## Attachment 35: Recorded Reference (Deed Notice) for Florida Department of Transportation Memorandum of Understanding Institutional Controls

*This instrument prepared by*

*and return to:*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

NOTICE OF PETROLEUM DISCHARGE AFFECTING FDOT PROPERTY

THIS NOTICE OF PETROLEUM DISCHARGE AFFECTING FDOT PROPERTY (hereinafter “Notice”) is made this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “OWNER).

RECITALS

A. OWNER is the fee simple owner of that certain real property more particularly described on Exhibit “A” attached hereto and made a part hereof (hereinafter the “Property”)

B. There are “petroleum pollutants” (as that term is defined in the Memorandum of Understanding [hereinafter "MOU"] referred to below) which are emanating from a discharge located on or under the Property, and such petroleum pollutants are going into, onto, or under an adjacent “transportation facility” as that term is defined in the MOU referred to below and in Section 334.03(30), Florida Statutes;

C. The Florida Department of Environmental Protection (hereinafter “FDEP”) has determined that the circumstances of such petroleum pollutants satisfy FDEP requirements for a risk based corrective action no further action (hereinafter “NFA”) determination or a Site Rehabilitation Completion Order (hereinafter “SRCO”) pursuant to the provisions of the MOU between FDEP and the Florida Department of Transportation (hereinafter “FDOT”) dated June 16, 2014;

D. Pursuant to the procedures contemplated by the terms of the MOU, FDOT has added a “map note” to the applicable FDOT Right of Way map for the affected transportation facility. A copy of that map note is attached to this Notice as Exhibit “B” and is made a part hereof (hereinafter “Map Note”). The Map Note shows the location of the existing petroleum pollutant contamination within the transportation facility;

E. It is the intent of this Notice to facilitate FDEP’s and FDOT’s use of the Map Note to manage and to notify any and all parties of the presence of petroleum pollutants that are not feasible or are technically impractical to remediate and which FDOT and FDEP have determined under current circumstances of exposure and/or land use do not pose a potential or real threat to human health or the environment. Through the above described MOU process FDEP has determined that the Map Note qualifies as an alternative institutional control.

NOW, THEREFORE, to induce FDEP to issue the SRCO or the NFA determination and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OWNER agrees as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. It is the intention of OWNER that this Notice shall touch and concern the Property, run with the land and with the title to the Property, and shall apply to and be binding upon and inure to the benefit of OWNER, FDOT and FDEP, and to any and all parties hereafter having any right, title or interest in the Property or any part thereof. All references to “OWNER”, “FDEP” and “FDOT” shall also mean and refer to their respective successors and assigns.
3. In order to ensure the perpetual nature of these provisions, OWNER shall reference these Notice provisions in any subsequent lease or deed of conveyance, including the recording book and page of record of this Notice.
4. This Notice is binding until a release is executed by OWNER and the FDEP Secretary (or designee) and is recorded in the public records of the county in which the Property is located.
5. If the Map Note is modified pursuant to Section 7 of the MOU, FDEP agrees to allow OWNER to terminate this Notice. This Notice may be modified in writing only. If there is any subsequent amendment to this Notice, it must be executed by both FDEP and OWNER. FDEP agrees to inform OWNER of any modification of the MOU, as is authorized by Section 10 of the MOU.
6. If any provision of this Notice is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provisions of the Notice. All such other provisions shall continue unimpaired in full force and effect.
7. This Notice shall not operate to create or vest any property right in or to FDEP, FDOT, or to third parties. FDEP, FDOT and third parties shall not acquire any right, title, interest or estate in the Property by virtue of the execution, operation, effect, performance or breach of the MOU, the Map Note or this Notice.
8. OWNER covenants and represents that on the date of execution of this Notice that OWNER is seized of the Property in fee simple and has good right to create, establish, and record this Notice.

Remainder of page intentionally left blank.

{Note: adjust spacing as necessary to keep signatures on one page}

IN WITNESS WHEREOF, OWNER has executed this instrument, this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

OWNER  
{{COMPANY NAME, IF APPLICABLE}}

By:   
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Full Mailing Address:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed, sealed and delivered in the presence of:

Date:   
Witness  
Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:   
Witness  
Print Name:

STATE OF )

COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as \_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on behalf of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Personally Known \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ OR Produced Identification \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Type of Identification Produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Signature of Notary Public