

FOLLOWING EXECUTION PLEASE RETURN TO:
Robert Weber, Coastal Program Manager Town of Palm Beach
P.O. Box 2029
Palm Beach, FL 33480

**TEMPORARY ACCESS EASEMENT AGREEMENT
2022 DUNE RESTORATION PROJECT**

THIS TEMPORARY ACCESS EASEMENT AGREEMENT, executed this ____ day of _____, 2022, by **Town of Lantana**, which has a mailing address of 500 Greynolds Circle, Lantana, FL 33462, hereinafter referred to as "Grantor," in consideration of the mutual benefits to be derived from the Town of South Palm Beach's and the Town of Palm Beach's 2022 Dune Restoration Project (the "Project"), and other good and valuable consideration, hereby grants, bargains, and conveys to the Town of South Palm Beach ("South Palm Beach"), a municipal corporation, which has a mailing address of 3577 S. Ocean Blvd., South Palm Beach, FL 33480, and the Town of Palm Beach ("Palm Beach"), a municipal corporation, which has a mailing address of P.O. Box 2029, Palm Beach, FL 33480, hereinafter, collectively, referred to as "Grantee", the temporary access easement, thirty (30) feet in width, as depicted in the attached Exhibit A, such access to commence no earlier than January 1, 2022. The Grantor and Grantee are hereinafter collectively referred to as the "parties".

This is a nonexclusive easement with Grantor reserving the right to use of the temporary access easement area in a manner consistent with the rights granted herein to the Grantee; provided, however, that Grantor agrees that Grantor shall not use or allow to be used the vehicle parking spaces within the temporary access easement area and Grantor shall use its best efforts to cause the temporary access easement area, including, without limitation all such vehicle parking spaces located therein, to remain open, unobstructed and unoccupied throughout the term of this Agreement. However, Grantee further agrees that neither Grantee, nor any of Grantee's contractors, suppliers, subcontractors, sub-subcontractors, employees or agents, shall cause or permit any obstruction of the free and clear ingress and egress with respect to the Town, unless otherwise agreed to in advance by the Town Manager of the Grantor.

Witnesseth, that the for the sum of *****Ten (\$10.00) Dollars***** and other good and valuable consideration as well as the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged by each party hereto, the parties hereto, intending to be legally bound hereby agree to the following terms and conditions:

1. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift, grant, or dedication to or for the general public and this agreement shall be strictly limited to and for the purposes expressed herein.
2. Use; Public Beach Closure. The access may be used by Grantee, its contractors, suppliers, subcontractors, sub- subcontractors, employees and agents, during the term of this Agreement, which is the period for which access rights are granted under this Agreement, for the limited purpose of access, ingress and egress, including the right to transport beach-quality sand over and across the temporary access easement area, in connection with

construction of the Project which consists of repairing erosion to the dune area by adding compatible beach-quality sand. Grantee and its contractors, suppliers, subcontractors, sub-subcontractors, employees and agents shall also have the right to erect, maintain and operate equipment within the temporary access easement area only in order to transport said beach-quality sand to the beach area, and for no other construction purposes except those related to the Project. Time is of the essence of the Project and the use of the temporary access easement area.

The Grantee, its contractors, suppliers, subcontractors, sub-subcontractors, agents and employees shall comply with all applicable laws, codes and ordinances with jurisdiction over the temporary access easement area and the work performed therein. Grantee will save and keep the Grantor free from all mechanics liens and other liens by reason of its use of the temporary access easement area or any materials or other things used in connection therewith by Grantee or its contractors, subcontractors, sub-subcontractors, agents and employees. If the Grantee fails to remove such lien(s) by bonding or otherwise within ten (10) days of the date that Grantee has received written notice of the recordation of any such lien, the Grantor may pay such lien(s), lien bonds and any reasonable attorney's fees and costs related thereto and the Grantee shall reimburse the Grantor within ten (10) days of its receipt of invoices and statements reflecting payment of such fees and costs by the Grantor and copies of releases of lien, if applicable. Time is of the essence in the payment of these fees and costs and any delay may, at the discretion of the Grantor, be considered a material breach that would entitle the Grantor to terminate the Agreement effective upon Grantee's receipt of the notice of termination. Notice to Grantee under this Paragraph shall be provided by certified mail, return receipt requested, to Grantee at: Town of Palm Beach, Attn.: Town Manager, P.O. Box 2029, Palm Beach, FL 33480 (with a copy to the Town of South Palm Beach, Attn: Town Manager, 3577 S. Ocean Blvd., South Palm Beach, FL 33480).

The Grantee shall provide reasonable notice to the Grantor when it and its contractors, and/or subcontractors will be accessing the easement for work on the Project. To ensure the safety of the public, the Grantor agrees to close its municipal beach to the public from the effective date of this Agreement through its termination or until the Project is completed, whichever occurs first.

3. Reasonable Use. The rights and interest conveyed hereunder are conditioned upon the reasonable exercise thereof by Grantee. Grantee shall not unreasonably interfere with Grantor's use of the temporary access easement area.
4. Location of the Temporary Access Easement Area. 30-foot-wide corridor, as indicated in the attached Exhibit A from Dorothy Rissler Lane (a/k/a East Ocean Avenue) easterly to the waters of the Atlantic Ocean, as depicted in Exhibit A.
5. State of Florida Department of Transportation Permit. Activities associated with construction within the temporary access easement area will at all times conform to the provisions/conditions contained within the FDOT General Use Permit. Prior to

ingress/egress activities within the temporary easement area, Grantee will receive permit issuance by FDOT. A copy of such permit(s) shall be provided to the Grantor.

6. State of Florida Department of Environmental Protection (FDEP) Permit. Prior to ingress/egress activities within the temporary easement area, within the FDEP jurisdiction area, east of the Coastal Construction Control Line, Grantee will receive permit issuance by FDEP. A copy of such permit(s) shall be provided to the Grantor.
7. Project Documentation. Grantee shall provide Grantor with video recordings documenting the pre-restoration dune/beach/temporary easement area/seawall condition and also the post-restoration dune/beach/temporary easement area/seawall condition in accordance with this paragraph. The pre-restoration video recording shall be provided to the Grantor and shall include a video recording of the Grantor's property along the temporary easement including the north property line and south within 50 feet of said temporary easement area. No vehicles will be permitted onto the easement area until the video recording is filmed. The post-restoration video recording shall be provided to the Grantor no later than 15 days following project demobilization and restoration of the Grantor's property as described in paragraph 9, below.

(7a) In addition to the above, Grantee shall, at Grantee's sole cost and expense, provide Grantor with a report from a qualified, licensed, engineer to establish the condition of the Grantor's property and the immediately adjacent property prior to use of the temporary access easement area by the Grantee and its contractors, subcontractors, suppliers, agents, and employees. Such engineer shall be selected by Grantor. Grantor's engineer shall also re-inspect such property within 30 days following project demobilization and restoration of the Grantor's property as described in Paragraph 8 below. All such engineering fees and costs for inspection of the Grantor's and adjacent property and the preparation of the report and the re-inspection of the property pursuant to this paragraph shall be at Grantee's sole cost and expense.

8. Restoration. Within 30 days of the completion of the Project, but in no event later than May 1, 2022, Grantee shall repair, replace and restore, as appropriate, all sod, fill, asphalt, vegetation and irrigation on the Grantor's property, and areas adjacent to the Grantor's property, to the extent damaged by the Grantee or its contractors, suppliers, sub-contractors, sub-subcontractors, agents, or employees. Such replacements shall be with sod, fill, asphalt, vegetation, and irrigation, existing at the time that Grantee commences use of the temporary access easement area. Grantee also agrees to reimburse Grantor upon Grantor's demand for the cost of irrigating the newly planted sod and vegetation for the first thirty (30) days after planting, not-to-exceed the sum of \$5,000. In addition to the foregoing, within 30 days of the completion of the Project, but in no event later than May 1, 2022, the Grantee will repair, replace and restore, as appropriate, all portions of the Grantor's property and adjacent areas, and the property of any resident, owner or visitor on Grantor's property to the extent damaged as a result of the use of the temporary access easement area by Grantee or its contractors, sub-contractors, sub-subcontractors, agents, suppliers, or employees, to the reasonable satisfaction of the Grantor's Town Manager. Grantee's restoration obligations set forth herein also specifically include any repairs,

replacement and/or restoration identified by the Grantor's engineer in accordance Paragraph (7a) above.

- 8(a) Emergency Repairs. Notwithstanding anything contained in this Agreement to the contrary, in the event that damage is caused to the temporary access easement area of any other portion of the Grantor's property by the Grantee or its contractors, subcontractors, agents or employees, and it is of an emergency nature which makes it impracticable to wait for the damage to be repaired/replaced by the Grantee at the completion of the Project, as reasonably determined by the Grantor's Town Manager, the Grantor shall verbally notify the Grantee by telephone by calling the Town of Palm Beach Police Department's 24-hour communications center at (561) 838-5454, with a written notice to follow within one (1) business day thereafter sent to Grantee at: Town of Palm Beach, Attn: Town Manager, P.O. Box 2029, Palm Beach, FL 33480 (with a copy to the Town of South Palm Beach, Attn: Town Manager, 3577 S. Ocean Blvd., South Palm Beach, FL 33480). Palm Beach will dispatch appropriate authorities to the temporary access easement area or other applicable portion of the Grantor's property within three (3) daylight hours of receiving said telephonic notice in order to promptly commence its assessment of the alleged damage and the emergency nature thereof. Within twenty-four (24) hours of receiving said telephonic notice, Palm Beach will complete its assessment of such damage and the emergency nature thereof and make a determination as to whether an emergency exists and what actions, if any, need to be taken with respect to such an emergency, in Palm Beach's reasonable discretion considering all relevant factors. If Palm Beach determines, in its reasonable discretion considering all relevant factors, that an emergency exists, then it will immediately commence the curative actions necessary in order to fully remediate the emergency. If Palm Beach determines, in its reasonable discretion considering all relevant factors, that an emergency does not exist, then it will commence the curative actions to repair, replace, and restore, as appropriate, as, when and to the extent required pursuant to paragraph 9 above. Palm Beach shall provide the parties the name and telephone number of its contractor's emergency contact who shall be available twenty-four (24) hours a day. Notwithstanding the foregoing, if there is a disagreement between Grantor and Palm Beach as to whether the subject damage is of an emergent nature or not, Grantor reserves the right to pursue any and all remedies available, including the right to revoke Grantee's use of the temporary access easement, without the need to obtain an injunction, until such time as the subject disagreement may be resolved.
9. Notice. In the event any damage caused or believed to be caused by Grantee or its contractors, sub-contractors, sub-subcontractors, agents, or employees to the Grantor's property, the areas adjacent to the Grantor's property or property of any owner, resident or guest of the Grantor's property, that is not fully addressed by the Grantee in accordance with Paragraph 8 hereof, Grantor agrees, within thirty (30) days of becoming aware of any such damage, to notify Grantee in writing at the Town of Palm Beach, Attention: Town Manager, P.O. Box 2029, Palm Beach, FL 33480 (with a copy to the Town of South Palm Beach, 3577 S. Ocean Blvd., South Palm Beach, FL 33480, Attention: Town Manager), by certified mail, return receipt requested. Failure of Grantor to timely notify Grantee of same

shall excuse Grantee of any liability for any and all such damage. If the damage is not cured within fifteen (15) days of receipt of written notice from Grantor for estimated costs below \$25,000, or within thirty (30) days of receipt of written notice from Grantor for estimated costs above \$25,000, or is repeated after receipt of such notification, the Grantor may contract for the repairs or replacements, as necessary, and the Grantee shall reimburse the Grantor for any costs reasonably incurred in connection with the same within thirty (30) days of its receipt of Grantor's request for reimbursement, by certified mail, return receipt requested, to Grantee at: the Town of Palm Beach, Attention: Town Manager, P.O. Box 2029, Palm Beach, FL 33480 (with a copy to the Town of South Palm Beach, Attn: Town Manager, 3577 S. Ocean Blvd., South Palm Beach, FL 33480), or commence an action to enforce the terms and conditions of this Agreement and Grantee shall, to the extent that the Grantee is the non-prevailing party, reimburse Grantor for all reasonable attorney's fees and costs incurred by Grantor in connection with its enforcement of the terms and conditions of this Agreement. Time is of the essence in the payment of these costs and any delay may, at the discretion of the Grantor, be considered a material breach that would entitle the Grantor to terminate this Agreement effective upon Grantee's receipt of the notice of the termination.

Any notice required to be sent to Grantor hereunder must also be sent to Grantor's attorney at:
Lohman Law Group, P.A.,
c/o R. Max Lohman, Esquire,
500 S. Australian Ave., Suite 531
West Palm Beach, FL 33401

10. Covenants Run with the Land. The covenants, rights, restrictions, reservations and access herein set forth are and shall run with the land for the duration of the Agreement.
11. Indemnification. Subject to the tort liability limitations of Florida Statutes, Section 768.28, the Grantee shall indemnify, save, defend and hold harmless the Grantor, its members, agents, servants, officers and employees from and against all loss, claims, costs, charges, expenses, suits, damage and judgments and reasonable attorney's fees which they may suffer, sustain or in anywise be subject to or for which it or they may be held liable on account of the death, personal injuries, damage or loss to property and/or loss of use of any property, damage to loss any person or persons, including employees, agents and officers of the Grantor, arising out of or on account of this Agreement. Nothing contained in this Agreement shall be interpreted or construed as consent by the Grantee to be sued, nor as a waiver of sovereign immunity beyond the waiver and limits set forth in Section 768.28, Florida Statutes.
12. Termination. All rights granted hereunder shall terminate on May 1, 2022 without the necessity of any further instrument of record. However, Grantee shall still be required to restore and repair the Grantor's property in accordance with this Agreement and access for such purposes shall be mutually agreed to by the Grantor and Grantee. The termination date may be extended up to thirty (30) days by the parties' respective town managers; otherwise, such extension shall be approved by the parties' respective governing bodies.

13. Amendment. This Agreement may be amended in a separate writing executed by all parties.
14. Assignment. This Agreement shall not be assigned unless agreed to in writing by the Grantor.
15. Counterparts. This Agreement may be executed in counterparts which together shall constitute the entire Agreement.
16. Special Conditions: The following conditions shall apply to this Agreement:
 - A. Grantee is to locate the 30-foot-wide corridor and establish/mark out easement limits using temporary barricades, such as, but not limited to, stakes, cones, fencing, or tape. All work, including laborers and equipment, will remain within the temporary access easement limits.
 - B. Grantee to provide flagmen, as necessary, in the access area to provide for safety and priority access for owners, residents and guests of the area.
 - C. Grantee shall provide a washing station to rinse the tires of all related construction vehicles prior to leaving the Grantor's Property in order to prevent dirt and debris from soiling the surrounding roadways.
 - D. There shall be no parking of vehicles by Grantee or its contractors, suppliers, Subcontractors, and agents outside of the easement area on the Grantor's property. Vehicles that are improperly parked outside of the easement area, on the Grantor's property are subject to being towed by the Grantor at any time. This Agreement does not confer the right for the Grantee or its contractors to store overnight or outside of work hours any vehicles, tools, or supplies on the Grantor's property outside of the temporary access easement area.
 - E. Consistent with Town Council authorization for this project, working hours will be restricted to 7:00 a.m. to 11:00 p.m. Monday through Saturday between February 10, 2022 and May 1, 2022. The contractor will refrain from construction activities on Sundays and holidays.
 - F. All truck traffic in the FDOT Right-of-Way at Dorothy Rissler Lane will cease at 11:00 p.m. on April 30, 2022 with complete demobilization by May 1, 2022.
 - G. All restoration activities (driveway asphalt, vegetation replacement, irrigation repairs etc. contemplated under Paragraph 8 above) will be completed within thirty (30) days following completion of the Project, but no later than May 1, 2022.
 - H. Grantor, Palm Beach and South Palm Beach will be named as an additional insured entitled to notice of any change or cancellation of the policy(ies), on the liability insurance policy(ies) of Palm Beach's general contractor Rio-Bak Corporation ("Grantee's contractor"). A copy of the Grantee's contractor's liability insurance policy(ies) and

Certificate(s) of Insurance or Addendum(s) in accordance with the coverage requirements of this Paragraph will be provided to the Grantor and South Palm Beach prior to February 10, 2022. Failure to provide Certificate(s) of Insurance or Addendum(s) as set forth in this paragraph 16. H. shall be considered a material breach of this Agreement. In the event of such occurrence Grantor, as its sole and absolute discretion, may immediately terminate this Agreement and revoke the temporary access easement granted hereunder by providing written notice of such termination and revocation, which shall subsequently be recorded in the public records of Palm Beach County.

Additionally, any other subcontractor working on the Grantor's property will also provide a certificate of insurance to the Grantor and South Palm Beach and name the Grantor, Palm Beach and South Palm Beach as an additional insured, entitled to notice of any change or cancellation of the policy(ies).

Certificates of insurance of the Grantee's contractor and subcontractors will evidence Comprehensive General Liability Insurance (which shall include vehicular liability insurance coverage), with a limit of liability of not less than \$5,000,000 per occurrence, including bodily injury, death, and property damage, not less than \$10,000,000 in the aggregate.

It is understood that if any insurance cancellation notice with respect to the Grantee's contractor's and/or any subcontractors' insurance is received by the Grantee it will immediately notify the Grantor and Grantee shall immediately cause said policy(ies) to be purchased and maintained, and provide the Grantor with a new Certificate of Insurance(s). Notwithstanding anything in this Agreement to the contrary, Grantee and its contractors, subcontractors, agents and employees shall not utilize the access easement area during any time as the required insurance policies are not in full force and effect.

IN WITNESS WHEREOF, the Grantor and Grantee have executed this Agreement as of the date and year first written above. However, the access rights provided hereunder shall not commence until a later time as more specifically set forth above in the introductory paragraph of this Agreement.

(Signature pages to follow.)

TOWN OF LANTANA

By: _____
Robert Hagerty, Mayor

Attest: _____
Kathleen Dominguez
CMC, Town Clerk

Approved as to form and legal sufficiency:

By: _____
R. Max Lohman, Town Attorney

WITNESS 1 Signature

WITNESS 2 Signature

WITNESS 1 Name Typed or Printed

WITNESS 2 Name Typed or Printed

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Robert Hagerty, Mayor _____, the authorized representative for **Town of Lantana**, who is personally known to me or who has produced a Florida driver's license, identification no. _____.

Notary Public
State of Florida
My Commission Expires:

TOWN OF SOUTH PALM BEACH

ATTEST:

By: _____
Bernice Fischer, Mayor

Yude Davenport, CMC, Town Clerk

Approved as to form and legal sufficiency:

Glen J. Torcivia, Town Attorney

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Bernice Fischer, Mayor, for **the Town of South Palm Beach**, who is personally known to me or who has produced a Florida driver's license, identification no. _____.

Notary Public
State of Florida
My Commission Expires:

TOWN OF PALM BEACH

ATTEST:

By: _____
Danielle H. Moore, Mayor

Pat Gayle-Gordon
Acting Town Clerk

Approved as to form and legal sufficiency:

John C. Randolph, Town Attorney

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Bernice Fischer, Mayor, for the **Town of Palm Beach**, who is personally known to me or who has produced a Florida driver's license, identification no. _____.

Notary Public
State of Florida
My Commission Expires:

EXHIBIT A

Legal Description of Access Easement

Legal Description of the Northernmost Parcel of the Lantana Municipal Beach Property (the "Access Easement")

That certain parcel of land lying and being in the County of Palm Beach and the State of Florida as follows:

2-45-43, S 150 FT OF N 831.3 FT OF E 200 FT OF GOV LT 1
LYG E OF A-1-A IN OR1394P257 and Dorothy Rissler Boulevard
(a/k/a East Ocean Avenue)