



Florida Department of Environmental Protection Cashlisting By Deposit Summary Report

Run Date	2022-01-25 09:55
Report Criteria	
Begin Deposit Number	07055N
End Deposit Number	07055N
End Cashlisting Number	99999999

Cashlisting	Cashlist Area	Description
229577	NED	NORTHEAST DISTRICT-JACKSONVILLE
Deposit No	Date Deposited	Contact
07055N	01/19/2022	ALISHA SIMPSON

Rev Code ODN	Revenue Object	Description	Total
012008	012008	LCT-PENALTIES	19,500.00
018003	018003	LCT-REIMB.LEGAL COST	1,000.00
Cashlisting 229577 Total:			\$20,500.00



Florida Department of Environmental Protection Cashlisting By Deposit Report

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Report Criteria	
Begin Deposit Number	07055N
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Cashlisting	Cashlist Area	Description
229577	NED	NORTHEAST DISTRICT-JACKSONVILLE
Deposit No	Date Deposited	Contact
07055N	01/19/2022	ALISHA SIMPSON

Rev Code ODN	Revenue Object	Transmittal	Dep DDN	Receipt Number	Pre- Numbered Receipt	Name	Check Number	Payment Amount	Reference Account	Payment Number	Remittance Number	Fund	Grant	Project	BPIN
012008	012008	0		101959		BRIGHTWORK REAL ESTATE INC	WIRE	19,500.00	211018	1830456	1509405	WQATF			
Rev Code ODN 012008 Subtotal:								\$19,500.00							
018003	018003	0		101959		BRIGHTWORK REAL ESTATE INC	WIRE	1,000.00	211018	1830457	1509405	WQATF			
Rev Code ODN 018003 Subtotal:								\$1,000.00							
Cashlisting 229577 Total:								\$20,500.00							

From: [Roughton, Laurie](#)
To: [Treadwell, Michelle D](#)
Cc: [Wilkinson, Arlene](#)
Subject: RE: OGC 21-1018
Date: Tuesday, January 25, 2022 9:53:57 AM
Attachments: [image005.png](#)

Hi Michelle,

Reference 211018
Cashlist area NED
Fund WQATF
Object codes \$19,500 (012008 penalties); \$1,000 (018003 expenses)

Let me know if you need anything else.



Laurie Roughton, Legal Assistant
Department of Environmental Protection
Office of General Counsel
Research Assistant
3900 Commonwealth Blvd., MS 35
Laurie.Roughton@FloridaDEP.gov
Office: 850-245-2268

From: Treadwell, Michelle D <Michelle.D.Treadwell@FloridaDEP.gov>
Sent: Tuesday, January 25, 2022 9:49 AM
To: Roughton, Laurie <Laurie.Roughton@FloridaDEP.gov>
Cc: Wilkinson, Arlene <Arlene.Wilkinson@FloridaDEP.gov>
Subject: OGC 21-1018

Laurie,

I got a wire in for OGC 21-1018. How should I post this?

Wire Transfers	
Remittance	1509405
Received Date *	01/19/2022
Check # *	WIRE
Amount *	20,500.00
Name *	BRIGHTWORK REAL ESTATE INC
Address1	

Thank You,

Michelle D. Treadwell
Accounting Specialist
Department of Environmental Protection

From: [Treadwell, Michelle D](#)
To: [Roughton, Laurie](#)
Cc: [Wilkinson, Arlene](#); [Melvin,Tabbatha](#); [Beebe, Erica](#)
Subject: RE: OGC 21-1018
Date: Tuesday, January 25, 2022 10:10:14 AM
Attachments: [07055N - NED LCT - \\$20500.00.pdf](#)
[image004.png](#)

Here's the cash listing

Thank You,



Michelle D. Treadwell

Accounting Specialist
Department of Environmental Protection
Bureau of Finance and Accounting
Michelle.D.Treadwell@floridadep.gov
Office: 850.245.2367



Please consider the environment before printing this email

From: Roughton, Laurie <Laurie.Roughton@FloridaDEP.gov>
Sent: Tuesday, January 25, 2022 9:54 AM
To: Treadwell, Michelle D <Michelle.D.Treadwell@FloridaDEP.gov>
Cc: Wilkinson, Arlene <Arlene.Wilkinson@FloridaDEP.gov>
Subject: RE: OGC 21-1018

Hi Michelle,

Reference	211018
Cashlist area	NED
Fund	WQATF
Object codes	\$19,500 (012008 penalties); \$1,000 (018003 expenses)

Let me know if you need anything else.



Laurie Roughton, Legal Assistant
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Research Assistant
3900 Commonwealth Blvd., MS 35
Laurie.Roughton@FloridaDEP.gov
Office: 850-245-2268

From: Treadwell, Michelle D <Michelle.D.Treadwell@FloridaDEP.gov>
Sent: Tuesday, January 25, 2022 9:49 AM



Florida Department Of Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

December 17, 2021

Timothy A. Simmons, Manager
BAYMIT II, LLC
3708 W. Swann Avenue, Suite 200
Tampa, Florida 33609
ASimmons@brightworkre.com

Daniel J. Bergin, MGRM
DIRT ON DEMAND, LLC
3802 Ehrlich Rd., Suite 312
Tampa, Florida 33609
dbergin@ondemandfl.com

Subject: FDEP v. Baymit II, LLC & Dirt on Demand, LLC
OGC File Number 21-1018
Duval County – Environmental Resource Program, Site ID: 407243 and
NPDES Stormwater Program, Permit #FLR20EO49

Dear Messrs. Simmons and Bergin:


Enclosed is a copy of the executed Consent Order to resolve Case Number 21-1018.

The effective date of this Order is December 17, 2021, and all time frames will be referenced from this date.

As a reminder, a Consent Order is a binding legal document and was voluntarily entered into by both parties.

Should you have any questions concerning the Consent Order, please contact Matthew Kershner via email at Matthew.Kershner@FloridaDEP.gov, or by phone at (904) 256-1649. Your continued cooperation in the matter is appreciated.

Sincerely,


James R. Maher, PE
Assistant Director

Enclosure: Executed Consent Order

cc: FDEP-OGC: Lea Crandall, Agency Clerk
FDEP-NED: Arlene Wilkinson, Sally Logan, Joni Petry
FDEP-Tallahassee: Savanna Harrison

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)
OF ENVIRONMENTAL PROTECTION)
)
v.)
)
BAYMIT II, LLC and)
DIRT ON DEMAND, LLC)
)

IN THE OFFICE OF THE
NORTHEAST DISTRICT

OGC FILE NO. 21-1018

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and Dirt on Demand, LLC ("DOD") and BAYMIT IL, LLC ("BAYMIT") (DOD and BAYMIT collectively, the "Respondents") to reach settlement of certain matters at issue between the Department and Respondents.

The Department finds and Respondents admit the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes ("F.S."), and the rules promulgated and authorized in Title 62, Florida Administrative Code ("Fla. Admin. Code"). The Department has jurisdiction over the matters addressed in this Order.

2. Respondents are each “person[s]” within the meaning of Section 403.031(5), F.S.

3. DOD is an active Florida profit corporation with a principal address of 3802 Ehrlich Rd, Suite 312, Tampa, Florida, 33624.

4. BAYMIT is an active Florida limited liability company with a principal address of 3708 W. Swann Avenue, Suite 200, Tampa, Florida, 33609.

5. Respondent BAYMIT owns property at 1412 Grove Park Blvd., Jacksonville, Florida, Duval County, approximate Latitude 30°17'31.65" North, Longitude -81°34'15.72" West ("Project Site").

6. The Department holds a Conservation Easement, granted by a prior owner, across wetlands located on the property of the Project Site. A copy of the Conservation Easement is attached as Exhibit I.

7. On June 21, 23, and 29, 2021 and July 12, 2021, Department personnel conducted site inspections and observed the following violations at the project site:

A Respondent had failed to install, maintain, or use a required pollution control system or device on-site, pursuant to NPDES Generic Permit Condition Part 5, Permit No. FLR20EO49-001 and Rule 62-621.260(1)-(3), Fla. Admin. Code.

b) Respondent had failed to obtain a permit as required before disturbing an acre or more of earth. A Notice of Intent to use the "*Generic Permit for Stormwater Discharge from Large and Small Construction Activities*" ("NPDES Stormwater CGP") to the Department was required in order to conduct construction activities at the Project Site.

8. On June 24, 2021, DOD submitted a Notice of Intent to use the NPDES Stormwater CGP to the Department, as required. DOD is the General Contractor overseeing the construction activities at the location addressed in the NPDES Stormwater CGP.

9. On June 24, 2021, the Department issued a letter to DOD verifying the NPDES Stormwater CGP ("Permit") and assigned project identification number FLR20EO49 to the Project Site.

10. On July 17, 2021, Department personnel received multiple complaints containing photos and a July 16, 2021 video of turbid water being discharged from the site into the adjacent conservation easement, without authorization, and flowing into Pottsburg Creek, resulting in a turbidity plume. Respondents provided photographic evidence that at the time of the turbid unauthorized discharge, no workers associated with Respondents were onsite. However, they provided photo documentation that multiple trespassers unassociated with Respondents were onsite during the violation. Still, Respondents failed to secure the site. The Respondents allowed a pump with the key still in the ignition on-site with suction in a highly turbid impoundment and discharge hosing that could easily be relocated from the intended discharge location to the conservation easement wetland and creek beyond.

11. On July 19 and 27, 2021 and August 2, 4, and 9, 2021, Department personnel conducted site inspections and observed the following violations at the project site:

a) Turbid water exceeding water quality standards was discharged from the project site. Turbidity was measured at 3600.0 Nephelometric Turbidity Units ("NTUs") on July 21 in sampling done by City of Jacksonville officials. The turbid water discharge is in

violation of Rules 62-302.500(1)(a)(3) and 62-302.530(70), Fla Admin. Code, which state that turbidity NTU levels shall not exceed 29 NTUs above natural background conditions. Natural Background Conditions were measured at 110.53 NTUs.

b) The Respondents have insufficiently and improperly installed Best Management Practices ("BMPs") on-site, pursuant to NPDES Generic Permit Condition Part 5, Permit No. FLR20EO49-001, and Rule 62-621.260(1)-(3), Fla. Admin. Code, and as documented by Department personnel on each of the dates identified above.

12. As of September 15, 2021, Respondents have substantially stabilized disturbed earth from the project through sodding. Respondents have conveyed that the project was to scrape down uplands in order to provide compensatory floodplain storage for the City of Jacksonville to offset floodplain impacts on another project.

Having reached a resolution of the matter Respondents and the Department mutually agree and it is, **ORDERED:**

13. Immediately upon the effective date of this order, Respondents shall ensure the Project Site remains fully stabilized with sod or other measures to ensure no further sedimentation reaches adjacent wetlands. If additional work on-site is needed, Respondents shall implement performance based sediment and erosion control measures to ensure no further sedimentation can reach the adjacent wetlands, including any required security steps such that disturbed earth or turbid impounded water cannot be redirected offsite.

14. Within 15 days of the effective date of this Order, Respondents shall propose a Plan ("Plan") for an Independent Environmental Professional Assessment ("Assessment") of (1) the adjacent conservation easement wetlands and (2) the receiving stretch of Pottsburg Creek that was the subject recipient of sedimentation from the failed erosion controlled measures, discussed herein, and that was the subject recipient of the unauthorized discharge of July 16, 2021. The Plan shall provide the scope and methodology of the assessment, credentials of the assessing entity, and a timeline.

The Department shall review the Plan and either approve the Plan or request additional information, including an evaluation. The Respondents shall respond to any request for additional information by the Department within 10 days of any such request. Respondents must receive an approved Plan no later than 40 days from the effective date of this order. Respondents shall begin implementation of the approved Plan and provide the Assessment within 60 days of the effective date of this order.

15. The Assessment shall identify the footprint that received sedimentation and shall identify any areas where the sediment could smother habitat or have other adverse effects on the ecosystem. Respondents shall propose corrective actions for all areas identified as impacted. The corrective actions shall be sufficient to restore the impacted areas to pre-discharge conditions, if such can be accomplished without greater harm to the ecosystem. Within 5 days of the completion of the Assessment, the Respondents shall submit to the Department the results of the Assessment. The Department shall review the Assessment and either approve the Assessment or request additional information, potentially including an evaluation. The Respondents shall respond to any request for additional information by the Department within 15 days of any such request.

16. Within 15 days of approval of the Assessment, Respondents shall submit a restoration plan to the Department to restore any areas found to have environmental impacts as a result of the Respondents' activities. The Department shall review the restoration plan and either approve the plan or request additional measures be taken. The Respondents shall respond to any request for additional information by the Department within 15 days of any such request. Respondents shall complete restoration actions in accordance with the approved restoration plan within 30 days of approval.

17. Notwithstanding the time periods described in the paragraphs above, Respondents shall complete all corrective actions required by paragraphs 13 through 16 within 4 months of the effective date of this Order and be in full compliance with Rules 62-302.500(1)(a)(3) and 62-302.530(70), Fla. Admin. Code, regardless of any intervening events or alternative time frames imposed in this Order.

18. Within 30 days of the effective date of the Order, Respondents shall pay the Department \$20,500.00, in settlement of the regulatory matters addressed in this Order. This amount includes \$19,500.00 for civil penalties and \$1,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalty in this case includes six violations that each warrant a penalty of \$2,000.00 or more.

19. Respondents agree to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondents fail to timely comply with paragraphs 9 through 11 of this Order.

20. Each day constitutes a separate violation. Within 30 days of written demand from the Department, Respondents shall make payment of the appropriate stipulated penalties to the "State of Florida Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Water Quality Assurance Trust Fund." The Department may make demands for payment at any time after violations occur. Respondents shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment and shall do so as further described in paragraph 21, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 18 of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

21. Respondents shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at:

<http://www.fldepportal.com/go/pay/>. It will take a number of days after this order becomes

final and effectively filed with the Clerk of the Department before ability to make online payment is available.

22. Except as otherwise provided, all submittals and payments required by this Order shall be sent to NPDES Stormwater Program, Department of Environmental Protection, Northeast District Office, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256. This Order shall remain in effect until all costs and expenses have been paid and until the construction project has reached Final Stabilization. Final Stabilization means that all soil disturbing activities at the site have been completed, and that for all unpaved areas and areas not covered by a permanent structure, a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of at least 70% have been established or equivalent permanent stabilization measures (e.g., geotextiles) have been employed.

23. Respondents shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

24. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Order have not been fully satisfied, Respondents shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondents of the obligations imposed in this Order.

25. If any event, including administrative or judicial challenges by third parties unrelated to Respondents, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondents shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondents and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond

the control of Respondents (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondents shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondents intend to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondents, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondents must take to avoid or minimize the delay, if any. Failure of Respondents to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondents' right to request an extension of time for compliance for those circumstances.

26. The Department, for and in consideration of the complete and timely performance by Respondents of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondents' complete compliance with all of the terms of this Order.

27. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondents of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

28. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

29. Respondents are fully aware that a violation of the terms of this Order may subject Respondents to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

30. Respondents acknowledge and waive their right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this Order. Respondents also acknowledge and waive their rights to appeal the terms of this Order pursuant to Section 120.68, F.S.

31. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondents and the Department, and filed with the clerk of the Department.

32. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of Section 403.161(1)(b), F.S.

33. This Consent Order is a final order of the Department pursuant to Section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

34. Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;

- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida, 32399-3000, or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at Northeast District, 8800 Baymeadows Way West, Jacksonville, Florida, 32256. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in Section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

35. Rules referenced in this Order are available at:

<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>.

36. Notwithstanding the foregoing, this Consent Order is not an admission of guilt by Respondents, but rather an agreement with respect to disputed claims.

FOR THE RESPONDENT BAYMIT:

BAYMIT II, LLC

By: *Brightwork Real Estate, Inc.*

Timothy A. Simmons

~~Manager~~ **T. Austin Simmons, Vice President of
Brightwork Real Estate, Inc.**

12/9/21
Date

FOR THE RESPONDENT DOD:

DIRT ON DEMAND, LLC

[Signature]

Daniel J. Bergin
MGRM

12/10/21
Date

DONE AND ORDERED this 17th day of December 2021, in Duval, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

[Signature]

Gregory J. Strong
District Director
Northeast District

Filed, on this date, pursuant to Section 120.52, F.S., with the designated Department Clerk,
receipt of which is hereby acknowledged.

[Signature]

Clerk

December 17, 2021

Date

Copies furnished to: FDEP-OGC: Lea Crandall
FDEP-NED: Arlene Wilkerson, Joni Petry

Exhibit C

Return to:
Department of Environmental Protection
Attn: SLERP Enforcement Manager
7825 Baymeadows Way
Jacksonville, FL 32256

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is given this 2 day of W.A., 2011, by Jack and Elaine Schekira, having an address at 1843 Live Oak Drive, Jacksonville, Florida 32246-2138 (Grantors) to the State of Florida Department of Environmental Protection (DEPARTMENT), whose address is Department of Environmental Protection, Division of State Lands, 3900 Commonwealth Boulevard, Mail Station 130, Tallahassee, Florida 32399-3000. As used herein, the term Grantors shall include any and all heirs, successors or assigns of the Grantors, and all subsequent owners of the Property (as hereinafter defined) and the term DEPARTMENT shall include any successor or assignee of the DEPARTMENT.

WITNESSETH

WHEREAS, the Grantors are the sole owners in fee simple of certain lands situated in Duval County, Florida, more specifically described in Exhibit A attached hereto and incorporated herein (Property);

WHEREAS, the Grantors have conducted activities at a site in Duval County, which are subject to the regulatory authority of the Florida Department of Environmental Protection ("Department") under Part IV of Chapter 373 of the Florida Statutes;

WHEREAS, under the Department's authority, the Grantors are required to preserve, enhance, restore or mitigate for impacts to wetlands, other surface waters, or uplands under the Department's jurisdiction; and

WHEREAS, pursuant to Section 373.414(1)(b), F.S., the DEPARTMENT agrees to accept this conservation easement and the Grantors agree to grant this conservation easement as a condition of the Consent Order number 09-3133 issued by Department to offset or prevent adverse impacts to water quality and natural resources, such as fish, wildlife, and wetland or other surface water functions. Specifically, this conservation easement is intended to:

1. Offset impacts to wetlands and other surface waters;
2. Protect a mitigation area;
3. Ensure that the proposed Project is clearly in the public interest.

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, together with other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby voluntarily grants and conveys a perpetual conservation easement, as defined in Section 704.06, Florida Statutes, for and in favor of the DEPARTMENT upon the Property which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

The scope, nature and character of this conservation easement shall be as follows:

1. Purpose. The purpose of this conservation easement is to retain land or water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wooded condition and to retain such areas as suitable habitat for fish, plants or wildlife. Those wetland or upland areas included in the conservation easement that are to be enhanced or created pursuant to the Consent Order number 09-3133 (Consent Order) shall be retained and maintained in the enhanced or created conditions required by the Consent Order.

Granters reserve the right to construct, through the conservation easement area, a single piling supported elevated access pier per parcel for the intended use of a single family residential dock to reach navigable waters of the state. This paragraph does not guarantee nor assure the Granters a permit for the dock. The Granters must meet all permitting requirements pursuant to 18-21.005 in order to obtain a dock permit.

Dock access pier construction is subject to permitting by the Florida Department of Environmental Protection.

Any elevated access pier associated with dock construction shall conform to the following construction criteria:

- a.) The dock access pier shall be elevated.
- b.) The dock access pier shall be limited to a maximum width of 6 feet.
- c.) No excavation, digging, tree felling, root removal, or filling shall occur except for that necessary to install the dock access pier pilings.
- d.) Every reasonable effort shall be made to avoid cutting of any trees larger than 4 inch diameter at breast height (i.e. 4 ½ feet above the base of the tree) during construction of the dock access pier.

2. Rights of the DEPARTMENT. To carry out this purpose, the following rights are conveyed to DEPARTMENT by this easement:

- a. The right to take action to preserve and protect the environmental value of the Property;
- b. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of this conservation easement, and to require the restoration of areas or features of the Property that may be damaged by any inconsistent activity or use;
- c. The right to enter upon and inspect the Property in a reasonable manner and at reasonable times, including the right to use vehicles and all necessary equipment to determine if Granters are complying with the covenants and prohibitions contained in this conservation easement; and
- d. The right to enforce this conservation easement by injunction or proceed at law or in equity to enforce the provisions of this conservation easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities hereinafter set forth, and the right to require Granters to restore such areas or features of the Property that may be damaged by any inconsistent activity or use.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this conservation easement is prohibited. Without limiting the foregoing, the following activities and uses are expressly prohibited, except for restoration, creation, enhancement, maintenance, and monitoring activities authorized by the Consent Order:

a. Construction or placing of additional structures other than those specified above in, on, above, or below the ground, including but not limited to: buildings, roads, docks, piers, boardwalks, billboards or other advertising; utilities; signs (other than those marking the conservation easement), or other structures with the exception of a single-family dock access pier as specified in 1. Purpose.

b. Dumping or placing of soil or other substance or material as land fill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except nuisance, invasive, exotic, or nonnative species upon prior written approval by the DEPARTMENT;

d. Planting or seeding of exotic or nuisance species or other plants that are outside their natural range or zone of dispersal and have or are able to form self-sustaining, expanding, and free-living populations in a natural community with which they have not previously associated;

e. Exploration for or extraction of oil or gas, and excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

f. Surface use except for purposes that permit the land or water area to remain in its natural condition;

g. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking, dredging, and fencing;

h. Acts or uses detrimental to such aforementioned retention and maintenance of land or water areas;

i. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites, or properties of historical, architectural, archaeological, or cultural significance; and

j. The use of All-Terrain Vehicles.

4. Reserved Rights. Granters reserve to themselves all rights as owners of the Property, including the right to engage in uses of the Property that are not prohibited herein, which are not inconsistent with any Department rule, criteria, permit, and the intent and purposes of this conservation easement.

5. Public Access. No right of access by the general public to any portion of the Property is conveyed by this conservation easement.

6. Responsibilities of Parties. Granters hereby agree to bear all costs and liabilities related to the operation, upkeep, or maintenance of the Property and Granters do hereby indemnify and hold harmless the DEPARTMENT from same. In addition, the DEPARTMENT shall have no responsibility for any costs or liabilities related to the operation, upkeep or maintenance of the Property.

7. Taxes. Granters shall pay before delinquency any and all taxes, assessments, fees, and charges of whatever description levied on or assessed by competent authority on the Property, and shall furnish the DEPARTMENT with satisfactory evidence of payment upon request.

8. Liability. Grantors shall be responsible for any and all liability, loss, damage, expense, judgment or claim (including a claim for attorney fees) arising out of any negligent or willful action or activity resulting from the Grantors' use and ownership of or activities on the Property, the use by or activities of Grantors' agents, guests, lessees or invitees on the Property, or the use by or activities of third parties on the Property, and shall indemnify and hold the Department harmless from same. Neither Grantors nor any person or entity claiming by or through Granters shall hold the DEPARTMENT liable for any damage or injury to person or personal property which may occur on the Property. Furthermore, the Granters shall indemnify and hold harmless the DEPARTMENT for all liability, any injury or damage to the person or property of third parties which may occur on the Property.
9. Hazardous Waste. Granters covenant and represent that no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Property, and that there are not now any underground storage tanks located on the Property. Grantors further indemnifies the DEPARTMENT for any and all liability arising from any subsequent placement or discovery of hazardous or toxic material on the property. In the event such material is discovered, Granters shall be responsible for bringing the Property into compliance with all environmental laws related to hazardous substances and toxic wastes.
10. Enforcement Discretion. Enforcement of the terms, provisions and restrictions of this conservation easement shall be at the reasonable discretion of the DEPARTMENT, and any forbearance on behalf of the DEPARTMENT to exercise its rights hereunder in the event of any breach by Granters, shall not be deemed or construed to be a waiver of the DEPARTMENT'S rights.
11. Enforcement Costs. If the DEPARTMENT prevails in an enforcement action, it shall be entitled to recover costs, including expert witness fees, as well as the reasonable cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of the conservation easement or to the vegetative and hydrologic condition required by the aforementioned Consent Order. These remedies are in addition to any other remedy, fine or penalty which may be applicable under Chapters 373 and 403, Florida Statutes, or at law or in equity.
12. Assignment of Rights. DEPARTMENT agrees to hold this conservation easement exclusively for conservation purposes and that it will not assign its rights and obligations under this conservation easement except to another organization qualified to hold such interests under applicable state laws.
13. Recording in Land Records. Grantors agree to record this conservation easement and any amendments hereto in a timely fashion in the Official Records of Duval County, Florida. Grantors shall pay all recording costs and taxes necessary to record this conservation easement in the public records.
14. Successors. The covenants, terms, conditions and restrictions of this conservation easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.
15. Notices. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

16. Subsequent Deeds. Granters shall insert the terms and restrictions of this conservation easement in any subsequent deed or other legal instrument by which Granters divest themselves of any interest in the Property. Granters further agree to give written notice to DEPARTMENT of the transfer of any interest at least twenty days prior to the date of such transfer. The failure of Granters to perform any act required by this paragraph shall not impair the validity of this conservation easement or limit its enforceability in any way.

17. Severability. If any provision of this conservation easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this conservation easement shall not be affected thereby, as long as the purpose of the conservation easement is preserved.

18. Alteration or Revocation. This conservation easement may be amended, altered, released or revoked only by Consent Order modification as necessary and written agreement between the parties hereto or their heirs, assigns or successors-in-interest, which shall be filed in the public records in Duval County.

19. Controlling Law. The interpretation and performance of this conservation easement shall be governed by the laws of the State of Florida.

20. Baseline Documentation Report. The specific conservation values of the property are documented in the Baseline Documentation Report associated with this conservation easement. The Baseline Documentation Report consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the property at the time of this grant, and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. The Baseline Documentation Report is maintained in the offices of the Florida Department of Environmental Protection and is incorporated by this reference. A copy of the Baseline Documentation Report is available from the Department on request.

TO HAVE AND TO HOLD unto the DEPARTMENT forever. The covenants, terms, conditions, restrictions and purpose imposed with this conservation easement shall be binding upon Granters, and shall continue as a servitude running in perpetuity with the Property.

Granters hereby covenants with said DEPARTMENT that Granters are lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this conservation easement and all mortgages have been joined or subordinated; that Grantors have good right and lawful authority to convey this conservation easement; and that it hereby fully warrants and defends the title to the conservation easement hereby conveyed against the lawful claims of all person whomsoever.

IN WITNESS WHEREOF, the Granters have executed this Conservation Easement on the day and year first above written.

Signed, sealed and delivered in our presence as witnesses:

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Signature of Witness

Seooh & edlt4
Printed/Typed Name

[Signature]
Signature of Witness

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Printed/Typed Name

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By: 4:t.-f.: Sc HGf... t#A
Print Name:

By: iEL.11 f.:" SCHERIRA
Print Name

STATE OF FLORIDA fl.O
COUNTY OF UV

The foregoing instrument was acknowledged before me this Jj day of Jf&t',

20Jl, by t:fo:Je. <SiK sc.nf of the (corporation's name)
He/she is personally known to me or has produced
floR...cla :r/> as identification.

(SEAL)

t!ud.i.ML
Notary Public Signature

m...!P
BROOKECORDARA
Notary Public - State of Florida
My Comm. Expires Sep 7, 2014
Commission # EE 23908

Brooke Cordara
Printed/Typed Name of Notary
Commission No. f t!id)fiJi.°g
Commission Expires 7It

SPECIFIC PURPOSE SURVEY OF:

OF THE F. RICHARD GRANT, SECTION 52, TOWNSHIP 2 SOUTH, RANGE 27 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

POINT OF REFERENCE, COMMENCE AT THE SOUTHWEST CORNER OF LOT 1, BLOCK 1, GROVE UNIT 1, AS RECORDED IN PLAT BOOK 31, PAGE 25 THROUGH 258 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA; THENCE SOUTH 20°19'39" EAST, A DISTANCE OF 17.09 FEET;

SOUTH 34°43'54" WEST, A DISTANCE OF 24.93 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 34°43'54" WEST, A DISTANCE OF 585 FEET MORE OR LESS TO THE WATER'S EDGE

OF OTTSBURG CREEK; THENCE NORTHWESTERLY ALONG THE WATER'S EDGE OF BIG POTTSBURG AND THE MEANDERINGS THEREOF, A DISTANCE OF 450 FEET MORE OR LESS TO A POINT ALONG THE WATER'S EDGE; THENCE NORTH 18°52'17" EAST, DEPARTING SAID WATER'S EDGE ALONG THE 5TH LINE OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS VOLUME 9545, PAGE 1873 OF THE PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, A DISTANCE OF 725 FEET MORE OR LESS TO A POINT ON THE SOUTHWEST LINE OF LOT 6, BLOCK 1, OF SAID GROVE PARK UNIT 1, SAID POINT BEING A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 1822.30 FEET; THENCE IN A NORTHEASTERLY DIRECTION ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 166.11 FEET, AND BEARING ANO DISTANCE OF SOUTH 22°49'52" EAST, 166.05 FEET TO A POINT ON THE

5TH LINE OF LOT 5, BLOCK 1, OF SAID GROVE PARK UNIT 1; THENCE DEPARTING SAID POINT, ALONG THE FOLLOWING EIGHTEEN (18) COURSES: COURSE NO. (1): SOUTH 54°33'27" EAST, A DISTANCE OF 31.10 FEET; COURSE NO. (2): SOUTH 79°01'46" WEST, A DISTANCE OF 25.16

FEET; COURSE NO. (3): SOUTH 05°35'43" WEST, A DISTANCE OF 43.39 FEET; COURSE NO. (4): SOUTH 28°11'19" EAST, A DISTANCE OF 50.30 FEET; COURSE NO. (5): SOUTH 28°11'19" EAST, A DISTANCE OF 50.30 FEET; COURSE NO. (6): SOUTH 35°42'28" EAST, A DISTANCE OF 50.30 FEET; COURSE NO. (7): SOUTH 30°33'25" EAST, A DISTANCE OF 30.43 FEET; COURSE NO. (8): SOUTH 30°33'25" EAST, A DISTANCE OF 30.43 FEET; COURSE NO. (9): SOUTH 01°03'36" EAST, A DISTANCE OF 28.98 FEET; COURSE NO. (10): SOUTH 15°15'14" EAST, A DISTANCE OF 28.98 FEET; COURSE NO. (11): SOUTH 00°01'27" WEST, A DISTANCE OF 46.47 FEET; COURSE NO. (12): SOUTH 00°01'27" WEST, A DISTANCE OF 46.47 FEET; COURSE NO. (13): SOUTH 27°56'57" EAST, A DISTANCE OF 64.67 FEET; COURSE NO. (14): SOUTH 55°22'52" EAST, A DISTANCE OF 57.90 FEET; COURSE NO. (15): NORTH 68°16'14" EAST, A DISTANCE OF 68.16 FEET; COURSE NO. (16): NORTH 68°16'14" EAST, A DISTANCE OF 68.16 FEET; COURSE NO. (17): NORTH 68°16'14" EAST, A DISTANCE OF 68.16 FEET; COURSE NO. (18): NORTH 68°16'14" EAST, A DISTANCE OF 68.16 FEET.

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E OF 33.14 FEET; COURSE NO. (16): NORTH 52.1627" EAST, A DISTANCE OF 36.25 FEET;
~~0: (17): NORTH 54.1501" EAST, A DISTANCE OF 35.88 FEET; COURSE NO. (18): NORTH~~
EAST, A DISTANCE OF 35.78 FEET TO THE POINT OF BEGINNING. (CONTAINING 222,662
ET OR 5.11 ACRES MORE" OR 11:00:00)

1-11' " 11"