**TEMPORARY USE AGREEMENT**

This Temporary Use Agreement (hereinafter referred to as the “Agreement”) is entered into this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_\_, by and between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (hereinafter referred to as the “Board”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, [a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ corporation] (hereinafter referred to as the “Applicant”).

RECITALS:

A. The Applicant desires to enter into this Agreement for the sovereign lands (hereinafter referred to as “lands”) and water column adjacent to the Applicant’s upland real property located at [PROJECT LOCATION,[ \_\_\_\_\_\_\_\_\_\_\_\_ County], Florida.

B. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Describe the unauthorized structure / activity] has been constructed [performed] on these lands adjacent to Applicant’s upland real property without the Board’s approval or authorization.

C. Applicant desires to obtain the consent of the Board to maintain and use the structures [maintain the performance of the activities] located on these lands.

D. The parties acknowledge that the application, approval and issuance of a sovereign lands lease may require a time period of several months.

E. The Applicant desires to have the temporary use of the structures [performance of the activities] located on these lands during the processing and review of the Applicant’s sovereign lands lease application.

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants set forth herein, the Applicant agrees to pay to the Board a total of $ \_\_\_\_\_\_\_\_\_\_ for deposit into the Internal Improvement Trust Fund as compensation for the past and current use of these lands without the approval or authorization of the Board. Such payment, which shall be in the form of a cashier’s check, certified check or money order payable to the Department of Environmental Protection has been delivered along with this signed Agreement. [OPTIONAL -REPLACE THE PREVIOUS SENTENCE WITH THE FOLLOWING ONLY IF PAYMENT IS NOT MADE WHEN THE TUA IS SIGNED: Such payment, which shall be in the form of a cashier’s check, certified check, or money order payable to the Department of Environmental Protection shall be delivered to the Board’s Accounting Office, Post Office Box 3070, Tallahassee, Florida 32315-3070 within \_\_\_\_\_ days of the date of this Agreement]. [OPTIONAL- REPLACE THE PREVIOUS SENTENCE WITH THE FOLLOWING IF PAYMENT PLAN IS BEING USED: Such payment, which shall be in the form of a cashier’s check, certified check, or money order payable to the Department of Environmental Protection shall be made in X monthly installment payments delivered to the Board’s Accounting Office, Post Office Box 3070, Tallahassee, Florida 32315-3070. The first X installment payments shall each be for an amount $\_\_\_\_\_\_\_\_\_, the X and final installment payment shall be for an amount of $\_\_\_\_\_\_\_\_\_\_. The X installment payments shall be due on the first, second, 22nd etc of each month with the first installment payment due on Month, Day, Year and the final installment payment due no later than Month, Day, Year. See a schedule of the payment plan attached as Exhibit “B”.] The parties hereto, then, agree as follows:

**1. The Applicant acknowledges and understands that the grant of this Agreement and the payment of the amount herein does not guarantee that the Board will grant the Applicant a lease or that the Department of Environmental Protection will recommend that a lease be granted.**

2. The Applicant is hereby granted the temporary exclusive use of the structures [performance of the activities] located on these lands as depicted in Exhibit “A”, consisting of approximately \_\_\_\_ square feet, waterward of Applicant’s upland real property described above. This temporary exclusive use is for a term not to exceed one year from the date of execution of this Agreement through month/day/year, or until the date of execution of a sovereign lands lease between the Board and the Applicant, whichever occurs first. The Applicant shall make no claim of title to or interest in the sovereign lands identified in Exhibit “A” solely by reason of occupancy or use thereof under this Agreement.

3. The existing structures can only be utilized [activities can only be performed] as they were on the date of execution of this Agreement, which was as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. In the event any part of any of these structures [Activities] is determined by a final adjudication issued by a court of competent jurisdiction to encroach or interfere with riparian rights of the adjacent upland riparian owner, Applicant agrees to either obtain written consent for the offending structure [or use] from the affected adjacent upland riparian owner or remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this paragraph shall constitute a material breach of this Agreement and be grounds for immediate termination of this Agreement at the sole option of the Board.

4. The consideration paid for this Agreement includes the lease fees due for these lands from \_\_\_\_\_\_\_\_\_\_\_\_\_ through \_\_\_\_\_\_\_\_\_\_\_\_ [plus interest payable on past due lease fees]. This consideration is not refundable, notwithstanding the denial of a sovereign lands lease by the Board.

5. The Applicant acknowledges that the lease fees assessed in this agreement after March 1, 20\_\_ are an estimate created using the base rate of $0.\_\_\_\_\_\_per square foot fee from the 20\_\_-20\_\_ billing cycle times the approximate square footage of the lands preempted by the structures [performance of the activities]. A supplemental invoice will be generated and issued to the applicant at the time of lease execution that accounts for any difference in lease fees owed for the new per square foot fee established on March 1, 20\_\_ which is based on changes in the consumer price index, pursuant to Rule 18-21.011(1)(b.), Florida Administrative Code, and changes in the square footage of the preempted area based on a survey supplied by the Applicant pursuant to Applicant’s sovereign lands lease application, and the Applicant hereby agrees to pay the full amount of any additional lease fees owed to the Board due to these changes within 30 days of the receipt of the supplemental invoice.

6. In the event that a sovereign lands lease application is not approved by the Board, or the Applicant fails to execute the lease agreement prior to the expiration or termination of this Agreement, whichever occurs first, the Applicant shall remove all structures [cease all activities] referenced herein from [on] the sovereign lands at the Applicant’s sole expense. In the event that the Applicant asserts title to the sovereign lands identified in Exhibit “A,” and either the Applicant fails to timely submit the information concerning title as required herein, or the Board denies the Applicant’s claim of title and the Applicant has not commenced an action to quiet title as specified herein, the Applicant shall remove all structures [cease all activities] referenced herein from [on] the sovereign lands at the Applicant’s sole expense. In the event that the Applicant fails to complete the requirements of paragraph 8 of this Agreement, the Applicant shall remove all structures [cease all activities] referenced herein from [on] the sovereign lands at the Applicant’s sole expense. The complete removal of the structures as required by this paragraph shall be accomplished within 180 days [The complete cessation of the activities shall occur immediately] following the expiration or termination of this Agreement, whichever occurs first.

7. If the Applicant asserts title to the sovereign lands identified in Exhibit “A”, the Applicant must submit an application, accompanied by all evidence upon which Applicant relies for the assertion of title, to the Division of State Lands (“DSL”), Department of Environmental Protection, within 90 days after the execution of this Agreement. DSL will review the application and accompanying evidence and give a response to Applicant as to whether the Board will assert title to the sovereign lands described in Exhibit “A”. If DSL responds that the Board will assert title to said sovereign lands, the Applicant must file an appropriate action in circuit court within 90 days of DSL’s response to obtain a legal determination of title to the sovereign lands. If DSL, after consultation with the Board, responds that the Board does not assert title to the sovereign lands, then the Applicant shall not have to apply for a sovereign lands lease, and that portion of the consideration representing lease fees and interest shall be refunded. If DSL, after it’s review, responds that the Board does not assert title to a portion of the sovereign lands, any consideration for that portion representing lease fees and interest will be refunded. Failure to submit the initial application and evidence within 90 days after execution of this Agreement, or failure to file the appropriate court action within 90 days after DSL’s response, shall constitute a waiver by the Applicant of all of its claim of title to the sovereign lands and an acknowledgment that the Board owns the sovereign lands.

8. Applicant shall make initial application for a sovereign lands lease (modification) to the Board within 30 days of the execution of this Agreement and complete the application by no later than 90/120/150/180 days of the execution of this Agreement for the lands identified in Exhibit “A”.

OR

8. Applicant shall complete the application submitted on \_\_\_\_\_\_\_\_\_ for a sovereign submerged lands lease (modification) to the Board by no later than 90/120/150/180 days of the execution of this Agreement for the lands identified in Exhibit “A”.

9. Immediately following execution of this Agreement, Applicant shall record this Agreement and send a copy of the recorded Agreement to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [LOCAL DEP ADDRESS] within 10 days of recording.

10. This Agreement is temporary in nature and may not be extended or modified except upon the express written agreement of the Board. No request for an extension of the Agreement shall be considered by the Board except upon a demonstration by the Applicant that the Applicant is in full compliance with the terms and conditions of this Agreement and has exercised due diligence in its efforts to procure a sovereign lands lease from the Board.

11. As a material condition of this Agreement, Applicant agrees to comply with all of the requirements of Consent Order No. [Insert No. of Consent Order that is part of Department’s enforcement action], [Permit No. \_\_\_\_\_\_], [Exemption No. \_\_\_\_\_\_],Chapters 253, 258, and 376, Florida Statutes, and the rules promulgated pursuant thereto. The Board has the right to immediately rescind this Agreement upon the failure of Applicant to comply with either the terms of this Agreement, the aforementioned Consent Order, statutes, rules, or any permits or exemptions. The Board has the right to immediately rescind this Agreement upon the failure of Applicant to comply with either the terms of this Agreement, statutes, or regulations. Upon written notice that the Board has exercised its right to rescind under this paragraph, Applicant shall immediately cease and desist all activity authorized by this Agreement, or within the timeframe specified in the notice, or within twenty days of receipt of the notice if no timeframe is specified. Notice may be given by the Board by certified mail or hand delivery to:\_\_\_\_\_\_\_\_\_\_\_\_,[APPLICANT’S ADDRESS] or by posting the notice at the property described in Exhibit “A”.

12. Applicant shall save and hold harmless and indemnify the Board, Department of Environmental Protection, and the State of Florida against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to, or death of, any person or persons and for loss or damage to any property arising out of or connected with Applicant’s occupation and use of these lands and the structures or activities located thereon. By execution of this Agreement, applicant waives any claim it may have against the Department of Environmental Protection concerning the submerged lands described on Exhibit “A” except as described in Paragraph 7 above.

13. Applicant agrees that any litigation arising from matters relating to this Agreement between the Board and the Applicant shall be initiated and maintained only in Leon County, Florida.

14. This Agreement, and any rights and privileges contained herein, are for the sole benefit and use of the Applicant and shall not be assigned or transferred by the Applicant to any other party without the prior written consent of the Board, which consent shall not be unreasonably withheld.

15. The terms of this Agreement may be enforced by the Board notwithstanding that the authorization granted hereunder has expired.

Executed on the date first written above.

BOARD OF TRUSTEES OF THE

INTERNAL IMPROVEMENT TRUST FUND

OF THE STATE OF FLORIDA

WITNESSES:

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

Original Signature Director of District Management,

Department of Environmental Protection, as

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ agent for and on behalf of the Board of

Printed/Typed Name Trustees of the Internal Improvement Trust Fund of the State of Florida

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

Original Signature

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

Printed/Typed Name

STATE OF FLORIDA

COUNTY OF\_\_\_\_\_\_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Director of District Management, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ District, Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Find of the State of Florida. He/She is personally known to me.

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

Notary Public, State of Florida

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

Printed, Typed or Stamped Name

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_

Commission/Serial No.: \_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a\_\_\_\_\_\_\_\_\_

Corporation

WITNESSES:

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

Original Signature Original Signature

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

Printed/Typed Name Printed/Typed Name

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

Original Signature Title

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

Printed/Typed Name

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

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

Notary Public, State of Florida

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

Printed/Typed or Stamped Name

My Commission Expires: \_\_\_\_\_\_\_\_\_\_ Commission/Serial No.: \_\_\_\_\_\_\_\_\_\_\_