

This Instrument prepared by:
Herbert W.A. Thiele, Esq., County Attorney
Leon County Attorney's Office
301 South Monroe Street, Suite 217
Tallahassee, Florida 32301

Property Address: _____

Parcel ID: _____

**Flooded Property Acquisition and Management Program
Leon County, Florida**

SPECIAL RESTRICTED-USE PERMIT
(For Non-Exclusive Use of County-Owned Flooded Property)

THIS SPECIAL RESTRICTED-USE PERMIT, given this _____ day of _____, 200____, by **LEON COUNTY, FLORIDA, a charter county and political subdivision of the state of Florida**, having a mailing address of 301 South Monroe Street, Tallahassee, Florida 32301 ("County") to _____, having a mailing address of _____, Tallahassee, Florida 323____ ("Permittee"), which parties hereby acknowledge and agree is subject to the following recitals, covenants, terms, and conditions.

RECITALS

WHEREAS, County is the owner of the unimproved real property located at _____, Tallahassee, Leon County, Florida (Parcel ID _____), which real property, pursuant to County Policy No. 05-5, Flooded Property Acquisition and Management Program (the "Program") has been designated as a Flooded Property (the "Flooded Property"); and

WHEREAS, the Flooded Property is available for use in accordance with a Special Restricted-Use Permit granted by County, and Permittee, in accordance with the Program, has made application to County for such use of the Flooded Property; and

WHEREAS, Permittee and County, by virtue of this Special Restricted-Use Permit (the "Permit") wish to establish the terms and conditions by which Permittee may use the Flooded Property.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and Permittee's covenant to use and maintain the Flooded Property in accordance with the terms and conditions as set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Article 1.

General Terms and Conditions of Permit

1.1. **Permit Area.** Unless as provided otherwise herein, the area governed by terms and conditions set forth herein shall comprise that certain area lying within the boundaries of the Flooded Property as described and depicted in Exhibit "A" attached hereto and incorporated herein (the "Permit Area").

1.2. Permitted Use. The use of the Permit Area shall be compatible with open space, recreational, or wetlands management practices and shall prohibit the construction or installation of any of new structures other than the following: (i) a public facility that is open on all sides and functionally related to a designated open space; or (ii) a structure that the County approves in writing before the commencement of the construction of the structure. Permittee acknowledges and agrees that the use of the Permit Area shall be limited to the following activities:

1.3. Tenure of Permit. This Permit shall commence on the date on which the last of the parties signs the Permit and shall continue indefinitely thereafter until this Permit is terminated in accordance with the terms provided herein.

1.4. Authority: This Permit is issued pursuant to the authority set forth in County Policy No. 05-5, Flooded Property Acquisition and Management Program (the "Program"), as may be amended from time to time. This Permit, and the activities or use authorized herein, shall be subject to the terms and conditions of the Program and any subsequent amendment thereto.

1.5. License. This Permit is a license for the use of the Permit Area and does not grant any permanent possessory interest in real property, nor shall this Permit be construed as conveying any real property interest in the Permit Area. The loss of any privileges granted by this Permit resulting from termination shall not be compensable to Permittee.

1.6. Permit Fees: Permittee shall not be required to pay any fees for this Permit.

1.7. Amendment. This Permit may be amended in whole or in part by County when such action is deemed necessary or desirable to incorporate new terms and conditions as may be required by law, regulation, land management plans, or other management decisions.

1.8. Existing Rights. This Permit is subject to all valid rights and claims of third parties. County shall not be liable to Permittee for the exercise of any such right or claim.

1.9. Nonexclusive Use and Public Access. County reserves the right to use or allow others to use any part of the Permit Area for any purpose compatible with the Program; provided, however, that such use does not materially interfere with Permittee's authorized use. A final determination of conflicting uses is reserved to County at County's sole discretion.

1.10. County Right of Entry and Inspection. County shall have the right of unrestricted access to the Permit Area to ensure compliance with laws, regulations, and ordinances and with the terms and conditions of this Permit.

1.11. Permit Not Assignable. This Permit shall not be assignable or transferable.

Article 2.
Responsibilities of Permittee

2.1. Compliance with Laws, Regulations, and Other Legal Requirements. Permittee shall comply with all applicable federal, state, and local laws, regulations, and standards including, but not limited to, any applicable laws related to environmental protection or public health and safety, as well as those relating to the siting, construction, placement, operation, maintenance, or storage of any improvements, equipment, or personal property on, or in, the Permit Area.

2.2. Maintenance of Permit Area. Permittee, at Permittee's expense, shall maintain the Permit Area and any improvements, equipment, or personal property thereon or therein to standards of repair, orderliness, neatness, sanitation, and safety acceptable to County and consistent with other provisions of this Permit. If requested by County, Permittee shall comply with inspection requirements deemed appropriate by County.

2.3. Change of Address. Permittee shall provide written notification to County of any change in address of Permittee no later than ten (10) days after the occurrence of such change.

Article 3.
Insurance Requirements, Indemnification, and Liability

3.1. Risk of Loss. Permittee shall assume all risk of loss to any improvements, equipment, or personal property constructed, placed, or stored on, or in, the Permit Area.

3.2. Insurance Requirements.

3.2.1. If this Permit does not authorize, and thereby prohibits, the construction or placement of any improvements or equipment on, or in, the Permit Area, then Permittee shall not be required to procure or maintain any insurance to cover Permittee's use of the Permit Area.

3.2.2. If, however, this Permit authorizes Permittee to construct or place improvements or equipment on, or in, the Permit Area, Permittee shall assume all risk of loss to such improvements and equipment. Furthermore, Permittee shall, at Permittee's expense, procure and maintain for the tenure of this Permit insurance in the minimum coverage and amounts as provided hereinbelow.

3.2.2.1. Permittee shall provide liability insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance by Permittee of the privileges, covenants, and responsibilities pursuant to this Permit with combined single limits for bodily injury, personal injury, and property damage of no less than \$100,000 per occurrence and a \$300,000 annual aggregate.

3.2.2.2. Permittee's insurance policy shall name and cover County as an additional insured and shall further provide that, in the event of cancellation, the effective date of cancellation shall be no sooner than ten (10) days after written notice of said cancellation has been provided to County.

3.2.2.3. Permittee shall provide to County a certificate of insurance evidencing such insurance coverage effective as of the date of this Permit.

3.3. Permittee's Indemnity. Permittee agrees to indemnify and hold harmless County and its respective officers, directors and employees from and against any and all claims, including, but not limited to, reasonable attorneys' fees, which claims are threatened or assessed against, levied upon, or collected from, County and which may arise from, or in connection with, the performance by Permittee of the privileges, covenants, and responsibilities pursuant to this Permit. However, Permittee shall not be required to indemnify County with respect to any liability, loss, damages, cost or expense suffered as a result of the negligence or misconduct of County or any of the agents or employees of County nor with respect to any liability, loss, damage, cost or expense to the extent that the same is covered by proceeds received by County pursuant to insurance maintained by Permittee.

3.4. Flooding and Other Hazards. Permittee acknowledges that the Permit Area is within a Flooded Property, as designated by the Program, and has been, is currently, or may be in the future, prone to continued flooding. Notwithstanding that fact, County shall have no duty to inspect the Permit Area nor to warn of any hazards including, but not limited to, flooding. In the event County does inspect the Permit Area, it shall incur no additional duty nor liability for any identified or non-identified hazards. This provision may be enforced by County in a court of competent jurisdiction.

Article 4.

Termination of Permit

4.1. Termination by Permittee. Permittee may terminate this Permit for any reason by delivering written notice to County of Permittee's intent to terminate; provided, however, such termination shall not be effective until three (3) business days after County's receipt of written notice of Permittee's intent to terminate.

4.2. Termination by County. County may terminate this Permit for any of the following reasons:

4.2.1. Permittee's noncompliance with any federal, state, or local laws or regulations;

4.2.2. Permittee's noncompliance with any of the terms and conditions of this Permit;

4.2.3. Permittee's abandonment of the Permit Area or failure to otherwise exercise the privileges granted by this Permit; a final determination of Permittee's abandonment of the Permit Area is reserved to County at County's sole discretion; or

4.2.4. Any reason deemed by County to be in the public interest.

4.3. Opportunity to Take Corrective Action. Prior to County's termination of this Permit, County shall provide to Permittee written notice setting forth the reason for such termination and a reasonable period of time, not to exceed thirty (30) days, within which Permittee may complete any corrective action deemed necessary by County to prevent such termination.

4.4. Removal of Improvements, Equipment, and Personal Property. Prior to Permittee's abandonment of any improvements, equipment, or personal property on, or in, the Permit Area, or within a reasonable time following termination of this Permit, Permittee shall provide to County a plan for abandonment of the Permit Area. The abandonment plan shall address the removal of any such improvements, equipment, or personal property and restoration of the Permit Area, along with prescribed time frames for Permittee's completion of these actions. In the event Permittee, within the times prescribed in the abandonment plan, fails to remove such improvements, equipment, or personal property, or fails to restore the Permit Area, such improvements, equipment, or personal property shall become the property of County and may be sold, destroyed, or otherwise disposed of by County without any liability imposed against County for such actions. In any event, Permittee shall remain liable for all costs associated with County's removal of such improvements, equipment, or personal property, including costs of sale and impoundment, and for any cleanup and restoration of the Permit Site deemed necessary by County.

**Article 5.
Other Provisions**

5.1. Attorney's Fees. In the event Permittee defaults in the performance of any of the covenants, terms, or conditions contained in this Permit, and County thereafter places the enforcement of this Permit, or any part thereof, or the collection of any fees due or to become due hereunder or recovery of the possession of the Permit Area, in the hands of an attorney who files suit upon the same and should County prevail in such suit, Permittee agrees to pay County's reasonable attorneys' fees and costs incurred from the time of Permittee's default.

5.2. Delivery of Notices. Any written notice required or permitted to be delivered by the terms and conditions of this Permit shall be delivered by (i) hand delivery; (ii) certified mail, return receipt requested; or (iii) guaranteed overnight delivery service.

5.2.1. Notices to Permittee shall be delivered to the address specified in the introductory paragraph of this Permit or as specified in any change of address provided by Permittee in accordance with the terms herein.

5.2.2. Notices to County shall be delivered to:

Leon County Public Works Department
Attention: Director
2280 Miccosukee Road
Tallahassee, FL 32308

With a copy delivered to:

Herbert W. A. Thiele, Esq.
Leon County Attorney's Office
301 S. Monroe Street, Suite 217
Leon County Courthouse
Tallahassee, FL 32301

5.2.3. All notices shall be effective upon delivery or attempted delivery during regular business hours. Either party may change its notice address upon written notice to the other party, given in accordance herewith by an authorized officer, partner, or principal.

5.3. Waivers. All waivers must be in writing and signed by the waiving party. County's failure to enforce any provision of this Permit shall not be a waiver and shall not prevent County from enforcing that provision or any other provision of this Permit in the future.

5.4. No Recordation. Permittee shall not record this Permit, nor any memorandum thereof, without prior written consent from County.

5.5. Joint And Several Liability. All parties signing this Permit as Permittee shall be jointly and severally liable for all covenants, responsibilities, and obligations of Permittee.

5.6. Florida Law. This Permit shall be governed by the laws of the State of Florida.

5.7. Holding Over. In the event Permittee remains in possession of the Permit Area, or otherwise holds over, after termination of this Permit, Permittee shall be liable for any and all direct and consequential damages incurred by County on account of such unapproved holding over, including claims by any Permittee entitled to future possession of the Permit Area.

5.8. Time Is Of The Essence. Time is of the essence of this Permit and all provisions contained herein.

5.9. Riders And Exhibits. All Riders, Addenda and Exhibits attached hereto shall be deemed to be a part of this Permit and are hereby incorporated herein.

IN WITNESS WHEREOF, Permittee and County have caused this Permit to be duly executed as of the date first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[NAME OF PERMITTEE]

Name: _____

By: _____

Print Name: _____

Name: _____

Date: _____

LEON COUNTY, FLORIDA

By: _____

Name: _____

Its Assistant to the County Administrator

Date: _____

Name: _____

Approved as to Form:
Leon County Attorney's Office

By: _____
Herbert W. A. Thiele, Esq.

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