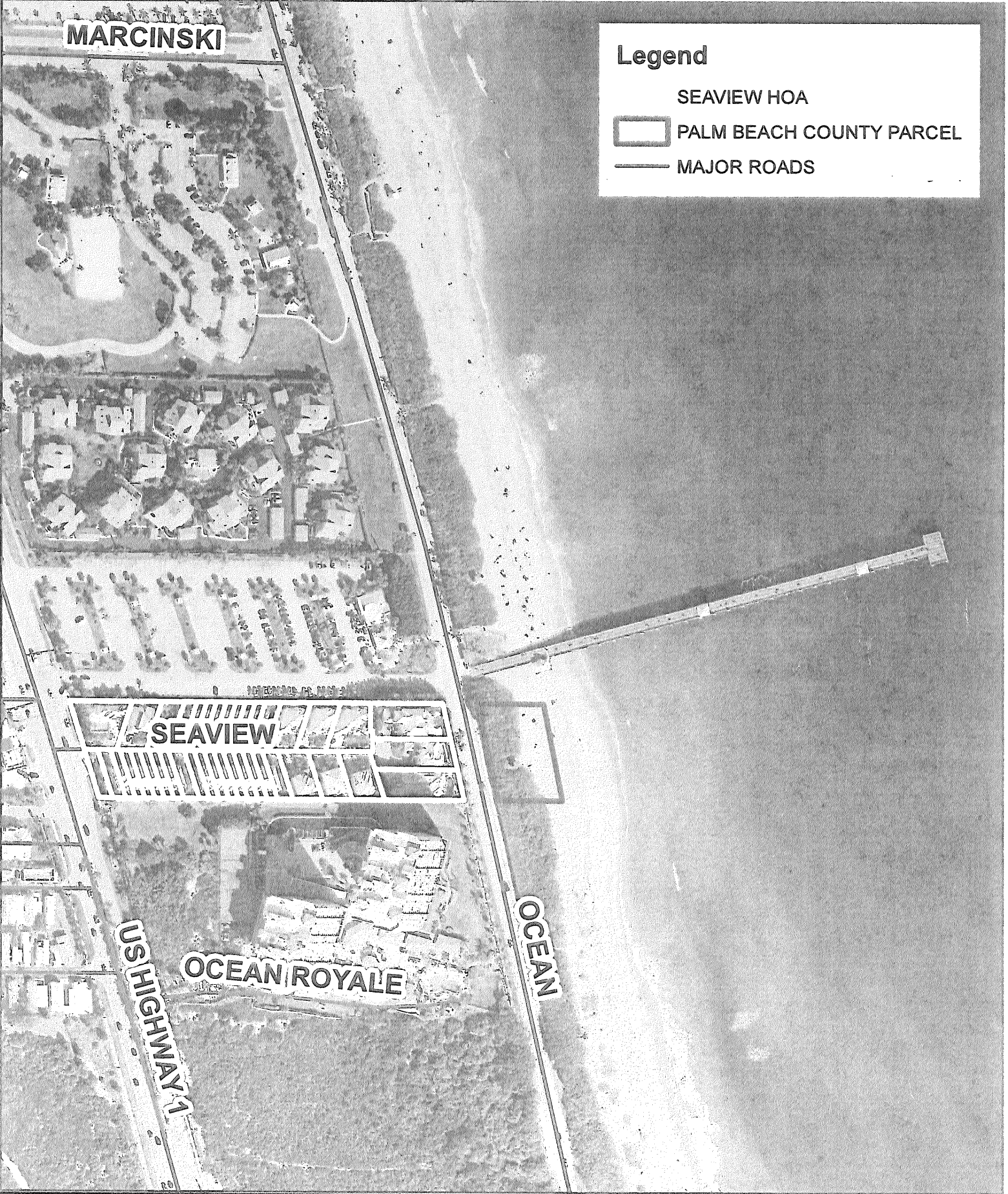
Deborah Row 12/27/18 *J. S. Janbrun* 12/31/18
OFMB (20) 12/27/18/21 Contract Development and Control

B. Legal Sufficiency:

Anne Delmont 1-2-19
Assistant County Attorney

C. Other Department Review:

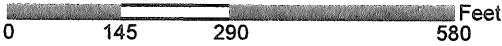
Department Director



Palm Beach County
Department of Environmental
Resources Management

Created: 11/21/2018 LG

Seaview Location Map



Aerial Photo Date: June 2016



Return To:
Lory Gonzalez
Palm Beach County
Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411-2743

AGREEMENT AND LICENSE
FOR
PROPERTY ACCESS TO TRIM VEGETATION

THIS AGREEMENT is made this ____ day of _____, 2018 between Palm Beach County, a political subdivision of the State of Florida, whose mailing address is 2300 North Jog Road, 4th Floor, West Palm Beach, Florida 33411 ("Grantor"), and Seaview at Juno Beach Property Owner's Association, Inc., whose mailing address is 791 Seaview Drive, Juno Beach, Florida, 34408, ("Grantee"), both being herein referred to collectively as the "parties", for the sole purpose of providing property access for permit approved trimming of native vegetation.

WHEREAS, the parties recognize and agree that it is in both of their best interests to enter into this trimming agreement to define management of the dune east of Seaview to minimize the impacts from vegetation trimming.

WHEREAS, the GRANTOR and the GRANTEE previously entered into an Agreement and License for Property Access to Trim Vegetation on February 3, 2015 (R2015-0204) ("Previous Agreement") to provide property access for permit approved trimming of native vegetation, and this Agreement replaces said Agreement and License.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

1. Termination of Previous Agreement. This Agreement terminates and replaces the Previous Agreement.
2. Grant of License. Grantor hereby grants, bargains and conveys to the Grantee, its subcontractors, agents and employees, a temporary, non-exclusive License on, over, under, through and across the Property described in Exhibit "B," attached hereto and incorporated herein ("the License Premises") for property access to trim vegetation as provided herein. This instrument is further subject to all Licenses, restrictions, covenants, conditions, limitations and reservations of record, if any. Grantee's use of the License Premises as provided herein shall not interfere with Grantor's ownership and use of the License Premises or right to construct, maintain or improve the beach and dune system or dune walkover on Grantor's Property.
3. Not a Dedication. Nothing herein contained shall be deemed to be a gift to any private authority or any third party, and the License provided herein shall be strictly limited to the purposes expressed herein. Nothing herein contained shall be deemed to give the

Grantee or any other persons, other than Grantor, and Grantee and its subcontractors, agents and employees any access rights to the License Premises or access to the beach from the Grantor's property other than as may have existed prior to the date of this Agreement. Grantor hereby reserves the right to the continued free use of the property in a manner not inconsistent with the rights granted herein to Grantee and subject to the terms and conditions of this Agreement.

4. Grantee's Use. The License Premises may be used by Grantee, its subcontractors, agents or employees solely for the purpose of providing property access during and only during periods of maintenance associated with sea grape trimming and exotic species removal.

5. Grantee's Obligations. Grantee shall obtain all local and state permits and approvals required by all applicable governmental entities to perform the acts contemplated herein. Grantee shall safeguard and maintain the License Premises and its immediate environs throughout the term of this Agreement when exercising the rights granted herein. Any damage caused by Grantee or its subcontractors, agents or employees to the License Premises or any property of the Grantor or others located on Grantor's property shall be immediately (in no event later than 30 days) repaired by the Grantee at Grantee's sole expense. Such repair work may include, but is not limited to, replanting sea grapes with vegetation of similar size to that damaged and providing sufficient irrigating for successful reestablishment of such sea grapes to the allowable trimmed height.

Grantee shall provide Grantor with thirty (30) days written notification of Grantee's desire to enter onto the License Premises for a major trimming event. Seven (7) days written notification shall be given for minor trimming.

Prior to any trimming event, Grantee shall perform a pre-trim night inspection from the beach to assess existing lighting. If the inspection reveals that exposure of additional lights or indirect illumination will occur due to the trimming, corrective action must be taken prior to this trimming event. Corrective action shall include but is not limited to the Grantee adhering to all applicable sea turtle codes and ordinances in effect during the term of this Agreement. Self-monitoring by the Grantee of the number of interior and exterior lights visible from the beach must be conducted once per month on a new moon during sea turtle nesting season. Results of the monitoring shall be sent to Grantee residents and Grantor within 5 days of each monitoring event.

A major trimming event (which in no event shall reduce the height or amount of vegetation below the limits set forth in Exhibit A) is permitted once per year and shall occur only outside of sea turtle nesting season (March 1 – October 31). Minor trimming events (less than 1 foot vertical reduction) for maintenance of trimmed height can occur at any time. All trimming shall be in accordance with Exhibit A. The Grantee shall remove all existing exotic vegetation (Category I species as defined by the Exotic Pest Plant Council) located within the License Premises during each trimming event. Trimming must be performed in compliance with the

Tree Care Industry Association ANSI A300 Standards for Crown Reduction Pruning by an experienced vendor who is knowledgeable of proper trimming techniques.

Vegetation with a total height of ten (10) feet or less may be reduced by no more than 2 feet annually as part of any major trimming event. Trimming heights for vegetation west of the dune crest shall not be any less than 6 feet. The dune crest shall be defined as the highest elevation of the beach profile or a distance of 15 feet seaward of the easternmost sidewalk edge, whichever is less. Vegetation with a total height greater than ten (10) feet shall not be trimmed for a height reduction. Vegetation with a height of twelve (12) feet or greater and falls west of the dune crest may be window trimmed. Window trimming consists of the pruning of any branch with a diameter of less than 2 inches and is less than eight (8) feet above the elevation of the sidewalk. Seagrapes east of the dune crest may be trimmed to a minimum height of 36 inches above the sidewalk elevation. Grantee shall ensure that all trim heights will be measured from the sidewalk and that PVC reference markers are installed to mark minimum trim heights. The trimming plan and specifications are set out in Exhibit "A", attached hereto and incorporated herein.

Prior to each nesting season, it is the responsibility of Grantee to verify that sea turtle disorientation data will be collected (documented) for the season within the disorientation evaluation area described in Exhibit "B" by a Florida Fish & Wildlife Conservation Commission (FWC) marine turtle permit-holder. In the alternative, Grantee shall hire a qualified consultant, who holds a FWC permit, to document disorientation. Disorientation data shall be collected daily during the sea turtle nesting season within the disorientation evaluation area described in Exhibit "B". Following the conclusion of each sea turtle nesting season, Grantee must present to the Grantor an evaluation of annual disorientation totals for the disorientation evaluation area. If the Grantor reasonably determines that trimming events are increasing sea turtle disorientation, it shall so advise Grantee and the parties will in good faith attempt to work out a resolution to the problem. If the parties are unable to resolve the disorientation problem, the Grantor may immediately give notice of termination of this Agreement.

Grantee acknowledges and agrees that Grantor may at its own expense have a representative on-site observing the activities of Grantee during trimming and in the event Grantee, its agents, employees or subcontractors are violating the terms of this Agreement, Grantor and its representatives shall have the right to stop the work in progress, and Grantee shall hold Grantor harmless from such work stoppage. Grantee is solely responsible to pay for all costs related to sea grape trimming, exotic species removal and any corrective action in the event that the terms of this Agreement are violated.

6. Term. This Agreement shall be effective upon execution by both parties and shall continue for five (5) years from the date of execution, unless earlier terminated as provided herein. After the initial five year term, the parties shall in good faith evaluate whether this Agreement has had a detrimental effect on sea turtles and, if not, whether it should be extended. At that time, the parties may decide to extend the Agreement for an additional period of time to be agreed upon by the parties.

7. Termination. If any party fails to fulfill its obligations under this Agreement in a timely and proper manner, any other party may give written notice of any deficiency. The party in default shall immediately correct the deficiency or shall correct the deficiency in the time period specified by the non-defaulting party. If the defaulting party fails to correct the deficiency within the time period specified by the non-defaulting party, the non-defaulting party shall have the option to terminate this Agreement effective upon notice to the defaulting party.

This Agreement may be terminated for convenience by either party upon thirty (30) days written notice to the other party.

8. Notices. All formal notices between the Parties shall be deemed received if sent by certified mail, return receipt requested, or facsimile with confirmation receipt to the Parties' Representatives set forth below:

Grantor:
Director
Palm Beach County Department of Environmental Resources Management
2300 North Jog Road 4th floor
West Palm Beach, FL 33411
Facsimile: 561-233-2414

Grantee:
President
Seaview at Juno Beach Property Owner's Association, Inc.
781 Seaview Drive
Juno Beach, FL 33408
Facsimile:

9. Insurance. Grantee and its subcontractors, agents or vendors who actually perform the vegetation trimming work provided for herein shall maintain the insurance provided for herein below, which shall cover Grantee's performance under this Agreement.

Grantee agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as GRANTOR's review or acceptance of insurance maintained by Grantee is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Grantee under this contract. In addition, Grantee agrees to notify GRANTOR of any cancellation, non-renewal or material change taking place during the life of this Agreement.

Commercial General Liability Grantee agrees to maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement(s) excluding nor limiting Premises/Operations, Personal Injury, Product/Completed Operations, Contractual Liability, Severability of Interests or Cross

Liability. Coverage shall be provided on a primary basis.

Additional Insured Grantee agrees to endorse COUNTY as an Additional Insured with a CG2026 Additional Insured or its equivalent – Designated Person or Organization endorsement to the Commercial General Liability. The additional insured shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents. Coverage shall be provided on a primary basis.

Waiver of Subrogation Grantee hereby waives any and all rights of Subrogation against the GRANTOR, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Grantee shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should Grantee enter into such an agreement on a pre-loss basis.

Certificate(s) of Insurance Grantee agrees to provide GRANTOR a Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. In addition, Grantee agrees to notify GRANTOR of any cancellation, non-renewal or material change taking place during the life of this contract. The Certificate Holder address shall read:

PALM BEACH COUNTY

Director

Palm Beach County Department of Environmental Resources Management

2300 North Jog Road 4th floor

West Palm Beach, FL 33411

Facsimile: 561-233-2414

In addition to the requirements above, the following requirements apply to the vendor(s) / subcontractors who will be doing the work.

Business Automobile Liability Grantee agrees to maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Grantee does not own automobiles, Grantee agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. Coverage shall be provided on a primary basis.

Worker's Compensation Insurance & Employers Liability Grantee agrees to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. Coverage shall be provided on a primary basis.

Additional Insured Grantee agrees to endorse GRANTOR as an Additional Insured with

a CG2026 Additional Insured or its equivalent – Designated Person or Organization endorsement to the Commercial General Liability. The additional insured shall read “Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents. Coverage shall be provided on a primary basis.

Waiver of Subrogation Grantee hereby waives any and all rights of Subrogation against the GRANTOR, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Grantee shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should Grantee enter into such an agreement on a pre-loss basis.

Umbrella or Excess Liability. Grantee may satisfy the minimum liability limits required above for Commercial General Liability and Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest “Each Occurrence” limit for the Commercial General Liability and Business Auto Liability. Grantee agrees to endorse GRANTOR as an “Additional Insured” on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a pure/true “Follow-Form” basis.

Right to Review GRANTOR reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the GRANTOR reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due to its poor financial condition or failure to operating legally.

10. Indemnification. Grantee shall protect, defend, reimburse, indemnify and hold GRANTOR, its agents, employees and elected officials harmless from and against any and all claims, liability, loss, expense, cost, damages, or causes of action of every kind or character, including attorneys’ fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of Grantee’s performance of the terms of this Agreement or due to the acts or omissions of Grantee.

The Grantor shall not be not responsible for the accidental taking of any sea turtle(s) due to the trimming of vegetation by Grantee pursuant to this Agreement, and Grantee shall assume full responsibility and liability for any and all impacts to sea turtles.

11. Non-Discrimination. Grantor and Grantee agree that no person shall, on the grounds of age, race, color, sex, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, or gender identity or expression, or genetic information be excluded from the benefits of, or be subjected to any form of discrimination

under any activity carried out by the performance of this Agreement.

12. Grantor's Representations. Grantor represents and warrants that Grantor is the lawful owner of and has good and marketable legal title to the License Premises. Grantor has the full right, power and authority to grant a License and all other rights granted hereunder to Grantee.

13. Authority to Execute This Agreement. Any person executing this Agreement hereby warrants and represents that he or she has received all authorizations necessary to bind the parties to the terms of this Agreement.

14. Non-Assignability. This Agreement shall not be assignable by either party without the prior written consent of the other and any attempted assignment shall be null and void.

15. Prohibited Acts by Grantee. With the sole exception of the License Premises, Grantee shall not enter on, over, under, through or across any other portion of Grantor's property for access to or to do work on the License Premises. Grantee shall promptly and at Grantee's sole expense repair or replace any unauthorized portion of Grantor's property damaged or destroyed and/or impairment caused by Grantee. Unless otherwise authorized by the Grantor, the Grantee shall perform work on the License Premises only on weekdays, between 8:00 a.m. and 5:00 p.m. Grantee shall promptly remove, on a daily basis, any debris and branches from major trimming events resulting from Grantee's work on the License Premises. Vegetation trimmings, with the exception of exotic vegetation, from minor events shall remain in the dune.

16. Governing Law and Venue. Any action to enforce this Agreement shall be brought in Palm Beach County, Florida. This Agreement shall be governed by the laws of the State of Florida.

17. Good Faith and Fair Dealing. The Parties shall at all times deal with each other fairly and in good faith.

18. Modification. This Agreement shall not be modified except by written agreement signed by Grantor and Grantee.

19. Binding Effect. The covenants contained in this Agreement, including all benefits and burdens, are not personal, but shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, transferees, successors and assigns.

20. No Joint Venture. Nothing in this Agreement shall be construed to make the parties hereto partners or joint ventures or render either party liable for the debts or obligations of the other.

21. Vacation of License. In the event this License Agreement is terminated as set forth

in Paragraph 5 or 6 above, Grantee, its successors or assigns, shall vacate said License Premises and repair any damage as directed by Grantor.

22. Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Grantee, its officers, agents, employees, and lobbyists in order to ensure compliance with agreement requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

23. Construction. As used herein, the term Grantee includes subcontractors, agents, vendors and employees of the Grantee.

24. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

(The remainder of this page left blank intentionally)

IN WITNESS WHEREOF, Grantor and Grantee have set hereto their hand and seals on the day and year first above set forth.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Mayor

Approved as to Form and Legal Sufficiency

By: _____
Assistant County Attorney

Approved as to Terms and Conditions

By: 
Department Director

Seaview at Juno Beach
Property Owner's Association, Inc.


By: President

Trimming of Vegetation:

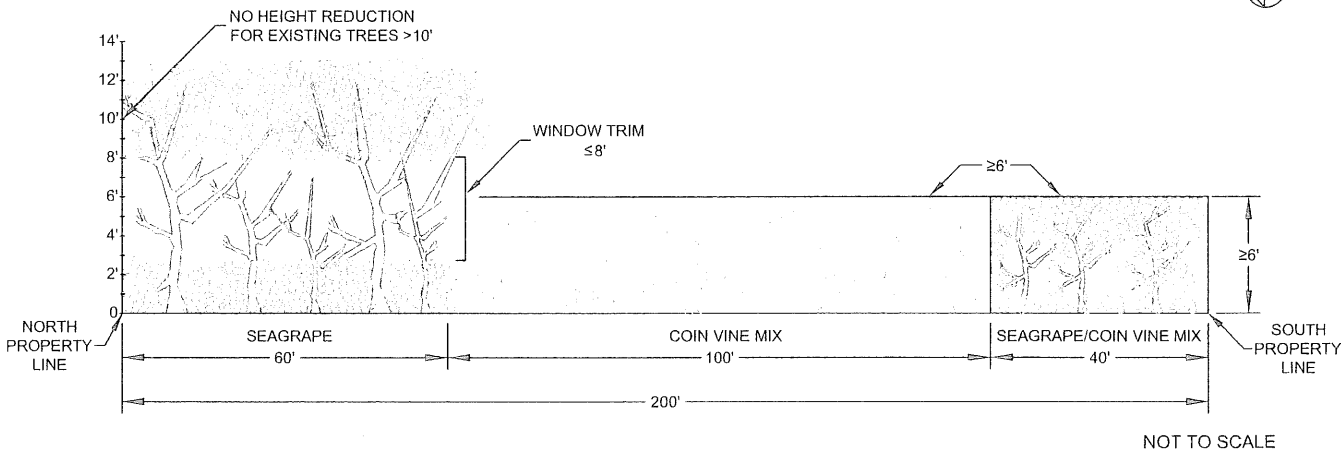
1. Vegetation with a total height of ten (10) feet or less may be reduced by no more than 2 feet annually as part of any major trimming event. Trimming heights for vegetation west of the dune crest shall not be any less than 6 feet. The dune crest shall be defined as the highest elevation of the beach profile or a distance of 15 feet seaward of the easternmost sidewalk edge, whichever is less.
2. Vegetation with a total height greater than ten (10) feet shall not be trimmed for a height reduction.
3. Vegetation with a height of twelve (12) feet or greater and falls west of the dune crest may be window trimmed. Window trimming consists of the pruning of any branch with a diameter of less than 2 inches and is less than eight (8) feet above the elevation of the sidewalk. Seagrapes east of the dune crest may be trimmed to a minimum height of 36 inches above the sidewalk elevation.
4. Grantee shall ensure that all trim heights will be measured from the sidewalk and that PVC reference markers are installed to mark minimum trim heights. The trimming plan and specifications are set out in Exhibit "A", attached hereto and incorporated herein.

Exotic Vegetation:

1. Invasive exotic plant species shall be removed from the dune and disposed of off-site during all major and minor trimming events. Invasive plants shall be hand pulled. Larger invasive exotic plants shall be trimmed at ground level and the stump treated with herbicide. A list of prohibited plant species can be found at <http://www.fleppc.org/list/list.htm>

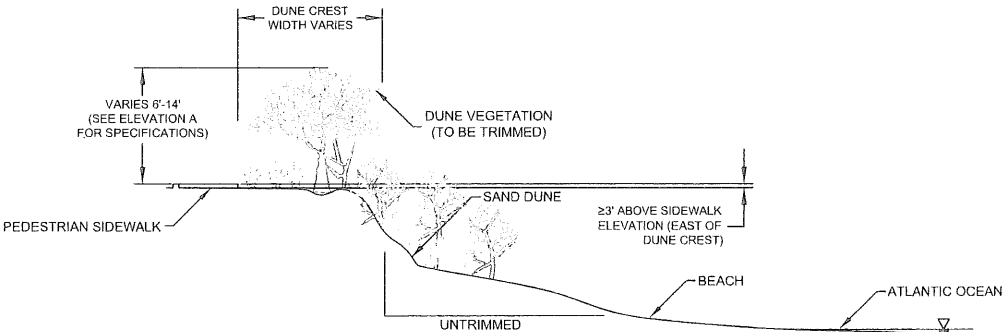
ELEVATION A

(VIEW LOOKING EAST ACROSS A1A FROM THE SEA VIEW CONDO)



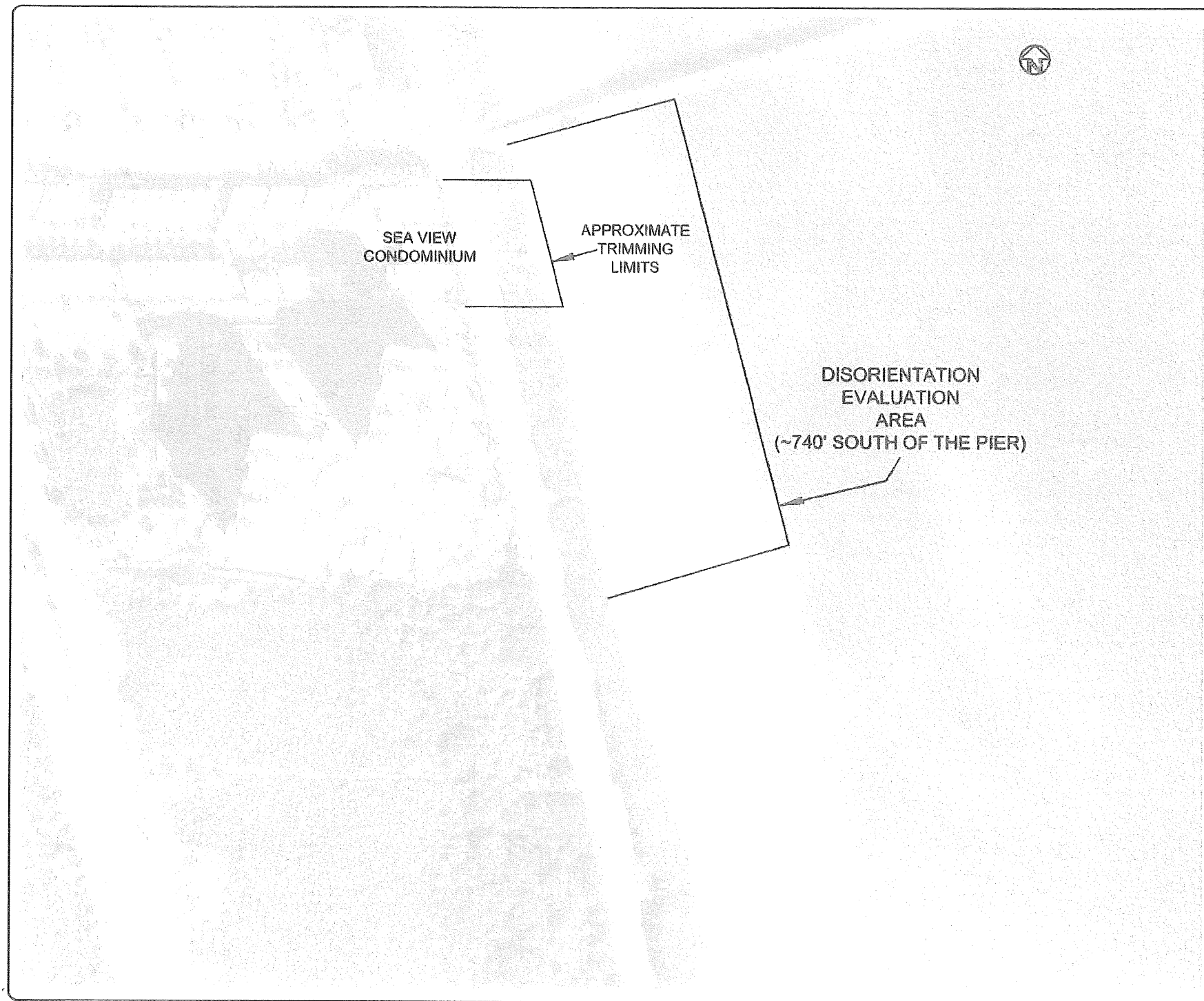
ELEVATION B

(VIEW LOOKING NORTH DOWN A1A DIRECTLY EAST OF THE SEA VIEW CONDO)



| | |
|-------------|----------|
| Project | |
| Sheet | |
| Revised | |
| Scale | AS NOTED |
| Prepared | RB |
| Drawn | RB |
| Checked | JBC |
| Date | 3/11/18 |
| Excluded to | |





Seal of Palm Beach County, Florida

PALM BEACH COUNTY

FLORIDA

PALM BEACH COUNTY

DEPARTMENT OF

ENVIRONMENTAL RESOURCES MANAGEMENT

2000 NORTH JOG ROAD, 4TH FLOOR

WEST PALM BEACH, FLORIDA

(561) 835-2400

| | |
|----------|----------|
| DATE | AS 10/20 |
| BY | PA |
| CHECKED | RB |
| APPROVED | BT |
| DATE | 10/14 |

SEAL

200.1

DUNE TRIMMING EAST OF
SEA VIEW CONDO

JUNO BEACH, FLORIDA

500.1

EXHIBIT B

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Agenda Item #: 341

THPB 7-0

R-2015-0204

Meeting Date: February 3, 2015

(X) Consent

() Regular

() Workshop

() Public Hearing

Department

Submitted By: Environmental Resources Management

FSS-COPY #1, #2, #3, CERT #2
SECRET
original #
AKC

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve an Agreement and License to Trim Vegetation (Agreement) with the Seaview at Juno Beach Property Owner's Association, Inc. (Condominium) for permit approved trimming of native vegetation on County owned property in Juno Beach.

B) authorize the County Administrator, or his designee, to sign any necessary minor amendments that do not substantially change the scope of work or terms and conditions of the Agreement.

Summary: The Condominium is located on the west side of Highway A1A in Juno Beach immediately south of the Juno Beach Pier. The Agreement will allow for the Condominium to trim approximately 140 linear feet of native vegetation (sea grapes) growing on County property along the east side of Highway A1A. The Condominium will be responsible for obtaining all local and state permits prior to trimming. The initial term of the Agreement is five years. There is no cost to the County. District 1 (SF)

Background and Justification: The Condominium is seeking approval to trim vegetation on a narrow strip of dune vegetation along Highway A1A. The agreement provides for monitoring to ensure that trimming will not adversely impact sea turtle nesting activities on the beach nor threaten the viability of the vegetation which helps to stabilize the dune.

Attachments:

1. Location Map
2. Agreement and License to Trim Vegetation
3. Non-Discrimination Statement

Recommended by: [Signature]

Department Director

1-16-15

Date

Approved by: [Signature]

County Administrator

1/21/15
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|-------|-------|-------|-------|-------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| External Revenues | _____ | _____ | _____ | _____ | _____ |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | _____ | _____ | _____ | _____ | _____ |
| # ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |

Is Item Included in Current Budget? Yes _____ No _____
 Budget Account No.: Fund Department Unit Object

B. Recommended Sources of Funds/Summary of Fiscal Impact

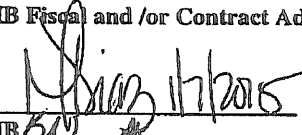
There is no fiscal impact associated with this item.


C. Department Fiscal Review:

_____ *HP*

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Administrator Comments:

 11/17/2015
 OFMB *AK* 11/17/15

  11/21/15
 Contract Administrator
 1-20-15 *1860 hush*

B. Legal Sufficiency:


 Assistant County Attorney

C. Other Department Review:

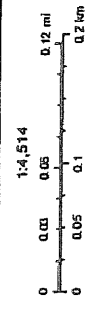
 Department Director

ATTACHMENT 1



Created by: Palm Beach County
December 22, 2014

Location Map



Return To:
Reubin Bishop
Palm Beach County
Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411-2743

R20150204
AGREEMENT AND LICENSE
FOR
PROPERTY ACCESS TO TRIM VEGETATION

THIS AGREEMENT is made this _____ day of FEB 03 2015, 2015 between Palm Beach County, a political subdivision of the State of Florida, whose mailing address is 301 North Olive Avenue, West Palm Beach, Florida 33401 ("Grantor"), and Seaview at Juno Beach Property Owner's Association, Inc, whose mailing address is 791 Seaview Drive, Juno Beach, Florida, 34408, ("Grantee"), both being herein referred to collectively as the "parties", for the sole purpose of providing property access for permit approved trimming of native vegetation.

WHEREAS, the parties recognize and agree that it is in both of their best interests to enter into this trimming agreement to define management of the dune east of Seaview to minimize the impacts from vegetation trimming.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

1. Grant of License. Grantor hereby grants, bargains and conveys to the Grantee, its subcontractors, agents and employees, a temporary, non-exclusive License on, over, under, through and across the Property depicted in Exhibit "A," attached hereto and incorporated herein ("the License Premises") for property access to trim vegetation as provided herein. This instrument is further subject to all Licenses, restrictions, covenants, conditions, limitations and reservations of record, if any. Grantee's use of the License Premises as provided herein shall not interfere with Grantor's ownership and use of the License Premises or right to construct, maintain or improve the beach and dune system or dune walkover on Grantor's Property.
2. Not a Dedication. Nothing herein contained shall be deemed to be a gift to any private authority or any third party, and the License provided herein shall be strictly limited to the purposes expressed herein. Nothing herein contained shall be deemed to give the Grantee or any other persons, other than Grantor, and Grantee and its subcontractors, agents and employees any access rights to the License Premises or access to the beach from the Grantor's property other than as may have existed prior to the date of this Agreement. Grantor hereby reserves the right to the continued free use of the property in a manner not inconsistent with the rights granted herein to Grantee and subject to the terms and conditions of this Agreement.

3. Grantee's Use. The License Premises may be used by Grantee, its subcontractors, agents or employees solely for the purpose of providing property access during and only during periods of maintenance associated with native plant trimming and exotic species removal.

4. Grantee's Obligations. Grantee shall obtain all local and state permits and approvals required by all applicable governmental entities to perform the acts contemplated herein. Grantee shall safeguard and maintain the License Premises and its immediate environs throughout the term of this Agreement when exercising the rights granted herein. Any damage caused by Grantee or its subcontractors, agents or employees to the License Premises or any property of the Grantor or others located on Grantor's property shall be immediately (in no event later than 30 days) repaired by the Grantee at Grantee's sole expense. Such repair work may include, but is not limited to, replanting sea grapes with vegetation of similar size to that damaged and providing sufficient irrigating for successful reestablishment of such sea grapes to the allowable trimmed height.

Grantee shall provide Grantor with thirty (30) days prior written notification of Grantee's desire to enter onto the License Premises.

Prior to any trimming event, Grantee shall perform a pre-trim night inspection from the beach to assess existing lighting. If the inspection reveals that exposure of additional lights or indirect illumination will occur due to the trimming, corrective action must be taken prior to the trimming event. Corrective action shall include but is not limited to the Grantee adhering to all applicable sea turtle codes and ordinances in effect during the term of the Agreement. Self monitoring by the Grantee of the number of interior and exterior lights visible from the beach must be conducted once per month on a new moon during sea turtle nesting season. Results of the monitoring shall be sent to Grantee residents and Grantor within 5 days of each monitoring event.

A major trimming event (which in no event shall reduce the height or amount of vegetation below the limits set forth in Exhibit A) is permitted once per year and shall occur only outside of sea turtle nesting season (November 1 – February 28). Minor trimming events (< 1 foot vertical reduction) for maintenance of trimmed height in accordance with Exhibit A can occur at any time. All trimming shall be in accordance with Exhibit A. The Grantee shall remove all existing exotic vegetation (Category I species as defined by the Exotic Pest Plant Council) located within the License Premises during each trimming event. Trimming must be performed in compliance with the Tree Care Industry Association ANSI A300 Standards for Crown Reduction Pruning by an experienced vendor who is knowledgeable of proper trimming techniques.

Trimming shall not occur on the northern 60 feet of dune. As depicted in Exhibit A, trimming heights shall not be any lower than 6 feet on the central 100 feet of dune and shall not be any lower than 8 feet on the southern 40 feet of dune. Grantee shall ensure that all trim heights will be measured from the sidewalk and that PVC reference markers are installed to mark minimum trim heights. Grantee shall adhere to the trimming Plan

attached hereto and incorporated herein as Exhibit "A".

Prior to each nesting season, it is the responsibility of Grantee to verify that disorientation data will be collected (documented) for the season within the disorientation evaluation area described in Exhibit "B" by a Florida Fish & Wildlife Conservation Commission (FWC) marine turtle permit-holder. In the alternative, Grantee shall hire a qualified consultant, who holds an FWC permit, to document disorientation. Disorientation data will be collected daily during the sea turtle nesting season within the disorientation evaluation area described in Exhibit "B". Following the conclusion of each sea turtle nesting season, Grantee must present to the Grantor an evaluation of annual disorientation totals for the disorientation evaluation area. If the Grantor reasonably determines that trimming events are increasing sea turtle disorientation, it shall so advise Grantee and the parties will in good faith attempt to work out a resolution to the problem. If the parties are unable to resolve the disorientation problem, the Grantor may immediately give notice of termination of this Agreement.

Grantee acknowledges and agrees that Grantor may at its own expense have a representative on-site observing the activities of Grantee during trimming and in the event Grantee, its agents, employees or subcontractors are violating the terms of this Agreement, such Grantor representative shall have the right to stop the work in progress, and Grantee shall hold Grantor harmless from such work stoppage. Grantee is solely responsible to pay for all costs related to sea grape trimming, coin vine trimming, and exotic species removal and any corrective action in the event that the terms of this Agreement are violated.

5. Term. This Agreement shall be effective upon execution by both parties and shall continue for five (5) years from the date of execution, unless earlier terminated as provided herein. If the Agreement is not terminated early in accordance with paragraph 4, after the initial five year term, the parties shall in good faith evaluate whether the Agreement has had a detrimental effect on sea turtles and, if not, whether it should be extended. At that time, the parties may decide to extend the Agreement for an additional period of time to be agreed upon by the parties.

6. Termination. If any party fails to fulfill its obligations under this Agreement in a timely and proper manner, any other party may give written notice of any deficiency. The party in default shall immediately correct the deficiency or shall correct the deficiency in the time period specified by the non-defaulting party. If the defaulting party fails to correct the deficiency within the time period specified by the non-defaulting party, the non-defaulting party shall have the option to terminate this Agreement effective upon notice to the defaulting party.

This Agreement may be terminated for convenience by either party upon giving thirty (30) days written notice to the other party.

7. Notices. All formal notices between the Parties shall be deemed received if sent by certified mail, return receipt requested, or facsimile with confirmation receipt to the

Parties' Representatives set forth below:

Grantor:
Director
Palm Beach County Department of Environmental Resources Management
2300 North Jog Road 4th floor
West Palm Beach, FL 33411
Facsimile: 561-233-2414

Grantee:
President
Seaview at Juno Beach Property Owner's Association, Inc
791 Seaview Drive
Juno Beach, FL 33408
Facsimile:

8. Insurance.

Grantee and its subcontractors, agents or vendors who actually perform the vegetation trimming work provided for herein shall maintain the insurance provided for herein below, which shall cover Grantee's performance under this Agreement.

Grantee agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as Grantor's review or acceptance of insurance maintained by Grantee is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Grantee under this contract. In addition, Grantee agrees to notify GRANTOR of any cancellation, non-renewal or material change taking place during the life of this Agreement.

Commercial General Liability Grantee agrees to maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement(s) excluding nor limiting Premises/Operations, Personal Injury, Product/Completed Operations, Contractual Liability, Severability of Interests or Cross Liability. Coverage shall be provided on a primary basis.

Additional Insured Grantee agrees to endorse COUNTY as an Additional Insured with a CG2026 Additional Insured or its equivalent – Designated Person or Organization endorsement to the Commercial General Liability. The additional insured shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents. Coverage shall be provided on a primary basis.

Waiver of Subrogation Grantee hereby waives any and all rights of Subrogation against the GRANTOR, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Grantee

shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should Grantee enter into such an agreement on a pre-loss basis.

Certificate(s) of Insurance Grantee agrees to provide Grantor a Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. In addition, Grantee agrees to notify Grantor of any cancellation, non-renewal or material change taking place during the life of this Agreement. The Certificate Holder address shall read:

PALM BEACH COUNTY

Director
Palm Beach County Department of Environmental Resources Management
2300 North Jog Road 4th floor
West Palm Beach, FL 33411
Facsimile: 561-233-2414

In addition to the requirements above, the following requirements apply to the vendor(s) / subcontractors who will be doing the work.

Business Automobile Liability Grantee agrees to maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Grantee does not own automobiles, Grantee agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. Coverage shall be provided on a primary basis.

Worker's Compensation Insurance & Employers Liability Grantee agrees to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. Coverage shall be provided on a primary basis.

Additional Insured Grantee agrees to endorse Grantor as an Additional Insured with a **CG2026 Additional Insured or its equivalent – Designated Person or Organization** endorsement to the Commercial General Liability. The additional insured shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." Coverage shall be provided on a primary basis.

Waiver of Subrogation Grantee hereby waives any and all rights of Subrogation against the Grantor, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Grantee shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement

shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should Grantee enter into such an agreement on a pre-loss basis.

Umbrella or Excess Liability. Grantee may satisfy the minimum liability limits required above for Commercial General Liability and Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for the Commercial General Liability and Business Auto Liability. Grantee agrees to endorse Grantor as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a pure/true "Follow-Form" basis.

Right to Review Grantor reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the Grantor reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due to its poor financial condition or failure to operate legally.

9. **Indemnification.** Grantee shall protect, defend, reimburse, indemnify and hold Grantor, its agents, employees and elected officials harmless from and against any and all claims, liability, loss, expense, cost, damages, or causes of action of every kind or character, including attorneys' fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of Grantee's performance of the terms of this Agreement or due to the acts or omissions of Grantee.

The Grantor shall not be not responsible for the accidental take of any sea turtle(s) due to the trimming of vegetation by Grantee pursuant to this Agreement, and Grantee shall assume full responsibility and liability for any and all impacts to sea turtles.

10. **Non-Discrimination.** Grantor and Grantee agree that no person shall, on the grounds of age, race, color, sex, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity or expression or genetic information be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of this Agreement.

Grantee has submitted to Grantor a copy of its non-discrimination policy which is consistent with the above, as contained in Resolution R-2014-1421, as amended, or in the alternative, if Grantor does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to Grantor that Grantee's non-discrimination policy conforms to R-2014-1421, as amended.

11. **Grantor's Representations.** Grantor represents and warrants that Grantor is the lawful owner of and has good and marketable legal title to the License Premises.

Grantor has the full right, power and authority to grant a license and all other rights granted hereunder to Grantee.

12. Authority to Execute This Agreement. Any person executing this Agreement and representing Grantor hereby warrants and represents that he or she has received all governmental authorization necessary to bind Grantor to the terms of this Agreement. Any person executing this Agreement and representing Grantee hereby warrants and represents that he or she has received all corporate authorization necessary to bind Grantee to the terms of this Agreement.

13. Non-Assignability. This Agreement shall not be assignable by either party without the prior written consent of the other and any attempted assignment in derogation of such prohibition shall be null and void.

14. Prohibited Acts by Grantee. With the sole exception of the License Premises, Grantee shall not enter on, over, under, through or across any other portion of Grantor's property for access to or to do work on the License Premises. Grantee shall promptly and at Grantee's sole expense repair or replace any unauthorized portion of Grantor's property damaged or destroyed and/or impairment thereto caused by Grantee. Unless otherwise authorized by the Grantor, the Grantee shall perform work on the License Premises only on weekdays, between 8:00 a.m. and 5:00 p.m. Grantee shall promptly remove, on a daily basis, any debris and large branches from major trimming events resulting from Grantee's work on the License Premises. Vegetation trimmings from minor events shall remain in the dune.

15. Governing Law and Venue. Any action to enforce this Agreement shall be brought in Palm Beach County, Florida. This Agreement shall be governed by the laws of the State of Florida.

16. Good Faith and Fair Dealing. The Parties shall at all times deal with each other fairly and in good faith.

17. Modification. This instrument shall not be modified except by written agreement signed by Grantor and Grantee.

18. Binding Effect. The covenants contained in this instrument, including all benefits and burdens, are not personal, but shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, transferees, successors and assigns.

19. No Joint Venture. Nothing in this instrument shall be construed to make the parties hereto partners or joint venturers or render either party liable for the debts or obligations of the other.

20. Vacation Of License. In the event of a termination of this License Agreement as set forth in Paragraphs 4, 5 or 6 above, Grantee, its successors or assigns, shall vacate

said License Premises or relevant part thereof.

21. Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Grantee, its officers, agents, employees, and lobbyists in order to ensure compliance with agreement requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

22. Construction. As used herein, the term Grantee includes subcontractors, agents, vendors and employees of the Grantee. Notwithstanding the foregoing, only an authorized officer of the Grantee has authority to execute any amendment to this Agreement.

23. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

(The remainder of this page left blank intentionally)

IN WITNESS WHEREOF, Grantor and Grantee have set hereto their hand and seals on the day and year first above set forth.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

By: 

Deputy Clerk



R 2015 0204
PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

FEB 03 2015

By: 

Shelley Vana, Mayor

Approved as to Form and Legal Sufficiency

By: 

Assistant County Attorney

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, SHARON R. BOCK, Clerk & Comptroller, certify
this to be a true and correct copy of the original
filed in my office on FEB 03 2015

dated at West Palm Beach, Florida

By: 

Deputy Clerk

Approved as to Terms and Conditions

By: 

Department Director

Seaview at Juno Beach
Property Owner's Association, Inc

By: 

President

ATTACHMENT 3

Affidavit

The undersigned acknowledges that it is the express policy of the Palm Beach County Board of County Commissioners that Palm Beach County ("County") shall not conduct business with any organization that practices discrimination on the basis of race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information, and that County Resolution 2014-1421, as may be amended, requires all entities doing business with the County to submit a copy of their written non-discrimination policies to ensure consistency with County Resolution 2014-1421, as may be amended, or to provide a written statement affirming their non-discrimination policies are in conformance with County Resolution 2014-1421, as may be amended.

Seaview at Juno Beach Property Owner's Association, Inc. does not have a written nondiscrimination policy but affirms that its non-discrimination policy conforms to Resolution R-2014-1421.

Seaview at Juno Beach Property Owner's Association, Inc



By: President