

**Lee County Board Of County Commissioners  
Agenda Item Summary**

**Blue Sheet No.: 20050684**

**1. ACTION REQUESTED/PURPOSE:** Approve the Florida Communities Trust (FCT) Grant Award Calculation Statement and Declaration of Restrictive Covenants for the County to receive a FCT grant award of up to 40% of the acquisition expenses in the amount of **\$2,529,994.98** for the Conservation 20/20 addition to the Wild Turkey Strand Preserve acquired site #200. Authorize the Division of County Lands and/or the Department of Parks and Recreation to handle all documentation necessary to complete the final requirement of the Grant Contract Number 05-CT-E5-04-F4-A1-031. Approve Budget Amendment Resolution in the amount of \$2,529,995. CA

**2. WHAT ACTION ACCOMPLISHES:** This action will allow the funds, as allocated on the Calculation Statement, to be dispersed from FCT to the County.

**3. MANAGEMENT RECOMMENDATION:** Management recommends Board approve the Action Requested.

**4. Departmental Category:** 6 *CLR* **5. Meeting Date:** *05-31-2005*

<b>6. Agenda:</b> <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	<b>7. Requirement/Purpose: (specify)</b> <input type="checkbox"/> Statute <input type="checkbox"/> Ordinance <input type="checkbox"/> Admin. Code <input checked="" type="checkbox"/> Other <span style="float: right;">BS20041505</span>	<b>8. Request Initiated:</b> Commissioner _____ Department <span style="float: right;">Independent <i>RLMA</i></span> Division <span style="float: right;">County Lands</span> By: <u>Karen L.W. Forsyth, Director</u> <i>KLF</i>
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**9. Background:**  
 In November 23, 2004 the Board entered into a contract with FCT approving the Grant Contract for FCT Project Number: 04-031-FF4. The project plan has been accepted by FCT. The Board of County Commissioners needs to accept the Grant Award Calculation and Declaration of Restrictive Covenants in order for FCT to disperse the grant award.

Staff recommends approval of the requested motion.

Attachments: Grant Award Calculation Statement in Triplicate and Declaration of Restrictive Covenants. *W*

The grant award will be deposited into the following account: 12079730105.334390.9012

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other Parks and Recreation	County Attorney	Budget Services			County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.
<i>K. Forsyth</i>	N/A	N/A		<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>
					<i>5/19/05</i>	<i>5/19/05</i>	<i>5/19/05</i>	<i>5-19-05</i>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

Rec. by CoAtty  
 Date: *5/19/05*  
 Time: *10:00*

Forwarded To:  
*Admin.*  
*5/19/05 10am*

RECEIVED BY  
 COUNTY ADMIN. *[Signature]*  
 COUNTY ADMIN  
 FORWARDED TO: *[Signature]*  
*5/19/05*  
*4:30pm*

# RESOLUTION #

Amending the Cap. Imp. - Environ. Sen. Land Mgt Budget, Fund 30105 to incorporate the unanticipated receipts into Estimated Revenues and Appropriations for the fiscal year 2005-2006.

**WHEREAS**, in compliance with the Florida Statutes 129.06(2), it is the desire of the Board of County Commissioners of Lee County, Florida, to amend the Cap. Imp. - Environ. Sen. Land Mgt. Budget, Fund 30105 for \$ 2,529,995 of the unanticipated revenue from Grant funding and an appropriation of a like amount for grant expenditures and;

**WHEREAS**, the Cap. Imp. - Environ. Sen. Land Mgt. Budget, Fund 30105 shall be amended to include the following amounts which were previously not included.

## ESTIMATED REVENUES

Prior Total:		
Additions		\$18,042,885
12079730105.334390.9012	DCA Grants	\$ 2,529,995
Amended Total Estimated Revenues		\$20,572,880

## APPROPRIATIONS

Prior Total:		\$18,042,885
Additions		\$ 2,529,995
12079730105.503190	Other Professional Services	\$ 2,529,995
Amended Total Appropriations		\$20,572,880

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Lee County, Florida, that the Cap. Imp. - Environ. Sen. Land Mgt. Budget, Fund 30105 is hereby amended to show the above additions to its Estimated Revenue and Appropriation Accounts.

Duly voted upon and adopted in Chambers at a regular Public Hearing by the Board of County Commissioners on this \_\_\_\_ day of \_\_\_\_\_, 2005.

ATTEST:  
CHARLIE GREEN, EX-OFFICIO CLERK

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA

BY: \_\_\_\_\_  
DEPUTY CLERK

\_\_\_\_\_  
CHAIRMAN

APPROVED AS TO FORM

\_\_\_\_\_  
OFFICE OF COUNTY ATTORNEY

DOC TYPE YA  
LEDGER TYPE BA

FORWARD WITH AGREEMENT AND BLUE SHEET

ALL INFORMATION IS REQUIRED - DO NOT LEAVE ANY BLANKS - USE N/A WHEN NOT APPLICABLE

GRANT AT A GLANCE

GRANT AWARD INFORMATION

- 1. County Grant ID (project #): 0797
- 2. Title of Grant: FCT WILD TURKEY STRAND
- 3. Amount of Award: \$2,529,995
- 4. Amount of Match Required: \$3,811,514
- 5. Type of Match: REIMBURSEMENT OF 40%  
(cash, in-kind etc)
- 6. SOURCE OF GRANT FUNDS & CATALOG NUMBER:

FEDERAL <input type="checkbox"/> CFDA #	STATE <input type="checkbox"/> CSFA #TBD
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7. Agency Contract Number: \_\_\_\_\_

8. Contract Period:	Begin Date: upon exec	End Date: N/A
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9. Name of Subrecipient(s) N/A

10. Business Unit(s): 12079730105

11. Scope of Grant: (describe project).Reimbursement for Conservation 20/20 land acquisition fund for site #200

12. Has this Grant been Funded Before?  YES  NO If YES When? \_\_\_\_\_

13. Is Grant Funding Anticipated in Subsequent Years?  YES  NO

14. If Grant Funding Ends Will This Program Be Continued at County Expense?  YES  NO  
If YES What is the Lee County Budget Impact:

1st Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
4 <sup>th</sup> Year	5 <sup>th</sup> Year	

Check Box if Additional Information on Program and Budget Impact is provided in *Comment Section* on page 2

ADMINISTERING DEPARTMENT INFORMATION

- 1. Department: LEE COUNTY PARKS & REC
- 2. Contacts:

Program Mgr.	Phone #:
Fiscal Mgr. Cindy Mitar	Phone #:461-7414

**GRANTOR AGENCY INFORMATION**

(The agency you signed this agreement with)

- 1. Grantor Agency: DEPARTMENT OF COMMUNITY AFFAIRS
- 2. Program Title/Division: FLORIDA COMMUNITIES TRUST
- 3. Agency Contact: LINDA DEMETROPOULOS
- 4. Phone Number: 850 922-1703
- 5. Mailing Address: 25550 SHUMMARD OAK BLVD TALLAHASSEE FLORIDA 32999-2100

**SOURCE OF FUNDS**

**1. Original Funding**

Source: FL DCA  
(name of agency where funding originated from)

**2. Pass Through Agency: N/A**

(middleman if any? Example: federal \$\$ from US DOT given to STATE of FL DOT ---then from STATE DOT to Lee County DOT --- STATE of FL DOT is the pass-through agency).

**3. Additional Information for Other Agencies Involved:**

GRANTEE

**3a. Is the County a Grantee  
or Subrecipient in #3 above:**

**REPORTING REQUIREMENTS**

**1. Does this grant require a separate subfund?** YES  NO   
(Example: you need to return interest earnings)

**Please Explain:**

**2. Is funding received in advance?** YES  NO   
(If YES, please indicate conditions for returning residual proceeds, or interest and the address to return it to, if different from the Grantor Agency Information)

**COMMENTS--INSTRUCTIONS:**

This document prepared by:  
Kristen L. Coons  
Florida Communities Trust  
Department of Community Affairs  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399

FLORIDA COMMUNITIES TRUST  
FF4 AWARD #04-031-FF4  
FCT Contract # 05-CT-E5-04-F4-A1-031  
WILD TURKEY STRAND PRESERVE

**DECLARATION OF RESTRICTIVE COVENANTS**

THIS AGREEMENT is entered into by and between the **FLORIDA COMMUNITIES TRUST** ("FCT"), a nonregulatory agency within the State of Florida Department of Community Affairs, and **LEE COUNTY**, a local government of the State of Florida ("Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING FACTS:

WHEREAS, the intent of this Agreement is to impose terms and conditions on the use of the proceeds of certain bonds, hereinafter described, and the lands acquired with such proceeds, as described in Exhibit "A" attached hereto and made a part hereof ("Project Site"), that are necessary to ensure compliance with applicable Florida law and federal income tax law and to otherwise implement the provisions of Sections 259.105, 259.1051 and Chapter 380, Part III, Florida Statutes;

WHEREAS, Chapter 380, Part III, Fla. Stat., the Florida Communities Trust Act, creates a non-regulatory agency within the Department of Community Affairs ("Department") that will assist local governments in bringing into compliance and implementing the conservation, recreation and open space, and coastal elements of their comprehensive plans or in conserving natural resources and resolving land use conflicts by providing financial assistance to local governments and nonprofit environmental organizations to carry out projects and activities authorized by the Florida Communities Trust Act;

WHEREAS, FCT is funded through either Section 259.105(3)(c), Fla. Stat. of the Florida Forever Act, which provides for the distribution of twenty-two percent (22%), less certain reductions, of the net Florida Forever Revenue Bond proceeds to the Department, or any other revenue source designated by the Florida Legislature, to provide land acquisition grants to local governments and nonprofit environmental organizations for the acquisition of community-based projects, urban open spaces, parks and greenways to implement local comprehensive plans;

WHEREAS, the Florida Forever Revenue Bonds are issued as tax-exempt bonds, meaning the interest on the Bonds is excluded from the gross income of bondholders for federal income tax

purposes;

WHEREAS, Rule 9K-7.009(1), Florida Administrative Code (“F.A.C.”), authorizes FCT to impose conditions for funding on those FCT applicants whose projects have been selected for funding;

WHEREAS, FCT has approved the terms under which the Project Site was acquired and the deed whereby the Recipient acquired title to the Project Site. The deed shall contain such covenants and restrictions as are sufficient to ensure that the use of the Project Site at all times complies with Section 375.051, Florida Statutes and Section 9, Article XII of the State Constitution and it shall contain clauses providing for the conveyance of title to the Project Site to the Board of Trustees of the Internal Improvement Trust Fund (“Trustees”) upon the failure of the Recipient to use the Project Site acquired thereby for such purposes; and

WHEREAS, the purpose of this Agreement is to set forth the covenants and restrictions that are imposed on the Project Site subsequent to disbursing FCT Florida Forever funds to the Recipient for Project Costs.

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FCT and the Recipient do hereby contract and agree as follows:

#### **I. PERIOD OF AGREEMENT**

1. This Agreement shall begin upon execution by both parties. The covenants and restrictions contained herein shall run with the Project Site and shall bind, and the benefit shall inure to, FCT and the Recipient and their respective successors and assigns.

#### **II. MODIFICATION OF AGREEMENT**

1. Either party may request modification of the provisions of this Agreement at any time. Changes which are mutually agreed upon shall be valid only when reduced to writing and duly signed by each of the parties hereto. Such amendments shall be incorporated into this Agreement.

#### **III. RECORDING AND APPROVAL OF DECLARATION OF RESTRICTIVE COVENANTS**

1. Upon execution by the parties hereto, the Recipient shall cause this Agreement to be recorded and filed in the official public records of **Lee County, Florida**, and in such manner and in such other places as FCT may reasonably request. The Recipient shall pay all fees and charges incurred in connection therewith.

2. The Recipient and FCT agree that the State of Florida Department of Environmental Protection shall forward this Agreement to the Department of Environmental Protection Bond Counsel for review. In the event Bond Counsel opines that an amendment is required to this Agreement so that the tax-exempt status of the Florida Forever Bonds is not jeopardized, FCT and the Recipient shall amend the Agreement accordingly.

#### **IV. NOTICE AND CONTACT**

1. All notices provided under or pursuant to this Agreement shall be in writing and delivered either by hand delivery or first class, certified mail, return receipt requested, to the addresses specified below. Any such notice shall be deemed received on the date of delivery if by personal delivery or upon actual receipt if sent by registered mail.

FCT: Florida Communities Trust  
Department of Community Affairs  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100  
ATTN: Program Manager

Recipient: Lee County  
Post Office Box 398  
Fort Myers, FL 33902  
ATTN: Chairman, Board of  
County Commissioners

2. In the event that a different representative or address is designated for paragraph 1. above after execution of this Agreement, notice of the change shall be rendered to FCT as provided in paragraph 1. above.

#### **V. PROJECT SITE TITLE REQUIREMENTS IMPOSED BY CHAPTER 259, CHAPTER 375 AND CHAPTER 380, PART III, FLA. STAT.**

1. Any transfer of the Project Site shall be subject to the approval of FCT and FCT shall enter into a new agreement with the transferee containing such covenants, clauses or other restrictions as are sufficient to protect the interest of the State of Florida.

2. The interest acquired by the Recipient in the Project Site shall not serve as security for any debt of the Recipient.

3. If the existence of the Recipient terminates for any reason, title to the Project Site shall be conveyed to the Trustees unless FCT negotiates an agreement with another local government, nonprofit environmental organization, the Florida Division of Forestry, the Florida Fish and Wildlife Conservation Commission, the Department of Environmental Protection or a Water

Management District who agrees to accept title and manage the Project Site.

4. In the event that the Project Site is damaged or destroyed or title to the Project Site, or any part thereof, is taken by any governmental body through the exercise or the threat of the exercise of the power of eminent domain, the Recipient shall deposit with FCT any insurance proceeds or any condemnation award and shall promptly commence to rebuild, replace, repair or restore the Project Site in such manner as is consistent with the Agreement. FCT shall make any such insurance proceeds or condemnation award moneys available to provide funds for such restoration work. In the event that the Recipient fails to commence or to complete the rebuilding, repair, replacement or restoration of the Project Site after notice from FCT, FCT shall have the right, in addition to any other remedies at law or in equity, to repair, restore, rebuild or replace the Project Site so as to prevent the occurrence of a default hereunder.

Notwithstanding any of the foregoing, FCT shall have the right to seek specific performance of any of the covenants and restrictions of this Agreement concerning the construction and operation of the Project Site.

## **VI. MANAGEMENT OF PROJECT SITE**

1. The Project Site shall be managed only for the conservation, protection and enhancement of natural and historical resources and for compatible passive, natural resource-based public outdoor recreation, along with other related uses necessary for the accomplishment of this purpose. The proposed uses for the Project Site are specifically designated in the Management Plan approved by FCT.

2. The Recipient shall ensure that the future land use designation assigned to the Project Site is for a category dedicated to open space, conservation or outdoor recreation uses, as appropriate. If an amendment to the applicable comprehensive plan is required, the amendment shall be proposed at the next comprehensive plan amendment cycle available to the Recipient.

3. The Recipient shall ensure, and provide evidence thereof to FCT, that all activities under this Agreement comply with all applicable local, state, regional and federal laws and regulations, including zoning ordinances and the adopted and approved comprehensive plan for the jurisdiction, as applicable. Evidence shall be provided to FCT that all required licenses and permits have been obtained prior to the commencement of any construction.

4. The Recipient shall, through its agents and employees, prevent the unauthorized use of the Project Site or any use thereof not in conformity with the Management Plan approved by FCT.

5. FCT staff or its duly authorized representatives shall have the right at any time to inspect the Project Site and the operations of the Recipient at the Project Site.



6. All buildings, structures, improvements and signs shall require the prior written approval of FCT as to purpose. Further, tree removal, other than non-native species, and major land alterations shall require the written approval of FCT. The approvals required from FCT shall not be unreasonably withheld by FCT upon sufficient demonstration that the proposed structures, buildings, improvements, signs, vegetation removal or land alterations will not adversely impact the natural resources of the Project Site. FCT's approval of the Recipient's Management Plan addressing the items mentioned herein shall be considered written approval from FCT.

7. If archaeological and historic sites are located on the Project Site, the Recipient shall comply with Chapter 267, Fla. Stat. The collection of artifacts from the Project Site or the disturbance of archaeological and historic sites on the Project Site shall be prohibited unless prior written authorization has been obtained from the Department of State, Division of Historical Resources.

8. As required by Rule 9K-7.013, F.A.C., each year after FCT reimbursement of Project Costs the Recipient shall prepare and submit to FCT an annual stewardship report that documents the progress made on implementing the Management Plan.

## **VII. SPECIAL MANAGEMENT CONDITIONS**

The following conditions are particular to the Project Site:

1. Two or more resource-based outdoor recreational facilities including a nature trail and wildlife observation platform shall be provided. The facilities shall be developed in a manner that allows the general public reasonable access for observation and appreciation of the natural resources on the project site without causing harm to those resources.

2. A permanent recognition sign, a minimum size of 4' x 6', shall be maintained in the entrance area of the project site. The sign shall acknowledge that the project site was purchased with funds from the Florida Communities Trust Florida Forever Program and Lee County.

3. Interpretive signage shall be provided to educate visitors about the natural resources on the Project Site.

4. A survey of the natural communities and plant species on the project site shall be conducted prior to the development of the project site. The survey shall be used during development of the site to ensure the protection, restoration, and preservation of the natural communities on the project site.

5. The natural communities that occur on the project site shall be preserved and appropriately managed to ensure the long-term viability of these communities.

6. The project site shall be managed in a manner that protects and enhances habitat for listed wildlife species that utilize or could potentially utilize the project site, including the Florida Panther and red cockaded woodpecker. The development of the management plan shall be coordinated with the Fish and Wildlife Conservation Commission's Office of Environmental Services to ensure the preservation and viability of listed and non-listed native wildlife species and their habitat. Periodic surveys shall be conducted of listed species using the project site.

7. A vegetation analysis of the project site shall be performed to determine which areas of the project site need a prescribed burning regime implemented to maintain natural fire-dependent vegetative communities. The development of the prescribed burn program shall be coordinated the Division of Forestry and the Florida Fish and Wildlife Conservation Commission.

8. The water quality of the on-site wetlands shall be protected and the natural hydrology of the project site shall be restored to a more natural function and shall include the restoration of areas impacted by agricultural activities. The development of the restoration plan shall be coordinated with the South Florida Water Management District.

9. A comprehensive landscaping plan will be developed for the project site. The landscaping plan will make significant use of native plants.

10. Approximately 20 percent of the project site or 400 acres of disturbed wetlands shall be restored to a natural condition in terms of biological composition and ecological function. Invasive exotic vegetation will be removed, cattle grazing will be eliminated, drainage ditches will be modified to restore a more natural flow and hydroperiod, and the area replanted with native vegetation.

11. An ongoing monitoring and control program for invasive vegetation including exotic (non-native) and nuisance native plant species shall be implemented at the project site. The objective of the control program shall be the elimination of invasive exotic plant species and the maintenance of a diverse association of native vegetation. The management plan shall reference the Exotic Pest Plant Council's List of Florida's Most Invasive Species to assist in identifying invasive exotics on the project site.

12. A feral animal removal program shall be developed and implemented for dogs, cats, hogs, and other non-native wildlife that may be found on the project site.

13. Prior to the commencement of any proposed development activities, measures will be taken to determine the presence of any archaeological sites. All planned activities involving known archaeological sites or potential site areas shall be closely coordinated with the Department of State, Division of Historic Resources in order to prevent the disturbance of significant sites.

14. The location and design of the parking facility, boardwalk, and wetland observation

deck shall be designed to have minimal impacts on natural resources. The parking area shall incorporate pervious material wherever feasible.

15. The project site shall be protected and managed as part of linked conservation lands and wildlife corridor.

16. The requirements imposed by other grant program funds that may be sought for activities associated with the project site shall not conflict with the terms and conditions of this award.

### **VIII. OBLIGATIONS OF THE RECIPIENT RELATING TO THE USE OF BOND PROCEEDS**

1. FCT is authorized by Section 380.510, Fla. Stat. to impose conditions for funding on the Recipient in order to ensure that the project complies with the requirements for the use of Florida Forever Bond proceeds including, without limitation, the provisions of the Internal Revenue Code and the regulations promulgated thereunder as the same pertain to tax exempt bonds.

2. The Recipient agrees and acknowledges that the below listed transactions, events, and circumstances, collectively referred to as the “disallowable activities,” may be disallowed on the Project Site as they may have negative legal and tax consequences under Florida law and federal income tax law. The Recipient further agrees and acknowledges that these disallowable activities may be allowed up to a certain extent based on guidelines or tests outlined in the Federal Private Activity regulations of the Internal Revenue Service:

- a. any sale or lease of any interest in the Project Site to a non-governmental person or organization;
- b. the operation of any concession on the Project Site by a non-governmental person or organization;
- c. any sales contract or option to buy or sell things attached to the Project Site to be severed from the Project Site with a non-governmental person or organization;
- d. any use of the Project Site by a non-governmental person other than in such person’s capacity as a member of the general public;
- e. any change in the character or use of the Project Site from that use expected at the date of the issuance of any series of Bonds from which the disbursement is to be made;

- f. a management contract for the Project Site with a non-governmental person or organization; or
- g. such other activity or interest as may be specified from time to time in writing by FCT to the Recipient.

3. If the Project Site, after its acquisition by the Recipient and/or the Trustees, is to remain subject to any of the disallowable activities, the Recipient shall provide notice to FCT, as provided for in paragraph III.1. above, at least sixty (60) calendar days in advance of any such transactions, events or circumstances, and shall provide FCT such information as FCT reasonably requests in order to evaluate for approval the legal and tax consequences of such disallowable activities.

4. In the event that FCT determines at any time that the Recipient is engaging, or allowing others to engage, in disallowable activities on the Project Site, the Recipient shall immediately cease or cause the cessation of the disallowable activities upon receipt of written notice from FCT. In addition to all other rights and remedies at law or in equity, FCT shall have the right to seek temporary and permanent injunctions against the Recipient for any disallowable activities on the Project Site.

DELEGATIONS AND CONTRACTUAL ARRANGEMENTS BETWEEN THE RECIPIENT AND OTHER GOVERNMENTAL BODIES, NONPROFIT ENTITIES OR NON GOVERNMENTAL PERSONS FOR USE OR MANAGEMENT OF THE PROJECT SITE WILL IN NO WAY RELIEVE THE RECIPIENT OF THE RESPONSIBILITY TO ENSURE THAT THE CONDITIONS IMPOSED HEREIN ON THE PROJECT SITE AS A RESULT OF UTILIZING BOND PROCEEDS TO ACQUIRE THE PROJECT SITE ARE FULLY COMPLIED WITH BY THE CONTRACTING PARTY.

## **IX. RECORDKEEPING; AUDIT REQUIREMENTS**

1. The Recipient shall maintain financial procedures and support documents, in accordance with generally accepted accounting principles, to account for the receipt and expenditure of funds under this Agreement. These records shall be available at all reasonable times for inspection, review or audit by state personnel, FCT and other personnel duly authorized by FCT. "Reasonable" shall be construed according to the circumstances, but ordinarily shall mean the normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

2. If the Recipient expends a total amount of State financial assistance equal to or in excess of \$500,000 in any fiscal year of such Recipient, the Recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Fla. Stat., the applicable rules of the Executive Office of the Governor and the Comptroller and Chapter 10.550 (local government entities) or Chapter 10.650 (nonprofit organizations), Rules of the Auditor General. In determining the State financial assistance expended in its fiscal year, the Recipient shall consider all

sources of State financial assistance, including State funds received from FCT, other state agencies and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements. The funding for this Agreement was received by FCT as a grant appropriation.

In connection with the audit requirements addressed herein, the Recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Fla. Stat. This includes submission of a reporting package as defined by Section 215.97(2)(d), Fla. Stat. and Chapter 10.550 (local government entities) or 10.650 (nonprofit organizations), Rules of the Auditor General.

3. If the Recipient expends less than \$500,000 in State financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Fla. Stat. is not required. If the Recipient elects to have an audit conducted in accordance with the provisions of Section 215.97, Fla. Stat., the cost of the audit must be paid from non-State funds (i.e., the cost of such an audit must be paid from Recipient funds not obtained from a State entity).

4. The annual financial audit report shall include all management letters, the Recipient's response to all findings, including corrective actions to be taken, and a schedule of financial assistance specifically identifying all Agreement and other revenue by sponsoring agency and agreement number. Copies of financial reporting packages required under this Article shall be submitted by or on behalf of the Recipient directly to each of the following:

Department of Community Affairs (at each of the following addresses):  
Office of Audit Services  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

and

Florida Communities Trust  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

State of Florida Auditor General at the following address:  
Auditor General's Office  
Room 401, Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32302-1450

5. If the audit shows that any portion of the funds disbursed hereunder were not spent in accordance with the conditions of this Agreement, the Recipient shall be held liable for reimbursement to FCT of all funds not spent in accordance with the applicable regulations and

Agreement provisions within thirty (30) days after FCT has notified the Recipient of such non-compliance.

6. The Recipient shall retain all financial records, supporting documents, statistical records and any other documents pertinent to this Agreement for a period of five years after the date of submission of the final expenditures report. However, if litigation or an audit has been initiated prior to the expiration of the five-year period, the records shall be retained until the litigation or audit findings have been resolved.

7. The Recipient shall have all audits completed in accordance with Section 215.97, Fla. Stat. performed by an independent certified public accountant ("IPA") who shall either be a certified public accountant or a public accountant licensed under Chapter 473, Fla. Stat. The IPA shall state that the audit complied with the applicable provisions noted above.

## **X. DEFAULT; REMEDIES; TERMINATION**

1. If any essential term or condition of the Declaration of Restrictive Covenants is violated by the Recipient or by some third party with the knowledge of the Recipient, the Recipient shall be notified of the violation by written notice given by personal delivery, registered mail or registered expedited service. The recipient shall diligently commence to cure the violation or complete curing activities within thirty (30) days after receipt of notice of the violation. If the curing activities can not be reasonably completed within the specified thirty (30) day time frame, the Recipient shall submit a timely written request to the FCT Program Manager that includes the status of the current activity, the reasons for the delay and a time frame for the completion of the curing activities. FCT shall submit a written response within thirty (30) days of receipt of the request and approval shall not be unreasonably withheld. It is FCT's position that all curing activities shall be completed within one hundred twenty (120) days of the Recipient's notification of the violation. However, if the Recipient can demonstrate extenuating circumstances exist to justify a greater extension of time to complete the activities, FCT shall give the request due consideration. If the Recipient fails to correct the violation within either (a) the initial thirty (30) day time frame or (b) the time frame approved by FCT pursuant to the Recipient's request, fee simple title to all interest in the Project Site shall be conveyed to the Trustees unless FCT negotiates an agreement with another local government, nonprofit environmental organization, the Florida Division of Forestry, the Florida Fish and Wildlife Conservation Commission, the Department of Environmental Protection or a Water Management District, who agrees to accept title and manage the Project Site. FCT shall treat such property in accordance with Section 380.508(4)(e), Fla. Stat.

## **XI. STANDARD CONDITIONS**

1. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall lie in Leon County. If any provision hereof is in conflict with any applicable statute or rule, or is otherwise unenforceable, then such provision shall

be deemed null and void to the extent of such conflict and shall be severable, but shall not invalidate any other provision of this Agreement.

2. No waiver by FCT of any right or remedy granted hereunder or failure to insist on strict performance by the Recipient shall affect or extend or act as a waiver of any other right or remedy of FCT hereunder, or affect the subsequent exercise of the same right or remedy by FCT for any further or subsequent default by the Recipient.

3. The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), if applicable, which prohibits discrimination by public and private entities on the basis of disability in the areas of employment, public accommodations, transportation, State and local government services, and in telecommunications.

4. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit lease bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

5. No funds or other resources received from FCT in connection with this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

This Agreement including Exhibit "A" embodies the entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

Witness: \_\_\_\_\_

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

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

ATTEST:  
CHARLIE GREEN, CLERK  
BY: \_\_\_\_\_  
Deputy Clerk

**LEE COUNTY, a local government of  
the State of Florida**

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

Print Name: Douglas St. Cerny

Title: Chairman, of the Board of County  
Commissioners

Date: \_\_\_\_\_

Approved as to Form and Legality(County):

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

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

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by Douglas St. Cerny as Chairman of the Board of Lee County Commissioners, on behalf of the Local Government, and who is personally known to me.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Witness:

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

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

**FLORIDA COMMUNITIES TRUST**

By: \_\_\_\_\_  
Janice Browning, Director, Division of  
Housing and Community Development

Date: \_\_\_\_\_

Approved as to Form and Legality:

By: \_\_\_\_\_  
Kristen L. Coons, Trust Counsel

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by Janice Browning, Director, Division of Housing and Community Development. She is personally known to me.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



## **EXHIBIT "A"**

**CONSERVATION LAND PROGRAM, Project No. 8800**

**PARCEL 200**

**STRAP No.: 11-45-26-00-00001.0000, 14-45-26-00-00002.0000,  
23-45-26-00-00002.0000, 26-45-26-00-00002.0000,  
27-45-26-00-00001.0000, 28-45-26-00-00001.0000  
and 33-45-26-00-00001.0000**

**That part of the West half of Section 11 lying South of State Road No. 82:**

**That part of the West half of Section 14 lying South of State Road No. 82:**

**The West half of Section 23 and**

**The West half of Section 26, all of Section 27, all of Section 28 and all of Section 33 except the South 950.00 feet of the West 989.00 feet thereof, except the portion of the following described parcel which lies within said tracts:**

**From the concrete monument marking the Southwest corner of said Section 33 run North 89 degrees 08'12" East along the South line of said section for 2,640.36 feet to a 3/4 steel pipe and the Point of Beginning of the herein described parcel; thence continue North 89 degrees 08'12" East along the South line of said section for 2,640.36 feet to a concrete post marking the Southeast corner of said section; thence run North 89 degrees 30'38" East along the South line of Section 34 for 2,639.04 feet to a concrete post; thence run North 88 degrees 31'53" East along said South line for 2,641.60 feet to a concrete post marking the Southeast corner of said Section 34; thence run North 00 degrees 50'11" East along the Easterly line of said section for 2,547.72 feet to a concrete post marking the quarter section corner; thence run North 00 degrees 27'43" East along the East line of said section for 2,544.32 feet to a concrete post marking the Northeast corner of said Section 34; thence run South 88 degrees 39'21" East along the South line of said Section 26 for 2,648.38 feet to a concrete post marking the quarter section corner; thence run North 01 degrees 30'04" West along the quarter section line for 5,416.83 feet to a concrete post marking the quarter section corner on the North line of said Section 26; thence run South 89 degrees 22'14" West along said North line for 1,300.94 feet to a 3/4" pipe marking the quarter-quarter section corner; thence run South 01 degrees 16'08" East along the quarter-quarter section line for 2,349.53 feet to a 2" steel pipe marking the intersection with the Southwesterly line of the Florida Power & Light Company transmission line easement; thence run North 75 degrees 33'59" West along said Southwesterly line for 1,359.84 feet to a concrete post marking the intersection with the West line of said Section 26; thence run South 01 degrees 01'58" East passing through a concrete post marking the quarter section corner at 666.24 feet for 1,829.09 feet to a 3/4 steel pipe at a point bearing North 01 degrees 01'58" West a distance of 1,500.00 feet from the Southeast corner of said Section 27; thence run North 89 degrees 38'57" West for 7,965.76 feet to a concrete post bearing North 00 degrees 07'43" West from the Point of Beginning; thence run South 00 degrees 07'43" East passing through a concrete post at 1,500.00 feet for 6,770.27 feet to the Point of Beginning.**

**All in Township 45 South, Range 26 East in Lee County, Florida.**