

DEED OF CONSERVATION EASEMENT

(pursuant to a Mitigation Agreement)

Prepared by: T. Andrew Zodrow, Esq.
Return to: Environmental Protection Commission
3629 Queen Palm Dr.
Tampa, Florida, 33619
Attn: Wetlands Management Division

- For recording purposes only -

THIS DEED OF CONSERVATION EASEMENT is given this _____ day of _____ 20__, by _____

_____ (name and address) (Grantor) to the ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY, whose address is 3629 Queen Palm Dr., Tampa, Florida 33619 (EPC or Grantee). As used herein, the term Grantor shall include any and all heirs, 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 assignee of Grantee.

WITNESSETH

WHEREAS, the Grantor is the sole owner in fee simple of certain lands situated in Hillsborough County, Florida, more specifically described in Exhibit "A" attached hereto and incorporated herein (Property);

WHEREAS, Grantor desires to construct _____ (Project) at a site in Hillsborough County, which is subject to the regulatory jurisdiction of the Grantee pursuant to the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended, and Chapter 1-11, Rules of the EPC;

WHEREAS, under the jurisdiction of the Approval and Mitigation Agreement (the "Mitigation Agreement") executed by the EPC Executive Director on _____ the Grantee authorizes certain activities which affect wetlands in Hillsborough County;

WHEREAS, the authorization requires that the Grantor adequately protect the environmental benefits provided by the impacted wetland under the EPC's jurisdiction through wetland mitigation; and

WHEREAS, Grantor, pursuant to Chapter 1-11.08, Rules of the EPC, grants this conservation easement as a condition of the issuance of the Mitigation Agreement to offset or

prevent adverse impacts to water quality and natural resources, including fish, wildlife, and wetland or other surface water functions.

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 Grantee 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 which are to be mitigated pursuant to the Mitigation Agreement shall be retained in the mitigated conditions required by the Mitigation Agreement. Furthermore, during the term of the Mitigation Agreement, the Grantor shall be required to comply with all of the terms and conditions of the Mitigation Agreement pertaining to the Property, including any required monitoring or maintenance activities. However, upon the Grantee's issuance of a Certificate of Completion for the mitigation located on the Property, all of the Grantor's obligations under the Mitigation Agreement shall terminate and Grantor shall no longer be required to conduct any monitoring or maintenance of the Property.

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

a. The right to take action to preserve and protect the environmental value of the Property, as set forth in paragraph 2.c., below;

b. 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 Grantor is complying with the covenants and prohibitions contained in this conservation easement; and

c. 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 Grantor to restore such areas or features of the Property that may be damaged by any Prohibited Uses.

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 Mitigation Agreement:

- a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- 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, including the removal, destruction, trimming or alteration of mangroves, except for any maintenance or removal of invasive exotic plant species in accordance with a plan approved by the EPC;
- d. Planting or seeding of plants that are outside its natural range or zone of dispersal and has or is able to form self-sustaining, expanding, and free-living populations in a natural community with which it has not previously associated;
- e. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;
- 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, fencing and use by farm animals for grazing. Any ditching, diking, or fencing is considered detrimental; and
- h. Acts or uses detrimental to such aforementioned retention of land or water areas in a natural state as described in paragraph Nos. 1 and 3a. through g. above.

4. Reserved Rights. 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 which are not inconsistent with any EPC rule, permit and the intent and purposes of this conservation easement. Entry into this Conservation Easement does not relieve Grantor of the need to comply with applicable federal, state or local laws, regulations or ordinances, and all applicable permits and orders issued under those laws, regulations or ordinances. Removal of exotic and nuisance plant species from wetlands and other surface waters requires authorization from the EPC.

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. Grantor shall take responsibility for any costs or liabilities related to the operation, upkeep or maintenance of the Property, if necessary to preserve and protect the environmental value of the Property. In addition Grantee shall have no responsibility for any costs or liabilities related to the operation, upkeep or maintenance of the Property.

7. Taxes. Grantor 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 Grantee with satisfactory evidence of payment upon request.

8. Liability. Grantee will assume all liability, up to the scope and limits provided in Florida Statutes §768.28, for any injury or damage to the person or property of third parties which may occur on the Property arising from the negligence of the Grantee. Neither Grantee nor any person or entity claiming by or through Grantee shall hold Grantor liable for any damage or injury to person or personal property which may occur on the Property, unless the damage or injury arose from the negligence of the Grantor. Furthermore, the Grantee shall indemnify and hold harmless Grantor up to the scope and limits provided in Florida Statutes §768.28, for all liability, any injury or damage to the person or property of third parties caused by the negligence of the Grantee. Likewise, Grantor shall assume all liability for any injury or damage to the person or property of third parties which may occur on the Property arising from the negligence of the Grantor. Furthermore, the Grantor shall indemnify and hold harmless Grantee for all liability, any injury or damage to the person or property of third parties arising out of the negligence of the Grantor.

9. Hazardous Waste. Grantor covenants and represents that to the best of its knowledge prior to its acquisition of the Property and that since its acquisition of the Property, 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.

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

11. Venue and Enforcement Costs. The terms and conditions of this Conservation Easement may be enforced by the Grantee by injunctive relief and other appropriate available remedies, and Grantor consents that venue for such enforcement actions shall lie exclusively in the circuit court of the Thirteenth Judicial Circuit, in Hillsborough County, Florida. If the Grantee prevails in an enforcement action, it shall be entitled to recover the 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 Mitigation Agreement. These remedies are in addition to any other remedy, fine or penalty which may be applicable under Chapter 84-446, Laws of Florida.

12. Assignment of Rights. 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 qualified to hold such interests under applicable state laws.

13. Recording in Land Records. Grantor shall record this conservation easement and any amendments hereto within thirty (30) days of execution of this easement in the Official Records of Hillsborough County, Florida. Grantor 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 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. Grantor shall insert the terms and restrictions of this conservation easement in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Property. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty days prior to the date of such transfer. The failure of Grantor 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 modification of the Mitigation Agreements as necessary and written agreement between the parties hereto or their assigns or successors-in-interest, which shall be filed in the public records in Hillsborough County.

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

20. Rights of SWFWMD, ACOE and DEP. In the event the Southwest Florida Water Management District (SWFWMD), Army Corps of Engineers (ACOE) and / or the Department of Environmental Protection (DEP) require the same or a substantially similar mitigation for the referenced wetland impacts, the aforementioned agency shall have all the rights of Grantee to enforce the terms of this easement.

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

Grantor hereby covenants with said Grantee that Grantor is 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 Grantor has 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 Grantor has executed this Conservation Easement on the day and year first above written.

Signed, sealed and delivered
in our presence as witnesses:

(GRANTOR)

Print Witness Name: _____
Date: _____

By: _____
Print Name: _____
Title: _____

Print Witness Name: _____
Date: _____

STATE OF FLORIDA
COUNTY OF _____

The Grantor's signature(s) on the foregoing Conservation Easement was (were) acknowledged before me this _____ day of _____, 20____, by _____ (owners). He/she is personally known to me or has produced _____ as identification, and who stated under oath that he was the person who signed.

Notary Public

Printed/Typed Name of Notary

Commission No. _____
Commission Expires _____

To be signed by Grantee EPC prior to recording:

Approved as to form by the Environmental
Protection Commission, Wetlands Management Division.

By: _____
Print Name: _____

CONSENT AND JOINDER OF MORTGAGEE

The undersigned, _____ [mortgagee], the mortgagee under that certain _____ [title of mortgage document] dated _____ and recorded at Official Records Book _____, page _____, of _____ County, Florida, [if any assignments, specify] hereby consents and joins in the foregoing Conservation Easement, and subordinates its mortgage lien encumbering all or any part of the Property (as described in the foregoing Conservation Easement) to the Conservation Easement.

IN WITNESS WHEREOF, this Consent and Joinder is executed by the undersigned this _____ day of _____, 20____.

Witnesses:

Mortgagee:

BY: _____

Name: _____

Name: _____

Title: _____

Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__, by _____, who did not take an oath.

Notary Public, State of Florida at Large.
My Commission Expires:

Commission No.

Personally known _____ OR produced identification _____. Identification produced _____.