

Return original or certificated document to:
Town of Fort Myers Beach
Department of Community Services
2525 Estero Blvd
Fort Myers Beach, FL 33931

(above area for recording information)

TEMPORARY BEACH ACCESS, RESTORATION AND MANAGEMENT EASEMENT

THIS TEMPORARY EASEMENT (the “Easement”) is given this _____ day of _____, 20____, by _____ (“Grantor”), whose mailing address is _____, to the Town of Fort Myers Beach (“Grantee”). As used herein, the term “Grantor” shall include all heirs, successors, and assigns of the Grantor, and all subsequent owners of the “Property” (as hereinafter defined) and the term “Grantee” shall include any successor or assignee of Grantee.

W I T N E S S E T H

WHEREAS, Grantor is the owner of certain lands situated in Lee County, Florida, and more specifically described in Exhibit “A” attached hereto and incorporated herein (the “Property”); and

WHEREAS, Grantor has agreed to grant and convey to Grantee, a non-exclusive access easement over, upon, and across the Property for the specific and limited purposes set forth herein more specifically described in Exhibit “B” attached hereto and incorporated herein (the “Easement Land”).

NOW, THEREFORE, in consideration of the sum of one dollar (\$1.00) provided to Grantor and the mutual covenants, promises, terms and conditions set forth herein, the adequacy and receipt of which are hereby acknowledged, Grantor hereby voluntarily grants, creates, conveys, and establishes an Easement for and in favor of Grantee crossing over (landward of) the Erosion Control Line (ECL) or Mean High Water Line (MHWL) where the ECL was not established on the Property described in Exhibit “A”, which shall run with the land and be binding upon the Grantor. The scope, nature, and character of this Easement shall be as follows:

1. **Recitals.** The recitals herein are true and correct and incorporated into and made a part of this Easement.
2. **Purpose.** It is the purpose of this Easement to grant a non-exclusive access easement over, on, upon, and across the Property for the limited purposes of:
 - a. Vehicular and pedestrian ingress and egress to and from certain real property and related appurtenances in the vicinity of the Property that is

related to constructing, preserving, patrolling, operating, maintaining, repairing, rehabilitating, and replacing the beach and dune system and other erosion control and storm damage reduction measures.

- b. Depositing sand, accomplishing any alterations of contours on said land, constructing berms and dunes, planting and maintaining dune vegetation, nourishing and renourishing periodically, for moving, temporarily storing and removing equipment and supplies, erecting temporary structures (as used herein, “temporary structures” does not include buildings of any kind), and performing any work necessary and incident to the construction, periodic renourishment, maintenance, and implementation of the Grantee’s beach renourishment plan or hurricane recovery project.
- c. Facilitating preservation of dunes and vegetation.
- d. Removing debris and obstructions within the limits of the easement.
- e. Further reserving to the Grantor, its successors and assigns all such rights and privileges as may be used and enjoyed without interfering or abridging the rights and easements hereby acquired; subject however to existing easements for public utilities and pipelines.

3. Limitations. None of the Easement rights granted hereunder are intended to be a dedication or gift to or for the public, nor give the Grantee the right to prohibit or restrict the Grantor and its successors and assigns from using and enjoying the portion of the land described in Exhibit “A” for recreational purposes in compliance with applicable federal, state, county and Town laws, ordinances, rules, and regulations.

4. Grantee’s Liability. Grantee’s liability is limited as provided in § 704.06(10), Fla. Stat. and § 768.28, Fla. Stat. Nothing herein shall constitute a waiver by Grantee of its sovereign immunity or the provisions of § 768.28, Fla. Stat. Additionally, Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep, or maintenance of this Easement.

5. Duration. This Easement shall be for a fixed period and shall automatically terminate June 1, 2038, without the necessity of any further instrument of record.

6. Modification. This Easement may be amended, altered, released, or revoked only by written agreement between the parties hereto or their heirs, assigns or successors-in-interest, which shall be filed in the public records in Lee County, Florida.

7. Title Warranties. Grantor warrants that Grantor has good and indefeasible fee simple title to and possession of the Easement Land and that it has good and lawful right to grant this Easement. Grantor represents that execution and delivery of this Easement and performance of its obligations pursuant to this Easement will not violate any agreement, instrument, order, judgment, decree, permit, approval, license, law, regulation, or ordinance to which Grantor is a party or by which Grantor or Grantor’s assets or the Property is bound, or which otherwise affects the Property. Grantor shall indemnify, defend, and hold Grantee and its successors and assigns

harmless from and against all claims, damages, liabilities, losses, costs, and expenses, including, without limitation, reasonable attorneys' fees arising from a breach of the representations, warranties, guarantees or covenants of Grantor contained in this Easement.

8. Authority. The undersigned person executing this Easement on behalf of Grantor represents and certifies that he or she is authorized to execute and deliver this Easement; that Grantor has full capacity to convey the Easement and other rights herein; and that all necessary action for the making of such conveyance has occurred. The undersigned person executing this Agreement on behalf of Grantee represents and certifies that he or she is authorized to execute and deliver this Easement; and that all necessary action for the execution of this Easement has occurred.

9. Notices. All notices, demands and requests required or permitted to be given under this Easement must be in writing and addressed to the appropriate Party at the appropriate address as set forth below and shall be deemed given and received (i) when hand delivered to the intended recipient, by any means; (ii) three (3) business days after the same is deposited in the United States mails, with adequate postage prepaid, and sent by registered or certified mail, with return receipt requested; (iii) one (1) business day after the same is deposited with an overnight courier service of national or international reputation having a delivery area encompassing the address of the intended recipient, with the delivery charges prepaid; or (iv) when received via electronic mail at the intended recipient's email address set forth below (provided such email delivery and receipt is confirmed via return receipt of the noticing Party). The initial addresses of the parties shall be:

If to Grantor:

Email: _____

If to Grantee:

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, FL 33931
Attn: Town Manager
Email: townmanager@fmbgov.com

A Party may change its address, intended recipient party or email address by notice given in accordance with this Section.

10. Amendment and Termination. This Easement may only be amended or terminated by a written agreement signed by the Parties.

11. Counterparts. This Easement may be executed in counterparts, each of which when executed shall be deemed an original, all of which together shall constitute one instrument.

12. Enforcement; Attorneys' Fees. If any Party is required to commence any action or proceeding against the other to enforce or interpret the provisions hereof, the prevailing Party in such action shall be awarded, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including attorneys' fees.

13. Severability. If any provision in this Agreement is held invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be impaired thereby.

14. Governing Law and Recordation. This Agreement shall be governed by the laws of the State of Florida.

15. Interpretation. Nothing contained herein is to be construed as creating a joint venture or partnership between Grantee and Grantor. Furthermore, it is acknowledged that each party had the opportunity to consult with by counsel in the preparation of and contributed equally to the terms and conditions of this Easement and, accordingly, the rule that an instrument shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.

16. Headings. The Section headings are included only for convenience and shall not be construed to modify or affect the covenants, terms, or provisions of any Section.

17. No Third-Party Rights. Nothing contained in this Easement shall create a contractual relationship with or duties, obligations or causes of action in favor of any third party.

18. Remedies Cumulative. The rights and remedies given in this Easement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Easement or given to a non-defaulting party by law.

19. No Waiver. One or more waivers of the breach of any provision of this Easement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Easement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

20. WAIVER OF JURY TRIAL. EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS EASEMENT.

21. Miscellaneous.

a. The Parties hereto covenant and agree that they will from time to time, upon the request of another Party, and without further consideration, execute, acknowledge, and

deliver in proper form any further instruments, and take such other actions, as such Party may require to conduct the intent of this Easement.

b. This Easement is the final expression of the complete and exclusive agreement between the Parties with respect to the subject matter hereof.

c. As soon as reasonably practicable after the execution and acknowledgment hereof, the Parties shall cause this Easement to be recorded in the Official Records of Lee County, Florida.

[Remainder of Page Intentionally Left Blank, Signature Page to Follow]

GRANTEE:

WITNESSES:

Town of Fort Myers Beach, a Florida
municipal corporation

Name: _____

By: _____

Name: _____

Title: _____

Name: _____

STATE OF FLORIDA)

) ss.

COUNTY OF LEE)

The foregoing instrument was acknowledged before me this ____ day of _____ 20____, by _____ as _____ of the Town of Fort Myers, Beach, who (check one) [] is personally known to me or [] produced a valid _____ driver's license as identification.

Print or Stamp Name: _____

Notary Public, State of Florida at Large

Commission No.: _____

My Commission Expires: _____

EXHIBIT A
GRANTOR'S LAND

EXHIBIT B

EASEMENT LAND

