

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
CONSENT / AGENDA ITEM # 7k**

SUBJECT: Consideration of an Agreement with LRA Hammock Beach Ocean LLC for the Construction of Emergency Protective Berms/Dunes.

DATE OF MEETING: March 5, 2018

BACKGROUND: The County has undergone two hurricanes and several noreaster's in the last two years unlike the County has seen in recent times, if ever. To respond to those events and protect the safety and well being of residents and public and private property the County has embarked on a series of projects with Federal Emergency Management Agency(FEMA), Florida Department of Environmental Protection (FDEP), Florida Department of Transportation (FDOT), as well as residents, HOAs, the municipalities of Marineland, Beverly Beach and Flagler Beach. This request is yet another piece of the puzzle for the northern County project which is seeking to restore 12 miles of protective berm ranging in size from 6-10 cubic yards, per lineal feet of shoreline.

The agreement with the LRA (commonly know locally as Hammock Beach Club) entitled "**EMERGENCY BERM (DUNE) AND PARTIAL ENGINEERED DUNE RESTORATION AGREEMENT**" is similar to the previous two HOA agreements approved by the Board, except for the monetary amounts, which are different due to the length of the shoreline and for specifics related to timing of one section of shoreline and other minor details related to plantings and more corporate legalessee. As with previous agreements, this agreement seeks to do two main things. One - provide a construction easement and constructions details. Two - lay the foundation for the voluntary special assessment district and the financial particulars on how we will work with the Club on their respective assessments.

This is the final voluntary assessment agreement needed for us to pursue the funding for the assessment district. We will be obtaining a loan for the three entities based on the assessment levies and provide the assessment resolutions as collateral for repayment. The amounts for each entity are: Ocean Hammock - \$1,107,537.00; Hammock Dunes - \$2,421,494.00 and the Club at \$834,142.00 for a total of \$4,363,173.00. This agreement provides for an initial payment by April 1st 2018 and subsequent payments by January 1 of each year for the next 5 years. It is our belief that we can beat the construction costs amount in agreement and in turn reduce the costs for the HOAs/Club, County and State.

The entire segment for the two HOAs and the Club covers 4.3 miles of shoreline, broken up by County right of way and parks inbetween the participants. The Club is the last agreement we were working on. Although it will mirror the other two agreements in most ways, as previously stated it will have some unique items related specifically to the Club and it operations.

The 12-mile, northern project is well underway and began January 22nd. The Board should be familiar with this agreement and the general terms and concepts as we have discussed these projects at multiple meetings and presented the other agreements in January. We apologize for the lateness of this item, but felt the Board would rather receive the item late and see the item move forward so that the County could try to meet the Clubs time constraint for the area immediately north of 16th Road (1200ft).

FUNDING INFORMATION: This agreement provides the basis for financing of the northern protective berm/dunes project and will require the County to obtain a loan for \$4,363,173 for the assessment district to advance fund these segments.

RECOMMENDATION: Request the Board approve the draft agreement conceptually and authorize the Chairman to execute the contract as approved to form by the County Attorney and approved for final content by the County Administrator. Additionally authorize the County staff to pursue necessary funding and the Administrator to execute all necessary documents associated with accepting and implementing this agreement, including any amendments approved as to form by the County Attorney.

ATTACHMENTS:

1. Emergency Berm (Dune) and Partial Engineered Dune Restoration Agreement with LRA Hammock Beach Ocean, LLC.



Craig M. Coffey, County Administrator



Date

EMERGENCY BERM (DUNE) AND PARTIAL ENGINEERED DUNE RESTORATION AGREEMENT

This Emergency Berm (Dune) and Partial Engineered Dune Restoration Agreement (hereafter, the "Agreement") is entered into by and among the Flagler County Board of County Commissioners, a political subdivision of the State of Florida, whose address is 1769 East Moody Blvd., Bldg. 2, Bunnell, FL 32110 (hereafter, the "County"), Hammock Beach Property Owners Association, Inc., whose address is 105 16th Road East, Palm Coast, FL 32137 (hereafter, "HBPOA"), and LRA Hammock Beach Ocean LLC, whose address is 105 16th Road East, Palm Coast, FL 32137 (hereafter, "LRA") and who is the owner of certain real property located on the Atlantic Ocean between Jungle Hut Road and MalaCompra Park, whose parcel identification number is 04-11-31-2984-00GC0-0000 and which is approximately 4,697 linear feet on the Ocean and which is visually depicted in Exhibit A; provided, however, that for purposes of this Agreement the "Property" shall be limited to the Parcels BPP1 and BPP2 of that certain Plat of the Ocean Hammock Golf Course recorded in Plat Book 33 Page 11 of the public records of Flagler County, being further described on Exhibit A. The County, HBPOA, and LRA are hereafter collectively, the "Parties" or individually, a "Party". LRA and HBPOA are collectively referred to as "Hammock".

WITNESSETH:

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

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

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

Whereas, the damaged dune system of the entire coastline of the County, including the precarious situation of LRA's Property and that of neighboring properties, including the properties governed by the Hammock Dunes Property Owners Association, Inc., Ocean Hammock Property Owners Association, Inc., and HBPOA, is the primary reason the County continues to declare a State of Local Emergency to this date; and

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

Whereas, the Parties desire to construct a protective dune on the Property to mitigate against the loss of land and structures on the Property as well as on the County's beaches (the "Dune") and other properties on the barrier island; and

Whereas, the County is also working with other coastal property owners, including the Hammock Dunes Property Owners Association and Ocean Hammock Property Owners

Association, along with others, to construct protective dunes along the entirety of the County's coastline to create a comprehensive and cohesive protective berm (aka Dune) system; and

Whereas, constructing the Dune serves a paramount public purpose in avoiding further erosion and loss of property landward of the Dune and in preventing contamination of and hazardous conditions on the beach from collapsing debris and structures; and

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

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

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

Whereas, there are economies of scale to be achieved by the joint participation of the County and Hammock and in utilizing the County's Engineer of Record who has worked on the beach dune issues continually following Hurricane Matthew; and

Whereas, it is the County's position the Property is not for the exclusive use of the Club but is also used by the public who use or traverse across the beaches at the Property; and

Whereas, it is the County's position that constructing the Dune will directly benefit the public which uses the Property as part of their beach visitation and experience; and

Whereas, the most efficient funding and coordination of the Dune construction is through the Club using its authority over the Property; and

Whereas, the County is proposing to establish a voluntary special assessment district whereby Hammock and adjacent benefiting property owners can pay in annual installments their share of the cost of the Dune construction in proportion to the benefit Hammock and adjacent property owners will receive from the construction; and

Whereas, Hammock is willing to structure participation by way of a voluntary special assessment district on LRA Property by which Hammock pays the special assessment on behalf of both LRA and HBPOA; and

Whereas, Hammock and adjacent property owners will benefit if the financial and coordination matters are handled by LRA directly through a voluntary special assessment district; and

Whereas, the County is using Hammock's agreement to participate in the payment of the construction through a voluntary special assessment district as an inducement to obtain favorable financing for the full cost of the Dune construction; and

Whereas, the costs computed by the County and the associated debt are based on LRA's timely payment of the voluntary special assessments; and

Whereas, HBPOA is comprised of members who will directly benefit from the dune reconstruction contemplated in this Agreement, and further HBPOA is willing to join in this Agreement and be liable for its share of the special assessments to assure timely payment thereof and to cooperate with the County on the project.

Whereas, LRA is willing to exercise its powers to assure timely payment of the voluntary special assessments and to cooperate with the County on the project.

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

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

2 PURPOSE. The Parties are entering into this Agreement to set forth each Party's rights and obligations related to the financing, design, construction and inspection of the Dune.

3 DUNE PROJECT.

a. County's Responsibilities. In addition to the other requirements in this Agreement, the County agrees to:

i. Obtain all local, state and federal permits for the Dune construction and be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse LRA for any loss incurred in connection therewith. LRA hereby grants to the County authorization to act on LRA's behalf, as LRA's agent, with respect to obtaining the necessary permits for the Dune construction; provided, however, the County specifically acknowledges that the County will include LRA on all correspondence between the County and Permitting Agencies (whether received or delivered by the County) related to the permits applicable to LRA Property, including post permit issuance. Moreover, LRA shall have the right of notice and review related to any permit modifications or post permit issuance related to LRA Property

ii. Not allow any liens to be placed on the Property. In the event a contractor or supplier doing work on the Property files a mechanic's lien encumbering the Property, the County shall cause such lien to be terminated or bonded off within one hundred and eighty (180) days after the date of such lien.

iii. Construct/Complete the Dune in accordance with any permit(s) and the terms of this Agreement, including best efforts to comply with the preferred construction periods attached as Exhibit C, it being a material term of inducement to LRA that the County will use best efforts to abide with the preferred construction periods and complete the construction of the Dune in accordance

therewith because of the interruption caused by the construction to LRA's hospitality operation. The County agrees to keep one of the two sections of the LRA beachfront property open to LRA hospitality operations at all times. One section shall be considered as that property north of 16th Road/Old Salt Park ("BPP1") and one section shall be considered as that property south of 16th Road/Old Salt Park ("BPP2"). To facilitate these goals LRA will provide a Construction Coordinator for Hammock's interest that generally works near the Property on a regular basis.

iv. Certify in writing that the County completed the installation of the Dune in accordance with the plans and specifications as designed by the County's Engineer of Record. The plan and specifications are those included as part of any permits to include modifications thereto, and as they may be adjusted for field conditions due to past storm impacts. Such plans and specifications as modified accordingly are incorporated herein by reference.

v. Except as set forth in this Agreement, County's liability shall be limited to installing the Dune according to the design and specifications of the County's Engineer of Record. County shall not be liable for any negligent design or any negligent maintenance by LRA subsequent to the transfer of ownership of the Dune to LRA.

vi. Levy a voluntary non-ad valorem special assessment on the Property, pursuant to Section 197.3632, *Florida Statutes*, to finance the construction and inspection of the Dune.

vii. Allocate a portion of the cost of the Dune to this Property as provided for in Paragraph 8.c. herein.

b. LRA's Responsibilities. In addition to the other requirements of this Agreement, LRA agrees to:

i. Grant to County, including but not limited to its employees, agents or entities who are acting under a contract with the County, the right to enter upon the Property and perform such functions and activities in accordance with the provisions of this Agreement.

ii. Be responsible for maintaining the reconstructed Dune upon transfer of ownership of the Dune to LRA only to the extent of any condition required by the permit(s) issued by the regulatory agencies to include, if necessary, any additional permits or other applicable regulatory authorizations necessary to affect those repairs required to maintain the Dune. This requirement shall not create any new or ongoing maintenance obligation for the LRA with regard to Dune except as it solely relates to the permit(s).

iii. Make all future repairs to the Dune, if any, as solely desired and determined by the LRA in accordance with any permits and/or applicable laws,

rules, regulations and ordinances of the appropriate federal, state and local governments.

iv. Voluntarily accept the imposition of a non-ad valorem special assessment pursuant to Section 197.3632, *Florida Statutes*, to finance the final design, construction, and inspection of the Dune on the Property

v. Authorize the Flagler County Property Appraiser to assess against the Property of LRA and to authorize the Flagler County Tax Collector to collect the special assessment from LRA on the County's basis that the Property is not for the exclusive use of the Club or its members and the manner of assessment and collection herein is more efficient for LRA.

vi. Appoint a Construction Coordinator to work with the County on the project who shall serve as a single point of contact for day to day coordination. This person shall generally work near the Property and be available by phone, text, or email to come to the project and work through issues with the County and its contractors.

4 GRANT OF TEMPORARY EASEMENT. LRA hereby grants, and the County accepts, a temporary, non-exclusive easement for the benefit of the County, its employees, agents, successors and assigns (including those parties that have entered into a contract with the County to provide the project described herein), over, under, upon and across the Property of LRA, as depicted in Exhibit A attached hereto, for the purpose of designing, constructing and inspecting the Dune. LRA and the County agree to cooperate in good faith and record a release of either BBP1 or BPP2, to reduce the scope of the easement area. The County, its employees, agents, (including those parties that have entered into a contract with the County to provide the project described herein) are required to comply with the terms of this Agreement. LRA may use any and all remedies at law to enforce this requirement.

5 TERMS AND CONDITIONS OF TEMPORARY EASEMENT. The temporary easement being granted by LRA is for the installation of a Dune, including its survey, design, permitting, construction and inspection. Accordingly, the temporary easement granted to the County by LRA pursuant to this Agreement and the rights hereunder shall (i) commence upon the issuance of all required permits and agreement, and (ii) be released, vacated and automatically terminated without further action by the Parties upon the occurrence of the following events:

a. Completion of construction of the Dune as evidenced by the delivery of as-built drawings from the County to LRA.

b. Delivery by the County to LRA of a Certificate of Completion. The Certificate of Completion shall:

i. Certify that the Dune has been completed in accordance with the applicable permits and the design and specifications by the Engineer of Record;

- ii. Include final approval of the construction by the Florida Department of Environmental Protection (FDEP); and
- iii. Indicate that the Temporary Easement is terminated, released, and vacated.

Upon the occurrence of both (a) and (b) above, undivided fee simple ownership of the Dune shall be vested in LRA thereby negating any easement granted to the County, and the County shall have no further property rights, easement rights or obligations whatsoever in the Dune or the Property. Notwithstanding anything in this Agreement to the contrary, the temporary easement contemplated herein shall terminate no later eighteen (18) months after the date of this Agreement, subject to delays caused by force majeure events.

6 DUNE CONSTRUCTION. Based on existing conditions and current design plans, the construction of the Dune is estimated to include approximately eight (8) cubic yards per linear foot on average and shall generally be in accordance with the attached dune profile depicted in Exhibit B. The Dune work is estimated at approximately 50,726 tons of the total Countywide dune project of approximately 639,000 tons. Further, the Dune project shall be in accordance with the design plans/specifications submitted and approved as part of the FDEP permit and in accordance with the terms and conditions of the FDEP permit issued for construction on the Property, all of which are incorporated herein by reference; provided however, that nothing therein shall permit Dune construction within playable areas of LRA's operating signature golf course. The County believes that additional sand placement may be necessary due to original impacts of Hurricane Matthew and subsequently Hurricane Irma and Nor'easter since then and intends to do so if there are any savings from the estimates herein and within any available funding. However, the County agrees that it will not modify the proposed Dune profile to increase the Dune height without prior written consent from LRA. LRA understands and acknowledges the estimated cubic yardage, the dune profile depicted in Exhibit B, and the proposed design plans/specifications and hereby authorizes the County to construct the Dune in accordance with the plans, specifications and the permits as issued by FDEP.

Overall Dune construction costs shall include but shall not be limited to: all costs related to the Dune including final design and permit costs, Dune sand and vegetative plantings. Additionally, all costs related to surveying for the construction, "as built" surveys, construction inspection and management, any financial procurement and finance costs, and engineer certifications, plus all labor and equipment, and all other costs associated with the Dune construction. Upon completion of the project contemplated herein, LRA, in its sole discretion and at its own expense and with the County's support, may seek to apply for its own permit with FDEP to modify any minimum dune plantings, per FDEP requirements. The County is prohibited from planting any endangered or threatened plant species with LRA property. LRA, if it elects to obtain a permit for planting, will not interfere with the County's completion of and compliance with the County-obtained FDEP permit.

If, during the term of this Agreement, any of the area outside the Property is damaged, destroyed, or caused to be in a condition that is different than the condition of the area outside the Property on the date of this Agreement, by the County, its employees, agents, (including those parties that have entered into a contract with the County to provide the project described herein), the County, at its cost and expense and with all reasonable diligence, shall repair or replace the damaged or

destroyed portion of the Property to the same condition as existed as of the date of this Agreement. LRA shall provide the County with relevant documentation of the existing condition of the area outside the Property, including video, photographs, or other relevant information in its possession within 10 days prior to signing this Agreement.

7 HARMONIOUS USE BY LRA. LRA reserves unto itself the right and privilege to use the Property for any purpose that does not unreasonably interfere with the County's obligation to construct the project as provided by this Agreement.

8. VOLUNTARY ASSESSMENT. Hammock agrees to participate in the financing of the Dune project for its Property and for the benefit of other properties for which those owners may contribute financially. LRA hereby consents to the County levying a non-ad valorem special assessment on Parcels BPP1 and BPP2 of the Property and to use the uniform method of collecting non-ad valorem special assessments for the collection of the assessment against the Property. The non-ad valorem assessment shall be a capped portion of the Dune construction cost on LRA's Property (the "Assessment") as described in Paragraph 8.c below. The total cost of the Dune project on the Property is estimated to be approximately \$2,130,559.00, not including any anticipated financing costs (4%), tax collector fees (2%), or early payment discounts applicable to the Assessment (4%).

a. Acknowledgments by Hammock. Hammock acknowledges that construction of the Dune will provide a special benefit to the Property and adjacent properties and that payment of the Assessment on the tax bill provides an additional special benefit by allowing Hammock the ability to finance the Dune over a term of up to five (5) years. Hammock acknowledges that all terms of this Agreement are acceptable in relation to the special benefits described. Hammock acknowledges and agrees that the cost of the Dune is commensurate with the benefits to be received by Hammock.

b. Enabling Ordinance and Resolution. The Parties agree to approve, support and keep in effect such resolutions and ordinances reasonably and directly necessary to approve the Assessment.

c. Assessment Amount. The portion of the total project cost that Hammock will pay is agreed upon at a not to exceed amount of \$831,613.00. This amount includes a portion of project costs and County debt issuance and financing costs such as interest, plus Tax Collector fees. This amount does not include any Assessment early payment discounts, as provided for by *Florida Statutes*. The Assessment amounts provided herein are those attributable to Hammock, and adjacent benefiting properties, for Dune on the Property and the role it plays interconnected with the Dune the County is constructing on other coastal properties within the County; Hammock will pay the costs with an initial non-assessment payment of \$132,002.00 directly to the Board of County Commissioners for the Dune construction within LRA property, upon (i) creation and adoption of the Assessment district but in no case later than April 1, 2018, and thereafter, pay in five equal annual Assessments of \$140,428.00 for five years prior to January 1 of each of the following years. The Assessment amount that LRA is responsible for paying set forth in this Section 8.c. is subject to reduction and the sharing of payment by other benefiting property owners as contemplated in Sections 8.e., 8.d., 8.f.

d. Reductions to Assessment Amounts Due to Project Savings. The County shall reduce the Assessment should the County realize savings in the construction of the dune projects carried out within the Special Assessment District. The County in its sole discretion shall determine the applicable amount of project savings and shall apply it equally based on the percentage of the engineer's estimated sand quantities, per the entity participating in the Dune Voluntary Assessment District (District covers the area from MalaCompra Park south to Varn Park along the ocean).

To effectuate any Assessment reduction the County shall prepare an accounting true up for the Dune Voluntary Assessment District area based on actual expenditures and shall provide a minimum credit of 37% or 37 cents (\$0.37) for any construction dollar the County estimated that was saved based on the County's true-up. The Parties understand that the accounting true-up will not be precise. Some of the accounting true-up will be based on more detailed quantities (i.e. sand, sand testing samples and plantings) while other portions will be based on less detailed allocations and estimates such as project dump truck rental, CEI (Construction, Engineering Inspection) services, final survey costs, closeout costs, and remedial work, that may be allocated project wide. There shall not be any reductions for financing costs as the County will need to secure the funding at the outset of the project before the construction is completed. Similarly, there shall be no proportionate reductions in estimated Tax Collector fees, or early Assessment payment discounts, except to the extent the annual Assessments are reduced. If there are no Tax Collector fees assessed by the Tax Collector, none will be charged.

The County shall apply any Assessment reductions to the last Assessment year at the time the County approves the assessment roll on or before September 15 for that year. Should the savings exceed the final year Assessment amount as provided herein, then the County shall apply the remainder savings to each year preceding the final year consecutively until the savings are fully applied. Such reductions shall occur when the County approves the assessment roll on or before September 15 of each such year.

e. Reductions to Assessment Amounts Due to Payment by Third Parties. As a matter of law payments on any Special Assessment may be made by someone other than LRA. In addition to HBPOA, the County supports but is not involved in the financial participation of adjacent benefiting property owners that may not own property eastward of the coastal construction control line but may benefit in the same manner as property owners within the Hammock Dunes Property Owners Association and Ocean Hammock Property Owners Association that are participating via their owners' association to share in the cost of the Dune construction in proportion to the obligation of other benefited properties. In this regard, the Parties recognize that the Dune construction cost within LRA property will likely extend benefits to other property owners other than just LRA. Therefore, the County will not oppose LRA facilitating direct or indirect financial participation by adjacent benefiting property owners, such as the properties governed by HBPOA. Financial participation by such properties made directly to the County shall directly reduce LRA's level of participation at a 1:1 ratio. The Parties agree that although LRA shall be responsible for submitting the full amount of the Assessment due, HBPOA agrees that it is responsible to pay to share of the Assessment in the same proportion as the association expenses are assessed to its members (after deducting LRA's share) pursuant to the HBPOA governing documents (the "HBPOA Share"). HBPOA hereby agrees to timely pay in full, the HBPOA Share to LRA, which will collect such funds on behalf of HBPOA. HBPOA

further agrees to be liable to the County for the HBPOA Share. The County agrees to look only to HBPOA for the HBPOA Share and only to LRA for LRA's proportionate share. HBPOA specifically agrees that all of the remedies available to the County against LRA to collect any amounts of the Assessment shall also be available against the HBPOA in the event of any failure by HBPOA to pay the HBPOA Share hereunder. HBPOA and LRA agree that each condominium unit owner governed by HBPOA shall be assessed \$1,000 by HBPOA to pay for HBPOA's share of the Assessment.

f. Payment of Assessment/Default. Hammock hereby freely and willingly agrees to pay the Assessment pursuant to the terms of this Agreement and acknowledges that the failure to pay the Assessment will cause a tax certificate to be issued against the Parcels BPP1 and BPP2 of the Property, which may result in a loss of title in accordance with Section 197.3632, *Florida Statutes*. Hammock recognizes that the County has pledged payment of the financing with a lender for which any default can result in interest and penalties against the County. Hammock agrees that should its payment be delinquent following January 1 of any year, the County may pursue suit in the Seventh Judicial Circuit Court in and for Flagler County to compel LRA and HBPOA to pay their respective shares of the Assessment due and to assess its members the amounts necessary to discharge that responsibility. For this purpose, Hammock consents to the County pursuing an injunction to compel payment without the necessity of posting any bond. Further, Hammock agrees that it shall be liable for reasonable costs incurred by the County including reasonable attorneys and paralegal fees and reasonable costs, whether incurred in negotiations, at trial or on appeal. Hammock also agrees to pay reasonable consequential costs such as late interest at the rate prescribed in the financing instruments, in addition to the statutory interest for late payment of an Assessment to the Tax Collector. Hammock agrees that the case fees and reasonable costs and reasonable consequential financing costs shall be recoverable. The purpose of the foregoing provisions is to facilitate strict compliance with the Assessment payment due dates such that the County's pro rata cost allocation remains properly stated and such that the Property not be subject to a tax certificate. There can be no set off against the Assessment due the County for any reason or purpose, however this provision shall not in way preclude other parties for paying portions of such Assessments as contemplated herein. Absent a default by Hammock, the County agrees that Hammock's financial obligation for the Dune construction shall remain fixed.

9 TERM. Subject to the duration of the easement set forth in Paragraph 5, the term of this Agreement shall commence when the last Party hereto executes this Agreement and shall terminate upon full satisfaction of all Assessment payments by Hammock.

10 VOLUNTARY ASSESSMENT DISTRICT, CONSENT AND TIMING OF ASSESSMENTS. LRA shall be included as a single property owner in the voluntary special assessment district. The County has created the district in December of 2017, and the annual Assessment will first appear on LRA's FY 2018/19 tax bill that the Flagler County Tax Collector will send out in October or November 2018; provided, however, that the County agrees to amend the voluntary special assessment district to limit its scope only over BPP1 and BPP2. The district will be established for five (5) years and will include an initial non-assessment payment of \$132,002 paid directly to the Flagler Board of County Commissioners, and five annual Assessments of \$140,428.00 as further described in Paragraph 8.c herein. The amount owed may be pre-paid at any time without any prepayment penalty. This Agreement shall serve as

prima face evidence of LRA's concurrence with the voluntary special assessment Dune district. These assessments contemplated in this Agreement shall be a non-renewable Assessment and all of Hammock's obligations shall terminate upon payment thereof.

11 POWER OF ATTORNEY FOR INSTALLATION OF DUNE. By signature herein, LRA hereby grants the County the power of attorney to enter into permits, contracts, financing and other legal documents necessary to carry out the construction of the Dune. LRA warrants that it is empowered to bind the Property to the terms of this Agreement and that it is acting on behalf of any individual or entity that has an interest in the Property and will hold the County harmless from any other individual or entity, including its members, that claim an interest in the Property in the performance of this Agreement.

12 THE COUNTY'S INDEMNIFICATION. The County shall defend, indemnify and hold LRA, and all contractors, subcontractors, agents, employees, officers, directors, members and lenders of LRA, harmless from any and against all liabilities, losses, damages, demands, claims, liens, causes of action, judgments and expenses including, without limitation, reasonable attorneys' fees, costs and expenses caused by, arising from or relating to the exercise by the County, its employees, agents, (including those parties that have entered into a contract with the County to provide the project described herein), subject to the standards and limits of Section 768.28, Florida Statutes, of the rights granted hereunder, or the entry by any of them onto or use of the Property or the breach by any of them of the County's obligations under this Agreement, except to the extent caused by the negligence or willful misconduct of LRA or of its contractors, subcontractors, agents or employees. This Paragraph shall survive termination of this Agreement for one (1) year.

13 LRA'S INDEMNIFICATION. LRA shall defend, indemnify and hold the County, harmless from any and against all liabilities, losses, damages, demands, claims, liens, causes of action, judgments and expenses including, without limitation, reasonable attorneys' fees, costs and expenses caused by, arising from or relating to LRA's activities on the Property, except to the extent caused by the negligence or willful misconduct of the County, its employees, agents, (including those parties that have entered into a contract with the County to provide the project described herein). In no event shall LRA have any liability to any person for any claim by any person, except to the extent caused by the negligence or willful misconduct of LRA or of its contractors, subcontractors, agents or employees. This Paragraph shall survive termination of this Agreement for one (1) year.

14 PUBLIC RECORDS. Hammock acknowledges and agrees that this Agreement and any other documentation connected herewith, including correspondence and emails with the County, are public records by law subject to public inspection pursuant to Chapter 119, *Florida Statutes*.

15 FURTHER DOCUMENTATION. Hammock agrees that at any time following a request by the County, Hammock shall execute and deliver to the County such further documents and instruments in form and substance reasonably necessary to confirm and/or effectuate the obligations of Hammock hereunder and to consummate the design and construction of the Dune as contemplated herein.

16 GOVERNING LAW; VENUE; ATTORNEYS' FEES; REMEDIES. The exclusive jurisdiction and venue for any action to interpret and/or enforce the terms of this Agreement shall be in the Seventh Judicial Circuit in and for Flagler County, Florida. In the event of a dispute, this Agreement shall be interpreted under Florida law except its conflict of laws provisions. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with the provisions of this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such Party or Parties may be entitled. No remedy herein conferred upon any Party is intended to be exclusive of any other remedy, shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any Party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

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

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

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

LRA:
LRA Hammock Beach Ocean, LLC
ATTN: LRA Manager
105 16th Road E
Palm Coast, FL 32137

County:
Flagler County
ATTN: County Administrator
1769 East Moody Blvd., Bldg. 2
Bunnell, FL 32110

And a copy to:
Foley & Lardner LLP
111 North Orange Avenue
Suite 1800
Orlando, Florida 32801
Attn: Bill Guthrie

Flagler County
ATTN: County Attorney
1769 East Moody Blvd., Bldg. 2
Bunnell, FL 32110

HBPOA:

Hammock Beach Property Owners' Association, Inc.
ATTN: President
105 16th Road E
Palm Coast, FL 32137

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

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

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

23 REPRESENTATIONS AND WARRANTIES. LRA is authorized to enter into this Agreement and has secured any approvals necessary to enter into this Agreement. By executing this Agreement, LRA certifies that nothing prevents LRA from entering into this Agreement and that no encumbrance would impede or prohibit the installation of the Dune as described herein or to make the payments of the amounts due herein. HBPOA is authorized to enter into this Agreement and has secured any approvals necessary to enter into this Agreement. By executing this Agreement, HBPOA certifies that nothing prevents HBPOA from entering into this Agreement and that no encumbrance would impede or prohibit HBPOA from making the payments of the amounts due herein.

24 INSURANCE AND INDEMNIFICATION. The County and the planting contractor working on the Property shall obtain and maintain, at its sole cost and expense commercial general liability insurance covering liability to persons for bodily injury (including death) or for property damage incident to or arising from any use of the Property pursuant to this Agreement with County's normal limits for general liability and per occurrence, and \$200,000 in the general aggregate, and (\$100,000.00) per occurrence for its planting contractor. Such insurance shall name LRA as an additional insured. After the undivided fee simple interest of the Dune is vested in LRA pursuant to Section 5 hereof, LRA agrees to indemnify, defend, protect, and hold harmless the County and any and all agents, officers, employees, and consultants, from and against all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with the maintenance of the Dune after it has been conveyed to LRA by the County.

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

Attest:

Flagler County Board
Of County Commissioners

Tom Bexley, Clerk of the Circuit
Court and Comptroller

Gregory L. Hansen, Chair

Date

Approved As To Form:

Al Hadeed, County Attorney

Witness

HBPOA
Hammock Beach Property Owners Association, Inc.

Signature

Signature

Printed Name

Printed Name

Date

Date

Witness

(Signature)

(Print or Type Name)

Date

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, who is personally known to me or who has produced a driver's license as identification and who swears and affirms that he is authorized to execute this Agreement on behalf of the Hammock Beach Property Owners Association, Inc.
SEAL:

Notary Public

Witness

Signature

Printed Name

Date

Witness

(Signature)

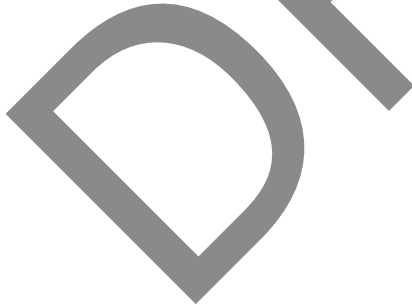
(Print or Type Name)

Date

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, who is personally known to me or who has produced a driver's license as identification and who swears and affirms that he is authorized to execute this Agreement on behalf of LRA Hammock Beach Ocean LLC

SEAL:



LRA

LRA Hammock Beach Ocean LLC

Signature

Printed Name

Date

Notary Public

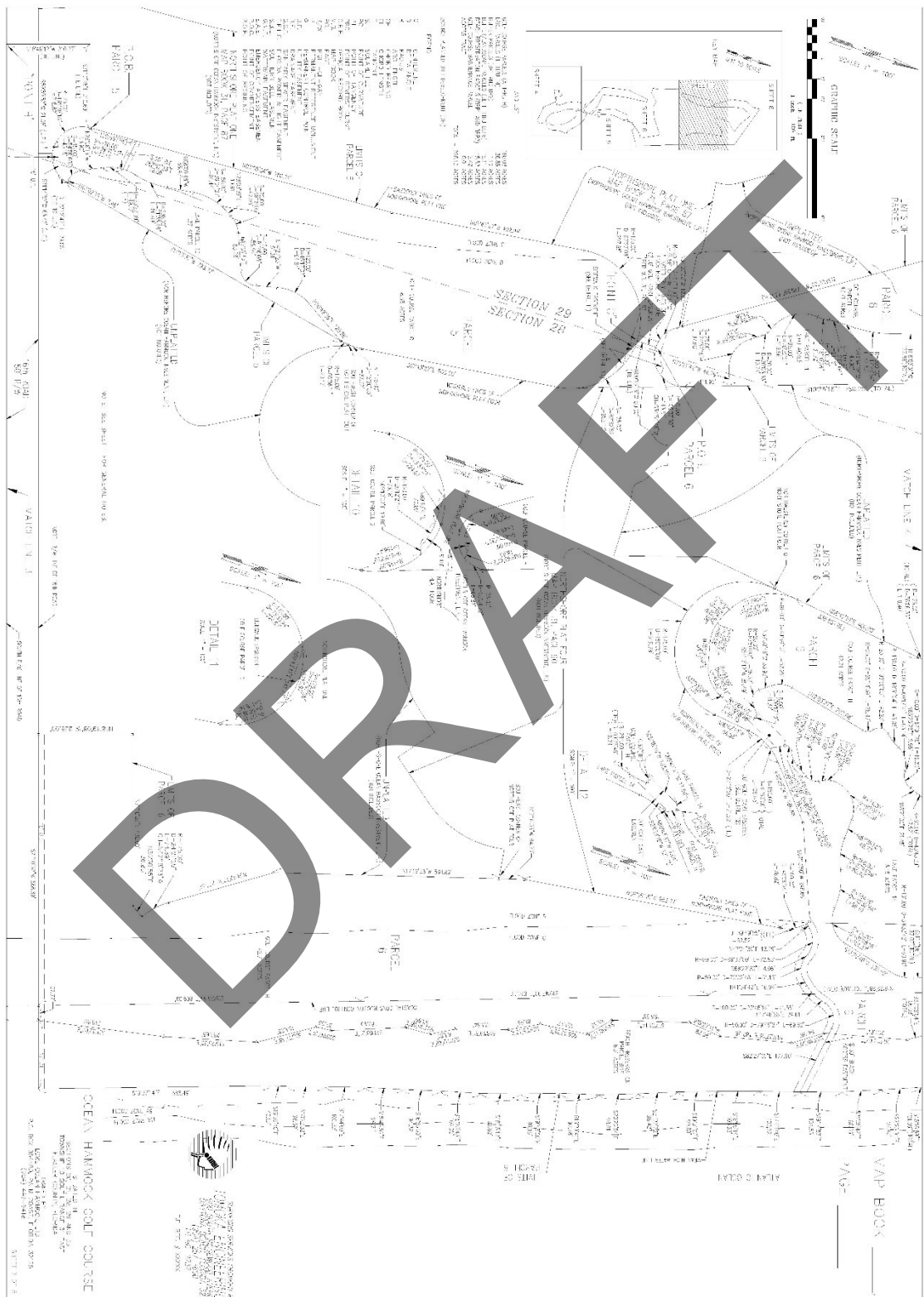
EXHIBIT A
PROPERTY DEPICTION (AERIAL PHOTOGRAPH)

DRAFT

DATE	DESCRIPTION
10/15/00	ISSUED FOR PERMIT
08/15/00	ISSUED FOR PERMIT
07/15/00	ISSUED FOR PERMIT



DATE	07/15/14
PROJECT	SECTION 29 SECTION 28
SCALE	AS SHOWN
BY	...
CHECKED	...
APPROVED	...

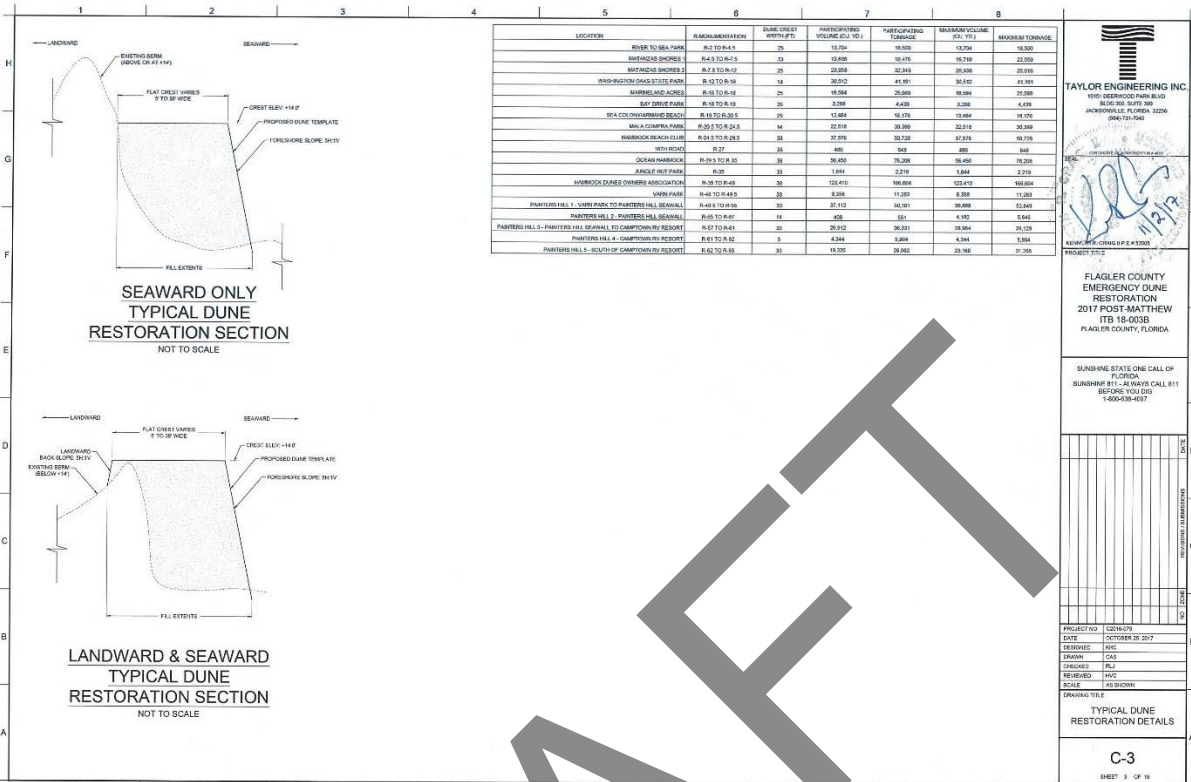


DATE	10/15/2000
BY	...
SCALE	AS SHOWN
PROJECT	OCEAN HAWMOCK GOLF COURSE



EXHIBIT B
DUNE/BEACH PROJECT PROFILE

DRAFT



LOCATION	RIDGE NUMBER	DUNE CREST WIDTH (FT)	VOLUME (CU YD)	PARTICIPATING TONNAGE	MINIMUM VOLUME (CU YD)	MOOREM TONNAGE
RIVER TO SEA PARK	R-2 TO R-4	75	13,754	18,000	13,754	18,500
WINDY HILLS	R-5 TO R-7	75	13,688	18,475	13,710	22,500
WINDY HILLS	R-8 TO R-10	75	28,858	32,343	28,858	32,500
WASHINGTON DASH STATE PARK	R-11 TO R-14	75	26,812	41,981	26,812	41,981
MARSH AND JAGS	R-15 TO R-18	75	18,784	25,089	18,784	25,089
SEA COAST	R-19 TO R-21	75	2,788	4,420	2,788	4,420
SEA COAST	R-22 TO R-24	75	13,464	18,475	13,464	18,475
MALCOLM PARK	R-25 TO R-28	75	22,518	30,380	22,518	30,380
HARBOR BEACH	R-29 TO R-31	75	37,376	50,727	37,376	50,727
WINDY HILLS	R-32 TO R-34	75	400	500	400	500
OCEAN MARSH	R-35 TO R-37	75	56,420	75,288	56,420	75,288
WINDY HILLS	R-38 TO R-40	75	1,991	2,719	1,991	2,719
HARBOR BEACH	R-41 TO R-43	75	120,412	160,564	120,412	160,564
VAN DYKE	R-44 TO R-46	75	8,208	11,083	8,208	11,083
PARTNERS HILL 1 - VANDYKE TO PARTNERS HILL 3	R-47 TO R-49	75	27,112	36,191	27,112	36,191
PARTNERS HILL 1 - PARTNERS HILL 3	R-50 TO R-51	75	408	541	408	541
PARTNERS HILL 3 - PARTNERS HILL 4	R-52 TO R-53	75	28,812	38,331	28,812	38,331
PARTNERS HILL 4 - CAMPION RIV. REPORT	R-54 TO R-55	75	4,344	5,804	4,344	5,804
PARTNERS HILL 5 - SOUTH OF CAMPION RIV. REPORT	R-56 TO R-59	75	18,700	24,982	18,700	24,982

TAYLOR ENGINEERING INC.
 1101 DEERWOOD PARK BLVD
 BLDG 500 BOX 308
 JACKSONVILLE FLORIDA 32206
 904-721-7800

PROJECT SITE

**FLAGLER COUNTY
 EMERGENCY DUNE
 RESTORATION**
 2017 POST-MATTHEW
 I7B-18-003B
 FLAGLER COUNTY, FLORIDA

SUNSHINE STATE ONE CALL 811
 SUNSHINE 811 - ALWAYS CALL 811
 BEFORE YOU DIG
 1-800-3M-6037

PROJECT NO.	C026109
DATE	OCTOBER 26, 2017
DESIGNED BY	CS
DRAWN BY	CS
REVISIONS	1
SCALE	AS SHOWN

TYPICAL DUNE RESTORATION DETAILS

C-3

SHEET 3 OF 10

DRAFT

**EXHIBIT C
PREFERRED CONSTRUCTION PERIODS**

Most critical area to minimize duration of work and least impact hospitality operations:

Southerly 1,500 feet of BPP1

Minimize duration to a maximum of two weeks

Most preferred period to reduce impact to hospitality operations:

October 1 – November 22, 2018

Alternate periods to reduce impact to hospitality operations:

January 1 – March 31, 2018

DRAFT