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Department of Environmental Protection

160 Governmental Center

Pensacola FL, 32501

c/o Ted Reese

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is given this 7th day of JAN. 2008, by Emerald Coast Development Corp., having an address at 8317 Front Beach Road, Suite 17C, Panama City Beach, Florida 32407 (Grantor) to the State of Florida Department of Environmental Protection (DEPARTMENT), whose address is Department of Environmental Protection, Division of State Lands, 3900 Commonwealth Boulevard, Mail Station 130, Tallahassee, Florida 32399-3000. As used herein, the term Grantor shall include any and all heirs, successors or assigns of the Grantor, and all subsequent owners of the Property (as hereinafter defined) and the term DEPARTMENT shall include any successor or assignee of the DEPARTMENT.

WITNESSETH

WHEREAS, the Grantor is the sole owner in fee simple of certain lands situated in Bay County, Florida, more specifically described in Exhibit A, A1, and B attached hereto and incorporated herein (Property);

WHEREAS, the Grantor desires to construct a commercial retail development on Back Beach Road (Project) at a site in Bay County, which is subject to the regulatory jurisdiction of the Department under Part IV of Chapter 373 of the Florida Statutes;

WHEREAS, Department Permit No. 03-0245015-001-DF (Permit) authorizes certain activities which affect waters in or of the State of Florida;

WHEREAS, this Permit requires that the Grantor preserve, enhance, restore or mitigate for impacts to wetlands, other surface waters, or uplands under the Department's jurisdiction; and

WHEREAS, pursuant to Section 373.414(1)(b), F.S., the DEPARTMENT agrees to accept this conservation easement and the Grantor agrees to grant this conservation easement as a condition of the Permit issued by the Department to offset or prevent adverse impacts to water quality and natural resources, such as fish, wildlife, and wetland or other surface water functions. Specifically, this conservation easement is intended to

Offset impacts to wetlands and other surface waters;

Prevent cumulative impacts;

Prevent secondary impacts to the functions provided to fish, wildlife, and listed species by wetlands, other surface waters, and uplands.

NOW THEREFORE, in consideration of the above and the 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 the DEPARTMENT upon the Property 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 conservation easement shall be as follows:

1. Purpose. The purpose of this conservation easement is to retain land or water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wooded condition and to retain such areas as suitable habitat for fish, plants or wildlife. Those wetland or upland areas included in the conservation easement that are to be enhanced or created pursuant to the Permit shall be retained and maintained in the enhanced or created conditions required by the Permit.
2. Rights of the DEPARTMENT. To carry out this purpose, the following rights are conveyed to the DEPARTMENT by this easement:
 - a. The right to take action to preserve and protect the environmental value of the Property;
 - b. The right 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 areas or features of the Property that may be damaged by any inconsistent activity or use;
 - c. 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; and
 - d. 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.
3. 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 and uses are expressly prohibited, except for restoration, creation, enhancement, maintenance, and monitoring activities authorized by the Permit:
 - a. Construction or placing of structures on, above, or below the ground, including but not limited to: buildings, roads, docks, piers, boardwalks, billboards or other

advertising; utilities; signs (other than those marking the conservation easement), or other structures.

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

c. Removal or destruction of trees, shrubs, or other vegetation, except nuisance, invasive, exotic, or nonnative species upon prior written approval by the DEPARTMENT;

d. Planting or seeding of exotic or nuisance species or other plants that are outside their natural range or zone of dispersal and have or are able to form self-sustaining, expanding, and free-living populations in a natural community with which they have not previously associated;

e. Exploration for or extraction of oil or gas, and excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

f. Surface use except for purposes that permit the land or water area to remain in its natural condition;

g. 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, dredging, and fencing;

h. Acts or uses detrimental to such aforementioned retention and maintenance of land or water areas;

i. 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; and

j. The use of All-Terrain Vehicles, other than those used for land management activities

4. Reserved Rights. Grantor reserves to itself, its successors or assigns all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and that are not inconsistent with any Department rules, criteria, permit and the intent and purposes of this conservation easement. The following resource based recreational uses are not contrary to the purposes of this conservation easement upon prior written approval by the DEPARTMENT.

a. Controlled burning.

- b. Machine clearing of fire lines and fire breaks as part of fire fighting, fire suppression, or controlled burns.
 - c. Installation of fences for land management or habitat protection purposes.
 - d. Removal or extermination of nuisance or exotic animal species.
 - e. Installation of signs for land management or for habitat protection purposes.
5. Public Access. No right of access by the general public to any portion of the Property is conveyed by this conservation easement.
6. Responsibilities of Parties. Grantor on behalf of itself and its successors or 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 DEPARTMENT from same. In addition, the DEPARTMENT and its successors or assigns shall have no responsibility for any costs or liabilities related to the operation, upkeep or maintenance of the Property.
7. Taxes. Grantor, its successors or assigns, shall pay before delinquency any and all taxes, assessments, fees, and charges of whatever description levied on or assessed by competent authority on the Property, and shall furnish the DEPARTMENT with satisfactory evidence of payment upon request.
8. Liability. Grantor, its successors or assigns, will assume all liability for any injury or damage to the person or property of third parties which may occur on the Property arising from ownership of the Property by the Grantor, its successors or assigns. Neither Grantor, its successors or assigns, nor any person or entity claiming by or through Grantor its successors or assigns, shall hold the DEPARTMENT liable for any damage or injury to person or personal property which may occur on the Property. Furthermore, the Grantor, its successors or assigns shall indemnify and hold harmless the DEPARTMENT for all liability, any injury or damage to the person or property of third parties which may occur on the Property.
9. Hazardous Waste. Grantor covenants and represents that no hazardous substance or toxic waste exists nor 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 DEPARTMENT 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 DEPARTMENT.
10. Enforcement Discretion. Enforcement of the terms, provisions and restrictions of this conservation easement shall be at the reasonable discretion of the DEPARTMENT, and any forbearance on behalf of the DEPARTMENT to exercise its rights hereunder in the

event of any breach by Grantor, shall not be deemed or construed to be a waiver of the DEPARTMENT'S rights.

11. Venue and Enforcement Costs. Venue to enforce the terms of this conservation easement shall be in Leon County, Florida. In the event the Army Corps takes enforcement action, venue shall be in a state or federal court of competent jurisdiction. If the DEPARTMENT prevails in an enforcement action, it shall be entitled to recover costs, including expert witness fees, as well as reasonable cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of the conservation easement or to the vegetative and hydrologic condition required by the aforementioned Permit. These remedies are in addition to any other remedy, fine or penalty which may be applicable under Chapters 373 and 403, F.S.

12. Assignment of Rights. The DEPARTMENT agrees to 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 applicable state laws.

13. Recording in Land Records. Grantor agrees to record this conservation easement and any amendments hereto in a timely fashion in the Official Records of Bay County, Florida. Grantor shall pay all recording costs and taxes necessary to record this conservation easement in the public records.

14. 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.

15. Notices. 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.

16. Subsequent Deeds. Grantor shall insert the terms and restrictions of this conservation easement in 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 the DEPARTMENT of the transfer of any interest at least twenty days prior to the date of such transfer. The failure of 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.

17. 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.

18. Alteration or Revocation. This conservation easement may be amended, altered, released or revoked only by permit modification as necessary and written agreement

between the parties hereto or their heirs, assigns or successors-in-interest, which shall be filed in the public records in Bay County.

19. Controlling Law. The interpretation and performance of this conservation easement shall be governed by the laws of the State of Florida.

20. Baseline Documentation Report. The specific conservation values of the property are documented in the Baseline Documentation Report associated with this conservation easement. The Baseline Documentation Report consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the property at the time of this grant, and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. The Baseline Documentation Report is maintained in the offices of the Florida Department of Environmental Protection and is incorporated by this reference. A copy of the Baseline Documentation Report is available from the Department on request.

TO HAVE AND TO HOLD unto the DEPARTMENT 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 DEPARTMENT 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 all mortgages 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 Grantor has executed this Conservation Easement on the day and year first above written.

Signed, sealed and delivered in our presence as witnesses:

Donatella Hartless
Signature of Witness

Donatella Hartless
Printed/Typed Name

[Signature]
Signature of Witness

DEBORAH K RODEHEAVER
Printed/Typed Name

By: [Signature]
Keith S. Hall, as President
Emerald Coast Development Corp.

STATE OF FLORIDA
COUNTY OF BAY

The foregoing instrument was acknowledged before me this 2nd day of January, 2008, by Keith S. Hall, as President of Emerald Coast Development Corp., a Florida Corporation. He/she is personally known to me or has produced personally known as identification.

(SEAL)

[Signature]

Notary Public Signature
Renata Harris
Notary Public - State of Florida
My Commission Expires March 30, 2009
Comm # ED 412917

Printed/Typed Name of Notary

JOINDER OF MORTGAGE

Bay Bank & Trust Co., hereinafter called "Mortgagor", the owner and holder of a mortgage encumbering the property described in Exhibits A, A1, and B of this Conservation Easement Deed, which is that certain mortgage dated July 9, 2004 and recorded in the Official Records Book 2473, Page 625, Public Records of Bay County, Florida (the "Mortgage"), joins in the making of the foregoing Conservation Easement Deed and hereby consents thereto, and agrees that the property described in Exhibits A, A1, and B shall be subject to this Conservation Easement Deed.

Signed, sealed and delivered in our presence

Patricia Carr

Signature of Witness

PATRICIA CARR

Printed/Typed Name

[Signature]

Signature of Witness

Jersey F. Sewell III

Printed/Typed Name

By: *Karla A French*

KARLA A. FRENCH

Typed, Printed Name

Title: *Vice President*

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this 19th day of December, 2007, by Karla A. French, as VP of Bay Bank & Trust Company. He/she is personally known to me or has produced _____ as identification.

(SEAL)

Mary Scherer

Notary Public Signature

Mary Scherer

Printed/Typed Name of Notary

MARY SCHERER
Notary Public - State of Florida
My Commission Expires Aug. 25, 2008
Commission No. DD 350011

Exhibit A

DESCRIPTION OF PARCEL:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 32, TOWNSHIP 3 SOUTH, RANGE 15 WEST, BAY COUNTY, FLORIDA; THENCE N 89°58'39" E ALONG THE NORTH LINE OF SAID SECTION 32 FOR 400.43 FEET TO THE POINT OF BEGINNING; THENCE LEAVING SAID NORTH LINE RUN S 00°09'53" W FOR 392.39 FEET; THENCE S 86°30'51" E FOR 600.90 FEET; THENCE N 32°21'11" W FOR 20.17 FEET; THENCE N 17°32'33" W FOR 14.96 FEET; THENCE N 12°44'26" W FOR 43.95 FEET; THENCE N 25°39'52" W FOR 38.36 FEET; N 43°03'13" W FOR 56.78 FEET; THENCE N 71°02'54" W FOR 20.00 FEET; THENCE N 32°21'11" W FOR 79.34 FEET; THENCE S 73°38'41" W FOR 46.50 FEET; THENCE N 70°52'03" W FOR 28.19 FEET; THENCE N 81°58'18" W FOR 39.63 FEET; THENCE N 51°07'25" W FOR 31.09 FEET; THENCE N 35°17'36" W FOR 41.17 FEET; THENCE N 41°47'20" E FOR 54.49 FEET; THENCE N 62°24'30" W FOR 25.21 FEET; THENCE N 89°38'44" E FOR 112.31 FEET; THENCE S 63°19'54" E FOR 7.15 FEET; THENCE S 73°30'44" E FOR 30.58 FEET; THENCE S 87°42'42" E FOR 27.17 FEET; THENCE N 65°05'30" E FOR 30.91 FEET; THENCE S 90°00'00" E FOR 41.65 FEET; THENCE N 31°10'47" W FOR 103.35 FEET TO THE NORTH LINE OF SAID SECTION 32; THENCE S 89°38'44" W ALONG SAID NORTH LINE FOR 533.70 FEET TO THE POINT OF BEGINNING. CONTAINING 4.56 ACRES MORE OR LESS.

