Agenda Item: 3L5

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	October 8, 2019	(X) Consent () Workshop	()Regular ()Public Hearing	
Department:	Environmental Resources Management			
I. EXECUTIVE BRIEF				

Motion and Title: Staff recommends motion to:

- **A) approve** a Perpetual Easement Agreement for Construction Access (Agreement) with KT 5000 LLC to facilitate the Singer Island Dune Restoration Project (Project); and
- **B)** authorize the County Administrator, or designee, to sign all future time extensions, certifications, and other forms associated with the Agreement, and any necessary minor amendments that do not substantially change the scope of work, terms, or conditions of the Agreement.

Summary: The Agreement provides construction access for dune restoration and maintenance activities within the Project's Zone 4 shoreline area as depicted on the attached Project Overview Map. Recent redevelopment of the subject property required a reconfiguration of an existing easement area to accommodate the proposed site plan and maintain construction access for the Project. The Project includes dune restoration in an area designated by the Florida Department of Environmental Protection as "critically eroded". Dune restoration reconstructs past dune profiles and stabilizes the sand with native dune vegetation. Easement agreements are required for construction access to the beach and dune areas within the project limits. **There is no cost to the County.** <u>District 1</u> (SS)

Background and Justification: Since 2001, 12 County-managed dune restoration projects have provided beach stabilization for recreation, habitat, and storm protection on Singer Island. A dune restoration project planned for January-February, 2020 will repair damages sustained during the passage of Hurricane Irma.

Attachments:

1. Perpetual Easement Agreement for Construction Access

2. Project Overview Map

Recommended by	: Michael Stalf	In 9/12/19
	Department Director	Date
Approved by:	Pal	10/4/19
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	•	2020	2021	2022	2023	2024
Capital Expe	enditures				-	
Operating C	osts				-	
External Rev	venues			•	And Address of the Control of the Co	AMAZONIA MARKATA PARAMATAN
Program Inc	ome (County	·)				
In-Kind Mate	ch (County)		Annual Control of Control			14
NET FISCAL	. IMPACT		***************************************			
# ADDITION POSITIONS	AL FTE (Cumulative)				
Is Item Inclu	ded in Curre	nt Budget?	Yes _		No X	
Does this ite	em include th	e use of fede	eral funds?	Yes	No X	
Budget Acce	ount No.:					
Fund	_ Department	:Unit	Obje	ct Pro	gram	
В.	There is no fi	scal impact a	of Funds/Surssociated with	this item.	cal Impact:	
C.	Department	riscai Revie	W: 70. 7 (2000)	<i>y</i>	Ministration 100	
		III. REVII	EW COMMEN	ITS		
A.	OFMB Fisca	l and /or Con	ntract Dev. an	d Control Co	omments:	
	OFMB QL	_ q lauliq 9/23 (M)	alin Contr	act Developm	ment and Cor	10/1/19
B.	Legal Sufficient Co	- IV	0/a/19 ey		wy	
C.	Other Depar	tment Reviev	v:			
		Director				

ATTACHMENT 1

Return To: Andy Studt, Environmental Program Supervisor Palm Beach County Environmental Resources Management 2300 North Jog Road, 4th Floor West Palm Beach, FL 33411-2743

PERPETUAL EASEMENT AGREEMENT FOR CONSTRUCTION ACCESS

THIS EASEMENT AGREEMENT is made this ____ day of ______, 2019 between KT 5000 LLC, a Florida limited liability company, whose mailing address is 701 South Olive Avenue, Suite 104, West Palm Beach, FL 33401 ("Grantor"), and Palm Beach County, a political subdivision of the State of Florida, whose mailing address is 301 North Olive Avenue, West Palm Beach, Florida 33401, ("Grantee"), both being herein referred to collectively as the "parties", for the sole purpose of providing construction access for the SINGER ISLAND SHORE PROTECTION PROJECT ("the Project").

- 1. <u>Grant of Easement.</u> In consideration of the mutual benefits to be derived from the Project, the sufficiency of which is hereby acknowledged by the parties, the Grantor hereby grants, bargains and conveys to the Grantee, its subcontractors, agents and employees, a non-exclusive easement on, over, under, through and across the Property described in Exhibit "A," attached hereto and incorporated herein ("the Easement Premises") for construction access purposes. This instrument is further subject to all easements, restrictions, covenants, conditions, limitations and reservations of record, if any.
- 2. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift to any public authority or any third party, and this Easement shall be strictly limited to and for the limited purposes expressed herein. Nothing herein contained shall be deemed to give the public or any other persons, other than Grantor, Grantor's successors, assigns, officers, directors, partners, contractors, tenants, lessees, mortgagee, agents, employees, guests, customers, invitees members and Grantee and its subcontractors, agents and employees any access rights to the Easement 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. <u>Grantee's Use.</u> The Easement Premises may be used by Grantee, its subcontractors, agents or employees solely for the purpose of providing access during and only during periods of construction or maintenance associated with the Project. The parties acknowledge that it may be necessary to remove obstructions from the Easement Premises and this may include removing vegetation, pruning vegetation, and removing fencing or any other obstacles within the Easement Premises.
- 4. <u>Grantee's Obligations.</u> Grantee shall obtain all permits and approvals required by all applicable governmental entities in order to perform the acts contemplated herein. Grantee shall safeguard and maintain the Easement Premises and its immediate environs throughout the term of the Project. Any damage caused by Grantee or its agents or employees to the surface or sub-surface portion of the Easement Premises or any property of the Grantor or others located therein shall be repaired by the Grantee in a workmanlike manner excluding any concrete block surfaces or pavers installed by the Grantor. Such repair work may include, but is not limited to, placing sod on the easement area and re-routing any existing irrigation lines. Grantee will use best efforts to restore the easement area no later than three months after the completion of each Project event requiring construction access. Generally, dune restoration work associated with the Project will commence on or about November 1st through February 28th of the following year; construction access will be required during that period.

Grantee shall provide Grantor with ten (10) days prior written notification of Grantee's desire to enter onto the Easement Premises.

- 5. <u>Grantor's Obligations.</u> Grantor shall not commit any act that would interfere with or impede the rights granted to Grantee, its subcontractors, agents or employees under this Agreement.
- 6. <u>Term.</u> This Agreement shall be effective upon execution by both parties and shall continue in perpetuity, except as set forth in section 16 below.
- 7. <u>Subordination of Rights.</u> The Easement hereby granted is subject and subordinate to: (i) the easements granted in and by any Declaration recorded or to be recorded by Grantor and any such amendments to the Declaration hereinafter enacted; and (ii) Grantor's right to enter and work upon the Easement Premises.
- 8. <u>Insurance</u>. Without waiving the right to sovereign immunity as provided by S.768.28 F.S., the Grantee acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. Grantee's subcontractors using the Easement Premises for construction access purposes shall at all times maintain insurance coverage at or above the coverage required by the Grantee.
- 9. <u>Indemnification</u>. Grantee acknowledges the waiver of sovereign immunity for liability in tort contained in Florida Statutes Section 768.28 and acknowledges that such statute permits actions at law against the Grantee to recover damages in tort for money damages up to the amounts set forth in such statute for injury or loss of property, personal injury, or death caused by the negligence or wrongful act or omission of an employee of Grantee while acting within the scope of the employee's office or employment under circumstances in which Grantee, if a private person, would be liable under the general laws of this State.
- 10. <u>Grantor's Representations.</u> Grantor represents and warrants that Grantor is the lawful owner of and has good and marketable legal title to the Easement Premises; Grantor has the full right, power and authority to grant this Easement and all other rights granted hereunder to Grantee and that Grantor has disclosed the location and terms of all other known easements that may affect the Easement Premises. If any person shall seek to set aside this Easement or to nullify the rights granted hereunder based upon an alleged superior right in the Easement Premises, then Grantor shall, upon Grantee's request and at Grantor's expense, take any action reasonably necessary to secure to Grantee the rights and interest granted hereunder.
- 11. <u>Authority to Execute This Agreement.</u> Any person executing this Agreement and representing Grantor hereby warrants and represents that he or she has received all corporate 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 governmental authorization necessary to bind Grantee to the terms of this Agreement.
- 12. <u>Assignment.</u> The County may assign the Agreement to another governmental entity for the purpose of restoring and maintaining the vegetated dune and the sandy beach in accordance with this Agreement.
- 13. Prohibited Acts by Grantee. With the sole exception of the Easement 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 Easement Premises. Grantee shall promptly and at Grantee's expense repair or replace any unauthorized portion of Grantor's property damaged or destroyed and/or impairment thereto caused by Grantee during the course of Grantee's work. Grantee shall not plant or erect anything upon the dune which shall unreasonably interfere with Grantor's use of any portion of Grantor's Non-Easement Premises. Unless otherwise authorized by the Grantor, the Grantee shall perform work on the Easement Premises only on weekdays, between 7:00 a.m. and 5:00 p.m. Grantee shall promptly remove, on a daily basis, any unauthorized debris resulting from Grantee's work on the Easement Premises.
- 14. <u>Impending Damage.</u> Nothing herein shall prevent Grantor from reasonably protecting their property including the dune and Easement Premises from impending damage or loss due to wind, seas, storms or other forces of nature in the event that Grantee is unwilling or unable to undertake such actions for any reason including lack of funding.
- 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. <u>Modification</u>. This instrument shall not be modified or terminated except by written agreement signed by Grantor and Grantee.
- 17. <u>Binding Effect.</u> 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.
- 18. <u>No Joint Venture.</u> Nothing in this instrument shall be construed to make the parties hereto partners or joint venturers or render them liable for the debts or obligations of the other.
- 19. <u>Recordation.</u> This instrument shall be recorded in the Public Records of Palm Beach County, Florida.

(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. Signed, Sealed and Delivered GRANTOR: in the presence of: KT 5000 LLC, a Florida limited liability company Shannon Lee Typed or Printed Name – Typed or Printed Witnes Typed or Printed STATE OF FLORIDA COUNTY OF PALM BEACH The foregoing instrument was acknowledged before me this Shannon Lee _____, as Authorized Signatory of KT 5000 LLC, a Florida limited liability company and who is personally known to me or who produced identification. Witness my hand and official seal this 644 day of (Notary Public, State of Florida CARLA ANGUS HOMAN MY COMMISSION # GG 034109 EXPIRES: November 15, 2020 Printed N My Commission Expires: Notary Commission Number ATTEST: **GRANTEE:** SHARON R. BOCK, CLERK PALM BEACH COUNTY, FLORIDA AND COMPTROLLER BY ITS BOARD OF COUNTY COMMISSIONERS Clerk Mayor APPROVED AS TO LEGAL FORM APPROVED AS TO TERMS AND AND SUFFICIENCY CONDITIONS By:

Deborah Drum, Director 0

Assistant County Attorney

EXHIBIT "A"

NOTES:

- REPRODUCTIONS OF THIS SKETCH ARE NOT VALID UNLESS SEALED WITH A SURVEYOR'S SEAL.
- LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.

 BEARINGS SHOWN HEREON ARE RELATIVE TO THE WEST LINE OF HARBOR POINT REPLAT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 121, PAGE 127, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA; BEARING S02°12'33"W.
- THE "LAND DESCRIPTION" HEREON WAS PREPARED BY THE SURVEYOR.
- DATA SHOWN HEREON WAS COMPILED FROM INSTRUMENTS OF RECORD AND DOES NOT CONSTITUTE A BOUNDARY SURVEY AS SUCH.

CERTIFICATE:

I HEREBY CERTIFY THAT THE ATTACHED SKETCH OF DESCRIPTION OF THE HEREON DESCRIBED PROPERTY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION ON MAY 3, 2016. I FURTHER CERTIFY THAT THIS SKETCH OF DESCRIPTION MEETS THE STANDARDS OF PRACTICE SET FORTH IN CHAPTER 5J-17 ADOPTED BY THE FLORIDA BOARD OF SURVEYORS AND MAPPERS PURSUANT TO FLORIDA STATUTES 472.027.

David

Digitally signed by David Lindley DN: c=US, st=Florida, l=Boca Lindley

| Compared to the control of the control o

DLS

DAVID P. LINDLEY, P.L.S. REG. LAND SURVEYOR #5005 STATE OF FLORIDA - LB #3591

CAULFIELD & WHEELER, INC.



CIVIL ENGINEERING — LAND PLANNING LANDSCAPE ARCHITECTURE — SURVEYING 7900 GLADES NOAD — SUITE 100 BOCA RATON, FLORIDA 33434 PHONE (561)-392-1991 / FAX (561)-750-1452

HARBOR POINT REPLAT DUNE REFURISHMENT ACCESS EASEMENT SKETCH OF DESCRIPTION

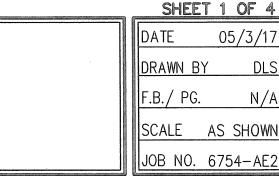


EXHIBIT "A"

DESCRIPTION:

A PORTION OF PARCEL A, HARBOR POINT REPLAT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 121, PAGE 127, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

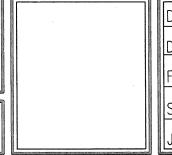
COMMENCING AT THE SOUTHWEST CORNER OF SAID HARBOR POINT; THENCE, ALONG THE WEST LINE OF SAID HARBOR POINT, NORTH 02°12'33" EAST, A DISTANCE OF 7.45 FEET TO THE POINT OF BEGINNING; THENCE, DEPARTING SAID WEST LINE, THENCE SOUTH $89^{\circ}42'28"$ EAST, A DISTANCE OF 155.50 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 49.50 FEET; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 50'36'35", A DISTANCE OF 43.72 FEET; THENCE NORTH 08'35'55" EAST, A DISTANCE OF 36.03 FEET TO A POINT ON A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 163.10 FEET FROM WHICH A RADIAL LINE BEARS NORTH 47°07'21" WEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 19°29'45", A DISTANCE OF 55.50 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 116.03 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 39°28'06", A DISTANCE OF 79.93 FEET TO THE POINT OF TANGENCY; THENCE NORTH 62°51'00" EAST, A DISTANCE OF 40.62 FEET; THENCE NORTH 82°27'21" EAST, A DISTANCE OF 188.32 FEET; THENCE NORTH 11°23'35" WEST, A DISTANCE OF 26.65 FEET; THENCE NORTH 78°31'12" EAST, A DISTANCE OF 48.03 FEET; THENCE NORTH 38°39'20"E, A DISTANCE OF 31.25 FEET; THENCE SOUTH 88°33'43" EAST, A DISTANCE OF 35.59 FEET; THENCE NORTH 1°26'17" EAST, A DISTANCE OF 25.00 FEET; THENCE NORTH 88°33'43" WEST, A DISTANCE OF 48.00 FEET; THENCE SOUTH 38'39'20" WEST, A DISTANCE OF 21.07 FEET; THENCE NORTH 51°33'43" WEST, A DISTANCE OF 14.00 FEET; THENCE SOUTH 83°39'20" WEST, A DISTANCE OF 22.50 FEET; THENCE SOUTH 8°02'57" WEST, A DISTANCE OF 34.40 FEET; A DISTANCE OF 24.24 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 50.00 FEET FROM WHICH A RADIAL LINE BEARS SOUTH 11°06'52" WEST; THENCE, WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 77°27'32", A DISTANCE OF 67.60 FEET; THENCE SOUTH 83°39'20" WEST, A DISTANCE OF 101.70 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 156.03 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 60°16'26", A DISTANCE OF 164.14 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 123.10 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 68°03'24", A DISTANCE OF 146.22 FEET TO THE POINT OF TANGENCY; THENCE NORTH 88°33'42" WEST, A DISTANCE OF 75.00 FEET TO A POINT OF INTERSECTION WITH THE AFORESAID WEST LINE OF HARBOR POINT REPLAT, THE PREVISOUS 5 COURSES AND DISTANCES ARE ALONG THE NORTH LINE OF SAID HARBOR POINT REPLAT; THENCE ALONG SAID WEST LINE, SOUTH 02"12'33" WEST, A DISTANCE OF 42.55 FEET TO THE POINT OF BEGINNING, LESS THE FOOTPRINT OF THE GUARD HOUSE.

SAID LANDS SITUATE IN THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA. SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS, COVENANTS, AND RIGHTS—OF—WAY OF RECORD.

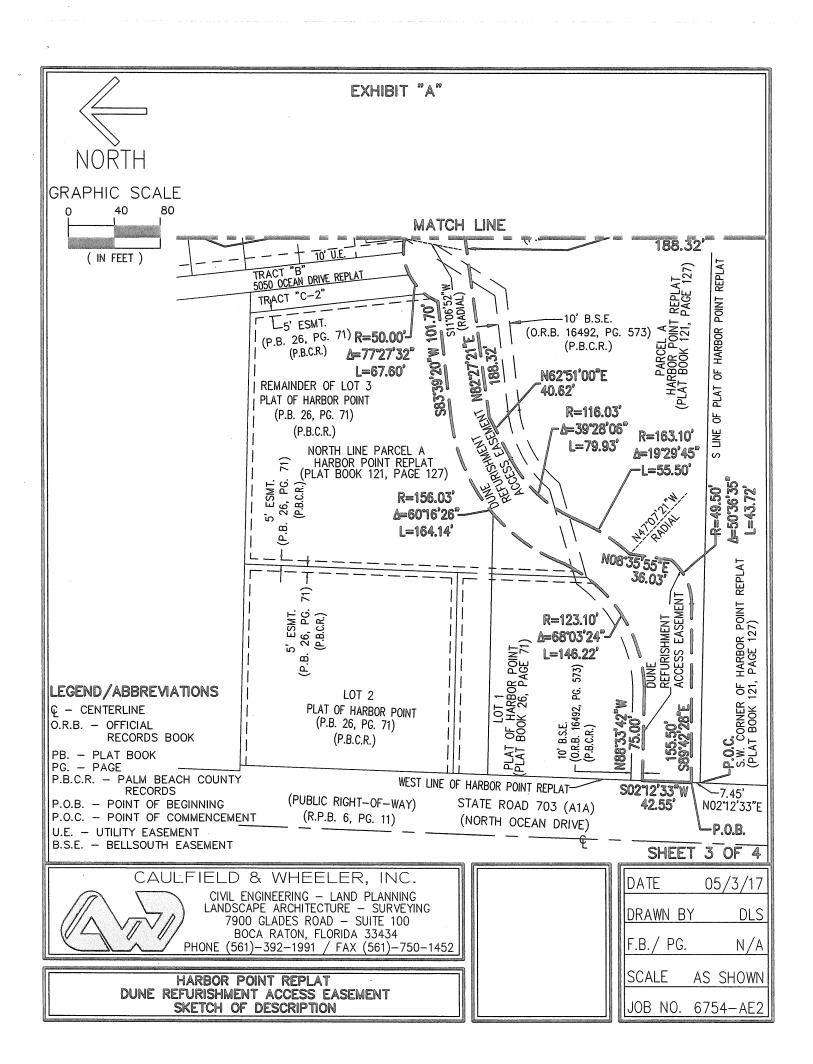


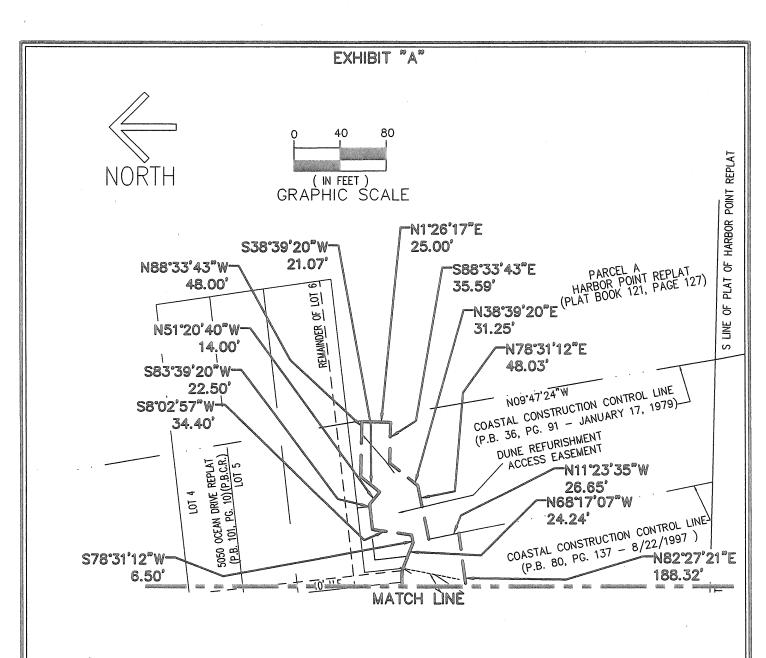
BOCA RATON, FLORIDA 33434 PHONE (561)-392-1991 / FAX (561)-750-1452

HARBOR POINT REPLAT
DUNE REFURISHMENT ACCESS EASEMENT
SKETCH OF DESCRIPTION



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STATE OF THE PARTY	DRAWN BY	DLS
	F.B./ PG.	N/A
	SCALE A	S SHOWN
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LEGEND/ABBREVIATIONS

Ç - CENTERLINE

O.R.B. - OFFICIAL

RECORDS BOOK

PB. — PLAT BOOK PG. — PAGE P.B.C.R. — PALM BEACH COUNTY RECORDS

P.O.B. — POINT OF BEGINNING P.O.C. — POINT OF COMMENCEMENT

U.E. - UTILITY EASEMENT

B.S.E. - BELLSOUTH EASEMENT

CAULFIELD & WHEELER, INC.



CIVIL ENGINEERING — LAND PLANNING LANDSCAPE ARCHITECTURE — SURVEYING 7900 GLADES ROAD — SUITE 100

BOCA RATON, FLORIDA 33434 PHONE (561)-392-1991 / FAX (561)-750-1452

HARBOR POINT REPLAT
DUNE REFURISHMENT ACCESS EASEMENT
SKETCH OF DESCRIPTION



DATE	05/3/17
DRAWN B	Y DLS
F.B./ PG.	N/A
SCALE	AS SHOWN
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