APPENDIX A

ACOE LETTER DATED SEPTEMBER 8, 2010

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO
ATTENTION OF

Regulatory Division
South Permits Branch
Tampa Permits Section
SAJ-1998-2682(IP-MN)

9 September 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michele L. Baker, Chief Assistant County Administrator
West Pasco Government Center
7530 Little Road, Suite 340
New Port Richey, Florida 34654

Dear Ms. Baker:

Reference is made to Department of the Army (DA) permit application SAJ-1998-2682(IP-MN) submitted by the Pasco County Board of County Commissioners (County) to discharge fill in wetlands to construct an east-west roadway between State Roads 52 and 54 to be known as the Ridge Road Extension (RRE) and our last letter to the County dated 28 May 2009 outlining information still needed by the U.S. Army Corps of Engineers (Corps).

In response to the Corps' letter of 28 May 2009, the County submitted a response that was received on 11 January 2010. A telephone conference was held on 4 February 2010 to discuss information still needed to review the permit application. The County responded with a letter dated 13 May 2010. A review of the 13 May 2010 response determined that additional information was required to address the Corps' comments and a telephone conference was held on 5 August 2010 to outline the proposed action by the Corps.

Participants in the telephone conference included the County's staff and the Corps' staff, including the Corps' Real Estate attorney. The Corps advised that the project did not comply with Clean Water Act Section 404(b)(1) guidelines (Guidelines) and that a final action decision would not be

favorable. The County requested that the Corps provide a list of missing or inadequate information and contended that the County had already provided sufficient information. The Corps agreed to provide the County a list of information still needed in order to comply with the Guidelines.

The following is a list of information that the County must submit in order to ensure compliance with the Guidelines:

I. Alternatives Analysis:

The alternatives analysis prepared by the County in 2001 and subsequent updates to that information is not adequate for the Corps to ensure compliance with the Guidelines. The applicant must rebut the presumption that, for a non-water dependent project there exists a less environmentally damaging, practicable alternative that would have less adverse impact on the aquatic ecosystem. See 40 CFR § 230.10. The 2001 alternatives analysis together with the updates does not meet this requirement. Therefore, the submitted alternatives analysis did not rebut the presumption that a less environmentally damaging, practicable alternative exists that would have less adverse impact on the aquatic ecosystem.

An alternatives analysis consists of avoidance of wetland impacts, followed by minimization of wetland impacts, and finally compensation for unavoidable wetland impacts (mitigation). The application of the Guidelines is sequential, requiring that avoidance be adequately addressed first, followed by minimization of wetland impacts to the greatest extent possible and, finally, if the first two are successfully addressed, mitigation must be provided that adequately compensates for the remaining unavoidable wetland impacts.

The County's application indicates an alternative was chosen before the analysis was completed. See, for example, the "Route Study Phase/Design Phase/Post Design Phase/Future Efforts" portion of the application. Also, the overall project purpose was narrowly defined in the "Portion and Need" section of the application so as to eliminate seemingly practicable alternatives.

The County should address the number of lanes that would be necessary to accomplish the overall project purpose and maintain an acceptable level of service (LOS). The "No-Build Alternative" should include an assessment of taking no action at all - including not widening State Road (SR) 52, SR-54,

constructing Tower Road, or constructing the RRE. Data used should be current and discussion should be limited to the positives and negatives of the no-build alternative.[1]

Please include as a fourth corridor alternative, Tower Road. Address all available funding sources including funding by the County. Neither the northern nor the southern corridor alternative can be ruled out without further analysis of the impacts of widening the road to meet the overall project purpose. Widening beyond 6 lanes must be discussed, wetland impacts outlined, and justifications provided for either accepting one of these corridor alternatives as the least environmentally damaging practicable alternative or rejecting these alternatives. With respect to the Middle Corridor, at this point in the analysis no corridor can be eliminated since all alignments must be reviewed to include SR-52, SR-54, Tower Road, and the alignments within the central corridor to include Phases 1 and 2.

The County needs to evaluate the travel characteristics of the alignment alternatives of the northern and southern corridors (i.e., SR-52, SR-54, and Tower Road). This should include expansion of the analysis of the community and other property impacts including the alternative corridors. Please submit an alternatives analysis that objectively reviews all alternatives.

A. Environmental Impacts:

1) Wetland impacts: Wetland impacts need to be shown on a chart/matrix drawing for each alternative. The chart/matrix should include wetlands impacted (herbaceous, forested, scrub) and the total size of each wetland. It is not acceptable to only state "1" as having the most wetland impacts and "7" as having the least. The County's rankings should be quantifiable.

2) Wildlife or Habitat: Each ranking from "1" to "7" needs to be defined. It is very important not only to accurately define the review parameters but also to indicate the rationale for using seven review parameters.

3) Floodplain Impacts: Each ranking from "1" to "7" needs to be defined. It is very important not only to accurately

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[1]The County should note here that the statement made at the bottom of page 19 is incorrect. In discussions with the FDOT and their consultants, it appears there is no policy prohibiting widening either SR-52 or SR-54 beyond 6 lanes.

define the review parameters but also to indicate the rationale for using seven review parameters.

4) Water Quality: Please elaborate on the County's statement regarding "impact of project on groundwater and surface water quality" since this may be an important factor to consider when the preferred alternative is chosen and justified.

5) Air Quality: Please elaborate on the County's statement regarding "effects of increased traffic on air quality".

B. Other Considerations:

1) The sections "Regulatory Agency Approval Potential" and "Project Costs" should have the rankings from "1" to "7" defined. Review parameters should be accurately defined and a rationale for utilizing the parameters should be provided.

2) Preferred Alignment Alternative: This section should contain the documentation/justification to show the preferred alternative after all alternative alignments in all four corridors have been analyzed.[2] Updated data should be provided. If this has already been accomplished, please provide the document location and page numbers.

3) National Historic Preservation Act: Since the last paragraph on page 46 refers to archeological and historic impacts, the County will need to check on input from the State Historic Preservation Officer (SHPO) for clearance since a SHPO letter was provided during the original public notice review.

II. Minimization of Wetland Impacts:

Please refer to Subpart H of the Guidelines for information concerning actions to minimize adverse effects. The County will need to provide a table that shows wetland minimization for each of the four corridors.

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[2] Table 2.4 is a matrix table that could be used to compare alternatives. The matrix should include all four corridors. The parameters of the weighting factor need to be defined in the document so that the Corps can review the weighting rationale. The factors of "1" through "7" used in this table need to be defined in the document so that the justification for the preferred alternative can be reviewed by the Corps together with the rationale for not choosing any of the other alternatives (Independent Review). The County will also need to provide descriptions of the other numbers used in this matrix.

III. Mitigation of Wetland Impacts:

Once the least environmentally damaging practicable alternative is chosen and minimization of wetland impacts is completed, any unavoidable wetland impacts must be mitigated in accordance with the Guidelines. Should the RRE be shown to be the least environmentally damaging practicable alternative, the proposed mitigation for wetland impacts for Phases 1 and 2 of the RRE currently consists of the River Ridge Floodplain Preservation site and the 4G Ranch Wildlife Corridor Preservation site.[3]

With respect to the River Ridge Preservation, please clarify the current ownership of the two parcels that comprise this proposed preservation area. Will both parcels be conveyed fee simple to the Southwest Florida Water Management District (SWFWMD)? The 4G Ranch Wildlife Corridor Preservation (4G) is proposed as mitigation by means of a conservation easement (CE). Currently, the CE submitted to preserve this site has not been deemed acceptable by the Corps. A copy of the CE with terms acceptable to the Corps is enclosed. Please review the attached CE and provide your comments within the timeframe specified in this letter. In addition, you should address the following issues with the 4G site:

1) Third Party Mineral Interests: To date only three Oil, Gas and Mineral Leases have been addressed by the title company and the County attorney. There are at least 29 outstanding third party mineral interests currently on the tax records. The mineral interests can be cleared by purchase, extinguishing the interest by operation of law, by eliminating any right of access, or producing other evidence (e.g., geological report) for us to make a determination that the probability of extraction is "miniscule". These interests need to be addressed in one way or another. Title information, including copies of all deeds going back to the time the mineral interests were originally severed, must be provided.

2) Survey and Legal Description of the CE: The County should supply a survey and legal description of the land to be placed under CE. To date, the County has provided this information for some but not all of the property located on the proposed CE site.

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[3] Mitigation for the impacts of the interchange with the Suncoast I and the RRE should also be discussed.

In accordance with 33 CFR § 325.2(4), the County has 30 days to respond to this request for additional information. If the County does not respond with the requested information or a justification why additional time is necessary, its application will be considered withdrawn. Questions should be addressed to the Project Manager, Mike Nowicki, at the letterhead address, by telephone at 904-232-2171, or electronic mail at Michael.F.Nowicki@usace.army.mil.

Sincerely,

Charles A. Schnepel

Charles A. Schnepel, Chief
Tampa Permits Section

Enclosure

Return to:
~~Pasco County, Florida~~
~~Real Estate Division~~
~~7530 Little Road~~
~~New Port Richey, FL 34654~~

Perpetual Conservation Easement

This indenture, made and entered into this _____ day of _____, 20__, by William Ted Phillips, Sr., whose address is 22501 S.R. 52, Land O' Lakes, FL 34639, hereinafter referred to as "Grantor," and the Southwest Florida Water Management District~~Pasco County~~, a public corporation created by Chapter 61-691, Laws of Florida, whose address is 2379 Broad Street, Brooksville, Florida 346-6899, ~~political subdivision of the State of Florida, whose address is 37918 Meridian Avenue, Dade City, Florida 33523~~, hereinafter referred to as "Grantee."

WITNESSETH:

Whereas, Grantor is the owner in fee simple of certain real property lying and being situated in Pasco County, Florida, more specifically described in Exhibit "A," attached hereto and incorporated herein by reference, hereinafter referred to as the "Protected Property";

WHEREAS, Grantee is a public body of the state of Florida and is qualified to be the Grantee of a conservation easement pursuant to applicable state law;

WHEREAS, Grantee Permit No. _____ and Permit No. _____ of the U.S. Army Corps of Engineers ("Corps") (hereinafter referred to as the "Permits") authorize certain activities which affect waters in or of the State of Florida and waters of the United States;

WHEREAS, The Corps is not authorized to hold conservation easements, and the Grantee has agreed to hold the easement on behalf of the Corps;

Whereas, Grantor and Grantee mutually recognize the natural, scenic and special character of the Protected Property and have the common purpose of conserving that certain natural, scenic, agricultural and special character of the Protected Property by conveyance to Grantee of a perpetual conservation easement on, under, over, and across the Protected Property, which shall act to conserve and protect the natural, scenic, agricultural and special character of the Protected Property; it further being the intent of the parties to conserve and protect the ecological and hydrological integrity, present use and animal and plant populations on the Protected Property, and to prohibit certain further development activity on the Protected Property; and

Whereas, the Grantor and Grantee mutually recognize the protected property as a wildlife corridor as well as a critical linkage consistent with Pasco County's

Comprehensive Plan, providing the connector between Cross Bar Ranch and the Connerton Preserve;

NOW THEREFORE, in consideration of the above and mutual covenants, terms conditions, and restrictions contained herein, together with other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby voluntarily grants and conveys a perpetual Conservation Easement, as defined in Section 704.06, Florida Statutes, for and in favor of Grantee upon the Property, which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

~~NOW, THEREFORE, the above recitals are incorporated herein, and Grantor for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell and convey to Grantee and its successors and assigns a perpetual conservation easement on, under, over and across the Protected Property for the purposes as set forth herein, and pursuant to Section 704.06, Florida Statutes (F.S.), but without intending the validity of this Easement to be dependent on the continuing existence of such laws (hereinafter "Easement").~~

~~ARTICLE I. DURATION OF EASEMENT~~

~~This Easement shall be perpetual. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor and his personal representatives, heirs, successors and assigns, lessees, agents and licensees.~~

ARTICLE II. PURPOSE OF EASEMENT

A. In addition to the recitations stated above, the purposes of this Conservation Easement are to provide a wildlife corridor between Cross Bar Ranch and the Connerton Preserve and to retain and maintain land or water areas on the Property in their natural, vegetative, hydrologic, scenic, open, agricultural, or wooded condition and to retain such areas as suitable habitat for fish, plants, or wildlife. ~~the~~ Consistent with these purposes, this Conservation ~~of this~~ Easement ~~is to~~ prohibits development on the Protected Property and thereby protects and preserves, in perpetuity, the natural, scenic, agricultural and special character, ecological and hydrological integrity, and habitat for indigenous plant and animal life of the Protected Property, consistent with the establishment and maintenance of a wildlife corridor and the critical linkage designation placed on the Protected Property within the Pasco County Comprehensive Plan. Grantor intends that this Conservation Easement will confine the use of the Protected Property to such activities as are consistent with the purposes of this Conservation Easement as defined herein.

B. The specific conservation values of the Protected Property are documented in the "Baseline Inventory ~~Report~~" that is contained within Section 2.0 of the Environmental Management Plan, attached hereto as Exhibit "B," and incorporated herein.

ARTICLE III. RIGHTS GRANTED TO GRANTEE

To accomplish the purpose of this Conservation Easement the following rights

are conveyed to Grantee and/or the Corps by this Conservation Easement:

A. The right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose and provisions of this Easement and to require the restoration of or to restore such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, at Grantor's cost.

B. The right to take action to preserve and protect the environmental value of the Property;

C~~A~~. The right to preserve and protect the conservation values of the Protected Property as specifically provided within the "Environment Management Plan" which is attached hereto as Exhibit "B" and incorporated into and made a part of this Easement. The Environmental Management Plan contains the Baseline Documentation referenced in Article II, B. above, and specifically defines the Grantor's responsibilities for maintaining and managing the Protected Property.

D~~B~~. ~~Th~~The right to enter upon and inspect the Property in a reasonable manner and at reasonable times, including the right to use vehicles and all necessary equipment to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement.~~e right to enter upon the Protected Property at reasonable times to monitor compliance with and otherwise enforce the terms of this Easement; provided Grantee notifies Grantor twenty-four hours in advance of such entry, and Grantee shall not unreasonably interfere with the rights and uses of the Protected Property retained by Grantor. Notice, for purposes of this paragraph, need not comply with Article VI, Paragraph H.~~

~~C. The right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose and provisions of this Easement and to require the restoration of or to restore such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, at Grantor's cost.~~

E~~D~~. Grantor hereby grants to Grantee a "Right of First-Refusal" to purchase the Protected Property, or any interest in the Protected Property, which Grantor hereafter wishes to sell. Grantor shall notify Grantee in writing of Grantor's intent to accept an offer to sell the Protected Property, or any interest in it, to a third party purchaser. Grantee shall have forty-five (45) days from receipt of said notification within which to provide Grantee's written notice to Grantor of Grantee's intention to purchase the Protected Property at which time Grantee shall be bound to purchase said Protected Property in cash (with all closing costs to Grantee) at the price provided in the notice with closing to occur within ninety (90) days of Grantee's notice of intent to purchase. If Grantee notifies Grantor that Grantee has decided not to purchase the Protected Property, or, in the event Grantee fails to notify Grantor, within forty-five (45) days, of its intent to purchase the Protected Property, then Grantor may sell the Protected Property to the party named in Grantor's notice. If Grantor does not sell the Protected Property to said named party, then Grantee shall have the same right-of-first-refusal before Grantor may accept an offer from another purchaser. This Right of First-Refusal shall apply to any voluntary transfer of the Protected Property to any other entity, except (i) voluntary transfer by will, gift,

intestacy, devise or other testamentary transfer; or (ii) transfer to or sale to a lineal descendant of Grantor or a spouse of such lineal descendant including a transfer or sale to an entity such as a limited liability company whereby the member or members of said limited liability company would be the Grantor or a lineal descendant of Grantor or a Trust whereby the beneficiary or beneficiaries of said Trust are the lineal descendants of Grantor or a spouse of such lineal descendant or the spouse of the Grantor; or (iii) any transfer of any portion of the Protected Property to a governmental or quasi-governmental entity through or under threat of the exercise of its eminent domain authority; or (iv) further restriction by grant of conservation easement to any government or quasi-governmental agencies or to any tax exempt non-profit entity. The parties specifically intend that this Right of First-Refusal shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, transferees, assigns and successors.

~~E. The right to have the Protected Property maintained in its current state as reflected in the Baseline Documentation contained within the Environmental Management Plan, as the Protected Property may develop through the forces of nature hereafter, subject only to the exercise of Grantor's Reserved Rights, and the Rights Granted to Grantee, as described in this Easement.~~

F. The right to enforce this Conservation Easement by injunction or proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities hereinafter set forth, and the right to require Grantor to restore such areas or features of the Property that may be damaged by any inconsistent activity or use.

ARTICLE III~~V~~. PROHIBITED USES

Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the foregoing, the following activities, structures and uses are expressly prohibited, except as authorized by the Permits for restoration, creation, enhancement, maintenance, management and monitoring activities authorized by the Permits:

A. **Construction.** Except as otherwise provided herein, there shall be no construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.

B. **.Dumping.** Except as otherwise specified herein, there shall be no dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

C. **Removal of trees and other vegetation.** Removal or destruction of trees, shrubs, or other vegetation, shall be prohibited, except as may be permitted by the Permits, and except for the removal of nuisance, exotic, or non-native vegetation in accordance with a maintenance plan approved by Grantee;

D. **Excavation** Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface shall be prohibited.;

E. **Surface Use**. There shall be no surface use of the protected area except for purposes that permit the land or water area to remain in its natural condition,

F. **Water and Hydrology.** f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation are prohibited unless otherwise specifically provided for in this Conservation Easement. There shall be no dredging of new canals, construction of new dikes, manipulation of natural water courses, or disruption, alteration, pollution, depletion or extraction on the Protected Property 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, nor any activities or uses conducted on the Protected Property which would be detrimental to water purity or which could alter natural water level or flow in or over the Protected Property. Provided, however, Grantor may continue to operate, maintain or replace existing ground water wells incident to permitted uses on the Protected Property, subject to legally required permits and regulations.

G. **Retention of Land and Water Areas**.. Acts or uses detrimental to such aforementioned retention of land or water areas. Lands that are depicted in the Baseline Documentation as being wetlands shall remain wetlands, and lands depicted in the Baseline Documentation as undisturbed natural areas shall remain undisturbed natural areas.

H. **Historical, Archaeological, and Cultural Sites**,. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance shall be prohibited unless authorized or approved by the appropriate officials of the State of Florida having jurisdiction thereover.;

I. **Exotics.** There shall be no planting of nuisance, exotic, or non-native plants as listed by the Exotic Pest Plant Council (EPPC), or its successor;

J. **Mining.** Exploration for or extraction of oil, gas or other minerals shall be prohibited.;

K. **Hunting, fishing and trapping.** Hunting and trapping shall be prohibited as such activities are inconsistent with the purpose of a wildlife corridor. Fishing may be allowed as provided for herein below.

L. **Recreational Uses.** Any recreational use inconsistent with the purpose or provisions of this Conservation Easement are prohibited, , including but not limited to the use of all-terrain vehicles except as used for land management activities.

~~The Protected Property shall be maintained in its current, scenic, rural, agricultural and open condition and restricted from any development or use that would impair or interfere with the conservation purposes of this Easement. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted:~~

~~A. **Construction.** Except as otherwise specifically provided herein, there shall be no construction of or the placing of temporary or permanent buildings, mobile homes, roads~~

~~except as stated specifically herein, signs, billboards or other advertising, or other structures on or above the ground.~~

M. ~~B~~. **Subdivision of the Protected Property.** The Protected Property shall not be subdivided. Any interest granted subsequent to this document shall be subject to this Conservation Easement.

~~C. **Dumping.** Except as otherwise specifically authorized herein, there shall be no dumping or placing of imported fill material, trash, liquid or solid waste (including sludge), or unsightly, offensive, or hazardous materials or toxic substances, pollutants or contaminants, including, but not limited to, those as defined by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901-6991, or the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601-9674, as amended by the Superfund Amendments and Reauthorization Act of 1986, or any Florida Statute defining hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants (hereinafter collectively referred to as "Contaminants") on the Protected Property.~~

~~D. **Mining.** Grantor shall be prohibited from engaging in, authorizing or consenting to the exploration for, or extraction or removal of, oil or gas, minerals, peat, muck, limestone, sand, loam, gravel, rock, soil or other material, except as reasonably necessary for the agricultural activities permitted in Article V, paragraph D below.~~

N.~~E~~. **Agricultural Areas and Activities.** There shall be no grazing permitted in the protected area and ~~more intense agricultural use of the Protected Property than exists on the Protected Property, no creation of new pastures nor enlargement of existing pastures, and~~ no conversion of natural areas to agriculture. ~~All areas of the Protected Property shall be identified by categories within a Baseline Natural Resource Inventory prepared as a part of the Baseline Documentation, which is a part of this Easement. The categories for areas of the Protected Property identified in the Baseline Documentation shall include uplands, wetlands, native range, improved pasture and improved lands. Grantor shall not use the Protected Property for dairy, swine, poultry or feedlot operations,~~ Citrus production activities~~y~~ and ~~or~~ the planting of truck or row crops are prohibited.. Grantor shall not introduce or release non-indigenous species, including wild game animals, on the Protected Property. ~~except as specifically allowed herein.~~

~~F. **Retention of Land and Water Areas.** Lands that are depicted in the Baseline Documentation as being wetlands shall remain wetlands, and lands depicted in the Baseline Documentation as undisturbed natural areas shall remain undisturbed natural areas.~~

O..~~G~~. **Wetland/Cypress Harvesting.** There shall be no harvesting in wetlands and no live cypress shall be harvested at any time.

P..~~H~~. **Commercial and Industrial Use.** Commercial or industrial activity and ingress, egress or other passage across or upon the Protected Property in connection with any commercial or industrial activity is prohibited on the Protected Property.

~~I. **Waters and Hydrology.** Activities that will be detrimental to drainage, flood~~

~~control, water conservation, erosion control, soil conservation or fish and wildlife habitat preservation are prohibited unless otherwise specifically provided for in this Easement. There shall be no dredging of new canals, construction of new dikes, manipulation of natural water courses, or disruption, alteration, pollution, depletion or extraction on the Protected Property 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, nor any activities or uses conducted on the Protected Property which would be detrimental to water purity or which could alter natural water level or flow in or over the Protected Property. Provided, however, Grantor may continue to operate, maintain or replace existing ground water wells incident to permitted uses on the Protected Property, subject to legally required permits and regulations.~~

~~J. **Exotics.** There shall be no planting of non-indigenous aquatic and terrestrial species except as otherwise specifically provided for herein. Grantor shall make all reasonable efforts to reduce or eliminate the occurrence of non-indigenous aquatic and terrestrial species to the extent practicable and economically feasible as provided in Exhibit B, Environmental Management Plan.~~

Q.~~K~~. **Pesticides/Herbicides/Fertilizers.** Agricultural chemicals used by Grantor, including fertilizers, pesticides and herbicides, shall only be applied in such amounts and with such frequency of application that constitute the minimum necessary, as defined in the Environmental Management Plan attached hereto as Exhibit "B", to perform noxious weed control, habitat enhancement and restoration, timber management and agricultural and residential or other activities permitted under this Easement, and provided that such chemicals shall be applied by non-aerial means. It is further required that the use of such chemicals shall be in compliance with the manufacturer's label instructions and State and Federal law and conducted in such a manner as to minimize adverse environmental effects on the Protected Property. Grantor is prohibited from using biological weed and insect control agents without obtaining prior written approval from Grantee. No substance harmful to the animals using the wildlife corridor shall be used.

R..~~L~~. **Endangered Species.** Grantor shall take no action that will negatively impact threatened or endangered species as shown on the then current list for threatened and endangered species as established by the Florida Fish and Wildlife Conservation Commission and the U.S. Fish and Wildlife Service or any other animal using the wildlife corridor.. ~~A current list for such threatened or endangered species is contained with the Environmental Management Plan attached hereto as Exhibit "B".~~

~~M. **Archaeological, Cultural or Historic Sites.** Grantor shall take no action that will materially and negatively impact or damage any sites of archaeological, cultural, or historical significance, when any such sites have been specifically identified as such by any United States or State of Florida governmental entity, unless authorized or approved by the appropriate officials of the State of Florida having jurisdiction thereover.~~

ARTICLE IV. RESERVED RIGHTS

Grantor reserves to himself, his successors, lessees, invitees, contractors and assigns the following rights with regard to the Protected Property:

A. **Right of Exclusive Use.** Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and which are not inconsistent with any Grantee or Corps rule, criteria, permit, or the intent and purposes of this Conservation Easement.
~~Grantor shall have all rights not inconsistent with the purposes of this Easement to perform any act not prohibited or restricted by this Easement, including without limitation, the right of exclusive use, possession and enjoyment of the Protected Property as the underlying fee owner of the Protected Property.~~

B. **Transfer of Rights.** To give, sell, assign, lease, mortgage or otherwise transfer the Protected Property by operation of law, by deed, or by indenture, subject and subordinate to this Easement.

C. **Open Space.** To be able to include the Protected Property as part of the gross area of other property not subject to this easement in order to satisfy open space requirements under applicable laws, regulations, ordinances and comprehensive plan provisions controlling land use and building density.

D. ~~**Agricultural Operations.** Grantor may maintain agricultural operations, including existing cattle and equine activities, on the Protected Property provided such operations are conducted in accordance with BMPs and the number of animal units on the Protected Property does not exceed the acceptable number of animal units established by the Baseline Documentation for the native range and improved pasture of the Protected Property. Existing ponds may be maintained for fishing and agricultural activities, subject to obtaining all consents or permits required by law. New ponds as needed to maintain existing agricultural activities may be created, subject to obtaining all consents or permits required by law. Grass and forage crop production may be conducted on any improved pasture as established by the Baseline Documentation.~~

D..**Existing Improvements**. Grantor shall have the right to:

1. Maintain ~~and replace~~ any and all existing buildings, structures, improvements, roads, fences, ponds and drainage ditches in a usable condition without the consent of Grantee, subject to obtaining all consents or permits required by law.

2. ~~Construct,~~ maintain and repair fences necessary for ~~agricultural or other~~ activities not prohibited by this Easement, subject to obtaining all consents and permits required by law.

3. Place signs, for which placement, number and design do not significantly diminish the scenic character of the Protected Property, to state the name and address of the persons living on the Protected Property, to advertise the Protected Property for sale or to post the Protected Property to control unauthorized entry or use or as described in the Environmental Management Plan.

E.~~F.~~ **Hunting and Fishing.** Grantor retains fishing rights and existing ponds may be maintained for that purpose. ~~In addition, Grantor reserves unto himself, and his~~

~~successors and assigns, the sole and exclusive right to continue existing hunting activities on the property subject to the conservation easement, so long as such activity does not adversely impact endangered or threatened species of wildlife. All hunting must be in conformance with all state hunting regulations. Captive-raising of native and non-native game, and the sale of any game is prohibited. Notwithstanding anything herein to the contrary, Grantor retains the right to hold and release imported quail for the purpose of hunting. Grantee retains the right to inspect the Property to insure that hunting activities within the Property are not detrimental to fish and wildlife preservation, and do not result in any prohibited uses or impacts expressly prohibited in this agreement. Any lease of these rights shall be contingent upon Grantor providing Grantee with a wildlife management plan consistent with Florida Fish and Wildlife Conservation Commission guidelines.~~

~~G. **Restoration Credits.** Grantor retains the right to claim and utilize any restoration credits that can be created within the Protected Property, subject to approval under applicable regulations; however, no wetland creation or upland conversion shall be permitted on the Protected Property unless approved by the County and in conformance with all applicable rules and regulations.~~

F~~H~~. **Water.** To take action necessary to preserve water levels, to preserve the natural purity of the water, or to prevent the erosion of any slope or shoreline on the Protected Property, subject to regulatory approval.

G~~I~~. **Emergency Action.** In response to natural disaster, environmental hazards or threats to human safety, Grantor may take emergency action to preserve and protect Grantor's rights herein.

ARTICLE V~~I~~. MISCELLANEOUS TERMS

A. Responsibility of the Parties. Grantor, on behalf of its successors and assigns, hereby agrees to bear all costs and liabilities related to the operation, upkeep or maintenance of the Property and Grantor does hereby indemnify and hold harmless the Grantee and the Corps from same.

B~~A~~. **Taxes.** ~~**Ad Valorem Taxes.**~~ Grantor agrees to make timely payment of any ad valorem taxes on the Protected Property, consistent with Section 196.26, F.S.. In each tax year, Grantor shall provide Grantee written proof of payment of applicable taxes on the Protected Property on or before the date such taxes would be considered delinquent. In the event Grantor fails to extinguish or obtain a subordination of such lien, in addition to any other remedy, the Grantee may, but shall not be obligated to, elect to pay the lien on behalf of the Grantor and Grantor shall reimburse Grantee for the amount paid by Grantee, together with Grantee's reasonable attorney's fees and costs, with interest at the maximum rate allowed by law, no later than thirty days after such payment. In the event Grantor does not so reimburse the Grantee, the debt owed to Grantee shall constitute a lien against the Property which shall automatically relate back to the recording date of this Conservation Easement. Grantee may foreclose this lien on Property in the manner provided for mortgages on real property.

C~~B~~. **Liability.** Grantor shall be responsible for any and all liability for any loss, damage, expense, judgment or claim (including a claim of attorney fees) arising out of any negligent or willful action or activity resulting from Grantors use and ownership of or activities on the Property or the use or activities by the Grantor's agents, guests, lessees, or invitees, and shall indemnify and hold the Department and the Corps harmless from same. Furthermore, the Grantor, its successors or assigns shall indemnify and hold harmless the Department and the Corps for all liability, any injury or damage to the person or property of third parties which may occur on the Property.
~~Grantor shall assume all liability for any injury or damage to the person or property of third parties which may occur on the Protected Property arising from Grantor's ownership of the property. Neither Grantor, nor any person or entity claiming by or through Grantor, shall hold Grantee liable for any damage or injury to person or personal property which may occur on the Protected Property. Subject to the limits of liability set forth in Section 768.28, Florida Statutes, Grantee will indemnify, defend, and hold Grantor harmless from any claim, loss, damage, costs, charge, or expense, including attorney's fees and costs, arising from or in connection with the activities of Grantee authorized herein, except for damages arising out of the injury or damage to persons or property directly caused or resulting from the sole negligence of the Grantor or any of its agents, servants or employees.~~

D..**Hazardous Waste.** Grantor covenants and represents that no hazardous substances or toxic waste exists or has been generated, treated, stored, used, disposed of, or deposited in or on the Property, and that there are not now any underground storage tanks located on the Property. Grantor, its successors or assigns, further indemnify the Grantee and the Corps for any and all liability arising from any subsequent placement or discovery of hazardous or toxic material on the property. In the event such material is discovered, Grantor, its successors or assigns, shall be responsible for the removal of the materials following coordination and written approval of the Grantee.

ED~~C~~. **Acts Beyond Grantor's Control.** Nothing contained herein shall be construed to entitle Grantee to bring any action against Grantor, its successors or assigns, for any injury to or change in the Property resulting from natural causes beyond Grantor's control, including without limitation, fire, flood, storm and earth movements, or from any necessary action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

FE.~~D~~. **Monitoring.** Grantor shall assist Grantee in the monitoring and enforcement of the terms and conditions of this Easement. The Grantee and the Corps and their~~its~~ agents, employees, ~~and~~ assigns, ~~and the South West Florida Water Management District,~~ may enter upon, over and across the Protected Property, to inspect it for the purpose of ensuring compliance with the terms and conditions of this Conservation Easement~~, so long as such entry does not interfere with the rights and uses of the Protected Property retained by the Grantee, and provided that Grantee notifies Grantor at least twenty-four (24) hours before said inspection.~~

G~~E~~. **Public Access.** ~~G~~ No right or access by the general public to any portion of the Property is conveyed by this Conservation Easement, and Grantor further covenants not to convey any right or allow access to the general public to any portion of the Property, except as provided in the Permits.

~~rantee shall not have any right to allow the general public on the Protected Property at any time without the prior written consent of Grantor.~~

H. **Rights of the Corps:** The Corps, as a third party beneficiary, shall have all the rights of the Grantee under this easement. The Corps shall approve any modification, alteration, release or revocation of the conservation easement, and shall review and approve as necessary any additional structures or activities on the property that require approval by the Grantee. The Grantor shall provide the Corps (District Engineer) at least 60 days advance notice in writing before any action is taken to modify, alter, release or revoke this Conservation Easement.

I. **Venue and Enforcement Costs:** Venue to enforce the terms of this Conservation Easement shall be in _____ County, Florida. In the event the Corps takes enforcement action, venue shall be in a state or federal court of competent jurisdiction. If Grantee and/or the Corps prevail in an enforcement action, they shall be entitled to recover the cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement or to the vegetative and hydrologic condition required by the Permits. These remedies are in addition to any other remedy, fine or penalty which may be applicable under Chapters 373 and 403, F.S.

J. **Enforcement Discretion:** Enforcement of the terms, provisions, and restrictions of this Conservation Easement shall be at the reasonable discretion of Grantee and/or the Corps, and any forbearance on behalf of Grantee or the Corps to exercise their respective rights hereunder in the event of any breach by Grantor, shall not be deemed or construed to be a waiver of such rights.

K. **Assignment of Rights:** Grantee shall hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement, except to another legal entity qualified to hold such interests under applicable state laws.

~~F. **Notice of Violation.** In the event of violation of any of the terms and conditions hereof, Grantor or Grantee shall give written notice to the other party, which shall have the right to cease or to cure the violation without penalty. If the party in violation does not cease or cure the violation within thirty (30) days after receipt of written notice from the other party, the terms and conditions hereof may be enforced by Grantor or by Grantee by suit for injunctive relief or for other appropriate remedy in equity or at law. Venue for such suit shall be in the Circuit Court in and for Pasco County, Florida. In the event of such suit, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs of suit, including on appeal. As a condition precedent for filing of any lawsuit, the parties shall perform the mediation process immediately stated below.~~

~~G. **Mediation.** All disputes, claims and questions regarding the rights and obligations of the parties are subject to pretrial mediation. In case of dispute, either party may make a demand for mediation by filling such demand in writing with the other party. Based on the mutual agreement of both parties, one mediator will be selected. The costs of mediation (including the reasonable compensation of mediators) shall be borne equally~~

~~by the parties.~~

L. **Recording in Land Records:** Grantor shall record this Conservation Easement and any amendments in a timely manner in the official records of _____ County, Florida, and shall re-record it at any time Grantee or the Corps may require to preserve their rights. Grantor shall pay all recording costs and taxes necessary to record this Conservation Easement and any amendments in the public records.

M. **Successors:** The covenants, terms, conditions, and restrictions of this Conservation 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.

N. **Subsequent Deeds:** Grantor shall insert the terms and restrictions of this Conservation Easement into any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Property. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. Grantor shall provide a photocopy of the recorded deed or other legal instrument to the Grantee and Corps, together with the requisite notice of permit transfer. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

O~~H~~. **Notices.** Any notice, demand or request which may be or is required or to be given under this Easement shall be delivered in person or sent by United States Certified Mail, postage prepaid, return receipt requested, and shall be addressed to Grantee, at the addresses first set forth above, with a copy to: Pasco County, Attn: Environmental Lands Division, 7530 Little Road, New Port Richey, FL 34654 and the District Engineer, U.S. Army Corps of Engineers, Jacksonville District, P.O. 4970, Jacksonville, FL 32232-0019.

P~~I~~. **No Waiver.** No waiver of any provision of this Easement shall be effective unless it is in writing signed by the party against whom it is asserted, and any such waiver shall only be applicable to the specific incident to which it relates and shall not be deemed to be a continuing or future waiver.

~~J~~Q.~~—~~**Severability.** If any provision of this Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby, as long as the purpose of the Conservation Easement is preserved.

~~A determination that any provision of this Easement is invalid or unenforceable shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Easement to any person or circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other person or circumstances.~~

R~~K~~. **Entire Agreement.** This Easement, together with the all documents attached or otherwise incorporated herein, constitutes the entire understanding and agreement between the parties and shall not be changed, altered, or modified, except by an

instrument in writing, signed by the party against whom enforcement of such change would be sought, which shall be recorded in the public records of Pasco County. In the event any terms or provisions of this Easement are determined by competent judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or shall be construed or deleted as such authority determines, and the remainder of this Easement shall be construed as being in full force and effect.

S. **Alteration or Revocation:** Subject to the rights of the Corps as stated in Paragraph 11 above, this Conservation Easement may be amended, altered, released or revoked only by written agreement between the parties hereto or their heirs, assigns, or successors in interest, which shall be filed in the public records of _____ County, Florida.

T. **Controlling Law:** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Florida and any applicable Federal laws, where appropriate.

U~~L~~. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of Section 704.06, F.S. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

V. **Language of Conservation Easement Prevails.** Should there be any inconsistency or conflict between the rights, responsibilities, or prohibitions set forth in this Conservation Easement and the provisions of the Environmental Management Plan, Baseline Inventory, or any other document or exhibit pertaining to this transaction, the provisions of the Conservation Easement shall prevail.

~~M. **Definitions.** For the purpose of this Easement, the following definitions shall apply:~~

~~1. "Improved Pasture" shall be considered grazing lands of introduced species or domesticated native forage species that receive periodic renovation and/or cultural treatments such as tillage, fertilization, mowing, weed control or irrigation and for the purposes of this Easement, as identified by the Baseline Documentation as improved pasture.~~

~~2. "Native Range" shall be considered land on which the existing vegetation, whether growing naturally or through management, is suitable for grazing and browsing of domestic livestock at least part of the year. Native range includes any natural grasslands, savannas, shrub-lands, woodlands and wetlands which support a vegetative cover of native grasses, grass-like plants, forbs, shrubs or other natural species and for the purposes of this Easement, as identified by the Baseline Documentation as native range.~~

~~3. "Improved Lands" shall be defined as those lands where indicated as such in~~

~~the Baseline Documentation and include all residential and agricultural structures and related improvements.~~

~~4. "Best Management Practices" (BMPs) as referenced throughout this document are as defined in Exhibit B, the Environmental Management Plan.~~

~~5. "Non-indigenous" shall be considered a species or other viable biological material that is not native to an ecosystem or to a geographical region; includes exotic and transplanted species.~~

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

Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this Conservation Easement and that all mortgages, if any, have been joined or subordinated; that Grantor has good right and lawful authority to convey this Conservation Easement, and that it hereby fully warrants and defends the title to the Conservation Easement hereby conveyed against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the parties or the lawful representatives of the parties hereto have caused this Agreement to be executed the day and year first above written.

Signed, sealed and delivered
In the presence of:

GRANTOR:

_____
Signature of Witness #1

_____
WILLIAM TED PHILLIPS, SR.

_____
(Typed/Printed Name of Witness #1)

_____
Signature of Witness #2

_____
(Typed/Printed Name of Witness #2)

ACKNOWLEDGMENT

STATE OF FLORIDA

COUNTY OF _____.

The foregoing instrument was acknowledged before me this _____ day of _____ 20__, by WILLIAM TED PHILLIPS, SR. a person who is personally known to me or has produced _____ as identification.

_____
Name of Notary

(Seal)

_____
(Name of Notary typed, printed or stamped)
Commission No _____
My Commission Expires: _____

IN WITNESS WHEREOF, the County has caused this Perpetual Conservation Easement to be duly executed in its name by its ~~Board of County Commissioners acting by the Chairman of said Board~~, this _____ day of _____, 2009.

~~BOARD OF COUNTY COMMISSIONERS OF PASCO COUNTY, FLORIDA~~

ATTEST:

BY_____
~~PAULA S. O' NEIL, Clerk & Comptroller~~

BY_____
Chairman