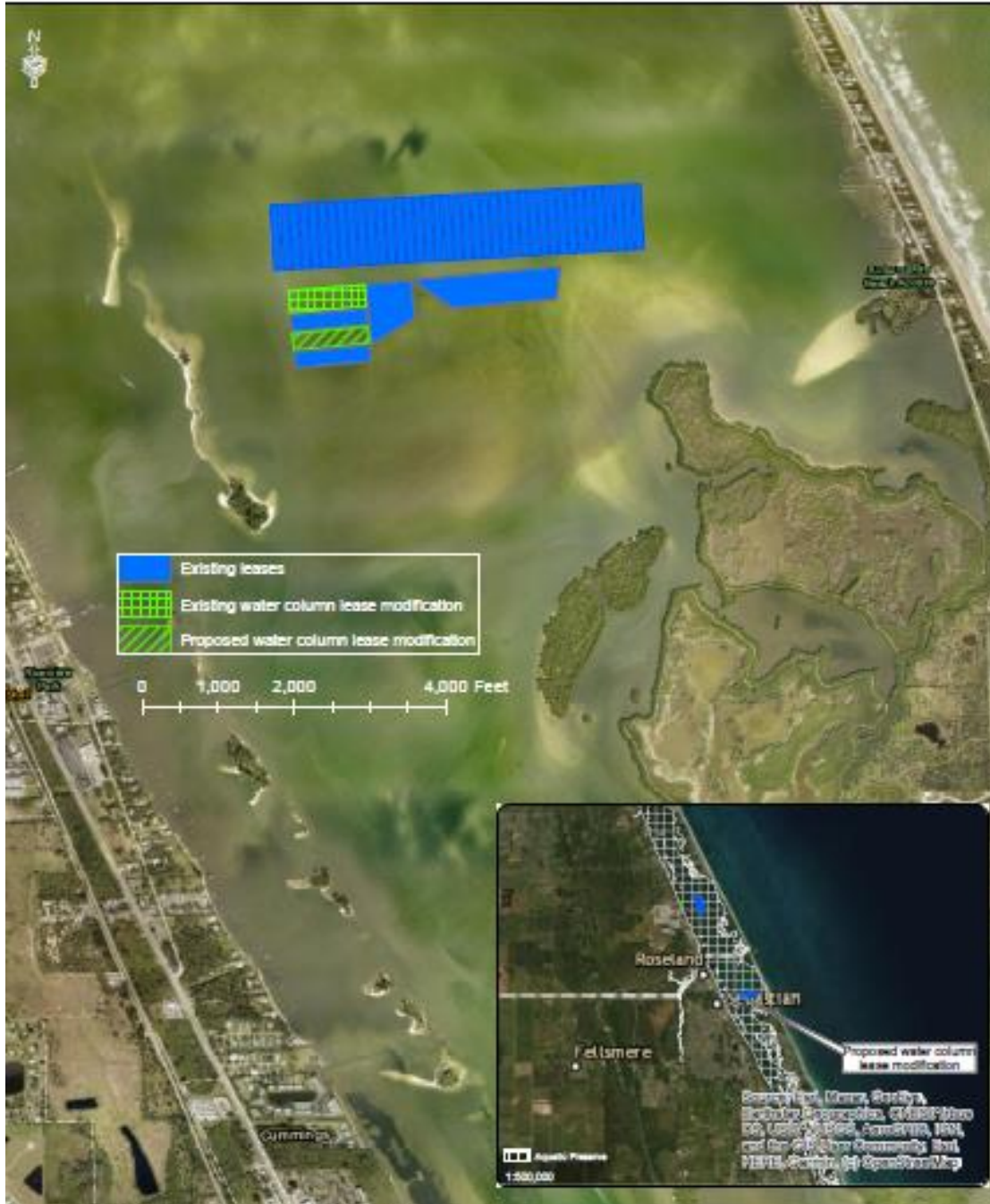


Proposed Water Column Lease Modification
Indian River County



Dear Denise,

Please accept this correspondence as my official request to modify Orchid Island Shellfish Company's submerged land shellfish lease 31AQ235 located in Indian River County to become a water column lease.

This lease is within the parameters of a designated area that has recently been marked off for this type of lease. I understand this will take some time and must go before the Board of Trustees. Attached is the larger overview showing lease location. Have installed lights on our corner markers A, B and Nicolette had installed lights on her corner markers I and H. As you can see this lease is within that marked off area. I had recently paid for the survey of all 4 of the leases within that rectangular area and believe it is on file in your agency.

Thank You for your help on this matter.

Ed Mangano
Orchid Island Shellfish Company, Inc



Florida Department of Agriculture and Consumer Services
Division of Aquaculture

**SOVEREIGNTY SUBMERGED LAND AQUACULTURE LEASE
Water Column Lease**

NICOLE "NIKKI" FRIED
COMMISSIONER

Section 253.71, Florida Statutes

This Instrument Prepared by:
Division of Aquaculture
600 South Calhoun Street, Suite 217
Tallahassee, Florida 32399

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OF THE STATE OF FLORIDA**

No. _____

THIS LEASE is hereby issued by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the "Lessor."

WITNESSETH: That for and in consideration of payment of the lease fees hereinafter provided, and the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to _____ hereinafter designated as the "Lessee," the sovereignty lands described as follows:

A parcel (_____) of sovereignty, submerged land lying in the _____ Aquaculture Use Zone, near _____, in _____ County, Florida, containing _____ acres, more or less, of sovereignty, submerged lands described and shown on Attachment _____.

TO HAVE THE USE OF the hereinabove described premises for a period of ten years from _____, the effective date of this lease. The terms and conditions upon and for which this lease is granted are as follows:

1. The Lessee is hereby authorized to undertake aquaculture activities on the lands described above.
2. Lessee shall pay to Lessor an annual fee of \$_____, representing a base annual rental fee of \$33.46 per acre or fraction thereof and an annual surcharge of \$10.00 per acre or fraction thereof, pursuant to rule 18-21.022, Florida Administrative Code (F.A.C.). The annual fee and surcharge collected will be deposited in the General Inspection Trust Fund, pursuant to sections 597.010(5)(b) and (7), F.S. The first year's base rent and surcharge shall be paid to Lessor within 30 days of the effective date of this lease. Thereafter base rent and surcharge shall be paid annually to Lessor on or before January 1 of each succeeding year of the lease term. Lessee understands that from time to time the lease fee may be increased by the Lessor, and the Lessee agrees to pay the increased lease fee, as adopted by the Board of Trustees.
3. Failure of the lessee to pay rent within 30 days of January 1 shall constitute ground for cancellation of the lease and forfeiture to the state of all works, improvements, and animal and plant life in and upon the leased land and water column.
4. The Lessee shall maintain complete and accurate production documents and shall provide same to Lessor upon request.

5. Failure of the Lessee to perform effective cultivation, or otherwise comply with the terms of this lease, shall constitute cause for termination of the lease and forfeiture to the State of all the works, improvements, and animal and plant life in and upon the leased land and water column. Effective cultivation shall consist of the reasonable and bona fide attempt to grow-out _____ in a density suitable for commercial harvesting, in accordance with the Lessee's business plan submitted to the Department of Agriculture and Consumer Services (hereafter "Department") as part of the lease application and shall be extended throughout the entire ___-year term of this lease.

6. This lease may be terminated upon the Lessee's written request.

7. The Lessee, in accepting this lease, does hereby agree that no claim to title or interest to said lands hereinbefore described shall be made by reason of the occupancy or use thereof and that all title or interest to said land hereinbefore described is vested in the Lessor.

8. The Board of Trustees will not approve lease transfers or assignments during the first five years of the lease term. However, after five years from the effective date, Lessee, upon written consent from the Lessor, may sublease, assign or otherwise transfer the lease granted to the Lessee.

9. The Lessee shall neither permit the sovereign lands described in this lease nor any part thereof to be used or occupied for any purpose or business other than herein specified; nor shall the Lessee knowingly permit or suffer nuisances or illegal operations of any kind on the sovereign lands described in this lease.

10. The Lessee agrees to maintain the sovereign lands described in this lease in good condition in the interest of public health, safety and welfare. The Lessee agrees that the sovereign lands described in this lease are subject to inspection by the Lessor or its designated agent at any reasonable time.

11. The Lessee hereby covenants and agrees to investigate all claims of every nature at its expense, and to indemnify, defend, hold, and save harmless the Board of Trustees of the Internal Improvement Trust Fund, the State of Florida, and the Department from all claims, actions, lawsuits and demands arising out of this lease or any activity conducted hereunder. The Lessee further agrees to be solely responsible for any injury or property damage resulting from any property conditions or activity on the leased area.

12. The Lessee agrees that upon expiration or termination of this lease all permission granted to undertake the activities, as described in paragraph 1 of this lease, shall cease and terminate, and Lessee shall immediately vacate and surrender possession of the premises to Lessor subject to the provisions of paragraph 23.

13. If requested by Lessee, this lease may be renewable for additional ten-year terms upon such terms and conditions as are acceptable to the parties hereto. The request must be in writing and delivered by the Lessee to the Lessor no later than 90 days before the expiration date of the then existing lease agreement. Upon receipt of the request for an additional term, the Department will either take final action on behalf of the Board of Trustees where the circumstances meet the delegation provided to the Department by the Board or the Department will submit the Lessee's request for an additional term to the Board of Trustees for final action.

14. Neither failure or successive failures on the part of the Lessor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Lessor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

15. The Lessee, by acceptance of this lease, binds itself to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Lessee. In the event the Lessee fails or refuses to comply with the provisions and conditions herein set forth, or in the event the Lessee violates any of the provisions and conditions herein, except for the provisions of paragraph 25, this lease may be terminated by the Lessor after notice in writing by certified mail to the Lessee. Upon receipt of such notice, the Lessee shall undertake to correct such noncompliance or violation for which the Lessor has given notice to correct within 30 days of receipt of notice. In the event Lessee fails or refuses to timely correct the violation, the Lessor, at its option, shall be entitled to terminate this lease and, if terminated, all rights of Lessee hereunder shall cease. All costs, including reasonable attorney fees, incurred by the Lessor to enforce any provisions of this lease shall be paid by the Lessee.

The Lessee, by acceptance of this lease, agrees to accept service by certified mail of any notice required by this lease or Chapter 253, F.S., in addition to Chapter 18-14, Florida Administrative Code (F.A.C.) at the following address:

STREET OR P. O. BOX NO.

CITY STATE ZIP

The Lessee agrees to notify the Lessor by certified mail of any change in this address at least ten (10) days before the change is effective. If Lessee's mail is returned for any reason (unclaimed, unable to deliver, no longer at address, etc.), and Lessor is unable to locate Lessee, Lessor has the option of canceling the lease.

16. The Lessee agrees to assume all responsibility for liabilities that accrue to the subject property or to the improvements thereof, including any and all special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property and associated improvements during the effective period of this lease.

17. Unless the mooring of a security vessel is specifically approved in writing by Lessor, no security vessel shall be moored on or adjacent to the lease area. Lessee further agrees that no vessel required to be registered or titled under Florida law shall be allowed to moor or dock within or adjacent to, or otherwise use the area described within this lease unless such vessel is registered or titled in accordance with Chapters 327 and 328, F.S. Lessee agrees that no vessel of any description shall be moored on or adjacent to the leased premises for a period exceeding twenty-four hours, irrespective of whether the vessel is periodically moved, unless authorized by the terms of this lease.

18. NOTICE: The undertaking of any unauthorized activities, including the erection or placement of any permanent or temporary structures, shall constitute a violation of Chapter 253, F.S., and subject the Lessee to administrative fines under Chapter 18-14, F.A.C., and the terms of this lease. Any such violation may result in the imposition of administrative fines, judgment for damages, and/or the termination of this lease.

19. As a condition to obtaining this lease, the Lessee hereby agrees not to discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the area subject to this lease or upon lands adjacent to and used as an adjunct of the area described within this lease.

20. Lessor and Lessee agree that Lessor has venue privilege as to any litigation arising from matters relating to this lease. Therefore, any such litigation between Lessor and Lessee shall be initiated and maintained only in Leon County, Florida.

21. This lease is the entire and only lease between the parties. Its provisions are not severable. Any amendment or modification to this lease must be in writing and must be accepted, acknowledged and executed by the Lessee and Lessor.

22. This lease shall be deemed to have been executed and entered into in the State of Florida. Any dispute arising hereunder shall be governed by the laws of the State of Florida. This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators and assigns of the parties hereto, but nothing contained in this paragraph shall be construed as a consent by Lessor to any assignment of this Lease or any interest therein by Lessee.

23. Lessee shall remove all works, equipment, structures and improvements from the sovereign lands described in this lease within 60 days following the date of expiration or termination of this lease. Lessee shall also provide to the Department an attestation statement from a third party, acceptable by the Lessor, verifying that all works, equipment, structures and improvements have been removed. Failure to remove all equipment and improvements within 60 days and provide the attestation statement may result in cancellation of all other aquaculture submerged land leases held by Lessee and Lessee will be prohibited from executing, acquiring, subletting, or the authorized use of any state owned aquaculture submerged land lease for ten years from date of cancellation of the lease in which the works, equipment, structures and improvements were not removed.

24. The Lessee shall be bound by present and future enactments in Florida law as expressed in Chapter 253, F.S., or elsewhere in Florida Statutes, and by present and future provisions of the Florida Administrative Code promulgated thereunder, and by any present and future enactments adopted by the Board of Trustees pertaining to this lease agreement.

25. Conviction of a violation of Chapter 597, F.S., and/or rule 5L-1, F.A.C., or other rules promulgated by the Department, or the Florida Fish and Wildlife Conservation Commission, may be cause for this lease to be terminated without further notice to Lessee and shall result in the forfeiture to Lessor of the works, improvements, and shellfish in and upon the leased premises.

26. SPECIAL LEASE CONDITIONS

- a) Pursuant to Chapter 253.71 (7), F.S., lease agreements may contain special lease conditions that provide for flexibility in surveying and posting lease boundaries, incorporate conditions necessary to issue permits pursuant to Part IV of Chapter 373, F.S. and Chapter 403, F.S., and provide for special activities related to aquaculture and resource management.
- (1) Pursuant to Chapter 597, F.S. authorized activities include, but are not limited to, planting shellfish cultivated from eggs, transplanting live stocks, placement of cultch material, harvesting shellfish, the installation and removal of nets, bags, or other devices, and the placement of markers that designate the corners and perimeters of the culture area.
 - (2) All culture materials, cover nets, bags or other designated markers placed on or in the water shall be clean and free of pollutants; including petroleum products such as creosote, oils and greases, or other pollutants. Compounds used as preservatives must be used in accordance with product label.
 - (3) Culture materials (cultch) placed on the grow-out area must be a suitable substance for attachment of oyster larvae: such as natural molluscan shells; fossilized shell; fossilized coral and other aquatic organisms; lithic materials, such as crushed and graded limestone, granite, and gravel which contain calcium carbonate and/or fossilized organisms; or recycled materials which contain lithic fractions and calcium carbonate, including crushed and graded concrete. Exceptions to this list of generally accepted cultch materials must be specifically approved and identified within the aquaculture lease agreement.
 - (4) Bags and/or trays used in the culture operation shall be removed from the water during all mechanical cleaning, maintenance and repair operations. Mechanical or hydraulic devices shall not be used below the water for the cleaning of the submerged structures. The Lessee may use hand tools for cleaning shellfish, bags, and other structures under water.
- b) The Lessee agrees that mechanical harvesting is prohibited on the lease site, unless expressly approved in this lease agreement.
- c) No aquaculture activities will be allowed over bottoms that contain biological resources consisting of submerged seagrass communities, naturally occurring oyster and clam beds, corals, attached sponges or attached macro marine algae beds.
- d) The Lessee shall, prior to commencement of the aquaculture activities on the approved lease site, and no later than 120 days from the date of such approval, provide to the Lessor a Department of Environmental Protection, Division of State Lands approved survey and legal description of the parcel to be included in the lease. If an acceptable survey is not received from the Lessee within 120 days it may be cause for immediate termination of the lease.
- e) The Lessee shall, within 90 days from the date of execution of this lease, properly post the lease boundaries to delineate the corners and perimeters of the lease. Except for the _____ corner, Lessee must install and maintain a buoy or post at each of the remaining lease corners of the lease area. Markers shall be installed in a consistent manner (i.e., utilizing all buoys, or all posts on site). Lessee shall apply for a Private Aids to Navigation permit from the US Coast Guard and comply with all provisions of the permit to warn mariners passing in the vicinity of the lease of the potential hazards to navigation.

- (1) A corner marker is required to be installed on the ___ corner of this lease. Unless different marking requirements are prescribed by the USCG Private Aids to Navigation permit, the corner marker must meet all requirements of this section. The corner marker shall be a sign (3' x 3' in size) fastened to a PVC pole at least six-inches in diameter. The sign must be a yellow background and include: (a) the letter "___" in twelve-inch black letters, and (b) a two-inch border using international yellow reflective tape. The PVC pole must contain: (a) the relative geographic position ___ for the corner in two-inch black letters, and (b) parcel number ___ or FDACS Lease No. ___-AQ-___ in two-inch black letters. The bottom of the sign shall extend a minimum of three-feet above the mean high water mark.
 - (2) Buoys must be white with international orange bands of reflective tape with black block characters at least one-inch in height and include each corner designation (i.e., NE, NW, SE, and SW) and parcel number ___ or FDACS Lease No. ___-AQ-___. Each buoy must be maintained upright at a minimum height of 14-inches above the mean high water mark.
 - (3) Posts must contain a field at least 2-1/2" wide and 10" long. The background shall be white with international orange bands of reflective tape above and below the field. Parcel number ___ or FDACS Lease No. ___-AQ-___ and each corner designation (i.e., NE, NW, SE, and SW) shall be displayed in black block characters of at least one-inch in height. The bottom of the identifying field on the post shall extend a minimum of 18-inches above the mean high water mark. Posts may be made from carsonite, fiberglass, and/or PVC.
 - (4) For theft prevention, you may install a sign with a white background and include: (a) the language "HARVESTING PROHIBITED EXCEPT BY LESSEE" in one-inch black letters; (b) the "circle symbol" using international orange reflective tape; and (c) a two-inch border using international orange reflective tape. The bottom of the sign shall extend a minimum of three-feet above the mean high water mark.
- f) This lease authorizes use of the entire water column, from surface to bottom for the purpose of culturing shellfish in off-bottom or floating structures. The Lessee's identification information shall be attached to all culturing structures. In the event that culturing structures become dislodged from the lease site, it is the Lessee's responsibility to retrieve the structures from the shoreline, seagrass beds, or submerged bottom anywhere within the aquatic preserve with minimal damage to the resources affected. The structures shall be removed and properly disposed of or returned to the lease site.
 - g) The Lessee, and any sublessee and/or authorized user, must possess and maintain a valid Aquaculture Certificate of Registration from the Department of Agriculture and Consumer Services pursuant to Chapter 597.004, F.S. As certified, the Lessee, sublessee and authorized user shall implement the best management practices adopted in Chapter 5L-3, F.A.C.
 - h) The Lessee shall employ "best management practices" to protect endemic shellfish populations from the potential introduction and transfer of diseases. The best management practices shall be employed during all production and transport phases to provide responsible resource management, and reduce or eliminate the risk of disease introduction or transfer. Best management practices will include but not be limited to the following provisions.
 - (1) The source of brood stock for seed stocks to be cultured shall be from native stocks. Lessee shall provide documentation to the Department stating that seed stocks are from native brood stocks. The Lessee shall obtain such documentation from the hatchery or nursery from which seed stocks are obtained. Hatchery-reared seed stocks may not be obtained from facilities that cannot document the use of native (regional) stocks in their brood stock and genetic programs.
 - (2) The Lessee shall provide documentation that seed stocks are free of diseases that may threaten endemic populations. Such documentation should be obtained from the hatchery or nursery from which the seed stocks were obtained. Seed stocks, obtained from hatcheries or nurseries located outside of the specific region referenced in section 26, h. (1), of this lease must be certified by a recognized shellfish pathologist as free of diseases that may threaten endemic populations.

- (3) The documentation required in section 26, h. (2), of this lease, as well as the source and destination, must accompany each shipment of seed stocks and market size shellfish, and a record of all documents and transactions shall be maintained by the Lessee and submitted to the Department in the annual Affidavit for Audit (FDACS form 15104) no later than 45 days from the date of the request for the information. Shellfish seed stocks, for the purpose of this section, shall be defined as shellfish that are less than ten percent of market-size or require a minimum of six months to reach market-size.
- i) Shellfish aquaculture products from certified aquaculture operations may be possessed, transported and sold when such shellfish are segregated in distinct containers, with each container being appropriately labeled as to source and certificate of registration number.
- (1) The Lessee shall obtain authorization from the Department to transplant market-size shellfish stocks from leases that are temporarily closed to direct-to-market sale. The Lessee shall document that the receiving lease is closed for direct-to-market sale of shellfish for at least 30 days when market-size shellfish are obtained from another lease that is closed for direct-to-market sale at the time of the transaction. Shellfish aquaculture products which are harvested from a lease that is temporarily closed to direct-to-market sale shall be documented as to date of harvest and transport. The authorization to transplant may include requirements for bacteriological analyses.
- (2) Transplanting or relaying wild shellfish stocks to a lease is prohibited.
- j) Shellfish aquaculture products which are harvested from the lease for direct-to-market sales for human consumption shall comply with all applicable provisions of Chapter 597, F.S., Chapter 5L-1, F.A.C., and any other applicable provisions of law and administrative code.
- k) The Lessee shall perform the aquaculture activities in such a manner that will not have an adverse impact on significant resource habitats such as seagrass beds or on endangered species such as manatees and sea turtles.
- l) If the activity and/or gear proposed by the lessee are not covered under the Department's Programmatic General Permit (SAJ-99) for Live Rock and Marine Bivalve Aquaculture, the Lessee will need to apply for an individual permit from the Army Corps of Engineers and comply with all provisions of the permit. Specifications regarding placement, type and function of appliances and devices used in culture practices and predator exclusion should be expressly approved by the Division of Aquaculture.
- m) If prehistoric or historic artifacts, such as pottery or ceramics, projectile points, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities involving subsurface disturbance in the vicinity of the discovery. The Lessee shall contact the Florida Department of State, Division of Historical Resources, Compliance Review Section at (850/245-6333). Project activities shall not resume without verbal and/or written authorization. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, F.S.

(Remainder of page intentionally left blank)

“LESSEE”:

By _____
Original Signature of Lessee or Executing Authority

Typed/Printed Name of Lessee or Executing Authority

As: _____
(If Lessee is a corporation, please enter capacity in which
Executing Authority is authorized to sign, i.e, President,
Vice President, etc.)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____, who is personally known to me, or who has
produced a _____ as identification.

Notary Public (SEAL)

BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA
(SEAL)

By: _____
Joey B. Hicks, Director, Division of Administration
Department of Agriculture and Consumer Services, Designee
For the Board of Trustees of the Internal Improvement Trust Fund

"LESSOR"

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by
Joey B. Hicks, Director, or his designee, Division of Administration, who is personally known to me.

Notary Public (SEAL)