

Prepared by:
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AMENDED DEED OF CONSERVATION EASEMENT

THIS AMENDED DEED OF CONSERVATION EASEMENT is given this _____ day of _____ 2018, by Hilochee Mitigation Bank, LLC, a Florida limited liability company ("Grantor") whose mailing address is 1005 Edgewater Drive, Orlando, FL. 32084, to the Southwest Florida Water Management District and the Florida Department of Environmental Protection (collectively, "Grantee") with third party enforcement rights to the United States Army Corps of Engineers ("Third Party Beneficiary"). As used herein, the term "Grantor" shall include any and all heirs, successors or assigns of the Grantor, and all subsequent owners of the "Conservation Easement Area" (as hereinafter defined); the term "Grantee" shall include any successor or assignee of Grantee; and the term "Third Party Beneficiary" shall include any successor or assignee of the Third Party Beneficiary.

WITNESSETH

WHEREAS, on April 13, 2018, Grantor executed that certain Conservation and Land Access Easement and recorded same at Book 10459, Page 1156, of the public records of Polk County, Florida; and

WHEREAS, Grantor desires to amend the terms of the Conservation and Land Access Easement by executing and recording this Amended Deed of Conservation Easement; and

WHEREAS, the Grantor is the fee simple owner of certain lands situated in Polk County, Florida, and more specifically described on the location map in Exhibit "A" attached hereto and incorporated herein (the "Property"); and

WHEREAS, Permit No.43042047.000 (Permit") and any modifications thereto issued by the Grantee authorizes certain activities which could affect wetlands or other surface waters in or of the State of Florida; and

WHEREAS, the U.S. Army Corps of Engineers Mitigation Banking Instrument No. SAJ-2014-01190 (Corps MBI) authorizes the construction, implementation, operation, management, and maintenance of a mitigation bank and requires a site protection instrument over the lands identified in Exhibit "B"; and

WHEREAS, the Grantor, in consideration of the consent granted by the Permit or other good and valuable consideration provided to Grantor, is agreeable to granting and securing to the Grantee a perpetual Conservation Easement as defined in Section 704.06, Florida Statutes (F.S.), over the area of the Property described on Exhibit "B" ("Conservation Easement Area"); and

WHEREAS, Grantor grants this Amended Deed of Conservation Easement as a condition of the Permit, pursuant to Chapter 62-342, Florida Administrative Code; and

WHEREAS, Grantor desires to preserve the Conservation Easement Area in perpetuity in its natural condition, or, in accordance with the Permit, in an enhanced, restored, or created condition.

NOW, THEREFORE, in consideration of the issuance of the Permit to construct and operate the permitted activity, and as an inducement to Grantee in issuing the Permit, together with other good and valuable consideration provided to the Grantor, the adequacy and receipt of which are hereby acknowledged, Grantor hereby voluntarily grants, creates, conveys, and establishes a perpetual Amended Deed of Conservation Easement for and in favor of the Grantee upon the Conservation Easement Area which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

The scope, nature, and character of this Amended Deed of Conservation Easement shall be as follows:

Paragraph Nos. 7, 9, 11, 12 and 14 of the Conservation and Land Access Easement recorded at Book 10459, Page 1156, of the public records of Polk County, Florida are hereby deleted in their entirety; Paragraph Nos. 2, 3, 4, 5, 6, 8, 9, 10, 13, 15, 16, 17, 18, and 19 of the Conservation and Land Access Easement recorded at Book 10459, Page 1156, of the public records of Polk County, Florida are hereby replaced in their entirety as follows:

1. Recitals. The recitals hereinabove set forth are true and correct and are hereby incorporated into and made a part of this Amended Deed of Conservation Easement.

2. Purpose. It is the purpose of this Amended Deed of Conservation Easement to retain land or water areas in their existing, natural, vegetative, hydrologic, scenic, open or wooded condition and to retain such areas as suitable habitat for fish, plants, or wildlife in accordance with Section 704.06, F.S. Those wetland and upland areas included in this Conservation Easement which are to be preserved, enhanced, restored, or created pursuant to the Permit (or any modification thereto) and any Management Plan attached hereto as Exhibit "C" ("Management Plan") which has been approved in writing by the Grantee, shall be retained and maintained in the preserved, enhanced, restored, or created condition required by the Permit (or any modification thereto).

To carry out this purpose, the following rights are conveyed to Grantee by this easement:

a. To enter upon the Conservation Easement Area at reasonable times with any necessary equipment or vehicles to inspect, determine compliance with the covenants and prohibitions contained in this Amended Deed of Conservation Easement, and to enforce the rights herein granted in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Conservation Easement Area by Grantor at the time of such entry; and

b. To proceed at law or in equity to enforce the provision of this Amended Deed of Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and to require the restoration of such areas or features of the Conservation Easement Area that may be damaged by any activity or use that is inconsistent with this Amended Deed of Conservation Easement.

3. Prohibited Uses. Except for activities that are permitted or required by the Permit (or any modification thereto) (which may include restoration, creation, enhancement, maintenance, and monitoring activities, or surface water management improvements) or other activities described herein, any activity on or use of the Conservation Easement Area inconsistent with the purpose of this Amended Deed of Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities are expressly prohibited in or on the Conservation Easement Area (except as authorized or required by the Permit (or any modification thereof)):

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

b. 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. Removing, destroying or trimming trees, shrubs, or other vegetation, except:

i. The removal of dead trees and shrubs or leaning trees that could cause damage property is authorized;

ii. The destruction and removal of noxious, nuisance or exotic invasive plant species as listed on the most recent Florida Exotic Pest Plant Council's List of Invasive Species is authorized;

iii. Activities authorized by the Permit or otherwise approved in writing by the Grantee are authorized; and

iv. Activities conducted in accordance with a wildfire mitigation plan developed with the Florida Forest Service that has been approved in writing by the Grantee are authorized. No later than thirty (30) days before commencing any activities to implement the approved wildfire mitigation plan, Grantor shall notify the Grantee in writing of its intent to commence such activities. All such activities may only be completed during the time period for which the Grantee approved the plan;

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 area to remain in its natural, restored, enhanced, or created condition;

f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking, clearing, and fencing; and

g. Acts or uses detrimental to such aforementioned retention of land or water

h. Acts or uses which are detrimental to the preservation of the structural integrity or physical appearance of sites or properties having historical, archaeological, or cultural significance.

4. Grantor's Reserved Rights. Grantor reserves all rights as owner of the Conservation Easement Area, including the right to engage or to permit or invite others to engage in all uses of the Conservation Easement Area that are not prohibited herein and which are not inconsistent with the Permit (or any modification thereto), or the intent and purposes of this Amended Deed of Conservation Easement.

5. Rights of the U.S. Army Corps of Engineers ("Corps"). The Corps, as a third-party beneficiary, shall have the right to enforce the terms and conditions of this Amended Deed of Conservation Easement, including:

a. The right to take action to preserve and protect the environmental value of the Conservation Easement Area;

b. The right to prevent any activity on or use of the Conservation Easement Area that is inconsistent with the purpose of this Amended Deed of Conservation Easement, and to require the restoration of areas or features of the Conservation Easement Area that may be damaged by any inconsistent activity or use;

c. The right to enter upon and inspect the Conservation Easement Area in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Amended Deed of Conservation Easement; and

d. The right to enforce this Amended Deed of Conservation Easement by injunction or proceed at law or in equity to enforce the provisions of this Amended Deed of Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and the right to require Grantor, or its successors or assigns, to restore such areas or features of the Conservation Easement Area that may be damaged by any inconsistent activity or use or unauthorized activities.

The Grantor, including their successors or assigns, shall provide the Corps at least 60 days advance notice in writing before any action is taken to amend, alter, release, or revoke this Amended Deed of Conservation Easement. The Grantee shall provide reasonable notice and an opportunity to comment or object to the release or amendment to the U.S. Army Corps of Engineers. The Grantee shall consider any comments or objections from the U.S. Army Corps of Engineers when making the final decision to release or amend this Amended Deed of Conservation Easement.

6. No Dedication. No right of access by the general public to any portion of the Conservation Easement Area is conveyed by this Amended Deed of Conservation Easement.

7. Grantee's and Third Party Beneficiary's Liability. Grantee's liability is limited as provided in Subsection 704.06(10) and Section 768.28, F.S. Additionally, Grantee and Third-Party Beneficiary shall not be responsible for any costs or liabilities related to the operation, upkeep, or maintenance of the Conservation Easement Area.

8. Enforcement. Enforcement of the terms, provisions and restrictions of this Amended Deed of Conservation Easement shall be at the reasonable discretion of Grantee, and any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a waiver of Grantee's rights hereunder. Grantee shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Amended Deed of Conservation Easement.

9. Third Party Beneficiary's Enforcement Rights. The Third Party Beneficiary of this Amended Deed of Conservation Easement shall have all the rights of the Grantee under this Amended Deed of Conservation Easement, including third party enforcement rights of the terms, provisions and restrictions of this Amended Deed of Conservation Easement. Third Party Beneficiary's enforcement of the terms, provisions and restrictions shall be at the discretion of the Third Party Beneficiary, and any forbearance on behalf of the Third Party Beneficiary to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a waiver of Third Party Beneficiary's rights hereunder. Third Party Beneficiary shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Amended Deed of Conservation Easement.

10. Taxes. When perpetual maintenance is required by the Permit, Grantor shall pay before delinquency any and all taxes, assessments, fees, and charges of whatever description levied on or assessed by competent authority on the Conservation Easement Area and shall furnish the Grantee with satisfactory evidence of payment upon request.

11. Assignment. Grantee will hold this Amended Deed of Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Amended Deed of Conservation Easement except to another organization or entity qualified to hold such interests under the applicable state laws.

12. Severability. If any provision of this Amended Deed of Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Amended Deed of Conservation Easement shall not be affected thereby, as long as the purpose of the Amended Deed of Conservation Easement is preserved.

13. Terms and Restrictions. Grantor shall insert the terms and restrictions of this Amended Deed of Conservation Easement (or incorporate the terms and restrictions by reference) in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Amended Deed of

Conservation Easement.

14. Written Notice. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

15. Modifications. This Amended Deed of 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 in Polk County, Florida.

16. Recordation. Grantor shall record this Amended Deed of Conservation Easement in timely fashion in the Official Records of Polk County, Florida, and shall rerecord it at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Amended Deed of Conservation Easement in the public records. Grantor will hold Grantee harmless from any recording costs or taxes necessary to record this Amended Deed of Conservation Easement in the public records.

17. Existing Conservation and Land Access Easement. Except as expressly amended by the terms included herein, the existing Conservation and Land Access Easement recorded at Book 10459, Page 1156 of the official records of Polk County, Florida, shall remain in effect. In the event of conflict between the terms of the Conservation and Land Access Easement and this Amended Deed of Conservation Easement, the terms of the Amended Deed of Conservation Easement shall prevail.

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

IN WITNESS WHEREOF, each party, or its lawful representative, has executed this Amended Deed of Conservation Easement on the date set forth next to their signature below:

Hilochee Mitigation Bank, LLC ("Grantor") through its Managing Member, Dennis K.

Benbow has hereunto set its authorized hand this _____ day of _____, 20__.

By: _____
Dennis K. Benbow
Managing Member
Hilochee Mitigation Bank, LLC

Signed, sealed and delivered in our presence as witnesses:

By: _____ By: _____
(Signature) (Signature)

Name: _____ Name: _____
(Print) (Print)

STATE OF FLORIDA
COUNTY OF

On this _____, 2018, before me, the undersigned notary public, personally appeared Dennis K. Benbow, the person who subscribed to the foregoing instrument, as the Managing Member, Hilochee Mitigation Bank, LLC, a Florida limited liability company and acknowledged that he executed the same on behalf of said limited liability company and the he was duly authorized to do so. He is personally known to me or has produced a _____ (state) driver's license as identification.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC, STATE OF FLORIDA

(Signature)

(Name)

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: _____
Jeffrey M. Adams, Chair

Attest: _____
Bryan K. Beswick, Secretary

Date: _____

(Seal)

STATE OF FLORIDA

CITY OF _____

Before me, the undersigned authority, appeared JEFFREY M. ADAMS and BRYAN K. BESWICK, who are personally known to me, or who have shown _____ as identification, and who, upon being first duly sworn under oath, hereby acknowledges that they have read the foregoing, and same is true and correct to the best of their knowledge and belief.

Dated this _____ day of June 2018.

Notary Public, State of Florida

Date:

My commission expires: _____