

**AMENDMENT
TO
AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
THE LESTER FAMILY INVESTMENTS, L.P. ET AL.
FOR
WETLAND MITIGATION**

THIS AMENDMENT TO THE AGREEMENT is made and entered into as of this ____ day of _____, 2011, by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners ("County") and Lester Family Investments L.P., Richard Thall, Robert Thall, Peter L. Briger, Paul H. Briger, and the David Minkin Florida Realty Trust dated December 12, 1996 ("Lester"), both being hereinafter referred to collectively as "the parties".

WITNESSETH

WHEREAS, on April 6, 2010, the parties entered into an Agreement (R-2010-0541) for wetland mitigation related to the project known as Scripps Florida Phase II ("Project"); and

WHEREAS, after the parties entered into the Agreement, the United States Army Corps of Engineers ("USACE") notified that parties that the County must solely apply for the federal permit for the Project; and

WHEREAS, the County has solely applied to USACE for a federal permit for the Project, and the permit is expected to be issued in summer of 2011; and

WHEREAS, it is anticipated that the County will be required to complete 23.23 functional units of mitigation under the USACE permit; and

WHEREAS, the parties agree that Lester is responsible for 17.50 of the 23.23 functional units of mitigation anticipated to be required under the USACE permit; and

WHEREAS, the County has identified land within the Pine Glades Mitigation Area ("PGMA") where sufficient mitigation can be performed to satisfy Lester's mitigation obligations under both USACE permit no. SAJ-2009-1720 and SFWMD permit no. 50-00610-P; and

WHEREAS, the County is willing to perform mitigation for Lester in accordance with the terms and conditions of the Agreement as herein amended; and

WHEREAS, the parties agree that once the County completes the offsite mitigation required under the USACE permit and the USACE provides notice that the offsite mitigation requirement has been fulfilled, Lester shall apply to the USACE to have the USACE permit transferred to Lester.

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

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The parties agree that despite the fact that the County is currently the sole permittee under USACE permit no. SAJ-2009-1720, the County's only responsibility under USACE permit no. SAJ-2009-1720 is to complete what is referred to in the permit as the offsite mitigation at PGMA. Lester is solely responsible for fulfilling all other terms and conditions of USACE permit no. SAJ-2009-1720, including but not limited to timely purchasing the required mitigation credits from the Loxahatchee Mitigation Bank, timely performing the required onsite compensatory mitigation, timely recording a conservation easement over the onsite mitigation parcel and buffer area, and otherwise complying with the permit, provided, however, the County shall remain responsible for compliance with permit requirements, if any, applicable to property owned by the County within the Project.
3. As soon as the County successfully completes construction of the offsite mitigation work required by USACE permit no. SAJ-2009-1720, less any required monitoring, Lester shall immediately apply to USACE to have the permit transferred into Lester's name and shall diligently pursue said modification. Upon transfer of the permit, the permit shall become the sole responsibility of Lester.

4. Paragraph 2 of the Agreement is deleted in its entirety and replaced with the following:

Purpose of this Agreement. The purpose of this Agreement is to set forth the County's agreement to perform the equivalent of 21.17 functional units of mitigation to satisfy Lester's offsite wetland mitigation obligations under SFWMD permit no. 50-00610-P and 17.50 functional units of mitigation to satisfy Lester's offsite wetland mitigation obligations under USACE permit no. SAJ-2009-1720 and for Lester to compensate the County for such offsite mitigation as specified herein. This Agreement also sets forth Lester's responsibilities under USACE permit no. SAJ-2009-1720 and Lester's agreement to transfer the permit into its name upon the County's completion of the offsite mitigation.

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

The parties acknowledge and agree under SFWMD permit no. 50-00610-P Lester is responsible for 21.17 functional units of mitigation. USACE permit no. SAJ-2009-1720 has not yet been issued and the mitigation requirements under USACE permit have not yet been officially

determined by the USACE. The parties estimate that Lester will be responsible for 17.50 functional units of mitigation under USACE permit no. SAJ-2009-1720.

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

Lester agrees to pay the County a total of One Million Eight Hundred and Twenty-Five Thousand Nine Hundred and Twelve Dollars and Fifty Cents for (\$1,825,912.50)(hereinafter "Total Mitigation Costs") for 21.17 functional units of mitigation (which includes the 21.17 functional units of mitigation required under SFWMD permit no. 50-00610-P and the 17.50 functional units of mitigation required under USACE permit no. SAJ-2009-1720), which shall be paid to the County in three installment payments in the amount of Six Hundred and Eight Thousand Six Hundred and Thirty Seven Dollars and Fifty Cents (\$608,637.50).

7. Paragraph 7 of the Agreement is deleted in its entirety and replaced with the following:

The County shall be solely responsible for performing whatever offsite mitigation activities are required at PGMA under SFWMD permit no. 50-00610-P and USACE permit no. SAJ-2009-1720 to provide Lester with the appropriate functional units of mitigation. Lester's only responsibility for such offsite mitigation shall be to compensate the County for the Total Mitigation Costs as described in this Agreement.

8. Paragraph 8 of the Agreement is deleted in its entirety and replaced with the following:

Lester shall be responsible for fulfilling all responsibilities and obligations under SFWMD permit no. 50-00610-P and USACE permit no. SAJ-2009-1720 other than those specifically reserved for the County as set forth in this Agreement.

9. Paragraph 12 of the Agreement is deleted in its entirety and replaced with the following:

Term and Effective Date. This Agreement shall commence upon execution by both parties and shall continue in effect and remain binding on the parties until such time as the County has successfully completed the mitigation required under SFWMD permit no. 50-00610-P and USACE permit no. SAJ-2009-1720, Lester has paid the County all amounts due under this Agreement, and USACE permit no. SAJ-2009-1720 has been transferred into the name of Lester.

10. Paragraph 13 of the Agreement is deleted in its entirety and replaced with the following:

Default & Termination. If Lester fails to properly complete any term or condition of USACE permit no. SAJ-2009-1720 (other than the offsite mitigation at PGMA) while the permit is in the County's name, Lester shall be deemed in default of this Agreement and shall be solely responsible for any and all remedial mitigation, fines and penalties imposed by USACE and any and all costs and attorneys fees incurred by the County as a result of Lester's failure to comply with the permit. In the event of such default, Lester shall cooperate with the County to resolve

the violation as quickly as possible and shall defend and hold the County harmless in any and all manner of claims, actions, or lawsuits, whatsoever, in law or in equity, resulting from Lester's violation of said permit terms and conditions.

Lester shall be deemed in default of this Agreement if it fails to make timely payment to the County of the sums required to be paid as set forth in Paragraphs 4 and 5 of the April 6, 2010 Agreement unless it cures the default within thirty (30) days after written notice from the County that it is in default with respect to such payment. If Lester fails to correct the default within such time, unless otherwise agreed by the parties, the County may terminate this Agreement and withdraw its consent for the use of PGMA as mitigation for the Project and/or bring an action for such default.

The County shall not be deemed in breach of this Agreement unless its failure to perform mitigation activities required by SFWMD permit no. 50-00610-P and USACE permit no. SAJ-2009-1720 results in the revocation of credit for any or all of the functional units of mitigation provided by the County under this Agreement. If the County's failure, neglect or refusal to perform the mitigation activities required under SFWMD permit no. 50-00610-P and USACE permit no. SAJ-2009-1720 results in SFWMD or USACE revoking the credit for any or all of the functional units of mitigation to be provided by the County under this Agreement, Lester shall have the right to bring an action for breach of this Agreement by giving the County written notice of the deficiency and Lester's intent to bring an action for breach as provided herein. The County shall have thirty (30) days from receipt of notice to correct the stated deficiency. If the County fails to correct the deficiency within such time, unless otherwise agreed by the parties, Lester may take such further action as it deems appropriate including, without limitation, an action to recover damages occasioned by such breach. Notwithstanding the foregoing, the damages recoverable by Lester for any such breach shall be limited to the cost of any replacement mitigation credits needed to fulfill its obligation to provide functional units of mitigation under SFWMD permit no. 50-00610-P and USACE permit no. SAJ-2009-1720. In the event of revocation of credit by SFWMD or USACE for less than all of the functional units of mitigation provided by the County herein, this Agreement shall still be effective as to the functional units of mitigation provided by the County, and Lester shall pay the County for such credits in accordance with this Agreement.

11. Paragraph 21 of the Agreement is deleted in its entirety and replaced with the following:

Assignment. If Lester should sell the property to which SFWMD permit no. 50-00610-P and USACE permit no. SAJ-2009-1720 relate it must assign this Agreement to the new purchaser(s) upon transfer of the property.

12. Terms and Definitions.

“Agreement” shall mean the Agreement entered into by the parties on April 6, 2010 and all amendments thereto.

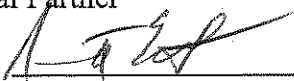
“Lester” shall mean Lester Family Investments L.P., Richard Thall, Robert Thall, Peter L. Briger, Paul H. Briger, and the David Minkin Florida Realty Trust dated December 12, 1996 and any Assignees to the Agreement approved by the County.

13. All other provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day set forth on the first page of this Agreement.

THE LESTER FAMILY INVESTMENTS L.P., a
Delaware limited partnership

By: PHL Financial Consulting Co., Inc., as
General Partner

By: 

(Signature)

Prescott Lester

(Print Signatory's Name)

Its: President

Richard Thall

Robert Thall

Peter L. Briger

Paul H. Briger

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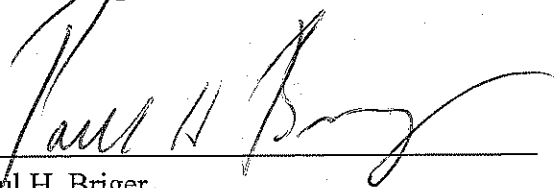
(Print Signatory's Name)

Its: _____

Richard Thall

Robert Thall

Peter L. Briger



Paul H. Briger

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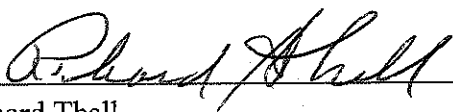
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(Signature)

(Print Signatory's Name)

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Robert Thall

Peter L. Briger

Paul H. Briger

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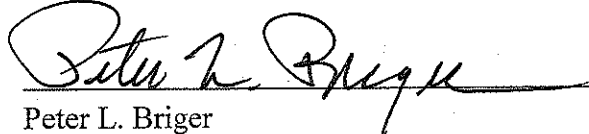
By: _____
(Signature)

(Print Signatory's Name)

Its: _____

Richard Thall

Robert Thall


Peter L. Briger

Paul H. Briger

THE DAVID MINKIN FLORIDA REALTY TRUST

By: [Signature]
(Signature) HOWARD LESTER
(Print Signatory's Name)

Its: TRUSTEE

ATTEST:

SHARON R. BOCK,
CLERK AND COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: [Signature]
County Attorney

PALM BEACH COUNTY BOARD OF COUNTY
COMMISSIONERS

By: _____
Karen Marcus, Chair

APPROVED AS TO
TERMS AND CONDITIONS

By: [Signature]
Richard E. Walesky, Director
Palm Beach County Department of
Environmental Resources Management



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
4400 PGA BOULEVARD, SUITE 500
PALM BEACH GARDENS, FLORIDA 33410

JUN 10 2011

Palm Beach Gardens Regulatory Section
SAJ-2009-01720 (IP-EGR)

Palm Beach County Board of County Commissioners
C/o Shannon LaRocque-Baas, Assistant County Administrator
301 N. Olive Ave., 11th Floor
West Palm Beach, FL 33401

Dear Ms. LaRocque-Baas:

The U.S. Army Corps of Engineers (Corps) has completed the review and evaluation of your Department of the Army permit application, number SAJ-2009-01720. Our regulations require that you have an opportunity to review the terms and conditions prior to final signature by the Department of the Army. Enclosed is an unsigned Department of the Army permit instrument (permit).

Please read carefully the Special Conditions beginning on page 2 of the permit. These were developed to apply specifically to your project. Water Quality Certification is also required prior to issuance of a permit. The Corps has received a copy of the State of Florida certification for your project. In accordance with General Condition 5 of the permit, any special conditions of the Water Quality Certification have been attached to the Department of the Army permit.

Instructions for Objecting to Permit Terms and Conditions: This letter contains an initial proffered permit for your proposed project. If you object to certain terms and conditions contained within the permit, you may request that the permit be modified. Enclosed you will find a Notification of Administrative Appeal Options and Process fact sheet and Request for Appeal (RFA) form. If you choose to object to certain terms and conditions of the permit, you must follow the directions provided in Section 1, Part A and submit the completed RFA form to the letterhead address.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria under 33 CFR Part 331.5, and that it has been received by the District office within 60 days of the date of the RFA. Should you decide to submit an RFA form, it must be received at the letterhead address within 60 days of the date of this letter.

Instructions for Accepting Terms and Conditions and Finalizing Your Permit: It is not necessary to submit an RFA form to the District office, if you do not object to the decision in this letter. In this case, the permit must be signed by the applicant in the space provided on the signature page of the permit. In the case of corporations, acceptance must be by an officer of that corporation authorized to sign on behalf of the corporation. The party responsible for assuring the work is done in accordance with the permit terms and conditions must sign the permit. Please type or print the name and title of the person signing below the signature and the date signed.

SIGN AND RETURN THE PERMIT, IN ITS ENTIRETY, TO THE LETTERHEAD ADDRESS.

Attachment #

2

-2-

The permit will be signed by the District Engineer and returned to you. It is important to note that the permit is not valid until the District Engineer signs it.

The Corps Jacksonville District Regulatory Division is committed to improving service to our customers. We strive to perform our duty in a friendly and timely manner while working to preserve our environment. We invite you to take a few minutes to visit <http://per2.nwp.usace.army.mil/survey.html> and complete our automated Customer Service Survey. Your input is appreciated – favorable or otherwise. Please be aware this web address is case sensitive and should be entered as it appears above.

If you have any questions concerning this application, you may contact Eric Reusch in writing at the letterhead address, by electronic mail at Eric.G.Reusch@usace.army.mil, or by telephone at 561-472-3529.

Sincerely,



Donald W. Kinard
Chief, Regulatory Division

Enclosures

Copy Furnished:

Mary Lindgren, Environmental Services, Inc., mlindgren@esinc.cc

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND PROFFERED PERMIT

Applicant: Palm Beach County Board of County Commissioners		File Number: SAJ-2009-1720	Date: JUN 10 2011
Attached is:			See Section below
<input checked="" type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
<input type="checkbox"/>	PERMIT DENIAL	C	
<input type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D	
<input checked="" type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I: The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at: http://www.pbc.state.fl.us/multi/CECW/Pages/cecw_municipals.aspx or Code Regulations at 35 C.F.R. Part 301.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact:

Project Manager as noted in letter

If you only have questions regarding the appeal process you may also contact:

**for process:
Stuart Santos 904-232-2018**

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

**PRELIMINARY JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers**

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): JUN 10 2011

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:
Palm Beach County Board of County Commissioners
C/o Shannon LaRocque-Baas, Assistant County Administrator
301 N. Olive Ave., 11th Floor
West Palm Beach, FL 33401

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: Jacksonville District,
Scripps/Briger, SAJ-2009-01720

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION: The project is to fill 75.71 acres of wetlands and 2.76 acres of other waters of the United States in order to construct a mixed-use development.

(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)

State: Florida **County:** Palm Beach **City:** Palm Beach Gardens

Center coordinates of site (lat/long in degree decimal format):

Latitude 26.877° North

Longitude 80.119° West

Name of nearest waterbody: Residential canal system which flows to the Intracoastal Waterway.

Identify (estimate) amount of waters in the review area:

1) Non-wetland waters: 2.76 acres of onsite ditches
Stream Flow: seasonal flow to the offsite residential canal system to the east of the project site.

2) Wetlands: 83.21 acres

Name of any water bodies on the site that have been identified as

Section 10 waters:

Tidal: N/A

Non-Tidal: N/A

E. REVIEW PERFORMED FOR SITE EVALUATION (check all that apply):

- Office (Desk) Determination. Date:
 Field Determination. Date(s): 1/12/2010

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.


2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

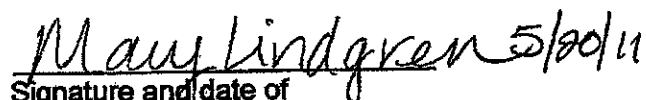
This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

F. SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name:
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name: Google Earth.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth.
or Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.


Signature and date of
Regulatory Project Manager
(REQUIRED)


Signature and date of
person requesting preliminary JD
(REQUIRED, unless obtaining
the signature is impracticable)

DEPARTMENT OF THE ARMY PERMIT

Permittee:

Palm Beach County Board of County Commissioners
C/o Shannon LaRocque-Baas, Assistant County Administrator
301 N. Olive Ave., 11th Floor
West Palm Beach, FL 33401

Permit No: SAJ-2009-01720(IP-EGR)

Issuing Office: U.S. Army Engineer District, Jacksonville

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: The project is to fill 78.47 acres of jurisdictional wetlands and 2.76 acres of other waters of the United States in order to construct a mixed-use development known as the "Scripps Florida-Phase II/Briger Tract Development of Regional Impact". In order to offset the proposed impacts to the aquatic environment, the Permittee shall enhance and preserve a 7.50-acre onsite wetland and a 1.72-acre wetland transitional buffer, enhance and preserve 395 acres of wetlands at the Pine Glades West Advance Mitigation Area, and purchase 13.7 herbaceous freshwater wetland credits at the Loxahatchee Mitigation Bank. The work described above is to be completed in accordance with the six pages of drawings and six attachments affixed at the end of this permit instrument.

Project Location: The project site is located within wetlands and other waters of the U.S. on parcels separated by I-95 and located east of the turnpike, north of Hood Road and south of Donald Ross Road, in Palm Beach Gardens (Sections 26 and 35, Township 41 South, Range 42 East and Section 5, Township 41 South, Range 41 East), in Palm Beach County, Florida.

Directions to site: From I-95 in Palm Beach County, take Exit 83 to Donald Ross Road and proceed east. The project is located on the south side of Donald Ross Road.

Latitude & Longitude: Latitude 26.877° North
Longitude 80.119° West

Permit Conditions

General Conditions:

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1. The time limit for completing the work authorized ends on _____. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature and the mailing address of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. **Reporting Address:** All reports, documentation and correspondence required by the conditions of this permit shall be submitted to the following address: U.S. Army Corps of Engineers, Regulatory Division, Enforcement Section, 4400 PGA Boulevard, Suite 500, Palm Beach Gardens, FL 33410. The Permittee shall reference this permit number, SAJ-2009-1720, on all submittals.

2. **Commencement Notification:** Within 10 days from the date of initiating the authorized work, the Permittee shall provide to the Corps a written notification of the date of commencement of work authorized by this permit.

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3. Wetland Avoidance/Minimization Areas: The Permittee shall avoid the remaining 7.5-acre onsite wetland and transitional buffer, as detailed on Drawing #3 of 6. This natural wetland and transitional buffer area was avoided as part of the permit application review process and therefore will not be disturbed by any dredging, filling, mechanized land clearing, agricultural activities, or other construction work other than the activities required to restore the wetland in accordance with the attached mitigation plan. The Corps reserves the right to deny review of any requests for future impacts to this natural wetland area.

4. Erosion Control: Prior to the initiation of any work authorized by this permit, the Permittee shall install erosion control measures along the perimeter of all work areas to prevent the displacement of fill material outside the work area. Immediately after completion of the final grading of the land surface, all slopes, land surfaces, and filled areas shall be stabilized using sod, degradable mats, barriers, or a combination of similar stabilizing materials to prevent erosion. The erosion control measures shall remain in place and be maintained until all authorized work has been completed and the site has been stabilized.

5. Mitigation Credit Purchase: Within 30 days from the date of initiating the authorized work the Permittee shall provide verification to the Corps that 13.7 federal herbaceous wetland mitigation bank credits have been purchased from the Loxahatchee Mitigation Bank (SAJ-1997-07816). The required verification shall reference this project's permit number (SAJ-2009-01720).

6. Compensatory Mitigation: Within 12 months from the date of initiating the authorized work the Permittee shall complete the following mitigation objectives in accordance with the approved compensatory mitigation plan (Attachment C):

a. Onsite Mitigation

(1) Wetland Enhancement: Within 12 months from the date of initiating the authorized work in Basin 1W, as shown on the attached drawings, a 7.50-acre wetland will be enhanced and preserved on the project site by receiving treated water through the proposed surface water management system and by exotic and nuisance plant species removal. A total of 1.72 acres of transitional wetland buffer will also be preserved and enhanced adjacent to wetland A.

b. Offsite Mitigation

(1) Wetland Enhancement: Within 12 months from the date of initiating the authorized work the permittee shall treat and remove Category I and II invasive exotic plant species from the 395-acre mitigation area located in the Pine Glades West Advance Mitigation Area and manage the area in accordance with the approved compensatory mitigation plan.

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To the extent the mitigation plan conflicts with the DA permit special conditions, the DA permit special conditions shall prevail. These onsite and offsite compensatory mitigation areas shall be preserved in perpetuity in accordance with the **Conservation Easement** Special Condition of this permit.

7. Performance Standards: To meet the objectives of the approved compensatory mitigation plan, the Permittee shall achieve the following performance standards:

- a. At least 80 percent cover by appropriate wetland species (i.e., FAC or wetter).
- b. Cover of Category I and II invasive exotic plant species, pursuant to the most current list established by the Florida Exotic Pest Plant Council at <http://www.fleppc.org>, and the nuisance species, dogfennel (*Eupatorium capillifolium*), Bermudagrass (*Cynodon* spp.), Bahiagrass (*Paspalum notatum*), and cattail (*Typha* spp.), shall total less than 5 percent.
- c. Hydrologic enhancement of the 7.5-acre onsite wetland will result in soils that are saturated to the surface or inundated with a frequency and duration sufficient to support appropriate wetland hydrology.
- d. Maintain the entire Pine Glades West Advance Mitigation Area in perpetuity in accordance with the County's Pine Glades Natural Area Management Plan.

The Permittee shall achieve the above performance standards by the end of the 5-year monitoring period, with no maintenance during the 5th year of monitoring. In the event that the above performance standards have not been achieved, the Permittee shall undertake a remediation program approved by the Corps in accordance with the **Remediation** Special Condition of this permit.

8. Monitoring and Reporting Timeframes: To show compliance with the performance standards the Permittee shall complete the following:

- a. Perform a time-zero monitoring event of the wetland mitigation area(s) within 60 days of completion of the compensatory mitigation objectives identified in the **Compensatory Mitigation** Special Condition of this permit.
- b. Submit the time-zero report to the Corps within 60 days of completion of the monitoring event. The report will include at least one paragraph depicting baseline conditions of the mitigation site(s) prior to initiation of the compensatory mitigation objectives and a detailed plan view drawing of all created, enhanced and/or restored mitigation areas.

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c. Subsequent to completion of the compensatory mitigation objectives, perform semi-annual monitoring of the wetland mitigation areas for the first 2 years and annual monitoring thereafter for a total of no less than 5 years of monitoring.

d. Submit annual monitoring reports to the Corps within 60 days of completion of the monitoring event. Semi-annual monitoring will be combined into one annual monitoring report.

e. Monitor the mitigation area(s) and submit annual monitoring reports to the Corps until released in accordance with the **Mitigation Release** Special Condition of this permit.

9. Reporting Format: Annual monitoring reports shall follow a 10-page maximum report format for assessing compensatory mitigation sites. The Permittee shall submit all documentation to the Corps on 8½-inch by 11-inch paper, and include the following:

a. Project Overview (1 Page):

(1) Department of the Army Permit Number

(2) Name and contact information of Permittee and consultant

(3) Name of party responsible for conducting the monitoring and the date(s) the inspection was conducted

(4) A brief paragraph describing the purpose of the approved project, acreage and type of aquatic resources impacted, and mitigation acreage and type of aquatic resources authorized to compensate for the aquatic impacts.

(5) Written description of the location, any identifiable landmarks of the compensatory mitigation project including information to locate the site perimeter(s), and coordinates of the mitigation site (expressed as latitude, longitudes, UTM's, state plane coordinate system, etc.).

(6) Dates compensatory mitigation commenced and/or was completed

(7) Short statement on whether the performance standards are being met

(8) Dates of any recent corrective or maintenance activities conducted since the previous report submission

(9) Specific recommendations for any additional corrective or remedial actions.

b. Requirements (1 page): List the monitoring requirements and performance standards, as specified in the approved mitigation plan and special conditions of this permit, and evaluate

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whether the compensatory mitigation project site is successfully achieving the approved performance standards or trending towards success. A table is a recommended option for comparing the performance standards to the conditions and status of the developing mitigation site.

c. **Summary Data** (maximum of 4 pages): Summary data should be provided to substantiate the success and/or potential challenges associated with the compensatory mitigation project. Photo documentation may be provided to support the findings and recommendations referenced in the monitoring report and to assist the PM in assessing whether the compensatory mitigation project is meeting applicable performance standards for that monitoring period. Submitted photos should be formatted to print on a standard 8 ½" x 11" piece of paper, dated, and clearly labeled with the direction from which the photo was taken. The photo location points should also be identified on the appropriate maps.

d. **Maps and Plans** (maximum of 3 pages): Maps shall be provided to show the location of the compensatory mitigation site relative to other landscape features, habitat types, locations of photographic reference points, transects, sampling data points, and/or other features pertinent to the mitigation plan. In addition, the submitted maps and plans should clearly delineate the mitigation site perimeter(s). Each map or diagram should be formatted to print on a standard 8 ½" x 11" piece of paper and include a legend and the location of any photos submitted for review. As-built plans may be included.

e. **Conclusions** (1 page): A general statement shall be included that describes the conditions of the compensatory mitigation project. If performance standards are not being met, a brief explanation of the difficulties and potential remedial actions proposed by the Permittee or sponsor, including a timetable, shall be provided. The District Commander will ultimately determine if the mitigation site is successful for a given monitoring period.

10. **Remediation:** If the compensatory mitigation fails to meet the performance standards 5 years after completion of the compensatory mitigation objectives, the compensatory mitigation will be deemed unsuccessful. Within 60 days of notification by the Corps that the compensatory mitigation is unsuccessful, the Permittee shall submit to the Corps an alternate compensatory mitigation proposal sufficient to create the functional lift required under this permit. The alternate compensatory mitigation proposal may be required to include additional mitigation to compensate for the temporal loss of wetland function associated with the unsuccessful compensatory mitigation activities. The Corps reserves the right to fully evaluate, amend, and approve or reject the alternate compensatory mitigation proposal. Within 120 days of Corps approval, the Permittee will complete the alternate compensatory mitigation proposal.

11. **Mitigation Release:** The Permittee's responsibility to complete the required compensatory mitigation, as set forth in the **Compensatory Mitigation** Special Condition of this permit will not be considered fulfilled until mitigation success has been demonstrated and written

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verification has been provided by the Corps. A mitigation area which has been released will require no further monitoring or reporting by the Permittee; however the Permittee, Successors and subsequent Transferees remain perpetually responsible to ensure that the mitigation area(s) remain in a condition appropriate to offset the authorized impacts in accordance with General Condition 2 of this permit.

12. As-Builts: Within 60 days of completion of the authorized work or at the expiration of the construction authorization of this permit, whichever occurs first, the Permittee shall submit as-built drawings of the authorized work and a completed As-Built Certification Form (Attachment F) to the Corps. The drawings shall be signed and sealed by a registered professional engineer and include the following:

a. A plan view drawing of the location of the authorized work footprint (as shown on the permit drawings) with an overlay of the work as constructed in the same scale as the attached permit drawings (8½-inch by 11-inch). The drawing should show all "earth disturbance," including wetland impacts, water management structures, and any on-site mitigation areas.

b. List any deviations between the work authorized by this permit and the work as constructed. In the event that the completed work deviates, in any manner, from the authorized work, describe on the As-Built Certification Form the deviations between the work authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings any deviations that have been listed. Please note that the depiction and/or description of any deviations on the drawings and/or As-Built Certification Form does not constitute approval of any deviations by the U.S. Army Corps of Engineers.

c. The Department of the Army Permit number.

d. Include pre- and post-construction aerial photographs of the project site, if available.

13. Conservation Easement: The Permittee shall preserve the areas referenced in the **Compensatory Mitigation** Special Condition which includes 395 acres of wetlands in the Pine Glades West Advance Mitigation Area, 7.5 acres of onsite wetlands, and 1.72 acres of onsite transitional wetland buffer in perpetuity by recording a conservation easement within the boundaries and location annotated on the attached permit drawing 3 of 6 and in accordance with the attached mitigation plan and the procedures outlined in Special Condition No. 19 of the attached South Florida Water Management District permit number 50-00610-S-24 and Special Condition No. 17 of the attached South Florida Water Management District permit number 50-08187-P and the following conditions:

a. Within 30 days from the date of initiating the authorized work the Permittee shall submit to the Corps a copy of the recorded conservation easement document with exhibits (including legal description and sketch).

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b. These natural preserve areas will not be disturbed by any dredging, filling, land clearing, agricultural activities, planting, or other construction work whatsoever except as required or authorized by this permit. The Permittee agrees that the only future utilization of the preserved areas in question will be as a purely natural area. Any deviation from the established conservation easement cannot be performed without a modification to this permit instrument. The ability to modify or remove this conservation easement is neither implied nor guaranteed. If the conservation easement is removed for any reason, the Permittee shall provide appropriate mitigation to compensate for functional wetland loss.

14. Biological Opinion: This Corps permit does not authorize the Permittee to take an endangered species, in particular the eastern indigo snake. In order to legally take a listed species, the Permittee must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a BO under ESA Section 7, with “incidental take” provisions with which the Permittee must comply). The enclosed U.S Fish and Wildlife Service (FWS) Biological Opinion (BO) (Attachment D) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with “incidental take” that is also specified in the BO. Authorization under this Corps permit is conditional upon compliance with all of the mandatory terms and conditions associated with incidental take of the attached BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with this Corps permit. The FWS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA.

15. Eastern Indigo Snake Protection Measures: The Permittee shall comply with U.S. Fish and Wildlife Service's “Standard Protection Measures for the Eastern Indigo Snake” dated February 12, 2004 and provided in Attachment E of this permit.

16. The Permittee shall preserve the archaeological site 8PB13953 identified on the attached drawings as “Archaeological Significant Site” in accordance with the recommendations and procedures provided by the Florida Department of State, Division of Historical Resources. No construction is authorized in this preserved area. The 0.71-acre site shall be protected by a 25-foot buffer. The site and buffer area shall be fenced off during construction. If any inadvertent impacts occur to 8PB13953, the Corps and the Florida Department of State, Division of Historical Resources shall be notified immediately.

17. If prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, the permitted project should cease all activities involving subsurface disturbance in the immediate vicinity of such discoveries. The Permittees, or other designee,

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should contact the Florida Department of State, Division of Historical Resources, Review and Compliance Section at (850) 245-6333 or (800) 847-7278, as well as, the appropriate permitting agency office. Project activities should not resume without verbal and/or written authorization from the Division of Historical Resources. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with *Section 872.05, Florida Statutes*.

18. Fill Material: The Permittee shall use only clean fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete block with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.

19. Regulatory Agency Changes: Should any other regulatory agency require changes to the work authorized or obligated by this permit, the Permittee is advised that a modification to this permit instrument is required prior to initiation of those changes. It is the Permittee's responsibility to request a modification of this permit from the Palm Beach Gardens Regulatory Office.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 10 of the Rivers and Harbors Act of 1899
(33 U.S.C. 403).

Section 404 of the Clean Water Act (33 U.S.C. 1344).

Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal projects.

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3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

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6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

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Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE)

(DATE)

(PERMITTEE NAME-PRINTED)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(DISTRICT ENGINEER)

Alfred A. Pantano, Jr.
Colonel, U.S. Army
District Commander

(DATE)

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When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEEE-SIGNATURE)

(DATE)

(NAME-PRINTED)

(ADDRESS)

(CITY, STATE, AND ZIP CODE)

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*Attachments to Department of the Army
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1. PERMIT DRAWINGS: 6 pages.
2. WATER QUALITY CERTIFICATION: Specific Conditions of the water quality permit/certification in accordance with General Condition number 5 on page 2 of this DA permit. 4 pages.
3. South Florida Water Management District permit number 50-08187-P (Pine Glades West Advance Mitigation Area). 3 pages.
4. Mitigation Plan. 38 pages, dated June 2010.
5. FWS Biological Opinion. 21 pages.
6. Standard Protection Measures for the Eastern Indigo Snake. 1 page.
7. As-Built Certification Form. 2 pages.