

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	November 21, 2006	(X) Consent	() Regular
		() Workshop	() Public Hearing
Department			
Submitted By:	<u>Environmental Resources Management</u>		
Submitted For:	<u>Environmental Resources Management</u>		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve Grant Contract (Contract) with Florida Communities Trust (FCT) that specifies the State standards for acquisition which the County must meet in order to receive Florida Forever Revenue Bond proceeds, partially covering acquisition expenses for the Delaware Scrub Natural Area for an amount that is lesser of 50% of the total approved project costs or \$3,542,500.

B) authorize the County Administrator, or his designee, to execute all documents in connection with this grant on behalf of the County, provided that such documents do not change the scope of work or terms and conditions of the Contract.

Summary: The purchase of the Delaware Scrub Natural Area property (R2005-0927) from Bev Smith, Inc., was part of the County's Conservation Lands Acquisition Program and the Town of Jupiter's Open Space Preservation Program. Approval of this Contract is the first step necessary for State participation in cost sharing under the State's Florida Forever Grant Program. The Town is expected to approve and execute the Contract on November 21, 2006. The Contract requires the County and the Town to have followed standards for acquisition that are generally the same as those adhered to by the County for all of its conservation land acquisitions; approve and return the executed Contract to FCT by November 27, 2006; to submit to an audit; and to develop a Project Plan, including a management plan that will outline facility development, public use, and both natural and historic resources management for the Project Site. The Contract also requires the County and the Town of Jupiter as co-owners of the site to manage the Natural Area solely for the conservation, protection and enhancement of natural and historical resources and for passive, natural resource-based public outdoor recreation. The maximum amount of the grant award is the lesser of 50 % of the total approved project costs or \$3,542,500. The grant award will be shared by the County (\$1,806,675 or 51% of the actual grant award, whichever is less) and the Town of Jupiter (\$1,735,825, or 49% of the actual grant award, whichever is less). The plan must include specific public access facilities. Approval of the Project Plan by FCT is required before funds will be
(Continued on Page 3.)

Attachments:

1. Delaware Scrub Natural Area Location Map
2. Grant Contract

Recommended by:	<u>Richard E. Uebachs</u>	<u>11/9/06</u>
	Department Director	Date

Approved by:	<u>[Signature]</u>	<u>11/17/06</u>
	County Administrator	Date

I. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	20010	2011
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

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

Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact

There is no fiscal impact associated with this item. Any funds potentially received as a result of this action will be confirmed with a Grant Award Agreement following completion of the Project Plan and at that time staff will process an agenda item for the Budget Amendment.

C. Department Fiscal Review:

III. REVIEW COMMENTS

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

Elizabeth Bresh 11/15/06
OFMB
11/15/06
11-906
Jim J. Powell 11/16/06
Contract Dev. and Control
6.7.06 11/16/06

B. Legal Sufficiency:

James Butler 11/17/06
Assistant County Attorney

This Contract complies with our
contract review requirements.

C. Other Department Review:

Department Director

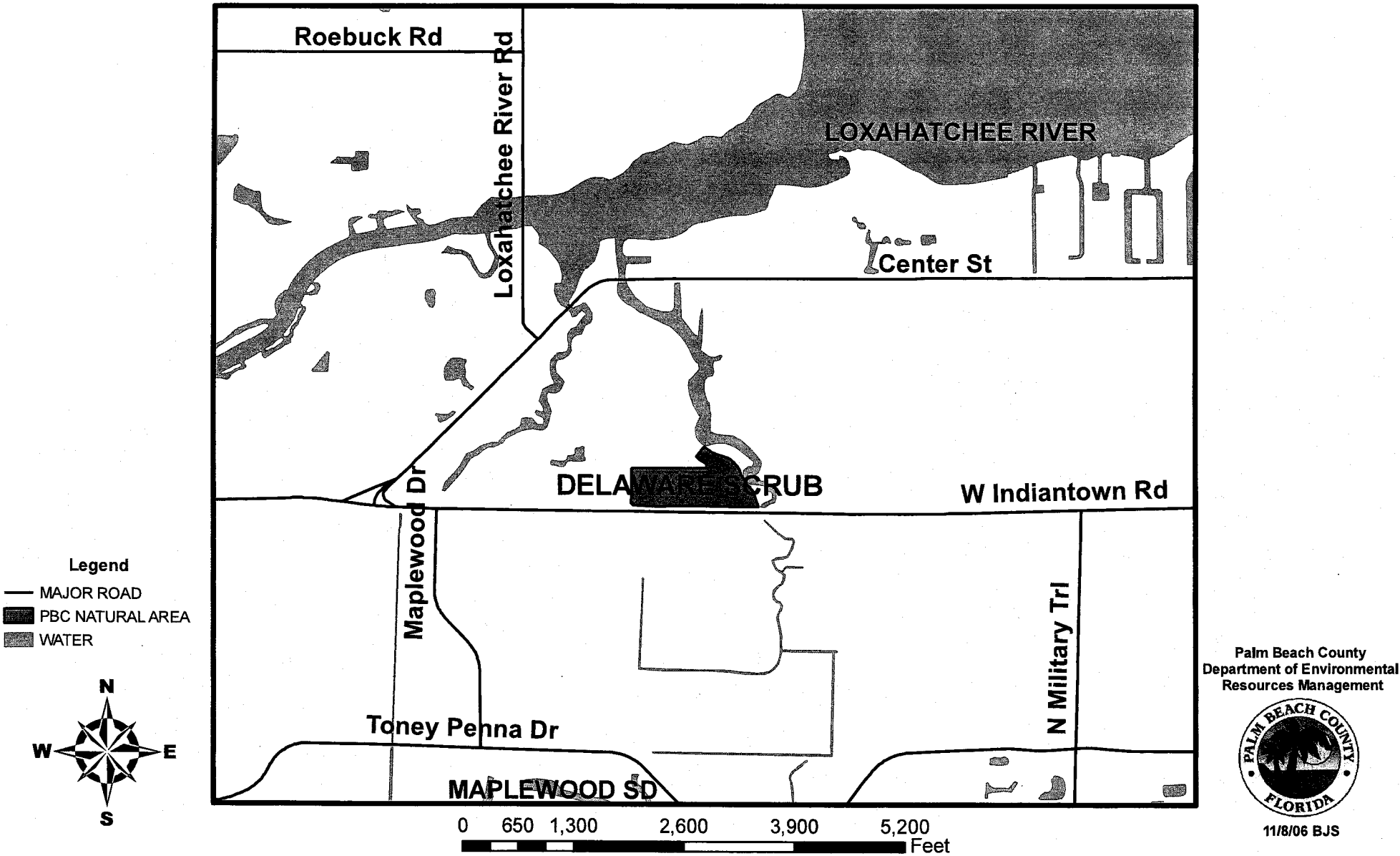
(Continued from page 1):

disbursed. If the Project Plan is approved within the time allotted by the Contract, the County and the Town will be asked to execute an Agreement and a Calculation. The Agreement will contain those terms and conditions of the Contract still applicable and the Calculation will detail the final approved acquisition costs and the share of those costs paid by the County and State, respectively. Due to the standard nature of Contract requirements and short turn-around allotted for Agreement and Calculation processing, authorization is requested for the County Administrator or his designee to execute all future documents in association with this grant. Execution of all documents in connection with this grant on behalf of the County may include but not be limited to the grant reconciliation statement, statements submitted as a part of the Project Plan, any addenda to this Contract, and the Grant Award Agreement (Agreement) and Grant Award Calculation (Calculation), provided that such documents do not change the scope of work or the terms and conditions of the Contract. District 1 (JMB)

Background and Justification: The Contract methodology was created by the State of Florida through the FCT program as a vehicle to ensure that the use of the Florida Forever bond proceeds and the lands acquired with these proceeds comply with applicable Florida law and federal income tax law and to otherwise implement provisions of Sections 259.105, 259.1051 and Chapter 380, Part III, Florida Statutes. The conditions and requirements of the Contract are standard to the FCT Grant Program and similar to those imposed on other natural areas for which the County has received State grant awards over the past ten (10) years. Specific public use facilities, including a fully accessible (paved) nature trail, hiking trail, parking facility, sidewalk from Indiantown Road to the site, bike parking stands, boardwalk and wildlife observation platform and interpretive kiosk, will be required. The Contract also requires the restoration and replanting of a 3-acre disturbed wetland area. Once approved by FCT, this Contract will govern all future activities on this project until completion of the Project Plan. Following completion of the Project Plan and prior to disbursement of the grant funds, the Agreement will need to be executed. The Agreement will restate the conditions that were placed on the Project Site at the time of initial grant approval. All such statements are contained in this Contract with the exception of statements that do not survive the reimbursement for the costs for the acquisition. A Calculation will also need to be executed. This document will detail the costs approved by FCT for inclusion as the grant award match and the exact amount of the grant award. The grant award may be less than \$ 3,542,500; however, it will not be greater than this amount. Any FCT grant award received for the Delaware Scrub Natural Area will be shared by the County (51%) and the Town (49%). State funding may be withdrawn if the FCT Governing Board does not approve the Project Plan for the site by June 1, 2007. Any requests for extensions beyond this date must be submitted as an addendum to the Contract and approved by the FCT Governing Board.

Joint title to the Delaware Scrub Natural Area is currently held by the County (51% undivided interest) and the Town (49% undivided interest) as it will continue to be after the FCT grant award funds are received.

ATTACHMENT 1
DELAWARE SCRUB NATURAL AREA LOCATION MAP



FCT Contract Number -CT-
FLORIDA COMMUNITIES TRUST
06-017-FF6
DELAWARE SCRUB NATURAL AREA
CSFA # 52002

GRANT CONTRACT

THIS AGREEMENT is entered into by and between the FLORIDA COMMUNITIES TRUST ("FCT"), a non-regulatory agency within the State of Florida Department of Community Affairs, and PALM BEACH COUNTY, a political subdivision of the State of Florida, and TOWN OF JUPITER, a local government of the State of Florida ("Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING FACTS:

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

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

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

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

WHEREAS, Rule 9K-7, Florida Administrative Code ("F.A.C.") sets forth the procedures for the evaluation and selection of lands proposed for acquisition and Rule 9K-8, F.A.C. sets forth the acquisition procedures;

WHEREAS, on September 14, 2006 the FCT Governing Board scored, ranked and selected projects to receive approval for funding;

WHEREAS, the Recipient's project, described in an application submitted for evaluation, was selected for funding in accordance with Rule 9K-7, F.A.C., and by executing this Agreement the Recipient reaffirms the representations made in its application;

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

WHEREAS, Rule 9K-7.003(5) F.A.C., recognizes real property owned by the Recipient and included in the application as part of the Project Site as an eligible source of Match, provided that the real property owned was acquired by the Recipient within 24 months prior to the application deadline for which the application was made. The date of this application deadline was May 10, 2006;

WHEREAS, the Recipient acquired fee simple title to the entire Project Site on May 23, 2005 (Insert date[s]) from Bev Smith Ford (Insert Seller name[s]);

WHEREAS, the Recipient will request disbursement of FCT Florida Forever Bond proceeds for the reimbursement of Project Costs expended by the Recipient for the acquisition of the Project Site; and

WHEREAS, the purpose of this Agreement is to set forth the conditions that must be satisfied by the Recipient prior to the disbursement of any FCT Florida Forever funds awarded, as well as the restrictions that are imposed on the Project Site subsequent to reimbursing the Recipient for Project Costs.

NOW THEREFORE, FCT and the Recipient mutually agree as follows:

I. PERIOD OF AGREEMENT

1. This Agreement shall begin upon the Recipient's project being selected for funding and shall end **June 1, 2007** ("Expiration Date"), unless extended as set forth below or unless terminated earlier in accordance with the provisions of Article XIII of this Agreement.

2. FCT may extend this Agreement beyond the Expiration Date if the Recipient demonstrates that significant progress is being made toward Project Plan approval or that extenuating circumstances warrant an extension of time. A request for an extension shall fully explain the reason for the delay and why the extension is necessary and shall be provided to FCT in accordance with paragraph V.1. prior to the Expiration Date. If the Recipient does not request an extension, or if a requested extension is not granted by FCT, the Recipient's award shall be rescinded and this Agreement shall terminate.

II. MODIFICATION OF AGREEMENT

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

III. DEADLINES

1. At least two original copies of this Agreement shall be executed by the Recipient and returned to the FCT office at 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-2100, as soon as possible and before **November 27, 2006**. If the Recipient requires more than one original document, the Recipient shall photocopy the number of additional copies needed and then execute each as an original document. Upon receipt of the signed Agreements, FCT shall execute the Agreements, retain one original copy and return all other copies that have been executed to the Recipient.

2. The Recipient and its representatives shall know of and adhere to all project deadlines and devise a method of monitoring the project. Deadlines stated in this Agreement, as well as deadlines associated with any FCT activity relating to the project, shall be strictly enforced. Failure to adhere to deadlines may result in delays in the project, allocation of time or resources to other recipients that respond timely or the termination of this Agreement by FCT.

3. The Recipient shall submit the documentation required by this Agreement to FCT as soon as possible so that the Project Costs may be reimbursed in an expeditious manner.

4. The Recipient shall provide a monthly status report to FCT of its progress towards reimbursement of the Project Costs.

5. The Recipient shall provide the appraisal(s) required by 9K-8.007, F.A.C. to FCT for review by a date not to exceed ninety (90) days after the Recipient's project is selected for funding. The appraisals shall be reviewed and, upon approval, the Maximum Approved Purchase Price ("MAPP"), as provided in Rule 9K-8.007(5) and (6), F.A.C., shall be determined.

IV. FUNDING PROVISIONS

1. The FCT Florida Forever award granted to the Recipient ("FCT Award") will in no event exceed the lesser of Fifty Percent (50%) of the final Project Costs, as defined in Rule 9K-7.002(29), F.A.C., or Three Million Five Hundred Forty Two Thousand Five Hundred Dollars And Zero Cents (\$3,542,500.00), unless FCT approves a different amount after determination of the MAPP.

The FCT Award is based on the Recipient's estimate of final Project Costs in its application, as well as the Limitation of Award provided in Rule 9K-7.003(3), F.A.C. and advertised in the Notice of Application. When disbursing the FCT Award, FCT shall recognize only those Project Costs consistent with the definition in Rule 9K-7.002(29), F.A.C. FCT shall participate in the land cost at

either the actual purchase price or the MAPP, whichever is less, multiplied by the percent stated in the above paragraph.

2. The FCT Governing Board selected the Recipient's application for funding in order to acquire the entire Project Site identified in the Application. FCT reserves the right to withdraw or adjust the FCT Award if the acreage that comprises the Project Site is reduced or the project design is changed so that the objectives of the acquisition cannot be achieved. FCT shall consider any request for Project Site boundary modification in accordance with the procedures set forth in Rule 9K-7.010, F.A.C.

3. The FCT Award shall be delivered either in the form of Project Costs prepaid by FCT to vendors or in the form of a State of Florida warrant to the Recipient. The FCT Award shall only be delivered after FCT approval of the Project Plan and Project Site acquisition terms. FCT shall prepare a grant reconciliation statement prior to the reimbursement that evidences the amount of Match provided by the Recipient, if any is required, and the amount of the FCT Award. Funds expended by FCT for Project Costs shall be recognized as part of FCT Award on the grant reconciliation statement.

4. If a Match is required, it shall be delivered in an approved form as provided in Rule 9K-7.002(22), F.A.C. If the value of Pre-acquired land, as defined by Rule 9K-7.002(28), F.A.C., or donated land is the source of the Match, the MAPP shall determine the value of the Match. Funds expended by the Recipient for Project Costs shall be recognized as part of the Match on the grant reconciliation statement.

5. By executing this Agreement, the Recipient affirms that it is ready, willing and able to provide a Match, if any is required.

6. FCT's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Florida Legislature, and is subject to any modification in accordance with Chapter 216, Fla. Stat. or the Florida Constitution.

V. NOTICE AND CONTACT

1. All notices provided under or pursuant to this Agreement shall be in writing and delivered either by hand delivery or first class, certified mail, return receipt requested, to:

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

2. All contact and correspondence from FCT to the Recipient shall be through the key contact. Recipient hereby notifies FCT that the following administrator, officer or employee is the authorized key contact on behalf of the Recipient for purposes of coordinating project activities for the duration of the project:

Name: Richard E. Walesky
Title: Director, Palm Beach County, Environmental Resources Management
Address: 2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411
Phone: 561/233-2400 Fax: 561/233-2414
E-mail: rwalesky@co.palm-beach.fl.us

3. The Recipient authorizes the administrator, employee, officer or representative named in this paragraph to execute all documents in connection with this project on behalf of the Recipient, including, but not limited to, the Grant Contract or any addenda thereto, grant reconciliation statement, statements submitted as a part of the Project Plan and Declaration of Restrictive Covenants.

Name: Addie L. Green, Chairperson,
or Robert Weisman, County Administrator,
or his designee
Title: See above
Address: 301 N. Olive Ave
West Palm Beach, FL 33402
Phone: 561/233-2400 Fax: 561/233/2414
Email: _____

4. In the event that different representatives or addresses are designated for either paragraph 2. or 3. above after execution of this Agreement, notice of the changes shall be rendered to FCT as provided in paragraph 1. above.

5. The Recipient hereby notifies FCT that the Recipient's Federal Employer Identification Number(s) is: Palm Beach County: 50-6000785; Town of Jupiter: 59-6033967

VI. PROJECT PLAN APPROVAL; PRE-CLOSING REQUIREMENTS

1. Prior to the final disbursement of the FCT Award, the Recipient shall submit to FCT and have approved a Project Plan that complies with Rule 9K-8.011, F.A.C. The Project Plan shall not be considered by FCT unless it is organized with a table of contents and includes all of the following documents to ensure that the interest of the State of Florida will be protected:

- a. Closing documents associated with the parcel(s):
- (1) A copy of the Purchase Agreement(s) for sale and purchase of the parcel(s) between the Recipient and Bev Smith Ford (Insert name[s] of Seller[s]).
 - (2) A copy of closing statements from Buyer(s) and Seller(s) for the purchase of the parcel(s).
 - (3) A copy of the recorded deed(s) evidencing conveyance of title to the parcel(s) to the Recipient.
 - (4) Certified survey(s) of the parcel(s) that meets the requirements of Rule 9K-8.006, F.A.C., and is dated within ninety (90) days of the date of acquisition of the parcel(s) by the Recipient.
 - (5) A copy of the title insurance policy(s) evidencing marketable title in Recipient to the parcel(s) and effective the date of acquisition of the parcel(s) by the Recipient, including a statement from the title insurer as to the minimum promulgated rate if premium was paid by Recipient, and all documents referenced in the title policy(s).
 - (6) Environmental site assessment(s) of the parcel(s) certified to the Recipient, which meets the standards and requirements of ASTM Practice E 1527, and with a date of certification within ninety (90) days of the date of acquisition of the parcel(s) by Recipient, together with the statement required by Rule 9K-8.012(4), F.A.C.
- b. A letter from FCT indicating approval of the Management Plan written in accordance with Rule 9K-7.011, F.A.C., and as described in Article VII below.
- c. A statement of the Project Costs.
- d. A statement of the amount of the award being requested from FCT.
- e. Supporting documentation that the conditions imposed as part of this Agreement have been satisfied.
- f. A signed statement by the Recipient that the Recipient is not aware of any pending criminal, civil or regulatory violations imposed on the Project Site by any governmental agency or body.

- g. A signed statement by the Recipient that all activities under this Agreement comply with all applicable local, state, regional and federal laws and regulations, including zoning ordinances and the applicable adopted and approved comprehensive plan.
- h. Additional documentation as may be requested by FCT to provide Reasonable Assurance, as set forth in paragraph VII.4. below.

2. FCT shall approve the terms under which the interest in land is acquired pursuant to Section 380.510(3), Fla. Stat. Such approval is deemed given when FCT approves the Project Plan containing a copy of the document(s) vesting title to the Project Site in the Recipient.

3. **All real property shall be obtained through a Voluntarily-Negotiated Transaction, as defined in Rule 9K-7.002(41). The use of or threat of condemnation is not considered a Voluntarily-Negotiated Transaction.**

4. All invoices for Project Costs, with proof of payment, shall be submitted to FCT and be in a detail sufficient for a proper audit thereof.

5. The Recipient may, and is strongly encouraged to, request a courtesy review of its Project Plan prior to its submission for approval.

6. Reimbursement for Project Costs shall not occur until after FCT approval of the Project Plan.

VII. MANAGEMENT PLAN; ANNUAL STEWARDSHIP REPORT

1. Prior to approval of the Project Plan and final disbursement of the FCT Award, the Recipient shall submit to FCT and have approved a Management Plan that complies with Rule 9K-7.011, F.A.C. and addresses the criteria and conditions set forth in Articles VII, VIII, IX, X, and XI herein.

2. The Management Plan explains how the Project Site will be managed to further the purposes of the project and meet the terms and conditions of this Agreement. The Management Plan shall include the following:

- a. An introduction containing the project name, location and other background information relevant to management.
- b. The stated purpose for acquiring the Project Site as proposed in the application and a prioritized list of management objectives.
- c. The identification of known natural resources including natural communities, listed plant and animal species, soil types, and surface and groundwater characteristics.

- d. A detailed description of all proposed uses including existing and proposed physical improvements and the impact on natural resources.
- e. A detailed description of proposed restoration or enhancement activities, if any, including the objective of the effort and the techniques to be used.
- f. A scaled site plan drawing showing the Project Site boundary, existing and proposed physical improvements and any natural resource restoration or enhancement areas.
- g. The identification and protection of known cultural or historical resources and a commitment to conduct surveys prior to any ground disturbing activity, if applicable.
- h. A description of proposed educational displays and programs to be offered, if applicable.
- i. A description of how the management will be coordinated with other agencies and public lands, if applicable.
- j. A schedule for implementing the development and management activities of the Management Plan.
- k. Cost estimates and funding sources to implement the Management Plan.

3. If the Recipient is not the proposed managing entity, the Management Plan shall include a signed agreement between the Recipient and the managing entity stating the managing entity's willingness to manage the site, the manner in which the site will be managed to further the purpose(s) of the project and the identification of the source of funding for management.

In the event that the Recipient is a partnership, the Recipient shall also provide FCT with the interlocal agreement that sets forth the relationship among the partners and the fiscal and management responsibilities and obligations incurred by each partner for the Project Site as a part of its Project Plan.

4. To ensure that future management funds will be available for the management of the site in perpetuity pursuant to Section 259.105 and Chapter 380, Part III, Fla. Stat., the Recipient(s) shall be required to provide FCT with Reasonable Assurance, pursuant to Rule 9K-7.002(32), F.A.C., that it has the financial resources, background, qualifications and competence to manage the Project Site in perpetuity in a reasonable and professional manner. Where the Recipient does not include at least one Local Government, FCT may require the Recipient to do one, or more, of the following: post a performance or other bond in an amount sufficient to ensure that the Project Site shall be reasonably and professionally managed in perpetuity; establish an endowment or other fund in an amount sufficient to ensure performance; provide a guaranty or pledge by the Local

Government, in whose jurisdiction the Project Site is located, which shall require the Local Government to take over the responsibility for management of the Project Site in the event the Recipient is unable to, and may require the Local Government to be a named co-signer on the Declaration of Restrictive Covenants; or provide such other assurances as the Governing Board may deem necessary to adequately protect the public interest.

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

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

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

VIII. SPECIAL MANAGEMENT CONDITIONS

In addition to the Management Plan conditions already described in this Agreement, which apply to all sites acquired with FCT funds, the Management Plan shall address the following conditions that are particular to the Project Site and result from either commitments made in the application that received scoring points or observations made by FCT staff during the site visit described in Rule 9K-7.009(1), F.A.C.:

1. Two or more resource-based outdoor recreational facilities, including a nature trail and wildlife observation platform, shall be provided. The facilities shall be developed in a manner that allows the general public reasonable access for observation and appreciation of the natural resources on the project site without causing harm to those resources.

2. A permanent recognition sign, a minimum size of 3' x 4', shall be maintained in the entrance area of the project site. The sign shall acknowledge that the project site was purchased with funds from the Florida Communities Trust Program and the Recipient.

3. Interpretive signage shall be provided to educate visitors about the natural environment or the history of the site.

4. At least 12 regularly scheduled and ongoing educational classes or programs that promote the protection of environmental resources shall be provided at the project site.

5. A survey of the natural communities and plant species on the project site shall be

conducted prior to the development of the project site. The survey shall be used during development of the site to ensure the protection, restoration, and preservation of the natural communities on the project site

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

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

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

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

10. Approximately 3 acres of disturbed wetlands shall be restored to a natural condition in terms of biological composition and ecological function. The invasive exotic vegetation will be removed and... the area replanted with native vegetation.

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

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

13. Prior to the commencement of any proposed development activities, measures will be taken to determine the presence of any archaeological sites. All planned activities involving known archaeological sites or potential site areas shall be closely coordinated with the Department of State, Division of Historic Resources in order to prevent the disturbance of significant sites.

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

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

IX. DECLARATION OF RESTRICTIVE COVENANTS REQUIREMENTS IMPOSED BY CHAPTER 259 AND CHAPTER 380, PART III, FLA. STAT.

1. Each parcel in the Project Site to which the Recipient acquires title shall be subject to a Declaration of Restrictive Covenants describing the parcel and containing such covenants and restrictions as are, at a minimum, sufficient to ensure that the use of the Project Site at all times complies with Sections 375.051 and 380.510, Fla. Stat.; Section 11(e), Article VII of the Florida Constitution; the applicable bond indenture under which the Bonds were issued; and any provision of the Internal Revenue Code or the regulations promulgated thereunder that pertain to tax exempt bonds. The Declaration of Restrictive Covenants shall contain clauses providing for the conveyance of title to the Project Site to the Board of Trustees of the Internal Improvement Trust Fund ("Trustees"), or a nonprofit environmental organization or government entity, upon failure to comply with any of the covenants and restrictions, as further described in paragraph 3. below.

2. The Declaration of Restrictive Covenants shall also restate the conditions that were placed on the Project Site at the time of project selection and initial grant approval. The Declaration of Restrictive Covenants shall be executed by FCT and the Recipient at the time of reimbursement of Project Costs and shall be recorded by the Recipient in the county(s) in which the Project Site is located.

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

X. GENERAL OBLIGATIONS OF THE RECIPIENT AS A CONDITION OF PROJECT FUNDING

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

2. If the existence of the Recipient terminates for any reason, title to the Project Site shall be conveyed to the Trustees unless FCT negotiates an agreement with another local government, nonprofit environmental organization, the Florida Division of Forestry, the Florida Fish and Wildlife Conservation Commission, the Department of Environmental Protection or a Water Management District who agrees to accept title and manage the Project Site.

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

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

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

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

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

- a. any sale or lease of any interest in the Project Site to a non-governmental person or organization;
- b. the operation of any concession on the Project Site by a non-governmental person or organization;
- c. any sales contract or option to buy or sell things attached to the Project Site to be severed from the Project Site with a non-governmental person or organization;

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

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

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

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

XII. RECORDKEEPING; AUDIT REQUIREMENTS

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

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

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

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

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

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

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

and

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

State of Florida Auditor General at the following address:

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

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

6. The Recipient shall retain all financial records, supporting documents, statistical records and any other documents pertinent to this Agreement for a period of five (5) years after the date of submission of the final expenditures report. However, if litigation or an audit has been initiated prior to the expiration of the five-year period, the records shall be retained until the litigation or audit findings have been resolved.

7. The Recipient shall have all audits completed in accordance with Section 215.97, Fla. Stat. performed by an independent certified public accountant ("IPA") who shall either be a certified public accountant or a public accountant licensed under Chapter 473, Fla. Stat. The IPA shall state that the audit complied with the applicable provisions noted above.

XIII. DEFAULT; REMEDIES; TERMINATION

1. If the necessary funds are not available to fund this Agreement as a result of action by the Florida Legislature or the Office of the Comptroller, or if any of the events below occur ("Events of Default"), all obligations on the part of FCT to make any further payment of funds hereunder shall, if FCT so elects, terminate and FCT may, at its option, exercise any of its remedies set forth herein, but FCT may make any payments or parts of payments after the happening of any Events of Default without thereby waving the right to exercise such remedies, and without becoming liable to make any further payment. The following constitute Events of Default:

- a. If any warranty or representation made by the Recipient in this Agreement, any previous agreement with FCT or in any document provided to FCT shall at any time be false or misleading in any respect, or if the Recipient shall fail to keep, observe or perform any of the terms or covenants contained in this Agreement or any previous agreement with FCT and has not cured such in timely fashion, or is unable or unwilling to meet its obligations thereunder;
- b. If any material adverse change shall occur in the financial condition of the Recipient at any time during the term of this Agreement from the financial condition revealed in any reports filed or to be filed with FCT, and the Recipient fails to cure said material adverse change within thirty (30) days from the date written notice is sent to the Recipient by FCT;
- c. If any reports or documents required by this Agreement have not been timely submitted to FCT or have been submitted with incorrect, incomplete or insufficient information; or

- d. If the Recipient fails to perform and complete in timely fashion any of its obligations under this Agreement.

2. Upon the happening of an Event of Default, FCT may, at its option, upon thirty (30) calendar days from the date written notice is sent to the Recipient by FCT and upon the Recipient's failure to timely cure, exercise any one or more of the following remedies, either concurrently or consecutively, and the pursuit of any one of the following remedies shall not preclude FCT from pursuing any other remedies contained herein or otherwise provided at law or in equity:

- a. Terminate this Agreement, provided the Recipient is given at least thirty (30) days prior written notice of such termination. The notice shall be effective when placed in the United States mail, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address set forth in paragraph V.2. herein;
- b. Commence an appropriate legal or equitable action to enforce performance of this Agreement;
- c. Withhold or suspend payment of all or any part of the FCT Award;
- d. Exercise any corrective or remedial actions, including, but not limited to, requesting additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance or issuing a written warning to advise that more serious measures may be taken if the situation is not corrected; or
- e. Exercise any other rights or remedies which may be otherwise available under law, including, but not limited to, those described in paragraph IX.3.

3. FCT may terminate this Agreement for cause upon written notice to the Recipient. Cause shall include, but is not limited to: fraud; lack of compliance with applicable rules, laws and regulations; failure to perform in a timely manner; failure to make significant progress toward Project Plan and Management Plan approval; and refusal by the Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Fla.Stat., as amended. Appraisals, and any other reports relating to value, offers and counteroffers are not available for public disclosure or inspection and are exempt from the provisions of Section 119.07(1), Fla. Stat. until a Purchase Agreement is executed by the Owner(s) and Recipient and conditionally accepted by FCT, or if no Purchase Agreement is executed, then as provided for in Sections 125.355(1)(a) and 166.045(1)(a), Fla. Stat.

4. FCT may terminate this Agreement when it determines, in its sole discretion, that the continuation of the Agreement would not produce beneficial results commensurate with the further expenditure of funds by providing the Recipient with thirty (30) calendar days prior written notice.

5. The Recipient may request termination of this Agreement before its Expiration Date by a written request fully describing the circumstances that compel the Recipient to terminate the project. A request for termination shall be provided to FCT in a manner described in paragraph V.1.

XIV. LEGAL AUTHORIZATION

1. The Recipient certifies with respect to this Agreement that it possesses the legal authority to receive funds to be provided under this Agreement and that, if applicable, its governing body has authorized, by resolution or otherwise, the execution and acceptance of this Agreement with all covenants and assurances contained herein. The Recipient also certifies that the undersigned possesses the authority to legally execute and bind the Recipient to the terms of this Agreement.

XV. STANDARD CONDITIONS

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

2. No waiver by FCT of any right or remedy granted hereunder or failure to insist on strict performance by the Recipient shall affect or extend or act as a waiver of any other right or remedy of FCT hereunder, or affect the subsequent exercise of the same right or remedy by FCT for any further or subsequent default by the Recipient. Any power of approval or disapproval granted to FCT under the terms of this Agreement shall survive the terms and life of this Agreement as a whole.

3. The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), if applicable, which prohibits discrimination by public and private entities on the basis of disability in the areas of employment, public accommodations, transportation, State and local government services, and in telecommunications.

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

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

This Agreement embodies the entire agreement between the parties.

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

ATTEST:

COUNTY:

PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Sharon R. Bock
Clerk & Comptroller

By: _____
Addie L. Greene, Chairperson

Date of Execution _____

Approved as to form
and legal sufficiency:

By: James Brako
James Brako
Assistant County Attorney

Approved as to terms and conditions:

By: Richard E. Walesky
Richard E. Walesky, Director
Environmental Resources Management

TOWN OF JUPITER, FLORIDA

By: _____
Karen J. Golonka, Mayor

Date: _____

Approved as to Form and Legal Sufficiency:

By: _____
Thomas J. Baird, Esq.

ATTEST:

By: _____
Sally M. Boylan, CMC
Town Clerk

(Town Seal)

FLORIDA COMMUNITIES TRUST

By: _____
Janice Browning
Division Director of Housing &
Community Development

Date: _____

Approved as to Form and Legality:

By: _____
Kristen L. Coons
Trust Counsel