

4E-1

Agenda Item #:

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

<b>Meeting Date:</b>	December 6, 2016	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing

<b>Department:</b>	Facilities Development & Operations
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**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve: a Third Amendment to Interlocal Agreement with the South Florida Water Management District (SFWMD) authorizing issuance of an Invitation for Bids for the sale of the jointly owned 571 acre McMurrain Farm property.

**Summary:** The County (39.4%) and SFWMD (60.6%) jointly own the 571 acre McMurrain Farm property in the Ag Reserve. The property was initially purchased for interim agricultural use with plans for SFWMD to construct an above ground reservoir as part of SFWMD's Agricultural Reserve Reservoir program. SFWMD has since determined that the Ag Reserve Reservoir program is not feasible, has terminated the program, and has declared its interest in the McMurrain Farm property to be surplus. SFWMD desires to sell its interest in the property to recover its investment. SFWMD has obtained a 2015 appraisal valuing the property at \$15,400,000, (SFWMD \$9,335,000; County \$6,065,000), and is currently updating that appraisal. SFWMD is requesting that the County participate in the sale of the County's interest in the property. While the property has an AGR Preserve land use and has no density, in order to provide additional assurances that the land remain in Agricultural production and not be developed, SFWMD proposes that the property be sold subject to a Perpetual Agricultural Conservation Easement in favor of the County and SFWMD, and that a separate Perpetual Agricultural Conservation Easement be granted to the State Department of Environmental Protection. The Conservation Easements restrict use of the property to agricultural production and provide an added level of protection against change in use beyond what is in place today. The bid process for the sale of the property would be open competitive and administratively managed by the SFWMD using SFWMD's statutorily mandated sale process with participation by County Staff. Under SFWMD's process, the property would be sold to the highest bidder submitting a responsive bid which is equal to or greater than appraised value and subject to the restrictions set forth above. The Governing Board of SFWMD has indicated that if the County Commission declines to participate in a sale of the property, SFWMD will consider filing a partition action in Circuit Court to force a sale of the property. In such an action, it is conceivable that SFWMD could be allowed, and the County forced, to sell the property without the added protection of the Conservation Easements. Staff believes that a sale of the property subject to conservation easements is a practical solution which allows SFWMD to recoup its investment while providing maximum protection against future change in use of the property. **This item requires a supermajority vote (5 Commissioners) for approval.** If this Interlocal Agreement is approved, the sale will proceed without further action or review by the Board. **(PREM) District 5 (HJF)**

**Background and Policy Issues:** See Page 3

**Attachments:**

1. Location Map
2. Third Amendment to Interlocal Agreement
3. Perpetual Agricultural Conservation Easement

**Recommended By:** Reh Anthony Wolf  
Department Director

11/28/12  
Date

**Approved By:** W. Baker  
County Administrator

12/5/14  
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes \_\_\_\_\_ No \_\_\_\_\_

Budget Account No: Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_  
Program \_\_\_\_\_

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

If competitive responsive bids are received at a price equal to or greater than the appraised value, then this item would generate at least \$6,000,000 for the County. The farming lease currently generates \$118,734.73 in annual revenue which has been used by ERM for management of conservation lands. That revenue stream would terminate upon sale of the property.

The County’s acquisition of the property was funded out of the \$150 million GO Conservation Bond Issue. Consistent with the State law limitations on use of general obligation bond funds, Staff suggests that proceeds from the sale be used for similar purposes as the bonds were issued for. Staff recommends that the proceeds be deposited into a holding account and decisions regarding use of the funds be considered as part of the FY 18 budget process.

Fixed Assets Numbers M09621 and M09617

C. Departmental Fiscal Review: \_\_\_\_\_

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

  
OFMB *ET*

  
Contract Development and Control

B. Legal Sufficiency:

  
Assistant County Attorney

C. Other Department Review:

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

This summary is not to be used as a basis for payment.

**Background and Policy Issues:** The various Water Management Districts have been directed to identify all properties which are not required for the District's purposes and to surplus those properties. In that process the SFWMD identified the McMurrain Farm property as surplus. The SFWMD Governing Board has directed their Staff to work with the County to effectuate a sale of the property. The Interlocal Agreement currently provides that neither party may sell or transfer their interest in the property without the consent of the other property. It is debatable whether the County has the right to withhold its consent in this instance. Notwithstanding, in the event the County does not agree to sell the property, the SFWMD Governing Board is contemplating initiating legal action to partition the property. A partition action can result in a division of the property in accordance with each party's percentage interest in the property, or in the alternative, a forced sale of the entire property with the proceeds being divided in accordance with the percentage ownership of the parties.

Staff of SFWMD and the County have worked together to structure a transaction which provides the SFWMD with a way to comply with State mandates and recoup their investment, while ensuring that the land remain in agricultural production by encumbering the property with perpetual agricultural conservation easements. There is little practical difference in the legal protection against change in use of the property between continued ownership of the property and selling the property subject to conservation easement restrictions on use of the property. Arguably, the proposed structure provides more protection, in that the DEP would also have to approve any change in use. A change in use of the property would also require a land use change to be approved by the BCC. It should be noted that the initial program to protect the Ag Reserve (PACE) was structured to place conservation easements on properties similar to what is being proposed here. The PACE program was unsuccessful primarily due to the farmers unwillingness to accept easement valuations.

The specific language of the Perpetual Agricultural Conservation Easements is attached hereto as Attachment 3. The document limits use of the property to agricultural production consistent with the current use of the property.

In June of 2000, the County and SFWMD entered into an Interlocal Agreement (R2000-0806) providing for the purchase of the 627 acre McMurrain Farm property. The SFWMD's share of the purchase price was to be funded by a U.S. Department of Interior grant, which funding was delayed, and the County completed the purchase on its own using Agricultural Preservation and Conservation Bond funds. The purchase price was \$23,073,600 and the transaction was closed on July 21, 2000.

Subsequently, the existing farmer Pero Family Farms ("Pero"), requested that the County sell them 52.37 acres of the McMurrain Farm property to enable Pero to expand their existing hydroponic farming facility. After lengthy negotiations between the County, SFWMD and Pero regarding both the sale of 57 acres to Pero and measures to ensure Pero would not be impacted by construction and operation of SFWMD's planned reservoir, and SFWMD finally obtaining grant funding to complete the purchase, the County and SFWMD entered into Amendment #1 to the Interlocal Agreement (R2000-0806) which reduced the acreage to 571 acres to accommodate the proposed sale to Pero, with a corresponding reduction in SFWMD's share of the purchase price to \$13,734,881. The sale to SFWMD closed August 28, 2002.

On March 22, 2006, the Board approved the sale of the 57.37 acres to Pero for a purchase price of \$1,063,700. The sale was subject to a deed restriction limiting use of the property to agricultural purposes. The specific language of the restriction is set forth below:

"The party of the second part acknowledges for itself and its successors and assigns, that no residential density exists for the Property conveyed hereby.

The Property shall be used solely for agricultural purposes together with such ancillary uses as are reasonably required in direct support of said agricultural purposes. In particular, it is intended that hydroponic farming facilities shall

be constructed on the Property, provided that such hydroponic facilities may be constructed over time in phases in a manner commercially reasonable for the party of the second part. Until hydroponic facilities are fully constructed, the portions of the Property not being utilized for hydroponic farming may be utilized for other agricultural purposes (i.e.: row crop farming) together with ancillary uses thereto. The foregoing restrictive covenant shall be deemed a covenant running with the Property, enforceable against the Property and the party of the second part, its legal representatives, successors and/or assigns. In the event the party of the second part ceases to use the Property for agricultural purposes or uses the Property for any purpose which violates the foregoing restrictive covenant, the Property shall revert to the party of the first part.”

Due to changes in requirements and costs for hurricane coverage, Pero abandoned plans to expand the glass covered hydroponic facilities and the deed restrictions on the 57 acres were modified July 10, 2012 to allow for packing plants. The modified language is set forth below:

“... Pero hereby covenants and agrees that the Property shall be used solely for “agricultural purposes,” together with such ancillary uses as are reasonable required in direct support of said “agricultural purposes.” The term “agricultural purposes” as used herein shall expressly include: (i) row crop farming; (ii) the processing of agricultural products, including, without limitation, storing, bottling, manufacturing, selling (at wholesale levels, provided, however, that such sales are limited to agricultural products), packaging, transportation, logistics, and/or distribution of agricultural products and products ancillary thereto; and (iii) the construction, erection, demolition, maintenance, alteration, and/or operation of all structures, facilities and improvements relating to or in support of the processing of agricultural products.”

The SFWMD obtained an appraisal in November of 2015 which valued the Property at \$15,400,000 (\$27,000/acre). This is obviously less than the \$23,073,400 (\$36,800/acre) which the County and SFWMD paid for the Property. This lower value is due to two factors. First, the acreage has been reduced by the 51 acres which was previously sold to Pero. Second, when the County initially purchased the property, it had development rights, which have since been removed and retired.

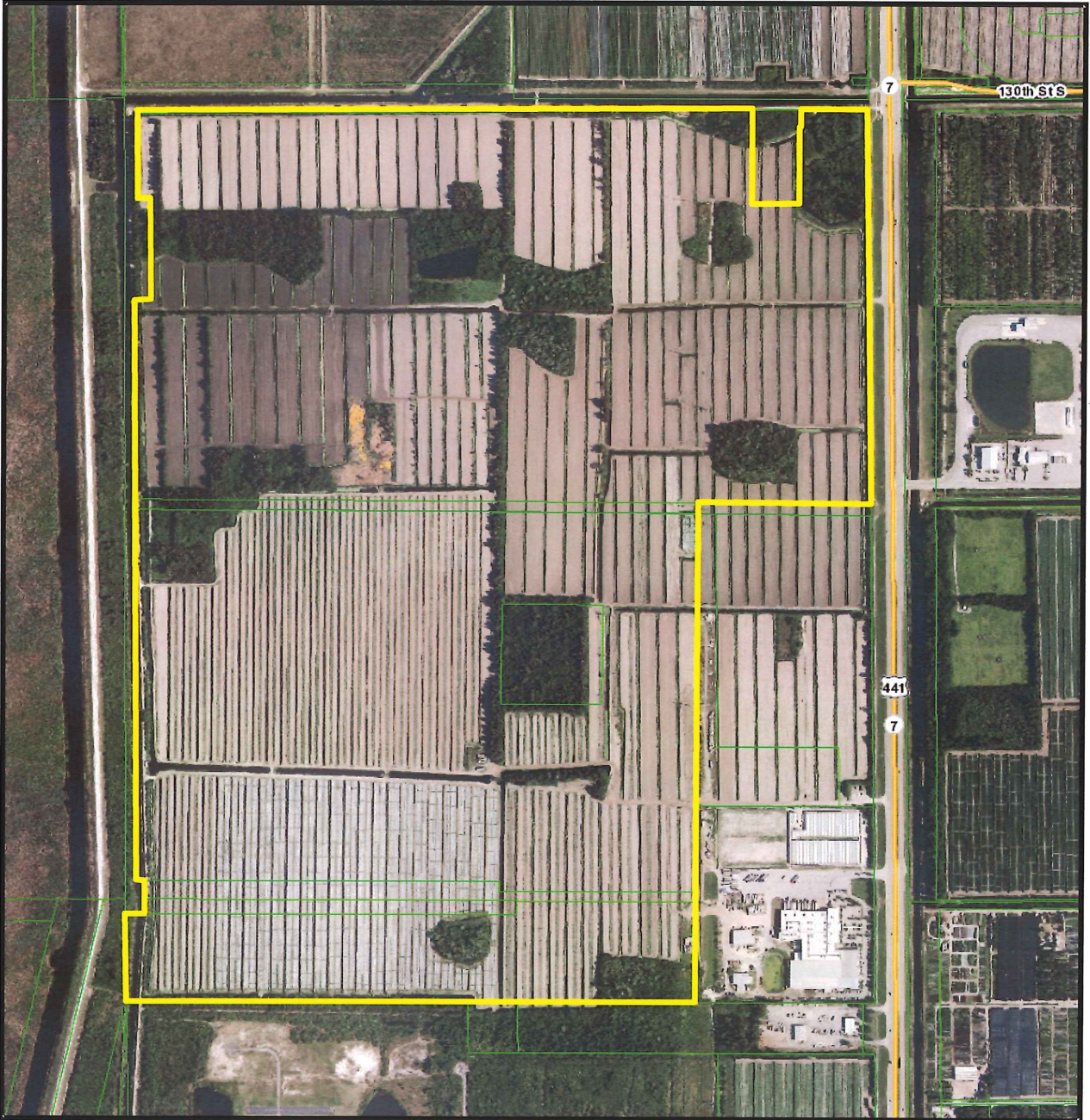
The McMurrain Farm property has been leased to Pero since before the County acquired it. The lease currently generates \$118,734.73 in annual revenue to the County. ERM has been using the revenue for management of conservation lands. Loss of this revenue will have an impact on ERM’s land management budget.



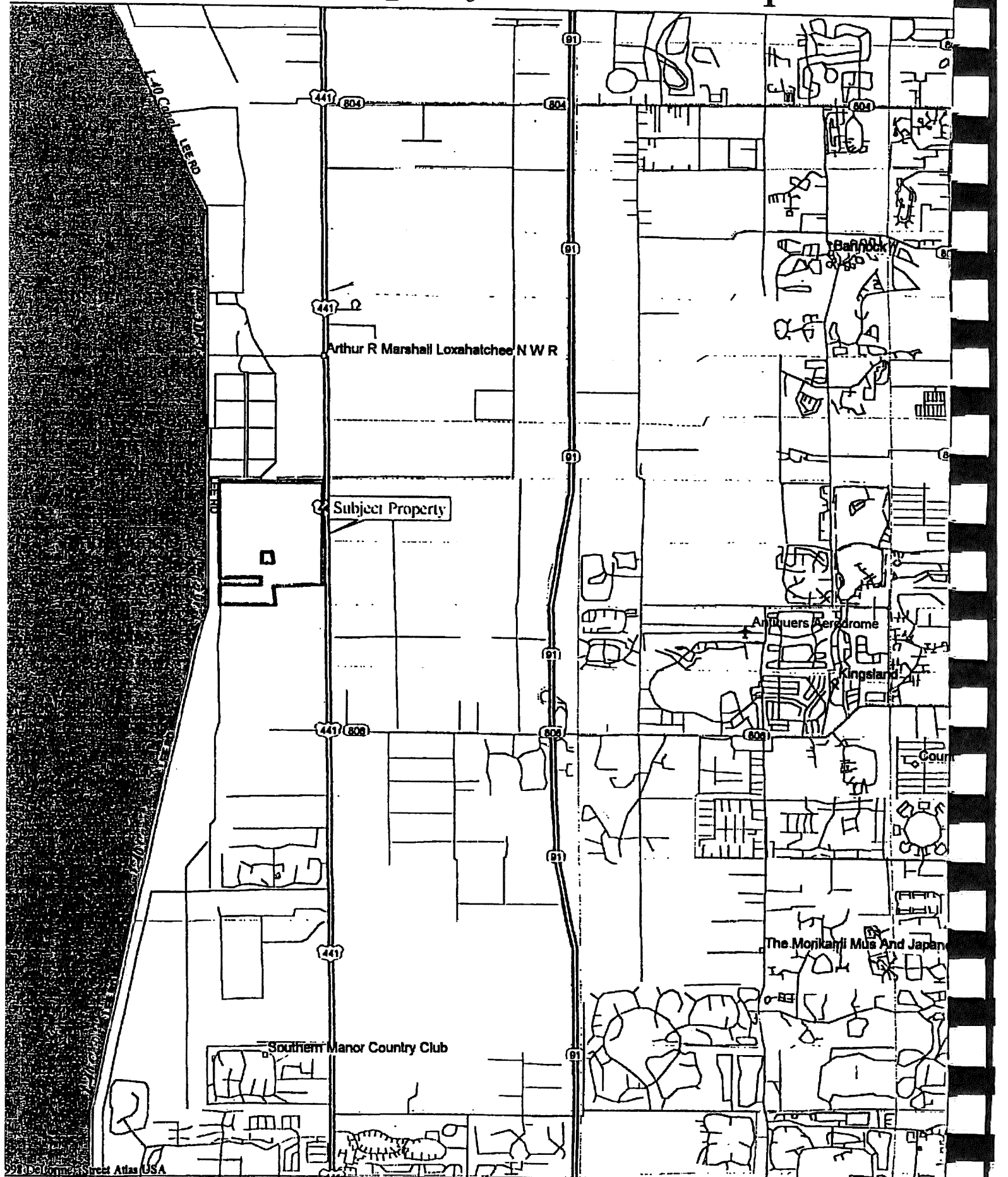
## Attachment 1

### Location Map

Page 1 of 2



## Subject Property Location Map



### **THIRD AMENDMENT TO INTERLOCAL AGREEMENT**

**THIS THIRD AMENDMENT TO INTERLOCAL AGREEMENT** ("Third Amendment") is made and entered into by and between **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**, a governmental entity created and existing pursuant to Chapter 373, Florida Statutes, hereinafter referred to as "SFWMD", and **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County".

#### **WITNESSETH:**

**WHEREAS**, on June 6, 2000, SFWMD and the County entered into an Interlocal Agreement providing for the joint purchase by the parties of approximately 627 acres of real property located in the Agricultural Reserve in Palm Beach County also known as the McMurrain Farms property (the "Property"); and

**WHEREAS**, on February 5, 2002, SFWMD and the County entered into Amendment #1 to the Interlocal Agreement, amending among other terms, the acreage of the joint purchase from approximately 627 acres to approximately 571 acres; and

**WHEREAS**, the parties closed upon SFWMD's acquisition of a 60.6% interest in the Property on August 28, 2002; and

**WHEREAS**, the purposes for which the SFWMD acquired its 60.6% interest in the Property are no longer viable and SFWMD desires to sell its interest in the Property to recoup its investment; and

**WHEREAS**, the County is willing to assist SFWMD in recouping SFWMD's investment by agreeing to participate in a joint sale of the Property upon the condition that the Property be restricted to, and remain in, agricultural production in perpetuity.

**NOW, THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00), the mutual covenants contained herein, the parties agree as follows:

1. The Property shall be offered for sale by competitive bid in accordance with SFWMD's statutorily mandated procurement process and in compliance with County Ordinance and Florida law generally. SFWMD shall have sole responsibility for conducting the competitive bid process, but shall consult and

coordinate with County Staff to ensure the County that the provisions of this Agreement are complied with.

2. In addition to the jointly owned property, SFWMD and County shall each offer for sale all property owned by them individually within the larger farm property as depicted on Exhibit "A".

3. The competitive bid process shall include the following requirements:

a. The property shall have no residential density, may not be developed and shall be used solely for agricultural production.

b. The Property shall be conveyed subject to a Perpetual Agricultural Conservation Easement (the "Easement") in the form attached hereto as Exhibit "B" in favor of the Department of Environmental Protection of the State of Florida which easement shall bind the Property in perpetuity and run with the land. In addition, the highest responsive bidder shall grant both SFWMD and County separate Perpetual Agricultural Conservation Easements in substantially the same form as the Easement attached hereto as Exhibit "C".

c. The highest responsive bidder must provide title insurance with an insured value equal to the highest bid price, naming each Easement Holder as an insured and insuring that the Easements have priority over all interests in the Property.

4. To be considered responsive, a bid price must be equal to or greater than the average appraised value as determined by two (2) appraisals obtained by SFWMD. SFWMD has already obtained one appraisal in 2015 indicating a value of \$15,400,000, and is in the process of obtaining a second appraisal which when received shall be used in calculating the average appraised value. The appraisals may not contain any hypothetical assumptions or extraordinary assumptions.

5. The bid shall be awarded to the highest responsive bidder. Thereafter, SFWMD shall schedule a closing with the highest responsive bidder. At the closing, the County and SFWMD shall each deliver Quit Claim or County deeds in the forms attached hereto as Exhibits "D" and "E" conveying their interest in the Property, and the sales proceeds shall be distributed proportionately in accordance with their respective ownership interests.

6. Rent under the existing lease of the Property shall be prorated up to the date of closing and distributed proportionally in accordance with the parties' ownership interests.



7. SFWMD and County agree that neither party shall transfer or release its interest in this Interlocal Agreement and/or the Easements, and agree that the Easements shall be binding upon the Property and the parties hereto in perpetuity. Each Easement Holder shall be entitled to re-record their Easement or record notice in the public records pursuant to Chapter 712, Florida Statutes as necessary to maintain the perpetual nature of the Easement.

8. Except as modified by Amendment #1 and Amendment #2, the Interlocal Agreement remains unmodified and in full force and effect. The provisions of this 3<sup>rd</sup> Amendment shall continue in full force and effect in perpetuity.

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**IN WITNESS WHEREOF**, the parties have set their hands and seals on the dates set forth below.

Executed by SFWMD this \_\_\_\_\_ day of \_\_\_\_\_, 2016

ATTEST:  
SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT

**SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT,**

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
\_\_\_\_\_  
Print Name and Title

(Corporate Seal)

Legal Form Approved:

\_\_\_\_\_  
South Florida Water Management District  
Office of Counsel

Executed by County this \_\_\_\_\_ day of \_\_\_\_\_, 2016

ATTEST:  
SHARON R. BOCK, CLERK &  
COMPTROLLER

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

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Paulette Burdick, Mayor

{County Seal}

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

By:  \_\_\_\_\_  
County Attorney

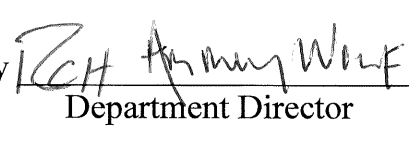
By:  \_\_\_\_\_  
Department Director

Exhibit A

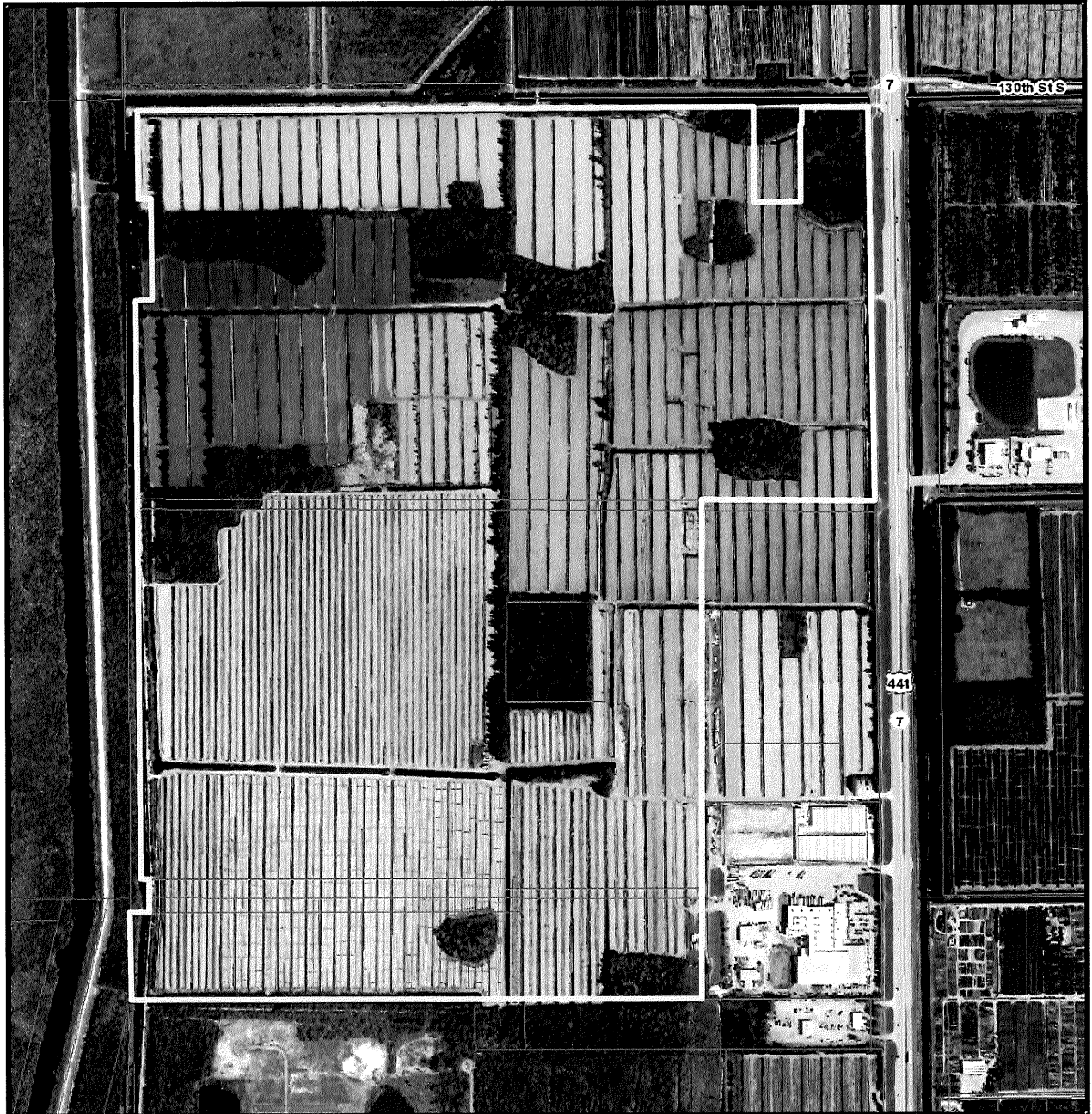




EXHIBIT “B”

Perpetual Agricultural Conservation Easement

16 pages

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Return to:  
SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
P. O. Box 24680  
West Palm Beach, FL 33416-4680

This instrument prepared by:  
South Florida Water Management District  
3301 Gun Club Road, P. O. Box 24680  
West Palm Beach, FL 33416-4680

### **PERPETUAL AGRICULTURAL CONSERVATION EASEMENT**

THIS PERPETUAL AGRICULTURAL CONSERVATION EASEMENT ("Conservation Easement") is granted this \_\_\_\_\_ day of \_\_\_\_\_, 2016, ("Conservation Easement Date") by the **South Florida Water Management District**, a governmental entity of the State of Florida created under Chapter 373, Florida Statutes, with its principal office located at 3301 Gun Club Road, West Palm Beach, Florida 33406, and **Palm Beach County**, a political subdivision of the State of Florida, whose office address is 301 North Olive Avenue, West Palm Beach, Florida 33406, (hereinafter collectively referred to as the "Owner") to the **State of Florida Department of Environmental Protection** (hereinafter the "Easement Holder"). As used herein, the term "Owner" shall include any and all heirs, successors or assigns of the Owner, and all subsequent owners of the "Property" (as hereinafter defined) and the term "Easement Holder" shall include any successor or assign of the Easement Holder.

### **WITNESSETH**

**WHEREAS**, the Owner is the owner of certain lands situated in Palm Beach County, Florida, and more specifically described in Exhibit "A," attached hereto and made a part hereof ("Property"); and

**WHEREAS**, the Owner and Easement Holder recognize the special character of the Property as a working landscape that has traditionally been used for agriculture, as that term is defined in Section 570.02(1), Florida Statutes, and have the common purpose of conserving certain values and character of the Property by conveyance to the Easement Holder of a perpetual Conservation Easement on, under, over, and across the Property, to conserve the character of the Property, continue certain land use patterns that do not significantly impair the character of the Property, and prohibit certain further development activities on the Property as recognized under Section 704.06, Florida Statutes, with respect to the Property.

**NOW, THEREFORE**, in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, received by Owner from Easement Holder, the adequacy and receipt of which are hereby acknowledged, Owner hereby conveys, grants, creates, secures and establishes a perpetual

Conservation Easement as recognized under Section 704.06, Florida Statutes, for the benefit of and in favor of the Easement Holder with respect to the Property, which shall run with the land and be binding upon the Owner, and shall remain in full force and effect forever, in accordance with the following terms, conditions and provisions.

**1. Recitals.** The foregoing recitals are true and correct and are hereby incorporated herein by reference.

**2. Conservation Easement Purposes.** The purposes of this Conservation Easement (“Conservation Easement Purposes”) are to assure that the Property will be retained forever in its natural, vegetative, hydrologic, scenic, open, and agricultural condition as a working landscape to preserve the Property as productive agricultural land that sustains for the long term both the economic and conservation values of the Property and its environs, to provide a relatively natural habitat for fish, wildlife, plants or similar ecosystems, to retain the structural integrity and physical appearance of the Property, preserve features of historical, architectural, archaeological, or cultural significance, and to maintain the existing land use through management guided by the following principles :

a. Maintenance of economically viable agricultural practices that protect the landscape as a working enterprise in harmony with the open space and scenic qualities of the Property.

b. Maintenance of soil productivity and control of soil erosion.

c. Maintenance or improvement of the overall quality of the timber resource.

d. Consistent with the protection of the integrity and function of the working landscape, promotion of a more complete pattern of protection, including buffers to natural areas, ecological greenways, and functioning ecosystems.

e. Promotion of the restoration, enhancement or management of species habitat, consistent with the purposes for which the Conservation Easement is acquired.

f. Protection, restoration or enhancement of water bodies and aquifer recharge areas including uplands and springsheds, wetlands, or watersheds.

g. Protection of unique and fragile natural areas and rare species habitats.

h. Perpetuation of open space on working lands that contain significant natural areas (hereinafter “SNA’s”) as identified in the map attached as Exhibit “B,” made a part hereof .

**3. Rights Granted to the Easement Holder.** To accomplish the Conservation Easement Purposes the following rights are conveyed to the Easement Holder by this Conservation Easement:

- a. The right to enforce protection of the Conservation Easement Purposes.
- b. All future residential, commercial, industrial and incidental development rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property. The parties agree that such rights are hereby terminated and extinguished and may not be used on the Property or assigned to a third party or transferred to other property. The Property may not be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements, under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise. Nor shall any development rights or density credits be transferred onto the Property from other property.
- c. The right to enter upon the Property on a periodic basis as determined by Easement Holder at reasonable times in order to inspect and monitor compliance with and otherwise enforce the terms of this Conservation Easement; provided that such entry shall be upon prior reasonable notice to Owner, and Easement Holder shall not unreasonably interfere with Owner's use and quiet enjoyment of the Property.
- d. The right to prevent any activity on or use of the Property that is inconsistent with the Conservation Easement Purposes or provisions of this Conservation Easement and to require the Owner at its cost to restore such areas or features of the Property that may be damaged by any inconsistent activity or use.
- e. Except where the Owner is a political subdivision of the State of Florida, the right to have the ad valorem taxes, assessments and any other charges on the Property paid by Owner.
- f. A right to prior notice of Owner's intent to sell or transfer title as provided in Section 15. This right of notice shall be triggered by sales or transfers of title by Owner, including gifts and bequests as well as transfers to entities in which Owner owns a majority of the controlling interests.
- g. Except where the Owner is a political subdivision of the State of Florida, the right of Easement Holder and its agents, contractors, subcontractors, and representatives ("Indemnitees") to be defended, saved and held harmless, and indemnified by Owner against any and all liability, loss, damage, expense, judgment or claim (including a claim for attorney fees) with respect bodily injury, death, property damage, and any other damages, direct or indirect, of whatsoever nature, arising out of or in any way related to, or resulting from Owner or its agents, guests, contractors, subcontractors, lessees, licensees, or invitees use of or activities on the Property, including performance under this Conservation Easement, however caused, except where caused solely by the negligence of the Easement Holder or its agents, contractors, subcontractors, and representatives. This provision is not intended to be an exclusive or exhaustive remedy and does not preclude the exercise of any other rights and remedies available to the Indemnitees which may now or subsequently exist under law or in equity.

h. The right to have the Property maintained as reflected in the Baseline Documentation Report for the Property referred to in the next paragraph, subject only to the exercise of Owner's Reserved Rights, and the Rights Granted to the Easement Holder as described in this Conservation Easement.

The existing agricultural uses and conservation values of the Property are documented in the "Baseline Documentation Report for the Property, dated \_\_\_\_\_, 2016. ("BDR"), which consists of documentation that the parties agree provides an accurate representation of the Property at the Conservation Easement Date and which serves as an objective information baseline for monitoring compliance with the terms of this Conservation Easement. The BDR is maintained in the offices of the Easement Holder and is incorporated into this Conservation Easement by this reference. A copy of the BDR is available from the Easement Holder on request.

i. If Owner fails to cut and remove timber damaged by natural disaster, fire, infestation or the like, then the right, but not the duty, of Easement Holder, in its sole discretion, to cut and remove said timber. Any such cutting and removal by Easement Holder shall be at the expense of Easement Holder and all proceeds from the sale of any such timber shall inure to the benefit of Easement Holder.

**4. Prohibited Uses.** The Property shall be maintained to preserve the Conservation Easement Purposes. Without limiting the generality of the foregoing, Owner agrees that the following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are expressly prohibited or restricted on the Property, except and only to the extent such uses or practices are otherwise allowably retained by Owner under Section 5:

a. The mining, removal, or excavation of surface or subsurface materials, the exploration for and extraction of oil, gas, minerals, dolostone, peat, muck, marl, limestone, kaolin, fuller's earth, phosphate, common clays, gravel, shell, sand and other substances, except for the drilling and extraction of oil, gas, and other hydrocarbons under the Property by slant or directional drilling from adjacent properties so not to damage or interfere with the Property, and except for the use of limestone to maintain the roads on the Property.

b. Activities that affect the hydrology of the Property or that detrimentally affect drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat, federal, state or local regulatory programs, or the applicable Best Management Practices adopted by the Florida Department of Agriculture and Consumer Services or its successor agency, as updated (hereinafter "BMP"), incorporated herein by reference. There shall be no dredging of new canals, construction of new dikes, manipulation of natural water courses, or disruption, alteration, or pollution of existing surface or subsurface water flow or natural water sources, fresh water lakes, ponds and pond shores, marshes, creeks or any other water bodies except as consistent with the BMP. Owner may construct, operate, maintain, or replace ground water wells incident to allowed uses on the Property.

c. Acts or uses detrimental to the preservation or structural integrity or physical appearance of features on the Property of historical, architectural, archaeological, or cultural significance.

d. Planting of nuisance exotic or non-native plants as listed by the Exotic Pest Plant Council (EPPC) or its successor. The Owner shall, to the extent practical, control and prevent the spread of nuisance exotics or non-native plants on the Property. Owner hereby grants to Easement Holder the right, in Easement Holder's sole discretion and at Easement Holder's expense, to develop and implement an exotic plant removal plan for the eradication of exotics, or non-native wild plants, on the Property. Under no circumstances shall this right conveyed to Easement Holder be construed to diminish Owner's responsibilities under this paragraph or as an obligation of the Easement Holder.

e. Except as provided in Section 5.i, new construction or placing of temporary or permanent buildings, residences, mobile homes or other structures or improvements on the Property other than temporary structures during emergencies. For purposes of this paragraph, the term "emergency" shall mean those situations that will have an immediate and irreparable adverse impact on the Conservation Easement Purposes.

f. Construction or placing of roads, billboards or other advertising, utilities, or structures, except improvements and unpaved roads necessary for the agricultural operations on the land, and except for linear facilities described in section 704.06(11), Florida Statutes. Easement Holder may erect and maintain signs designating the Property as land under the protection of the Easement Holder.

g. Fertilizer use for agriculture activities not in accordance with the applicable current agricultural Best Management Practices recommended by the Natural Resources Conservation Service or the BMP, whichever is more stringent. No agricultural activities shall occur within a 100-foot buffer around sinkholes and other karst features that are connected to spring conduits, except as provided in the BMP.

h. Actions or activities that may reasonably be expected to adversely affect threatened or endangered species.

i. Surface use except for purposes that permit the Property to remain in its natural or agricultural condition.

j. Any subdivision of the Property. The Property shall remain a single tract as described in Exhibit "A."

k. Commercial water wells.

l. Removal of trees, shrubs, or other vegetation.

m. Mitigation banks or offsite regional mitigation areas as established under Chapter 373, Florida Statutes.

n. Conversion of SNAs to more improved areas.

o. Conversion of areas not in improved pasture to improved pasture.

p. Dumping or placing soils, trash, waste, or unsightly or offensive materials, as a landfill or uses of the Property detrimental to the preservation of the structural integrity or physical appearance of the Property or of items of historical, architectural, archaeological, or cultural significance.

q. Conversion of forested areas to non-forested areas.

r. Dairy operation of any type.

s. Any Disposal of Pollutants (as defined in this Subsection 4.a.) on the Property. For purposes of this Conservation Easement, "Pollutant" shall mean any waste, substance, material, sludge, contaminant, pollutant, petroleum, petroleum product or petroleum by-product, or toxic or hazardous material or substance, as defined or regulated by environmental laws. "Dispose" shall mean the release, storage, use, handling, discharge, or disposal of such pollutants at any time prior to or after the Conservation Easement Date. "Environmental Laws" shall mean any applicable federal, state, or local laws, statutes, ordinances, rules, regulations or other governmental restrictions. Disposal of reasonable amounts of waste generated in agricultural use of the Property is allowed, provided it is generated from an allowed use in accordance with this Conservation Easement and disposed of in accordance with the Environmental Laws and the BMP. Any Disposal of such materials, whether caused by Owner or any other third party, shall be reported to the Easement Holder immediately upon the knowledge thereof by the Owner. The Owner shall be solely responsible for the entire cost of investigating and remediating the Disposal of Pollutants otherwise discovered on the Property or emanating from the Property to adjacent lands

## **5. Owner's Reserved Rights**

Owner reserves the following specified rights with respect to use of the Property, which are deemed allowable and consistent with the Conservation Easement Purposes.

a. The right to conduct prescribed burning on the Property; provided, however, that Owner shall obtain and comply with a prescribed fire authorization from the Florida Forest Service of the Florida Department of Agriculture and Consumer Services or its successor agency.

b. The right to mortgage the Property; provided, however, that the Mortgagee's lien shall be inferior to and lower in priority than this Conservation Easement.

c. The right to contest tax appraisals, assessments, taxes and other charges on the Property.

d. The right to continue to use, maintain, repair, and reconstruct, all existing buildings, barns, animal pens, outbuildings, fences, roads, ponds, wells, utilities, drainage ditches and such other facilities on the Property as depicted in the BDR.



e. The right to sell, devise or otherwise transfer ownership of the Property to a third party subject to this Conservation Easement.

f. The right to exclusive use of the improvements on the Property.

g. The right to establish (by survey, fencing or marking) and maintaining property lines around the perimeter of the Property to protect the Property from trespassing and to assist Owner in the management of the Property.

h. The right to maintain, introduce and stock native fish or wildlife on the Property and to use the Property for hiking and horseback riding. Owner reserves, and shall continue to own, the hunting and fishing rights on or related to the Property and Owner may lease and sell privileges with respect to such rights so long as incidental to agricultural use.

i. In accordance with applicable local, state and federal laws and regulations, and obtaining and maintaining in good standing all applicable local, state, and federal permits, authorizations, and approvals: (1) the right to repair and replace existing structures, and (2) subject to the prior written approval of the Easement Holder, the right to (i) enlarge existing buildings, structures, and improvements solely for agricultural purposes, (ii) to build new buildings, structures, and improvements solely for agricultural purposes, and (iii) to create impervious surfaces for such buildings and paved areas on the Property.

**6. No Public Access.** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement.

**7. Operation and Maintenance.** Except where the Owner is a political subdivision of the State of Florida, Owner shall be solely responsible for and shall bear all costs and liabilities of any kind arising out of or in any way related to the ownership, operation, and maintenance of the Property, including maintaining adequate comprehensive general liability coverage.

**8. Compliance with Laws.** Owner in using the Property and performing under the terms of this Conservation Easement shall comply with all applicable local, state and federal laws and regulations, and shall obtain and maintain in good standing all applicable local, state, and federal permits, authorizations, and approvals.

**9. Payment of Taxes and Assessments.** Except where the Owner is a political subdivision of the State of Florida exempt from paying taxes and assessments, Owner shall pay any and all real property taxes and assessments levied on the Property. No later than April first of each year, Owner shall provide to Easement Holder evidence of satisfaction of the prior year's real property taxes in the form of a paid tax receipt. Owner shall keep current on the payment of taxes and not allow a lien to attach to the Property superior to this Conservation Easement. In the event Owner fails to extinguish or subordinate any such lien, the Easement Holder may elect to pay off the lien on behalf of the Owner and Owner shall reimburse Easement Holder for the amount of the pay off, together with reasonable attorney's fees and costs, and with interest at the maximum allowable rate, no later than thirty days after delivery of notice of such payment. Owner's debt owed to Easement

Holder shall constitute a lien against the Property which automatically relates back to the date of the recording of this Conservation Easement and Easement Holder may foreclose the Property in the manner provided for mortgages on real property in the event Owner does not so reimburse the Easement Holder.

#### **10. Remedies.**

a. If Easement Holder determines that Owner is in violation of the terms of this Conservation Easement or that a violation is threatened, Easement Holder shall give written notice to Owner of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property, to restore the portion of the Property so injured. If Owner fails to cure the violation within 30 days after receipt of notice thereof from Easement Holder or, under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing such violation within the 30-day period, or fails to continue diligently to cure such violation until finally cured, Easement Holder may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any values protected by the Conservation Easement purposes, including loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury.

b. Without limiting Owner's liability therefore, Easement Holder, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Easement Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant injury to the Conservation Easement Purposes, Easement Holder may pursue its remedies under this Section 10 without prior notice to Owner or without waiting for the period provided for cure to expire.

c. Owner agrees that Easement Holder's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Easement Holder shall be entitled to the injunctive relief described in this Section 10, both prohibitive and mandatory, in addition to such other relief as Easement Holder may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Easement Holder's remedies described in this Section shall be cumulative with any other remedies provided in this Conservation Easement and shall be in addition to all remedies now or hereafter existing at law or in equity.

d. Enforcement of the terms of this Easement shall be at the discretion of Easement Holder, and any forbearance by Easement Holder to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Owner shall not be deemed or construed to be a waiver by Easement Holder of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Easement Holder's rights under this Conservation Easement. No delay or omission by Easement Holder in the exercise of any right or remedy upon any breach by Owner shall impair such right or remedy or be construed as a waiver.

## **11. Liability.**

a. Easement Holder's ownership interest or attempted enforcement of rights under this Conservation Easement does not subject the Easement Holder to any liability for any damage or injury that may be suffered by any person on the Property or as a result of the condition of the Property.

b. Except where Owner is a political subdivision of the State of Florida, Owner hereby releases, defends, indemnifies, and saves and holds harmless, Easement Holder and its directors, officers, employees, agents, contractors, and subcontractors, representatives, and invitees (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including reasonable attorney's fees and costs, for bodily injury, death, and property damage and all other damage, direct or indirect, of whatsoever nature, arising out of or in any way related to, or resulting from: (i) any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of one of the Indemnified Parties in which case only the solely negligent Indemnified Party loses the protection provided in this Section 11, (ii) any obligation of Owner under this Conservation Easement, and (iii) the Disposal of Pollutants. Easement Holder's remedies described in this Section shall be cumulative with any other remedies provided in this Conservation Easement and shall be in addition to all remedies now or hereafter existing at law or in equity.

**12. Waiver of Certain Defenses.** Owner hereby waives any defense of estoppel, adverse possession, or prescription against the Easement Holder.

**13. Condemnation.** If the Conservation Easement is taken, in whole or in part, by exercise of the power of eminent domain, Easement Holder shall be entitled to compensation in accordance with applicable law.

**14. Assignment by Easement Holder.** Easement Holder may assign its rights and obligations either in whole or in part, including adding an additional Easement Holder, provided the assignee is another organization qualified to hold such interest under applicable law.

## **15. Transfer of Interest/Assignment by Owner.**

a. Notification of Transfer. Owner shall notify Easement Holder of the names and addresses of any party to whom a right, title, or interest is to be granted at least 60 days prior to the date of such transfer. Owner shall obtain assurances in writing from the prospective transferee of the Property that the Property will continue to be used for bona fide agricultural production purposes in accordance with the Conservation Easement.

b. Statement of Compliance. Owner may request in writing at least 45 days prior to sale, mortgage, transfer or long term (five years or longer) lease of the Property, or any portion thereof, a written statement from Easement Holder stating that Owner is either in compliance with the terms and conditions of this Conservation Easement or if not in compliance, stating what violations have occurred. Easement Holder agrees to execute and deliver to

Owner or to any mortgagee, transferee, purchaser or lessee such written statement concerning compliance within 30 days from receipt by Easement Holder of such written request.

c. Specific Reference to Conservation Easement. In any grant of a right, title, or interest in the Property, including a license, lease, or easement, Owner shall either (i) insert into such instrument of conveyance or transfer the terms of this Conservation Easement or (ii) incorporate by specific reference the terms of the Conservation Easement by including the following language in the legal instrument by which the right or interest is conveyed:

“The right, title, or interest granted is subject to a Conservation Easement, dated [ ] and recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_ of Palm Beach County which creates obligations with respect to the Property.

**[Note: Blanks to be filled in at time of execution and recording of this Conservation Easement]**

d. Owner's Liability after Transfer. In the event of the sale, and/or the transfer of title of the Property, Easement Holder will meet with the new owner within 30 days to review with the new owner the obligations under this Conservation Easement. Owner shall have no personal liability for the performance of the obligations of the Owner hereunder arising after the Owner has conveyed his or her interest in the Property.

e. Subdivision of the Property. The Property shall not be subdivided and shall remain a single tract as described in Exhibit "A".

**16. Notices.** All notices, requests, consents and other communications required or permitted under this Conservation Easement shall be in writing (including electronic communications) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated, or mailed (airmail if international) by registered or certified mail (postage prepaid), return receipt requested, or sent by any form of overnight mail, or by email addressed to:

**TO OWNER:**

SFWMD:

Real Estate Division Director  
South Florida Water Management District  
(MAILING ADDRESS:)  
P.O. Box 24680  
West Palm Beach, Florida 33416-4680  
E-Mail: \_\_\_\_\_@sfwmd.gov

(OFFICE LOCATION:)  
3301 Gun Club Road  
West Palm Beach, Florida 33406

PALM BEACH COUNTY:

Palm Beach County  
Property & Real Estate Management Division  
Attention: Director  
2633 Vista Parkway  
West Palm Beach, Florida 33411-5605  
Fax: (561) 233-0210  
E-Mail: \_\_\_\_\_@pbcgov.org

WITH COPY TO:

County Attorney's Office  
301 N Olive Avenue, Suite 601  
West Palm Beach, Florida 33401  
Attention: Howard Falcon, Esquire  
Fax: (561) 355-4398  
E-Mail: \_\_\_\_\_@sfwmd.gov

**TO EASEMENT HOLDER:**

STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
\_\_\_\_\_  
3900 Commonwealth Boulevard  
Mail Station \_\_\_\_\_  
Tallahassee, Florida 32399-3000  
Fax: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
Email: \_\_\_\_\_@dep.state.fl.us

or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (1) on the date delivered if by personal delivery; (2) on the date telecommunicated if by telegraph; (3) on the date of transmission with confirmed receipt if fax; (4) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed; (5) one day after mailing by any form of overnight mail service, and (6) on the date email transmitted (with option checked for "request a delivery receipt").

**17. Miscellaneous**

a. Recordation. Easement Holder shall record this instrument and any amendments in timely fashion in the official records of Palm Beach County, Florida, and may re-record it at any time as may be required to preserve its rights in this Easement.

b. Amendments. The terms and provisions of this Easement may be amended by the mutual consent of the parties hereto. No amendment shall be effective until executed with the formality of a deed and recorded in the public records.

c. Controlling Law. The laws of the State of Florida shall govern the interpretation and performance of this Easement.

d. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Easement Holder to effect the Easement Purposes and the policy and purpose of Section 704.06, Florida Statutes. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Easement Purposes that would render the provision valid shall be favored over any interpretation that would render it invalid.

e. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

g. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Owner's title in any respect.

h. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

i. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j. Priority. This Easement shall be of equal priority with all other conservation easements granted to other governmental agencies and not-for-profit agencies contemporaneously herewith.

All the terms herein contained run with the land and shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, personal representatives, heirs, successors, and assigns.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise incident or appertaining to the use, benefit and behoof of the Easement Holder, its successors and assigns, forever.

This grant conveys only the interest of the Owner in the Property and Owner does not warrant the title or represent to any state of facts concerning same.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in their names and official seal affixed hereto.

(Corporate Seal)

ATTEST:

\_\_\_\_\_

\_\_\_\_\_, Secretary

Legal Form Approved By:

\_\_\_\_\_  
South Florida Water Management  
District Counsel

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ as Chairman and \_\_\_\_\_ as Secretary, of the Governing Board of the South Florida Water Management District, a government entity created by Chapter 373, Florida Statutes, on behalf of the South Florida Water Management District, who are personally known to me.

(Seal)

GRANTOR:

**SOUTH FLORIDA WATER MANAGEMENT  
DISTRICT, BY ITS GOVERNING BOARD**

By: \_\_\_\_\_  
Dan O’Keefe  
Chairman

Notary Public, State of Florida  
Print Notary Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

ATTEST:

**SHARON BOCK, Clerk**

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

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

GRANTOR

**PALM BEACH COUNTY, FLORIDA,  
BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor



STATE OF FLORIDA  
COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016,  
by \_\_\_\_\_, as Chairman of the Board of County Commissioners of Palm  
Beach County, who is personally known to me or who has produced \_\_\_\_\_ as  
identification,

(Seal)

Notary Public, State of Florida  
Print Notary Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

**[NOTE: Legal description needs to include McMurrain Parcel and both the District-owned approx. 10 acre parcel and the County-owned approx. 14 acre parcel.]**

**EXHIBIT B**

**MAP OF SIGNIFICANT NATURAL AREAS**

EXHIBIT “B”

Perpetual Agricultural Conservation Easement

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Prepared by and Return to:  
Palm Beach County  
Property & Real Estate Management Division  
Attention: Director  
2633 Vista Parkway  
West Palm Beach, Florida 33411

**PERPETUAL AGRICULTURAL CONSERVATION EASEMENT**

THIS PERPETUAL AGRICULTURAL CONSERVATION EASEMENT ("Conservation Easement") is granted this \_\_\_\_\_ day of \_\_\_\_\_, 2016, ("Conservation Easement Date") by \_\_\_\_\_ (hereinafter referred to as the "Owner") to **Palm Beach County**, a political subdivision of the State of Florida, whose office address is 301 North Olive Avenue, West Palm Beach, Florida 33406, (hereinafter the "Easement Holder"). As used herein, the term "Easement Holder" shall include any and all successors or assigns of the Easement Holder.

**WITNESSETH**

**WHEREAS**, the Owner is the owner of certain lands situated in Palm Beach County, Florida, and more specifically described in Exhibit "A," attached hereto and made a part hereof ("Property"); and

**WHEREAS**, the Owner and Easement Holder recognize the special character of the Property as a working landscape that has traditionally been used for agriculture, as that term is defined in Section 570.02(1), Florida Statutes, and have the common purpose of conserving certain values and character of the Property by conveyance to the Easement Holder of a perpetual Agricultural Conservation Easement on, under, over, and across the Property, to conserve the character of the Property, continue certain land use patterns that do not significantly impair the character of the Property, and prohibit certain further development activities on the Property as recognized under Section 704.06, Florida Statutes, with respect to the Property.

**NOW, THEREFORE**, in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, received by Owner from Easement Holder, the adequacy and receipt of which are hereby acknowledged, Owner hereby conveys, grants, creates, secures and establishes a perpetual Agricultural Conservation Easement as recognized under Section 704.06, Florida Statutes, for the benefit of and in favor of the Easement Holder with respect to the Property, which shall run with the land and be binding upon the Owner, and shall remain in full force and effect forever, in accordance with the following terms, conditions and provisions.

**1. Recitals.** The foregoing recitals are true and correct and are hereby incorporated herein by reference.

**2. Conservation Easement Purposes.** The purposes of this Conservation Easement (“ Conservation Easement Purposes”) are to assure that the Property will be retained forever in its natural, vegetative, hydrologic, scenic, open, and agricultural condition as a working landscape to preserve the Property as productive agricultural land that sustains for the long term both the economic and conservation values of the Property and its environs, to provide a relatively natural habitat for fish, wildlife, plants or similar ecosystems, to retain the structural integrity and physical appearance of the Property, preserve features of historical, architectural, archaeological, or cultural significance, and to maintain the existing land use through management guided by the following principles :

- a. Maintenance of economically viable agricultural practices that protect the landscape as a working enterprise in harmony with the open space and scenic qualities of the Property.
- b. Maintenance of soil productivity and control of soil erosion.
- c. Maintenance or improvement of the overall quality of the timber resource.
- d. Consistent with the protection of the integrity and function of the working landscape, promotion of a more complete pattern of protection, including buffers to natural areas, ecological greenways, and functioning ecosystems.
- e. Promotion of the restoration, enhancement or management of species habitat, consistent with the purposes for which the Conservation Easement is acquired.
- f. Protection, restoration or enhancement of water bodies and aquifer recharge areas including uplands and springsheds, wetlands, or watersheds.
- g. Protection of unique and fragile natural areas and rare species habitats.
- h. Perpetuation of open space on working lands that contain significant natural areas (hereinafter “SNA’s”) as identified in the map attached as Exhibit “B,” made a part hereof .

**3. Rights Granted to the Easement Holder.** To accomplish the Conservation Easement Purposes the following rights are conveyed to the Easement Holder by this Conservation Easement:

- a. The right to enforce protection of the Conservation Easement Purposes.
- b. All future residential, commercial, industrial and incidental development rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property. The parties agree that such rights are hereby terminated and extinguished and may not be used on the Property or assigned to a third party or transferred to other property. The Property may not be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements, under otherwise

applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise. Nor shall any development rights or density credits be transferred onto the Property from other property.

c. The right to enter upon the Property on a periodic basis as determined by Easement Holder at reasonable times in order to inspect and monitor compliance with and otherwise enforce the terms of this Conservation Easement; provided that such entry shall be upon prior reasonable notice to Owner, and Easement Holder shall not unreasonably interfere with Owner's use and quiet enjoyment of the Property.

d. The right to prevent any activity on or use of the Property that is inconsistent with the Conservation Easement Purposes or provisions of this Conservation Easement and to require the Owner at its cost to restore such areas or features of the Property that may be damaged by any inconsistent activity or use.

e. Except where the Owner is a political subdivision of the State of Florida, the right to have the ad valorem taxes, assessments and any other charges on the Property paid by Owner.

f. A right to prior notice of Owner's intent to sell or transfer title as provided in Section 15. This right of notice shall be triggered by sales or transfers of title by Owner, including gifts and bequests as well as transfers to entities in which Owner owns a majority of the controlling interests.

g. Except where the Owner is a political subdivision of the State of Florida, the right of Easement Holder and its agents, contractors, subcontractors, and representatives ("Indemnitees") to be defended, saved and held harmless, and indemnified by Owner against any and all liability, loss, damage, expense, judgment or claim (including a claim for attorney fees) with respect bodily injury, death, property damage, and any other damages, direct or indirect, of whatsoever nature, arising out of or in any way related to, or resulting from Owner or its agents, guests, contractors, subcontractors, lessees, licensees, or invitees use of or activities on the Property, including performance under this Conservation Easement, however caused, except where caused solely by the negligence of the Easement Holder or its agents, contractors, subcontractors, and representatives. This provision is not intended to be an exclusive or exhaustive remedy and does not preclude the exercise of any other rights and remedies available to the Indemnitees which may now or subsequently exist under law or in equity.

h. The right to have the Property maintained as reflected in the Baseline Documentation Report for the Property referred to in the next paragraph, subject only to the exercise of Owner's Reserved Rights, and the Rights Granted to the Easement Holder as described in this Conservation Easement.

The existing agricultural uses and conservation values of the Property are documented in the "Baseline Documentation Report for the Property, dated



\_\_\_\_\_, 2016. ("BDR"), which consists of documentation that the parties agree provides an accurate representation of the Property at the Conservation Easement Date and which serves as an objective information baseline for monitoring compliance with the terms of this Conservation Easement. The BDR is maintained in the offices of the Easement Holder and is incorporated into this Conservation Easement by this reference. A copy of the BDR is available from the Easement Holder on request.

i. If Owner fails to cut and remove timber damaged by natural disaster, fire, infestation or the like, then the right, but not the duty, of Easement Holder, in its sole discretion, to cut and remove said timber. Any such cutting and removal by Easement Holder shall be at the expense of Easement Holder and all proceeds from the sale of any such timber shall inure to the benefit of Easement Holder.

**4. Prohibited Uses.** The Property shall be maintained to preserve the Conservation Easement Purposes. Without limiting the generality of the foregoing, Owner agrees that the following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are expressly prohibited or restricted on the Property, except and only to the extent such uses or practices are otherwise allowably retained by Owner under Section 5:

a. The mining, removal, or excavation of surface or subsurface materials, the exploration for and extraction of oil, gas, minerals, dolostone, peat, muck, marl, limestone, kaolin, fuller's earth, phosphate, common clays, gravel, shell, sand and other substances, except for the drilling and extraction of oil, gas, and other hydrocarbons under the Property by slant or directional drilling from adjacent properties so not to damage or interfere with the Property, and except for the use of limestone to maintain the roads on the Property.

b. Activities that affect the hydrology of the Property or that detrimentally affect drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat, federal, state or local regulatory programs, or the applicable Best Management Practices adopted by the Florida Department of Agriculture and Consumer Services or its successor agency, as updated (hereinafter "BMP"), incorporated herein by reference. There shall be no dredging of new canals, construction of new dikes, manipulation of natural water courses, or disruption, alteration, or pollution of existing surface or subsurface water flow or natural water sources, fresh water lakes, ponds and pond shores, marshes, creeks or any other water bodies except as consistent with the BMP. Owner may construct, operate, maintain, or replace ground water wells incident to allowed uses on the Property.

c. Acts or uses detrimental to the preservation or structural integrity or physical appearance of features on the Property of historical, architectural, archaeological, or cultural significance.

d. Planting of nuisance exotic or non-native plants as listed by the Exotic Pest Plant Council (EPPC) or its successor. The Owner shall, to the extent practical, control and prevent the spread of nuisance exotics or non-native plants on the Property. Owner hereby grants to Easement Holder the right, in Easement Holder's sole discretion and at Easement Holder's expense, to develop and implement an exotic plant removal plan for the eradication of exotics, or non-native wild plants,

on the Property. Under no circumstances shall this right conveyed to Easement Holder be construed to diminish Owner's responsibilities under this paragraph or as an obligation of the Easement Holder.

e. Except as provided in Section 5.i, new construction or placing of temporary or permanent buildings, residences, mobile homes or other structures or improvements on the Property other than temporary structures during emergencies. For purposes of this paragraph, the term "emergency" shall mean those situations that will have an immediate and irreparable adverse impact on the Conservation Easement Purposes.

f. Construction or placing of roads, billboards or other advertising, utilities, or structures, except improvements and unpaved roads necessary for the agricultural operations on the land, and except for linear facilities described in section 704.06(11), Florida Statutes. Easement Holder may erect and maintain signs designating the Property as land under the protection of the Easement Holder.

g. Fertilizer use for agriculture activities not in accordance with the applicable current agricultural Best Management Practices recommended by the Natural Resources Conservation Service or the BMP, whichever is more stringent. No agricultural activities shall occur within a 100-foot buffer around sinkholes and other karst features that are connected to spring conduits, except as provided in the BMP.

h. Actions or activities that may reasonably be expected to adversely affect threatened or endangered species.

i. Surface use except for purposes that permit the Property to remain in its natural or agricultural condition.

j. Any subdivision of the Property. The Property shall remain a single tract as described in Exhibit "A."

k. Commercial water wells.

l. Removal of trees, shrubs, or other vegetation.

m. Mitigation banks or offsite regional mitigation areas as established under Chapter 373, Florida Statutes.

n. Conversion of SNAs to more improved areas.

o. Conversion of areas not in improved pasture to improved pasture.

p. Dumping or placing soils, trash, waste, or unsightly or offensive materials, as a landfill or uses of the Property detrimental to the preservation of the structural integrity or physical appearance of the Property or of items of historical, architectural, archaeological, or cultural significance.

q. Conversion of forested areas to non-forested areas.

r. Dairy operation of any type.

s. Any Disposal of Pollutants (as defined in this Subsection 4.a.) on the Property. For purposes of this Agricultural Easement, "Pollutant" shall mean any waste, substance, material, sludge, contaminant, pollutant, petroleum, petroleum product or petroleum by-product, or toxic or hazardous material or substance, as defined or regulated by environmental laws. "Dispose" shall mean the release, storage, use, handling, discharge, or disposal of such pollutants at any time prior to or after the Conservation Easement Date. "Environmental Laws" shall mean any applicable federal, state, or local laws, statutes, ordinances, rules, regulations or other governmental restrictions. Disposal of reasonable amounts of waste generated in agricultural use of the Property is allowed, provided it is generated from an allowed use in accordance with this Conservation Easement and disposed of in accordance with the Environmental Laws and the BMP. Any Disposal of such materials, whether caused by Owner or any other third party, shall be reported to the Easement Holder immediately upon the knowledge thereof by the Owner. The Owner shall be solely responsible for the entire cost of investigating and remediating the Disposal of Pollutants otherwise discovered on the Property or emanating from the Property to adjacent lands

## **5. Owner's Reserved Rights**

Owner reserves the following specified rights with respect to use of the Property, which are deemed allowable and consistent with the Conservation Easement Purposes.

a. The right to conduct prescribed burning on the Property; provided, however, that Owner shall obtain and comply with a prescribed fire authorization from the Florida Forest Service of the Florida Department of Agriculture and Consumer Services or its successor agency.

b. The right to mortgage the Property; provided, however, that the Mortgagee's lien shall be inferior to and lower in priority than this Conservation Easement.

c. The right to contest tax appraisals, assessments, taxes and other charges on the Property.

d. The right to continue to use, maintain, repair, and reconstruct, all existing buildings, barns, animal pens, outbuildings, fences, roads, ponds, wells, utilities, drainage ditches and such other facilities on the Property as depicted in the BDR.

e. The right to sell, devise or otherwise transfer ownership of the Property to a third party subject to this Conservation Easement.

f. The right to exclusive use of the improvements on the Property.

g. The right to establish (by survey, fencing or marking) and maintaining property lines around the perimeter of the Property to protect the Property from trespassing and to assist Owner in the management of the Property.

h. The right to maintain, introduce and stock native fish or wildlife on the Property and to use the Property for hiking and horseback riding. Owner reserves, and shall continue to own, the hunting and fishing rights on or related to the Property and Owner may lease and sell privileges with respect to such rights so long as incidental to agricultural use.

i. In accordance with applicable local, state and federal laws and regulations, and obtaining and maintaining in good standing all applicable local, state, and federal permits, authorizations, and approvals: (1) the right to repair and replace existing structures, and (2) subject to the prior written approval of the Easement Holder, the right to (i) enlarge existing buildings, structures, and improvements solely for agricultural purposes, (ii) to build new buildings, structures, and improvements solely for agricultural purposes, and (iii) to create impervious surfaces for such buildings and paved areas on the Property.

**6. No Public Access.** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement.

**7. Operation and Maintenance.** Except where the Owner is a political subdivision of the State of Florida, Owner shall be solely responsible for and shall bear all costs and liabilities of any kind arising out of or in any way related to the ownership, operation, and maintenance of the Property, including maintaining adequate comprehensive general liability coverage.

**8. Compliance with Laws.** Owner in using the Property and performing under the terms of this Conservation Easement shall comply with all applicable local, state and federal laws and regulations, and shall obtain and maintain in good standing all applicable local, state, and federal permits, authorizations, and approvals.

**9. Payment of Taxes and Assessments.** Except where the Owner is a political subdivision of the State of Florida exempt from paying taxes and assessments, Owner shall pay any and all real property taxes and assessments levied on the Property. No later than April first of each year, Owner shall provide to Easement Holder evidence of satisfaction of the prior year's real property taxes in the form of a paid tax receipt. Owner shall keep current on the payment of taxes and not allow a lien to attach to the Property superior to this Conservation Easement. In the event Owner fails to extinguish or subordinate any such lien, the Easement Holder may elect to pay off the lien on behalf of the Owner and Owner shall reimburse Easement Holder for the amount of the pay off, together with reasonable attorney's fees and costs, and with interest at the maximum allowable rate, no later than thirty days after delivery of notice of such payment. Owner's debt owed to Easement Holder shall constitute a lien against the Property which automatically relates back to the date of the recording of this Conservation Easement and Easement Holder may foreclose the Property in the manner provided for mortgages on real property in the event Owner does not so reimburse the Easement Holder.

## **10. Remedies.**

a. If Easement Holder determines that Owner is in violation of the terms of this Conservation Easement or that a violation is threatened, Easement Holder shall give written notice to Owner of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property, to restore the portion of the Property so injured. If Owner fails to cure the violation within 30 days after receipt of notice thereof from Easement Holder or, under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing such violation within the 30-day period, or fails to continue diligently to cure such violation until finally cured, Easement Holder may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any values protected by the Conservation Easement Purposes, including loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury.

b. Without limiting Owner's liability therefore, Easement Holder, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Easement Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant injury to the Conservation Easement Purposes, Easement Holder may pursue its remedies under this Section 10 without prior notice to Owner or without waiting for the period provided for cure to expire.

c. Owner agrees that Easement Holder's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Easement Holder shall be entitled to the injunctive relief described in this Section 10, both prohibitive and mandatory, in addition to such other relief as Easement Holder may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Easement Holder's remedies described in this Section shall be cumulative with any other remedies provided in this Conservation Easement and shall be in addition to all remedies now or hereafter existing at law or in equity.

d. Enforcement of the terms of this Easement shall be at the discretion of Easement Holder, and any forbearance by Easement Holder to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Owner shall not be deemed or construed to be a waiver by Easement Holder of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Easement Holder's rights under this Conservation Easement. No delay or omission by Easement Holder in the exercise of any right or remedy upon any breach by Owner shall impair such right or remedy or be construed as a waiver.

## **11. Liability.**

a. Easement Holder's ownership interest or attempted enforcement of rights under this Conservation Easement does not subject the Easement Holder to any liability for any damage or injury that may be suffered by any person on the Property or as a result of the condition of the

Property.

b. Except where Owner is a political subdivision of the State of Florida, Owner hereby releases, defends, indemnifies, and saves and holds harmless, Easement Holder and its directors, officers, employees, agents, contractors, and subcontractors, representatives, and invitees (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including reasonable attorney's fees and costs, for bodily injury, death, and property damage and all other damage, direct or indirect, of whatsoever nature, arising out of or in any way related to, or resulting from: (i) any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of one of the Indemnified Parties in which case only the solely negligent Indemnified Party loses the protection provided in this Section 11, (ii) any obligation of Owner under this Conservation Easement, and (iii) the Disposal of Pollutants. Easement Holder's remedies described in this Section shall be cumulative with any other remedies provided in this Conservation Easement and shall be in addition to all remedies now or hereafter existing at law or in equity.

**12. Waiver of Certain Defenses.** Owner hereby waives any defense of estoppel, adverse possession, or prescription against the Easement Holder.

**13. Condemnation.** If the Conservation Easement is taken, in whole or in part, by exercise of the power of eminent domain, Easement Holder shall be entitled to compensation in accordance with applicable law.

**14. Assignment by Easement Holder.** Easement Holder may assign its rights and obligations either in whole or in part, including adding an additional Easement Holder, provided the assignee is another organization qualified to hold such interest under applicable law.

**15. Transfer of Interest/Assignment by Owner.**

a. Notification of Transfer. Owner shall notify Easement Holder of the names and addresses of any party to whom a right, title, or interest is to be granted at least 60 days prior to the date of such transfer. Owner shall obtain assurances in writing from the prospective transferee of the Property that the Property will continue to be used for bona fide agricultural production purposes in accordance with the Conservation Easement.

b. Statement of Compliance. Owner may request in writing at least 45 days prior to sale, mortgage, transfer or long term (five years or longer) lease of the Property, or any portion thereof, a written statement from Easement Holder stating that Owner is either in compliance with the terms and conditions of this Conservation Easement or if not in compliance, stating what violations have occurred. Easement Holder agrees to execute and deliver to Owner or to any mortgagee, transferee, purchaser or lessee such written statement concerning compliance within 30 days from receipt by Easement Holder of such written request.

c. Specific Reference to Conservation Easement. In any grant of a right, title, or interest in the Property, including a license, lease, or easement, Owner shall either (i) insert into

such instrument of conveyance or transfer the terms of this Conservation Easement or (ii) incorporate by specific reference the terms of the Conservation Easement by including the following language in the legal instrument by which the right or interest is conveyed:

“The right, title, or interest granted is subject to a Conservation Easement, dated [ ] and recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_ of Palm Beach County which creates obligations with respect to the Property.

**[Note: Blanks to be filled in at time of execution and recording of this Conservation Easement]**

d. Owner's Liability after Transfer. In the event of the sale, and/or the transfer of title of the Property, Easement Holder will meet with the new owner within 30 days to review with the new owner the obligations under this Conservation Easement. Owner shall have no personal liability for the performance of the obligations of the Owner hereunder arising after the Owner or subsequent owner has conveyed his or her interest in the Property.

e. Subdivision of the Property. The Property shall not be subdivided and shall remain a single tract as described in Exhibit "A".

**16. Notices.** All notices, requests, consents and other communications required or permitted under this Conservation Easement shall be in writing (including electronic communications) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated, or mailed (airmail if international) by registered or certified mail (postage prepaid), return receipt requested, or sent by any form of overnight mail, or by email addressed to:

**TO CONSERVATION EASEMENT HOLDER:**

PALM BEACH COUNTY:

Palm Beach County  
Property & Real Estate Management Division  
Attention: Director  
2633 Vista Parkway  
West Palm Beach, Florida 33411-5605  
Fax: (561) 233-0210  
E-Mail: \_\_\_\_\_@pbcgov.org

**WITH COPY TO:**

County Attorney’s Office  
301 N Olive Avenue, Suite 601  
West Palm Beach, Florida 33401  
Attention: Howard Falcon, Esquire  
Fax: (561) 355-4398  
E-Mail: \_\_\_\_\_@sfwmd.gov

**TO OWNER:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
Email: \_\_\_\_\_@\_\_\_\_\_

or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (1) on the date delivered if by personal delivery; (2) on the date telecommunicated if by telegraph; (3) on the date of transmission with confirmed receipt if fax; (4) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed; (5) one day after mailing by any form of overnight mail service, and (6) on the date email transmitted (with option checked for “request a delivery receipt”).

**17. Miscellaneous**

- a. Recordation. Easement Holder shall record this instrument and any amendments in timely fashion in the official records of Palm Beach County, Florida, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement.
- b. Amendments. The terms and provisions of this Conservation Easement may be amended by the mutual consent of the parties hereto. No amendment shall be effective until executed with the formality of a deed and recorded in the public records.
- c. Controlling Law. The laws of the State of Florida shall govern the interpretation and performance of this Conservation Easement.
- d. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Easement Holder to effect the Conservation Easement Purposes and the policy and purpose of Section 704.06, Florida Statutes. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Conservation Easement Purposes that would render the provision valid shall be favored over any interpretation that would render it invalid.
- e. Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- g. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Owner's title in any respect.



h. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

i. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j. Priority. This Conservation Easement shall be of equal priority with all other conservation easements granted to other governmental agencies and not-for-profit agencies contemporaneously herewith.

All the terms herein contained run with the land and shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, personal representatives, heirs, successors, and assigns.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise incident or appertaining to the use, benefit and behoof of the Easement Holder, its successors and assigns, forever.

This grant conveys only the interest of the Owner in the Property and Owner does not warrant the title or represent to any state of facts concerning same.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in their names and official seal affixed hereto.

Witnesses:

**OWNER:**

\_\_\_\_\_  
Name: \_\_\_\_\_

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

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ as \_\_\_\_\_, of \_\_\_\_\_, a \_\_\_\_\_, on behalf of said entity, who is/are personally known to me.

(Seal) Notary Public, State of Florida  
Print Notary Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**ATTEST:**  
**SHARON BOCK, Clerk**

**EASEMENT HOLDER:**  
**PALM BEACH COUNTY, FLORIDA,**  
**BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_ Deputy Clerk  
By: \_\_\_\_\_, Mayor

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

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

STATE OF FLORIDA  
COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, as Chairman of the Board of County Commissioners of Palm Beach County, who is personally known to me or who has produced \_\_\_\_\_ as identification,

(Seal) Notary Public, State of Florida  
Print Notary Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**EXHIBIT A**

LEGAL DESCRIPTION OF THE PROPERTY

**[NOTE: Legal description needs to include McMurrain Parcel and both the District-owned approx. 10 acre parcel and the County-owned approx. 14 acre parcel.]**

**EXHIBIT B**

**MAP OF SIGNIFICANT NATURAL AREAS**

EXHIBIT “D”

SFWMD Quit Claim Deed

4 pages

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EXHIBIT “D”

SFWMD Quit Claim Deed

4 pages

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This instrument prepared by and return to:  
 South Florida Water Management District  
 3301 Gun Club Road  
 West Palm Beach, FL 33406  
 ATTN: REAL ESTATE, MS#3710

Tax Folio #: \_\_\_\_\_  
 Tract No.: \_\_\_\_\_

## QUITCLAIM DEED

THIS INDENTURE made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, **between SOUTH FLORIDA WATER MANAGEMENT DISTRICT**, a government entity created by Chapter 373, Florida Statutes, its successors and assigns, hereinafter referred to as the "Grantor", with its principal office at 3301 Gun Club Road, West Palm Beach, Florida 33406-3089 and \_\_\_\_\_, a \_\_\_\_\_, its successors and assigns, hereinafter referred to as the "Grantee" whose address is \_\_\_\_\_.

### WITNESSETH:

That said Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations in hand paid by the said Grantee, the receipt whereof is hereby acknowledged, by these presents does remise, release and quitclaim unto the said Grantee, its successors and assigns forever, the following described land, situate, lying and being in Palm Beach County, State of Florida, described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Premises");

SUBJECT TO: That certain Perpetual Agricultural Conservation Easement granted by the South Florida Water Management District, a government entity created by Chapter 373, Florida Statutes, and Palm Beach County, a political subdivision of the State of Florida, in favor of the State of Florida Department of Environmental Protection dated the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, and recorded the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, in Official Records Book \_\_\_\_\_, page \_\_\_\_\_, Palm Beach County, Florida, public records, which creates obligations with respect to the Premises.

Pursuant to Section 270.11, Florida Statutes, the Grantor has elected not to reserve any phosphate, minerals, and metals or petroleum interests in the Premises.

The Grantor makes no express or implied warranty or representation with respect to the title to the Premises or the condition, including but not limited to ground elevations, or suitability of the Premises and/or any improvements located thereon for the Grantee's intended use or otherwise (including without limitation, NO WARRANTY OF MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OR RELATING TO THE ABSENCE OF LATENT OR OTHER DEFECTS) all of which are expressly disclaimed by the Grantor. The

Grantee shall accept the Premises, including improvements, in “AS IS”, “WHERE IS” and “WITH ALL FAULTS” condition, subject to all matters including but not limited to title, zoning, restrictions, prohibitions and other regulations and/or requirements imposed by governmental authority, taxes, access, ingress or egress, value, operating history, physical conditions, cultural resources, suitability for use, environmental conditions, and conditions with respect to hazardous waste, hazardous substances, or pollutants (as defined or regulated under applicable law) that may be located on, under or adjacent to the Premises. The Premises shall be subject to all applicable Chapter 373, Florida Statutes and Chapter 40E, Florida Administrative Code permitting requirements, and the conveyance of the Premises by the Grantor to the Grantee shall not constitute a waiver by the Grantor of the obligation of the Grantee to comply with all Chapter 373, Florida Statutes and Chapter 40E, Florida Administrative Code permitting requirements and the Grantee acknowledges that there is no obligation on the part of the Grantor to approve the issuance of any required permits. The Grantor’s review process for any required permits will be done separate, independent and unfettered of the fact that the Grantor has conveyed to Grantee the Premises and shall be in accordance with the Grantor’s applicable statutes and rules.

**TO HAVE AND TO HOLD** the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of the said Grantor, either in law or in equity, to the only proper use, benefit and behoof of the said Grantee, its successors and assigns forever.

All the covenants, restrictions, terms, easements and agreements herein contained shall run with the land, shall burden and encumber the Premises, and shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, personal representatives, heirs, successors, assigns, and successors in title of their respective interests in the Premises.

By its execution of this Indenture below, Grantee agrees, for itself and its heirs, successors, assigns, and all subsequent owners of the Premises, to accept the Premises and agrees to be subject to, abide by and comply with all of the terms, conditions, covenants, restrictions and provisions contained herein.

IN WITNESS WHEREOF, the South Florida Water Management District has caused these presents to be executed in its name and its official seal affixed hereto by its Governing Board, acting by the Chairman of said Board and attested by its Secretary.

**GRANTOR:**

**SOUTH FLORIDA WATER MANAGEMENT  
DISTRICT,  
BY ITS GOVERNING BOARD**

By: \_\_\_\_\_  
Dan O’Keefe, Chairman

(Seal)  
ATTEST:



\_\_\_\_\_  
Brenda Low, Secretary

Legal Form Approved:

By: \_\_\_\_\_  
Office of Counsel

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Dan O’Keefe, as Chairman of the Governing Board of the South Florida Water Management District, a government entity created by Chapter 373, Florida Statutes, on behalf of the South Florida Water Management District, who is personally known to me.

\_\_\_\_\_  
Notary Public  
Print: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Brenda Low, as Secretary, of the Governing Board of the South Florida Water Management District, a government entity created by Chapter 373, Florida Statutes, on behalf of the South Florida Water Management District, who is personally known to me.

\_\_\_\_\_  
Notary Public  
Print: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**GRANTEE:**

Witnesses

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

(Corporate Seal)

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016,  
by \_\_\_\_\_, as \_\_\_\_\_, of  
\_\_\_\_\_, a \_\_\_\_\_, on behalf  
of the \_\_\_\_\_, who is personally known to me.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
My Commission Expires: \_\_\_\_\_

PREPARED BY AND RETURN TO:

\_\_\_\_\_  
PALM BEACH COUNTY  
PROPERTY & REAL ESTATE MANAGEMENT DIVISION  
2633 Vista Parkway  
West Palm Beach, FL 33411-5605

PCN: \_\_\_\_\_  
Closing Date: \_\_\_\_\_  
Purchase Price: \_\_\_\_\_

**COUNTY DEED**

**This COUNTY DEED**, made \_\_\_\_\_, by **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose legal mailing address is 2633 Vista Parkway, West Palm Beach, Florida 33411-5605, "County", and \_\_\_\_\_, a Florida \_\_\_\_\_, whose legal mailing address is \_\_\_\_\_, " \_\_\_\_\_".

**WITNESSETH:**

That County, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) to it in hand paid by \_\_\_\_\_, the receipt whereof is hereby acknowledged, has granted, bargained and sold to \_\_\_\_\_, its successors and assigns forever, the following described land lying and being in Palm Beach County, Florida:

See **Exhibit "A"** attached hereto and made a part hereof.

Reserving, however, unto County, its successors and assigns, an undivided three-fourths (¾) interest in, and title in and to an undivided three-fourths (¾) interest in, all the phosphate, minerals, and metals that are or may be in, on, or under the said land and an undivided one-half (½) interest in all petroleum that is or may be in, on, or under said land. The aforementioned reservation of phosphate, mineral, metals and petroleum rights shall not include, and County hereby expressly releases, any and all rights of entry and rights of exploration relating to such phosphate, mineral, metals and petroleum rights.

**IN WITNESS WHEREOF**, County has caused these presents to be executed in its name by its Board of County Commissioners acting by the Mayor or Vice Mayor of said Board, the day and year aforesaid.

**ATTEST:**

**SHARON R. BOCK**  
**CLERK & COMPTROLLER**

**PALM BEACH COUNTY, a political**  
**subdivision of the State of Florida**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Paulette Burdick, Mayor

**APPROVED AS TO FORM**  
**AND LEGAL SUFFICIENCY**

(OFFICIAL SEAL)

By: \_\_\_\_\_  
Assistant County Attorney

Attachment 3

Perpetual Agricultural Easement

15 pages

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Prepared by and Return to:  
Palm Beach County  
Property & Real Estate Management Division  
Attention: Director  
2633 Vista Parkway  
West Palm Beach, Florida 33411

**PERPETUAL AGRICULTURAL CONSERVATION EASEMENT**

THIS PERPETUAL AGRICULTURAL CONSERVATION EASEMENT ("Conservation Easement") is granted this \_\_\_\_\_ day of \_\_\_\_\_, 2016, ("Conservation Easement Date") by \_\_\_\_\_ (hereinafter referred to as the "Owner") to **Palm Beach County**, a political subdivision of the State of Florida, whose office address is 301 North Olive Avenue, West Palm Beach, Florida 33406, (hereinafter the "Easement Holder"). As used herein, the term "Easement Holder" shall include any and all successors or assigns of the Easement Holder.

**WITNESSETH**

**WHEREAS**, the Owner is the owner of certain lands situated in Palm Beach County, Florida, and more specifically described in Exhibit "A," attached hereto and made a part hereof ("Property"); and

**WHEREAS**, the Owner and Easement Holder recognize the special character of the Property as a working landscape that has traditionally been used for agriculture, as that term is defined in Section 570.02(1), Florida Statutes, and have the common purpose of conserving certain values and character of the Property by conveyance to the Easement Holder of a perpetual Agricultural Conservation Easement on, under, over, and across the Property, to conserve the character of the Property, continue certain land use patterns that do not significantly impair the character of the Property, and prohibit certain further development activities on the Property as recognized under Section 704.06, Florida Statutes, with respect to the Property.

**NOW, THEREFORE**, in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, received by Owner from Easement Holder, the adequacy and receipt of which are hereby acknowledged, Owner hereby conveys, grants, creates, secures and establishes a perpetual Agricultural Conservation Easement as recognized under Section 704.06, Florida Statutes, for the benefit of and in favor of the Easement Holder with respect to the Property, which shall run with the land and be binding upon the Owner, and shall remain in full force and effect forever, in accordance with the following terms, conditions and provisions.

**1. Recitals.** The foregoing recitals are true and correct and are hereby incorporated herein by reference.

**2. Conservation Easement Purposes.** The purposes of this Conservation Easement (“Conservation Easement Purposes”) are to assure that the Property will be retained forever in its natural, vegetative, hydrologic, scenic, open, and agricultural condition as a working landscape to preserve the Property as productive agricultural land that sustains for the long term both the economic and conservation values of the Property and its environs, to provide a relatively natural habitat for fish, wildlife, plants or similar ecosystems, to retain the structural integrity and physical appearance of the Property, preserve features of historical, architectural, archaeological, or cultural significance, and to maintain the existing land use through management guided by the following principles :

- a. Maintenance of economically viable agricultural practices that protect the landscape as a working enterprise in harmony with the open space and scenic qualities of the Property.
- b. Maintenance of soil productivity and control of soil erosion.
- c. Maintenance or improvement of the overall quality of the timber resource.
- d. Consistent with the protection of the integrity and function of the working landscape, promotion of a more complete pattern of protection, including buffers to natural areas, ecological greenways, and functioning ecosystems.
- e. Promotion of the restoration, enhancement or management of species habitat, consistent with the purposes for which the Conservation Easement is acquired.
- f. Protection, restoration or enhancement of water bodies and aquifer recharge areas including uplands and springsheds, wetlands, or watersheds.
- g. Protection of unique and fragile natural areas and rare species habitats.
- h. Perpetuation of open space on working lands that contain significant natural areas (hereinafter “SNA’s”) as identified in the map attached as Exhibit “B,” made a part hereof .

**3. Rights Granted to the Easement Holder.** To accomplish the Conservation Easement Purposes the following rights are conveyed to the Easement Holder by this Conservation Easement:

- a. The right to enforce protection of the Conservation Easement Purposes.
- b. All future residential, commercial, industrial and incidental development rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property. The parties agree that such rights are hereby terminated and extinguished and may not be used on the Property or assigned to a third party or transferred to other property. The Property may not be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements, under otherwise

applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise. Nor shall any development rights or density credits be transferred onto the Property from other property.

c. The right to enter upon the Property on a periodic basis as determined by Easement Holder at reasonable times in order to inspect and monitor compliance with and otherwise enforce the terms of this Conservation Easement; provided that such entry shall be upon prior reasonable notice to Owner, and Easement Holder shall not unreasonably interfere with Owner's use and quiet enjoyment of the Property.

d. The right to prevent any activity on or use of the Property that is inconsistent with the Conservation Easement Purposes or provisions of this Conservation Easement and to require the Owner at its cost to restore such areas or features of the Property that may be damaged by any inconsistent activity or use.

e. Except where the Owner is a political subdivision of the State of Florida, the right to have the ad valorem taxes, assessments and any other charges on the Property paid by Owner.

f. A right to prior notice of Owner's intent to sell or transfer title as provided in Section 15. This right of notice shall be triggered by sales or transfers of title by Owner, including gifts and bequests as well as transfers to entities in which Owner owns a majority of the controlling interests.

g. Except where the Owner is a political subdivision of the State of Florida, the right of Easement Holder and its agents, contractors, subcontractors, and representatives ("Indemnitees") to be defended, saved and held harmless, and indemnified by Owner against any and all liability, loss, damage, expense, judgment or claim (including a claim for attorney fees) with respect bodily injury, death, property damage, and any other damages, direct or indirect, of whatsoever nature, arising out of or in any way related to, or resulting from Owner or its agents, guests, contractors, subcontractors, lessees, licensees, or invitees use of or activities on the Property, including performance under this Conservation Easement, however caused, except where caused solely by the negligence of the Easement Holder or its agents, contractors, subcontractors, and representatives. This provision is not intended to be an exclusive or exhaustive remedy and does not preclude the exercise of any other rights and remedies available to the Indemnitees which may now or subsequently exist under law or in equity.

h. The right to have the Property maintained as reflected in the Baseline Documentation Report for the Property referred to in the next paragraph, subject only to the exercise of Owner's Reserved Rights, and the Rights Granted to the Easement Holder as described in this Conservation Easement.

The existing agricultural uses and conservation values of the Property are documented in the "Baseline Documentation Report for the Property, dated

\_\_\_\_\_, 2016. ("BDR"), which consists of documentation that the parties agree provides an accurate representation of the Property at the Conservation Easement Date and which serves as an objective information baseline for monitoring compliance with the terms of this Conservation Easement. The BDR is maintained in the offices of the Easement Holder and is incorporated into this Conservation Easement by this reference. A copy of the BDR is available from the Easement Holder on request.

i. If Owner fails to cut and remove timber damaged by natural disaster, fire, infestation or the like, then the right, but not the duty, of Easement Holder, in its sole discretion, to cut and remove said timber. Any such cutting and removal by Easement Holder shall be at the expense of Easement Holder and all proceeds from the sale of any such timber shall inure to the benefit of Easement Holder.

**4. Prohibited Uses.** The Property shall be maintained to preserve the Conservation Easement Purposes. Without limiting the generality of the foregoing, Owner agrees that the following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are expressly prohibited or restricted on the Property, except and only to the extent such uses or practices are otherwise allowably retained by Owner under Section 5:

a. The mining, removal, or excavation of surface or subsurface materials, the exploration for and extraction of oil, gas, minerals, dolostone, peat, muck, marl, limestone, kaolin, fuller's earth, phosphate, common clays, gravel, shell, sand and other substances, except for the drilling and extraction of oil, gas, and other hydrocarbons under the Property by slant or directional drilling from adjacent properties so not to damage or interfere with the Property, and except for the use of limestone to maintain the roads on the Property.

b. Activities that affect the hydrology of the Property or that detrimentally affect drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat, federal, state or local regulatory programs, or the applicable Best Management Practices adopted by the Florida Department of Agriculture and Consumer Services or its successor agency, as updated (hereinafter "BMP"), incorporated herein by reference. There shall be no dredging of new canals, construction of new dikes, manipulation of natural water courses, or disruption, alteration, or pollution of existing surface or subsurface water flow or natural water sources, fresh water lakes, ponds and pond shores, marshes, creeks or any other water bodies except as consistent with the BMP. Owner may construct, operate, maintain, or replace ground water wells incident to allowed uses on the Property.

c. Acts or uses detrimental to the preservation or structural integrity or physical appearance of features on the Property of historical, architectural, archaeological, or cultural significance.

d. Planting of nuisance exotic or non-native plants as listed by the Exotic Pest Plant Council (EPPC) or its successor. The Owner shall, to the extent practical, control and prevent the spread of nuisance exotics or non-native plants on the Property. Owner hereby grants to Easement Holder the right, in Easement Holder's sole discretion and at Easement Holder's expense, to develop and implement an exotic plant removal plan for the eradication of exotics, or non-native wild plants,



on the Property. Under no circumstances shall this right conveyed to Easement Holder be construed to diminish Owner's responsibilities under this paragraph or as an obligation of the Easement Holder.

e. Except as provided in Section 5.i, new construction or placing of temporary or permanent buildings, residences, mobile homes or other structures or improvements on the Property other than temporary structures during emergencies. For purposes of this paragraph, the term "emergency" shall mean those situations that will have an immediate and irreparable adverse impact on the Conservation Easement Purposes.

f. Construction or placing of roads, billboards or other advertising, utilities, or structures, except improvements and unpaved roads necessary for the agricultural operations on the land, and except for linear facilities described in section 704.06(11), Florida Statutes. Easement Holder may erect and maintain signs designating the Property as land under the protection of the Easement Holder.

g. Fertilizer use for agriculture activities not in accordance with the applicable current agricultural Best Management Practices recommended by the Natural Resources Conservation Service or the BMP, whichever is more stringent. No agricultural activities shall occur within a 100-foot buffer around sinkholes and other karst features that are connected to spring conduits, except as provided in the BMP.

h. Actions or activities that may reasonably be expected to adversely affect threatened or endangered species.

i. Surface use except for purposes that permit the Property to remain in its natural or agricultural condition.

j. Any subdivision of the Property. The Property shall remain a single tract as described in Exhibit "A."

k. Commercial water wells.

l. Removal of trees, shrubs, or other vegetation.

m. Mitigation banks or offsite regional mitigation areas as established under Chapter 373, Florida Statutes.

n. Conversion of SNAs to more improved areas.

o. Conversion of areas not in improved pasture to improved pasture.

p. Dumping or placing soils, trash, waste, or unsightly or offensive materials, as a landfill or uses of the Property detrimental to the preservation of the structural integrity or physical appearance of the Property or of items of historical, architectural, archaeological, or cultural significance.

q. Conversion of forested areas to non-forested areas.

r. Dairy operation of any type.

s. Any Disposal of Pollutants (as defined in this Subsection 4.a.) on the Property. For purposes of this Agricultural Easement, "Pollutant" shall mean any waste, substance, material, sludge, contaminant, pollutant, petroleum, petroleum product or petroleum by-product, or toxic or hazardous material or substance, as defined or regulated by environmental laws. "Dispose" shall mean the release, storage, use, handling, discharge, or disposal of such pollutants at any time prior to or after the Conservation Easement Date. "Environmental Laws" shall mean any applicable federal, state, or local laws, statutes, ordinances, rules, regulations or other governmental restrictions. Disposal of reasonable amounts of waste generated in agricultural use of the Property is allowed, provided it is generated from an allowed use in accordance with this Conservation Easement and disposed of in accordance with the Environmental Laws and the BMP. Any Disposal of such materials, whether caused by Owner or any other third party, shall be reported to the Easement Holder immediately upon the knowledge thereof by the Owner. The Owner shall be solely responsible for the entire cost of investigating and remediating the Disposal of Pollutants otherwise discovered on the Property or emanating from the Property to adjacent lands

## **5. Owner's Reserved Rights**

Owner reserves the following specified rights with respect to use of the Property, which are deemed allowable and consistent with the Conservation Easement Purposes.

a. The right to conduct prescribed burning on the Property; provided, however, that Owner shall obtain and comply with a prescribed fire authorization from the Florida Forest Service of the Florida Department of Agriculture and Consumer Services or its successor agency.

b. The right to mortgage the Property; provided, however, that the Mortgagee's lien shall be inferior to and lower in priority than this Conservation Easement.

c. The right to contest tax appraisals, assessments, taxes and other charges on the Property.

d. The right to continue to use, maintain, repair, and reconstruct, all existing buildings, barns, animal pens, outbuildings, fences, roads, ponds, wells, utilities, drainage ditches and such other facilities on the Property as depicted in the BDR.

e. The right to sell, devise or otherwise transfer ownership of the Property to a third party subject to this Conservation Easement.

f. The right to exclusive use of the improvements on the Property.

g. The right to establish (by survey, fencing or marking) and maintaining property lines around the perimeter of the Property to protect the Property from trespassing and to assist Owner in the management of the Property.

h. The right to maintain, introduce and stock native fish or wildlife on the Property and to use the Property for hiking and horseback riding. Owner reserves, and shall continue to own, the hunting and fishing rights on or related to the Property and Owner may lease and sell privileges with respect to such rights so long as incidental to agricultural use.

i. In accordance with applicable local, state and federal laws and regulations, and obtaining and maintaining in good standing all applicable local, state, and federal permits, authorizations, and approvals: (1) the right to repair and replace existing structures, and (2) subject to the prior written approval of the Easement Holder, the right to (i) enlarge existing buildings, structures, and improvements solely for agricultural purposes, (ii) to build new buildings, structures, and improvements solely for agricultural purposes, and (iii) to create impervious surfaces for such buildings and paved areas on the Property.

**6. No Public Access.** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement.

**7. Operation and Maintenance.** Except where the Owner is a political subdivision of the State of Florida, Owner shall be solely responsible for and shall bear all costs and liabilities of any kind arising out of or in any way related to the ownership, operation, and maintenance of the Property, including maintaining adequate comprehensive general liability coverage.

**8. Compliance with Laws.** Owner in using the Property and performing under the terms of this Conservation Easement shall comply with all applicable local, state and federal laws and regulations, and shall obtain and maintain in good standing all applicable local, state, and federal permits, authorizations, and approvals.

**9. Payment of Taxes and Assessments.** Except where the Owner is a political subdivision of the State of Florida exempt from paying taxes and assessments, Owner shall pay any and all real property taxes and assessments levied on the Property. No later than April first of each year, Owner shall provide to Easement Holder evidence of satisfaction of the prior year's real property taxes in the form of a paid tax receipt. Owner shall keep current on the payment of taxes and not allow a lien to attach to the Property superior to this Conservation Easement. In the event Owner fails to extinguish or subordinate any such lien, the Easement Holder may elect to pay off the lien on behalf of the Owner and Owner shall reimburse Easement Holder for the amount of the pay off, together with reasonable attorney's fees and costs, and with interest at the maximum allowable rate, no later than thirty days after delivery of notice of such payment. Owner's debt owed to Easement Holder shall constitute a lien against the Property which automatically relates back to the date of the recording of this Conservation Easement and Easement Holder may foreclose the Property in the manner provided for mortgages on real property in the event Owner does not so reimburse the Easement Holder.

## **10. Remedies.**

a. If Easement Holder determines that Owner is in violation of the terms of this Conservation Easement or that a violation is threatened, Easement Holder shall give written notice to Owner of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property, to restore the portion of the Property so injured. If Owner fails to cure the violation within 30 days after receipt of notice thereof from Easement Holder or, under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing such violation within the 30-day period, or fails to continue diligently to cure such violation until finally cured, Easement Holder may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any values protected by the Conservation Easement Purposes, including loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury.

b. Without limiting Owner's liability therefore, Easement Holder, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Easement Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant injury to the Conservation Easement Purposes, Easement Holder may pursue its remedies under this Section 10 without prior notice to Owner or without waiting for the period provided for cure to expire.

c. Owner agrees that Easement Holder's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Easement Holder shall be entitled to the injunctive relief described in this Section 10, both prohibitive and mandatory, in addition to such other relief as Easement Holder may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Easement Holder's remedies described in this Section shall be cumulative with any other remedies provided in this Conservation Easement and shall be in addition to all remedies now or hereafter existing at law or in equity.

d. Enforcement of the terms of this Easement shall be at the discretion of Easement Holder, and any forbearance by Easement Holder to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Owner shall not be deemed or construed to be a waiver by Easement Holder of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Easement Holder's rights under this Conservation Easement. No delay or omission by Easement Holder in the exercise of any right or remedy upon any breach by Owner shall impair such right or remedy or be construed as a waiver.

## **11. Liability.**

a. Easement Holder's ownership interest or attempted enforcement of rights under this Conservation Easement does not subject the Easement Holder to any liability for any damage or injury that may be suffered by any person on the Property or as a result of the condition of the

Property.

b. Except where Owner is a political subdivision of the State of Florida, Owner hereby releases, defends, indemnifies, and saves and holds harmless, Easement Holder and its directors, officers, employees, agents, contractors, and subcontractors, representatives, and invitees (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including reasonable attorney's fees and costs, for bodily injury, death, and property damage and all other damage, direct or indirect, of whatsoever nature, arising out of or in any way related to, or resulting from: (i) any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of one of the Indemnified Parties in which case only the solely negligent Indemnified Party loses the protection provided in this Section 11, (ii) any obligation of Owner under this Conservation Easement, and (iii) the Disposal of Pollutants. Easement Holder's remedies described in this Section shall be cumulative with any other remedies provided in this Conservation Easement and shall be in addition to all remedies now or hereafter existing at law or in equity.

**12. Waiver of Certain Defenses.** Owner hereby waives any defense of estoppel, adverse possession, or prescription against the Easement Holder.

**13. Condemnation.** If the Conservation Easement is taken, in whole or in part, by exercise of the power of eminent domain, Easement Holder shall be entitled to compensation in accordance with applicable law.

**14. Assignment by Easement Holder.** Easement Holder may assign its rights and obligations either in whole or in part, including adding an additional Easement Holder, provided the assignee is another organization qualified to hold such interest under applicable law.

**15. Transfer of Interest/Assignment by Owner.**

a. Notification of Transfer. Owner shall notify Easement Holder of the names and addresses of any party to whom a right, title, or interest is to be granted at least 60 days prior to the date of such transfer. Owner shall obtain assurances in writing from the prospective transferee of the Property that the Property will continue to be used for bona fide agricultural production purposes in accordance with the Conservation Easement.

b. Statement of Compliance. Owner may request in writing at least 45 days prior to sale, mortgage, transfer or long term (five years or longer) lease of the Property, or any portion thereof, a written statement from Easement Holder stating that Owner is either in compliance with the terms and conditions of this Conservation Easement or if not in compliance, stating what violations have occurred. Easement Holder agrees to execute and deliver to Owner or to any mortgagee, transferee, purchaser or lessee such written statement concerning compliance within 30 days from receipt by Easement Holder of such written request.

c. Specific Reference to Conservation Easement. In any grant of a right, title, or interest in the Property, including a license, lease, or easement, Owner shall either (i) insert into

such instrument of conveyance or transfer the terms of this Conservation Easement or (ii) incorporate by specific reference the terms of the Conservation Easement by including the following language in the legal instrument by which the right or interest is conveyed:

“The right, title, or interest granted is subject to a Conservation Easement, dated [     ] and recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_ of Palm Beach County which creates obligations with respect to the Property.

**[Note: Blanks to be filled in at time of execution and recording of this Conservation Easement]**

d.     Owner's Liability after Transfer. In the event of the sale, and/or the transfer of title of the Property, Easement Holder will meet with the new owner within 30 days to review with the new owner the obligations under this Conservation Easement. Owner shall have no personal liability for the performance of the obligations of the Owner hereunder arising after the Owner or subsequent owner has conveyed his or her interest in the Property.

e.     Subdivision of the Property. The Property shall not be subdivided and shall remain a single tract as described in Exhibit "A".

**16. Notices.** All notices, requests, consents and other communications required or permitted under this Conservation Easement shall be in writing (including electronic communications) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated, or mailed (airmail if international) by registered or certified mail (postage prepaid), return receipt requested, or sent by any form of overnight mail, or by email addressed to:

**TO CONSERVATION EASEMENT HOLDER:**

PALM BEACH COUNTY:

Palm Beach County  
Property & Real Estate Management Division  
Attention: Director  
2633 Vista Parkway  
West Palm Beach, Florida 33411-5605  
Fax: (561) 233-0210  
E-Mail: \_\_\_\_\_@pbcgov.org

**WITH COPY TO:**

County Attorney's Office  
301 N Olive Avenue, Suite 601  
West Palm Beach, Florida 33401  
Attention: Howard Falcon, Esquire  
Fax: (561) 355-4398  
E-Mail: \_\_\_\_\_@sfwmd.gov

**TO OWNER:**

\_\_\_\_\_  
\_\_\_\_\_  
  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
Email: \_\_\_\_\_@\_\_\_\_\_

or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (1) on the date delivered if by personal delivery; (2) on the date telecommunicated if by telegraph; (3) on the date of transmission with confirmed receipt if fax; (4) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed; (5) one day after mailing by any form of overnight mail service, and (6) on the date email transmitted (with option checked for “request a delivery receipt”).

**17. Miscellaneous**

a. Recordation. Easement Holder shall record this instrument and any amendments in timely fashion in the official records of Palm Beach County, Florida, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement.

b. Amendments. The terms and provisions of this Conservation Easement may be amended by the mutual consent of the parties hereto. No amendment shall be effective until executed with the formality of a deed and recorded in the public records.

c. Controlling Law. The laws of the State of Florida shall govern the interpretation and performance of this Conservation Easement.

d. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Easement Holder to effect the Conservation Easement Purposes and the policy and purpose of Section 704.06, Florida Statutes. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Conservation Easement Purposes that would render the provision valid shall be favored over any interpretation that would render it invalid.

e. Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

g. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Owner's title in any respect.

h. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

i. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j. Priority. This Conservation Easement shall be of equal priority with all other conservation easements granted to other governmental agencies and not-for-profit agencies contemporaneously herewith.

All the terms herein contained run with the land and shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, personal representatives, heirs, successors, and assigns.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise incident or appertaining to the use, benefit and behoof of the Easement Holder, its successors and assigns, forever.

This grant conveys only the interest of the Owner in the Property and Owner does not warrant the title or represent to any state of facts concerning same.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in their names and official seal affixed hereto.

Witnesses:

**OWNER:**

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ as \_\_\_\_\_, of \_\_\_\_\_, a \_\_\_\_\_, on behalf of said entity, who is/are personally known to me.

(Seal)

Notary Public, State of Florida  
Print Notary Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**ATTEST:**  
**SHARON BOCK, Clerk**

**EASEMENT HOLDER:**  
**PALM BEACH COUNTY, FLORIDA,**  
**BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

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

STATE OF FLORIDA  
COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, as Chairman of the Board of County Commissioners of Palm Beach County, who is personally known to me or who has produced \_\_\_\_\_ as identification,

(Seal)

Notary Public, State of Florida  
Print Notary Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF THE PROPERTY**

**[NOTE: Legal description needs to include McMurrain Parcel and both the District-owned approx. 10 acre parcel and the County-owned approx. 14 acre parcel.]**

**EXHIBIT B**

MAP OF SIGNIFICANT NATURAL AREAS