

LICENSE AGREEMENT

This Agreement entered into on this ____ day of _____, 2024, between Indian River County (County), Martin B. Graf (Owner) and Sussan-Allen Construction (Contractor), (Owner and Contractor shall be collectively referred to as "Licensee"), who are hereby authorized to temporarily use the established beach access point at (Treasure Shores Beach Park) ("County Property") for the limited purpose of locating certain heavy equipment onto the beach to perform construction activities on the Owner's property. The terms of this agreement are in accordance with the Board adopted policy "Private Use of County Property for Non-Emergency Coastal Construction Access," and the requirements of the policy are hereby incorporated by reference. Use of the County Property for this purpose is limited to December 9, 2024 (with a backup date of December 11, 2024) and December 23, 2024 (with a backup date of December 29, 2024) between the hours of 7:00 am to 12:00 pm (the "License Period"), and is subject to the following terms and conditions:

- 1) Licensee shall pay a County Property use fee of \$1000/day or \$500/half day for the License Period.
- 2) Contractor shall operate all equipment, or cause all equipment to be operated, in a safe and prudent manner, adhering to all weight and traffic regulations (including but not limited to vehicle speed and engine breaking) on all roadways, and in accordance with any measures deemed necessary for public safety by County staff.
- 3) Contractor shall (a) keep the gates to the County Property securely locked at all times except when opened for the passage of Contractor's equipment, (b) manage in a timely and efficient manner any traffic issues that arise as a result of the Licensee's use of the County Property, and (c) prohibit any public vehicular or pedestrian use of the County Property during Licensee's dune construction activities. Contractor shall post "Beach Closed" signs at the County Property entrance during Licensee's construction activities.
- 4) Any sand needed to establish a "sand ramp" for equipment to access the beach, or to perform the dune construction activities, shall be provided and installed by Contractor. Material/sand used for a sand ramp shall be consistent with the Natural Resources Department Coastal Engineering Division's "Indian River County - Beach Fill Specifications" which shall be provided to the Licensee with this License Agreement prior to execution. Any damage by Licensee to the County Property shall be repaired to the satisfaction of the County and at no cost to the County within a reasonable amount of time depending on the nature of the repair, but no later than 5 days after expiration of the license agreement, unless otherwise agreed upon by County. The agreed upon access route shall be inspected/videoed by County staff with the Licensee present, prior to the equipment mobilization to the identified County Property. Any sand placed to create the 'ramp' is not to be removed, but to remain in place at the County Property and to be smoothed out such as to create a natural dune slope (3:1 vertical to horizontal grade, unless otherwise specified or approved by the Coastal Division).

- 5) In order to prepare the site for equipment access, the Contractor may place: Clean sand – consistent with requirements for Natural Resources Department Coastal Engineering Division's "Indian River County – Beach Fill Specifications", OR composite or steel mats – subject to acceptance by the Coastal Division; however, any placed material must be removed by the Contractor as part of Site Restoration, except for the sand used for the 'ramp'. If the Contractor employs mats that break up under service loads during construction, the Contractor shall (a) remove all pieces of the broken mats, and (b) replace the broken mats.
- 6) The Contractor shall restore any pavement striping, signage, vegetation (including dune vegetation), and County Property improvements that may have been damaged as a direct or indirect result of the construction activities to an equal or better condition upon completion of the work under this Agreement and demobilization of equipment, facilities, vehicles and crew from the County Property. These activities must be deemed complete and acceptable by County Staff prior to release of Licensee from Agreement requirements.
- 7) The County assumes no liability for loss of or damage to Contractor's equipment or personal property staged or stored at the County Property. Any such equipment or property shall be staged or stored at the sole risk of Contractor. All equipment shall be stored west of the vegetated dune line and shall be removed from the County Property prior to the expiration of the license period.
- 8) Contractor shall minimize construction impacts to residential communities in proximity to the worksite (i.e. work hours 7:00 AM to 5:30 PM, construction noise, equipment vibration, dump truck tailgate slamming, etc.).
- 9) Both Owner and Contractor, as Licensee, shall indemnify the County for any damage to County Property structures, roads, vegetation, or other County Property features resulting from the performance of the construction activities, or this Licensee Agreement. Any such damage shall be repaired to the satisfaction of the County, or Licensee shall pay the County the reasonable cost to repair any such damage as determined by the County. Licensee shall also indemnify and hold harmless the County, Commissioners, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused directly or indirectly by the negligence, recklessness, or intentional wrongful misconduct of the Licensee and persons employed or utilized by the Licensee in the performance of the dune and beach access repairs, or this License Agreement. Licensee's obligation to indemnify and hold harmless under this Agreement will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the County for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.
- 10) Contractor shall post a \$10,000 construction bond with the County prior to starting the project, which shall be returned to Contractor upon satisfactory completion of the project and the restoration of County Property. If Licensee fails to complete the project or

fully restore County Property, County shall be entitled to complete the project and restoration, which shall be funded from the bond proceeds. In the event the bond proceeds are not adequate, Licensee shall be fully responsible for the amount to finish the project and/or restoration of the County Property.

11) Contractor shall maintain, or cause to be maintained, during the License Period, the insurance policies and coverage limits set forth:

Insurance:

- **Contractor's and Subcontractor's Insurance:** The Contractor shall not commence work until they have obtained all the insurance required under this section, and until such insurance has been approved by the County, nor shall the Contractor allow any subcontractor to commence work until the subcontractor has obtained the insurance required for a contractor herein and such insurance has been approved unless the subcontractor's work is covered by the protections afforded by the insurance.
- **Worker's Compensation Insurance:** The Contractor shall procure and maintain worker's compensation insurance to the extent required by law for all their employees to be engaged in work under this contract. In case any employees are to be engaged in hazardous work under this contract and are not protected under the worker's compensation statute, the Contractor shall provide adequate coverage for the protection of such employees.
- **Public Liability Insurance:** The Contractor shall procure and maintain broad form commercial liability insurance (including contractual coverage) and commercial automobile liability insurance in amounts not less than shown below. The County shall be an additional named insured on this insurance with respect to all claims arising out of the operations or work to be performed.

Commercial General (Public) Liability, other than Automobile \$1,000,000.00 Combined single limit for Bodily Injury and Property Damage	Commercial General A. Premises/Operations B. Independent Contractors C. Products/Completed Operations D. Personal Injury E. Contractual Liability F. Explosion, Collapse, and Underground Property Damage
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- **Proof of Insurance:** The Contractor shall furnish the County a certificate of insurance in a form acceptable to the County for the insurance required. Such certificate or an endorsement provided by the contractor must state that the County will be given thirty (30) days written notice prior to cancellation or material

change in coverage. Copies of an endorsement-naming County as Additional Name Insured must accompany the Certificate of Insurance. Insurance certificates attached hereto and incorporated by reference as Composite Exhibit 'A'.

12) Licensee shall obtain all necessary local, state, and federal permits necessary for the dune construction activities and shall comply with all local, state, and federal laws, rules, regulations, policies, code and guidelines applicable to the project. Licensee shall perform its work in strict compliance with any permit issued for the project. If at any time Licensee does not adhere to the permit conditions or above conditions, the County may order the work to immediately cease until Licensee brings the project into compliance or it may immediately terminate the License Agreement. Licensee's permits and application for use of County Property by a private entity for coastal construction project access are attached hereto and incorporated by reference as Composite Exhibit 'A'.

13) Miscellaneous Provisions:

- a. Independent Contractor. It is specifically understood and acknowledged by the parties hereto that the Contractor or employees or subcontractors of the Contractor are in no way to be considered employees of the County but are independent contractors performing solely under the terms of the Agreement and not otherwise.
- b. Merger; Modification. This Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings of any nature whatsoever concerning the subject matter of the Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior or contemporaneous representations or agreements, whether oral or written. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by the Licensee and the County.
- c. Governing Law; Venue. This Agreement, including all attachments hereto, shall be construed according to the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Indian River County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.
- d. Remedies; No Waiver. All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu or exclusive of each other or of any other remedy available to either party, at law or in equity. Each right, power and remedy of the parties provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power

or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. The failure of either party to insist upon compliance by the other party with any obligation, or exercise any remedy, does not waive the right to do so in the event of a continuing or subsequent delinquency or default. A party's waiver of one or more defaults does not constitute a waiver of any other delinquency or default. 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 any provisions of this Agreement, each party shall bear its own costs.

- e. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- f. **Survival.** Except as otherwise expressly provided herein, each obligation in this Agreement to be performed by Contractor shall survive the termination or expiration of this Agreement.
- g. **Notices:** Any notice, request, demand, consent, approval, or other communication required or permitted by this Agreement shall be given or made in writing and shall be served, as elected by the party giving such notice, by any of the following methods: (a) Hand delivery to the other party; (b) Delivery by commercial overnight courier service; or (c) Mailed by registered or certified mail (postage prepaid), return receipt requested at the addresses of the parties shown below:

Indian River County
Attn: Natural Resources Department - Coastal Division
1801 27th Street
Vero Beach, FL 32960-3365

Contractor:
Sussan-Allen Construction
500 Bill France Blvd #11182
Daytona Beach, FL 32114

Owner:
Martin B. Graf
10880 Highway A1A
Vero Beach, FL 32963

Notices shall be effective when received at the address as specified above. Facsimile transmission is acceptable notice effective when received, provided, however, that

facsimile transmissions received (i.e., printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next day that is not a weekend day or a holiday. The original of the notice must additionally be mailed. Either party may change its address, for the purposes of this section, by written notice to the other party given in accordance with the provisions of this section.

SIGNATURE PAGE FOLLOWS

LICENSEE

OWNER

Date: _____

NAME: Martin B. Graf

TITLE: Trustee of the Revocable Trust of Martin B. Graf (Property Owner)

Witnessed by:

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Address: _____

Address: _____

CONTRACTOR

Date: _____

NAME: Tom Sussan

TITLE: Co-Owner Sussan-Allen Construction

Witnessed by:

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Address: _____

Address: _____

INDIAN RIVER COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

Date: _____

John A. Titkanich, Jr., County Administrator

Approved/Ratified by BOCC _____

ATTEST:

By: _____
Ryan L. Butler, Clerk of Court and Comptroller

Approved as to Form:

Jennifer W. Shuler, County Attorney