

This instrument prepared by:

After recording please return the document to Grantee:
Florida Fish and Wildlife Conservation Commission
ATTN: Gopher Tortoise Permit Coordinator
620 South Meridian Street
Tallahassee, Florida 32399-1600

CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is given this ____ day of _____ 201_ by _____, a Florida corporation whose mailing address is _____, (“Grantor”) to the Florida Fish and Wildlife Conservation Commission, an agency of the State of Florida, with its principal office at 620 South Meridian Street, Tallahassee, FL 32399-1600 (“Grantee”).

The parties agree as follows:

WITNESSETH

WHEREAS, the Grantor is the owner of certain lands situated in _____ County, Florida, hereinafter referred to as the “Property”, more specifically described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, the property possesses natural, scenic, open space, wildlife preservation and conservation values (collectively, “conservation values”) of great importance to Grantor, and the people of the State of Florida; and

WHEREAS, the specific conservation values of the Property are documented as part of the Habitat Management Plan pertaining to the Property, dated _____ (“Plan”), part of which is entitled the “Baseline Documentation”. A copy of the Plan is attached hereto as Exhibit B, and incorporated herein by reference. The Baseline Documentation is an accurate representation of the Property at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained by the continuation of land use patterns existing at the time of this grant, that do not significantly impair or interfere with those values; and

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, Grantee is a state public agency, part of whose mission is the conservation, preservation, protection or enhancement of lands such as the Property; and

WHEREAS, the Grantor, in consideration of the issuance by the Grantee a permit in favor of the Grantor for the take of those species identified on the permit, is required to grant and secure the enforcement of a perpetual conservation easement pertaining to the Property.

NOW THEREFORE, consistent with the issuance of the Permit, Grantor hereby grants, creates, and establishes a perpetual conservation easement upon the Property, which is described in Exhibit A, which shall run with the land and be binding upon the Grantor, its heirs, successors and assigns, and remain in full force and effect forever (“Conservation Easement”).

1. Recitals. The above “WHEREAS” clauses are true and correct and are incorporated into this Conservation Easement as if set forth at length herein incorporated into this agreement.

2. Purpose. The purpose of this Conservation Easement is to ensure that the Property or part thereof as described in this Conservation Easement shall be protected forever and used as conservation areas, consistent with the Habitat Management Plan (“Plan”). The parties intend that this Conservation Easement will confine the use of the Property to such uses as are consistent with the purpose of this Conservation Easement.

3. Heirs, successors, and assigns. The parties to this Conservation Easement intend the rights and responsibilities to accrue to any and all heirs, successors, personal representatives, or assigns.

4. Rights of Grantee. To accomplish the purpose of this Conservation Easement the following rights are conveyed to Grantee:

a. To preserve and protect the conservation values of the Property as defined in this Conservation Easement;

b. To enter upon the Property at reasonable times and upon reasonable notice to the Grantor in order to engage in activities consistent with this Conservation Easement, to monitor Grantor’s compliance with this Conservation Easement, and to otherwise enforce the terms of this Conservation Easement; provided that Grantee shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property; and

c. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

5. Grantor’s Reserved Rights. Grantor reserves to itself, or assigns all rights as owner of the Property including the right to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement.

6. Prohibited Uses. Unless expressly authorized in accordance with the Plan (Exhibit B), the following are prohibited activities on the Property:

a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures above, on, or below the ground.

b. Dumping or placing of soil or other substance or material as landfill or dumping of trash, waste, or unsightly or offensive materials.

c. Removal or destruction of trees, shrubs, or other vegetation.

- d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface.
- e. Surface use except for purposes that permit the land or water areas to remain in their existing natural condition.
- f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- g. Act or uses detrimental to such retention of land or water areas in their existing natural condition.
- h. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or culture significance.
- i. Alteration of the Property except in compliance with the Plan.

7. Subdivision. There shall be no subdivision of the Property except as may otherwise be provided in this Conservation Easement.

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

9. Management; Expenses; Taxes. Grantor shall manage the Property consistent with the Plan. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Such responsibilities and costs shall include those associated with the management activities discussed in the Plan. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantor shall pay before delinquency all taxes, assessments, fee, and charges of whatever description levied on or assessed against the Property by competent authority, and shall furnish Grantee with satisfactory evidence of payment upon request.

10. Costs of Enforcement. Any costs incurred by Grantee in successfully enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs of suit and attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement, shall be borne by Grantor.

11. Liability. Grantor and its successors shall hold harmless, indemnify and defend Grantee from and against all liabilities, penalties, costs, losses, damages, expenses causes of action, claims, demands or judgments, including attorneys fees, arising from or in any way connected with: 1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, 2) costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including but not limited to the maintenance of adequate comprehensive general liability coverage, payment of taxes, and keeping the Property free of liens; and 3) the existence or administration of this Conservation Easement.

12. Remedies. If Grantee determines that Grantor or successors are in violation of the terms of this Conservation Easement, Grantee may take any of the following actions, after 30 day written notice to Grantor or successors to correct the violation: 1) Grantee may itself correct the violation, including but not limited to restoration of any portion of the Property affected to the condition that existed prior to the violation, and demand payment from Grantor for all costs associated with such action; 2) Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, for specific performance, to temporarily or permanently enjoin the violation, recover damages for violation of this Conservation Easement, including but not limited to the costs of restoration, and any other damages permitted by law. In any enforcement action Grantee shall not be required to prove either actual damages or the inadequacy of otherwise available remedies. Grantee's remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. As part of the consideration for this Conservation Easement, the parties hereby waive trial by jury in any action brought by either party pertaining to any matter whatsoever arising out of or in any way connected with this Conservation Easement.

13. Waiver. Grantor intends that enforcement of the terms and provisions of the Conservation Easement and the Plan shall be at the discretion of Grantee and that any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, its heirs, successors, personal representatives or assigns shall not be deemed or construed to be a waiver of Grantee's rights hereunder in the event of a subsequent breach. Grantor hereby waives any defense of laches, estoppel, or prescription.

14. Assignment. Grantee agrees that it will hold this Conservation Easement exclusively for conservation purposes and that it will not assign its rights and obligations under this Conservation Easement except to another organization qualified to hold such interests under the applicable state and federal laws and committed to holding this Conservation Easement exclusively for conservation purposes.

15. Transfer of Property. Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which Grantor divests any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Not later than thirty (30) days after execution of any deed or other legal instrument by which Grantor divests any interest in all or a portion of the Property, including, without limitation, a leasehold interest, Grantor agrees to give written notice to Grantee of such transfer and provide a copy of the instrument.

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

17. 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, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

18. Notices; References. All notices, consents approvals or other communications hereunder shall be in writing and shall be deemed properly given as of the second business day after mailing if sent by United State certified mail, return receipt requested, or by overnight mail service (e.g., FedEx, UPS), addressed to the appropriate party or successor-in-interest, at the address above set forth or such new addresses as either party may in writing deliver to the other. References in this Conservation Easement to the Grantor or Grantee include their successors-in-interest.

19. Venue; Choice of Law; Waiver of Jury Trial. Any cause of action shall be brought in either the county or counties where the Property is situated or in Leon County. This Conservation Easement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. As part of the consideration for this Conservation Easement, the parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Conservation Easement.

20. Amendment. This Conservation Easement may be amended, altered, released or revoked only by written agreement between the parties hereto, their successors or assigns. No amendment shall be effective until executed with the formality of a deed and recorded in the public records.

21. Subordination of Liens. Grantor agrees that if the Property is subject to a mortgage lien or any other form of lien or security pertaining to the Property, Grantor shall provide recorded or recordable documentation to verify that such lien or security interest is subordinate to this Conservation Easement.

22. Recording. Grantor shall record this Conservation Easement and any amendments in a timely fashion in the same manner as any other instrument asserting title to real property and must re-record it at any time as may be required to preserve the rights in this Conservation Easement.

TO HAVE AND TO HOLD unto grantee, its respective successors and assigns forever. The covenants, terms, conditions, restrictions and purposes imposed with this easement shall not only be binding upon Grantor but also its agents, personal representatives, heirs, assigns and all other successors to it in interest and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF Grantor has set its hand on the day and year first above written.

Signed, sealed and delivered
In our presence as witnesses:

[Corporate name]

_____ By: _____

Name: _____

Name: _____

Title: _____

Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 201_ by _____, the _____ of, a Florida _____ corporation, on behalf of the corporation. The above-named individual is personally known to me or produced _____ as identification.

Notary Public State of Florida
Commission No:
Commission expires:

GRANTEE'S ACCEPTANCE

The Florida Fish and Wildlife Conservation Commission hereby accepts the foregoing Conservation Easement.

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION

By: _____

Title: _____

Date: _____

Approved as to form and legal sufficiency:

FWC Attorney