

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: November 6, 2007

[X] Consent
[] Ordinance

☐ Regular
☐ Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: A) receive and file a fully executed Florida Communities Trust (FCT) grant contract for \$2,500,000 to fund the acquisition of the 1.10 acre waterfront Susan DuBois Kindt Estate; **and B) approve** Budget Amendment of \$2,500,000 within the Park Improvement Fund to establish a budget for the approved grant.

Summary: On July 11, 2006, the Board authorized submission of a Florida Communities Trust grant application for acquisition of the 1.10 acre waterfront Susan DuBois Kindt Estate (R2006-1315). The Board also authorized the County Administrator or his designee to execute the grant contract (FCT Contract Number 07-CT-1E-06-F6-A1-041) and other grant related forms if the grant was approved. This grant was approved, the grant contract has been fully executed, and is now being submitted to the Board to receive and file.

The \$2,500,000 grant will be matched with \$2,500,000 from the 2004 \$50 Million Waterfront Access and Preservation General Obligation Bond. As outlined in the grant contract, the grant award will be paid directly to the property seller at closing. The 1.10 acre waterfront Susan DuBois Kindt Estate is also known as Zekes Marina and is located on the Jupiter Inlet, directly west of Dubois Park. The acquisition of this property will be used to expand the park's western boundary. District 1 (AH)

Background and Justification: FCT is administered by the Florida Department of Community Affairs, and is a State land acquisition grant program that provides funding to local governments and eligible non-profit environmental organizations for acquisition of community-based parks, open space and greenways that further outdoor recreation and natural resource protection needs identified in local government comprehensive plans. Palm Beach County will not receive any revenue as the grant award is paid directly to the property seller at closing. The County will own 100% of the property.

This acquisition will provide visitors access to the four (4) day use docks, a water taxi landing site, a launch site for non-motorized vessels, saltwater fishing, and a picnic area with grills. Park benches along the waterfront will be installed for the enjoyment of the scenic views of the inlet and the historic Jupiter Lighthouse. Additional parking and bike racks will also be installed.

Attachments:

1. Grant Contract
2. Budget Amendment

Recommended by:

Department Director

10/16/07
Date

Approved by:

Assistant County Administrator

10/25/07

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2008 | 2009 | 2010 | 2011 | 2012 |
|-------------------------|--------------------|------------|------------|------------|------------|
| Capital Expenditures | <u>5,000,000</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> |
| Operating Costs | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> |
| External Revenues | <u>(2,500,000)</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> |
| Program Income (County) | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> |
| In-Kind Match (County) | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> |
| NET FISCAL IMPACT | <u>2,500,000</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> |

ADDITIONAL FTE

POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No X

Budget Account No.: Fund _____ Department _____ Unit _____
Object _____ Program N/A

B. Recommended Sources of Funds/Summary of Fiscal Impact:

| | | |
|---------------------------------|----------------------|--------------------|
| \$50M GO Waterfront Access bond | (3038-581-P605-6501) | \$2,500,000 |
| Florida Communities Trust grant | | <u>\$2,500,000</u> |
| | Total | \$5,000,000 |

The grantor remits payment directly to the property seller. (Page 4; Section IV, Item 4 of grant contract)

C. Departmental Fiscal Review: ckopelakis

III. REVIEW COMMENTS

A. OFMB Fiscal And/Or Contract Development and Control Comments:

John D. 10-23-07
OFMB
10/24/07
V O
10/19
10/24/07
Contract Development & Control
10/24/07

B. Legal Sufficiency:

Anne Delgant 10/25/07
Assistant County Attorney

C. Other Departmental Review:

REVISED 09/2003

ADM FORM 01

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

FCT Contract Number 07-CT- 1E-06-F6-A1-041
FLORIDA COMMUNITIES TRUST
06-041-FF6
THE SUSAN DUBOIS KINDT ESTATE
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 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 are selected for funding; 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 its acquisition with Bond proceeds. Since the entire Project Site has not yet been negotiated for acquisition, some elements of the project are not yet known such as the purchase price, other project costs, and the terms upon which an owner will voluntarily convey the property.

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 **October 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 24, 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 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 Site may be acquired in an expeditious manner.

4. If the Recipient is identified in paragraph V.4. below as the party responsible for all negotiation and acquisition activities, the Recipient shall provide a monthly status report to FCT of Project Site acquisition activities. The monthly report shall contain the dates that appraisals are ordered and due, as well as the dates that purchase agreements are sent to sellers and the status of each contract, as appropriate.

5. No later than **November 24, 2006**, the Recipient shall deliver to FCT a written statement from the Project Site property owner(s) evidencing that the owner(s) is willing to entertain an offer from the Recipient and FCT, if not previously provided in the Application. No acquisition activity shall be commenced prior to FCT receipt of this statement.

6. No later than **November 24, 2006**, the Recipient shall deliver to FCT the executed Confidentiality Agreement provided to the Recipient by FCT, pursuant to Rule 9K-8.008(3), F.A.C. No acquisition activity shall be commenced prior to FCT receipt of the executed Confidentiality Agreement.

7. The party named in paragraph V.4. below as the party responsible for all negotiation and acquisition activities shall provide the following:

- a. **Title report(s) and appraisal(s), as required by Rule 9K-8.007(1-4), F.A.C., for review by a date not to exceed one hundred twenty (120) days after the Recipient's project is selected for funding.** Prior to the delivery of awarded FCT funds, the appraisal(s) 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; and
- b. Purchase Agreement(s), as defined by Rule 9K-8.002(16), based on the Acquisition Plan, if applicable, to be approved by FCT and sent to the property owner(s) within forty-five (45) days of receipt of the appraisal review memo from FCT establishing the MAPP.

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 Two Million Five Hundred Thousand Dollars And Zero Cents (\$2,500,000.00) 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.

If the Project Site is comprised of multiple parcels and multiple owners, an Acquisition Plan, as defined in 9K-7.002(2), F.A.C., was required in the application. FCT reserves the right to withdraw or adjust the FCT Award if the priority parcel(s) or a significant portion of the Project Site identified in the Acquisition Plan cannot be acquired.

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 at the closing of the Project Site, payable to the Seller or the Seller's designated agent authorized by law to receive such payment, provided the Comptroller determines that such disbursement is consistent with good business practices and can be completed in a manner minimizing costs and risks to the State of Florida. If the Project Site is comprised of multiple parcels, FCT shall deliver at the closing of each parcel only the share of the FCT Award that corresponds to the parcel being closed. FCT shall prepare a grant reconciliation statement prior to the closing of the Project Site parcel 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 the 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 land is the source of the Match, the MAPP shall determine the value of the Match. If the Project Site is comprised of multiple parcels, the Recipient shall deliver at the closing of each parcel the share of the Match that corresponds to the parcel being closed. 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. If the Recipient is the local government having jurisdiction over the Project Site, and an action by the Recipient subsequent to the FCT Governing Board selection meeting results in a

governmentally derived higher Project Site land value due to an enhanced highest and best use, FCT acquisition activities shall be terminated unless the Seller agrees that the appraisal(s) will be based on the highest and best use of the Project Site on or before the FCT Governing Board selection meeting.

7. 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: Jean Matthews

Title: Senior Planner, Parks & Recreation Department

Address: 2700 6th Avenue South
Lake Worth, FL 33461

Phone: (561) 966-6652 Fax: (561) 963-6747

E-mail: jmatthew@phcgov.com

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, purchase agreement(s) for the property, grant reconciliation statement, closing documents, statements submitted as a part of the Project Plan and Declaration of Restrictive Covenants.

Name: Dennis Eshleman

Title: Director, Parks & Recreation Department

Address: 2700 6th Avenue South
Lake Worth, FL 33461

Phone: (561) 966-6652 Fax: (561) 963-6747

Email: Deshlema@pbcgov.com

4. If the Project Site consists of five or fewer ownerships, as reflected on the Acquisition Plan, either FCT or the Recipient may act as the party responsible for all negotiation and acquisition activities. If the Project Site consists of six or more ownerships, as reflected on the Acquisition Plan, the Recipient shall act as the party responsible for all negotiation and acquisition activities. The Recipient hereby notifies FCT that Elect FCT [Note: *Elect FCT or Recipient*] will be the party responsible for all negotiation and acquisition activities. If the Recipient is named herein and represented by an agent, the Recipient hereby notifies FCT that the Recipient's agent is:

Name: N/A

Title: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

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

6. The Recipient hereby notifies FCT that the Recipient's Federal Employer Identification Number(s) is 59-6000-785.

VI. PROJECT PLAN APPROVAL; PRE-CLOSING REQUIREMENTS

1. Prior to FCT approval of the signed purchase agreement(s), closing(s) of the real estate transaction(s) to acquire the Project Site and 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. A purchase agreement, in a form previously approved by FCT staff, fully executed by both the Seller and the Recipient, that is based on an appraisal(s) approved by FCT and consistent with the requirements of Rule Chapter 9K-8, 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 and executes the purchase agreement for acquisition of the Project Site, further described in paragraph VI.1.a. above.

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. Title to the Project Site shall be titled in the Recipient, unless the Recipient specifically requests that title shall permanently vest in the Board of Trustees of the Internal Improvement Trust Fund ("Trustees"). Such request shall be subject to the approval of FCT and the Trustees. The Recipient hereby elects that title to the Project Site shall be vested in Palm Beach County Board County Commissioners [Note: Insert either the name of the Recipient or Board of Trustees of Internal Improvement Trust Fund.] If the Recipient elects that title shall vest in the Trustees, then all acquisition activities shall be administered by the Division of State Lands as specified in Section 253.025, Fla. Stat. and Rule 18-1, F.A.C. FCT signature of this Agreement shall constitute approval of this election.

7. The transfer of title to the Recipient for the Project Site shall not occur until the requirements for the acquisition of lands, as specified in Section 380.507(11), Fla. Stat. and Rule Chapter 9K-8, F.A.C., have been fully complied with by the Recipient and FCT, FCT has approved the Project Plan and the Recipient has complied with all Purchase Agreement requirements.

8. The deed transferring title of the Project Site to the Recipient shall set for the executory interest of the Board of Trustees of the Internal Improvement Trust Fund.

VII. MANAGEMENT PLAN; ANNUAL STEWARDSHIP REPORT

1. Prior to approval of the Project Plan, signature of the purchase agreement(s), closing(s) of the real estate transaction(s) 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. The Recipient is strongly urged to coordinate with FCT staff in order to ensure that FCT approval of the Management Plan occurs prior to the closing date of the real estate transaction(s) associated with the Project Site and the disbursement of the FCT Award.

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 representations 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 boat launch and picnic shelter, 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 and/or historic resources shall be provided at the project site.

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

6. 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.

7. 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.

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

9. 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.

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

11. A protection plan shall be developed and implemented, in conjunction with the Division of Historic Resources, for the protection of known historical and archaeological resources located on the project site. This plan shall include measures to stabilize disturbed sites. Information on significant historical and archaeological sites shall be provided to the Division of Historic Resources for the purpose of updating the Florida Master Site File.

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

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

14. The development and management of the project site shall be coordinated with the agencies developing and managing the Town of Jupiter's Bicycle Master Plan and Riverwalk trail, to ensure the project site is managed as part of a linked trail system.

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

06-041-FF6

Oct. 24, 2006

Joint Acquisition

bonds. The Declaration of Restrictive Covenants shall contain clauses providing for the conveyance of title to the Project Site to the 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 the closing of the Project Site 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 acquisition of the Project Site, 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 Project Site's acquisition.

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 herein, 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 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) financial 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

forth in

when placed in the United States mail, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address set paragraph V.2. herein;

written
situation is

- 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 warning to advise that more serious measures may be taken if the 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.

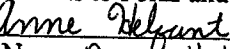
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

PALM BEACH COUNTY

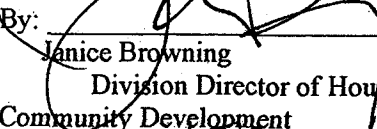
By: 
Print Name: Dennis Eshleman
Title: Director, Parks & Recreation

Date: 11/14/06

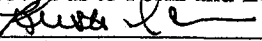
Approved as to Form and Legality:

By: 
Print Name: Anne Helfant

FLORIDA COMMUNITIES TRUST

By: 
Janice Browning
Division Director of Housing &
Community Development
Date: 12/5/06

Approved as to Form and Legality:

By: 
Kristen L. Coons
Trust Counsel

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET AMENDMENT

BGRV 581 101107*120
BGEX 581 101107*1394

| | | FUND 3600 - PARK IMPROVEMENT | | | | ADJUSTED BUDGET | EXPENDED/ ENCUMBERED 10/11/07 | REMAINING BALANCE |
|--|-------------------------------|------------------------------|-------------------|-----------|----------|----------------------------------|-------------------------------------|----------------------|
| ACCOUNT NUMBER | ACCOUNT NAME | ORIGINAL BUDGET | CURRENT BUDGET | INCREASE | DECREASE | | | |
| | | | | | | | | |
| REVENUES | | | | | | | | |
| 3600-581-P605-3407 | State Grant Capital-Cult/Recr | 0 | 0 | 2,500,000 | 0 | 2,500,000 | | 2,500,000 |
| TOTAL RECEIPTS & BALANCES | | 15,440,494 | 17,142,307 | 2,500,000 | 0 | 19,642,307 | | |
| APPROPRIATIONS | | | | | | | | |
| 3600-581-P605-6501 | Land - Cip | 0 | 0 | 2,500,000 | 0 | 2,500,000 | | 2,500,000 |
| TOTAL APPROPRIATIONS & EXPENDITURES | | 15,440,494 | 17,142,307 | 2,500,000 | | 19,642,307 | | |
| | | Signatures | | Date | | By Board of County Commissioners | | |

Signatures

Date

By Board of County Commissioners
At Meeting of
November 6, 2007
Deputy Clerk to the Court

10-16-07

Parks and Recreation Department
INITIATING DEPARTMENT/DIVISION

Administration/Budget Department Approval

OFMB Department - Posted