



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	20 <u>10</u>	20 <u>11</u>	20 <u>12</u>	20 <u>13</u>	20 <u>14</u>
Capital Expenditures	---	---	---	---	---
Operating Costs	---	---	---	---	---
External Revenues	---	---	---	---	---
Program Income (County)	---	---	---	---	---
In-Kind Match (County)	---	---	---	---	---
NET FISCAL IMPACT	* See below	---	---	---	---

# ADDITIONAL FTE POSITIONS (Cumulative) \_\_\_\_\_

Is Item Included In Current Budget? Yes \_\_\_\_\_ No X  
 Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_

Reporting Category

B. \* Recommended Sources of Funds/Summary of Fiscal Impact: There is no direct fiscal impact on PZ&B through the approval of the conservation easement forms.

C. Departmental Fiscal Review: Pat D'Agostino

**III. REVIEW COMMENTS**

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

Janine Oul 11/16/09 Dr. J. Jaworski 11/18/09  
 OFMB Contract Dev. and Control  
 11/5/09 11/14/09

**B. Legal Sufficiency:**

R. J. Jal 11/19/09  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

This Instrument was prepared by,  
Record and return to:

Recordation Stamp

Name \_\_\_\_\_

Address \_\_\_\_\_

## SFWMD CONSERVATION EASEMENT

This Conservation Easement ("Easement") is given this \_\_\_\_\_ day of \_\_\_\_\_, 20XX, by South Florida Water Management District, with a mailing address of 3301 Gun Club Road, Florida 33406 ("Grantor") to Palm Beach County, a political subdivision of the State of Florida, 301 North Olive Avenue, Suite 601, West Palm Beach, Florida 33401 ("Grantee"). The term "Grantor" shall include any successor or assign of Grantor and all subsequent owners of the Property, and the term "Grantee" shall include any successor or assign of Grantee.

### WITNESSETH

WHEREAS, Grantor is the owner of that certain real property situated in Palm Beach County, Florida, being \_\_\_\_\_ acres more or less, and specifically described in attached Exhibit "A" (the "Property"); and

WHEREAS, Grantor has agreed to allow the Property to be designated a Preservation Area pursuant to Article 3, Chapter E, Section 2.F.3 of the Palm Beach County Unified Land Development Code (the "Code"); and

WHEREAS, such designation of the Property as a Preservation Area is in connection with and on behalf of development of the project known as XXXX (the "Project") and is required in order for the Project to meet the AGR PUD 60/40 Option criteria as stated in the Code, Future Land Use Element Objective 1.5 of the Palm Beach County Comprehensive Plan ("the Comp Plan"), and Resolution No. R-XXXX (the "Resolution") Condition of Approval XXXX.

NOW, THEREFORE, in consideration of the above, and the mutual covenants, terms, conditions, and restrictions stated herein, Grantor hereby grants, conveys, creates, and establishes a conservation easement under Article 3, Chapter E, Section 2.F.3.h.2 of the Code and Chapter 704, F.S. to, for, and in favor of Grantee upon the Property of the nature and character and to the extent hereinafter set forth, which shall run with the land and be binding on Grantor, and shall remain in full force and effect forever.

1. Purpose. The purpose of this Easement is to support, preserve and perpetuate bona fide agricultural and open space uses of the Property, and to preserve any environmentally significant wetland habitats located on the Property, and to permit projects and uses contemplated under Section 2 below. Grantor in no way guarantees that any specific use of the Property will continue in perpetuity; just that the Property will be utilized in accordance with the provisions of this Easement.

2. Permitted Uses. Grantor may use the Property for:

- a. As a Water Preserve Area if designated by the South Florida Water Management District, or to serve uses for water resource, water management, wetland preservation, water storage, water supply, water recharge, aquifer recharge, water quality, environmental protection, or environmental restoration, including but not limited to projects of the South Florida Water Management District authorized under Chapter 373, F.S. and facilities and works related thereto including but not limited to:
  1. The Everglades Construction Project pursuant to section 373.4592, F.S. as it may be amended;
  2. A project to be undertaken under the Comprehensive Everglades Restoration Plan as generally described in the Central and South Florida Project Comprehensive Review Study-Final Integrated Feasibility report and Programmatic Environmental Impact Statement, dated April 1999;
  3. An everglades watershed restoration project to be undertaken unrelated to the Comprehensive Everglades Restoration Plan;
- b. Crop production, pasture, equestrian activities, wholesale or retail nursery operation or fallow land;
- c. Construction and maintenance of structures essential to the uses listed in subsection 2b., above, such as barns, stables, pumps, and pump houses, but specifically excluding agricultural support structures such as processing facilities and packing plants, which are prohibited;
- d. Maintenance and occupation of security, caretaker, farm worker or grooms quarters, or other residential structure provided that the quarters or structure is used solely for one of the purposes listed under Table 3.E.1 B-10 of the Code, any applicable special permit is obtained for such use, and requisite density exists on the Property for such use;

- e. A Water Preserve Area if designated by the South Florida Water Management District ("SFWMD"), or for regional water management purposes as certified by either Lake Worth Drainage District or SFWMD, or for water management purposes not directly related to the Project if approved by the Palm Beach County Department of Environmental Resources Management ("ERM") and managed for environmental resource values;
  - f. Wetland restoration and maintenance, or bona fide agriculture as defined by the Code; and
  - g. Those other activities authorized within a Preservation Area under Table 3.E.1. B-10 of the Code and consistent with applicable provisions of the Comp Plan.
3. Prohibited Uses. Any use of or on the Property that is not specifically listed or included in Section 2, above, and that is inconsistent with agricultural, environmentally sensitive wetlands, or open space preservation is prohibited by this Easement.
4. Rights of Grantee. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:
- a. To enter upon the Property at reasonable times, at Grantee's sole risk, in order to monitor Grantor's compliance with, and otherwise enforce the terms of this Easement provided that such entry shall be upon reasonable notice to Grantor and shall not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor; and
  - b. To enjoin any activity on or use of the Property that is inconsistent with this Easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.
  - c. Grantee hereby releases Grantor from and against injury to persons or property, and shall indemnify, to the extent provided by law without waiver of sovereign immunity under section 786.28, F.S., Grantor from and against injury to Grantee's employees or agents resulting from such entry.
5. No Recourse to Development Area. Grantor acknowledges and agrees that the Property constitutes the Preservation Area for the Project approved under the Resolution. Grantee acknowledges and agrees that, notwithstanding anything to the contrary, in the event of any violation or threatened violation of any of the terms of this Easement, Grantee shall have no recourse or remedy against the development area of the AGR-PUD approved under the Resolution (the "Development Area"), and Grantee's sole remedy or recourse for any such violation or threatened violation of this Easement shall be against Grantor and the Property and not the Development Area.
6. No Recourse to Preservation Area. Grantee acknowledges and agrees that the Property constitutes the Preservation Area for the Project approved under the Resolution. Grantee acknowledges and agrees that, notwithstanding anything to the contrary, in the event that the Development Area becomes in violation, or there is a threatened violation, of any applicable approvals for the Project, the Grantor shall have no liability whatsoever, and Grantee's sole remedy or recourse for any such violation or threatened violation shall be against the owner of the Development Area and not against the Grantor in the capacity as Grantor of this easement for the Preserve Property.
7. Wetlands (if applicable). Grantor shall have the right to impact jurisdictional wetlands in connection with activities conducted on the Property by Grantor identified under subparagraph 2.a. above. Subject to the right of Grantor to impact wetlands as provided in the previous sentence, Grantor shall otherwise use reasonable efforts to preserve and maintain the wetlands.
8. Access. No right of access by the general public is conveyed or restricted by this Easement.
9. Operation and Upkeep. Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep or maintenance of the Property.
10. Enforcement. Enforcement of the terms, conditions, and restrictions of this Easement shall be at the reasonable discretion of Grantee and any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a waiver of Grantee's rights hereunder. No third party shall have the right to enforce this Easement.
11. Cost and Liabilities. Grantor's liability for torts hereunder shall be subject to the limitations set forth in section 768.28 F.S., the Constitution of the State of Florida and any other applicable laws, and nothing contained in this Easement shall be construed as a waiver by Grantor of sovereign immunity under section 768.28, F.S.
12. Construction. The parties expressly acknowledge and agree that this Easement is the result of mutual arms-length negotiations, and that this Easement shall not be construed more strongly against either party regardless of who was responsible for preparing, drafting or transcribing the Easement.



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

IN WITNESS WHEREOF, Grantor has executed this Conservation Easement this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

GRANTOR:

SOUTH FLORIDA WATER MANAGEMENR DISTRICT, BY ITS GOVERNING BOARD

[SEAL]

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman Secretary/District Clerk

Legal Form Approved By:

\_\_\_\_\_  
Assistant County Attorney

\_\_\_\_\_  
Date

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_ and \_\_\_\_\_ as Chairman of the Governing Board and Secretary/District Clerk respectively, of the South Florida Water Management District, a Public Corporation of the State of Florida, on behalf of the South Florida Water Management District. They are personally known to me or have produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name of Notary Public)

**EXHIBIT "A"**

(insert preserve name)

1. Insert legal description.
2. Insert overall location map as to where the preserve is located in the Ag. Reserve.
3. Insert a map of the preserve area with boundaries of conservation easement.