

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: January 11, 2011

☒ Consent ☐ Regular
☐ Ordinance ☐ Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: a fully executed Sovereignty Submerged Lands Lease (No. 500341216) between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (LESSOR) and Palm Beach County (LESSEE) for 5,855 square feet of submerged lands at the Zeke's Marina portion of DuBois Park.

Summary: In 2008, the Zeke's Marina property was acquired by the County in part to expand public boater access to DuBois Park. The acquisition included a State of Florida Sovereignty Submerged Lands Lease, which was issued in the name of the seller. In conjunction with the DuBois Park Marina and Artificial Reef project, the County applied to the State of Florida for the reassignment of the Submerged Lands Lease to Palm Beach County. The new lease will allow the County to construct and operate a 4-slip docking facility with an access ramp at Zeke's Marina. The lease term is from August 5, 2010, to May 8, 2012, and there is no annual lease fee. District 1 (AH)

Background and Justification: On June 9, 2008, the Parks and Recreation Department acquired the 1.10 acre property known as the Susan DuBois Kindt Estate that included Zeke's Marina to be used for the expansion of DuBois Park. The Board awarded a construction contract (R2010-1129) for the DuBois Park Marina and Artificial Reef project to Murphy Construction Company, a Palm Beach County firm, on July 20, 2010. Prior to commencement of the Zeke's Marina portion of the project, a Submerged Lands Lease was required to be fully executed and recorded in the public records. Due to time constraints, the Board authorized the Director of the Parks and Recreation Department to sign the Sovereignty Submerged Lands Lease on behalf of the County on September 14, 2010.

Attachment: Sovereignty Submerged Lands Lease No. 500341216

Recommended by: 
Department Director

12/20/10
Date

Approved by: 
Assistant County Administrator

12/29/10
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Is Item Included in Current Budget? Yes No
Budget Account No.: Fund Department Unit
Object Program

B. Recommended Sources of Funds/Summary of Fiscal Impact:

There is no fiscal impact associated with this agenda item

C. Departmental Fiscal Review: ckopelakis

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

[Signature] 12/28/10
OFMB

[Signature] 12/28/10
Contract Development and Control

B. Legal Sufficiency:

[Signature] 12/29/10
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 10/95
ADM FORM 01

This summary is not to be used as a basis for payment

Return to :
Jean Matthews
Parks & Recreation Dept.
2700 6th Ave. South
Lake Worth, FL 33461



This Instrument Prepared By:
Taurean J. Lewis
Recurring Revenue Section
Bureau of Public Land Administration
3900 Commonwealth Boulevard
Mail Station No. 125
Tallahassee, Florida 32399

CFN 20100405243
OR BK 24156 PG 0975
RECORDED 10/25/2010 10:58:41
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0975 - 1002; (28pgs)

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

SOVEREIGNTY SUBMERGED LANDS FEE WAIVED LEASE MODIFICATION TO
REFLECT CURRENT STRUCTURES, REFLECT CHANGE IN UPLAND OWNERSHIP
CHANGE DESCRIPTION OF USE AND CONVERT TO FEE WAIVED

BOT FILE NO. 500341216
PA NO. 50-09160-P

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 the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to Palm Beach County, Florida, hereinafter referred to as the Lessee, the sovereignty lands described as follows:

A parcel of sovereignty submerged land in Section 31,
Township 40 South, Range 43 East, in Jupiter Inlet Cove,
Palm Beach County, containing 5,855 square feet, more or less,
as is more particularly described and shown on Attachment A, dated June 9, 2010.

TO HAVE THE USE OF the hereinabove described premises from August 5, 2010, the effective date of this modified lease, through May 8, 2012, the expiration date of this modified lease. The terms and conditions on and for which this lease is granted are as follows:

1. USE OF PROPERTY: The Lessee is hereby authorized to construct and operate a 4-slip docking facility with an access ramp exclusively to be used for mooring of law enforcement vessels, temporary mooring of a recreational vessel, and launching of kayak, canoe and other non-motorized vessels in conjunction with an upland public park, without fueling facilities, with a sewage pumpout facility if it meets the regulatory requirements of the State of Florida Department of Environmental Protection or State of Florida Department of Health, whichever agency has jurisdiction, and without liveaboards as defined in paragraph 24, as shown and conditioned in Attachment A, and the South Florida Water Management District, Environmental Resource Standard General Permit No. 50-09160-P, dated August 5, 2010, incorporated herein and made a part of this lease by reference. The construction of the structures described in Attachment A shall be completed within the initial term hereof or within the first 5 years of the initial term if the initial term is for a period greater than 5 years. The failure to complete the construction of all authorized structures within this time period shall constitute a material breach of the lease causing the lease to automatically terminate upon the expiration of the initial term or first 5 years, whichever is sooner, without any right of renewal. All of the foregoing subject to the remaining conditions of this lease.

2. AGREEMENT TO EXTENT OF USE: This lease is given to the Lessee to use or occupy the leased premises only for those activities specified herein and as conditioned by the South Florida Water Management District, Environmental Resource Standard General Permit. The Lessee shall not (i) change or add to the approved use of the leased premises as defined herein (e.g., from commercial to multi-family residential, from temporary mooring to rental of wet slips, from rental of wet slips to contractual agreement with third party for docking of cruise ships, from rental of recreational pleasure craft to rental or temporary mooring of charter/tour boats, from loading/offloading commercial to rental of wet slips, etc.); (ii) change activities in any manner that may have an environmental impact that was not considered in the original authorization or regulatory permit; or (iii) change the type of use of the riparian uplands or as permitted by the Lessee's interest in the riparian upland property that is more particularly described in Attachment B without first obtaining a regulatory permit/modified permit, if applicable, the Lessor's written authorization in the form of a modified lease, the payment of additional fees, if applicable, and, if applicable, the removal of any structures which may no longer qualify for authorization under the modified lease. If at any time during the lease term this lease no longer satisfies the requirements of subparagraph 18-21.011(1)(b)7., Florida Administrative Code, for a fee waived lease, the Lessee shall be required to pay an annual lease fee in accordance with Rule 18-21.011, Florida Administrative Code, and if applicable, remove any structures which may no longer qualify for authorization under this lease.

3. EXAMINATION OF LESSEE'S RECORDS: The Lessor is hereby specifically authorized and empowered to examine, for the term of this lease including any renewals, plus three (3) additional years, at all reasonable hours, the books, records, contracts, and other documents confirming and pertaining to the computation of annual lease payments as specified in paragraph two (2) above.

4. MAINTENANCE OF LESSEE'S RECORDS: The Lessee shall maintain separate accounting records for: (i) gross revenue derived directly from the use of the leased premises, (ii) the gross revenue derived indirectly from the use of the leased premises, and (iii) all other gross revenue derived from the Lessee's operations on the riparian upland property. The Lessee shall secure, maintain and keep all records for the term of this lease and any renewals plus three (3) additional years. This period shall be extended for an additional two (2) years upon request for examination of all records and accounts for lease verification purposes by the Lessor.

5. PROPERTY RIGHTS: The Lessee shall make no claim of title or interest to said lands hereinbefore described by reason of the occupancy or use thereof, and all title and interest to said land hereinbefore described is vested in the Lessor. The Lessee is prohibited from including, or making any claim that purports to include, said lands described or the Lessee's leasehold interest in said lands into any form of private ownership, including but not limited to any form of condominium or cooperative ownership. The Lessee is further prohibited from making any claim, including any advertisement, that said land, or the use thereof, may be purchased, sold, or re-sold.

6. INTEREST IN RIPARIAN UPLAND PROPERTY: During the term of this lease, the Lessee shall maintain the interest in the riparian upland property that is more particularly described in Attachment B and by reference made a part hereof together with the riparian rights appurtenant thereto, and if such interest is terminated, the lease may be terminated at the option of the Lessor. Prior to sale and/or termination of the Lessee's interest in the riparian upland property, the Lessee shall inform any potential buyer or transferee of the Lessee's interest in the riparian upland property and the existence of this lease and all its terms and conditions and shall complete and execute and documents required by the Lessor to effect an assignment of this lease, if consented to by the Lessor. Failure to do so will not relieve the Lessee from responsibility for full compliance with the terms and conditions of this lease which include, but are not limited to, payment of all fees and/or penalty assessments incurred prior to such act.

7. ASSIGNMENT OF LEASE: This lease shall not be assigned or otherwise transferred without prior written consent of the Lessor or its duly authorized agent. Such assignment or other transfer shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. Any assignment or other transfer without prior written consent of the Lessor shall be null and void and without legal effect.

8. INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS: The Lessee shall investigate all claims of every nature at its expense. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

9. VENUE: Lessee waives venue as to any litigation arising from matters relating to this lease and any such litigation between Lessor and Lessee shall be initiated and maintained only in Leon County, Florida.

10. NOTICES/COMPLIANCE/TERMINATION: The Lessee binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Lessee, its successors and assigns. 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 set forth, and the Lessee fails or refuses to comply with any of said provisions or conditions within twenty (20) days of receipt of the Lessor's notice to correct, this lease may be terminated by the Lessor upon thirty (30) days written notice to the Lessee. If canceled, all of the above-described parcel of land shall revert to the Lessor. All notices required to be given to the Lessee by this lease or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

PALM BEACH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS
2700 6th Avenue South
Lake Worth, Florida 33461

The Lessee shall notify the Lessor by certified mail of any change to this address at least ten (10) days before the change is effective.

11. TAXES AND ASSESSMENTS: The Lessee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this lease.

12. NUISANCES OR ILLEGAL OPERATIONS: The Lessee shall not permit the leased premises or any part thereof to be used or occupied for any purpose or business other than herein specified unless such proposed use and occupancy are consented to by the Lessor and the lease is modified accordingly, nor shall Lessee knowingly permit or suffer any nuisances or illegal operations of any kind on the leased premises.

13. MAINTENANCE OF FACILITY/RIGHT TO INSPECT: The Lessee shall maintain the leased premises in good condition, keeping the structures and equipment located thereon in a good state of repair in the interests of public health, safety and welfare. No dock or pier shall be constructed in any manner that would cause harm to wildlife. The leased premises shall be subject to inspection by the Lessor or its designated agent at any reasonable time.

14. NON-DISCRIMINATION: The Lessee shall not 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 leased area. During the lease term, the Lessee shall post and maintain the placard furnished to the Lessee by the Lessor in a prominent and visible location on the leased premises or adjacent business office of the Lessee. It shall be the responsibility of the Lessee to post the placard in a manner which will provide protection from the elements, and, in the event that said placard becomes illegible at any time during the term of this lease (including any extensions thereof), to notify the Lessor in writing, so that a replacement may be provided.

15. ENFORCEMENT OF PROVISIONS: No 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.

16. PERMISSION GRANTED: Upon expiration or cancellation of this lease all permission granted hereunder shall cease and terminate.

17. RENEWAL PROVISIONS: Renewal of this lease shall be at the sole option of the Lessor. Such renewal shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. In the event that Lessee is in full compliance with the terms of this lease, the Lessee may apply in writing for a renewal. Such application for renewal must be received by Lessor no sooner than 120 days and no later than 30 days prior to the expiration date of the original or current term hereof. The term of any renewal granted by the Lessor shall commence on the last day of the previous lease term. If the Lessee fails to timely apply for a renewal, or in the event the Lessor does not grant a renewal, the Lessee shall vacate the leased premises and remove all structures and equipment occupying and erected thereon at its expense. The obligation to remove all structures authorized herein upon termination of this lease shall constitute an affirmative covenant upon the Lessee's interest in the riparian upland property more particularly described in Attachment B, which shall run with the title to the Lessee's interest in said riparian upland property and shall be binding upon Lessee and Lessee's successors in title or successors in interest.

18. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: If the Lessee does not remove said structures and equipment occupying and erected upon the leased premises after expiration or cancellation of this lease, such structures and equipment will be deemed forfeited to the Lessor, and the Lessor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Lessee at the address specified in Paragraph 10 or at such address on record as provided to the Lessor by the Lessee. However, such remedy shall be in addition to all other remedies available to the Lessor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

19. REMOVAL COSTS/LIEN ON RIPARIAN UPLAND PROPERTY: Subject to the noticing provisions of Paragraph 18 of this lease, any costs incurred by the Lessor in removal of any structures and equipment constructed or maintained on state lands shall be paid by Lessee and any unpaid costs and expenses shall constitute a lien upon the Lessee's interest in the riparian upland property that is more particularly described in Attachment B. This lien on the Lessee's interest in the riparian upland property shall be enforceable in summary proceedings as provided by law.

20. RECORDATION OF LEASE: The Lessee, at its own expense, shall record this fully executed lease in its entirety in the public records of the county within which the lease site is located within fourteen (14) days after receipt, and shall provide to the Lessor within ten (10) days following the recordation a copy of the recorded lease in its entirety which contains the O.R. Book and pages at which the lease is recorded.

21. RIPARIAN RIGHTS/FINAL ADJUDICATION: In the event that any part of any structure authorized hereunder is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent riparian rights, Lessee agrees to either obtain written consent for the offending structure from the affected riparian owner or to 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 lease agreement and shall be grounds for immediate termination of this lease agreement at the option of the Lessor.

22. AMENDMENTS/MODIFICATIONS: This lease is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this lease must be in writing, must be accepted, acknowledged and executed by the Lessee and Lessor, and must comply with the rules and statutes in existence at the time of the execution of the modification or amendment. Notwithstanding the provisions of this paragraph, if mooring is authorized by this lease, the Lessee may install boatlifts within the leased premises without formal modification of the lease provided that (a) the Lessee obtains any state or local regulatory permit that may be required; and (b) the location or size of the lift does not increase the mooring capacity of the facility.

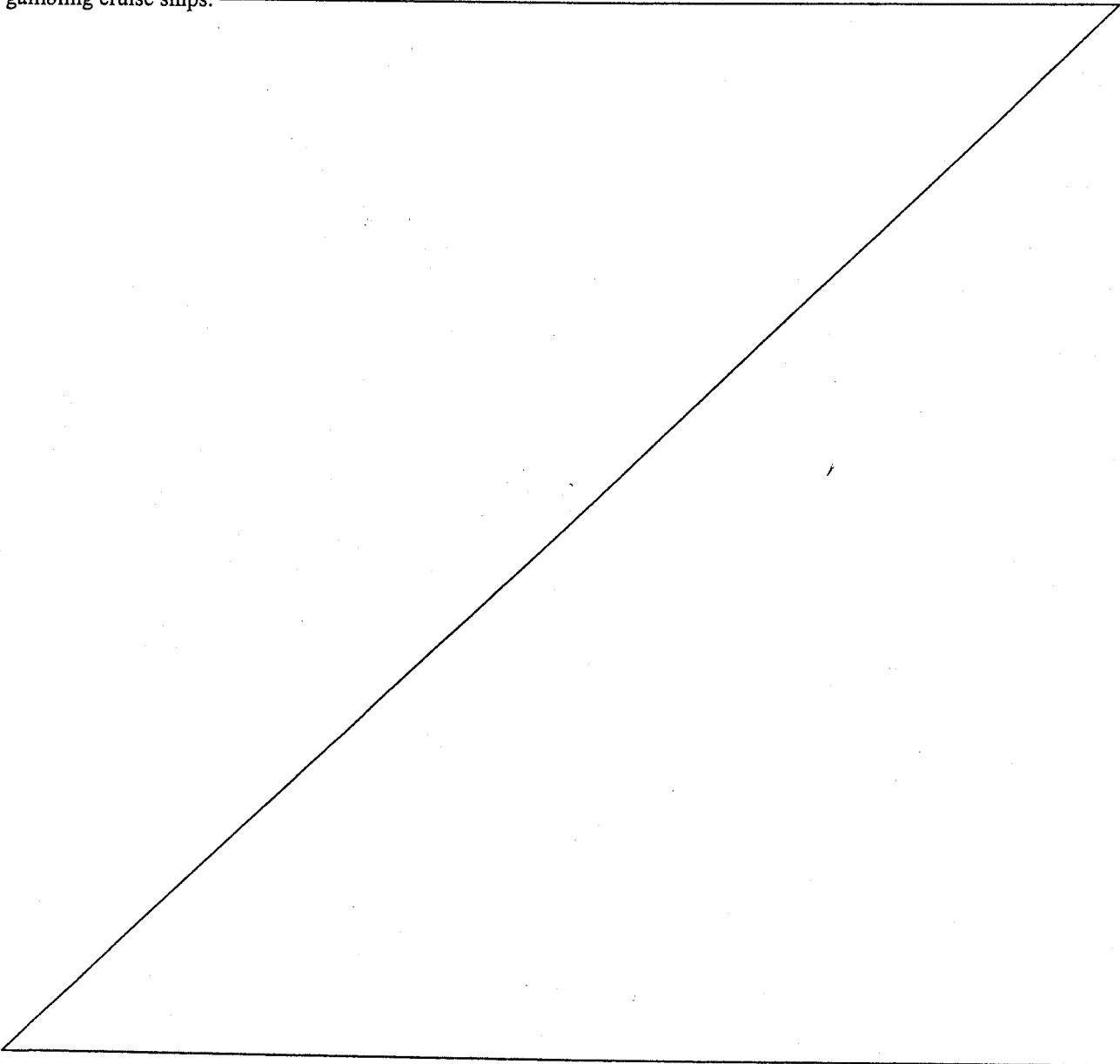
23. ADVERTISEMENT/SIGNS/NON-WATER DEPENDENT ACTIVITIES/ADDITIONAL ACTIVITIES/MINOR STRUCTURAL REPAIRS: No permanent or temporary signs directed to the boating public advertising the sale of alcoholic beverages shall be erected or placed within the leased premises. No restaurant or dining activities are to occur within the leased premises. The Lessee shall ensure that no permanent, temporary or floating structures, fences, docks, pilings or any structures whose use is not water-dependent shall be erected or conducted over sovereignty submerged lands without prior written consent from the Lessor. No additional structures and/or activities including dredging, relocation/realignment or major repairs or renovations to authorized structures, shall be erected or conducted on or over sovereignty, submerged lands without prior written consent from the Lessor. Unless specifically authorized in writing by the Lessor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Lessee to administrative fines under Chapter 18-14, Florida Administrative Code. This condition does not apply to minor structural repairs required to maintain the authorized structures in a good state of repair in the interests of public health, safety or welfare; provided, however, that such activities shall not exceed the activities authorized by this agreement.

24. ACOE AUTHORIZATION: Prior to commencement of construction and/or activities authorized herein, the Lessee shall obtain the U.S. Army Corps of Engineers (ACOE) permit if it is required by the ACOE. Any modifications to the construction and/or activities authorized herein that may be required by the ACOE shall require consideration by and the prior written approval of the Lessor prior to the commencement of construction and/or any activities on sovereign, submerged lands.

25. COMPLIANCE WITH FLORIDA LAWS: On or in conjunction with the use of the leased premises, the Lessee shall at all times comply with all Florida Statutes and all administrative rules promulgated thereunder. Any unlawful activity which occurs on the leased premises or in conjunction with the use of the leased premises shall be grounds for the termination of this lease by the Lessor.

26. LIVEABOARDS: The term "liveaboard" is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period. If liveaboards are authorized by paragraph one (1) of this lease, in no event shall such "liveaboard" status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.

27. GAMBLING VESSELS: During the term of this lease and any renewals, extensions, modifications or assignments thereof, Lessee shall prohibit the operation of or entry onto the leased premises of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere," where the ships leave and return to the state of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships.



WITNESSES:

Original Signature

Print/Type Name of Witness

Original Signature

Print/Type Name of Witness

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

BY:

Jeffery M. Gentry (SEAL)
Jeffery M. Gentry, Operations and Management Consultant
Manager, Bureau of Public Land Administration,
Division of State Lands, State of Florida Department of
Environmental Protection, as agent for and on behalf of the Board
of Trustees of the Internal Improvement Trust Fund of the State
of Florida

"LESSOR"

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 28th day of September, 2010, by
Jeffery M. Gentry Operations and Management Consultant Manager, Bureau of Public Land Administration, Division of State
Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the
Internal Improvement Trust Fund of the State of Florida. He is personally known to me.

APPROVED AS TO FORM AND LEGALITY:

DEP Attorney

Notary Public, State of Florida

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Anne G. Gentry
COUNTY ATTORNEY

Printed, Typed or Stamped Name Notary Public State of Florida
Kathy C Griffin
My Commission Expires DD727692
Expires 10/30/2011

Commission/Serial No.

WITNESSES:

Original Signature

Typed/Printed Name of Witness

Original Signature

Typed/Printed Name of Witness

STATE OF Florida

COUNTY OF Palm Beach

Palm Beach County, Florida

(SEAL)

By its Board of County Commissioners

BY:

Original Signature of Executing Authority

Dennis Eshleman
Typed/Printed Name of Executing Authority

Chair Director Parks + Recreation
Title of Executing Authority

"LESSEE"

The foregoing instrument was acknowledged before me this 14 day of September, 2010, by
Dennis Eshleman as Chair for and on behalf of the Board of County Commissioners of Palm Beach County, Florida. He is
personally known to me or who has produced na, as identification.

My Commission Expires:

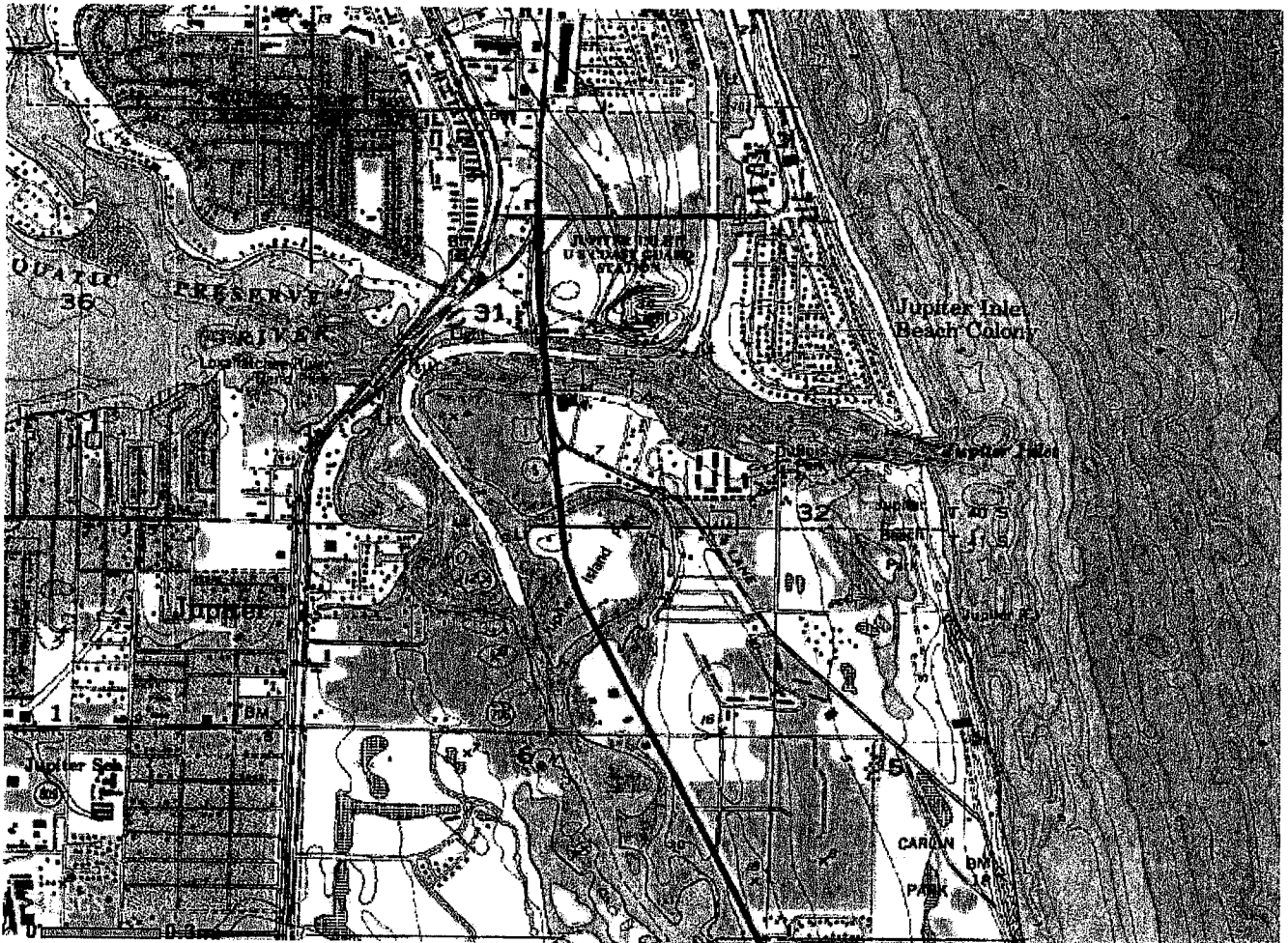
Notary Signature

Notary Public, State of

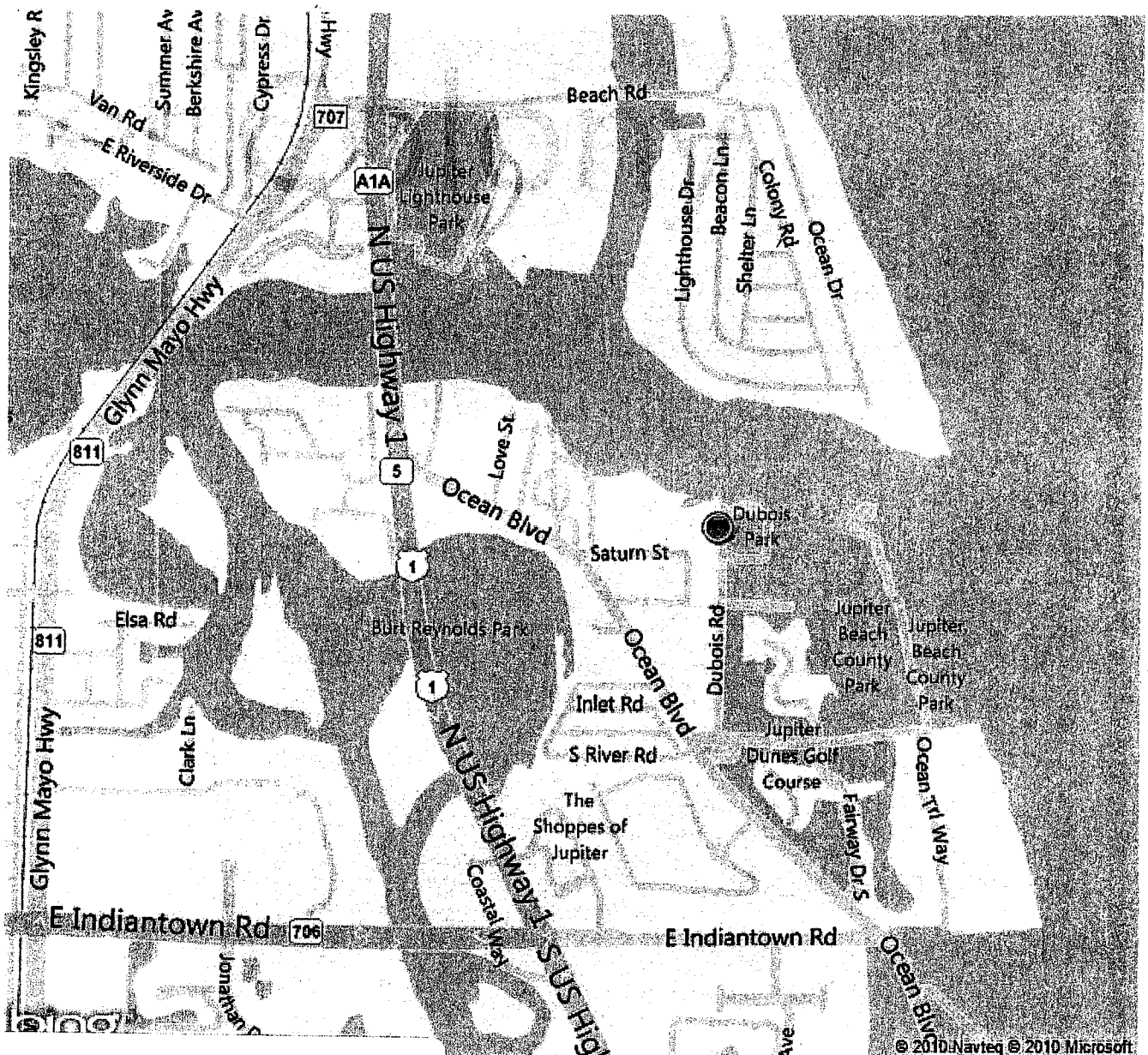
Nancy Elizabeth Beale
Printed, Typed or Stamped Name

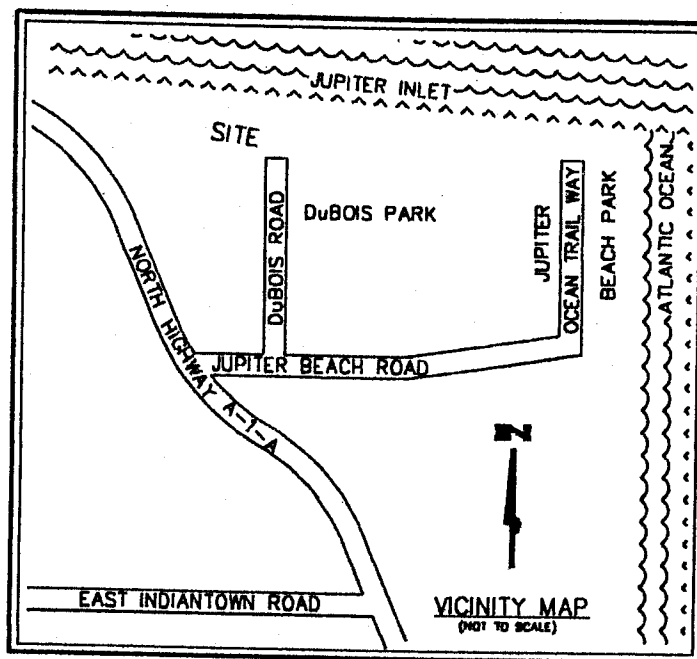


Commission/Serial No.



Facility Address: 1806g Dubois Rd, Jupiter, FL 33477





ADDL/REVISED SUBMITTAL

JUN 28 2010

09/25-21

SUBMERGED LAND LEASE LEGAL

A PARCEL OF SUBMERGED LAND LYING IN GOVERNMENT LOT 7, SECTION 31, TOWNSHIP 40 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT A POINT ON A LINE 75 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID GOVERNMENT LOT 7, SAID POINT ALSO BEING 803.75 FEET NORTH OF THE SOUTH LINE OF SAID GOVERNMENT LOT 7, THENCE SOUTH 00 DEGREES 26 MINUTES 07 SECONDS EAST ALONG SAID PARALLEL LINE A DISTANCE OF 4.54 FEET TO A POINT ON THE MEAN HIGH WATER LINE AND ELEVATION 1.46 NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D. 1929); THENCE ALONG SAID MEAN HIGH WATER LINE FOR THE FOLLOWING FOUR COURSES, NORTH 57 DEGREES 33 MINUTES 52 SECONDS EAST, A DISTANCE OF 6.76 FEET; THENCE NORTH 43 DEGREES 31 MINUTES 02 SECONDS EAST, A DISTANCE OF 4.92 FEET; THENCE NORTH 38 DEGREES 59 MINUTES 41 SECONDS EAST, A DISTANCE OF 9.80 FEET; THENCE NORTH 38 DEGREES 55 MINUTES 58 SECONDS EAST, A DISTANCE OF 19.33 FEET TO A POINT OF INTERSECTION WITH THE SOUTH FACE OF A SEAWALL; THENCE ALONG SAID SEAWALL FOR THE FOLLOWING FOUR COURSES, NORTH 61 DEGREES 25 MINUTES 44 SECONDS WEST, A DISTANCE OF 9.92 FEET; THENCE NORTH 00 DEGREES 10 MINUTES 14 SECONDS EAST, A DISTANCE OF 28.49 FEET; THENCE NORTH 34 DEGREES 46 MINUTES 13 SECONDS EAST, A DISTANCE OF 30.07 FEET; THENCE NORTH 58 DEGREES 31 MINUTES 37 SECONDS EAST, A DISTANCE OF 43.33 FEET TO A POINT 1.28 FEET WEST OF SAID EAST LINE OF GOVERNMENT LOT 7, SECTION 31; THENCE NORTH 63 DEGREES 47 MINUTES 40 SECONDS WEST, LEAVING SAID SEAWALL AND ALONG HEREIN DEFINED NORTHERLY RIPARIAN LINE, A DISTANCE OF 67.22 FEET; THENCE SOUTH 26 DEGREES 12 MINUTES 20 SECONDS WEST, LEAVING SAID RIPARIAN LINE, A DISTANCE OF 100.38 FEET TO THE HEREIN DEFINED SOUTHERLY RIPARIAN LINE; THENCE SOUTH 34 DEGREES 53 MINUTES 31 SECONDS EAST, ALONG SAID SOUTHERLY RIPARIAN LINE, A DISTANCE OF 55.45 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 5855 SQUARE FEET MORE OR LESS.

LOCATED IMMEDIATELY WATERWARD OF THAT UPLAND PROPERTY WITH THE FOLLOWING DESCRIPTION:

(CONTINUED ON SHEET 2 OF 4)

PROJECT NO. 2009012-22	SHEET 1	PROJECT DUBOIS PARK SUBMERGED LAND LEASE	DESIGN FILE NAME S-1-09-3021.DGN	DRAWING NO. S-1-09-3021	DATE 9/21/09	SCALE 1" = 40'	NO.	REVISION	BY	DATE
								1	ERM COMMENTS	N
							2	REV. DREDGE LIMITS	N	10/21/09
							3	PER SFWD COMMENTS	N	04/14/10
							4	ADD BOAT SLIPS	N	04/30/10

PALM BEACH COUNTY
ENGINEERING AND PUBLIC WORKS
ENGINEERING SERVICES
2300 NORTH JOG ROAD
WEST PALM BEACH, FL 33411

(CONTINUED FROM SHEET 1 OF 4)

TAKE A POINT WHICH IS THE SOUTHEAST CORNER OF GOVERNMENT LOT 7, SECTION 31, TOWNSHIP 40 SOUTH, RANGE 43 EAST, THENCE RUN NORTH ALONG THE EAST LINE OF SAID LOT 7, A DISTANCE OF 290 FEET TO A POINT OF BEGINNING; THENCE RUN NORTH ALONG THE EAST LINE OF SAID LOT 7, A DISTANCE OF 100 FEET; THENCE RUN WEST PARALLEL WITH THE SOUTH LINE OF SAID LOT 7 A DISTANCE OF 150 FEET MORE OR LESS TO THE EAST LINE OF THE LAND CONVEYED TO A.J. HODGSON BY DEED RECORDED IN DEED BOOK 102, PAGE 449, PALM BEACH COUNTY RECORDS; THENCE RUN SOUTH ALONG SAID HODGSONS EAST LINE A DISTANCE OF 100 FEET; THENCE RUN EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 7, A DISTANCE OF 150 FEET MORE OR LESS TO THE POINT OF BEGINNING.

TOGETHER WITH PARCEL 2, AS DESCRIBED AS

ALL THAT PORTION OF LAND LYING IN GOVERNMENT LOT 7, SECTION 31, TOWNSHIP 40 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, BEING ALL THE LAND LYING NORTH OF THE SOUTH 390 FEET OF THE EASTERLY 75 FEET OF SAID GOVERNMENT LOT 7.

SURVEY REPORT

1. THIS SPECIFIC PURPOSE SURVEY IS BASED ON PALM BEACH COUNTY PROPERTY AS DESCRIBED IN ORB 1958 PAGE 1865; SUBMERGED LANDS LEASES RECORDED IN ORB 19325 PAGE 918 & ORB 22015 PAGE 1837; A BOUNDARY SURVEY, DATED 11/18/08, AND A TOPOGRAPHIC (FIELD) SURVEY, DATED 11/13/08, PROJECT No. 08-054, PREPARED BY BROWN & PHILLIPS, INC. MEAN HIGH WATER LINE LOCATED ON 10/27/08 AS SHOWN, ELEVATION (-0.12 NAVD 88) OBTAINED FROM TIDE GAUGE 872-2492 WAS LOCATED ALONG THE SHORELINE OF THE PROJECT AREA AND SURVEY BY MAGELLAN DRAWING NO. 06-1051,

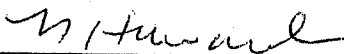
THE TOTAL LENGTH OF SHORELINE ALONG THE COUNTY'S PROPERTY - 3050 FEET, MORE OR LESS. THE LENGTH OF SHORELINE THROUGH THE SUBMERGED LEASE AREA - 153 FEET.

2. ELEVATIONS ARE REFERENCED TO PALM BEACH COUNTY BENCHMARK "BM 1", ELEVATION 5.14, NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88). BENCHMARK SET: MAG NAIL & "BROWN & PHILLIPS" DISK, ELEVATION 4.83, SET IN ASPHALT PARKING LOT, LOCATED 42' SOUTH AND 198' EAST, OF PALM BEACH COUNTY BRASS DISK "MC-LS4515".
3. BEARING BASIS: $NOO^{\circ}26'07"W$ ALONG THE EAST LINE OF SECTION 31, TOWNSHIP 40 SOUTH, RANGE 43 EAST.
4. a) THE PROPOSED DOCK FACILITIES AS SHOWN, WERE FURNISHED BY THE PALM BEACH COUNTY ENVIRONMENTAL RESOURCES MANAGEMENT DEPARTMENT
b) THE EXISTING MANGROVE LOCATIONS AS SHOWN, WERE FURNISHED BY THE PALM BEACH COUNTY ENVIRONMENTAL RESOURCES MANAGEMENT DEPARTMENT FROM A SPECIFIC PURPOSE SURVEY PREPARED BY BETSY LINDSAY, INC., PROJECT No.05-45, DATED FEBRUARY 2, 2009.
5. THIS SURVEY WAS PREPARED FOR TO THE PARTIES LISTED BELOW AND IS NOT ASSIGNABLE:
- PALM BEACH COUNTY ENVIRONMENTAL RESOURCES MANAGEMENT DEPARTMENT
- BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
6. THE SURVEY REPORT, NOTES, AND KEY MAP (SHEETS 1, 2 OF 4), ALONG WITH THE SKETCH (SHEETS 3 & 4 OF 4) COMPRISE THE COMPLETE SURVEY.

THE SURVEY NOT VALID UNLESS ALL SHEETS, 1 THROUGH 3, ACCOMPANY EACH OTHER. REPRODUCTIONS OF THIS DOCUMENT ARE NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER NOTED HEREON.

NO SEARCH OF THE PUBLIC RECORDS WAS MADE BY THE SIGNING SURVEYOR.

THIS INSTRUMENT WAS PREPARED BY NORMAN J. HOWARD, P.S.M., IN THE OFFICE OF THE COUNTY ENGINEER, 2300 NORTH JOG ROAD, WEST PALM BEACH, FLORIDA, 33411.

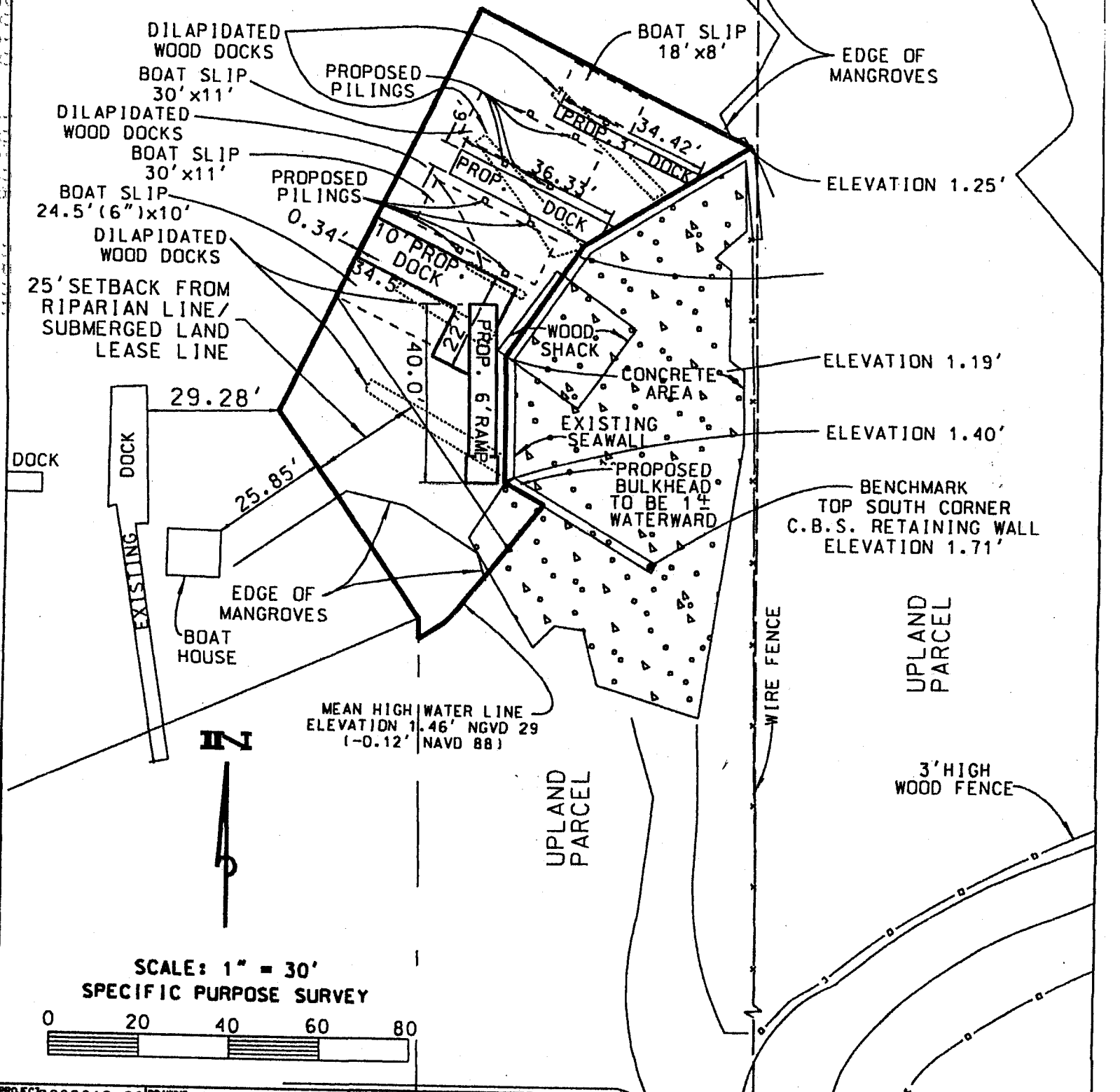

NORMAN J. HOWARD, P.S.M.
FLORIDA CERTIFICATE NO. 5776

6-9-2010
DATE

PROJECT NO. 2009012-22	DRAWING NO. S-1-09-3021	PROJECT: DUBOIS PARK SUBMERGED LAND LEASE	SHEET 2 OF 4
------------------------	-------------------------	---	--------------

LEGEND

POB = POINT OF BEGINNING
 SQ.FT. = SQUARE FEET
 AC. = ACRE
 ORB = OFFICIAL RECORD BOOK
 PG = PAGE
 NGVD = NATIONAL GEODETIC
 VERTICAL DATUM 1929
 NAVD = NORTH AMERICAN
 VERTICAL DATUM 1988
 PROP. = PROPOSED





PREPARED BY:
David Kuzmenko, Real Estate Specialist
Palm Beach County
Property & Real Estate Management Division
2633 Vista Parkway
West Palm Beach, Florida 33411-5605

CFN 20080239539
OR BK 22720 PG 0802
RECORDED 06/25/2008 09:52:07
Palm Beach County, Florida
ANT 3,600,000.00
Doc Stamp 25,200.00
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0802 - 818; (17pgs)

RECORD AND RETURN TO:
Danielle Adamski, Transaction Coordinator
My Closing Space LLC
1350 Liberty Avenue
Hillside, New Jersey 07205-1805

Property Control Numbers:
00-43-40-31-00-007-0060
00-43-40-31-00-007-0070

Closing Date: June 9, 2008
Purchase Price: \$3,600,000.00

STATUTORY WARRANTY DEED
(Section 689.02, Florida Statutes)

THIS INDENTURE, made this 9th day of June, A.D. 2008, between NANCY KINDT HERNANDEZ AS TRUSTEE OF THE SUSAN D. KINDT TRUST CREATED UNDER AGREEMENT DATED SEPTEMBER 26, 2003, whose post office address is 2639 West Edgewater Drive, Palm Beach Gardens, Florida 33410-2437, party of the first part, and PALM BEACH COUNTY, a political subdivision of the State of Florida, whose post office address is 301 North Olive Avenue, West Palm Beach, Florida 33401-4791, party of the second part.

WITNESSETH:

That the said party of the first part, for and in consideration of the sum of Ten Dollars, to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, its successors and assigns forever, the following described land, lying and being in Palm Beach County, Florida, to wit:

See Exhibit "A" (the "Property") attached hereto and by this reference made a part hereof.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, to have and to hold, the same in fee simple forever and the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

By acceptance of this statutory warranty deed, the party of the second part hereby agrees that the use of the Property described herein shall be subject to the covenants and restrictions as set forth in the Declaration of Restrictive Covenants recorded as Exhibit "B" to the deed in the Public Records of Palm Beach County, Florida. These covenants and restrictions shall run with the Property herein described. If any term or condition of the Declaration of Restrictive Covenants is violated by the party of the second part or by some third party with the knowledge of the party of the second part and the party of the second part does not correct the violation pursuant to the Declaration of Restrictive Covenants, fee simple title to all interest in the Project Site shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida in accordance with Chapter 380, Part III, Florida Statutes.

This property is not the homestead property of the party of the first part, nor contiguous to homestead property, as such homestead is defined under Florida law.

Remainder of page intentionally left blank.

APPROVED BY THE PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
ON 4/20/07 2007-2083

County Attorney or Designee

Page 2 of 3

Book22720/Page803

Page 2 of 17

In Witness Whereof, the party of the first part has hereunto set her hand the day and year first above written.

Signed, sealed and delivered in our presence:

Dated this 9th day of June, 2008

Party of the first part:

Judith D. Monteiro
Witness Signature

Judith D. Monteiro
(Print/Type Witness Name)

[Signature]
Witness Signature

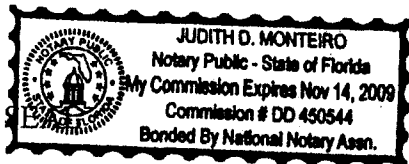
W. GASKILL
(Print/Type Witness Name)

Nancy Kindt Hernandez, Trustee
Nancy Kindt Hernandez, as Trustee of the
Susan D. Kindt Trust Created Under
Agreement Dated September 26, 2003

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 9th day of June 2008, by Nancy Kindt Hernandez, as Trustee of the Susan D. Kindt Trust Created Under Agreement Dated September 26, 2003 on behalf of the trust. She is personally known to me or has produced _____ as identification.

(NOTARY PUBLIC)



Judith D. Monteiro
(SIGNATURE OF NOTARY PUBLIC)

(PRINT/TYPE/STAMP NAME OF
NOTARY PUBLIC)

Commission No.:

My Commission Expires: 11/14/09

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Page 3 of 3

Exhibit "A"
the "Property"

LEGAL DESCRIPTION

The East 75 feet of the East 150 feet of Government Lot 7, Section 31, Township 40 South, Range 43 East, less the South 390 feet thereof.

AND

Take a point which is the Southeast corner of Government Lot 7, Section 31, Township 40 South, Range 43 East, thence run North along the East line of said Lot 7, a distance of 290 feet to a point of beginning; thence run North along the East line of said Lot 7, a distance of 100 feet; thence run West parallel with the South line of said Lot 7 a distance of 150 feet more or less to the East line of the land conveyed to A. J. Hodgson by Deed recorded in Deed Book 102, Page 449, Palm Beach County Records; thence run South along said Hodgson's East line a distance of 100 feet; thence run East parallel with the South line of said Lot 7 a distance of 150 feet more or less to the point of beginning.

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This document prepared by:
Kristen L. Coons, Esq.
Florida Communities Trust
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399

EXHIBIT "B"

R 2008 0374

MAR 11 2008

FLORIDA COMMUNITIES TRUST
FF6 AWARD #06-041-FF6
FCT Contract # 07-CT-1E-06-F6-J1-041
SUSAN DUBOIS KINDT ESTATE

DECLARATION OF RESTRICTIVE COVENANTS

THIS AGREEMENT is entered into by and between the FLORIDA COMMUNITIES TRUST ("FCT"), a nonregulatory agency within the State of Florida Department of Community Affairs, and PALM BEACH COUNTY, a political subdivision of the State of Florida ("Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING FACTS:

WHEREAS, the intent of this Agreement is to impose terms and conditions on the use of the proceeds of certain bonds, hereinafter described, and the lands acquired with such proceeds, as described in Exhibit "A" attached hereto and made a part hereof ("Project Site"), that are necessary to ensure compliance with applicable Florida law and federal income tax law and to otherwise implement the provisions of Sections 259.105, 259.1051 and Chapter 380, Part III, Florida Statutes;

WHEREAS, Chapter 380, Part III, Fla. Stat., the Florida Communities Trust Act, creates a non-regulatory agency within the Department of Community Affairs ("Department") that will assist local governments in bringing into compliance and implementing the conservation, recreation and open space, and coastal elements of their comprehensive plans or in conserving natural resources and resolving land use conflicts by providing financial assistance to local governments and nonprofit environmental organizations to carry out projects and activities authorized by the Florida Communities Trust Act;

WHEREAS, FCT is funded through either Section 259.105(3)(c), Fla. Stat. of the Florida Forever Act, which provides for the distribution of twenty-two percent (22%), less certain reductions, of the net Florida Forever Revenue Bond proceeds to the Department, or any other revenue source designated by the Florida Legislature, to provide land acquisition grants to local governments and nonprofit environmental organizations for the acquisition of community-based projects, urban open spaces, parks and greenways to implement local comprehensive plans;

WHEREAS, the Florida Forever Revenue Bonds are issued as tax-exempt bonds, meaning the interest on the Bonds is excluded from the gross income of bondholders for federal income tax purposes;

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WHEREAS, Rule 9K-7.009(1), Florida Administrative Code ("F.A.C."), authorizes FCT to impose conditions for funding on those FCT applicants whose projects have been selected for funding;

WHEREAS, FCT has approved the terms under which the Project Site was acquired and the deed whereby the Recipient acquired title to the Project Site. The deed shall contain such covenants and restrictions as are sufficient to ensure that the use of the Project Site at all times complies with Section 375.051, Florida Statutes and Section 9, Article XII of the State Constitution and it shall contain clauses providing for the conveyance of title to the Project Site to the Board of Trustees of the Internal Improvement Trust Fund ("Trustees") upon the failure of the Recipient to use the Project Site acquired thereby for such purposes; and

WHEREAS, the purpose of this Agreement is to set forth the covenants and restrictions that are imposed on the Project Site subsequent to disbursing FCT Florida Forever funds to the Recipient for Project Costs.

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FCT and the Recipient do hereby contract and agree as follows:

I. PERIOD OF AGREEMENT

1. This Agreement shall begin upon execution by both parties. The covenants and restrictions contained herein shall run with the Project Site and shall bind, and the benefit shall inure to, FCT and the Recipient and their respective successors and assigns.

II. MODIFICATION OF AGREEMENT

1. Either party may request modification of the provisions of this Agreement at any time. Changes which are mutually agreed upon shall be valid only when reduced to writing and duly signed by each of the parties hereto. Such amendments shall be incorporated into this Agreement.

III. RECORDING AND APPROVAL OF DECLARATION OF RESTRICTIVE COVENANTS

1. Upon execution by the parties hereto, the Recipient shall cause this Agreement to be recorded and filed in the official public records of **Palm Beach County, Florida**, and in such manner and in such other places as FCT may reasonably request. The Recipient shall pay all fees and charges incurred in connection therewith.

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2. The Recipient and FCT agree that the State of Florida Department of Environmental Protection shall forward this Agreement to the Department of Environmental Protection Bond Counsel for review. In the event Bond Counsel opines that an amendment is required to this Agreement so that the tax-exempt status of the Florida Forever Bonds is not jeopardized, FCT and the Recipient shall amend the Agreement accordingly.

IV. NOTICE AND CONTACT

1. All notices provided under or pursuant to this Agreement shall be in writing and delivered either by hand delivery or first class, certified mail, return receipt requested, to the addresses specified below. Any such notice shall be deemed received on the date of delivery if by personal delivery or upon actual receipt if sent by registered mail.

FCT: Florida Communities Trust
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100
ATTN: Program Manager

Recipient: Property and Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, FL 33411-5605

2. In the event that a different representative or address is designated for paragraph 1. above after execution of this Agreement, notice of the change shall be rendered to FCT as provided in paragraph 1. above.

V. PROJECT SITE TITLE REQUIREMENTS IMPOSED BY CHAPTER 259, CHAPTER 375 AND CHAPTER 380, PART III, FLA. STAT.

1. Any transfer of the Project Site shall be subject to the approval of FCT and FCT shall enter into a new agreement with the transferee containing such covenants, clauses or other restrictions as are sufficient to protect the interest of the State of Florida.

2. The interest acquired by the Recipient in the Project Site shall not serve as security for any debt of the Recipient.

3. If the existence of the Recipient terminates for any reason, title to the Project Site shall be conveyed to the Trustees unless FCT negotiates an agreement with another local government, nonprofit environmental organization, the Florida Division of Forestry, the Florida Fish

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and Wildlife Conservation Commission, the Department of Environmental Protection or a Water Management District who agrees to accept title and manage the Project Site.

4. In the event that the Project Site is damaged or destroyed or title to the Project Site, or any part thereof, is taken by any governmental body through the exercise or the threat of the exercise of the power of eminent domain, the Recipient shall deposit with FCT any insurance proceeds or any condemnation award and shall promptly commence to rebuild, replace, repair or restore the Project Site in such manner as is consistent with the Agreement. FCT shall make any such insurance proceeds or condemnation award moneys available to provide funds for such restoration work. In the event that the Recipient fails to commence or to complete the rebuilding, repair, replacement or restoration of the Project Site after notice from FCT, FCT shall have the right, in addition to any other remedies at law or in equity, to repair, restore, rebuild or replace the Project Site so as to prevent the occurrence of a default hereunder.

Notwithstanding any of the foregoing, FCT shall have the right to seek specific performance of any of the covenants and restrictions of this Agreement concerning the construction and operation of the Project Site.

VI. MANAGEMENT OF PROJECT SITE

1. The Project Site shall be managed only for the conservation, protection and enhancement of natural and historical resources and for compatible passive, natural resource-based public outdoor recreation, along with other related uses necessary for the accomplishment of this purpose. The proposed uses for the Project Site are specifically designated in the Management Plan approved by FCT.

2. The Recipient shall ensure that the future land use designation assigned to the Project Site is for a category dedicated to open space, conservation or outdoor recreation uses, as appropriate. If an amendment to the applicable comprehensive plan is required, the amendment shall be proposed at the next comprehensive plan amendment cycle available to the Recipient.

3. The Recipient shall ensure, and provide evidence thereof to FCT, that all activities under this Agreement comply with all applicable local, state, regional and federal laws and regulations, including zoning ordinances and the adopted and approved comprehensive plan for the jurisdiction, as applicable. Evidence shall be provided to FCT that all required licenses and permits have been obtained prior to the commencement of any construction.

4. The Recipient shall, through its agents and employees, prevent the unauthorized use of the Project Site or any use thereof not in conformity with the Management Plan approved by FCT.

5. FCT staff or its duly authorized representatives shall have the right at any time to inspect the Project Site and the operations of the Recipient at the Project Site.

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6. All buildings, structures, improvements and signs shall require the prior written approval of FCT as to purpose. Further, tree removal, other than non-native species, and major land alterations shall require the written approval of FCT. The approvals required from FCT shall not be unreasonably withheld by FCT upon sufficient demonstration that the proposed structures, buildings, improvements, signs, vegetation removal or land alterations will not adversely impact the natural resources of the Project Site. FCT's approval of the Recipient's Management Plan addressing the items mentioned herein shall be considered written approval from FCT.

7. If archaeological and historic sites are located on the Project Site, the Recipient shall comply with Chapter 267, Fla. Stat. The collection of artifacts from the Project Site or the disturbance of archaeological and historic sites on the Project Site shall be prohibited unless prior written authorization has been obtained from the Department of State, Division of Historical Resources.

8. As required by Rule 9K-7.013, F.A.C., each year after FCT reimbursement of Project Costs the Recipient shall prepare and submit to FCT an annual stewardship report that documents the progress made on implementing the Management Plan.

VII. SPECIAL MANAGEMENT CONDITIONS

The Management Plan for the project site is mentioned throughout this Agreement, and is particularly described in Section IV, above. In addition to the various conditions already described in this Agreement, which apply to all sites acquired with FCT funds, the Management Plan shall address the following conditions that are particular to the project site and result from either representations made in the application that received scoring points or observations made by the FCT staff during the site visit described in Rule 9K-7.009(1), F.A.C.:

1. Two or more resource-based outdoor recreational facilities, including a boat launch and picnic shelter, shall be provided. The facilities shall be developed in a manner that allows the general public reasonable access for observation and appreciation of the natural resources on the project site without causing harm to those resources.
2. A permanent recognition sign, a minimum size of 3' x 4', shall be maintained in the entrance area of the project site. The sign shall acknowledge that the project site was purchased with funds from the Florida Communities Trust Program and the Recipient.
3. Interpretive signage shall be provided to educate visitors about the natural environment or the history of the site.
4. At least 12 regularly scheduled and ongoing educational classes or programs that promote the protection of environmental and/or historic resources shall be provided at the project site.

5. The natural communities that occur on the project site shall be preserved and appropriately managed to ensure the long-term viability of these communities.

6. The project site shall be managed in a manner that will protect and enhance the listed and non-listed native wildlife species and their habitat. Periodic surveys shall be conducted of listed species using the project site.

7. The location and design of any parking facility shall be designed to have minimal impacts on natural resources. The parking area shall incorporate pervious materials wherever feasible.

8. A comprehensive landscaping plan will be developed for the project site. The landscaping plan will make significant use of native plants.

9. An ongoing monitoring and control program for invasive vegetation including exotic (non-native) and nuisance native plant species shall be implemented at the project site. The objective of the control program shall be the elimination of invasive exotic plant species and the maintenance of a diverse association of native vegetation. The management plan shall reference the Exotic Pest Plant Council's List of Florida's Most Invasive Species to assist in identifying invasive exotics on the project site.

10. A feral animal removal program shall be developed and implemented for the project site.

11. A protection plan shall be developed and implemented, in conjunction with the Division of Historic Resources, for the protection of known historical and archaeological resources located on the project site. This plan shall include measures to stabilize disturbed sites. Information on significant historical and archaeological sites shall be provided to the Division of Historic Resources for the purpose of updating the Florida Master Site File.

12. Sidewalk access to the project site shall be provided that links the project site with adjacent residential neighborhoods.

13. Bike parking stands shall be installed at the project site to provide an alternative to automobile transportation to the project site.

14. The development and management of the project site shall be coordinated with the agencies developing and managing the Town of Jupiter's Bicycle Master Plan and Riverwalk trail, to ensure the project site is managed as part of a linked trail system.

VIII. OBLIGATIONS OF THE RECIPIENT RELATING TO THE USE OF BOND PROCEEDS

1. FCT is authorized by Section 380.510, Fla. Stat. to impose conditions for funding on the Recipient in order to ensure that the project complies with the requirements for the use of Florida Forever Bond proceeds including, without limitation, the provisions of the Internal Revenue Code and the regulations promulgated thereunder as the same pertain to tax exempt bonds.

2. The Recipient agrees and acknowledges that the below listed transactions, events, and circumstances, collectively referred to as the "disallowable activities," may be disallowed on the Project Site as they may have negative legal and tax consequences under Florida law and federal income tax law. The Recipient further agrees and acknowledges that these disallowable activities may be allowed up to a certain extent based on guidelines or tests outlined in the Federal Private Activity regulations of the Internal Revenue Service:

- a. any sale or lease of any interest in the Project Site to a non-governmental person or organization;
- b. the operation of any concession on the Project Site by a non-governmental person or organization;
- c. any sales contract or option to buy or sell things attached to the Project Site to be severed from the Project Site with a non-governmental person or organization;
- d. any use of the Project Site by a non-governmental person other than in such person's capacity as a member of the general public;
- e. any change in the character or use of the Project Site from that use expected at the date of the issuance of any series of Bonds from which the disbursement is to be made;
- f. a management contract for the Project Site with a non-governmental person or organization; or
- g. such other activity or interest as may be specified from time to time in writing by FCT to the Recipient.

3. If the Project Site, after its acquisition by the Recipient and/or the Trustees, is to remain subject to any of the disallowable activities, the Recipient shall provide notice to FCT, as provided for in paragraph III.1. above, at least sixty (60) calendar days in advance of any such transactions, events or circumstances, and shall provide FCT such information as FCT reasonably requests in order to evaluate for approval the legal and tax consequences of such disallowable

activities.

4. In the event that FCT determines at any time that the Recipient is engaging, or allowing others to engage, in disallowable activities on the Project Site, the Recipient shall immediately cease or cause the cessation of the disallowable activities upon receipt of written notice from FCT. In addition to all other rights and remedies at law or in equity, FCT shall have the right to seek temporary and permanent injunctions against the Recipient for any disallowable activities on the Project Site.

DELEGATIONS AND CONTRACTUAL ARRANGEMENTS BETWEEN THE RECIPIENT AND OTHER GOVERNMENTAL BODIES, NONPROFIT ENTITIES OR NON GOVERNMENTAL PERSONS FOR USE OR MANAGEMENT OF THE PROJECT SITE WILL IN NO WAY RELIEVE THE RECIPIENT OF THE RESPONSIBILITY TO ENSURE THAT THE CONDITIONS IMPOSED HEREIN ON THE PROJECT SITE AS A RESULT OF UTILIZING BOND PROCEEDS TO ACQUIRE THE PROJECT SITE ARE FULLY COMPLIED WITH BY THE CONTRACTING PARTY.

IX. RECORDKEEPING; AUDIT REQUIREMENTS

1. The Recipient shall maintain financial procedures and support documents, in accordance with generally accepted accounting principles, to account for the receipt and expenditure of funds under this Agreement. These records shall be available at all reasonable times for inspection, review or audit by state personnel, FCT and other personnel duly authorized by FCT. "Reasonable" shall be construed according to the circumstances, but ordinarily shall mean the normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

2. If the Recipient expends a total amount of State financial assistance equal to or in excess of \$500,000 in any fiscal year of such Recipient, the Recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Fla. Stat., the applicable rules of the Executive Office of the Governor and the Comptroller and Chapter 10.550 (local government entities) or Chapter 10.650 (nonprofit organizations), Rules of the Auditor General. In determining the State financial assistance expended in its fiscal year, the Recipient shall consider all sources of State financial assistance, including State funds received from FCT, other state agencies and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements. The funding for this Agreement was received by FCT as a grant appropriation.

In connection with the audit requirements addressed herein, the Recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Fla. Stat. This includes submission of a reporting package as defined by Section 215.97(2)(d), Fla. Stat. and Chapter 10.550 (local government entities) or 10.650 (nonprofit organizations), Rules of the Auditor General.

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3. If the Recipient expends less than \$500,000 in State financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Fla. Stat. is not required. If the Recipient elects to have an audit conducted in accordance with the provisions of Section 215.97, Fla. Stat., the cost of the audit must be paid from non-State funds (i.e., the cost of such an audit must be paid from Recipient funds not obtained from a State entity).

4. The annual financial audit report shall include all management letters, the Recipient's response to all findings, including corrective actions to be taken, and a schedule of financial assistance specifically identifying all Agreement and other revenue by sponsoring agency and agreement number. Copies of financial reporting packages required under this Article shall be submitted by or on behalf of the Recipient directly to each of the following:

Department of Community Affairs (at each of the following addresses):

Office of Audit Services
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

and

Florida Communities Trust
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

State of Florida Auditor General at the following address:

Auditor General's Office
Room 401, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32302-1450

5. If the audit shows that any portion of the funds disbursed hereunder were not spent in accordance with the conditions of this Agreement, the Recipient shall be held liable for reimbursement to FCT of all funds not spent in accordance with the applicable regulations and Agreement provisions within thirty (30) days after FCT has notified the Recipient of such non-compliance.

6. The Recipient shall retain all financial records, supporting documents, statistical records and any other documents pertinent to this Agreement for a period of five years after the date of submission of the final expenditures report. However, if litigation or an audit has been initiated prior to the expiration of the five-year period, the records shall be retained until the litigation or audit findings have been resolved.

7. The Recipient shall have all audits completed in accordance with Section 215.97,

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Fla. Stat. performed by an independent certified public accountant ("IPA") who shall either be a certified public accountant or a public accountant licensed under Chapter 473, Fla. Stat. The IPA shall state that the audit complied with the applicable provisions noted above.

X. DEFAULT; REMEDIES; TERMINATION

If any essential term or condition of the Declaration of Restrictive Covenants is violated by the Recipient or by some third party with the knowledge of the Recipient, the Recipient shall be notified of the violation by written notice given by personal delivery, registered mail or registered expedited service. The recipient shall diligently commence to cure the violation or complete curing activities within thirty (30) days after receipt of notice of the violation. If the curing activities can not be reasonably completed within the specified thirty (30) day time frame, the Recipient shall submit a timely written request to the FCT Program Manager that includes the status of the current activity, the reasons for the delay and a time frame for the completion of the curing activities. FCT shall submit a written response within thirty (30) days of receipt of the request and approval shall not be unreasonably withheld. It is FCT's position that all curing activities shall be completed within one hundred twenty (120) days of the Recipient's notification of the violation. However, if the Recipient can demonstrate extenuating circumstances exist to justify a greater extension of time to complete the activities, FCT shall give the request due consideration. If the Recipient fails to correct the violation within either (a) the initial thirty (30) day time frame or (b) the time frame approved by FCT pursuant to the Recipient's request, fee simple title to all interest in the Project Site shall be conveyed to the Trustees unless FCT negotiates an agreement with another local government, nonprofit environmental organization, the Florida Division of Forestry, the Florida Fish and Wildlife Conservation Commission, the Department of Environmental Protection or a Water Management District, who agrees to accept title and manage the Project Site. FCT shall treat such property in accordance with Section 380.508(4)(e), Fla. Stat.

XI. STANDARD CONDITIONS

1. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall lie in Leon County. If any provision hereof is in conflict with any applicable statute or rule, or is otherwise unenforceable, then such provision shall be deemed null and void to the extent of such conflict and shall be severable, but shall not invalidate any other provision of this Agreement.

2. No waiver by FCT of any right or remedy granted hereunder or failure to insist on strict performance by the Recipient shall affect or extend or act as a waiver of any other right or remedy of FCT hereunder, or affect the subsequent exercise of the same right or remedy by FCT for any further or subsequent default by the Recipient.

3. The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), if applicable, which prohibits discrimination by

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public and private entities on the basis of disability in the areas of employment, public accommodations, transportation, State and local government services, and in telecommunications.

4. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit lease bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

5. No funds or other resources received from FCT in connection with this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

This Agreement including Exhibit "A" embodies the entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

R 2008. 0374

ATTEST:

COUNTY: MAR 11 2008

SHARON R. BOCK

CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: 

Deputy Clerk

By: 

Addie L. Greene, Chairperson

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: 

Assistant County Attorney

By: 

Department Director

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Witness:

Gayle H. Brett
Print Name: GAYLE H. BRETT

John T. Sluy
Print Name: John T. Sluy

FLORIDA COMMUNITIES TRUST

By: Janice Browning
Janice Browning, Director, Division of
Housing and Community Development

Date: 4/14/08

Approved as to Form and Legality:

By: Kristen L. Coons
Kristen L. Coons, Trust Counsel

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 14th day of April, 2008, by **Janice Browning**, Director, Division of Housing and Community Development. She is personally known to me.

Gayle H. Brett
Notary Public

Print Name: _____

Commission No. _____

My Commission Expires _____

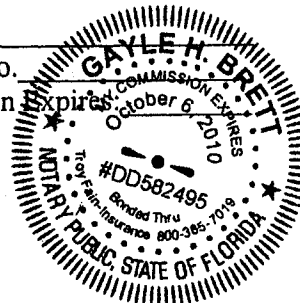


Exhibit "A"
the "Property"

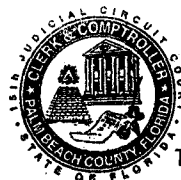
LEGAL DESCRIPTION

The East 75 feet of the East 150 feet of Government Lot 7, Section 31, Township 40 South, Range 43 East, less the South 390 feet thereof.

AND

Take a point which is the Southeast corner of Government Lot 7, Section 31, Township 40 South, Range 43 East, thence run North along the East line of said Lot 7, a distance of 290 feet to a point of beginning; thence run North along the East line of said Lot 7, a distance of 100 feet; thence run West parallel with the South line of said Lot 7 a distance of 150 feet more or less to the East line of the land conveyed to A. J. Hodgson by Deed recorded in Deed Book 102, Page 449, Palm Beach County Records; thence run South along said Hodgson's East line a distance of 100 feet; thence run East parallel with the South line of said Lot 7 a distance of 150 feet more or less to the point of beginning.

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STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office.

THIS 25 DAY OF OCT, 2010

SHARON R. BOCK
CLERK & COMPTROLLER

By [Signature] DEPUTY CLERK