



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

May 18, 2009

Mr. Dan Loubier, Director
Kissimmee Parks & Recreation Department
101 North Church Street
Kissimmee, FL 34741

Dear Mr. Loubier:

Subject: Contract # 3600000693-A02

Please find enclosed one (1) fully executed copy of the above referenced document.

Thank you for your efforts on behalf of the South Florida Water Management District (District). Should there be any questions, or if you require any additional information, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda Greer".

Linda Greer, CPPB
Senior Contract Specialist
Procurement Department
lgreer@sfwmd.gov
(561) 682-6396
FAX: (561) 681-6275

LG/kr

Enclosure

c: M. Moore, MSC 5212
Procurement/Original File
B. Katz, MSC 7300
Olga Sanchez de Fuentes, Assistant County Attorney, Osceola County



ORIGINAL

Prepared by:

Holly Walter, Esq.
South Florida Water Management District
3301 Gun Club Road, P. O. Box 24680
West Palm Beach, FL 33416-4680

Return to:

South Florida Water Management District
3301 Gun Club Road, P. O. Box 24680
West Palm Beach, FL 33416-4680

SECOND AMENDMENT

TO INTERLOCAL AGREEMENT (CONTRACT NO. 3600000693 – A02)

BETWEEN

THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

OSCEOLA COUNTY

AND

CITY OF KISSIMMEE, FLORIDA

This Amendment (the "Second Amendment") to that certain Interlocal Agreement, dated February 2, 2006, as amended on February 28, 2008, by and between the South Florida Water Management District, a public corporation of the State of Florida (the "District"), and Osceola County, a political subdivision of the State of Florida (the "County"), and the City of Kissimmee, Florida, a municipal corporation (the "City"), (the County and the City shall hereinafter be known collectively as the "Local Government"), is entered into this 14 day of May, 2009 (the "Effective Date"),

IN WITNESSETH:

WHEREAS, the Local Government and the District entered into that certain Interlocal Agreement, dated February 2, 2006 (the "Agreement"), and recorded in the Public Records of Osceola County at Official Record Book 3085, Page 257, concerning the acquisition of lands within the "Save Our Rivers" Project area identified as the "Shingle Creek Project" (the "Project"); and

WHEREAS, pursuant to that certain First Amendment, dated February 28, 2008 and recorded April 11, 2008 in the Public Records of Osceola County at Official Record

Book 3670, Page 2320, the parties amended the Agreement to make their obligations thereunder subject to the availability of funding and not obligate future appropriations; and

WHEREAS, on August 26, 2008, the parties hereto entered into that certain Cooperative Agreement concerning the management of the Project; and

WHEREAS, the parties hereto desire to further amend the Agreement as follows: (i) to expand the definition of "Parcel" to include additional lands within the Project, as delineated by the project boundary line shown on Exhibit "A" attached hereto and incorporated herein by reference; (ii) to provide for subsequent contributions by the District not to exceed Two Million Dollars (\$2,000,000.00) towards the Local Government's acquisition of the Parcels; (iii) to revise paragraph 3 to require the Local Government to record a conservation easement in favor of the District in conjunction with the closing on each Parcel; (iv) to revise the form of said conservation easements as set forth in Exhibit "B" attached hereto and incorporated herein by reference; (v) to revise paragraph 10 to acknowledge that the parties' management obligations shall henceforth be as provided in the Cooperative Agreement; and (vi) to revise paragraph 12 to extend the term of the Agreement until the earlier of May 1, 2011 or the date by which the District's total contribution since the date of this Second Amendment towards the purchase of the Parcels equals \$2,000,0000.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

1. The Agreement is hereby amended to expand the definition of "Parcel" to include additional lands located within the Project, as delineated by the project boundary line shown on Exhibit "A" attached hereto. More than one Parcel shall henceforth be referred to as "Parcels".

2. In addition to the Five Hundred Thousand Dollars previously provided by the District to the Local Government for the purchase of the Parcel commonly referred to as the "Ruba Parcel" (i.e. District Tract No. 26-110-132), the District shall provide the Local Government additional funds not to exceed Two Million Dollars (\$2,000,000.00) for the purchase of the Parcels within the Project as delineated on Exhibit "A". The District acknowledges that said funds are mitigation funds associated with impacts of the Western Beltway, State Road 429, Part C, not proceeds from a Florida Forever bond.

3. The form of the Conservation Easements, as that term is defined in paragraph 3 of the Agreement, to be conveyed by the Local Government to the District in accordance with paragraph 3 of the Agreement is hereby revised as set forth in Exhibit "B" attached to this Second Amendment and incorporated herein by reference. Henceforth, all Conservation Easements conveyed by the Local Government to the District under the Agreement shall be in substantially the form attached hereto as Exhibit "B", unless otherwise amended or revised by the parties.

4. Paragraph 3 of the Agreement is hereby deleted in its entirety and replaced with the following:

3. Conservation Easement: If the Local Government takes title to a Parcel, it shall record a conservation easement upon the Parcel in favor of the District, in substantially the form attached hereto as Exhibit "B" (the "Conservation Easement"), in conjunction with the closing on the Parcel; provided, however, that any portion of a Parcel that is intended to be used for active recreation shall not be encumbered by the Conservation Easement. Not less than fifteen (15) days prior to closing on a Parcel, the Local Government shall provide to the District the legal description of the Parcel, or portion thereof to be encumbered by the Conservation Easement, for review and approval. The legal description of the Parcel, or portion thereof to be encumbered by the Conservation Easement, shall be approved by the District prior to closing on the Parcel and recordation of the Conservation Easement. The Conservation Easement shall be recorded in the public records of Osceola County immediately following the recordation of the deed conveying the Parcel to the Local Government.

5. Paragraph 10 of the Agreement is deleted in its entirety and replaced with the following:

10. Management of the Parcels: The Local Government and the District shall manage the Parcels in accordance with (i) that certain Cooperative Agreement, dated August 26, 2008, by and between the parties, as it may be amended from time to time, and (ii) the Shingle Creek Regional Park Management Plan, dated August 31, 2007, as approved by the parties, together with any amendments thereto. The duration of the parties' management duties and obligations shall be in accordance with the terms and conditions set forth in the Cooperative Agreement.

6. The term of the Agreement is hereby extended until the earlier of (i) May 1, 2011, or (ii) the date by which the District has contributed \$2,000,000.00 towards the purchase of the Additional Parcels and the Local Government has recorded Conservation Easements in favor of the District over all such Parcels in accordance with paragraph 3 of the Agreement. In accordance with paragraph 10 of the Agreement, as revised pursuant to this Second Amendment, the parties hereto acknowledge and agree that the term of their obligations and duties relative to the management of the Parcels shall be as required under the Cooperative Agreement.

7. Except as expressly amended herein, the Agreement shall remain in full force and effect and is hereby ratified and confirmed as of the date of this Second Amendment.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day first above written.

**SOUTH FLORIDA WATER
MANAGEMENT DISTRICT, BY ITS
GOVERNING BOARD**

Attest: Jacki McGorty
District Clerk/Secretary

By: Eric Buermann
Eric Buermann, Chair

Date: 5/14/2009

Legal form approved by: Holly Waller South Florida Water Management District Office of Counsel

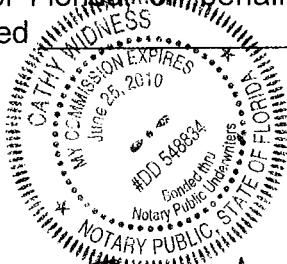
FWMD Procurement Approved:
By: Linda Green

Date: 4-15-09

Date: 4-20-09

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 14 day of May, 2009, by Eric Buermann, as Chair of the Governing Board of the South Florida Water Management District, a public corporation of the State of Florida, on behalf thereof, who is personally known to me or who has produced _____ as identification.

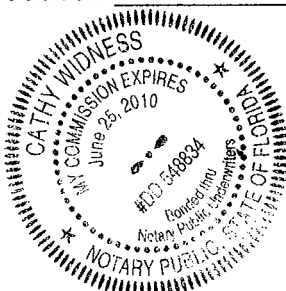


Cathy Widness
Notary Public
Cathy Widness

Print
My Commission Expires: 6/25/2010

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 14 day of May, 2009, by Jacki McGorty, as Secretary of the Governing Board of the South Florida Water Management District, a public corporation of the State of Florida, on behalf thereof, who is personally known to me or who has produced _____ as identification.



Cathy Widness
Notary Public
Cathy Widness

Print
My Commission Expires: 6/25/2010

**BOARD OF COUNTY
COMMISSIONERS, OSCEOLA
COUNTY, FLORIDA**

Attest:

Jimmy Rod
Clerk / Deputy Clerk

By:

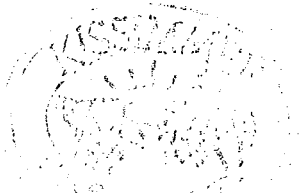
[Signature]
Chairman/Vice Chairman

Legal form approved by:

By: [Signature]
County Attorney

Date:

02/02/09



**CITY OF KISSIMMEE, FLORIDA, a
municipal corporation of the State of
Florida**

Attest:

[Signature]
City Clerk

By:

[Signature]
Mayor-Commissioner

Legal form approved by:

By: [Signature]
City Attorney

Date:

12/23/2008

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EXHIBIT "A"
PROJECT BOUNDARY
OSCEOLA COUNTY
ADDITIONAL LANDS

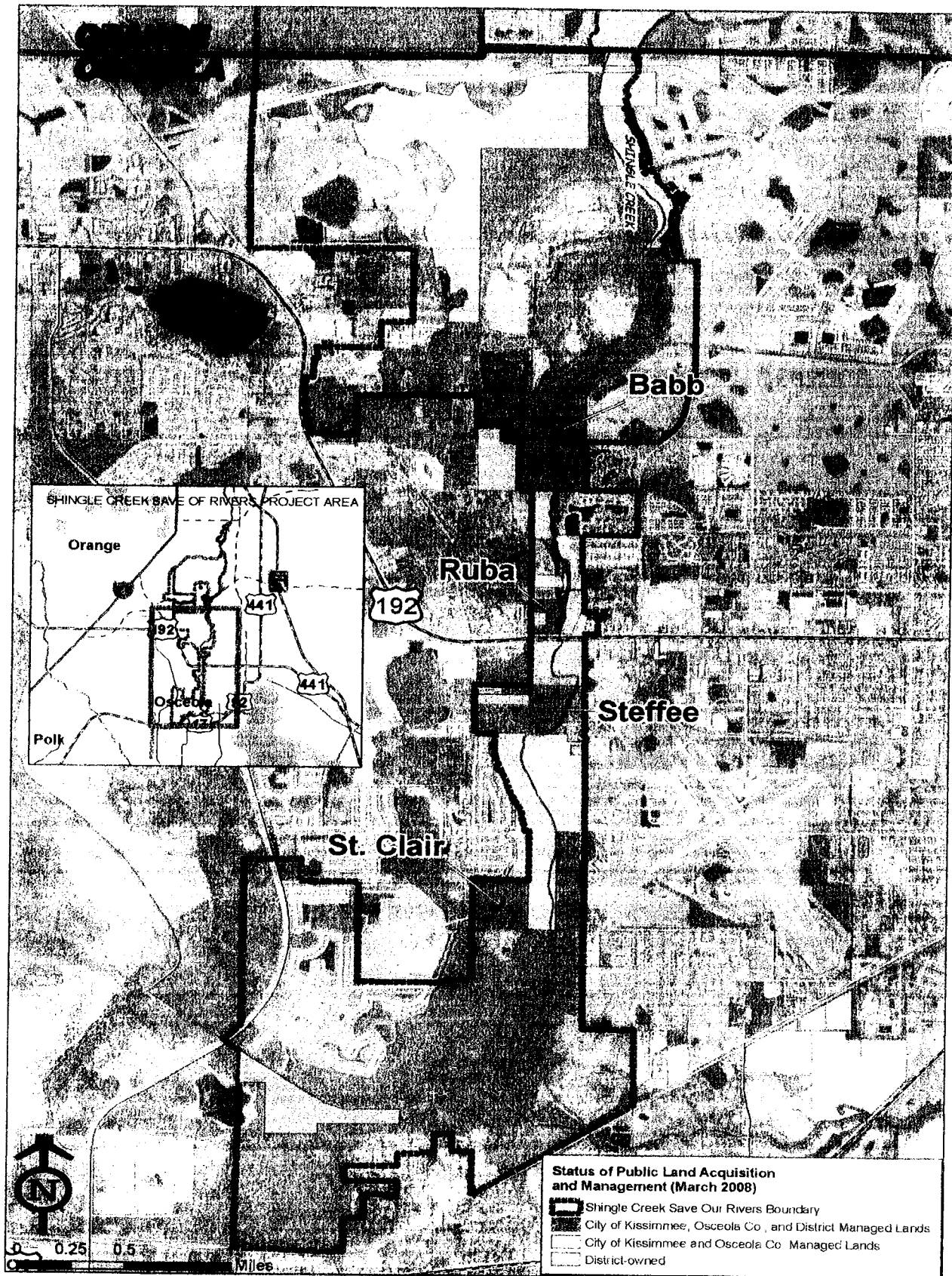


Exhibit A - Shingle Creek Save Our Rivers Project Area
Osceola County, Florida



Exhibit "B"

Return to:

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
P. O. Box 24680
West Palm Beach, FL 33416-4680

This instrument prepared by:

Holly Walter, Esquire,
South Florida Water Management District
3301 Gun Club Road, P. O. Box 24680
West Palm Beach, FL 33416-4680

Project: Shingle Creek

Tract No.: _____

PERPETUAL CONSERVATION EASEMENT

THIS PERPETUAL CONSERVATION EASEMENT ("Conservation Easement") is given this _____ day of _____, 20__, by **Osceola County**, a political subdivision of the State of Florida, with its principal office located at 1 Courthouse Square, Kissimmee, Florida 34741 (hereinafter referred to as "County"), and the **City of Kissimmee**, Florida, a municipal corporation (hereinafter referred to as "City"), with its principal office located at 101 North Church Street, Kissimmee, Florida 34741 (the County and the City shall hereinafter be collectively referred to as "the Grantor"), to the **South Florida Water Management District**, a Public Corporation of the State of Florida with its principal office located at 3301 Gun Club Road, West Palm Beach, Florida 33406 and whose mailing address is Post Office Box 24680, West Palm Beach, Florida 33416-4680, (hereinafter referred to as "Grantee"). As used herein, the term Grantor shall include any and all successors or assigns of the Grantor, and all subsequent owners of the "Property" (as hereinafter defined) and the term Grantee shall include any successor or assign of Grantee.

WITNESSETH

WHEREAS, the Grantor is the owner of certain lands situated in Osceola County, Florida, and more specifically described in Schedule "A" attached hereto and incorporated herein by reference ("Property"); and

WHEREAS, the Grantee desires to obtain a perpetual conservation easement as defined in and in accordance with the provisions of Section 704.06, Florida Statutes, with respect to the Property; and

WHEREAS, the Grantor desires to grant and secure to the Grantee a perpetual conservation easement as defined in and in accordance with the provisions of Section 704.06, Florida Statutes, with respect to the Property.

NOW, THEREFORE, for good and valuable consideration, received by Grantor from Grantee, the adequacy and receipt of which are hereby acknowledged, Grantor hereby

conveys, grants, creates, secures and establishes a perpetual conservation easement as defined in and in accordance with the provisions of Section 704.06, Florida Statutes, which are hereby incorporated herein by reference, for the benefit of and in favor of the Grantee with respect to the Property, which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever, in accordance with the following terms, conditions and provisions:

1. The foregoing recitals are true and correct and are hereby incorporated herein by reference.

2. It is the purpose of this Conservation Easement to restore and retain land or water areas in their natural, vegetative, hydrologic, scenic, open or wooded condition; to restore and retain such areas as suitable habitat for fish, plants or wildlife; and to allow for appropriate passive recreation opportunities for the public. To carry out this purpose, the following rights are conveyed to Grantee by this Conservation Easement:

a. To enter upon the Property at all times with any necessary equipment or vehicles to enforce the rights herein granted in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor at the time of such entry; and

b. To enjoin any activity on or use of the Property that is inconsistent with this Conservation Easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

3. The following activities are prohibited in or on the Property, except in accordance with the Shingle Creek Regional Park Management Plan, dated August 31, 2007, together with any amendments thereof which may be approved by Grantee from time to time (collectively, the "Management Plan"):

a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground, except for maintenance roads;

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

c. Removal or destruction of trees, shrubs, or other vegetation, except for the removal of sable palm trees and exotic vegetation;

d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other substance or material, except in accordance with a Grantee approved management plan;

e. Surface use except for purposes that permit the land or water area to remain in its natural condition, provided, however, that nothing herein shall prohibit Grantor from conducting any permitted wetland mitigation or species relocation activities on the Property;

f. Activities detrimental to drainage, flood control, water management, conservation, environmental restoration, water storage, erosion control, soil conservation,

reclamation, or fish and wildlife habitat preservation, or allied purposes, including, but not limited to, ditching, diking and fencing;

g. Acts or uses detrimental to such aforementioned retention of land or water areas;

h. Dairy operation of any type.

i. Acts or uses within Grantee's regulatory jurisdiction which are detrimental to the preservation of any features or aspects of the Property having historical, architectural, archaeological, or cultural significance.

4. Passive Recreational Facilities. Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and that are not inconsistent with any Grantee rule, criteria, permit and the intent and purpose of this Conservation Easement. Passive recreational uses that are not contrary to the purpose of this Conservation Easement may be permitted upon written approval by the Grantee, except such written approval shall not be required for uses that are in accordance with the Management Plan.

a. The Grantor may conduct limited land clearing for the purpose of constructing such pervious facilities as docks, boardwalks or mulched walking trails. Grantor may submit plans for the construction of the proposed facilities to the Grantee for review and written approval prior to construction. In the event Grantor desires to construct or install any facilities on the Property which are not otherwise permitted under this Conservation Easement, such as non-pervious walkways, Grantor (i) shall submit plans for the construction or installation of such facilities to Grantee for review and approval, and (ii) must obtain Grantee's written approval thereof prior to commencing construction or installation of such facilities on the Property.

b. The construction and use of the approved passive recreational facilities shall be subject to the following conditions:

i. Grantor shall minimize and avoid, to the fullest extent possible, impact to any wetland or upland buffer areas within the Property and shall avoid materially diverting the direction of the natural surface water flow in such area;

ii. Such facilities and improvements shall be constructed and maintained utilizing Best Management Practices;

iii. Adequate containers for litter disposal shall be situated adjacent to such facilities and improvements and periodic inspections shall be instituted by the maintenance entity, to clean any litter from the area surrounding the facilities and improvements;

iv. This Conservation Easement shall not constitute permit authorization for the construction and operation of the passive recreational facilities. Any such work shall be subject to all applicable federal, state, Grantee or local permitting requirements.

5. Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep or maintenance of the Property.

6. Hazardous Materials/Pollutants: For purposes of this Conservation Easement, "Pollutant" shall mean any hazardous or toxic substance, material, or waste of any kind or any contaminant, pollutant, petroleum, petroleum product, or petroleum by-product as defined or regulated by environmental laws. "Disposal" and/or "Disposed" shall mean the release, storage, use, handling, discharge or disposal of such Pollutants in reportable quantities or prohibited amounts. "Environmental Laws" shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restriction. Neither the Grantor, nor or its agents, licensees or invitees, shall cause the Disposal of any Pollutants upon the Property. Grantor shall operate and occupy the Property in compliance with all Environmental Laws. Any Disposal of such materials, whether caused by Grantor or any other third party, shall be reported to the Grantee immediately upon the knowledge thereof by the Grantor. The Grantor shall be solely responsible for the entire cost of cleanup of any Pollutants which are disposed of or are otherwise discovered on the Property or emanate from the Property to adjacent lands as a result of the use of the Property or surrounding lands by the Grantor, or its agents, licensees or invitees. While this paragraph establishes contractual liability for the Grantor regarding pollution of the Property as provided herein, it does not alter or diminish any statutory or common law liability of the Grantor for such pollution. Notwithstanding anything contained herein to the contrary, nothing contained herein is intended to be construed as a waiver by Grantor of the limitations of its sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes.

7. Grantor shall maintain the property in as exotic-free a condition as practicable.

8. Each party shall be responsible for any costs it incurs in enforcing, judicially or otherwise, the terms, provisions and restrictions of this Conservation Easement.

9. Enforcement of the terms, provisions and restrictions of this Conservation Easement shall be at the discretion of Grantee, and any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a waiver of Grantee's rights hereunder.

10. Grantee will hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement except to another organization or public entity qualified to hold such interests under the applicable state laws.

11. 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.

12. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly delivered only 1) on the date delivered, if by personal delivery, or 2) if mailed by certified mail/return receipt request, then the date the return receipt is signed or delivery is refused or the mail is designated by the postal authorities as not deliverable, as the case may be, or 3) one day after mailing by any form of overnight mail service.

13. The terms, conditions, restrictions, provisions and purpose of this Conservation Easement shall be inserted by Grantor in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Property. Any future holder of the Grantor's interest in the Property shall be notified in writing by Grantor of this Conservation Easement.

14. This Conservation Easement may only be amended, altered, released or revoked by written agreement between the parties hereto or their heirs, assigns or successors-in-interest, which agreement shall be filed in the public records in Osceola County, Florida.

15. All the terms and restrictions herein contained run with the land and shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, personal representatives, heirs, successors, and assigns.

TO HAVE AND TO HOLD this Perpetual Conservation Easement the same together with all and singular the appurtenances thereunto belonging or in anywise incident or appertaining to the use, benefit and behoof of the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor has hereunto set its authorized hand and seal as of this date and year first above written.

**OSCEOLA COUNTY BOARD OF
COUNTY COMMISSIONERS**, a political
subdivision of the State of Florida

By: _____
Chairman

Attest:

Deputy Clerk

Approved as to form and correctness:

By: _____
County Attorney Date

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____, as Chairman of the Osceola County Board of County Commissioners, on behalf thereof. He is personally known to me.

Notary Public, State of Florida
Print Name: _____

My Commission Expires: _____

CITY OF KISSIMMEE, FLORIDA, a
municipal corporation of the State of Florida

Attest:

City Clerk

By: _____
Mayor-Commissioner

Date: _____

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by, _____ as Mayor-Commissioner of City of Kissimmee Board of Commissioners, on behalf thereof. She is personally known to me.

Notary Public, State of Florida
Print Name: _____

My Commission Expires: _____

Legal form approved by:

By: _____
City Attorney

Date: _____

SCHEDULE "A"
LEGAL DESCRIPTION