

STATE OF FLORIDA
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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IN THE MATTER OF:

ORDER NO. SFWMD 2009-031-DAO

Amended Petition for Administrative Hearing
filed by the Miccosukee Tribe of Indians of
Florida for Sale and Purchase Agreement
between United States Sugar Corporation,
SBG Farms, Inc., and Southern Gardens
Groves Corporation and the South Florida
Water Management District.

ORDER DISMISSING PETITION WITH LEAVE TO AMEND

The Governing Board of the South Florida Water Management District ("District" or "SFWMD"), or its assigned designee, being otherwise fully informed, issues this Order containing the following Findings of Fact and Conclusions of Law after careful review of the Amended Petition for Administrative Hearing ("Petition") filed by the Miccosukee Tribe of Indians of Florida ("Tribe" or "Petitioner") on January 20, 2009, attached as Exhibit A. The Petitioner filed its original Petition for Administrative Hearing on January 13, 2009.

FINDINGS OF FACT

1. A party whose substantial interests are determined by an agency may request an administrative hearing with the agency. Section 120.569(1) and 120.57(1), Florida Statutes. Persons who request such a hearing must file a petition which substantially complies with Rule 28-106.201(2), Florida Administrative Code, within 21 days of receipt of written notice of the agency decision. Rules 28-106.111, 28-106.201(1) and 40E-1.521, Florida Administrative Code.

2. Petitioner is a federally-recognized Indian Tribe and is a taxpayer within the District. Petitioner further alleges that its members reside and work on lands it owns, leases, or controls within the Everglades, including Everglades National Park.

3. On January 13, 2009, Petitioner filed a Petition for Administrative Hearing objecting to an Agreement for Sale and Purchase, with an incorporated Lease Agreement (the “USSC Land Acquisition Contract”), entered into between the District and United States Sugar Corporation and its subsidiaries, SBG Farms, Inc., and Southern Gardens Groves Corporation, who own and farm a significant number of acres of land within the Everglades Agricultural Area. *Id.* at Ex. A, p. 1; ¶¶ 2, 9. The USSC Land Acquisition Contract was approved by the District’s Governing Board on December 16, 2008, and signed by the Sellers, United States Sugar Corporation, SBG Farms, Inc., and Southern Gardens Groves Corporation (collectively “USSC”), on December 8, 2008. *Id.* at Ex. A; ¶ 9.

4. Pursuant to the USSC Land Acquisition Contract, the District agreed to purchase approximately 180,000 acres of USSC farmland located in the Everglades Agricultural Area, and the adjoining C-139, S-4, and L-8 Basins, for a purchase price of \$1,340,000.00, payable at closing. *Id.* at Ex. A, p. 1. The incorporated Lease Agreement further provides that the District will lease the farmland back to USSC for seven years for continued use in conjunction with USSC’s existing sugar cane and citrus operations. According to Petitioner, the \$50.00 per acre rent to be paid by USSC is below the market lease rate. *Id.* at ¶¶ 2, 21.

5. As set forth in the USSC Land Acquisition Contract (and as acknowledged by Petitioner), the District seeks to acquire the USSC farmlands in order to construct Everglades restoration projects, such as reservoirs and stormwater treatment areas. *See Id.* at Ex. B at Exhibit 19e (Lease Agreement) at ¶ 18F and Schedule 4.2 at p. 4; *see also Id.* at ¶ 25.

6. The USSC Land Acquisition Contract contains at least three significant conditions precedent to closing. First, the District must secure acceptable financing arrangements to fund the purchase. *Id.* at Ex. A at ¶ 7.a.iv–v. (In that regard, it is important to note that the District has commenced bond validation proceedings in the Circuit Court for Palm Beach County, styled *South Florida Water Management District v. Florida*, Case No. 2008-CA-031975, to obtain authority to issue certificates of participation to fund the land acquisition.) Second, the District must also determine that the costs of funding the acquisition will not adversely affect its ability to fund its existing legal obligations and core operations, i.e., water supply, flood control, Everglades restoration, regulatory enforcement, etc. *Id.* at Ex. A at ¶ 7.a.xviii. Third, USSC has the right to “go shop” the USSC Land Acquisition Contract to find better offers than those agreed to by the District. *Id.* at Ex. A at ¶ 25.

7. Petitioner asserts several reasons explaining why its substantial interests will be affected by the USSC Land Acquisition Contract. Petition at ¶¶ 10–13. As a landowner and taxpayer within the District, Petitioner complains that the District is paying too much to buy the land—and not charging enough when renting it back to USSC—contrary to the procedural requirements of Sections 373.0831, .093, and .139,

Florida Statutes. *Id.* at ¶¶ 2, 20–21, 32, 34–35. Petitioner further contends that the cost of the USSC Land Acquisition Agreement is so prohibitive that *if* the District proceeds with the transaction, it will be forced to eliminate or delay other planned Everglades restoration projects, (including projects described in the Comprehensive Everglades Restoration Plan (“CERP”), the Everglades Forever Act (“EFA”), Section 373.4592, Florida Statutes, and the District’s *Long-Term Plan for Achieving Water Quality Standards* (“Long-Term Plan”)), the net effect of which will “adversely affect the Tribe’s recognized interests, including its interests in the Everglades.” *Id.* at ¶ 12, see also ¶¶ 4–5, 13, 23–31, 33, 36. Finally, Petitioner asserts that the District has not identified a future revenue source with which to build the restoration projects it envisions on the USSC lands, and, in fact, that it may never be able to build the projects because the USSC Land Acquisition Contract grants USSC a first right of refusal which gives it the power to continue to operate for an indefinite period.” *Id.* at ¶ 2, see also ¶¶ 3, 27, 30. As a result, Petitioner contends the purchase is not for a valid public purpose within the scope of Section 373.139, Florida Statutes.¹ *Id.* at ¶ 32.

CONCLUSIONS OF LAW

8. Section 120.569(2)(a), Florida Statutes, requires the District to take action on a petition for hearing. If the District accepts the petition, it may request that the

¹ In connection with its public purpose claims, Petitioner also asserts that the Lease Agreement contains a provision allowing USSC an unrestricted first right of refusal in the event the District wants to lease the farmland after the seventh year, thereby giving USSC “the power to continue to operate for an indefinite period.” See Petition at ¶ 2. This is incorrect. While paragraph 39 of the Lease Agreement contains a right of first refusal clause, it would not apply in the event the District elects to take a parcel out of sugar cane production and use it to build a restoration project. *Id.* at Ex. A at Ex. 19E at ¶ 39.

Division of Administrative Hearings (“DOAH”) be assigned to conduct the hearing. Before referring a petition to DOAH, however, the District must review the petition to determine if it is an appropriate petition and contains all required information.

9. Pursuant to Section 120.569(2)(c), Florida Statutes, a petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.

10. In *Agrico Chem. Co. v. Dep't. of Env't'l. Reg.*, 406 So. 2d 478 (Fla. 2d DCA 1981), the court set forth the definition of “substantial interest” in the context of a Chapter 120 proceeding, stating:

Before one can be considered to have a substantial interest in the outcome of the proceeding, he must show: 1) that he will suffer an injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing; and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect.

Id. at 482; *see also*, *City of Sunrise v. South Florida Water Management District*, 615 So. 2d 746 (Fla. 4th DCA 1993). Subsequent courts explained that the “first element pertains to the degree of injury whereas the second deals with the nature of the injury.” *Mid-Chattahoochee River Users v. FDEP*, 948 So. 2d 794, 797 (Fla. 1st DCA 2007).

I. Petitioner fails to allege material facts demonstrating a sufficiently “immediate” injury.

11. With respect to the first prong of *Agrico*, the allegations in the Petition fail to establish a sufficiently “immediate” injury. *See City of Sunrise*, 615 So. 2d at 747; *see*

also, *Florida Sugar Cane League, Inc. v. South Florida Water Management District*, 617 So. 2d 1065, 1066–67 (Fla. 4th DCA 1993); *Seacoast Utility Authority v. PGA Nat’l Golf Club*, DOAH Case No. 94-2903, 1995 WL 1052594 (Feb. 6, 1995), at ¶ 46. Similar to the facts in the preceding authorities, in this case, it is not the District’s execution of the USSC Land Acquisition Contract that will cause the injuries complained of by Petitioner. Rather, the harm, if any, that may result stems from a series of speculative future events and budgetary decisions that might ultimately result in a decision by the District to not comply with Florida law, i.e., to not build the projects contemplated by CERP or the Everglades Forever Act. For example, the acquisition of USSC’s farmlands must proceed to closing, an event not only contingent on USSC’s “go shop” efforts, but the District’s efforts to obtain bond validation in circuit court and have underwriters successfully issue certificates of participation. In addition, pursuant to Paragraph 6(a)(xviii) of the USSC Land Acquisition Contract, the District has the authority to walk away from the transaction if it concludes that it will “adversely affect the capacity of [the District] to continue to fulfill its statutory, contractual, and other legal obligations and mandates”

12. Upon scrutiny it is apparent that Petitioner is trying to recast a future budgetary decision to be made by the District into a present day, injury in fact. The Petition does not allege that existing restoration projects have been terminated or suspended as a result of the financial strain imposed by the USSC Land Acquisition Agreement. Rather, the complained of injuries materialize only if the USSC Land Acquisition Contract proceeds to closing and the District’s Governing Board makes a

series of financial decisions that places the District in a position so that it cannot fulfill its commitments under the EFA or CERP, i.e., concluding that it will not raise taxes to meet its existing obligations or re-allocate moneys from other programs to do so. The Tribe's analysis also assumes that the Long-Term Plan will not be amended to include the Everglades restoration projects predicated upon the acquisition of the USSC farmlands. Under these circumstances, the Tribe's alleged injuries are too remote and speculative.

II. Petitioner fails to allege material facts demonstrating a sufficient "injury in fact."

13. Also, with respect to the first prong of *Agrico*, the Petition does not set forth adequate allegations of material fact demonstrating an injury in fact. As discussed *supra*, Petitioner alleges that its members reside and work on lands it owns, leases, or controls within the Everglades, including Everglades National Park. Petitioner contends that the USSC Land Acquisition Contract will delay or eliminate ongoing EFA and CERP projects that, in turn, will adversely affect its "recognized interests, including its interests in the Everglades." Petition at ¶ 13, see also ¶ 4. Finally, Petitioner asserts that the District's actions will prevent the District from meeting the 10 ppb phosphorus criterion for waters being discharged into the Everglades. *Id.* at ¶ 14n. The Petition does not contain allegations, however, linking the delay or elimination of water quality projects with a materially adverse impact to the water quality on the lands on which the Tribe's members reside and work. Vague, conclusory allegations that the District's failure to fund Everglades restoration projects (or fund the water quality projects that the Tribe has sought to have constructed) will somehow "adversely affect" Petitioner's

recognized interests are insufficient. *See e.g., Agrico*, 406 So. 2d at 482 (petitioners must “clearly show injury in fact to interests protected by chapter 403”); *see also, Brookwood Extended Care Center of Homestead v. Agency for Health Care Admin.*, 870 So. 2d 834, 840 (Fla. 3d DCA 2003) (“general denials and non-specific allegations of compliance will no longer suffice”).

III. Petitioner has failed to allege material facts demonstrating an injury that is of a type or nature that a Chapter 120 proceeding is designed to protect.

A. Budgetary decisions and expenditures are not of a type or nature that a Chapter 120 proceeding is designed to protect.

14. The District’s budgetary decisions, such as to buy the USSC property, are generally not the types of actions reviewable under Chapter 120 or in any other forum. Generally, a taxpayer does not have standing to contest agency expenditures—even expenditures that exceed the agency’s statutory authority or waste public money—unless he claims to have suffered a special injury distinct from other taxpayers or launches a constitutional attack upon the agency’s action. *School Board of Volusia County v. Clayton*, 691 So. 2d 1066 (Fla. 1997) (taxpayer challenge to School Board’s purchase of real property); *North Broward Hosp. Dist. v. Fornes*, 476 So. 2d 154 (Fla. 1985) (taxpayer challenge to hospital district’s expenditures to expand medical facility). The special injury requirement has been applied in administrative proceedings. *See St. Joe Paper Co. v. Dept. of Community Affairs*, 657 So. 2d 27, 28 (Fla. 1st DCA 1995) (Section 120.57 requires an injury in a manner beyond the injury which might be suffered by the general public); *Grove Isle, Ltd., v. Bayshore Homeowners’ Assoc., Inc.*, 418 So.

2d 1046, 1047 (Fla. 1st DCA 1982)(same); *see also*, *Calabria v. Dept. of Transportation*, DOAH Case No. 02-3531, 2002 WL 31911465 (Dec. 21, 2002) at ¶¶ 44–53; *cf.* *Terwilliger v. South Florida Water Management District*, DOAH Case No. 01-1504, 2002 WL 569480 (Feb. 27, 2002) at ¶¶ 128–137, *PCA aff'd*, 846 So. 2d 526 (Fla. 4th DCA 2003).

15. Controlling case law also holds that an agency’s allocation and disbursement of funds is not subject to administrative review. In *Palm Beach County Classroom Teacher’s Ass’n. v. School Board of Palm Beach County*, 406 So. 2d 1208 (Fla. 4th DCA 1981), a teachers’ association sought to challenge a decision by the Palm Beach County School Board to not use appropriated funds for salary increases. In upholding that the School Board’s decision to not provide a 120.57 hearing on the matter, the Fourth District held “that the allocation and disbursement of the funds received through the SAA involves the modification of the agency’s budget which entails neither rule making nor an order within the meaning of those terms as set forth in Section 120.52, Florida Statutes (1980).” 406 So. 2d at 1210; *see also*, *South County Mental Health Center v. Department of Health and Rehabilitative Services*, 1990 WL 749617, DOAH Case No. 89-6088, at ¶¶ 34-38 (Mar. 28, 1990) (Fla.Div.Admin.Hrgs) (“The preparation, modification or allocation of agency budgets are not reviewable in Section 120.57(1) substantial interest proceedings.”)

16. In essence, Petitioner complains that the District will decide in the future to divert money from the Everglades restoration projects that it likes to those that the District likes. This complaint is beyond the scope of Chapter 120. If, and when, the

District were to violate the EFA by not building a required project, then Petitioner may have a point of entry. Proceeding with an administrative hearing at this juncture, however, would have the effect of stripping away the District's authority to determine its own future budget and give it to an assigned administrative law judge. As explained in *Fornes*, standing rules "are based on highly debatable policy choices, but they represent . . . a reasonable effort to guarantee that the state and county lawfully exercise their taxing and spending authority without unduly hampering the normal operations of a representative democratic government." 476 So. 2d at 156; *see also, Florida Board of Ophthalmology v. State Board of Optometry*, 532 So. 2d 1279, 1284 (Fla. 1st DCA 1988)(not everyone having an interest in the outcome of a particular dispute is entitled to participate as a party in an administrative proceeding to resolve that dispute.) To paraphrase *Fornes*, allowing Petitioner to proceed would render every public expenditure subject to judicial review, unduly hampering and crippling the normal operations of government. *Fornes* at 156.

B. The USSC Land Acquisition Contract is not a type of "agency action" that Chapter 120.569 is intended to address.

17. The USSC Land Acquisition Contract is not a type of "agency action" within the scope of Section 120.569, Florida Statutes. That statute is applicable "in all proceedings in which the substantial interests of a party are determined by an agency." Fla. Stat. § 120.52. Unless otherwise specifically identified, Section 120.52(13) defines a "party" as a person "whose substantial interests will be affected by proposed agency action." "Agency action" means "the whole or part of a rule or order." Fla. Stat.

§ 120.52(3). A “rule” means an “agency statement of general applicability that implements, interprets, or prescribes law or policy.” Fla. Stat. § 120.52(16). The USSC Land Acquisition Contract is not a “rule” under this definition. However, the term “order” is not defined in Chapter 120, so whether the USSC Land Acquisition Contract is an “order” requires further analysis.

18. When the statute itself does not define a word or phrase at issue, one may refer to dictionaries to obtain or verify the ordinary meaning of each such word, as necessary. *Aarmark Uniform & Career Apparel, Inc., v. Easton*, 894 So. 2d 20, 27 (Fla. 2005). The relevant definition of “order” is “an authoritative indication to be obeyed; command,” *Webster’s Ninth New Collegiate Dictionary* (1989), or “a command, direction, or instruction.” *Black’s Law Dictionary, Eighth Edition* (1999).

19. The dictionary definition of “order” is consistent with how the term is used in Chapter 373 of the Florida Statutes. Specifically, when defining the general powers and duties of the governing board of water management districts, Section 373.083 of the Florida Statutes states as follows:

In addition to other powers and duties allowed it by law, the governing board is authorized to:

- (1) Contract with public agencies, private corporations, or other persons; sue and be sued; and appoint and remove agents and employees, including specialists and consultants.
- (2) Issue orders to implement or enforce any of the provisions of this chapter or regulations thereunder.
- (3)–(5) . . .

(Emphasis supplied) This reference to “orders” involves actions (i.e. commands, directions, or instructions) implementing or enforcing the provisions of Chapter 373 or the rules adopted by the District such as District issued permits or enforcement actions. The USSC Land Acquisition Contract is not a command, direction or instruction implementing or enforcing the provisions of Chapter 373 or District rules, and therefore is not an “order”.

20. Additionally, this description of governing board powers and duties clearly distinguishes the term "contract" from the term "order". Based on that distinction, the two terms must have different meaning, and the USSC Land Acquisition Contract, a contract executed by a water management district, is not an “order” implementing or enforcing the provisions of Chapter 373 or District rules. The acquisition of real property is not the type of activity for which a formal fact-finding hearing is contemplated by Chapter 120, Florida Statutes.

21. Chapter 120 should be read *in pari materia* with Chapter 373. *See, South Florida Regional Planning Council v. State Land and Water Adjudicatory Commission*, 372 So. 2d 159 (Fla. 3d DCA 1979) (Chapters 120 and 380 must be read in harmony when determining standing of party to bring administrative action on land management issue); *see also, Op. Att’y Gen. Fla.* 062-47 (1962) (concluding that Florida Highway Patrol performance review procedures should be read *in pari materia* with Chapter 120). Considering how the term “order” is used in Chapter 373, a contract such as the USSC Land Acquisition Contract should not be considered an “order” or type of “agency action” subject to a 120.569 adjudicatory hearing.

22. The distinction between an order and a contract, and the conclusion that a contract is not subject to administrative proceedings under Section 120.659 of the Florida Statutes, is further supported by Section 120.57(3). This provision of the Florida Administrative Procedures Act (“APA”) provides an entirely separate procedure for the review of the bidding process for agency contracts. Through that process, the Florida APA allows third parties to challenge an agency’s decision concerning award of contracts. The Legislature established this particular procedure for Chapter 120 challenges because there would be other bidders or potential bidders who could be substantially affected by an agency’s decision in such matters.

23. However, persons who protest such bidding decisions based on policy concerns regarding the purpose of the contract may not initiate Chapter 120 challenges. *See, Advocacy Center for Persons v. State*, 721 So.2d 753 (Fla. 1st DCA 1998) (persons involuntarily confined to a state psychiatric hospital did not have standing to challenge the Request for Proposals for construction to privatize the hospital based on their disagreement with policy decisions concerning the privatization). The Legislature has not established a Chapter 120 proceeding to challenge policies upon which an agency bases its decision to expend resources. In this case the challenge to the USSC Land Acquisition Contract is not a bid protest and therefore does not fit under the only contract-related matter designated to be subject to challenge under Chapter 120.

C. Petitioner may not challenge the USSC Land Acquisition Contract pursuant to Sections 373.139, .093, and .0831, Florida Statutes.

24. Petitioner claims that the District violated Sections 373.139, .093, and .0831, Florida Statutes, when entering into the USSC Land Acquisition Contract. Petition at 32–33. In addition to the deficiencies discussed *supra*, these claims must be dismissed for the reasons below.

25. First, with regard to the questions of whether: (1) the District has authority under Section 373.139(2), Florida Statutes, to purchase the USSC farmlands for the purpose of Everglades restoration, and (2) whether it complied with Section 373.0831, Florida Statutes, in doing so, these issues are now pending in the previously filed, Chapter 75, Florida Statutes, bond validation proceeding brought by the District in Palm Beach County Circuit Court, Case No. 50-2008-CA-0311975, in which Petitioner intervened on January 12, 2009. In such circumstances, abatement of this subsequently commenced proceeding is appropriate. *See Thomas v. English*, 448 So. 2d 623 (Fla. 4th DCA 1984). In addition, dismissal is appropriate when a party seeks to use the administrative process as a vehicle for obstructing an opposing party's pursuit of a judicial remedy or attempting to obtain administrative preemption over legal issues then pending in court of competent jurisdiction and involving the same parties. *Suntide Condominium Assoc., Inc. v. Div of Florida Land Sales*, 504 So. 2d 1343, 1345 (Fla. 1st DCA 1987).

26. Second, with regard to the procedural requirements in Section 373.139(3), including the alleged need for the District to justify spending more than the appraised

value of the USSC land, the language in the statute demonstrates that those requirements apply only when a water management district is requesting funds for land acquisition from the Florida Department of Environmental Protection. *See* Section 33 of Ch. 99-247; *see also*, Final Analysis Report of the House of Representatives Committee on Environmental Protection on Bill CS/CS/SB 908, Chapter Law 99-247 (July 26, 1999). Because the District is not using State funds to acquire the property, nor alleged to be doing so, there is no material issue of disputed fact, and this claim must be dismissed.

27. Third, with regard to whether the USSC Land Acquisition Contract complies with the procedural requirements of Section 373.0831(2) (which addresses water resource and water supply development), it should be noted that the District is purchasing the USSC farmlands under its authority granted under Section 373.139, Florida Statutes, which authorizes the acquisition of land for purposes of flood control, water storage, the conservation and protection of water resources, and the preservation of wetlands, streams, and lakes, in addition to water resource and water supply development. Fla. Stat. 373.139(2). Because Section 373.139(2) provides independent authority to acquire the USSC lands for purposes other than water resource and water supply development, Petitioner's reliance on Section 373.0831(2) as grounds for setting aside the contract is misplaced. Moreover, Petitioner fails to allege facts suggesting that its injuries fall within the "zone of interest" that Section 373.0831(2) was intended to protect.

28. Finally, Petitioner asserts, as a disputed issue of material fact, whether the Lease Agreement between the District and USSC is contrary to Section 373.093(1),

Florida Statutes. Petition at ¶ 14d. At the outset, it should be noted that Section 373.139(2), Florida Statutes, provides independent authority to acquire the USSC lands subject to a purchase-leaseback provision. *See* Fla. Stat. § 373.139(2) (the governing board is “authorized to acquire in fee or less than fee title to real property . . .”). With regard to Section 373.093(1), it generally provides that land leases be “for the best price and terms obtainable, to be determined by the Board.” While the Petitioner alleges that the \$50 per acre lease is lower than the District’s own estimates (*id.* at ¶ 21), the Petition does not contain allegations the District could have obtained a better rental price, and with better terms, for a lease of approximately 180,000 acres of land. In addition, when Subsection 373.093(1) is read in conjunction with Subsections (2) and (3), it is evident that subsection (1) does not apply in the case of purchase-leaseback transaction (such as the USSC Land Acquisition Contract) where the lease results in a diminution of the District’s acquisition costs. Petitioner does not allege facts suggesting that is not the case.²

CONCLUSION

32. Rule 28-106.201(2)(d), Florida Administrative Code, requires a petition for administrative hearing to contain a statement of all disputed issues of material fact.

² As alternative grounds for attacking the USSC Land Acquisition Contract, Petitioner alleges that the cost of financing it is “very near [the District’s] newly raised 30 percent debt ceiling.” Because Petitioner does not allege that the District is, in fact, exceeding its debt ceiling, this does not create an issue appropriate for resolution, and there is no material issue of disputed fact. *See also*, *Palm Beach County Classroom Teachers Ass’n*; *South County Mental Health Center*, *supra*, (agency budgetary decisions beyond scope of Chapter 120).

Petitioner has failed to state any facts that are material to an agency action in their petition.

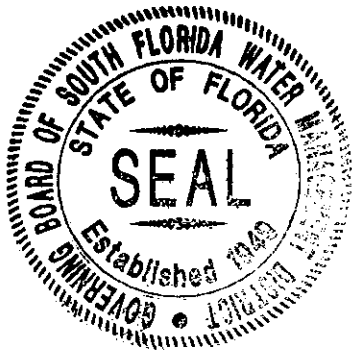
33. Furthermore, an “agency action” that would be subject to a 120.569 hearing has not yet occurred, and therefore all of the matters raised by the Petitioners concerning the USSC Land Acquisition Contract are not material for four reasons, as a matter of law, Petitioner cannot be a party in an administrative hearing initiated under Section 120.569, Fla. Stat., because their alleged injuries are not of a type or nature which the proceeding is designed to protect. First, Petitioner attempts to challenge something other than an agency action (i.e., a rule or order or equivalent thereof) as defined in Chapter 120, Florida Statutes. Second, the specific event in question—a contract for a potential land acquisition—is specifically distinguished from rules and orders in Chapter 373, Florida Statutes. Third, the Florida APA, Section 120.57(3), Florida Statutes, creates a wholly separate process for contracts limited to disputes related to competitive bid protests (and not mere land acquisition contracts). Fourth and finally, caselaw demonstrates that the policy and budgetary decisions implicit in that contract are not subject to Chapter 120 administrative hearings. *See General Development Utilities, Inc., v. Florida Department of Environmental Regulation*, 417 So. 2d 1068, 1070 (Fla. 1st DCA 1982) (to be entitled to a 120.57 [now 120.569] hearing there must be a final agency action affecting the petitioner’s substantial interest, coupled with disputed issues of material fact). *See also, Florida Sugar Cane League*, 617 So.2d at 1066–67 (settlement agreement did not create a point of entry for an administrative hearing pursuant to Section 120.57(1), Florida Statutes).

34. The District's Governing Board delegated to the Executive Director, General Counsel, and Deputy General Counsel authority to enter orders determining whether a petition for administrative hearing is timely filed or meets required pleading requirements, and to refer petitions for administrative hearing to the Division of Administrative Hearings filed subsequent to the Governing Board acting upon the permit application or other agency action being challenged. Fla. Stat. § 373.083(5) and the *District's Policies and Procedures*, Sections 101-22(a)(3) and (4).

ORDER

The District, based upon the above cited Findings of Facts and Conclusions of Law, and being fully informed otherwise, hereby orders that the Amended Petition for Administrative Proceedings filed by Petitioner on January 20, 2009, is hereby dismissed with leave to amend. The Amended Petition must be received by the Office of the District Clerk no later than 21 days from the date of the entry of this order.

Done and Ordered this 4th day of February, 2009.



SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
BY ITS GENERAL COUNSEL

BY: *Sheryl G. Wood*
SHERYL G. WOOD

ATTEST:
BY: *Cathy Widner*
DATE: 2/5/09

LEGAL FORM APPROVED:
BY: *[Signature]*
DATE: 2-5-09

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order Dismissing Petition with Leave to Amend has been served on the following by U.S. Mail this 5th day of February, 2009, to Dexter Lehtinen, Esquire, Lehtinen Riedi Brooks Moncarz, P.A., Suite 303, 7700 North Kendall Drive, Miami, Florida 33156.



NOTICE OF RIGHTS

As required by Sections 120.569(1), and 120.60(3), Fla. Stat., following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

RIGHT TO REQUEST ADMINISTRATIVE HEARING

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a District decision which does or may determine their substantial interests shall file a petition for hearing with the District Clerk within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: 1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or 2) within 14 days of service of an Administrative Order pursuant to Subsection 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of either written notice through mail, or electronic mail, or posting that the District has or intends to take final agency action, or publication of notice that the District has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

Filing Instructions

The Petition must be filed with the Office of the District Clerk of the SFWMD. Filings with the District Clerk may be made by mail, hand-delivery or facsimile. **Filings by e-mail will not be accepted.** Any person wishing to receive a clerked copy with the date and time stamped must provide an additional copy. A petition for administrative hearing is deemed filed upon receipt during normal business hours by the District Clerk at SFWMD headquarters in West Palm Beach, Florida. Any document received by the office of the SFWMD Clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the SFWMD Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.
- Filings by hand-delivery must be delivered to the Office of the SFWMD Clerk. **Delivery of a petition to the SFWMD's security desk does not constitute filing. To ensure proper filing, it will be necessary to request the SFWMD's security officer to contact the Clerk's office.** An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by facsimile must be transmitted to the SFWMD Clerk's Office at (561) 682-6010. Pursuant to Subsections 28-106.104(7), (8) and (9), Fla. Admin. Code, a party who files a document by facsimile represents that the original physically signed document will be retained by that party for the duration of that proceeding and of any subsequent appeal or subsequent proceeding in that cause. Any party who elects to file any document by facsimile shall be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed with the clerk as a result. The filing date for a document filed by facsimile shall be the date the SFWMD Clerk receives the complete document.

Initiation of an Administrative Hearing

Pursuant to Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 and 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, District file number or any other SFWMD identification number, if known.
2. The name, address and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

If the District's Governing Board takes action with substantially different impacts on water resources from the notice of intended agency decision, the persons who may be substantially affected shall have an additional point of entry pursuant to Rule 28-106.111, Fla. Admin. Code, unless otherwise provided by law.

Mediation

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401-405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to Sections 120.60(3) and 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

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**STATE OF FLORIDA
SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

MICCOSUKEE TRIBE OF INDIANS
OF FLORIDA, a federally recognized
Indian Tribe,

Petitioner,

v.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT,

Respondent.

SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

Case No:

AMENDED PETITION FOR ADMINISTRATIVE HEARING

Petitioner, Miccosukee Tribe of Indians of Florida (the "Tribe"), pursuant to Sections 120.569 and 120.57, Florida Statutes (2008), and Rule 28-106.201, Florida Administrative Code, challenge an action of the South Florida Water Management District ("SFWMD") and state:

INTRODUCTION

1. The action at issue is the SFWMD Governing Board's Approval of a Purchase and Sale Agreement (the "Agreement" or "Deal") between the SFWMD and United States Sugar Corporation ("U.S. Sugar"). Incorporated into the Agreement is a related Ground Lease.

2. Under the Agreement and the Lease, the SFWMD agrees to purchase certain landholdings of U.S. Sugar for \$1.34 billion in cash, and to then lease back those same lands to U.S. Sugar on highly preferential terms. U.S. Sugar is allowed to retain all of its lands for a minimum of seven years at far below the market lease rate, and at a price that is a small fraction of what SFWMD will pay annually in debt service for those lands.

After these seven years, U.S. Sugar is guaranteed to retain its lands via a right of first refusal in the lease, which gives it the power to continue to operate for an indefinite period after extracting the full value of its land from the public treasury.

3. The SFWMD Governing Board's approval of the Deal with U.S. Sugar is mere land acquisition, for which a water resources development project has not been identified, and will not accomplish Everglades restoration and protection. There were no concrete plans for a water resources development project or projects that will utilize this land when the SFWMD Governing Board approved the Agreement. Nor has the SFWMD identified a funding source to build the plethora of expensive water management structures and/or projects, such as storage reservoirs and Stormwater Treatment Areas ("STAs") that will have to be built in the future, and at a great public expense, to use the U.S. Sugar land for Everglades restoration and water quality protection.

4. The U.S. Sugar purchase will negatively impact the Comprehensive Everglades Restoration Plan ("CERP") and current ongoing projects expedited under the name Acceler8, including the EAA Reservoir Project, which are necessary to restore and clean-up the Everglades. If more than a billion is spent to simply acquire U.S. Sugar land, there will be no money left to complete current, and much needed, Everglades restoration and clean-up projects. This negative impact to current Everglades restoration projects will become irreversible once the asset purchase is completed.

5. For example, the SFWMD has already stopped, and may abandon, construction on its EAA Storage Reservoir, located north of the existing Stormwater Treatment Areas ("STAs"). The completion of this EAA Reservoir is critical for the efficient operations of the STAs (which the SFWMD has itself claimed), and for

compliance with the Settlement Agreement in S.D. Fla. Case No. 88-1886-CIV-Moreno. It appears the SFWMD may abandon a vital water resources project for which a great deal of money has already been expended, and which is necessary to meet Everglades water quality goals, to merely buy land that will have no water quality benefit for many years, and probably decades.

PRELIMINARY INFORMATION

6. The affected entity is the South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, Florida. The SFWMD Governing Board ratified the Agreement at issue here, and the SFWMD is the lead entity in consummating the U.S. Sugar acquisition, and is primarily responsible for implementation of the projects in the State's Long-Term Plan, and the Comprehensive Everglades Restoration Plan ("CERP") Projects, including those expedited by the SFWMD under the name Aceeler8. SFWMD will also issue and service the approximately \$1.34 billion in debt necessary to facilitate the acquisition.

7. Petitioner Miccosukee Tribe of Indians of Florida (the "Tribe") is a federally-recognized and federally-protected Indian Tribe, exercising powers of self-government under a Tribal constitution approved by the Secretary of the Interior, pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. § 476. The Tribe's post office address is Administration Building, U.S. Highway 41, Mile Marker 70, Miami, FL 33199, Tel: (305) 223-8380.

8. The names and addresses of Petitioner's attorneys in this matter are:

Dexter Lehtinen
Felippe Moncarz
Claudio Riedi
LEHTINEN RIEDI BROOKS MONCARZ, P.A.
7700 N. Kendall Drive, Suite 303
Miami, FL 33156
(305) 279-1166
dwl@lehtinenlaw.com
fmoncarz@lehtinenlaw.com
criedi@lehtinenlaw.com

9. The specific final action being challenged is the SFWMD Governing Board's December 16, 2008, ratification of the Agreement and Lease, and the December 23, 2008, signing of the Agreement. (Agreement is attached as Exhibit "A" to this Petition and Lease, which is incorporated into the Agreement, is attached as Exhibit "B" to this Petition) The Tribe's original Petition, filed January 13, 2009, was filed within 21 days of the date the SFWMD signed the Agreement and was therefore timely.

STATEMENT OF AFFECTED INTERESTS

10. The Tribe is an owner of property and a holder of land, which is taxable outside its federally designated lands, within the jurisdiction of the South Florida Water Management District.

11. The Tribe's members reside and work within the Florida Everglades on Indian lands in the Miccosukee Reserved Area ("MRA"), on the border of Everglades National Park ("ENP") and on perpetually-leased Indian lands and Federal Reservation lands. The Tribe's members depend upon the Everglades for their entire culture and way of life, and use the Everglades, including without limitation Everglades National Park and Water Conservation Area 3A, for numerous purposes. The Tribe's land interests include:

(i) Federal Indian Reservations, which includes those interests located within the

Everglades (Alligator Alley Reservation), the Miccosukee Resort and Convention Center and Tobacco Shop (Reservations at Krome), and the Miccosukee gas station and Miccosukee Restaurant located along Tamiami Trail (Reservation at Tamiami Trail); (ii) perpetual Indian Reservation rights to a portion along the border of Everglades National Park (designated by Congress as the Miccosukee Reserved Area ("MRA")); (iii) a perpetual lease for the use and occupancy of substantial portions of Water Conservation Area 3A, a vast area of the Everglades which both the United States and the State of Florida guarantee will be maintained in its natural state in perpetuity; (iv) aboriginal title of Tribal members to portions of the Everglades; and (v) rights to traditional use and occupancy in Everglades National Park and Big Cypress National Preserve.

12. The SFWMD action taken by the Governing Board will eliminate and/or substantially delay numerous planned Everglades restoration and clean-up projects, which will also adversely affect the Tribe's recognized interests, including its interests in the Everglades. (Felippe, this had something missing was it Everglades)

13. The SFWMD action taken by the Governing Board action will eliminate and/or substantially delay water quality that the Tribe has sought to have constructed, including the construction and implementation of the expedited Everglades Agricultural Area Reservoir ("EAA Reservoir") Project and projects in the Long Term Plan, for treating water flowing into the Everglades Protection Area. The SFWMD Action directly impacts the Tribe's interests as the U.S. Sugar acquisition will constitute a *de facto* abandonment of key projects in CERP, and the Long-Term Plan, which are necessary for Everglades clean-up and restoration in favor of other, as yet unstated measures, with no indication as to the timing, efficacy or cost-effectiveness of any replacement projects.

DISPUTED ISSUES OF MATERIAL FACT

14. Petitioner has identified the following potentially disputed issues of material fact and mixed issues of fact and law;

- a. Whether the SFWMD's Action is outside the scope of the District's authority to acquire property under section 373.139, Florida Statutes.
- b. Whether the SFWMD complied with the requirements for an above-appraised-value purchase of lands under section 373.139, Florida Statutes.
- c. Whether the SFWMD exceeded its statutory authority pursuant to Section 373.0831, Florida Statutes by acquiring land when it has no detailed plan or plans for a water resources development project or projects to use it.
- d. Whether the SFWMD acted contrary to Section 373.093(1), Florida Statutes, which requires leasing for the "best price." for leasing back the land to U.S. Sugar at below market rate.
- e. Whether the SFWMD properly accounted for the value of the preferential lease and right of first refusal.
- f. Whether the SFWMD is improperly subsidizing U.S. Sugar's farming operations.
- g. Whether the SFWMD's inability to implement projects on the U.S. Sugar land due to funding constraints, coupled with the Lease terms, will allow U.S. Sugar to operate its business at public expense for the foreseeable future.
- h. Whether the SFWMD's environmental justifications for the U.S. Sugar acquisition are arbitrary and capricious.

i. Whether the SFWMD has any presently defined, achievable, use for the U.S. Sugar land within the scope of its land acquisition powers.

j. Whether, and when, the SFWMD will have the financial capability to utilize the acquired land for any stated public purpose.

k. Whether the SFWMD action is in violation of statutory requirements that prohibit it from entering into a contract without a commitment for financing.

l. Whether the SFWMD action will result in CERP projects, including the expedited projects formerly referred to as Acceler8, from being cancelled or delayed.

m. Whether the SFWMD action will result in non-CERP projects, including those in the Long Term Plan, being cancelled and/or timelines not being met.

n. Whether the SFWMD action will result in an extended delay in the SFWMD not meeting the 10ppb phosphorus criterion into the waters being discharged to the Everglades Protection Area, which was to be achieved by December 31, 2006.

o. Whether the SFWMD action will compromise its ability to meet its core mission in the future.

p. Whether the SFWMD action is arbitrary or capricious.

ULTIMATE FACTS ALLEGED

15. Petitioner incorporates by reference Paragraphs 1-14 above, as if fully restated herein.

A. The Initial Deal

16. On June 24, 2008, Governor Charlie Crist and the Vice Chair of the SFWMD's Governing Board, Shannon Estenoz, announced that the SFWMD would

purchase a future interest in the land and assets of U.S. Sugar for \$1.75 billion allegedly to establish a “flow way” between Lake Okeechobee and the Everglades. During the prior eight months, officials from the Executive Office of the Governor, the District and DEP had negotiated this transaction with U.S. Sugar.

17. On June 24, 2008, U.S. Sugar and the SFWMD entered into a written agreement -- the “Statement of Principles” -- setting out the key terms of the purchase of the U.S. Sugar’s assets. This Statement of Principles formalized the terms negotiated, including the purchase price, the assets to be purchased, and the future interest aspects of the transaction, whereby full payment would be made at closing with title to the assets transferred six years thereafter.

18. The Statement of Principles was “ratified” by the Governing Board of the SFWMD on June 30, 2008. Following that decision a team of negotiators, led by the Secretary of DEP and including staff from the SFWMD, DEP and the Executive Office of the Governor, negotiated the Agreement.

19. The Statement of Principles provided that the final price was to be confirmed by appraisals. The District’s analysis of the value of the U.S. Sugar land and assets came back far below the \$2.2 billion true value of the initial proposal (factoring in the six-year holdover).

B. The Land-Only Deal

20. In an effort to address this valuation problem the SFWMD and U.S. Sugar developed the alternative land-only structure, reflected in the Agreement. Under this approach, U.S. Sugar would remain in business and continue to farm for an indefinite period of time after still receiving more than the SFWMD’s financial consultants’ estimate

of the total value of the company. As opposed to the initial proposal, where U.S. Sugar was to cease operations after a defined period, under the land-only alternative U.S. Sugar stays in business, retaining ownership of its mill and refinery, and other industrial assets.

21. While the price is claimed to be \$1.34 billion, it will actually be hundreds of millions of dollars higher because U.S. Sugar will also be given a preferential lease of the land it will sell to the state. For the first six years, U.S. Sugar can lease its lands at \$50 per acre, even though the SFWMD's own estimates are that the lease value is much higher. In the seventh year, U.S. Sugar gets a free lease of its land. For subsequent years, it is granted a right of first refusal against the SFWMD competitively leasing the land, guaranteeing U.S. Sugar long-term control until such time, if ever, as the SFWMD can construct projects on the lands.

22. The SFWMD has provided no analysis of what it would cost to actually construct a water management project or projects on the U.S. Sugar land or how it would finance such projects. Under the terms of the proposed agreement, this means that U.S. Sugar gets to use private use of public lands at public expense for the indefinite future.

C. Project Cuts to Pay for U.S. Sugar Debt Service

23. To pay for this acquisition, the SFWMD will redirect funds from currently planned restoration projects, including the EAA Reservoir Project, which has already been partially constructed, and projects in the Long-Term Plan. The SFWMD signed the Agreement with no detailed plan of a water management project for which the U.S. Sugar land will be used, and with no plan for replacement projects that will provide the restoration and clean-up function of the existing projects being abandoned.

24. For the foreseeable future the only effect of the SFWMD action will be to grant a massive public subsidy to U.S. Sugar, which gets to lease its land indefinitely and at a fraction of the public expense. The SFWMD will make annual debt service payments of over \$100 million, which result in little more than subsidizing U.S. Sugar's business, and in return will get only a small fraction of that back in rent from U.S. Sugar.

25. The SFWMD has attempted to justify the acquisition on the grounds that it is needed for Everglades restoration. The SFWMD is expending essentially all its Everglades resources on this acquisition based on little more than a speculative hope that it can make use of some of the U.S. Sugar lands for restoration and clean-up. The SFWMD (i) has not yet defined any alternative projects to replace those being eliminated; (ii) has no defined plan for a water resources project that will use of the land being acquired; and (iii) has no ability to secure the funding needed to build the new restoration projects it vaguely alludes to in its public presentations. No alternatives to the important Everglades restoration and clean-up projects being shelved will be realized from the U.S. sugar acquisition for decades, at best.

26. The SFWMD also failed to account for the impacts on the Everglades that will result from abandoning existing projects, including the EAA Reservoir Project and Long-Term Plan projects, that will be cancelled or delayed to pay for U.S. Sugar land. Nowhere has the SFWMD set out a plan for acquiring, and financing the acquisition of, the other land needed for the so-called "restoration." The SFWMD has not identified where the money would come from to build the project or projects that will be necessary (i.e. reservoirs, STAs, or any other infrastructure) that will be necessary to use the land being acquired for Everglades restoration or clean-up purposes. Nor is there any analysis

of the implications of abandoning the federal-state partnership on the Comprehensive Everglades Restoration Plan ("CERP"), which could in turn result in giving up any federal funding while at the same time spending all of the SFWMD's resources on acquiring the U.S. Sugar land.

27. Under the Agreement, the SFWMD will acquire significant amounts of land that cannot be use for a so-called "flow way" under any conceivable scenario, particularly since the U.S. Sugar land is non-contiguous and spread throughout the EAA. The SFWMD has claimed that it will attempt to sell off unneeded lands, but this arbitrarily fails to note that under the current contract and preferential lease, U.S. Sugar has encumbered the land such that the SFWMD cannot do anything other than facilitate U.S. Sugar's continued farming, on preferential terms, at the public's expense for many years to come.

D. The Agency Action is an Improper De Facto Abandonment of CERP and other restoration and clean-up projects

28. The U.S. Sugar purchase will negatively impact the Comprehensive Everglades Restoration Plan ("CERP") and other ongoing projects, necessary to restore and clean-up the Everglades. As a direct result of the U.S. Sugar acquisition, the SFWMD will cancel and/or delay projects, including projects that were expedited under the name Acceler8, such as the EAA Reservoir Project, and those in the State's Long-Term Plan.

29. The debt used to finance the acquisition (the "Purchase Debt") will place the SFWMD near its current maximum debt service limit (the "Debt Cap"), as set out in the SFWMD's Debt Management Policy, Article IV, South Florida Water Management District Policies and Procedures. Upon closing, the SFWMD would have incurred the Purchase Debt, transferred the proceeds to U.S. Sugar and moved itself to very near its

newly raised 30 percent debt ceiling.¹ The Purchase Debt will leave the SFWMD in a financial position where it will not be able to obtain the capital needed to complete all projects called for in CERP and the Long-Term Plan. Under the SFWMD's own projections it may need budget cuts of between 5 and 22 percent to "core operations" to meet the debt service requirements. These cuts will, according to the SFWMD's public statements, first target planned Everglades restoration projects in CERP and the Long-Term Plan, essentially abandoning the current restoration plan.

30. Upon closing on the deal, the SFWMD will have irrevocably departed from current CERP and/or expedited projects, and Long-Term Plan projects, having committed the funding to acquiring U.S. Sugar land. Even if replacement projects are available, the SFWMD has not identified any sources for the capital or debt service revenue needed to implement such projects in order to replace the functions of the projects that will be lost in the rush to make the U.S. Sugar acquisition.

31. The SFWMD was supposed to meet 10 ppb in waters being discharged to the Everglades Protection Area by December 31, 2006 but has failed to do so. Some of the projects, including the STA expansions and the EAA Reservoir, are important to the SFWMD meeting water quality goals but may now be abandoned or delayed to fund the land acquisition. Because the SFWMD is expending its available project funds for land that is encumbered by leases and intends to use a portion of that land for any new replacement projects, it could not even begin implementing projects until 2016 to replace those that were due to be completed in the near future. That is assuming that there will even be any money to build replacement projects after more than a billion dollars is spent

¹ Any changes to the Debt Policy would be a separate agency action subject to challenge under the APA and Petitioners reserve the right to bring such a challenge.

just buying land. Absent new revenues (none have been identified) the SFWMD will not be able to actually do anything with the land it acquires for the indefinite future.

E. The Agreement Does Not Comply With the Requirements for Land Acquisition for Water Management

32. Section 373.139, Florida Statutes, limits the SFWMD's power to acquire land and, among other things, allows land to be acquired only for “flood control, water storage, water management, conservation and protection of water resources, aquifer recharge, water resource and water supply development, and preservation of wetlands, streams, and lakes.” Fla. Stat. § 373.139(2). None of these purposes are met by the U.S. Sugar land acquisition alone. The acquisition of property merely to be leased back to the seller on preferential terms does not meet any public purpose, much less fall within the restrictive list of required uses under §373.139.

33. Section 373.139 also requires appraisals for land acquisition in excess of \$1 million and requires that “[i]f the purchase price is greater than the appraisal price, the governing board shall submit written justification for the increased price.” Fla. Stat. § 373.139(3)(c). The SFWMD commissioned two appraisals and one “fairness opinion”² all of which concluded that the SFWMD was overpaying. No written justification has been provided that complies with the requirement. And, to the extent the SFWMD attempts to justify the purchase under the mantra of “Everglades restoration” such a justification would be arbitrary and capricious as the SFWMD does not have the funding presently available to actually accomplish any Everglades restoration projects on the U.S. Sugar

² A fairness opinion differs from an appraisal in that it looks at the most a rational buyer would pay for U.S. Sugar’s ongoing business. The fairness opinion indicated that for all of U.S. Sugar’s land and business assets the most any buyer would pay is \$1.3 billion.

lands, or even to replace the functions lost from the projects that were, and will be, shelved as a result of the financial impact of the purchase.

34. Section 373.0831(2) shows that it was the intent of the Florida legislature that water management districts, including the SFWMD, take the lead in identifying and implementing water resource development projects. The U.S. Sugar land acquisition is not a water resource development project, nor has the SFWMD identified a project or projects for which the land will be used. The SFWMD has exceeded its statutory authority by approving an Agreement to spend \$1.34 billion merely to acquire land without identifying a detailed water resources development project for which it will be used.

F. The Deal is Arbitrary and Capricious and Serves No Public Purpose.

35. The SFWMD's purchase of this land for purposes that it has no ability to effectuate and at the expense of current Everglades restoration projects is arbitrary and capricious. The only party that benefits is U.S. Sugar, which continues to control its land for so long as the SFWMD remains financially crippled by the purchase debt.

36. Once the purchase price is paid to U.S. Sugar the SFWMD will have effectively committed itself to abandoning the Acceler8 and/or expedited projects on which it has already spent hundreds of millions of dollars, and those in the Long-Term Plan which are necessary to meet the already overdue water quality goal. To date, the SFWMD has not proposed any alternative projects to replace those that will be cancelled or delayed, nor identified where the funding for any such alternatives would come from.

37. Because of the SFWMD's lack of analysis of this critical issue, its action is arbitrary and capricious.

GOVERNING RULES AND STATUTES

38. The specific statutes and regulations requiring that the Agency Action be declared invalid include sections 120.569, 120.57, 373.019, 373.0831, 373.093, 373.139, 373.4592, 373.081 Florida Statutes, and Chapters 62-302 and 28-106, Florida Administrative Code.

RELIEF SOUGHT

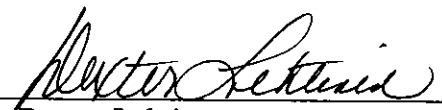
Petitioner requests that the SFWMD refer this matter to the Division of Administrative Hearings; that an Administrative Law Judge be assigned to conduct a hearing concerning the issues raised by this Petition, and that the SFWMD Governing Board Action be declared invalid for the reasons set forth herein.

Dated: January 16, 2009

Respectfully submitted,

LEHTINEN RIEDI BROOKS MONCARZ, P.A.
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dwl@lehtinenlaw.com

Attorneys for Petitioner Miccosukee Tribe

By: 
Dexter Lehtinen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Petition has been sent via Federal Express to the South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, Florida 33406 on this ____ day of January 2009.

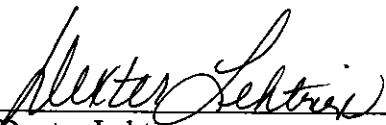
By: 
Dexter Lehtinen

Exhibit A

AGREEMENT FOR SALE AND PURCHASE

THIS AGREEMENT FOR SALE AND PURCHASE (this "Agreement") is made as of December 23, 2008, by and among **UNITED STATES SUGAR CORPORATION**, a Delaware corporation ("Parent"), **SBG FARMS, INC.**, a Florida corporation ("SBG") and **SOUTHERN GARDENS GROVES CORPORATION**, a Florida corporation ("SGGC") (collectively, "Selling Subsidiaries" and, together with Parent, individually and collectively, the "SELLER"), and the **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**, a public corporation created under Chapter 373 of the Florida Statutes, as BUYER (together with its successors and assigns, "BUYER"). BUYER and each SELLER are referred to herein individually as a "Party" and collectively as the "Parties." Each of the Parent and BUYER shall furnish to the other an original of this Agreement executed on its behalf promptly after execution.

For and in consideration of mutual covenants set forth herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and in further consideration of the terms and conditions hereinafter set forth, the parties hereto, intending to be legally bound, agree as follows:

1. AGREEMENT TO SELL AND BUY

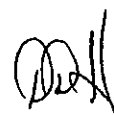
The SELLER hereby agrees to sell to the BUYER and the BUYER hereby agrees to buy from the SELLER, subject to the terms and conditions hereinafter set forth, that certain real property located in Hendry, Glades, and Palm Beach Counties, Florida (collectively, the "Counties"), legally described in Exhibit "A-1" attached hereto and made a part hereof; it being understood that the parties anticipate that the total acreage of the Premises shall be not less than 180,000 acres, together with all and singular the rights, tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining (hereinafter referred to as the "Premises"); it being agreed that in no event shall the Premises include (i) any unharvested citrus and planted sugar cane crops (provided that pursuant to the Lease any cane stubble existing at the end of the Lease term shall belong to BUYER) or (ii) those parcels more particularly described on Exhibit "A-2" attached hereto and made a part hereof. Subject to the Title Exceptions, the conveyance of the Premises will include, without limitation, all citrus groves, fixtures, buildings, structures, improvements, pumps, pump motors, pump stations, culverts, ditches, canals, levees, roads, bridges, and all other irrigation and drainage works and infrastructure located on the Premises and any and all other right, title and interest in and to the Premises, including but not limited to all logs and timber rights, all water rights, all mineral rights, all oil and gas rights, all pasturage rights, all grazing rights and all other rights connected with the beneficial use and enjoyment of the Premises; as well as all right, title and interest in all alleys, roads, streets, streams, canals, ditches and other water bodies located on the Premises, appurtenant to the Premises or which may provide access to the Premises; and all right, title and interest in any alleys, roads, streets and easements included within the Premises, appurtenant to the Premises or which may provide access to the Premises.

2. PURCHASE PRICE

The purchase price for the Premises is the sum of ONE BILLION THREE HUNDRED FORTY MILLION AND NO/100 U.S. Dollars (\$1,340,000,000.00) (the "Purchase Price") payable at time of Closing by a wire transfer in immediately available funds from BUYER to Title Company ("Closing Agent"), to be disbursed by the Closing Agent by wire transfer in immediately available funds to SELLER at Closing, subject only to the prorations and adjustments as otherwise provided in this Agreement.

3. TIME FOR ACCEPTANCE

This Agreement shall not be effective unless it is executed and delivered by the SELLER to the BUYER on or before December 22, 2008, and is executed by the BUYER on or before December 23, 2008.



Notwithstanding the foregoing, in the event this Agreement is executed by the SELLER and delivered to the BUYER after December 22, 2008, BUYER, in BUYER's sole and absolute discretion, may extend said date until the date the BUYER actually receives this Agreement fully executed by the SELLER. The effective date of this Agreement ("Effective Date"), for purposes of performance, shall be regarded as the date when the BUYER has signed this Agreement. Acceptance and execution of this Agreement shall void any prior contracts or agreements between the parties concerning the Premises unless incorporated by reference herein. This Agreement is subject to and contingent upon Validation. For purposes of this Agreement, "Validation" means a final judgment shall have been issued by the Circuit Court in and for Palm Beach County validating the Certificates of Participation pursuant to Chapter 75, Florida Statutes and either (i) no timely appeal has been taken and the time for taking such appeal has expired or (ii) in the event of an appeal, such final judgment shall have been affirmed by the Florida Supreme Court and shall have become final and not subject to re-hearing or further appeal.

4. CLOSING DATE

Subject to the terms and conditions of this Agreement, unless this Agreement shall have been earlier terminated in accordance with its terms, the consummation of the sale and purchase of the Premises (the "Closing") shall occur (a) on or before ninety (90) days after Validation at the offices of SELLER's counsel in West Palm Beach, Florida, or (b) at such other time, place and manner (including via facsimile or electronic transmission) as may be mutually agreed to in writing (without any obligation to do so) by the Parties hereto (such time and date on which the Closing occurs being referred to herein as the "Closing Time" and the "Closing Date", respectively). Notwithstanding the foregoing, either SELLER or BUYER may terminate this Agreement by written notice to the other if (i) Validation has not been issued by July 10, 2009, or (ii) the Closing shall not have occurred by September 25, 2009.

5. EVIDENCE OF TITLE

- a. Survey. SELLER shall use good faith efforts to have the Premises surveyed, at BUYER's sole expense (except as provided below), which surveys (each, a "Survey" and collectively, the "Surveys") shall: (i) be made by a duly licensed Florida surveyor; (ii) be prepared in accordance with the minimum technical standards set forth by the Florida Board of Land Surveyors pursuant to Section 472.027, Florida Statutes, and Chapter 61G17, Florida Administrative Code and those certain requirements set forth in Schedule 5.a. unless otherwise agreed to by BUYER; (iii) not be required to reflect improvements located within the boundaries of the Premises, except as may otherwise be required by Schedule 5.a.; (iv) contain a legal description of the Premises (or applicable portion thereof); and (v) contain a certificate in favor of SELLER, SELLER's counsel, BUYER, BUYER's counsel, the Title Company (as defined herein), the Title Agent (as defined herein), the corporate trustee issuing the Certificates of Participation, any credit enhancer securing the Certificates of Participation and other Persons as reasonably designated by BUYER (it being agreed that BUYER's obligation to reimburse SELLER for all of SELLER's reasonable, actual, documented out-of-pocket costs, not to exceed Five Million Dollars (\$5,000,000.00), incurred in connection with the preparation of the Surveys shall survive any termination of this Agreement). SELLER shall use reasonable efforts to cause the Surveys to be delivered prior to November 30, 2008, or as soon thereafter as reasonably possible (it being understood that the foregoing timeframe may not include Surveys which depict the property being retained by SELLER and SELLER will continue to use reasonable diligence to cause the same to occur). Upon receipt of any Survey by SELLER, SELLER shall promptly deliver certified copies of the

same to BUYER for review and approval, in the number of copies requested by BUYER at BUYER's expense.

- b. Title Binder. SELLER shall have fifteen (15) business days after the date of this Agreement to cause Chicago Title Insurance Company and/or other nationally recognized title companies selected by SELLER and acceptable to BUYER in its sole and absolute discretion ("Title Company") to issue and deliver to BUYER a binder or binders with legible copies of the deeds vesting title in, and conveying title from, SELLER and all instruments affecting title attached thereto (collectively, "Title Binder"), committing the Title Company to issue in BUYER's favor an ALTA title insurance policy or policies insuring BUYER's interest in the Premises (collectively, the "Title Policy") in the amount of the Purchase Price (it being agreed that separate policies may be issued for each portion(s) of the Premises that are owned by each of Parent and its Selling Subsidiaries so long as the aggregate amount of the title insurance is equal to 100% of the Purchase Price and provided that the issuance of separate policies shall not delay the delivery of the Survey). The amounts of re-insurance obtained by the Title Company and the title companies providing such re-insurance shall be reasonably acceptable to the Parties. Assuming that BUYER does not terminate this Agreement pursuant to Section 7.a.xvi, then, at the Closing, BUYER shall accept title to the Premises and the Title Policy, subject to the following (collectively, "Title Exceptions"):
- i. Real property taxes, assessments and special district levies that are not yet due and payable, for the year in which the Closing occurs, and for subsequent years; and
 - ii. All of those certain matters set forth on Schedule B-II to the Title Binder and any updates thereof and any matters that may be shown by the Survey, in each case, as of the Closing Date, subject to SELLER's obligation to cure Curable Title Defects, if any, as defined in and pursuant to Section 5.c below.
- c. Owner's Affidavit, Curable Title Defects. SELLER shall: (i) deliver to the Title Company the Owner's Affidavit at Closing, together with any other customary resolutions that may be required by the Title Company to evidence the corporate authority of each SELLER to enter into this transaction and convey its respective rights, title, and interests in and to the Premises to BUYER; and (ii) be absolutely obligated to satisfy/discharge of record or insure over at Closing (A) any and all mortgages, consensual liens (i.e., signed by the appropriate SELLER), construction liens filed under Chapter 713, F.S., Notices of Commencement (as defined in Section 713.01(22), Florida Statutes) and final and unappealable liquidated judgments as to which a SELLER has been duly served (i.e., not a default judgment without notice), all regardless of amount, which encumber the Premises, (B) any liquidated default judgments and other liens as to which the fixed amount to discharge the same can be ascertained from the face of the lien instrument, all up to an aggregate amount of \$3,000,000 (collectively, the "Curable Title Defects"), in each case, without any obligation to commence any action or proceeding in connection therewith. Other than the Curable Title Defects, in no event shall SELLER be deemed to have any obligation to cure any other title or survey matters; provided, however that prior to or at Closing, SELLER shall, at its sole cost and expense, satisfy Items Nos. 1(a), 2 (solely with respect to mortgagors), 3, 4, 5, 6, 7, 8, 10 and 12 set forth in Chicago Title Insurance Company Commitment Report No. 300804668 (Draft No. 2) dated September 17, 2008, and Item No. 14 in Endorsement No. 2 to Commitment Report No. 300804668 (Draft No. 2) issued by the Title Company dated October 14, 2008, solely as the same relate to the Counties within which the Premises are located and not

any other counties (e.g., SELLER may obtain a partial release of mortgage(s) to release the Premises from any such mortgages but not release the portion of any property not being conveyed by SELLER to BUYER).

- d. Title Agent. All title insurance shall be issued by an authorized agent ("Title Agent") for the Title Company, and both SELLER and BUYER hereby waive any conflict which may exist by virtue of the Title Agent also serving as legal counsel to SELLER.
- e. Encumbrances arising from and after the date of this Agreement. From and after the date of this Agreement, SELLER shall not execute or record any agreement or instrument in any way affecting the title to the Premises or grant, convey, encumber, lease or consent to the imposition of any additional lien on any portion of the Premises without BUYER's prior written consent; provided, however, that BUYER shall not have any right to object to SELLER's recording of any instruments, for corrective title instruments or in connection with any financings or refinancings permitted by the terms of this Agreement.
- f. Removal of Portions of the Premises. Prior to Closing, BUYER has the right to unilaterally elect to remove any portion of the Premises that is subject to any title or survey matters objectionable to BUYER so long as there is no reduction in the Purchase Price. BUYER and SELLER may mutually agree, each in their sole and absolute discretion without any obligation to do so, as to any removal of any portion of the Premises that is subject to any title or survey matters objectionable to BUYER as to which BUYER is requesting a reduction in the Purchase Price; provided that if the Parties cannot agree, each in their sole and absolute discretion, then BUYER's sole remedies shall be (x) to terminate this Agreement pursuant to Section 7.a.xvi, or (y) to remove the portion of the Premises without a reduction in Purchase Price. Notwithstanding the foregoing, BUYER shall have the right to exclude from the Premises up to 300 acres of land that is uninsurable (without additional cost to BUYER, unless SELLER elects to pay such additional insurance costs) or contains obligations that are prohibited by law as applied to BUYER, in which event BUYER and SELLER shall automatically adjust the Purchase Price by an amount equal to the aggregate sum of the appraised value for each such acre excluded (based upon the applicable appraised value(s) set forth in the Appraisal Report dated November 1, 2008, prepared by Anderson & Carr). In the event that any portion of the Premises is removed from the Premises as permitted under this Section 5.f., (i) BUYER shall provide access and utility (including drainage) easements to SELLER, in form and substance reasonably acceptable to SELLER and BUYER, if such easements are necessary in order for SELLER to continue to have legal and physical access and to preserve existing drainage (to the extent practicable over existing roads and drainage areas) to and from such property, together with any applicable utility service, and (ii) SELLER shall provide access and utility (including drainage) easements to BUYER or a third party to whom BUYER has sold a portion of the Premises, in form and substance reasonably acceptable to SELLER and BUYER, if such easements are necessary in order for BUYER or such third party to have legal and physical access and to preserve existing drainage (to the extent practicable over existing roads and drainage areas) to and from the Premises (or affected portion thereof), together with any applicable utility service.
- g. Title and Survey Costs. SELLER shall pay: (a) any and all costs (including search charges and premiums) required for the issuance of the Title Binder and continuations and extensions thereof (including any and all updates thereof) and the Title Policy, other than any costs for the issuance of any endorsements; and (b) the costs of the Survey to the extent they exceed \$5,000,000.

BUYER shall pay: (a) any costs for the issuance of any desired or applicable endorsements to the Title Policy; and (b) any and all costs of the Survey up to \$5,000,000.00.

- h. Title Insurance Policy. SELLER shall request the Title Company to issue a Title Binder that commits to issue a "Formerly American Land Title Association Owner's Policy Form B-1970 (Revised 10-17-70 and 10-17-84)" without creditor's rights exceptions (the "1970 Policy"). SELLER and BUYER shall provide any reasonable documentation in their respective possession requested by the Title Company in connection with the issuance of such 1970 Policy, provided that SELLER shall have no obligation to deliver such 1970 Policy.
- i. Quit-Claim Deeds. SELLER agrees, at any time after Closing upon written request of BUYER, to execute any corrective quit-claim deeds that may be necessary to effectuate this transaction, including the conveyance of strips, gaps and gores. This Section 5.i shall survive Closing.

6. SELLER'S DELIVERIES

- a. SELLER shall make available to BUYER, to the extent in SELLER's possession or reasonable control, the following documents and instruments related to the Premises within ten (10) days after written request of BUYER, except as specifically indicated:
 - i. Copies of any reports or studies (including engineering, environmental, soil borings, and other physical inspection reports) with respect to the physical condition or operation of the Premises, if any.
 - ii. Copies of all licenses, variances, waivers, permits (including but not limited to all surface water management permits, wetland resource permits, consumptive use permits and environmental resource permits issued by the BUYER), authorizations, and approvals required by law or by any governmental or private authority having jurisdiction over the Premises, or any portion thereof (the "Governmental Approvals"), as well as copies of all unrecorded instruments which are material to the use or operation of the Premises, if any.
 - iii. Copies of all contracts, agreements, insurance policies and all other information to the extent related to the Premises and reasonably needed by BUYER to evaluate this transaction.
 - iv. Copies of reports showing the acreage of sugar cane planted, the tons of sugar cane harvested from such planted acreage, and the "sucrose % cane" of such harvested acreage, in order to facilitate land exchanges or dispositions related to surplus portions of the Premises by BUYER, subject to the trade secret protocol established by SELLER.

With respect to any such information made available to BUYER pursuant to this Section 6.a. that is proprietary or "Trade Secret" (as defined under Section 812.081, Florida Statutes), BUYER shall follow the trade secret protocol established by SELLER attached hereto as Schedule 6.a.

- b. Notwithstanding the foregoing, in no event shall SELLER be obligated to provide any (i) financial or accounting information (e.g., pro-formas, tax returns, production reports, financial statements, appraisals, etc), other than reports listed in subsection (a)(iv) above; (ii) confidential

information (i.e., subject to a confidentiality agreement with another party); (iii) information that is proprietary (except for the information described in Paragraph 6.a. above); or (iv) information that pertains to SELLER's business operations or assets other than the Premises.

- c. Prior to or on the Closing Date, to the extent transferable, SELLER and BUYER shall take such actions as are necessary to transfer all of the Governmental Approvals of each SELLER relating to the Premises in accordance with Exhibit 6.c attached hereto, subject to the right of SELLER to continue its agricultural operations on the Premises pursuant to the Lease and to continue SELLER's agricultural operations on any other real property leased by SELLER, it being agreed that BUYER and SELLER shall mutually and reasonably cooperate to ensure that SELLER continues to receive the legal rights and entitlements afforded under the Governmental Approvals for such operations. In addition, to the extent permitted by applicable law, BUYER shall be listed as owner and SELLER shall be listed as an operator and/or joint permittee under any Governmental Approvals during the term of the Lease; provided, however, nothing in this subparagraph c. shall be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued or to obligate BUYER to issue any Governmental Approvals or to obligate BUYER, as purchaser under this Agreement, to take any action that conflicts with the enforcement obligations of the relevant regulatory agencies. This Section shall survive Closing.
- d. BUYER shall (and BUYER shall cause BUYER's Representatives) to keep any and all written or verbal information provided by SELLER or SELLER's Representatives, or otherwise obtained by BUYER, with respect to the Premises or the transactions contemplated hereby, in strict confidence in accordance with the terms and conditions of that certain Confidentiality Letter dated July 5, 2008 between Parent and BUYER, a copy of which is attached hereto as Schedule 6.d. "BUYER's Representatives" means any and all of BUYER's directors, officers, officials and employees, legal counsel, consultants, contractors, agents or other representatives engaged by BUYER in connection with the acquisition of the Premises, and investment bankers and underwriters engaged by BUYER to structure and issue the Certificates of Participation or the refinancing of the Certificates of Participation. "SELLER's Representatives" means any and all of SELLER's directors, officers, officials and employees, legal counsel, consultants, contractors, agents or other representatives engaged by SELLER in connection with the conveyance of the Premises.

7. ADDITIONAL CONDITIONS PRECEDENT TO CLOSING

- a. In addition to all other conditions precedent to BUYER's obligation to consummate the purchase and sale contemplated herein or provided elsewhere in this Agreement, the following shall be additional conditions precedent to BUYER's obligation to consummate the purchase and sale contemplated herein:
- i. The physical condition of the Premises shall be in all material respects the same on the date of Closing as on the Effective Date of this Agreement, reasonable wear and tear excepted.
- ii. At Closing, there shall be no litigation or administrative agency or other governmental proceeding of any kind whatsoever, pending or threatened which after Closing would, materially adversely affect the value of the Premises.

- iii. On the day of Closing, the Premises shall be in material compliance with all applicable federal, state and local laws, ordinances, statutes, rules, regulations, codes, requirements, licenses, permits and authorizations.
- iv. **Certificates of Participation.** The Validation shall have occurred and the Certificates of Participation shall have been issued and delivered upon terms, conditions and at interest rates acceptable to BUYER in its sole and absolute discretion and in a par amount sufficient to generate proceeds that BUYER in its sole and absolute discretion determines will be sufficient to pay the Purchase Price and Close. "Certificates of Participation" are defined as certificates of participation evidencing undivided proportionate interests of the owners thereof in basic lease payments to be made by the Governing Board of BUYER, as lessee, pursuant to a Master Lease Purchase Agreement with the Leasing Corp., as lessor, in an aggregate amount, that, when combined with any other funds to be paid by BUYER at Closing, shall equal the Purchase Price.
- v. BUYER's lender/financing trustee/credit enhancer/underwriter (the "Credit Provider") shall have approved the form of the Lease.
- vi. All of the representations and warranties of SELLER contained in this Agreement, including but not limited to those contained in Paragraph 12, shall be true and correct in all material respects as of Closing (provided, however, that the foregoing materiality standard shall not apply to any representation or warranty that is already qualified to a materiality standard).
- vii. The conveyance contemplated by this Agreement is not in violation of, or prohibited by, any private restriction, governmental law, ordinances, statute, rule or regulation, including but not limited to applicable governmental subdivision or platting ordinances.
- viii. Intentionally Deleted.
- ix. There are no judicial, administrative or other legal or governmental proceedings, including but not limited to proceedings pursuant to Chapter 120, Florida Statutes, filed or pending with respect to, or which affect, this Agreement or the transaction which is the subject of this Agreement.
- x. SELLER shall have funded the General Escrow Fund pursuant to the General Escrow Agreement, which shall be in form and substance attached hereto as Exhibit 7.a.x ("General Escrow Agreement").
- xi. **Performance.** Each of the covenants, obligations and agreements to be performed by each of SELLER on or prior to the Closing Date pursuant to the terms of this Agreement shall have been duly and fully performed in all material respects (provided, however, that the foregoing materiality standard shall not apply to any covenant, obligation or agreement that is already qualified to a materiality standard).
- xii. **Closing Deliveries.** SELLER or such other applicable party shall have executed and delivered to Closing Agent the documents specified in Section 11 that are to be delivered by SELLER or such other applicable party, each dated as of the Closing Date.

- xiii. **Board Resolutions; Incumbency Certificates.** BUYER shall have received from each SELLER copies of (a) within forty-five (45) days after Validation, resolutions of (i) the Board of Directors (or comparable authoritative body) of such SELLER, and (ii) the stockholders of such SELLER, authorizing the execution and delivery of this Agreement and the Related Agreements and the consummation of the transactions contemplated hereby and thereby, certified by the appropriate officer of each SELLER, and (b) a certificate as to incumbency and signatures of officers authorized to execute this Agreement and the Related Agreements, and (c) a certificate dated as of the Closing Date and validly executed by an appropriate officer certifying that the conditions specified in Section 7.a.xi. have been satisfied.
- xiv. **Legal Opinion.** BUYER shall have received a legal opinion regarding the authority of Seller to enter into this Agreement from SELLER's counsel in the form of Exhibit 7.a.xiv.
- xv. The Parties hereto acknowledge that, concurrently with the Closing, BUYER intends to enter into a ground lease agreement with the South Florida Water Management District Leasing Corp. (the "Leasing Corp.") which will encumber BUYER's interest in the Premises in order to facilitate the issuance of the Certificates of Participation. At Closing, SELLER, BUYER, the Leasing Corp. and any lender/financing trustee that may have received an assignment of the Leasing Corp.'s or BUYER's leasehold interest in the Premises, shall execute and deliver a Non-Disturbance, Subordination and Attornment Agreement in form and substance reasonably acceptable to all of such parties (the "NDSA") (with the express understanding that all parties to the NDSA shall have approved the form and content thereof not later than forty-five (45) days following Validation).
- xvi. BUYER shall be satisfied in its sole and absolute discretion with the matters set forth in the Title Binder (including, the Title Exceptions and the form of the Title Policy issued, e.g., the 1970 Policy, as the same may be updated) and Survey.
- xvii. The Closing Affidavit, if any, delivered by SELLER to BUYER pursuant to Section 12.a.xvi. shall be satisfactory to BUYER.
- xviii. BUYER, in its sole and absolute discretion, is satisfied that the amount of debt and debt service necessary to finance this transaction shall not adversely affect the capacity of BUYER to continue to fulfill its statutory, contractual, and other legal obligations and mandates based on its historical and projected operations.
- b. Should any of the conditions precedent to Closing provided in Section 7.a. above fail to occur, then BUYER shall have the right, in BUYER's sole and absolute discretion, to terminate this Agreement upon which, except as otherwise provided in Section 15 of this Agreement, both Parties shall be released of all obligations under this Agreement with respect to each other.
- c. In addition to all other conditions precedent to SELLER's obligation to consummate the purchase and sale contemplated herein or provided elsewhere in this Agreement, the following shall be additional conditions precedent to SELLER's obligation to consummate the purchase and sale contemplated herein:

- i. All of the representations and warranties of BUYER contained in this Agreement, including but not limited to those contained in Section 12, shall be true and correct in all material respects as of Closing (provided, however, that the foregoing materiality standard shall not apply to any representation or warranty that is already qualified to a materiality standard).
- ii. The conveyance contemplated by this Agreement is not in violation of, or prohibited by, any private restriction, governmental law, ordinances, statute, rule or regulation, including but not limited to applicable governmental subdivision or platting ordinances.
- iii. There are no judicial, administrative or other legal or governmental proceedings, including but not limited to proceedings pursuant to Chapter 120, Florida Statutes, filed or pending with respect to, or which affect, this Agreement or the transaction which is the subject of this Agreement.
- iv. Performance. Each of the covenants, obligations and agreements to be performed by BUYER on or prior to the Closing Date pursuant to the terms of this Agreement shall have been duly and fully performed in all material respects (provided, however, that the foregoing materiality standard shall not apply to any covenant, obligation or agreement that is already qualified to a materiality standard).
- v. Closing Deliveries. BUYER or such other applicable party shall have executed and delivered to Closing Agent the documents specified in Section 11 that are to be delivered by BUYER or such other applicable party, each dated as of the Closing Date.
- vi. Board Resolutions; Incumbency Certificates. SELLER shall have received from BUYER copies of (a) the resolution of the Governing Board of BUYER authorizing the execution and delivery of this Agreement and the Related Agreements and the consummation of the transactions contemplated hereby and thereby, certified by the appropriate officer of BUYER (the "BUYER's Approval"), and (b) a certificate as to incumbency and signatures of officers authorized to execute this Agreement and the Related Agreements, and (c) a certificate dated as of the Closing Date and validly executed by an appropriate officer certifying that the conditions specified in Section 7.c.iv, have been satisfied.
- vii. At Closing, SELLER, BUYER, the Leasing Corp. and any lender/financing trustee that may have received an assignment of the Leasing Corp.'s or BUYER's leasehold interest in the Premises, shall execute and deliver the NDSA.
- viii. On or before forty-five (45) days after Validation, (A) the Boards of Directors for PARENT and each SELLING SUBSIDIARY shall have each declared the transaction contemplated by this Agreement to be fair, advisable and in the best interests of its respective stockholders, recommended that their respective stockholders adopt this Agreement, presented this Agreement to their respective stockholders for approval, and, subject to stockholder approval, approved the consummation and performance of the transactions contemplated by this Agreement, and (B) the stockholders of PARENT and each SELLING SUBSIDIARY shall have adopted this Agreement and approved the consummation of the transactions contemplated by this Agreement, in the case of both

(A) and (B) above, in accordance with the applicable certificate or articles of incorporation and by-laws and applicable Law (collectively, the "SELLER's Approvals").

- ix. In connection and concurrent with subsection (viii) above, Parent's Board of Directors shall have received the opinion, satisfactory to Parent in its sole and absolute discretion, of a nationally recognized investment banking firm as to the fairness from a financial point of view of the transactions contemplated hereby to SELLER.
- x. BUYER's Credit Provider shall have approved the form of the Lease.
- d. Should any of the conditions precedent to Closing provided in Section 7.c. above fail to occur, then SELLER shall have the right, in SELLER's sole and absolute discretion, to terminate this Agreement upon which, except as otherwise provided in Section 15 of this Agreement, both Parties shall be released of all obligations under this Agreement with respect to each other.

8. PRORATIONS, TAXES AND ASSESSMENTS

SELLER shall pay when due all real property taxes, (whether ad valorem or non-ad valorem) as well as all pending, certified, confirmed and ratified special assessment liens levied against the Premises through the expiration date of the Lease. Upon the expiration of the Lease, SELLER shall pay all real property taxes, (whether ad valorem or non-ad valorem) accrued with respect to the Premises in accordance with Florida Statute 196.295.

9. CONVEYANCE

SELLER shall convey title to the Premises to the BUYER, by statutory warranty deed(s) ("Deed(s)") at Closing, in form and substance attached hereto as Exhibit 9.

10. OWNERS AFFIDAVIT/CONSTRUCTION LIENS; ENVIRONMENTAL ESCROW

- a. At Closing, the SELLER shall furnish to the BUYER an Owner's Affidavit ("Owner's Affidavit"), in form and substance as attached hereto as Exhibit 10.a.
- b. General Escrow Fund.
 - i. Provided that SELLER does not elect to fund the following escrow amounts with a General Letter of Credit as provided below, the Closing Agent shall hold in escrow (if Closing Agent is also the Escrow Agent) or deliver to Escrow Agent (if Escrow Agent is not the Closing Agent) the following amount at Closing (which shall be paid out of the Purchase Price): cash in an amount equal to TEN MILLION AND 00/100 DOLLARS (\$10,000,000) (the "General Escrow Fund"), which General Escrow Fund, if cash, shall be paid by wire transfer of immediately available funds to an interest bearing account designated by an Escrow Agent. The General Escrow Fund shall not be used for any purposes other than those set forth in Section 10.b.ii.
 - ii. The General Escrow Fund shall be held as security for: (w) any Environmental Claims that BUYER may have under this Agreement; (x) costs incurred by SELLER to perform

Additional Remediation pursuant to Section 21; (y) payment of one hundred thirty percent (130%) of the Final Remediation Cost Estimate to BUYER pursuant to Section 21; and (z) satisfaction of all of SELLER's obligations as provided under the Lease (without limiting BUYER's other rights and remedies under this Agreement or the Lease). The General Escrow Fund shall be disbursed in accordance with the General Escrow Agreement. In addition, the General Escrow Fund shall be security for costs incurred by BUYER to complete Additional Remediation begun by SELLER, but which has not been timely completed by SELLER pursuant to Section 21, or if SELLER has not met a Milestone in the Additional Remediation Schedule as a result of its failure to diligently pursue same.

- iii. In the event that SELLER elects to fund all of the General Escrow Fund with a Letter of Credit, as provided for below, then the cash to Close payable directly to SELLER shall be increased by the aggregate amount of any such General Letter of Credit.
- iv. In lieu of cash proceeds from the Purchase Price being deposited as General Escrow Fund on the Closing Date, SELLER shall have the option (to be exercised no later than ten (10) days prior to Closing), to elect to post a letter of credit with Escrow Agent for all the General Escrow Fund (the "General Letter of Credit"), which shall be held and drawn upon by Escrow Agent pursuant to the terms of the General Escrow Agreement and shall be substantially in the form attached hereto as Exhibit 10.c.iv. or otherwise in form and substance reasonably acceptable to SELLER and BUYER. The General Letter of Credit shall not be assignable or transferable to any transferees, successors or assigns of BUYER, and BUYER may not assign or transfer BUYER's power and authority to make any draws against the General Letter of Credit, except to the extent BUYER is permitted to assign this Agreement. If SELLER elects to post the General Letter of Credit, it shall: (i) be in the form of an irrevocable commercial letter of credit with a term of at least twelve (12) months, (ii) be issued by one or more of SELLER's lenders, under its revolving credit facility, naming Escrow Agent, as beneficiary, (iii) provide for draws as set forth below in this subsection, and (iv) have an "evergreen" clause and be renewed automatically each year by the issuing bank, unless the bank gives written notice to the beneficiary at least thirty (30) days prior to the expiration date of the then existing General Letter of Credit that the bank elects that it not be renewed. If the General Letter of Credit is not timely renewed and SELLER has not replaced the same within ten (10) business days prior to the expiration thereof, then Escrow Agent shall draw upon the same and hold it pursuant to the terms of the General Escrow Agreement, and the terms hereof related to the Escrow Agent shall be included in the General Escrow Agreement.
- v. Notwithstanding anything in this Agreement to the contrary, SELLER shall be required to replenish the General Escrow Fund in the event any disbursements are made from the General Escrow Fund in accordance with the terms of this Section 10 within fifteen (15) days after written notice of any such disbursement. Any failure by SELLER to replenish the General Escrow Fund within such fifteen (15) day period shall constitute an immediate default under this Agreement that shall not be subject to any further notice or cure period pursuant to Section 15.c. hereof. SELLER's obligation to replenish the General Escrow Fund as provided herein shall survive as provided in the General Escrow Agreement.

- vi. Payments shall be made from the General Escrow Fund in accordance with the General Escrow Agreement.

11. DOCUMENTS FOR CLOSING

- a. At Closing, SELLER and BUYER, as applicable, shall execute and deliver (or cause to be executed and delivered) to each other the following documents and instruments:
 - i. the Deed;
 - ii. the Owner's Affidavit;
 - iii. the closing statement in form and substance reasonably acceptable to the Parties;
 - iv. a "bring-down" certificate from each of SELLER and BUYER stating that the representations and warranties of each respective Party contained in Section 12 are true and correct;
 - v. the Lease;
 - vi. the NDSA;
 - vii. the General Escrow Agreement;
 - viii. an assignment and assumption of Tenant Leases, in form and substance as attached hereto as Exhibit 11.a.viii;
 - ix. all of the documents and instruments required to be delivered by SELLER pursuant to Section 6.c. of this Agreement;
 - x. an assignment and assumption of contracts, in form and substance attached hereto as Exhibit 11.a.x ("Assignment of Contracts");
 - xi. all other documents and instruments provided for under this Agreement, required by the Title Company or reasonably required by BUYER or SELLER to consummate the transaction contemplated by this Agreement, all in form, content and substance reasonably required by and acceptable to BUYER or SELLER, as may be applicable.
 - xii. SELLER and BUYER shall execute and deliver easements, in form and substance reasonably acceptable thereto (and at the sole cost and expense of the Party requesting the applicable easement(s)) with respect to: (i) BUYER's right to use SELLER's railroad crossings; and (ii) either Party's right to maintain and relocate existing utilities and/or access over and across the Premises or SELLER's retained property if reasonably necessary for the continued use and operation thereof (it being agreed that the foregoing shall include a drainage easement, not to exceed 320 acres in area, in favor of SELLER's citrus processing plant for a term of five (5) years). The instruments described in clauses

(i) and (ii) above shall be reasonably agreed upon prior to the Inspection Period Termination Date.

- b. The BUYER shall prepare or cause the Closing Agent to prepare a draft closing statement and submit it to SELLER at least ten (10) days prior to the scheduled Closing Date.

12. REPRESENTATIONS AND WARRANTIES

- a. SELLER's Representations. As a material inducement to BUYER entering into this Agreement, SELLER represents and warrants to and covenants with BUYER that the following matters are true as of the Effective Date and that they will also be true as of Closing:

- i. To SELLER's Knowledge, the description information concerning the Premises set forth in Section 1 hereof is generally accurate, unless otherwise disclosed by the Title Binder or Survey, or any updates thereof.
- ii. Except as set forth on Schedule 12.a.ii(A) or as may be otherwise disclosed on the Title Binder or Surveys or any updates thereto, each applicable SELLER (a) owns fee simple record title to the Premises, and (b) there are no outstanding options to purchase or rights of first refusal or restrictions on transferability affecting the Premises or any portion thereof. Except for the leases set forth on Schedule 12.a.ii(B) (the "Tenant Leases") and the matters disclosed on Schedule 12.a.ii(A) or as may be otherwise disclosed on the Title Binder or Surveys or any updates thereto, none of the Premises is subject to any lease or other occupancy agreements in favor of any third party.
- iii. To SELLER'S Knowledge, SELLER is not in default, nor do any circumstances exist which would give rise to a default under any of the documents, recorded or unrecorded, referred to in the Title Commitment. Without limiting the foregoing, except as set forth on Schedule 12a.iii, SELLER has not received any written notice from the appropriate governmental entity (x) that SELLER is not in compliance with any Governmental Approval or (y) that SELLER is not in compliance with all applicable federal, state, county or other governmental laws, ordinances, regulations, licenses, permits and authorizations, including, without limitation, Environmental Laws (collectively, the "Laws"), relating to or in any way affecting the Premises that remains uncured as of the date hereof, except where the failure to so comply would not reasonably be expected to have a material adverse effect on the Premises.
- iv. Except as specifically set forth in this Agreement or the Schedules to this Agreement, there are no facts or circumstances of which SELLER has Knowledge that could reasonably be expected to have a material adverse effect on the Premises.
- v. To the Knowledge of SELLER, Schedule 12.a.v, contains a true and complete list of the Governmental Approvals possessed by SELLER that are necessary to entitle or permit SELLER to own, lease and operate the Premises (the "Required Governmental Approvals") and the applicable SELLER set forth thereon is the authorized holder of each such Required Governmental Approval. To the Knowledge of SELLER, SELLER possesses all Required Governmental Approvals necessary to own and operate the Premises as they are currently owned and operated. Except as set forth on Schedule

12a.iii, SELLER has not received written notice that any Required Governmental Approval is not in full force and effect in the jurisdiction where it is required under applicable Laws.

- vi. Except as set forth on **Schedule 12a.vi**, there is no pending, or, to SELLER's Knowledge, threatened judicial, county or administrative proceedings or any judgment, order, injunction, decree, consent decree, ruling, or writ of any governmental authority materially affecting the Premises or in which SELLER is or will be a party by reason of SELLER's ownership of the Premises or any portion thereof, including, without limitation, proceedings for or involving condemnations, eminent domain or zoning violations, or personal injuries or property damage alleged to have occurred on the Premises or by reason of the condition or use of the Premises. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending, or, to SELLER's Knowledge, threatened against SELLER. In the event any proceeding of the character described in this subparagraph is initiated prior to Closing, SELLER shall promptly advise BUYER in writing.
- vii. The execution and delivery of this Agreement by SELLER has been, and subject to SELLER receiving the SELLER's Approvals, (i) all the documents to be delivered by SELLER to BUYER at Closing by SELLER, and (ii) the performance of the Agreement by SELLER, will be, duly authorized by SELLER. Assuming the due authorization, execution and delivery by BUYER of this Agreement, this Agreement will be binding on SELLER and enforceable against SELLER in accordance with its terms, conditions and provisions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship and other laws relating to or affecting creditor's generally and by general equitable principles. No consent to such execution, delivery and performance is required from any person, beneficiary, partner, limited partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party other than; (i) the SELLER's Approvals; (ii) any such consent which already has been unconditionally given; or (iii) where failure to obtain such consent would not be reasonably expected to have an adverse effect on the Premises. Neither the execution of this Agreement by SELLER nor the consummation of the transactions contemplated hereby by SELLER will: (i) violate any court order, or violate or conflict with any contract or agreement to which SELLER is a party and the Premises is subject, except to the extent that such violation would not reasonably be expected to have individually or in the aggregate, a material adverse effect on the Premises or the transactions contemplated under this Agreement; or (ii) result in the creation or imposition of any lien (other than the Title Exceptions), with or without the giving of notice or the lapse of time or both, on any of the Premises.
- viii. To SELLER's Knowledge, there are no facts or circumstances which would materially impair the continued use of the Premises for agricultural purposes employed by SELLER, in SELLER's ordinary course of business, consistent with past practices.
- ix. As to the environmental condition of the Premises, except as disclosed by the BUYER's Environmental Assessment or as set forth on **Schedule 12.a.iii** or **Schedule 12.a.vi**:

- (1) For purposes of this Agreement, pollutant ("Pollutant") shall mean any hazardous or toxic substance, material, or waste of any kind or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product as defined or regulated by environmental laws. Disposal ("Disposal") shall mean Pollution as defined as Section 376.301(37) of the Florida Statutes Annotated (provided that for purposes of this subsection 12.a.ix.(1) "pollutants" in Section 376.301(37) of the Florida Statutes Annotated shall mean Pollutants as defined in this subsection 12.a.ix.(1) and the release, storage, use, handling, discharge, or disposal of such Pollutants. Environmental laws ("Environmental Laws") shall mean any applicable federal, state, or local laws, statutes, ordinances, rules, regulations, orders, judgments, decrees or other governmental restrictions relating to, or regulating, governing or protecting human health or the environment. Pesticides ("Pesticides") means any Pollutant defined as a pesticide under Section 487.021(49) of the Florida Statutes Annotated. "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq. Solely for purposes of this subsection 12.a.ix., "Knowledge" shall be deemed to mean, with respect to SELLER, the actual knowledge of Peter Briggs, as environmental consultant of SELLER, and Edward Almeida (Vice President, Legal Affairs), all without imputation or attribution; provided however that the actual knowledge of Edward Almeida shall exclude any information that is protected by a legal privilege.
- (2) The SELLER has obtained, and has not received written notice of any violations under, any and all permits regarding the Disposal of Pollutants on the Premises or contiguous property owned by SELLER.
- (3) The SELLER has no Knowledge of, nor has it received any written notice of, any past, present or future events, conditions, activities or practices which may give rise to any liability or form a basis for any claim, demand, cost or action relating to the Disposal of any Pollutant, or alleged violation of any Environmental Laws, on or under the Premises or on contiguous property.
- (4) There is no civil, criminal or administrative action, suit, claim, demand, investigation or notice of violation pending, or to SELLER's Knowledge, threatened against the SELLER relating in any way to the Disposal of Pollutants, or an alleged violation of Environmental Law, on or under the Premises or on any contiguous property owned by SELLER.
- (5) To the Knowledge of SELLER, all applications of Pesticide on or to the Premises by SELLER have been applications of a pesticide product registered under FIFRA if such application occurred after FIFRA had been enacted, and have been done in accordance with the instructions on the labels applicable to such Pesticides.
- (6) To the Knowledge of SELLER, all applications of fertilizer on the Premises by SELLER have been "the normal application of fertilizer" within the meaning of Section 101(22)(D) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Secs. 9601 et seq.;
- (7) All determinations related to the status of any portion of the Premises as Prior Converted Cropland pursuant to the National Food Security Act Manual for the implementation of the Food Security Act of 1985 or the Clean Water Act (Final Rule, 58 FED. REG. 45,008,

45,034, August 25, 1993) that SELLER has received or possess are listed on Schedule 12.a.ix; and to SELLER's Knowledge, true and correct copies of such determinations and documents and information related to Prior Converted Cropland status of any portion of the Premises have been provided to BUYER.

- x. Parent is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware. SBG is a corporation duly organized, validly existing, and its status is active under the laws of the State of Florida. SGGC is a corporation duly organized, validly existing, and its status is active under the laws of the State of Florida.
- xi. Subject to the terms and conditions contained herein, SELLER shall use its commercially reasonable efforts to take, or cause to be taken, all appropriate action, and to make, or cause to be made, all filings necessary, proper or advisable under any Laws and to consummate and make effective the transactions contemplated by this Agreement, including commercially reasonable efforts to obtain, prior to the Closing Date, all permits, consents, approvals, authorizations, qualifications, waivers and orders as are necessary for consummation of the transactions contemplated by this Agreement and to fulfill the conditions to consummation of the transactions contemplated hereby set forth in Section 7 of this Agreement.
- xii. SELLER shall promptly notify BUYER of any material change in any condition with respect to the Premises or of any event or circumstance which makes any representation or warranty of SELLER to BUYER under this Agreement untrue or misleading, or any covenant of SELLER under this Agreement incapable or less likely of being performed, it being understood that the SELLER's obligation to provide notice to BUYER under this subparagraph shall in no way relieve SELLER of any liability for a breach by SELLER of any of its representations, warranties or covenants under this Agreement. As of the Effective Date, SELLER has no Knowledge of any event or circumstance which makes any representation or warranty of BUYER under this Agreement untrue or misleading.
- xiii. Except as set forth on Schedule 12.a.xiii, SELLER has made no other outstanding agreement for purchase and sale applicable to the Premises other than this Agreement.
- xiv. To SELLER's Knowledge, all items delivered by SELLER pursuant to this Agreement (except for the Title Binder, Survey or any information previously delivered by SELLER with respect to the SELLER's business or other assets other than the Premises), are and will be true, correct and complete in all material respects and fairly represent the information set forth therein and no such items omit to state information necessary to make the information contained therein or herein true and correct.
- xv. Intentionally Deleted.
- xvi. SELLER warrants that no person, individual, firm, association, joint venture, partnership, estate, trust, syndicate, fiduciary, corporation, or other entity or group (hereinafter referred to as "Person") is entitled to a fee, consideration, real estate commission, percentage, gift, or other non-monetary consideration from SELLER (a) in connection with this Agreement or Related Agreements or the subsequent Closing, (b) as compensation contingent upon BUYER entering into this Agreement or the Related

Agreements or the subsequent Closing the contemplated transaction, or (c) to solicit or secure this Agreement or Related Agreements (hereinafter referred to as "Fees"), except as accurately disclosed on, or exempt from disclosure pursuant to the terms of, the Beneficial Interest and Disclosure Affidavit dated as of the date hereof and attached hereto and made a part hereof as Exhibit 12.a.xvi. ("Affidavit"). SELLER and BUYER agree that, if necessary, at closing SELLER may execute and deliver to BUYER an updated Affidavit dated the date of the Closing in order to disclose any Fees payable by SELLER to any Persons that arise during the time between the Effective Date and the Closing Date ("Closing Affidavit"). If SELLER determines that it will execute and deliver a Closing Affidavit, SELLER shall first deliver a draft of the Closing Affidavit to BUYER no later than ten (10) business days prior to Closing for BUYER'S review. BUYER'S satisfaction of the matters disclosed in any Closing Affidavit is a condition precedent to BUYER'S obligations to close the transactions contemplated by this agreement as provided in subsection 7.a.xvii. Except as provided under subsection 19.h., SELLER shall pay all Fees, and SELLER shall indemnify and hold BUYER harmless from any and all claims for Fees, whether disclosed or undisclosed. Furthermore, if, prior to Closing, BUYER becomes aware that a Person is owed a Fee from SELLER and such Person is not disclosed on, or exempt from disclosure pursuant to the terms of, the Affidavit or the Closing Affidavit, then BUYER shall have the right to (A) terminate this Agreement without thereby waiving any action for damages resulting from such nondisclosure, or (B) proceed to Closing and reduce the Purchase Price by the full amount of such Fee owed from SELLER to such undisclosed Person. If BUYER proceeds to Closing and the Fee owed to the undisclosed Person is a gift or other non-monetary consideration or benefit, then the Purchase Price shall be reduced by the fair market value of such gift or other non-monetary consideration or benefit. If, after Closing, BUYER becomes aware that a Fee has been paid by SELLER to a Person that is not disclosed on, or exempt from disclosure pursuant to the terms of, the Affidavit or the Closing Affidavit, as applicable, then BUYER may recover from SELLER the full amount of such Fee ("Post-Closing Recovery Amount"). If the Fee paid to such undisclosed Person is in the form of a gift or other non-monetary consideration or benefit, BUYER may recover the fair market value of such gift or other non-monetary consideration or benefit from SELLER. BUYER and SELLER hereby acknowledge and agree that if a Fee has been paid by SELLER to a Person that is not disclosed on, or exempt from disclosure pursuant to the terms of, the Affidavit or the Closing Affidavit, as applicable, and BUYER does not become aware of such undisclosed Fee until after Closing, it will be difficult to quantify and determine BUYER's damages, and therefore, BUYER and SELLER agree that the Post Closing Recovery Amount is a fair and reasonable liquidated damages amount, and not a penalty. The provisions of this subparagraph 12.a.xvi shall survive the delivery and recording of the deed or other instrument pursuant to Section 18. The term "Related Agreements" means the Deed(s), the General Escrow Agreement, and the Lease.

- xvii. With respect to each of the Tenant Leases, the following information is true and correct, except as may be otherwise set forth on Schedule 12a.xvii, (A) each of the Tenant Leases is in full force and effect on the terms set forth therein and has not been modified, amended, or altered, in writing or otherwise, and each tenant ("Tenant") under the Tenant Leases is legally required to pay all sums and perform all obligations set forth in the Tenant Leases (in accordance with the terms of the Tenant Leases), without other

concessions, abatements, offsets, defenses or other basis for relief or adjustment; (B) all obligations of the SELLER, under the Tenant Leases which have accrued prior to Closing will be or have been performed, and no Tenant has asserted or, has any defense to, offsets or claims against, rent payable by it or the performance of its other obligations under its lease; SELLER has no outstanding obligation to provide any Tenant with an allowance to construct, or to construct at its own expense, any tenant improvements; (C) to SELLER's Knowledge, no Tenant is in default under or in arrears in the payment of any sums or in the performance of any obligation required of it under its Tenant Lease, and no circumstance exists which, with notice or the passage of time, or both, would give rise to a default, and no Tenant has prepaid any rent or other charges or given security deposits beyond the payment terms described in each Tenant Lease; (D) SELLER has received no written notice that any Tenant is or may become unable to or unwilling to perform any or all of its obligations under its lease, whether for financial or legal reasons or otherwise; (E) no guarantors of any of the Tenant Leases have been released or discharged, voluntarily or involuntarily, or by operation of law, from any obligation under or in connection with any of the Tenant Leases or any transaction related thereto; (F) SELLER has not applied and shall not apply any security deposit to rent due from any Tenant whose Tenant Lease shall not terminate prior to Closing; (G) the exclusive responsibility for all expenses connected with or arising out of the negotiation, execution and delivery of the Tenant Leases, including, without limitation, brokers' commissions, leasing fees and the cost of all tenant improvements have been paid; (H) after the Effective Date, SELLER shall neither execute any new lease nor renew, modify or grant any material consent with respect to any existing Tenant Lease without BUYER's prior written consent, which consent may be withheld in BUYER's reasonable discretion; provided, however that in no event shall BUYER's consent be required if such renewal, modification or consent by SELLER is (i) consistent with SELLER's ordinary course of business and the term of such new lease or existing Tenant Lease which is being renewed, modified or for which SELLER's consent is being requested has a lease term which expires on or prior to the term of the Lease or can be terminated by Seller without penalty upon thirty (30) days notice; or (ii) otherwise contemplated by the terms of any such Tenant Lease; (I) no new Tenant Lease shall violate the terms of any of the existing Tenant Leases; (J) without the prior written consent of BUYER, which may be withheld in BUYER's sole and absolute discretion, SELLER shall not, prior to Closing, terminate any of the Tenant Leases unless such termination is in the ordinary course of SELLER's business, in which event no such consent is required; and (M) after the Effective Date, SELLER shall not enter into any contract or other agreement (other than a lease as provided for above) with respect to the Premises which will survive Closing and be binding upon BUYER or the Premises without BUYER's prior written consent, which consent may be withheld in BUYER's sole and absolute discretion

xviii. Intentionally Deleted.

xix. The SELLER hereby represents and warrants that neither the Parent nor any Selling Subsidiary has received any written notice during the past three years from any insurance carrier regarding defects or inadequacies in the Premises wherein SELLER was notified that if not corrected would result in termination of insurance coverage or increase its insurance premium in any material respect.

- xx. The SELLER hereby represents and warrants that Schedule 12.a.xx contains a list of all casualty, liability and workers' compensation insurance coverage (specifying the insured, insurer, amount of coverage, type of insurance and policy number), maintained by SELLER and relating to the Premises (the "Insurance Policies"), and copies of which have been made available to BUYER. To the Knowledge of SELLER, with respect to each such Insurance Policy: (i) such policy is valid and enforceable in accordance with its terms and is in full force and effect; (ii) none of SELLER are in material breach (including any such breach with respect to the payment of premiums or the giving of notice); (iii) no event has occurred which, with notice or the lapse of time, would constitute a material breach or permit termination or modification, under any such Insurance Policy; (iv) no notice of cancellation or termination of, or general disclaimer of liability under any such policy has been received by the applicable SELLER. As of the date hereof, no claims under the Insurance Policies are outstanding other than any claims that would not reasonably be expected to have a material adverse effect.
- xxi. Other than as disclosed on the Affidavit, the SELLER hereby represents and warrants that SELLER has not agreed to pay any fee or commission to any agent, broker, finder, investment banker, or any other Person for or on account of services rendered as a broker or finder in connection with this Agreement or the transactions contemplated hereby that would give rise to an valid claim against BUYER or its Affiliates for any brokerage commission, finder's fee, investment banking fee, or similar payment.
- xxii. Intentionally Deleted.
- xxiii. The SELLER hereby represents and warrants that SELLER (on a consolidated basis) is Solvent and, after giving effect to the transactions contemplated hereby, will be Solvent. Each SELLER will receive valuable direct and indirect benefits as a result of the consummation of the transactions contemplated hereby and these benefits constitute "reasonably equivalent value" and "fair consideration" as those terms are used in the United States Bankruptcy Code, as amended (11 U.S.C., et seq.), or any other applicable bankruptcy law or state fraudulent transfer or conveyance statute, and the related case law. The term "Solvent" means, with respect to any Person on a particular date, that on such date (a) the fair market value of the property of such Person is greater than the total amount of its liabilities, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liabilities of such Person on its debts (including, without limitation, its liabilities under this agreement, and its stated and contingent liabilities) as they become absolute and matured, (c) such Person has not incurred, does not intend to incur and does not believe that it will incur debts or liabilities beyond its ability to pay as such debts and liabilities mature, (d) such person has not made a transfer or incurred an obligation under this agreement with the intent to hinder, delay or defraud any of its present or future creditors, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which its assets would constitute an unreasonably small capital.
- xxiv. No representation or warranty by SELLER in this Agreement, and no statement made by SELLER in the Schedules hereto, or any certificate or other document prepared by SELLER and furnished or to be furnished to BUYER pursuant hereto, or in connection with the negotiation, execution or performance of this Agreement, contains or will at the

Closing contain any untrue statement of a material fact or omits or will omit to state a material fact required to be stated herein or therein or necessary to make any statement herein or therein not misleading (provided, however, that the foregoing materiality standard shall not apply to any representation or warranty that is already qualified to a materiality standard).

- b. The representations and warranties made in this Agreement by SELLER shall be continuing (subject to Section 18) and shall be deemed remade by SELLER as of Closing with the same force and effect as if in fact made at that time. SELLER shall be liable to BUYER before and after Closing for any loss, damage, liability or cost (including but not limited to reasonable attorneys fees and costs) that BUYER incurs as a result of any warranty or representation made by SELLER in this Agreement not being true and correct in all material respects as of the Effective Date and Closing Date (provided, however, that the foregoing materiality standard shall not apply to any representation or warranty that is already qualified to a materiality standard), all as and to the extent provided in Section 15 and subsection (e) below. Notwithstanding anything to the contrary herein, but subject to subsection (e) below, the effect of the representations and warranties made in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by BUYER or its agents.
- c. BUYER's Representations. As a material inducement to SELLER entering into this Agreement, BUYER represents and warrants to and covenants to SELLER that the following matters are true as of the Effective Date and that they will also be true as of Closing:
 - i. The execution and delivery of this Agreement by BUYER has been, and subject to BUYER receiving the BUYER's Approval and Validation, (i) all the documents to be delivered by BUYER to SELLER at Closing by BUYER, and (ii) the performance of the Agreement by BUYER, will be, duly authorized by BUYER. Assuming the due authorization, execution and delivery by SELLER of this Agreement, this Agreement will be binding on BUYER and enforceable against BUYER in accordance with its terms, conditions and provisions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship and other laws relating to or affecting creditor's generally and by general equitable principles. No consent to such execution, delivery and performance is required from any person, beneficiary, partner, limited partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party other than; (i) the BUYER's Approvals; (ii) any such consent which already has been unconditionally given; or (iii) where failure to obtain such consent would not be reasonably expected to have an adverse effect on the Premises. Neither the execution of this Agreement by BUYER nor the consummation of the transactions contemplated hereby by BUYER will violate any court order, contract or agreement to which BUYER is a party.
 - ii. There is no pending, or, to BUYER's Knowledge, threatened judicial, county or administrative proceedings that would reasonably be expected to impair or delay the ability of BUYER to perform its obligations under this Agreement. In the event any proceeding of the character described in this subparagraph is initiated prior to Closing, BUYER shall promptly advise SELLER in writing.

- iii. Subject to the terms and conditions contained herein, BUYER shall use its commercially reasonable efforts to take, or cause to be taken, all appropriate action, and to make, or cause to be made, all filings necessary, proper or advisable under any Laws and to consummate and make effective the transactions contemplated by this Agreement, including commercially reasonable efforts to obtain, prior to the Closing Date, all permits, consents, approvals, authorizations, qualifications, waivers and orders as are necessary for consummation of the transactions contemplated by this Agreement and to fulfill the conditions to consummation of the transactions contemplated hereby set forth in Section 7 of this Agreement.
- iv. BUYER shall promptly notify SELLER of any event or circumstance which makes any representation or warranty of BUYER to SELLER under this Agreement untrue or misleading, or any covenant of BUYER under this Agreement incapable or less likely of being performed, it being understood that the BUYER's obligation to provide notice to SELLER under this subparagraph shall in no way relieve BUYER of any liability for a breach by BUYER of any of its representations, warranties or covenants under this Agreement. As of the Effective Date, BUYER has no Knowledge of any event or circumstance which makes any representation or warranty of SELLER under this Agreement untrue or misleading; provided, however, this representation shall not be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued.
- v. BUYER hereby represents and warrants that BUYER has not agreed to pay any fee or commission to any agent, broker, finder, investment banker, or any other Person for or on account of services rendered as a broker or finder in connection with this Agreement or the transactions contemplated hereby that would give rise to a valid claim against SELLER or its Affiliates for any brokerage commission, finder's fee, investment banking fee, or similar payment.
- d. The representations and warranties made in this Agreement by BUYER shall be continuing (subject to Section 18) and shall be deemed remade by BUYER as of Closing with the same force and effect as if in fact made at that time. BUYER shall be liable to SELLER before and after Closing for any loss, damage, liability or cost (including but not limited to reasonable attorneys fees and costs) that SELLER incurs as a result of any warranty or representation made by BUYER in this Agreement not being true and correct in all material respects (provided, however, that the foregoing materiality standard shall not apply to any representation or warranty that is already qualified to a materiality standard) as of the Effective Date and Closing Date, all as and to the extent provided in Section 15 and subsection (e) below.
- e. A representation or warranty will not be deemed to be untrue or incorrect on the Closing Date if such representation or warranty was originally true on the Effective Date and such representation or warranty thereafter became untrue for reasons other than the intentional or willful misconduct of the representing Party or due to events beyond the representing Party's reasonable control causing the same to be untrue, whereupon such representation or warranty shall be deemed to be conformed to such new circumstances, provided, however, that, in such event, the failure of such original (non-conformed) representation or warranty to be true and correct shall continue to be a condition precedent to Closing for the purposes of Section 7.a.vi or Section 7.c.i, respectively.

- f. For purposes hereof, "Knowledge" shall be deemed to mean, (a) with respect to SELLER, the actual knowledge of the respective (i) Robert H. Buker, Jr., President and Chief Executive Officer, Gerard A. Bernard, Chief Financial Officer and Carl Stringer, Chief Information Officer of Parent and Edward Almeida (Vice President, Legal Affairs), provided however, that the actual knowledge of Edward Almeida shall exclude any information that is protected by a legal privilege, (ii) Ricke Kress, President of SGGC, and (iii) Malcolm S. (Bubba) Wade, Jr., Vice President of SBG, and (b) with respect to BUYER, the actual knowledge of Carol Wehle, Executive Director, Thomas Olliff, Assistant Executive Director, Kenneth Ammon, Deputy Executive Director, Tommy Stroud, Assistant Deputy Executive Director, Ruth P. Clements, Department Director, Land Acquisition, Abe Cooper, Senior Attorney, Sheryl Woods, General Counsel, Sarah Nall, Deputy General Counsel, Carlyn Kowalsky, Managing Attorney, Cathy Linton, Senior Attorney, and Kirk Burns, Senior Attorney, and Paul Dumars, Chief Financial Officer, all of BUYER, all without imputation or attribution, and provided, however, that the actual knowledge of any attorneys listed in this clause (b) shall exclude any information that is protected by a legal privilege.
- g. Condition of Premises. BUYER hereby expressly acknowledges and agrees that, except as and to the extent expressly provided to the contrary in this Agreement, SELLER does not make, and has not made any warranty or representation whatsoever, express or implied, as to the condition or suitability of any portion of the Premises for BUYER's intended use or otherwise (including, without limitation, NO WARRANTY OF MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OR RELATING TO THE ABSENCE OF LATENT OR OTHER DEFECTS) all of which are expressly disclaimed by SELLER. BUYER has been afforded an opportunity to inspect the Premises prior to the Effective Date. Accordingly, to the extent that BUYER elects to Close under this Agreement, except as may be otherwise expressly set forth in this Agreement, including, without limitation, Section 12 and, except with respect to Pollutants and other environmental matters, other than BUYER's performance of Remediation of Pollutants Identified in BUYER's Environmental Assessment and any other obligation of BUYER expressly set forth Section 21 of this Agreement, whereby BUYER is not purchasing and accepting the Premises in an "as is" condition, BUYER shall be deemed to have purchased and accepted the Premises in its then current "as-is" condition at Closing without requiring any action, expense or other thing or matter on the part of the SELLER to be paid or performed.

13. INTENTIONALLY DELETED

14. EXPENSES

SELLER shall pay all State and County surtax and documentary stamps that are required to be affixed to the instrument of conveyance. All costs of recording the Deed(s), and all other Closing Documents to be recorded shall be paid by the SELLER. Intangible personal property taxes, if any, as well as any cost of recording corrective instruments, shall be paid by SELLER.

15. DEFAULT

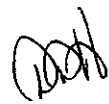
- a. SELLER's Default. If, after the expiration of any applicable cure period provided for below, the SELLER fails or neglects to perform, the terms, conditions, covenants or provisions of, or breaches any representations or warranties under, this Agreement, prior to or after Closing, then BUYER, as BUYER's sole remedies, shall have the right to seek (i) specific performance, and/or

(ii) an action for actual damages; provided, however, nothing herein shall be deemed to limit BUYER's right to terminate this Agreement pursuant to the terms hereof. To the extent permitted by law, BUYER shall not be entitled to seek, and in no event shall SELLER have any liability to BUYER for, loss of profits or other consequential damages or punitive damages, arising from any breach of this Agreement, all of which are hereby waived by BUYER, unless SELLER's failure to perform any of the terms, conditions, covenants or provisions of this Agreement is the result of SELLER's willful and intentional default, in which event BUYER shall have all rights and remedies available at law, in equity or under this Agreement as a result of such breach.

- b. BUYER's Default. If, after the expiration of any applicable cure period provided for below, the BUYER fails or neglects to perform, the terms, conditions, covenants or provisions of, or breaches any representations or warranties under, this Agreement, prior to or after Closing, then SELLER, as SELLER's sole remedies, shall have the right to seek an action for actual damages; provided, however, nothing herein shall be deemed to limit SELLER's right to terminate this Agreement pursuant to the terms hereof. To the extent permitted by law, SELLER shall not be entitled to seek, and in no event shall BUYER have any liability to SELLER for, loss of profits or other consequential damages or punitive damages, arising from any breach of this Agreement, all of which are hereby waived by SELLER, unless BUYER's failure to perform any of the terms, conditions, covenants or provisions of this Agreement is the result of BUYER's willful and intentional default, in which event SELLER shall have all rights and remedies available at law, in equity or under this Agreement as a result of such breach.
- c. Default Notice. In all cases (other than the failure of BUYER or SELLER to execute and deliver the items or funds required to be executed and/or delivered by same at Closing), each party shall, prior to exercising any remedy for a default hereunder, give the other party advance written notice of the acts or omissions alleged to have constituted a default. The party receiving such default notice shall have fifteen (15) days after receipt of such notice to cure the default, if any; provided, however that if such default cannot with due diligence be remedied by the defaulting party within said fifteen (15) day period, so long as the defaulting party commences to remedy such default within said fifteen (15) day period and thereafter prosecutes such remedy with reasonable diligence, the period of time for remedy of such failure shall be extended so long as such defaulting party prosecutes such remedy with reasonable diligence. Notwithstanding the foregoing: (a) in no event shall any cure period be deemed or permitted to extend the scheduled Closing Date pursuant to Section 4; and (b) from and after Closing, SELLER and BUYER shall be obligated to cure any monetary defaults within thirty (30) days after receipt of written notice thereof from the other Party. If such default is not cured within such applicable period, then the parties may exercise any remedies set forth in this Agreement to the extent applicable to the subject act or omission.
- d. Notwithstanding anything contained herein to the contrary, in no event shall either Party have the right to terminate this Agreement for a nonmaterial default or breach by the other Party.

16. RIGHT TO ENTER

- a. The SELLER agrees that from the Effective Date through the Closing Date, all officers, employees, contractors and agents of the BUYER shall have at all reasonable times upon reasonable advance notice to Edward Almeida, Esq., Vice President of Legal Affairs at (863)



902-2120 the right to enter upon the Premises for all proper and lawful purposes, including but not limited to inspection, investigation, examination of the Premises and the resources upon it; provided however that: (a) any such contractors or agents provide a certificate of insurance evidencing that such contractor or agent carries commercial general liability insurance in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage liability, which certificate shall name the appropriate SELLER as an additional insured thereunder; and (b) all such inspections, investigations and examinations by BUYER or BUYER's officers, employees and accredited agents shall be conducted in such a manner so as (i) not to cause any lien or claim of lien to exist against the Premises, (ii) not to unreasonably interfere with the operation of the SELLER or its business or its tenants and occupants; and (iii) at all times to comply with all of SELLER's or its tenants' safety standards and requirements.

- b. BUYER agrees to be responsible for: (x) any property damage that arises out of or is caused by BUYER or its officers, employees, contractors and agents while such Persons are acting within the proper scope of conducting inspections of, or accessing, the Premises, provided that with respect to any damaged sugarcane crop, SELLER's exclusive remedy shall be limited to compensation from BUYER in the amount of \$2,400 per acre of damaged sugarcane crop, subject to proration where the damage is less than a full acre; (y) to the extent found legally responsible, any property damage that arises out of or is caused by BUYER or its officers, employees, contractors and agents while acting outside the proper scope of conducting inspections of, or accessing, the Premises (e.g., negligence); and (z) to the extent found legally responsible, any personal injury arising from BUYER's or its officers', employees', contractors' and agents' inspections of or access to the Premises. BUYER shall promptly restore, if applicable, any property damage described above. For the purposes hereof, the term "to the extent found legally responsible" shall be deemed to mean "to the extent that BUYER has the legal authority to agree to be responsible for the acts of its officers, employees, contractors and agents". SELLER acknowledges that BUYER has not made any representation or warranty to SELLER as to, nor has BUYER waived any right to claim that it does not have, legal authority to agree to the provisions of this Section 16(b). The provisions of this Section 16(b) shall survive the Closing or any termination of this Agreement for a period of one (1) year.

17. RISK OF LOSS AND CONDITION OF REAL PROPERTY

- a. SELLER assumes all risk of loss or damage to the Premises prior to the Closing Date. However, in the event the condition of the Premises is materially altered by a fire, casualty, disease, act of God or other natural force beyond the control of SELLER, BUYER may elect, at its sole option, to terminate this Agreement and neither party shall have any further obligations under this Agreement. In the event BUYER elects not to terminate this Agreement, the Purchase Price shall not be reduced and any casualty insurance proceeds shall be assigned by SELLER to BUYER (it being understood that in no event shall the foregoing include any business loss/interruption insurance proceeds, which shall remain the property of SELLER).
- b. In the event all or any material portion of the Premises is taken by the exercise of the power of eminent domain prior to Closing, SELLER shall give BUYER written notice of such taking and either Party may, within twenty (20) business days after receipt of such notice, elect to terminate this Agreement by delivery of written notice to the other. If neither Party elects to exercise its option to terminate this Agreement as aforesaid, this Agreement shall remain in full force and

effect, the Purchase Price shall not be reduced and both SELLER and BUYER shall be entitled to negotiate for, settle and receive any award relating to such taking, and, at Closing, SELLER shall assign to BUYER all of its rights thereto relating to the Premises, provided, however, that SELLER shall retain any separately awarded claims for the loss of its leasehold interest. In the event a non-material portion of the Premises is taken by the exercise of the power of eminent domain prior to Closing, SELLER shall give BUYER written notice of such taking; provided, however, that neither Party shall have the right to elect to terminate this Agreement or reduce the Purchase Price and this Agreement shall remain in full force and effect, with SELLER and BUYER thereupon entitled to negotiate for, settle and receive any award relating to such taking. Notwithstanding anything contained herein to the contrary, BUYER shall not be entitled to receive any award until such time as Closing occurs, whereupon BUYER shall receive a credit against the Purchase Price for any portion of the award allocated to BUYER.

18. SURVIVAL

The covenants, warranties, representations, indemnities and undertakings of SELLER and BUYER set forth in this Agreement, shall survive the Closing for a period of two (2) years following the Closing Date, except as otherwise expressly provided in this Agreement, with the express understanding that Section 5(i) (Quitclaim Deeds), Section 21 (Environmental Matters), Section 12(a)(xvi) (Beneficial Interest) and Section 15 (Default) shall indefinitely survive except as otherwise expressly provided in each such Section.

19. SPECIAL CLAUSES.

- a. Radon Gas Disclosure. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.
- b. Inspection Period Contingencies. BUYER shall have until 11:59 p.m., January 15, 2009 ("Inspection Period Termination Date") to inspect, investigate and examine, at BUYER's expense, those certain matters specifically described on Schedule 19.b. (the "Inspection Matters"). If BUYER, in its sole and absolute discretion, determines that any Inspection Matters are not acceptable to BUYER, then BUYER shall be entitled to terminate this Agreement upon delivery of written notice to SELLER on or before the Inspection Period Termination Date (the "Termination Notice"). Upon such termination by BUYER, both parties shall be released of all obligations with respect to each other under this Agreement. Otherwise, if BUYER fails to deliver a Termination Notice on or before the Inspection Period Termination Date, this Agreement shall remain in full force and effect. If BUYER terminates this Agreement at any time, then, within ten (10) days thereafter, BUYER shall deliver to SELLER copies of all final, inspection reports, test results and studies prepared for it regarding the Premises, but such delivery shall be without representation or warranty from BUYER of any kind, shall at all times be subject to the rights of the professionals and other preparers of such inspection reports, test results and studies, and BUYER shall have no liability whatsoever to any Person in connection with such inspection reports, test results and studies. In connection with BUYER's delivery to SELLER of the copies described above, SELLER shall be responsible to pay for the duplication costs customarily charged by BUYER in connection with the same.

- c. Intentionally Deleted.
- d. Intentionally Deleted.
- e. Lease Back of the Premises. At Closing, BUYER (as Landlord) and SELLER (as Tenant) shall execute (i) one (1) lease with respect to the portion of the Premises allocated to the sugar operations of SELLER, and (ii) one (1) lease with respect to the portion of the Premises allocated to the citrus operations, such that the entirety of the Premises are leased back to SELLER, both of which leases shall be in substantially the same form as attached hereto and made a part hereof as Exhibit 19.e, as approved by the BUYER's Credit Provider, and conformed to just reflect terms applicable to each leased portion of the Premises (e.g., rent, security deposits, etc.) ("Lease"). The "Commencement Date" set forth in the Lease shall be the same as the actual Closing Date.
- f. Tenant Leases and Estoppels.
- i. On or after January 31, 2009 but no later than thirty (30) days prior to Closing, BUYER shall deliver written notice to SELLER containing the schedule of Tenant Leases which BUYER shall assume at Closing; it being agreed that if any Tenant Leases remain in effect as of the Closing Date which are not set forth in such notice, then BUYER shall have the right, as its sole remedy, to terminate this Agreement for failure of BUYER's Condition Precedent set forth in Section 7.a.xvi. In the event that BUYER does not elect to terminate this Agreement in connection therewith, BUYER shall assume at Closing all of the Tenant Leases then in effect.
- ii. SELLER shall use reasonable good faith efforts (which shall not include any obligation to commence any action or proceeding or pay any sum of money) to obtain and deliver to BUYER: (a) on or before thirty (30) days following the Effective Date estoppel certificates in the form attached hereto as Exhibit 19.f.ii from the Tenants, under the Tenant Leases; and (b) renewals of such estoppels no later than ten (10) days prior to the Closing Date.
- iii. In the event that, prior to Closing: (a) SELLER amends or modifies any Tenant Lease, the term of which extends beyond the Lease Termination Date, then SELLER shall use commercially reasonable efforts to incorporate language into such amendment or modification that will provide for such tenant to execute and deliver an estoppel certificate in the form attached hereto as Exhibit 19.f.ii upon request of the landlord thereunder; and (b) SELLER renews a Tenant Lease or enters into a new Lease, the term of which extends beyond the Lease Termination Date and is permitted pursuant to the terms of this Agreement, then SELLER shall incorporate language in such renewal or new lease that will provide for such tenant to execute and deliver an estoppel certificate in the form attached hereto as Exhibit 19.f.ii upon request of the landlord thereunder.
- iv. Prior to Closing, SELLER shall use commercially reasonable efforts to modify the Tenant Leases so that the lessees thereunder will be obligated to comply with the same Best Management Practices (as defined in the Lease) that SELLER will be obligated to comply with under its Lease with BUYER.
- g. Intentionally Deleted.

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- h. Fees and Costs. Except as otherwise specifically provided herein, each Party shall bear its own fees and costs, notwithstanding fee payments provided under Chapter 73, Florida Statutes (to the extent applicable), incurred by such Party in connection with the transaction contemplated by this Agreement.
- i. Intentionally Deleted.
- j. Relocation of Railroad Track. SELLER will not transfer to BUYER: (i) assets of the internal and external railroad system owned by Parent or South Central Florida Express, Inc. ("SCFE") ((including without limitation railroad assets, trackage, sidings, elevators, facilities and improvements, and railroad rolling stock) (collectively, the "Railroad System"); (ii) any and all rail common carrier rights, duties, and obligations, if any, it presently has; or (iii) any assets, property rights or other rights or privileges necessary to satisfy SELLER's common carrier duties and obligations of SCFE, if any. BUYER is not a rail common carrier and will not purchase, acquire, assume or otherwise receive any rights, duties or obligations of a rail common carrier in this transaction. SELLER will retain the Railroad System, and any and all common carrier rights, duties, and obligations it presently has, including, without limitation, the common carrier duties and obligations of SCFE. In the event that BUYER reasonably determines that it is necessary to relocate any portion of the Railroad System located within the boundaries described in Schedule 19.j attached hereto (the "Relocation Area") in order to construct BUYER's project, SELLER, SCFE and BUYER shall cause such relocation pursuant to the terms of a relocation agreement, the form of which shall be mutually agreed upon by the Parties and SCFE in their reasonable discretion on or before the Inspection Period Termination Date and executed, delivered and recorded at Closing. Such relocation agreement shall provide, among other things: (a) BUYER, at its sole cost and expense, shall construct the relocated track (which shall include, without limitation, the bed, the ballast, the ties, the rail and any adjacent service roads, sidings, elevators or other appurtenant facilities, if applicable); (b) the relocated track shall be in a location reasonably acceptable to SELLER, SCFE and BUYER; (c) SELLER and/or SCFE, as applicable, shall convey the underlying fee to BUYER, in its "as is" condition, of the track being abandoned in exchange for BUYER's construction and conveyance of the new track and the underlying fee to SELLER, which underlying fee shall be conveyed by BUYER in its "as-is" condition; and (d) the new track must be completed in accordance with all applicable Laws before the conveyance of the abandoned track will occur. Notwithstanding the foregoing, in no event shall BUYER be obligated to relocate any portion of the internal railroad system located within the Relocation Area if such portion "dead-ends" (i.e., does not connect to any other portion of the Railroad System but ends at a portion of the Premises which will be used for BUYER's project) and, in such event, SELLER shall convey to BUYER such "dead-end" portion of the Railroad System that is to be used for BUYER's project for no consideration and, at SELLER's option, SELLER may remove and/or leave any portion of the Railroad System in connection with such conveyance.
- k. Relocation Rights. In consideration of the negotiated Purchase Price and solely to the extent applicable, SELLER hereby waive any rights or claims they may have under the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended (42 U.S.C. § 4601 et seq.).
- l. Cooperation. From the Effective Date hereof through the expiration of the Lease, SELLER shall cooperate in good faith with BUYER's credit enhancers and rating agencies to provide information related to the Premises (and not the SELLER's business or other assets) and necessary for the

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original issuance or refinancing of the Certificates of Participation, so long as such credit enhancers and rating agencies execute and deliver to SELLER a confidentiality agreement reasonably acceptable to SELLER. BUYER shall be responsible for any and all actual, out-of-pocket costs and expenses incurred by SELLER in providing the information pursuant to this Section (e.g., copying fees, but not including attorneys' fees incurred by SELLER in connection with such requests).

- m. Conduct of SELLER. Except (i) as may be approved in advance by BUYER in writing, or (ii) as is otherwise required by this Agreement, during the period from the date of this Agreement until the earlier of (x) the Closing Date, and (y) the date this Agreement is terminated in accordance with its terms: (A) SELLER shall use commercially reasonable efforts to maintain the Premises (including, without limitation, pumps, culverts, canals, ditches and other irrigation and drainage infrastructure) according to the ordinary course of business consistent with past practices, (B) to the extent that Closing has not yet occurred, commence and continue through Closing the applicable sugar and citrus farming operations, all as and to the extent applicable and typically performed by SELLER in the ordinary course of business consistent with past practices and (C) in addition to, and not in limitation of the covenants set forth in the foregoing clauses (A)-(B) of this paragraph, none of SELLER shall, directly or indirectly, do any of the following:
- i. Sell or otherwise dispose of any of the Premises or incur or assume any new indebtedness that would affect the Premises (except SELLER may encumber the crops); provided, however that SELLER may refinance any existing indebtedness, so long as the same is discharged at Closing;
 - ii. fail to renew, maintain in full force and effect or comply with any material Required Governmental Approvals related to the Premises of any SELLER (provided, that in no event shall the foregoing be deemed to require SELLER to perform any actions or expend any money in excess of what SELLER has customarily performed or expended in SELLER's ordinary course of business consistent with past practices), provided, however, that in no event shall the foregoing be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued;
 - iii. fail to promptly and timely pay and discharge all federal income taxes, real property taxes and assessments (provided that SELLER shall retain the right to challenge or appeal such taxes and assessments), levied or imposed upon, or required to be withheld by, or otherwise owing by, any of SELLER or with respect to the Premises;
 - iv. fail to comply with all applicable Laws (other than Required Governmental Approvals which is governed by subsection ii. above) with respect to the ownership or operation of the Premises, to the extent SELLER has complied with the same in the ordinary course of business consistent with past practices, provided, however, that in no event shall the foregoing be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued; and
 - v. fail to maintain and continue in full force and effect the Insurance Policies or substantially equivalent policies, make any material adverse changes in the type or amount of coverages or permit any of the Insurance Policies or substantially equivalent policies to be canceled or terminated.

Notwithstanding anything contained to the contrary in this Section 19(m) or otherwise in the Agreement, in no event shall SELLER have any contractual obligation or liability to BUYER under this Agreement to perform any work or expend any money in connection with any matters disclosed by that certain Initial Assessment Report for Facilities in Crop Areas prepared for BUYER by Shaw Environmental, Inc. dated September 26, 2008 or otherwise; it being understood and agreed that from and after the Effective Date through Closing, SELLER shall perform its customary maintenance of the Premises, consistent with past practices, as SELLER reasonably determines is necessary for the continued operation of the Premises in connection with its farming operations. Provided, however, that in no event shall the foregoing be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued.

- n. Intentionally Deleted.
- o. Binding Contract. In addition to the Title Exceptions, BUYER acknowledges and agrees that the conveyance of the Premises from SELLER to BUYER shall be subject to the following binding contract: That certain Purchase and Sale Agreement, as amended, (the "RCP Agreement") dated as of August 30, 2005 between Parent, as seller, and Resource Conservation Properties, Inc., as BUYER, for approximately 502 acres of real property located in the City of Clewiston (the "RCP Agreement Property"). Prior to the Closing, Parent may sell any of the RCP Agreement Property pursuant to the terms of the RCP Agreement and retain all of the proceeds from such sale(s) whereupon such portion of the RCP Agreement Property conveyed shall not be deemed to be part of the Premises. To the extent that all of the RCP Agreement Property is not sold prior to the Closing Date, then, on such date, Parent shall convey title to the RCP Agreement Property to BUYER and assign all of its rights in and to the RCP Agreement to BUYER as part of the Assignment of Contracts and BUYER shall assume the obligations thereunder from and after Closing. In the event that, at the Closing, BUYER simultaneously transfers the RCP Agreement Property to the City of Clewiston, BUYER shall have the option to direct Parent to assign the RCP Agreement directly to a third-party so long as such third-party agrees to assume the same, which assignment and assumption shall be in the same form as the Assignment of Contracts.
- p. Appraisal(s). Prior to the execution of this Agreement, BUYER has obtained an appraisal(s) that is in an amount and in a form acceptable to, and complies with the statutorily mandated appraisal standards as determined by, BUYER, in its sole and absolute discretion (the "Appraisal(s)").
- q. Right of First Refusal.
 - i. Offer to Purchase; Notice to Company. If at any time after Closing and subject to subsection (vi) below, SELLER desires to sell for cash or any other form of consideration (including a promissory note or other deferred consideration) any or all of its sugar mill, sugar refinery, internal railroad, and/or external short-line railroad to any Person who, as of the Effective Date, is unaffiliated with SELLER (for purposes of this Section, the "Proposed Transferee"), and has received a bona fide written offer (for purposes of this Section, the "Bona Fide Offer") from such Proposed Transferee to purchase such assets (for purposes of this Section, the "Offered Assets") from such SELLER, the SELLER shall submit a written offer (the "Offer") to sell all, but not less than all, of such Offered Assets to BUYER on terms and conditions, including price, not less favorable to the BUYER than those on which the SELLER proposes to sell such Offered Assets to the

Proposed Transferee. The Offer shall disclose the identity of the Proposed Transferee (if any), the Offered Assets proposed to be sold and the terms and conditions, including price, of the proposed sale, and shall be accompanied by a copy of the Bona Fide Offer, together with any information concerning SELLER, its business operations and its assets, including the Premises, that has been provided by SELLER to the Proposed Transferee, or by the Proposed Transferee to SELLER, in connection with the Bona Fide Offer that has not previously been provided to BUYER, all of which shall be designated "Trade Secret" by SELLER and shall be kept confidential by BUYER in accordance with the Confidentiality Letter. The Offer shall further state that BUYER may acquire the Offered Assets, in accordance with the provisions of this Agreement, for the price and upon the terms and other conditions of the proposed sale to the Proposed Transferee set forth in the Bona Fide Offer. As used in this Agreement, the term "Person" shall be construed broadly and shall include, but not be limited to, an individual, a partnership, a corporation, an association, a joint stock company, a limited liability company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

- ii. **Exercise of Purchase Right.** If the BUYER desires to purchase the Offered Assets, BUYER shall deliver a written notice of its election to purchase such Offered Assets to the SELLER within forty (40) calendar days of the date of receipt by such holder of the Offer. If BUYER does not timely deliver such written notice of election, then Buyer shall be deemed to have waived its right of first refusal with respect to such Offer and BUYER shall, upon request of SELLER, promptly deliver to SELLER a written waiver of its rights under this Section 19.g.
- iii. **Closing.** The closing of the sale of Offered Assets to the BUYER pursuant to this Section shall be made at the offices of the BUYER on such date as may be agreed by the SELLER and the BUYER (but in no event later than the closing date specified in the Offer). Such sale shall be effected by the SELLER's delivery to the BUYER of commercially reasonable documentation, including, without limitation, a purchase and sale agreement, that is necessary to evidence the transfer and conveyance of the Offered Assets to be purchased by the BUYER and the payment to the SELLER of the purchase price in immediately available funds (or other mutually acceptable arrangement).
- iv. **Sale of Offered Assets to Proposed Transferee.** If BUYER declines to purchase the Offered Assets or fails to respond to the Offer in a timely manner as prescribed above, the Offered Assets may be sold by the SELLER at any time thereafter. Any such sale shall be only to the Proposed Transferee or its assignee (to the extent the Bona Fide Offer permits such assignment), at not less than the price and upon other terms and conditions, if any, not more favorable to the Proposed Transferee than those specified in the Offer. Promptly after completing the sale to the Proposed Transferee or its assignee, the SELLER shall provide notice of such sale (the "Notice") to the BUYER. Any Offered Assets not sold pursuant to the Offer shall again be subject to the requirements of a prior offer pursuant to this Section.
- v. In no event shall the provisions of this Section be assigned by BUYER, other than to the Florida Department of Environmental Protection ("FDEP").

- vi. The provisions of this Section 19(q) shall expire one (1) year following the expiration of the term of the Lease and shall be of no further force or effect.

20. DISPUTE RESOLUTION PROCEDURES.

- a. Negotiation by the Parties. If a dispute arises between BUYER on one hand and any or all of SELLER on the other hand, executives of both Parties shall meet at a mutually acceptable time and place within ten (10) days after delivery of notice of such dispute and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to negotiate resolutions of the dispute. If the matter has not been resolved within ten (10) days from the referral of the dispute to the executives, either Party may initiate mediation as provided hereinafter.

b. Mediation.

- i. If the dispute has not been resolved by the negotiation as provided above, the Parties shall endeavor to settle the dispute by mediation. Either Party may initiate a non-binding mediation proceeding by a request in writing to the other Party; thereupon, both Parties will be obligated to engage in mediation. The proceeding will be conducted at a mutually agreeable location in West Palm Beach, Florida.
- ii. If the Parties have not agreed within ten (10) days of the request for mediation on the selection of a mediator willing to serve, Buyer will provide a list of five (5) independent mediators from which SELLER shall choose a mediator.
- iii. Efforts to reach a settlement will continue until the conclusion of the proceeding, which is deemed to occur when: a written settlement is reached, the mediator concludes and informs the Parties in writing that further efforts would not be useful, the Parties agree in writing that an impasse has been reached, or a Party commences litigation in accordance with Section 20.c. Neither Party may withdraw before the conclusion of the proceeding unless litigation is commenced pursuant to the provisions of Section 20.c, or either Party has elected to terminate this Agreement in accordance with the terms of this Agreement.
- iv. In case of violation of the aforesaid obligation to mediate by either Party, the other Party may bring an action to seek enforcement of such obligation in the courts specified in Section 26.d.

c. Litigation.

If the dispute has not been resolved by mediation as provided in Section 20.b, above within forty-five (45) days of the initiation of such mediation procedure, either Party may initiate litigation upon five (5) days written notice to the other Party; provided, however, that if one Party has requested the other to participate in a nonbinding procedure, as provided for under this Section 20, and the other Party has failed to participate, the requesting Party may initiate litigation before expiration of the above period. The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the courts specified in Section 26.d.

d. Confidentiality.

To the extent allowed by Law, all negotiations, settlement agreements and/or other written documentation pursuant to this Section 20 shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and Florida Rules of Evidence.

e. Costs of Dispute Resolution.

Each Party shall bear its own fees and expenses with respect to the dispute resolution procedures and BUYER and SELLER shall each pay fifty percent (50%) of the fees and expenses of any mediator used under Section 20(b) above.

21. ENVIRONMENTAL MATTERS.

a. Certain Definitions.

- i. "Action" means any action, cause of action, litigation, claim, demand, suit, arbitration, investigation or proceeding, whether civil, criminal, administrative, investigative or appellate, in law or at equity, by any Person or before any Governmental Body.
- ii. "Additional Remediation" means Remediation in response to an Additional Remediation Notice identified in Section 21.c. that is delivered by BUYER to SELLER.
- iii. "Additional Remediation Notice" means written notification to SELLER from BUYER that BUYER has learned of a Release of Pollutants on, to or under the Premises that occurred or exists in excess of the Environmental Standard, or groundwater contamination that may be associated with Non-Point Source of Pollutants that exceeds the Natural Attenuation Default Concentrations established in Table V of Chapter 62-777, Florida Administrative Code, on or before the Lease Termination Date, but which was not Identified in Buyer's Environmental Assessment, which notice shall describe the factual and legal basis of such Release in reasonable detail (taking into account the information then available to BUYER), including, copies of all notices, pleadings, documents, and all other material written evidence thereof, if any, and which will state that it is being provided under Section 21.c.i. of this Agreement.
- iv. "Additional Remediation Schedule" means a schedule for the performance of Additional Remediation, which schedule shall be consistent with any and all applicable requirements of Environmental Law, shall identify the steps SELLER will take to obtain the Government Confirmation within seven (7) years of BUYER's delivery of its Additional Remediation Notice to SELLER, except for any Additional Remediation for which BUYER consents in writing to a longer period, and shall identify the Milestones.
- v. "Affiliate" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such first Person. The term "control" (including its correlative meanings "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

- vi. **"BUYER's Environmental Assessment"** means the Environmental Due Diligence Investigation Reports of the Premises prepared by or through Professional Service Industries, Inc., including all observations, findings, cost estimates, conclusions, data, risk evaluation, statistical evaluation and geospatial analyses and interpolation, tables, figures, appendices, maps, graphs, and charts, contained therein, as follows:
- Volume I, Executive Summary, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008;
 - Volume II, Phase I Environmental Site Assessment, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008;
 - Volume III, Phase II Environmental Site Assessment, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008;
 - Volume IV, Ecological Risk Assessment to Support the Phase I and Phase II Environmental Site Assessment of the United State Sugar Corporation Properties, prepared for Professional Service Industries, Inc. by Newfields, dated November 21, 2008;
 - Volume V, Asbestos Survey, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008.
- vii. **"BUYER Indemnified Parties"** means BUYER and its Affiliates and each of their respective officers, officials, directors, employees, partners, trustees, members, agents, and representatives, but does not include any of BUYER's successors in title to any portion of the Premises.
- viii. **"Cleanup Target Level"** means:

For all areas: shall be the groundwater criteria in Table I of Chapter 62-777 of the Florida Administrative Code, and for all environmental media other than groundwater, shall be the most stringent applicable concentration for the medium of concern identified in Table I or Table II of Chapter 62-777 of the Florida Administrative Code for either direct commercial/industrial exposure or leachability based on groundwater criteria, or an alternative leachability standard approved by the FDEP; provided that sediment in a Class IV (Agricultural Water Supplies) body of water on the Premises shall be considered soil and that sediment in a Class III body of water on the Premises shall meet the Florida Department of Environmental Protection Guidelines for Florida Inland Waters (MacDonald et al, 2003). If no Soil Cleanup Target Level ("SCTL"), Groundwater Cleanup Target Level ("GCTL"), or Florida Surface Water Cleanup Target Level ("FSCTL") exists in Table I or Table II of Chapter 62-777 of the Florida Administrative Code, the SCTL, GCTL or FSCTL for it shall be established in accordance with the procedures in Chapter 62-777 for establishing an SCTL, GCTL or FSCTL. A Cleanup Target Level may be achieved with the use of (1) a site specific risk assessment conducted pursuant to, as applicable, Chapter 62-770, 62-730, or 62-780 of the Florida

Administrative Code; (2) Institutional Controls and/or Engineering Controls; and/or (3) natural attenuation, as follows: (a) with regard to the use of Institutional Controls, BUYER hereby consents to restrictions that prohibit residential land uses, while allowing agricultural, commercial and industrial land uses, including, but not limited to, as classified by the North American Industry Classification System, United States, 2002 ("NAICS") and referenced in the Florida Department of Environmental Protection's Institutional Controls Procedures Guidance dated November 2004, (b) with regard to a site specific risk assessment, and other Institutional Controls, the BUYER provides its consents to the use of same (which consent shall not be unreasonably withheld) after the Effective Date, (c) with regard to natural attenuation, the BUYER consents to same (which consent shall not be unreasonably withheld) after the Effective Date and FDEP concludes that it is reasonably likely to achieve the applicable Cleanup Target Level within five (5) years after Closing or within a longer period of time which is technically justifiable and is agreeable to FDEP, and (d) with regard to Engineering Controls, the FDEP and the BUYER, in its sole and absolute discretion, approve of the same after the Effective Date.

BUYER agrees that the Cleanup Target Levels (SCTL, GCTL, and FSCTL), applicable herein for those matters subject to Remediation by BUYER pursuant to Section 21.b. (Remediation of Matters Identified in BUYER's Environmental Assessment) are those Cleanup Target Levels identified in Table I or Table II of Chapter 62-777 of the Florida Administrative Code that are in effect at the time of BUYER's Environmental Assessment. For Remediation pursuant to Section 21.c. the Cleanup Target Levels are those Cleanup Target Levels identified in Table I or Table II of Chapter 62-777 of the Florida Administrative Code that are in effect when the Additional Remediation is performed. If no Cleanup Target Levels identified in Table I or Table II of Chapter 62-777 are in effect, then the applicable Cleanup Target Levels shall be the successors thereto.

- ix. "Direct Claim" means a bona fide claim for indemnification that is made in good faith by a Indemnified Party and is based on facts that can reasonably be expected to establish a valid claim under Section 21.e. or Section 21.f. of this Agreement.
- x. "Direct Claim Notice" means written notification of a Direct Claim to an Indemnifying Party, which notice shall describe the factual and legal basis of such Direct Claim in reasonable detail (taking into account the information then available to such Indemnified Party), including the sections of this Agreement that form the basis of such claim, copies of all notices, pleadings, documents, and all other material written evidence thereof, if any, and, if then known and calculable, the amount or, if not then known or calculable, a good faith estimate of the Liabilities that have or may be sustained by the Indemnified Party.
- xi. "Engineering Controls" means the use of modifications to a site to reduce or eliminate the potential for migration of, or exposure to Pollutants.
- xii. "Environmental Claim" means a claim asserted under Section 21.e.
- xiii. "Environmental Notice" means written notification of an Environmental Claim to SELLER from a Buyer Indemnified Party, which describes the factual and legal basis of such Environmental Claim in reasonable detail (taking into account the information then

available to BUYER Indemnified Party), including the sections of this Agreement that form the basis of such claim, copies of all material notices, pleadings, documents, environmental reports and sampling data, and all other material written evidence thereof, if any, and, if then known and calculable, the amount or, if not then known or calculable, a good faith estimate of the Liabilities that have or may be sustained by Buyer Indemnified Party.

- xiv. **"Environmental Laws"** shall mean any applicable federal, state or local laws, statutes, ordinance, rules, regulations, orders, judgments, decrees or other governmental restrictions relating to, or regulating, governing or protecting human health or the environment.
- xv. **"Environmental Standard"** means for the Release of Pollutants, for all areas, shall be the groundwater criteria in Table I of Chapter 62-777 of the Florida Administrative Code, and for all other environmental media other than groundwater, the most stringent applicable concentration for the medium of concern identified in Table I or Table II of Chapter 62-777 of the Florida Administrative Code for either direct commercial/industrial exposure or, leachability based- on- groundwater; provided that sediment in a Class IV (Agricultural Water Supplies) body of water on the Premises shall be considered soil and that sediment in a Class III body of water on the Premises shall meet the Florida Department of Environmental Protection Guidelines for Florida Inland Waters (MacDonald et al, 2003). If no Soil Cleanup Target Level ("SCTL"), Groundwater Cleanup Target Level ("GCTL"), or Florida Surface Water Cleanup Target Level ("FSCTL") exists in Table I or Table II for a Pollutant, the SCTL, GCTL or FSCTL for it shall be established in accordance with the procedures in Chapter 62-777 for establishing an SCTL, GCTL or FSCTL.
- xvi. **"Final Remediation Cost Estimate"** means the BUYER's good faith estimate of the cost of Additional Remediation to achieve the Cleanup Target Level for a Release of Pollutants not Identified in BUYER's Environmental Assessment and the techniques that can be used to perform the Additional Remediation.
- xvii. **"Governmental Body"** means any (i) nation, state, county, city, town, village, district or other jurisdiction of any nature; (ii) federal, state, local, municipal, domestic, foreign, supranational or other government; or (iii) governmental, quasi-governmental, regulatory authority, agency, court, commission or other entity exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of or pertaining to government.
- xviii. **"Governmental Confirmation"** means a Site Rehabilitation Completion Order issued either by FDEP or a local agency if FDEP has delegated such authority to that local agency.
- xix. **"Indemnified Party"** means any Person claiming indemnification under any provision of **Section 21.e. or 21.f.**
- xx. **"Indemnifying Party"** means any Person against whom a claim for indemnification is being asserted under any provision of **Section 21.e. or 21.f.**
- xxi. **"Identified in BUYER'S Environmental Assessment"** means locations of Point Source of Pollutants found, as well as Non-Point Source of Pollutants, as described in the

BUYER'S Environmental Assessment, which were detected either (a) as the result of the collection of soil, sediment, groundwater and/or surface water samples, or (b) determined as the result of interpolation or geospatial statistical analyses of said data.

- xxii. "Institutional Controls" means the restriction on use or access to eliminate or minimize exposure to Pollutants. Such restrictions may include deed restrictions, restrictive covenants, and conservation easements.
- xxiii. "Laws" means, as to any Person, any law (including common law), regulation, rule, statute, treaty, code, ordinance, order, judgment, or decree, or any other determination or requirement of (or agreement with) a Governmental Body applicable to or binding on such Person or any of its property or assets or to which such Person or any of its property or assets is subject.
- xxiv. "Lease Termination Date" means the earlier of (a) the "Expiration Date" (as defined in the Lease) or (b) the date that SELLER vacates all or a portion of the Premises, from time to time, with respect to the portion vacated, or assigns the Lease to an unaffiliated third party, with respect to the portion of the Premises so assigned.
- xxv. "Liability" means any indebtedness, liability, obligation, commitment, guaranty, claim, loss, damage, penalty, fine, payment, deficiency, cost or expense (including, but not limited to, reasonable attorneys' fees and expenses, court costs and other reasonable costs of defense, including expert consultant and witness fees and costs) of any nature or kind, and whether the amount is known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, disputed or undisputed and whether due or to become due.
- xxvi. "Milestones" means dates on which specific elements of the Additional Remediation will be completed as identified in the FDEP approved Remedial Action Plan.
- xxvii. "Non-Governmental, Unrelated Party Claim" means any claim made or any Action commenced by any Person (other than a Party hereto, an Affiliate of a Party hereto, a successor in title of Buyer to the Premises, or a Governmental Body), in either case that can reasonably be expected to give rise to a right of indemnification for any BUYER Indemnified Party.
- xxviii. "Non-Point Source of Pollutants" shall mean: (a) the wide spread presence of Pollutants in soil in cultivated fields which resulted from the legal application of pesticides for which the FDEP is not authorized to institute proceedings against a property owner under Fla. Stat. § 487.081(6); (b) with regard to phosphorus and nitrogen in soils or groundwater, the wide spread presence of Pollutants in cultivated fields which resulted from the application of fertilizers for which the FDEP is not authorized to institute proceedings against a property owner under Fla. Stat. § 576.045(4); and (c) ambient agricultural contamination in cultivated fields in association with the normal application of fertilizer.
- xxix. "Offsite Environmental Liabilities" means any Liabilities that arise out of or relate to either directly or indirectly or that result in whole or in part from the arrangement for disposal off of the Premises, or transportation by the SELLER of, any Pollutants generated or used in connection with the Premises on or prior to the Lease Termination Date.

- xxx. **"Person"** means any natural person, corporation (including any non-profit corporation), general or limited partnership, limited liability company, proprietorship, other business organization, trust union, association, organization, other entity or Governmental Body.
- xxxi. **"Point Source of Pollutants"** means a Release of Pollutants, but does not include a Non-Point Source of Pollutants.
- xxxii. **"Pollutant Liabilities"** means any Liabilities that arise out of or relate to either directly or indirectly, or that result in whole or in part, from the presence, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Pollutants in soil, sediment, groundwater or surface water on, at, to, from or under the Premises on or prior to the Lease Termination Date.
- xxxiii. **"Pollutants"** shall mean any hazardous or toxic substance, material, or waste of any kind or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product as defined or regulated by Environmental Laws.
- xxxiv. **"Previously Unknown Pollutant Liability"** means any Liabilities that arise out of or relate to either directly or indirectly, or that result in whole or in part, from Pollution as defined in § 376.301(37) of the Florida Statutes Annotated (provided that for purposes of this **Section 21.a.xxxiv.**, "pollutants" in § 376.301(37) shall mean Pollutants as defined in **Section 21.a.xxxiii** of this Agreement) and the spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Pollutants in soil, sediment, groundwater or surface water on, at, to, from or under the Premises on or prior to the Lease Termination Date, except for (a) any such Liabilities arising out of Non-Point Source of Pollutants or Point Source of Pollutants Identified in the BUYER'S Environmental Assessment, (b) any such Pollutants for which Buyer Indemnified Parties have not submitted an Environmental Notice under **Section 21.b. or Section 21.c.i.**, any such Pollutants for which BUYER has not breached its obligation under **Section 21.b. or Section 21.c.ii.2.** or both.
- xxxv. **"Release"** means Pollution as defined in § 376.301(37) of the Florida Statutes Annotated (provided that for purposes of this **Section 21.a.xxxv.**, "pollutants" in § 376.301(37) shall mean Pollutants as defined in **Section 21.a.xxxiii** of this Agreement) and any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Pollutants in soil, sediment, groundwater or surface water, but shall not include (i) the legal application of pesticides for which the FDEP is not authorized to institute proceedings against a property owner under Fla. Stat. § 487.081(6), (ii) the contamination of groundwater or surface water which is the result of the application of fertilizers for which the FDEP is not authorized to institute proceedings against a property owner under Fla. Stat. § 576.045(4), or (iii) a Non-Point Source of Pollutants.
- xxxvi. **"Remediation"** means those steps taken, or that will be taken, to achieve the applicable Cleanup Target Level and obtain Governmental Confirmation.
- xxxvii. **"SELLER Indemnified Parties"** means PARENT, the SELLING SUBSIDIARIES, their respective Affiliates and each of their respective officers, officials, directors, employees, partners, stockholders, trustees, members, agents and representatives.

- xxxviii. "Third Party Claim" means any claim made or any Action commenced by any Person (other than a Party hereto or an Affiliate of a Party hereto), in either case that can reasonably be expected to give rise to a right of indemnification for any Indemnified Party from an Indemnifying Party.
- xxxix. "Third Party Claim Notice" means a written notification of a Third Party Claim to an Indemnifying Party, which notice shall describe the factual and legal basis of such claim in reasonable detail (taking into account the information then available to such Indemnified Party), including the sections of this Agreement that form the basis of such claim, copies of all notices, pleadings, documents, and all other material written evidence thereof, if any, and, if then known and calculable, the amount or if not then known or calculable, a good faith estimate of the Liabilities that have or may be sustained by the Indemnified Party.
- b. Remediation of Matters Identified in BUYER'S Environmental Assessment BUYER has performed BUYER's Environmental Assessment and performed sampling in those areas of the Premises where BUYER identified concerns regarding the likely presence of Pollutants. BUYER's Environmental Assessment has revealed the presence of Pollutants. In exchange for the payment of \$21,500,000.00 by SELLER at closing, BUYER shall perform the Remediation of the Pollutants Identified in the BUYER'S Environmental Assessment as required by Environmental Laws as the Person Responsible for Site Rehabilitation ("PRSR"), and secure all applicable Governmental Confirmations with respect thereto and SELLER, except as provided in Section 21.c. below, shall thereafter have no obligation or liability to BUYER to perform Remediation of the Pollutants Identified in the BUYER's Environmental Assessment.
- c. Remediation of Point of Source Pollutants
- i. If after the Effective Date BUYER learns of any Release of Pollutants on, to or under the Premises that occurred or exists in excess of the Environmental Standard, or groundwater contamination that may be associated with Non-Point Source of Pollutants that exceeds the Natural Attenuation Default Concentrations established in Table V of Chapter 62-777, Florida Administrative Code, on or before the Lease Termination Date, but which was not Identified in BUYER's Environmental Assessment, and BUYER provides an Additional Remediation Notice to SELLER on or before three (3) years after the Lease Termination Date, the provisions of this Section 21.c. shall apply. If within forty-five (45) business days of receipt of the Additional Remediation Notice, SELLER delivers written notice to BUYER that it disputes that the Release of Pollutants identified in the Additional Remediation Notice occurred or exists in excess of the Environmental Standard on or before the Lease Termination Date, or that same was not Identified in BUYER's Environmental Assessment, either SELLER or BUYER may initiate dispute resolution procedures as provided in Section 20. If within forty-five (45) business days after SELLER's receipt of the Additional Remediation Notice from BUYER, which must be delivered in accordance with Section 24, SELLER does not deliver written notice to BUYER that it disputes that the Release of Pollutants identified in the Additional Remediation Notice occurred or exists in excess of the Environmental Standard on or before the Lease Termination Date, or that same was not Identified in BUYER's Environmental Assessment, then, in that event, SELLER will not subsequently dispute its liability in connection with such notice. Unless the dispute resolution procedures are initiated as set forth above, within fifty (50) business days of receipt of the Additional

Remediation Notice by SELLER, BUYER and SELLER shall meet to attempt to reach agreement concerning the reasonably estimated aggregate cost of Additional Remediation. If such agreement is not reached and signed by both BUYER and SELLER within twenty (20) business days of initiating negotiations, then BUYER shall deliver to SELLER its Final Remediation Cost Estimate, together with any and all supporting information deemed relevant by BUYER to the determination of a reasonably estimated aggregate cost of the Additional Remediation in order to achieve the applicable Cleanup Target Level so that Governmental Confirmation can be obtained, and which is to be performed, as applicable, under Chapter 62-770, 62-730 or 62-780 of the Florida Administrative Code.

- ii. At the written election of SELLER, which shall be provided to BUYER within fifteen (15) business days after receipt of the BUYER's Final Remediation Cost Estimate for matters listed in an Additional Remediation Notice, SELLER shall elect to have the Additional Remediation accomplished as follows pursuant to either Section 21(c)(ii)(1) or (2):
- (1) SELLER shall perform the Additional Remediation described in the BUYER's Final Remediation Cost Estimate in accordance with Environmental Law, shall use only the techniques identified in the Final Remediation Cost Estimate to perform the Additional Remediation, shall be the Person Responsible for Site Rehabilitation, shall secure all applicable Governmental Confirmations with respect to the Additional Remediation, and shall provide a copy of such Governmental Confirmations to BUYER promptly upon receipt. SELLER shall be entitled to be reimbursed for the performance of such Additional Remediation from the General Escrow Fund, from time to time, in accordance with the terms of the General Escrow Fund Agreement; or
 - (2) One hundred thirty percent (130%) of the Final Remediation Cost Estimate shall be paid to BUYER from the General Escrow Fund and BUYER shall perform the Additional Remediation and secure the Governmental Confirmations with respect to the applicable Additional Remediation. In such event, all financial and performance obligations contained in this Agreement with respect to such Additional Remediation, other than the payment of one hundred thirty percent (130%) of the Final Remediation Cost Estimate, shall be the sole obligation and liability of BUYER, and SELLER shall have no further obligation or liability with respect to such Additional Remediation. BUYER shall perform such Additional Remediation in accordance with Environmental Law as the Person Responsible for Site Rehabilitation, and will secure all applicable Governmental Confirmations with respect thereto.
- iii. If SELLER elects to perform the Additional Remediation as provided in Section 21.c.ii.(1), then SELLER shall perform the Additional Remediation as follows: (i) within ninety (90) days after SELLER's election, SELLER shall deliver to BUYER a proposed Additional Remediation Schedule and proposed work plans for performing the Additional Remediation and receiving all Governmental Confirmations for the Additional Remediation within seven (7) years of BUYER's submittal of its Additional Remediation Notice, unless BUYER consents in writing to a longer period; (ii) within thirty (30) days of receiving written comments from BUYER requesting revisions to such proposed

Additional Remediation Schedule and work plans, consider all such revisions as are reasonably requested by BUYER and deliver the Additional Remediation Schedule (which shall contain Milestones) and work plans to BUYER; (iii) perform all such Additional Remediation at its own expense, subject to being reimbursed for the same from the General Escrow Fund in accordance with the General Escrow Agreement, and shall perform the Additional Remediation even if the actual cost exceeds the amount paid to the General Escrow Fund in accordance with Section 10.b. or the Final Remediation Cost Estimate; and (iv) promptly notify BUYER of the identification of the Release of Pollutants that was not Identified in BUYER's Environmental Assessment. If the Lease Termination Date has occurred, SELLER shall have access to perform the Additional Remediation pursuant to a Remediation Access Agreement, attached as Exhibit 21.c.iv.

- iv. On the annual anniversary of the Closing, if SELLER is performing Additional Remediation, it shall deliver to BUYER a report on the progress of the Additional Remediation, which shall include the following: (i) identification of whether the Additional Remediation performed to date has met the Additional Remediation Schedule, including the Milestones, and an explanation for any deviation from the Additional Remediation Schedule; (ii) costs incurred to date for Additional Remediation; and (iii) anticipated costs needed to complete the Additional Remediation, with a basis for the estimate. During the performance of the Additional Remediation, SELLER shall: (i) promptly provide BUYER with a copy of all documents, including but not limited to the Governmental Confirmation and correspondence and reports, exchanged between SELLER and any Governmental Body about the performance of the Additional Remediation; and (ii) respond to reasonable requests for information from BUYER about the Additional Remediation.
- v. The General Escrow Fund established in accordance with Section 10.b. shall be administered by the Escrow Agent pursuant to the General Escrow Agreement. In the event that SELLER elects to proceed under Section 21.c.ii.(1). in order to accomplish Additional Remediation, SELLER shall use reasonable, good-faith, diligent efforts to perform the Additional Remediation in accordance with the terms of this Agreement. If BUYER reasonably determines that SELLER is not proceeding diligently to perform the Additional Remediation so that it can receive the Governmental Confirmations within seven (7) years after BUYER's submittal of its Environmental Notice (subject to extension as set forth in Section 21.c.iii or to a longer period for which BUYER, in its sole and absolute discretion, has provided its written consent) then BUYER shall deliver written notice thereof to SELLER setting forth sufficient information to allow SELLER to respond thereto, whereupon SELLER shall have thirty (30) days thereafter to deliver to BUYER a written response. In the event of a disagreement between the Parties after such delivery as to whether SELLER was diligently pursuing the Additional Remediation then, either SELLER or BUYER may initiate dispute resolution procedures as provided for in Section 20.
- vi. If BUYER provides no Additional Remediation Notice to SELLER under Section 21.c.i. (or if the obligations under any such Additional Remediation Notice have been satisfied) and BUYER INDEMNIFIED PARTIES provide no Environmental Notices to SELLER (or any such indemnification claims have been satisfied) on or before the third anniversary of the Lease Termination Date, and if Governmental Confirmations for all of the Additional Remediation to be performed by SELLER pursuant to Section 21.c.ii.1



have been issued by the end of such period for all of the Additional Remediation, subject to the terms of the Lease (if applicable) and the General Escrow Agreement, SELLER shall be entitled to receive any remaining amounts in the General Escrow Fund and the General Escrow Fund shall terminate. Notwithstanding the foregoing, if substantially all (but not all) of the Additional Remediation has been completed, BUYER and SELLER shall use good-faith efforts to mutually agree to reduce the General Escrow Fund to an amount reasonably sufficient to cover the remaining costs of the Additional Remediation, but subject to the terms of the Lease (if applicable) and the General Escrow Agreement.

- d. BUYER agrees that prior to any sale or transfer by BUYER of all or a portion of the Premises containing levels of Pollutants above the applicable residential level set forth in Chapter 62-777 and Chapter 62-780, F.A.C. from and after the Closing, BUYER will record an Institutional Control against all or such portion of the Premises in favor of SELLER that will be binding upon and run with the land and will limit the use of all or such portion of the Premises to agricultural, commercial and industrial land uses, including, but not limited to, as classified by the NAICS and referenced in the Florida Department of Environmental Protection's Institutional Controls Procedures Guidance dated November 2004. Notwithstanding the foregoing, in the event that BUYER does not comply with the above, then BUYER shall be deemed to have breached its obligations under this subsection and SELLER shall have all rights and remedies provided under this Agreement as a result thereof.
- e. Indemnification by SELLER. From and after the Closing Date, SELLER agrees to jointly and severally indemnify, defend, save, and hold harmless the Buyer Indemnified Parties from and against any and all Liabilities incurred or suffered by any Buyer Indemnified Party, as to which an Environmental Notice is made on or before the third anniversary of the Lease Termination Date, and arising out of (1) Direct Claims and Third Party Claims for an alleged violation of Environmental Law in connection with the Premises that existed on or before the Lease Termination Date and began on or after the date that SELLER acquired title to the Premises, except for any alleged violation of any Environmental Law arising out of Non-Point Source of Pollutants or Point Source of Pollutants Identified in the BUYER's Environmental Assessment, (2) a Non-Governmental, Unrelated Party Claim for Pollutant Liabilities, (3) a Third Party Claim for Offsite Environmental Liabilities, (4) a Third Party Claim for a Previously Unknown Pollutant Liability asserted against a Buyer Indemnified Party concerning all or part of the Premises after the Buyer Indemnified Party has transferred such Premises to a Person who is not an Affiliate of the Buyer Indemnified Party, or (5) Third Party Claims arising out of or related to SELLER's breach of, or failure to perform, its covenants and obligations in Section 21.c.ii.(1); provided, however, that, in each of subsections (1) through (5) above, in no event shall SELLER be obligated to indemnify, defend, save and hold harmless any Buyer Indemnified Party for Liabilities for Environmental Claims to the extent (and only to the extent) the Liabilities are caused by any negligence by Buyer Indemnified Parties.
- f. Indemnification by BUYER. From and after the Closing Date, BUYER agrees, to the extent permitted by Law, to indemnify, defend, save and hold harmless SELLER Indemnified Parties from and against any and all Liabilities incurred or suffered by any SELLER Indemnified Party arising out of or related to (1) Third Party Claims arising out of or related to BUYER's breach of, or failure to perform, its covenants and obligations in Section 21.b., Section 21.c.ii.(2), or both, or (2) Third Party Claims arising out of or related to BUYER's change in use of the Premises from agricultural, except to the extent that the Liability arises out of Pollutants, Point Source of Pollutants and Non-Point Source of Pollutants not Identified in Buyer's Environmental

Assessment. SELLER acknowledges that BUYER has not made any representation or warranty to SELLER as to, nor has BUYER waived any right to claim that it does not have, the legal authority to agree to the provisions of this Section 21.f.

g. Procedure for Indemnification.

- i. Direct Claims. If an Indemnified Party should have a Direct Claim against an Indemnifying Party, the Indemnified Party shall deliver a Direct Claim Notice to the Indemnifying Party by certified mail with reasonable promptness following discovery of the facts and circumstances giving rise to the Direct Claim. The failure to give timely notice pursuant to this Section 21.g.i. shall not relieve the Indemnifying Party of its obligation to indemnify except to the extent the Indemnifying Party is actually prejudiced by such failure. The Indemnifying Party shall have 30 calendar days to respond in writing to the Indemnified Party regarding such Direct Claim Notice. If the Indemnifying Party notifies the Indemnified Party within such 30-day period that it does not dispute the claim described in the Direct Claim Notice, or does not respond to the Direct Claim Notice within such 30-day period, the Liabilities arising from the claim specified in such Direct Claim Notice shall be conclusively deemed a Liability of the Indemnifying Party and the Indemnifying Party shall pay the amount of such Liability to the Indemnified Party promptly following the final determination thereof. If the Indemnifying Party notifies the Indemnified Party that it disputes its liability for the matters described in the Direct Claim Notice, then the Indemnifying Party shall be deemed to dispute the claim, and the Parties shall proceed in good faith to resolve such dispute as provided in Section 20.
- ii. Indemnification Procedure – Third Party Claims. The Parties agree that, if a Third Party Claim is made, the Indemnified Party will give a Third Party Claim Notice to the Indemnifying Party by certified mail within five (5) days of receipt of service of process if an Action has commenced or, in all other circumstances, within fifteen (15) days of receipt of written notice of such Third Party Claim. The failure to give timely notice pursuant to this Section 21.g.ii. shall not relieve the Indemnifying Party of its obligation to indemnify except to the extent the Indemnifying Party is actually prejudiced by such failure. The Indemnifying Party shall have 30 days to respond in writing to the Indemnified Party regarding such Third Party Claim Notice. If the Indemnifying Party provides written notice to Indemnified Party during that 30-day period that it disputes its liability for the matters described in the Third Party Claim Notice, then the Indemnifying Party shall be deemed to dispute the Third Party Claim, and the Parties shall proceed in good faith to resolve such dispute as provided in Section 20. If the Indemnifying Party notifies the Indemnified Party within such 30-day period that it does not dispute the Third Party Claim described in the Third Party Claim Notice, or does not respond to such Third Party Claim Notice, the Liabilities arising from the Third Party Claim will be conclusively deemed a Liability of SELLER and the Parties shall proceed with the following indemnification procedures.
- iii. Subject to any Laws, privileges (including the attorney client privilege and joint defense privilege), rights and the trade secret protocol developed by SELLER, if applicable, the Indemnified Party shall make available to the Indemnifying Party and its counsel, accountants and other representatives at reasonable times and for reasonable periods, during normal business hours, all books and records of the Indemnified Party reasonably relating to any such claim for indemnification, and each Party hereunder will render to the

other such assistance as it may reasonably require of the other in order to insure prompt and adequate defense of any Third Party Claim.

- iv. Subject to applicable Laws and the further provisions of this Section 21, the Indemnifying Party shall have the right to defend, compromise, and settle any third-party Action in the name of the Indemnified Party to the extent that Indemnifying Party may be liable to the Indemnified Party in connection therewith.
- v. If the Indemnifying Party notifies the Indemnified Party that the Indemnifying Party elects to assume the defense of a Third Party Claim, the Indemnifying Party shall not be liable to the Indemnified Party under this Section 21.g.v for any fees of other counsel or any other expenses with respect to the defense of such Third Party Claim, in each case incurred by the Indemnified Party in connection with the defense of such Third Party Claim other than as contemplated under this Section 21.g.v.
- vi. If the Indemnifying Party elects to assume the defense of such Third Party Claim, the Indemnifying Party shall have the right to defend such Third Party Claim by all appropriate proceedings, which proceedings will be prosecuted by the Indemnifying Party. The Indemnifying Party shall have full control of such defense and proceedings, including settlement thereof; provided, however, that the Indemnifying Party shall not settle a Third Party Claim without the written consent of the Indemnified Party, which shall not be unreasonably withheld, unless (i) the relief consists solely of money damages and includes a provision where the plaintiff or claimant in the matter fully releases the Indemnified Party from all liability with respect thereto, and (ii) the settlement, compromise or discharge does not otherwise materially adversely affect the Indemnified Party. The Indemnified Party agrees to cooperate reasonably with the Indemnifying Party and its counsel in the compromise or settlement of, or defense against, any Third Party Claim and, if requested by the Indemnifying Party, the Indemnified Party will, at the sole cost and expense of the Indemnifying Party, cooperate with the Indemnifying Party and its counsel in contesting any Third Party Claim that the Indemnifying Party elects to contest, or, if appropriate and related to the Third Party Claim in question, in making any counter claim against the Person asserting the Third Party Claim, or any cross-complaint against any Person (other than the Indemnified Party or any of its Affiliates).
- vii. Notwithstanding an election by the Indemnifying Party to assume the defense of such Third Party Claim, the Indemnified Party shall have the right to employ separate counsel to represent it in, but not control, the defense, investigation, settlement, or litigation of such Third Party Claim, but the fees and expenses of such counsel shall be at the Indemnified Party's sole cost and expense unless (x) the Indemnifying Party shall have authorized in writing the Indemnified Party to employ separate counsel at the Indemnifying Party's expense, or (y) if, in the written opinion of counsel to the Indemnified Party, which counsel shall be reasonably satisfactory to the Indemnifying Party, a conflict or potential interest exists between the Indemnifying Party and the Indemnified Party, or (z) if, the named parties to such Third Party Claim include both the Indemnifying Party and the Indemnified Party and the Indemnified Party determines in good faith, based on the written opinion of counsel to the Indemnified Party, which counsel shall be reasonably satisfactory to the Indemnifying Party, that the Indemnified Party may have defenses or counterclaims that are not available to the Indemnifying Party, or that are inconsistent with those available to the Indemnifying Party. In any

event, the Indemnified Party and the Indemnifying Party and their counsel reasonably shall cooperate in the defense of any Third Party Claim subject to this Section 21.g.vii and keep such Persons informed of all developments relating to any such Third Party Claims, and provide copies to each other of all relevant correspondence and documentation relating thereto.

- viii. If the Indemnifying Party, after receiving a Third Party Claim Notice, does not elect to defend such Third Party Claim within the time period specified herein or does not defend such Third Party Claim in good faith, the Indemnified Party shall have the right, in addition to any other right or remedy it may have hereunder, at the Indemnifying Party's expense, to control the defense or settlement of such Third Party Claim; provided, however, that (i) the Indemnified Party shall not have any obligation to do so; (ii) the Indemnified Party's defense of or participation in the defense of any such claim shall not in any way diminish or lessen the obligations of the Indemnifying Party under this Section 21.g.viii; and (iii) the Indemnified Party shall not settle, compromise or discharge, or admit any liability with respect to, any such Third Party Claim without the prior written consent of the Indemnifying Party (which consent will not be unreasonably withheld or delayed) and if the Indemnified Party does settle, compromise or discharge, or admit any liability with respect to any such Third Party Claim without the written consent of the Indemnifying Party, then the Indemnifying Party shall have no liability whatsoever, nor be bound in any way, in respect thereof.

h. Satisfaction of Indemnification Payments.

- i. Subject to Section 20., and except as otherwise mutually agreed, prior to paying any Third Party Claim against which the Indemnifying Party is, or may be, obligated under this Agreement to indemnify an Indemnified Party, the Indemnified Party must first supply the Indemnified Party with a copy of a non-consensual, non-appealable, final judgment or decree, which has been entered after the matter has been fully and fairly litigated, that holds the Indemnified Party liable on such claim or, if the claim was not finally determined by a non-consensual, non-appealable judgment or decree, then the Indemnified Party must have received from the Indemnifying Party the written approval of the terms and conditions of the final settlement or compromise or other agreement that fully and finally determined the outcome, which written approval the Indemnifying Party cannot unreasonably withhold. Except as otherwise mutually agreed, prior to paying any Direct Claim against which the Indemnifying Party is, or may be, obligated under this Agreement to indemnify an Indemnified Party, the Indemnified Party must first supply the Indemnifying Party with reasonable documentation of the amount of such Direct Claim.
- ii. BUYER Indemnified Parties' indemnification claims shall be satisfied solely from the General Escrow Fund, which fund shall be replenished according to the terms of the General Escrow Agreement.
- iii. If a BUYER Indemnified Party makes an indemnification claim against the General Escrow Fund, or if any BUYER Indemnified Party shall have the right to assume the defense of a Third Party Claim pursuant to Section 21.g.iii, or is entitled to receive the reasonable legal fees and expenses associated with a claim, all such amounts shall be exclusively advanced by or set-off against the General Fund until the General Escrow Fund is completely depleted in accordance with the General Escrow Agreement, and

BUYER Indemnified Party and SELLER shall execute a joint written notice to the Escrow Agent, and otherwise cooperate with each other in obtaining any such funds.

- i. Limitations on Indemnification. Notwithstanding the foregoing, to the extent permitted by Law, an Indemnified Party shall not be entitled to indemnification under Sections 21.e. or 21.f. for, and in no event shall the Indemnifying Party have any Liability to any Indemnified Parties for, and the Liabilities shall not include, loss of profits or other consequential damages or punitive damages all of which are hereby waived by BUYER (other than loss of profits or other consequential damages, incidental damages or punitive damages suffered by third persons for which legal responsibility is allocated to any Indemnified Party).
- j. Insurance Recoveries. If any Liabilities related to a claim by an Indemnified Party are covered by one or more third party insurance policies held by such Indemnified Party and such Indemnified Party actually receives a full or partial recovery under such insurance policies, such Indemnified Party shall use such recovery to refund, within ten (10) Business Days, the aggregate amount of any payments (or, if such recovery is less than the aggregate amount of such payments, a portion thereof) actually received by such Indemnified Party from Indemnifying Party with respect to such Liabilities; provided, however, that such refund shall be net of (i) the amount of any costs incurred in collecting such insurance recovery, including the amount of any co-payment or deductible, and (ii) the amount of any premium increase in the next policy period of the applicable insurance policy or in a replacement insurance policy that results directly from the assertion of such claim, as determined by correspondence from the insurance carrier or insurance broker to the Indemnified Party, a copy of which shall have been provided to the Indemnifying Party. For the avoidance of doubt, the Parties agree that the existence of an insurance claim shall not require an Indemnified Party to pursue an insurance claim prior to making an indemnification claim under this Section 20, but if an indemnification claim is made, the Indemnified Party must use commercially reasonable effort to prosecute available insurance claims.
- k. Tax Consequences of Indemnification. The Parties agree to treat any indemnification payment made pursuant to this Section 20 as an adjustment to the Purchase Price for all income or similar tax purposes to the extent permitted by Law.
- l. Survival. The terms of this Section 21 shall survive the Closing or termination of this Agreement.

22. NO PERSONAL LIABILITY.

Notwithstanding anything to the contrary in this Agreement, to the extent permitted by Law, no present or future Affiliate of SELLER or BUYER, nor any present or future member, principal, shareholder, manager, officer, official, director, employee or agent of SELLER or BUYER (other than any such Person that is Party hereto), will be personally liable, directly or indirectly, under or in connection with this Agreement, or any document, instrument or certificate securing or otherwise executed in connection with this Agreement, or any amendments or modifications to any of the foregoing made at any time or times, heretofore or hereafter, or in respect of any matter, condition, injury or loss related to this Agreement or the Premises, and each of the Parties, on behalf of itself and each of its successors and permitted assignees, waives and does hereby waive any such personal liability.

23. TAX DEFERRED EXCHANGE.

BUYER and SELLER hereby acknowledge that SELLER may elect that all or a portion of the transaction contemplated by this Agreement may qualify as a tax-free exchange within the meaning of Section 1031 of the Code. BUYER agrees to take any further action commercially reasonable and appropriate to assist and cooperate with SELLER in effectuating such tax-free exchange; provided, however, SELLER hereby agrees that (a) SELLER shall pay directly for any additional expense caused to BUYER as a result of actions taken by BUYER for the purpose of facilitating such exchange, (b) BUYER's agreement to facilitate such exchange will not require it to take title to any property other than the Premises, and (c) SELLER shall reimburse, indemnify, defend and hold harmless BUYER from any liabilities resulting from BUYER's participation in such exchange for the benefit of SELLER.

24. NOTICES

Any notice, request, demand, instruction, or other communications to be given, provided or delivered to any Party hereunder, shall be in writing and shall be deemed to be delivered upon the earlier to occur of: (a) actual receipt if delivered by (i) hand, commercial courier or reputable overnight delivery service to the address indicated, (ii) facsimile transmission, with confirmation of receipt or (iii) electronic transmission, if also sent by another alternative means of delivery named herein; or (b) the delivery by registered or certified United States Postal Service mail, return receipt requested, postage prepaid, addressed as follows:

If to BUYER:

South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406
Attention: Executive Director and Chairman
Fax: (561) 681-6233

With a copy to:

South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406
Attention: General Counsel
Fax: (561) 682-6447

And

Florida Department of Environmental Protection
3900 Commonwealth Blvd M.S. 49
Tallahassee, Florida 32399
Attention: Secretary, Department of Environmental Protection
Fax: (850) 245-2128

If to SELLER:

c/o United States Sugar Corporation
111 Ponce de Leon Avenue
Clewiston, Florida 33440
Attention: Malcolm S. (Bubba) Wade, Jr. and
Edward Almeida, Esq.
Fax: (863) 902-2120

With a copy to:

Gunster, Yoakley & Stewart, P.A.
Attorneys At Law
Las Olas Centre
450 East Las Olas Boulevard
Suite 1400
Fort Lauderdale, Florida 33301-4206
Attention: Rick Burgess, Esq. and Robert Hackleman, Esq.
Fax: (954) 523-1722

The addresses for the purpose of this Paragraph may be changed by either Party by giving written notice of such change to the other Party in the manner provided herein. Attorneys for the respective Parties to this Agreement may send and receive notices on their client's behalf.

25. EXCLUSIVITY; ACQUISITION PROPOSALS.

a. Certain Definitions. For purposes of this Agreement:

- i. "Acquisition Proposal" means any written inquiry, proposal or offer from a Qualified Purchaser or group of Qualified Purchasers other than SELLER and SELLER Representatives for, whether in one transaction or a series of transactions: (i) any direct or indirect sale or other disposition (including by way of merger, consolidation, share exchange, business combination or any similar transaction) of the Premises, whether alone or together with other assets, or of any combination of assets of SELLER that represents all or substantially all of the assets of any SELLER and/or its respective subsidiaries, taken as a whole; (ii) any issuance, sale or other disposition by PARENT (including by way of merger, consolidation, share exchange, business combination or any similar transaction) of securities representing more than 80% of the voting rights of PARENT'S outstanding common stock; (iii) any tender offer or exchange offer that if consummated would result in any Person or group of Persons acquiring beneficial ownership, or the right to acquire beneficial ownership of, more than 80% of the voting rights of PARENT'S outstanding common stock; (iv) any merger, reorganization, consolidation, share exchange, business combination, recapitalization, liquidation, dissolution, equity infusion or similar transaction involving SELLER and/or its respective subsidiaries; or (v) any transaction that is similar in form, substance or purpose to any of the foregoing transactions; provided, however, that the term "Acquisition Proposal" shall not include a Permitted Reorganization, the transactions contemplated by this Agreement nor any transactions that do not meet the thresholds set forth in clauses (i) – (iv) above.
- ii. "Exclusivity Period" means the period beginning on the date of Validation and ending on the Closing Date or earlier termination of this Agreement in accordance with its terms.
- iii. "Qualified Purchaser" means any Person or group of Persons that SELLER reasonably believes are capable of entering into one or more definitive purchase agreement(s) meeting the terms of an Alternative Acquisition Agreement.
- iv. "Solicitation Period" means the period beginning on the Effective Date and ending sixty (60) days thereafter.

- v. **"Alternative Acquisition Agreement"** means a definitive purchase agreement, or series of related agreements, entered into between any combination of PARENT and the SELLING SUBSIDIARIES and a Qualified Purchaser with respect to a Superior Proposal (together with any related schedules, exhibits or other documentation).
 - vi. **"Matching Period"** means the period beginning on the day BUYER has delivered a copy of an Alternative Acquisition Agreement in accordance with Section 25.d. below and ending forty (40) calendar days thereafter.
 - vii. **"Termination Fee"** means an amount in cash equal to Forty Million Two Hundred Thousand Dollars (U.S. \$40,200,000.00), which amount shall be paid (when due and owing) by wire transfer of immediately available funds denominated in U.S. Dollars to the account or accounts designated by the recipient. SELLER acknowledges that the agreement to pay the Termination Fee in the circumstances set forth in Section 25.e. is an integral part of the transactions contemplated by this Agreement and that, without this Agreement, BUYER would not enter into this Agreement; accordingly, if the Termination Fee is not paid when due, Buyer shall be entitled to interest on the Termination Fee at a rate per annum equal to the Prime Rate as published in the Wall Street Journal, Eastern Edition, in effect from time to time during the period from the date that the such payment was required to be made pursuant to this Agreement to the date of payment.
 - viii. **"Superior Proposal"** means any bona fide Acquisition Proposal made in writing that would be consummated on or before September 25, 2009 for an all cash purchase price payment and that the Board of Directors of Parent in its good faith judgment determines, would, if consummated, result in a transaction that is more favorable to Parent and its existing stockholders than the transactions contemplated by this Agreement, which determination is made (A) after receiving the advice of a financial advisor, (B) after taking into account the likelihood (and likely timing) of consummation of such transaction on the terms set forth therein, and (C) after taking into account all appropriate legal, tax, financial (including the financing terms of such proposal), regulatory or other aspects of such proposal and any other relevant factors permitted by Law.
- b. **Solicitation Period.** Notwithstanding anything contained herein to the contrary, during the Solicitation Period, SELLER and the SELLER Representatives shall have the right to, directly or indirectly: (i) initiate, solicit and encourage Acquisition Proposals from any Qualified Purchasers, including by way of providing access to non-public information pursuant to one or more confidentiality agreements; and (ii) enter into and maintain discussions or negotiations with respect to Acquisition Proposals or otherwise cooperate with or assist or participate in or facilitate any such discussions or negotiations, including by delivering confidential information regarding any or all of SELLER, its business operations and its assets, including the Premises, to Qualified Purchasers and their representatives; provided, however, that SELLER shall (i) enter into and maintain one or more customary confidentiality agreements with any Persons being solicited hereunder, the terms of which are not materially more favorable to such Person than those in the Confidentiality Letter that SELLER has entered into with BUYER, (ii) notify BUYER in writing as promptly as reasonably practicable (and in any event within twenty four (24) hours of initial contact with the Qualified Purchaser) of the identity of any Qualified Purchaser that executes a confidentiality agreement; and (iii) keep BUYER reasonably informed of the status of any discussions with any Qualified Purchaser.

- c. Post Solicitation, Pre-Exclusivity Period. Notwithstanding anything to the contrary contained herein, if at any time following the end of the Solicitation Period and prior to Validation SELLER has received an Acquisition Proposal from a Qualified Purchaser that PARENT'S Board of Directors believes in good faith to be bona fide and PARENT'S Board of Directors determines in good faith, after consultation with its financial and legal advisors, that (1) such Acquisition Proposal constitutes or could reasonably be expected to result in a Superior Proposal, and (2) the failure to consider the Acquisition Proposal would be inconsistent with the fulfillment of its fiduciary duties to the stockholders under applicable Law, SELLER may (A) furnish information with respect to any or all of SELLER, its business operations and its assets, including the Premises, to the Person making such Acquisition Proposal and its representatives and (B) enter into and maintain discussions or negotiations with the Person making such Acquisition Proposal; provided, however, that Seller shall (i) enter into and maintain one or more customary confidentiality agreements with any Persons being solicited hereunder, the terms of which are not materially more favorable to such Qualified Purchaser than those in the Confidentiality Letter that SELLER entered into with BUYER, (ii) notify BUYER in writing as promptly as reasonably practicable (and in any event within twenty four (24) hours of initial contact with the Qualified Purchaser) of the identity of any Qualified Purchaser that executes a confidentiality agreement; and (iii) keep BUYER reasonably informed of the status of any discussions with any Qualified Purchaser.
- d. Superior Proposal. If, prior to the Exclusivity Period, SELLER receives an Acquisition Proposal from any Qualified Purchaser that the Board of Directors of PARENT concludes in good faith constitutes a Superior Proposal, any or all of PARENT and each other SELLER may enter into an Alternative Acquisition Agreement, except that such Alternative Acquisition Agreement must be conditioned upon BUYER's failure to exercise its rights set forth in subparagraph (e) below and if such right is not exercised, BUYER's receipt of the payment of the Termination Fee pursuant to subparagraph (E) below, and termination of this Agreement (without any cost, liability or obligation whatsoever to BUYER) as contemplated by subparagraph (e) below. SELLER (i) shall promptly upon entering into an Alternative Acquisition Agreement (and in any event within one (1) Business Day), make a true and complete copy thereof available for review by BUYER and BUYER's representatives, (ii) shall promptly upon entering into an Alternative Acquisition Agreement (and in any event within five (5) business days) make available to BUYER and its representatives any information concerning SELLER, its business operations and its assets, including the Premises, that has been provided by the Qualified Purchaser in connection with the Alternative Acquisition Agreement that has not previously been provided to BUYER, and (iii) shall not enter into any confidentiality provisions restricting the provision of such materials to BUYER; provided that, the Alternative Acquisition Agreement, and any other materials given to BUYER in connection with the Alternative Acquisition Agreement, shall be designated "Trade Secret" by SELLER and shall be kept confidential by BUYER in accordance with the Confidentiality Letter.
- e. Matching Period; Termination and Termination Fee. During the Matching Period SELLER shall, and shall cause SELLER Representatives to, during the Matching Period, negotiate with BUYER in good faith (to the extent BUYER desires to negotiate) to make such adjustments in the terms and conditions of this Agreement so that the Acquisition Proposal provided for in the Alternative Acquisition Agreement ceases to constitute a Superior Proposal. If BUYER agrees to make adjustments in the terms and conditions of this Agreement such that PARENT's Board of Directors concludes that the Acquisition Proposal provided for in the Alternative Acquisition



Agreement no longer constitutes a Superior Proposal, the Alternative Acquisition Agreement shall terminate (without any liability or obligation whatsoever to BUYER). If BUYER does not so agree during the Matching Period, SELLER may proceed with the transaction contemplated by the Alternative Acquisition Agreement, terminate this Agreement, and BUYER shall be entitled to payment of the Termination Fee, payable by wire transfer of immediately available funds. Any termination pursuant to this subsection (e) shall not constitute or serve as the basis for a breach of or default under this Agreement. The Termination Fee is the sole remedy available to BUYER in connection with a termination of this Agreement in accordance with the terms of this Section 25 and BUYER specifically waives its right to seek specific performance hereunder.

- f. Exclusivity. From the date of Validation until the Closing or earlier termination of this Agreement in accordance with its terms, SELLER agrees that, except with respect to this Agreement and the transactions contemplated hereby, SELLER will not and will cause the SELLER Representatives and other Persons acting on its behalf not to, directly or indirectly: (i) initiate, solicit or seek, entertain any inquiries or the making or implementation of any proposal or offer with respect to an Acquisition Proposal; (ii) engage in any discussions or negotiations concerning, or provide any confidential information or data to, or have any substantive discussion with, any Person relating to an Acquisition Proposal; (iii) otherwise cooperate with any Person in any effort or attempt to make, implement or accept any Acquisition Proposal; or (iv) enter into an agreement, contract, letter of intent, memorandum of understanding or confidentiality agreement with any Person relating to an Acquisition Proposal. SELLER agrees to notify Buyer promptly if it or any SELLER Representative or other Persons acting on its behalf receives, after the date of Validation, any written inquiries, offers or proposals relating to an Acquisition Proposal, and provide Buyer with the details thereof, keep BUYER informed with respect thereto, and provide BUYER with copies thereof.
- g. Post-Termination Transaction. In the event SELLER terminates this Agreement because SELLER fails to obtain approval of PARENT's stockholders for any reason other than the failure to receive an unqualified fairness opinion, and if SELLER thereafter sells all or substantially all of the Premises within a period of twelve (12) months following said termination, then Buyer shall be entitled to receive the Termination Fee. This subsection (g) shall survive the Closing.

26. MISCELLANEOUS

- a. Headings. The headings contained in this Agreement are for convenience of reference only, and are not to be considered a part hereof and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.
- b. Severability. If any provision of this Agreement or any other Agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

- c. **Third Parties.** Unless expressly stated herein to the contrary, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
- d. **Jurisdiction and Venue.** The parties acknowledge that a substantial portion of negotiations and anticipated performance and execution of this Agreement occurred or shall occur in Palm Beach County, Florida, and that, therefore, each of the parties irrevocably and unconditionally (1) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement may be brought in the courts of record of the State of Florida in Palm Beach County or the court of the United States, Southern District of Florida; (2) consents to the jurisdiction of each such court in any suit, action or proceeding; (3) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (4) agrees that service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws or court rules in said state.
- e. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile copy of this Agreement and any signatures hereon shall be considered for all purposes as originals.
- f. **Governing Law.** This Agreement and all transactions contemplated by this Agreement shall be governed by, construed, and enforced in accordance with, the internal laws of the State of Florida without regard to principles of conflicts of laws.
- g. **Interpretation.** This Agreement shall be interpreted without regard to any presumption or other rule requiring interpretation against the party causing this Agreement or any part thereof to be drafted.
- h. **Handwritten Provisions.** Handwritten provisions inserted in this Agreement and initialed by the BUYER and the SELLER shall control all printed provisions in conflict therewith.
- i. **Entire Agreement.** This Agreement and the Confidentiality Letter (which is incorporated by reference herein) contains the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No agreements or representations, unless incorporated in this Agreement shall be binding upon any of the parties. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.
- j. **Waiver.** Failure of BUYER to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future enforcement of any such covenant, condition or right; but the same shall remain in full force and effect.



- k. Time. Time is of the essence with regard to every term, condition and provision set forth in this Agreement. Time periods herein of less than six (6) days shall in the computation exclude Saturdays, Sundays and state or national legal holidays, and any time period provided for herein which shall end on Saturday, Sunday or a legal holiday shall extend to 5:00 p.m. (E.S.T.) of the next business day.
- l. WAIVER OF JURY TRIAL. AS INDUCEMENT TO BOTH PARTIES AGREEING TO ENTER INTO THIS AGREEMENT, BUYER AND SELLER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY PERTAINING TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. EACH OF THE PARTIES CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE ACTUAL WAIVERS AND CERTIFICATIONS OF THIS SECTION 25.1.
- m. Successors in Interest. This Agreement shall be legally binding upon the Parties hereto and their heirs, legal representatives, successors and permitted assigns. This Agreement may not be assigned by either Party, without the other Party's prior written consent, which may be withheld in their sole and absolute discretion; provided, however, that (i) SELLER may assign all of their rights and obligations under this Agreement to a Person(s) who is controlled by stockholders who currently control more than 50% of the voting rights of Parent's outstanding stock pursuant to a Permitted Reorganization; (ii) BUYER may collaterally assign all or a part of its interest in this Agreement and its rights hereunder and thereunder to the lenders of any third party financing necessary to consummate the transactions contemplated hereby to the extent required by such funding sources, and (iii) BUYER may assign all or a part of its interest in this Agreement and its rights and obligations hereunder or thereunder to any governmental agency organized under the laws of the State of Florida, provided that such assignment will not extend the Closing Date. For purposes hereof, a "Permitted Reorganization" means a merger, consolidation or other capital reorganization or business combination transaction of the Parent with or into another Person such that: (1) the stockholders of Parent immediately prior to such transaction possess at least fifty percent (50%) of the voting power of such Person immediately after such transaction or (2) members of the board of directors of the Parent immediately prior to such transaction possess majority voting power of the board of directors of such Person immediately after such transaction, provided that in the event of (1) and (2) above, the surviving entity and its subsidiaries shall own all or substantially all of the assets of SELLER.
- n. Lead Warning Statement. Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to

pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase. SELLER hereby advises BUYER that SELLER believes that there may be lead-based paint and/or lead-based paint hazards in residential structures that are being conveyed to BUYER in this transaction, however, SELLER has no reports or records pertaining to the same.. By execution of this Agreement, BUYER acknowledges that it has received a ten-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazard and BUYER has received the pamphlet "Protect Your Family from Lead in Your Home".

Handwritten signature or initials, possibly "DDH", in the bottom right corner of the page.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto as of the date first written above.

SELLERS:

UNITED STATES SUGAR CORPORATION,
a Delaware corporation

Witness: Margaret Brown

By: Robert H. Baker, Jr.
Name: Robert H. Baker, Jr.
As its: President
Date of Execution 12.08.08

Witness: Gerard A. Bernard

SBG FARMS, INC., a Florida corporation

Witness: Margaret Brown

By: Robert H. Baker, Jr.
Name: Robert H. Baker, Jr.
As its: President
Date of Execution 12.08.08

Witness: Gerard A. Bernard

SOUTHERN GARDENS GROVES
CORPORATION, a Florida corporation

Witness: Gerard A. Bernard

By: Gerard A. Bernard
Name: Gerard A. Bernard
As its: Secretary and Treasurer
Date of Execution 12.08.08

Witness: Margaret Brown

BUYER:

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT,
a public corporation created under Chapter
373, Florida Statutes

Witness: _____

By: _____
Name: _____
As Its: _____
Date of Execution _____

Witness: _____

[JOINDER OF SOUTH CENTRAL FLORIDA EXPRESS, INC. FOLLOWS]

[Handwritten signature]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto as of the date first written above.

SELLERS:

UNITED STATES SUGAR CORPORATION,
a Delaware corporation

Witness: Gerard A. Bernard

By: Robert H. Butler, Jr.
Name: Robert H. Butler, Jr.
As its: President
Date of Execution 12.08.08

Witness: Margaret J. B...

SBG FARMS, INC., a Florida corporation

Witness: Gerard A. Bernard

By: Robert H. Butler, Jr.
Name: Robert H. Butler, Jr.
As its: President
Date of Execution 12.08.08

Witness: Margaret J. B...

SOUTHERN GARDENS GROVES
CORPORATION, a Florida corporation

Witness: Gerard A. Bernard

By: Gerard A. Bernard
Name: Gerard A. Bernard
As its: Secretary and Treasurer
Date of Execution 12.08.08

Witness: Margaret J. B...

BUYER:

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT,
a public corporation created under Chapter
373, Florida Statutes

Witness: [Signature]

By: Eric Buermann
Name: Eric Buermann
As its: Chairman, Board of Governors
Date of Execution 12/23/08

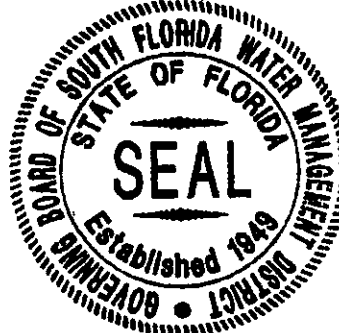
Witness: [Signature]

Attest: Cathy Widner
Secretary

[JOINDER OF SOUTH CENTRAL FLORIDA EXPRESS, INC. FOLLOWS]

54

WPD 1010191.10
12/3/08



[Signature]

JOINDER OF SOUTH CENTRAL FLORIDA EXPRESS, INC.

The undersigned, on behalf of SOUTH CENTRAL FLORIDA EXPRESS, INC., a Florida corporation, hereby joins in and agrees to **Section 19.i** of the Agreement for Sale and Purchase dated 12/23/08 by and among United States Sugar Corporation, SBG Farms, Inc., Southern Gardens Groves Corporation, collectively, as Seller, and South Florida Water Management District, as Buyer.

SOUTH CENTRAL FLORIDA EXPRESS,
INC., a Florida corporation

Witness: Glenn A. Bennett

By:

Name:

As its:

Date of Execution

Malcolm S. Wake Jr.

Malcolm S. Wake Jr.

President

12. 08. 08

Witness Mychal Brown

Exhibit B

EXHIBIT 19.e

LEASE

[SEE ATTACHED]

Handwritten signature or initials in the bottom right corner.

LEASE AGREEMENT

BETWEEN

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

**UNITED STATES SUGAR CORPORATION AND EACH OTHER LESSEE
NAMED BELOW**

This **LEASE AGREEMENT** (this "**LEASE**"), is entered into BETWEEN (herein called the "**Parties**" and each a "**Party**"): the SOUTH FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida, with its principal office at 3301 Gun Club Road, West Palm Beach, Florida 33406, and whose mailing address is Post Office 24680, West Palm Beach Florida 33416-4680, as lessor ("**LESSOR**"); and each of the following, as **LESSEE**: UNITED STATES SUGAR CORPORATION, a Delaware corporation (the "**Parent**"), and SOUTHERN GARDENS GROVES CORPORATION, a Florida corporation (the foregoing Parent and other Persons named as **LESSEE**, individually and collectively and jointly and severally, "**LESSEE**"), all with a mailing address of 111 Ponce DeLeon Avenue, Clewiston, Florida 33440.

WITNESSETH:

WHEREAS, the **LESSOR** is an agency of the State of Florida created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes.

WHEREAS, the **LESSOR** is empowered to enter into contracts with public agencies, private corporations or other persons, pursuant to Section 373.083, Florida Statutes.

WHEREAS, the **LESSOR** is empowered to lease lands or interests in land, to which the **LESSOR** has acquired title, pursuant to Section 373.093, Florida Statutes.

WHEREAS, **LESSEE**, as seller, and **LESSOR**, as buyer, have entered into that certain Agreement for Sale and Purchase dated as of [*__*] (the "**Agreement for Sale and Purchase**") for the Premises (as defined in the Agreement for Sale and Purchase). Unless otherwise defined herein, all capitalized terms used in this **LEASE** shall have the meanings assigned to the same in the Agreement for Sale and Purchase.



WHEREAS, concurrently herewith and pursuant to the Agreement for Sale and Purchase, LESSOR has acquired the Premises, which includes the real property described in Exhibit "A" attached hereto.

WHEREAS, pursuant to the Agreement for Sale and Purchase, LESSOR has agreed to lease the Premises to LESSEE for the Permitted Uses (as defined in Paragraph 2.B.) subject to the terms and conditions set forth herein and LESSEE has represented to LESSOR that it is qualified in all respects to operate the Premises under the Permitted Uses.

WHEREAS, the Governing Board of LESSOR, at its 2008, meeting has authorized entering into this LEASE with LESSEE.

WHEREAS, the Board of Directors of Parent, at its [____], 2008, meeting has duly authorized each LESSEE entering into this LEASE with LESSOR

NOW THEREFORE, in consideration of the duties, responsibilities, obligations and covenants herein contained to be kept and performed by the LESSEE, the LESSOR does hereby lease to the LESSEE the Premises in accordance with the following terms, conditions, covenants and provisions:

1. **Recitals:** The foregoing recitals are true and correct and are hereby incorporated herein by reference.

2. **Use of Premises:**

A. LESSEE and LESSOR acknowledge that (i) all citrus trees and groves are owned by LESSOR (and any cane stubble remaining on the Premises upon the Expiration Date (as defined herein) pursuant to Paragraph 22, it being agreed that LESSEE shall continue to own all cane stubble until the Expiration Date), and LESSEE is, pursuant to this LEASE, entitled only to the fruit and (ii) none of the crops (e.g., citrus fruit and sugar cane) or crop products are owned by the LESSOR. LESSEE may utilize the Premises solely for the Permitted Uses in accordance with the terms, conditions, covenants and provisions of this LEASE. LESSEE will not use or permit any use or entry upon the Premises for any other purpose. LESSEE's use of the Premises for the Permitted Uses shall be in accordance with the Best Management Practices (as defined below) and consistent with the industry standards. The Premises, including the improvements located thereon are being leased in their "AS IS", "WHERE IS" and "WITH ALL FAULTS" condition. LESSEE has examined the Premises to its complete and total satisfaction and is familiar with the condition thereof, and accepts the same in their present condition. LESSOR has made no representations or warranties to LESSEE respecting the condition of the Premises. LESSEE has had an adequate opportunity to investigate the zoning of the Premises and is satisfied that it can use the Premises in the manner required by this paragraph. LESSOR makes no warranty or representation as to the use or potential use to which the Premises may be put.

B. For the purposes of this LEASE, the term "Permitted Uses" shall mean the following: (a) all agricultural operations on the Premises, (b) LESSEE's historical business of planting, cultivating, farming, growing, harvesting, storing, fertilizing, transporting and removing citrus and sugar cane; (c) all uses incidental or related to the uses described in clause

(b) above, including, without limitation, (i) the planting, cultivating, farming, growing, harvesting, fertilizing, removing, using and selling of appropriate rotation crops and related nursery operations, (ii) the operation of existing railroads adjacent to the Premises and (iii) preexisting residential uses; (d) rock mining (x) under leases existing as of the Commencement Date or (y) as otherwise has been conducted by LESSEE solely for use on the Premises (and not for sale to any third party) in connection with its business operations; (e) tenant farming operations; (f) any other historical business operations of LESSEE related or ancillary to the agricultural business operations described in clause (b) above or other agreements or leases that are in existence as of the Commencement Date; and (g) any other uses not otherwise described herein for which LESSEE obtains LESSOR's prior written approval, which approval may be withheld in LESSOR's sole and absolute discretion.

C. During the Lease Term, LESSEE shall maintain its current level of security for the Premises.

D. Furthermore, LESSEE shall control and eradicate to the extent practicable, and shall prevent infestation of, Category I and Category II exotic/invasive pest plants and Class I & II prohibited aquatic plants as described on Schedule "1" and Schedule "2" attached hereto and made a part hereof, ("Exotic Pest Plants"). The sale of any Exotic Pest Plants is strictly prohibited and shall be sufficient cause for immediate termination of this LEASE. LESSEE agrees that its use and occupancy of the Premises shall result in the land being managed and maintained in accordance with applicable Best Management Practices, provided, however, that in no event shall such Best Management Practices or the terms of this LEASE require LESSEE to remove Exotic Pest Plants from the Premises to the extent such removal is not consistent with past practices of LESSEE on the Premises.

E. LESSEE shall neither hunt, trap or capture any wildlife upon the Premises nor allow others to do so; provided, however, LESSEE through its principals, contractors and employees may control nuisance wildlife in compliance with all state laws.

F. Prescribed burning on the Premises may be done by LESSEE provided that each such prescribed burning shall: (a)(i) have been requested by LESSEE in writing, (ii) be approved by LESSOR in writing, and (iii) be managed by a state approved burn manager; or (b) be conducted without LESSOR's consent or notification, so long as such controlled burning is regulated under the Division of Forestry's burning program, including the programs for sugar cane burning, citrus tree burning, agricultural container burning, etc. LESSEE shall not otherwise knowingly or deliberately set or cause to be set any fire or fires on the Premises.

G. There shall be no fertilization of the Premises, except for fertilization that is in compliance with the applicable Best Management Practices. Additionally there shall be no alterations, improvements or modifications of rangelands, wetlands, swamps or pastures of the Premises (including but not limited to mowing, chopping, disking, plowing, ditching, or digging water holes), other than (i) as is common in the industry, consistent with LESSEE's past practices and specifically allowed in the Best Management Practices, or (ii) is otherwise consented to in writing by LESSOR, which consent may be withheld in LESSOR's sole discretion. LESSEE shall not cut or remove any standing green or fallen timber from the Premises, other than removal of citrus trees for disease control or otherwise in the ordinary course of LESSEE's business consistent with past practices. LESSEE shall not, for any

purpose, drive nails, spikes or staples into or otherwise deface or mar any tree on the Premises.

H. The application of herbicides, pesticides, or agricultural chemicals with respect to the Premises, shall comply with the applicable Best Management Practices and shall be limited to those chemicals specified on Schedule "3" attached hereto and made a part hereof.

I. Intentionally Deleted.

J. LESSEE shall adhere to all management practices described in Schedule "4" attached hereto and made a part hereof with respect to the Premises ("Best Management Practices").

K. LESSEE shall at all times during the LEASE Term continuously commence and continue all applicable planting and cultivation of the sugar cane crops and the citrus crops, as and to the extent typically performed by LESSEE in LESSEE's ordinary course of business consistent with past practices and in accordance with the Best Management Practices; provided, however, LESSEE is not obligated to plant sugar cane on the Premises or continue applicable cultivation with respect thereto after June 30, 2014.

L. So long as LESSEE is not in Default under Paragraphs 7(A)(1), (2) (solely with respect to the failure to pay real estate taxes as required in this Lease), 3 or 4, LESSEE shall have the right to collect and retain all rents derived from the Premises (inclusive of rents paid during the Lease Term under leases that were in effect prior to the Commencement Date); provided, however that: (i) any such rents collected by LESSOR during any period of Default shall be applied to any unpaid amounts due hereunder; (ii) LESSOR shall provide written notice to LESSEE revoking the license described in Paragraph 2.M below at the same time as it provides notice to the tenants directing such rents to be paid directly to LESSOR; and (iii) in the event that LESSEE has cured any such Default, LESSEE shall again have the right to receive such rents, whereupon LESSOR shall, by written notice to LESSEE, reinstate the license and direct such tenants to deliver their respective rent payments directly to LESSEE. LESSOR shall, on or before the Commencement Date and thereafter, from time to time, as reasonably requested by LESSEE, deliver to each tenant who has a right to occupy the Premises a letter, in form and substance reasonably acceptable to LESSOR and LESSEE, which directs such tenant to deliver their respective rent payments directly to LESSEE during the Lease Term.

M. In addition to the rights granted to LESSEE under this LEASE, including the provisions set forth in Paragraph 2.L above, during the Lease Term, LESSOR hereby grants to LESSEE a revocable license (which may only be revoked by LESSOR in the event of a Default as described in Paragraph 2.L above and shall be reinstated pursuant to the terms of such paragraph) granting to LESSEE all rights and interest of LESSOR under any leases or contracts that have been assigned to and assumed by LESSOR on the Closing Date (collectively, the "Related Contracts"), which shall be deemed to include the right to seek any recourse against the applicable parties thereunder for failure to perform thereunder. As consideration for the foregoing license, LESSEE hereby agrees, during the Lease Term, to timely: (a) pay all sums directly to the appropriate parties under the Related Contracts and any New Agreements (as defined in Paragraph 33.P of this LEASE) that become payable and accrue thereunder during the Lease Term; and (b) perform the obligations of LESSOR under the Related Contracts and any New Agreements that arise and accrue during the Lease Term. If reasonably requested by

LESSEE, LESSOR agrees to execute authorizations reasonably required to evidence and effectuate the foregoing. **LESSEE** hereby agrees to promptly give **LESSOR** copies of any default notices given or received by **LESSEE** in connection with the Related Contracts or New Agreements.

N. **LESSEE** shall not at any time during the Lease Term, directly or indirectly, hypothecate, mortgage or pledge any of the Premises or any of **LESSEE**'s right, title or interest under this **LEASE**.

3. **Lease Term:** The **LESSOR** hereby leases the Premises to the **LESSEE** for a lease term (the "Lease Term") commencing [_____, 2009] (the "Commencement Date"), and terminating (unless earlier terminated pursuant to other provisions of this **LEASE**) at 11:59 p.m. on [June 30, 2016 – *NOTE – IF CLOSING UNDER THE AGREEMENT FOR SALE AND PURCHASE OCCURS ON OR AFTER JANUARY 1, 2010, THEN THE EXPIRATION DATE OF THE LEASE SHALL BE JUNE 30, 2017. IF THIS OCCURS, THEN OTHER DATES AND TIME FRAMES WITHIN THIS LEASE MAY HAVE TO BE CONFORMED TO REFLECT SUCH NEW EXPIRATION DATE*] (the termination date of this **LEASE** is herein called the "Expiration Date" and the term of this **LEASE** is herein called the "Lease Term"). Upon mutual agreement, **LESSOR** and **LESSEE** may agree to extend the Lease Term, based upon then prevailing market rents.

4. **Right to Terminate:**

A. Except as otherwise provided in Paragraph 7, of this **LEASE**, if either Party fails to fulfill its material obligations under this **LEASE** in a timely and proper manner, the other Party shall have the right to terminate this **LEASE** or exercise other rights and remedies hereunder after giving written notice of default to the applicable Party and an opportunity to cure the same as provided in this Subparagraph 4.A. An applicable Party that fails to fulfill its material obligations under this **LEASE** in a timely and proper manner (except as otherwise provided in Paragraph 7, of this **LEASE**) shall have forty-five (45) calendar days from receipt of notice from the other Party to remedy the deficiency. Notwithstanding the foregoing, if such deficiency cannot with due diligence be remedied by the applicable Party within such 45-day period, and if such Party diligently commences to remedy such deficiency within such 45-day period and thereafter prosecutes such remedy with reasonable diligence, the period of time to remedy such deficiency shall be extended to permit a cure period of one hundred and twenty (120) days in the aggregate so long as such Party prosecutes such remedy with reasonable diligence; provided, however that upon request of such Party, the other Party shall, from time to time, consent to an extension of such 120 day period, which consent shall not be unreasonably withheld, so long as the applicable Party is diligently proceeding to cure such deficiency. Such curing Party's request for an extension of time to cure shall be accompanied by a reasonably detailed schedule for completing such cure. A Party shall not be deemed to be in default under the terms of this **LEASE** unless and until a Default has occurred (as defined in Paragraph 7 below).

B. From and after January 1, 2011, **LESSEE**, in its sole discretion, shall have the right to terminate this **LEASE** by giving a written termination notice to **LESSOR** on or before June 10, 2011 and each June 10th of each calendar year thereafter, whereupon this **LEASE** shall terminate on (a) May 1st of the next calendar year following such notice with

respect to the portion of the Premises used in connection with LESSEE's sugar cane operations and (b) July 1st of the next calendar year following such notice with respect to the portion of the Premises used in connection with LESSEE's citrus operations. For example, if LESSEE gives a termination notice to LESSOR on June 4, 2011, then this LEASE shall terminate on May 1, 2012 with respect to the portion of the Premises used in connection with LESSEE's sugar cane operations and on July 1, 2012 with respect to the portion of the Premises used in connection with LESSEE's citrus operations.

C. If: (i) LESSEE does not timely exercise any applicable ROFR (as defined in and) in accordance with the terms and conditions of Paragraph 38, hereof; and (ii) from and after June 30, 2014 until the Expiration Date, LESSEE has allowed fallow fields to exist on the Premises (the "Applicable Premises"), LESSOR shall have the right, in its sole discretion, to terminate this LEASE with respect to the Applicable Premises upon fifteen (15) days written notice to the LESSEE and LESSEE shall thereupon vacate the Applicable Premises within fifteen (15) days of such written notice in accordance with Paragraph 22, of this LEASE or be deemed to be holding over pursuant to Paragraph 23, of this LEASE. In the event of such termination, LESSEE shall be deemed to have a non-exclusive right of access until the Expiration Date over and across paved or unpaved roadways or pathways within the Applicable Premises as reasonably necessary for LESSEE to continue to have access to the remaining portion of the Premises that is then still subject to the terms of this LEASE. From and after the date of the termination of this LEASE for all or any portion of the Applicable Premises as provided in this subparagraph C., the annual Rent shall be reduced by Fifty and No/100 Dollars (\$50.00) multiplied by the acreage of such released portion of the Premises.

D. If LESSEE does not timely exercise any applicable ROFR, then, at LESSEE's option, from and after June 30, 2014, LESSEE shall have the right to terminate this LEASE with respect to all or any portion of the Applicable Premises upon no less than one hundred and eighty (180) days written notice to LESSOR (which shall set forth the vacation date) and LESSEE shall thereupon vacate the Applicable Premises on such vacation date set forth in LESSEE's notice or be deemed to be holding over pursuant to Paragraph 23 of this LEASE. In the event of such termination, LESSEE shall be deemed to have a non-exclusive right of access until the Expiration Date over and across paved or unpaved roadways or pathways within the Applicable Premises as reasonably necessary for LESSEE to continue to have access to the remaining portion of the Premises that is then still subject to the terms of this LEASE. From and after the date of the termination of this LEASE for all or any portion of the Applicable Premises as provided in this subparagraph D., the annual Rent shall be reduced by Fifty and No/100 Dollars (\$50.00) multiplied by the acreage of such released portion of the Premises.

E. In the event that LESSOR or LESSEE terminates this LEASE in accordance with subparagraphs C. or D. above, then, in such event, LESSEE agrees to reasonably cooperate with any successor tenants of the Applicable Premises with respect to planting, cultivation and harvesting in order for such tenants to have access to the Applicable Premises over the Premises – if such access is the typical method of accessing the Applicable Premises (upon terms and conditions provided in this LEASE for access by private parties) and to reasonably coordinate such operations with LESSEE's operations on the remaining portion of the Premises.

F. (i) LESSOR, in its sole discretion, and without payment or consideration

of any kind to LESSEE whatsoever, shall have the right to terminate this LEASE for (x) portion(s) of the Premises in an amount not to exceed 10,000 acres in the aggregate (in portions of land which shall be comprised of no less than 2,000 contiguous acres) (collectively, the "First Partial Release") which are to be used in connection with or related to an SFWMD approved restoration project ("Restoration Project") or in exchange for property necessary for the Restoration Project, and/or (y) portion(s) of the Premises in an amount not to exceed 3,000 acres in the aggregate in connection with transfers of such portion(s) of the Premises by LESSOR to municipalities or other governmental entities (each, a "Governmental Transferee"), with the understanding that if any applicable portion of the Premises is then under cultivation of sugar cane by LESSEE, such transfer to the Governmental Transferee shall be made subject to the terms and conditions of the LEASE (other than the ROFR under Paragraph 39, below) and if any applicable portion of the Premises is not then under cultivation of sugar cane by LESSEE, such transfer shall be made free and clear of the LEASE. In the case of each of clauses (x) and (y) above, LESSOR shall provide written notice to LESSEE at least one (1) year prior to any May 1st, as to the portion of the Premises used for LESSEE's sugar operations, and any July 1st, as to the portion of the Premises used for LESSEE's citrus operations, whereupon this LEASE shall terminate as to such portion(s) of the Premises on such May 1st and July 1st, respectively. In the event of such termination, (x) LESSEE shall be deemed to have a non-exclusive right of access until the Expiration Date over and across paved or unpaved roadways or pathways within the portion of the Premises released under this subparagraph as reasonably necessary for LESSEE to continue to have access to the remaining portion of the Premises that is then still subject to the terms of this LEASE and (y) LESSOR shall be deemed have the right to have access over and across paved or unpaved roadways or pathways within the remaining portion of the Premises subject to this LEASE as reasonably necessary for LESSOR to continue to have access to the portion of the Premises that has been released under this subparagraph.

(ii) LESSOR, in its sole discretion, shall have the additional right to terminate this LEASE for portion(s) of the Premises which are to be used (x) in connection with or related to a Restoration Project or (y) in exchange for property necessary for a Restoration Project, which portion(s) of the Premises shall in no event exceed 30,000 acres in the aggregate (in portions of land which shall be comprised of no less than 10,000 contiguous acres), (collectively, the "Second Partial Release"), by providing written notice to LESSEE on or before December 15, 2013 thereof, whereupon this LEASE shall terminate as to such portion(s) of the Premises on December 15, 2015.

(iii) Notwithstanding the foregoing, LESSEE, at LESSEE's risk, may elect, by prior written notification to LESSOR, to continue farming operations on the real property as to which this LEASE has been terminated pursuant to a First Partial Release or a Second Partial Release, as applicable, until LESSOR, in its sole and absolute discretion: (x) notifies LESSEE in writing that such farming operations are incompatible with the applicable Restoration Project and directs LESSEE to cease operations on the date set forth in such notice; or (y) in the event that the First Partial Release or the Second Partial Release is being exchanged with property owned by another party, notifies LESSEE in writing that the farming operations of such exchange property owned by such other party are incompatible with the applicable Restoration Project and that such other party has been notified of such in writing and has been directed to vacate its property and that LESSEE is directed to cease operations on the date set forth in such notice. If LESSEE elects to continue farming operations, LESSOR hereby grants LESSEE a revocable license to continue such farming operations, which may only be revoked

upon the occurrence of (x) or (y) above; provided, however, that as consideration for such revocable license, LESSEE hereby agrees that all of the payment and performance terms, conditions and obligations of LESSEE under this LEASE, and all rights and remedies of LESSOR hereunder, shall remain in full force and effect with respect to each portion of the property LESSEE continues to farm pursuant to this subparagraph (iii). Each such revocable license granted by LESSOR shall automatically terminate upon the occurrence of any Default by LESSEE under this LEASE or the date of set forth in LESSEE's revocation notice set forth hereinabove. Except as provided above, from and after the date LESSEE vacates a portion of the Premises that comprises a First Partial Release and/or Second Partial Release, as applicable, the annual Rent shall be reduced by Fifty and No/100 Dollars (\$50.00) multiplied by the acreage of the applicable First Partial Release and/or Second Partial Release. LESSOR and LESSEE hereby agree to use mutually reasonable efforts in order for LESSOR to provide LESSEE with as much time as possible when giving its notice to vacate the First Partial Release and/or Second Partial Release, as applicable, as provided in this subparagraph (iii).

G. In the event any portion of the Premises is transferred with a reservation of LESSEE's rights as provided for in this Paragraph 4, LESSOR and LESSEE agree that they shall record a memorandum of this LEASE in the public records of the applicable Counties memorializing the reservations set forth in this Paragraph 4 such that each applicable reservation is binding on such transferee, LESSOR, LESSEE and their respective successors and assigns.

5. **Rent:**

A. As consideration for the rights conferred upon LESSEE by LESSOR pursuant to this LEASE, LESSEE shall pay, in advance, to LESSOR a quarterly rental in the amount of * _____ * ("Rent" representing twenty-five percent (25%) of Fifty and No/100 Dollars (\$50.00) per acre multiplied by * _____ * acres [*NOTE - ACTUAL ACREAGE OF PREMISES FROM THE FINAL APPROVED SURVEYS SHALL BE INSERTED AT CLOSING*], which shall be payable (i) on the Commencement Date on a pro-rated based on the number of days for the period beginning on the Commencement Date through and including the last day of the calendar quarter in which the Commencement Date falls and (ii) on the first day of each calendar quarter (i.e. January 1st, April 1st, July 1st, and October 1st) thereafter, through and including the first day of thereafter through and including the final calendar quarter of the sixth year of the Lease Term (with the understanding that Rent shall not be payable during the last twelve (12) months of the Lease Term, i.e., July 1, 2015 to June 30, 2016), together with all applicable sales and use taxes. In addition, LESSEE shall be responsible for payment of any and all Additional Rent (as defined in Paragraph 5.C. below) throughout the Lease Term as and when due under the terms of this LEASE.

B. All payments of Rent, as well as all other amounts due under this LEASE from LESSEE to LESSOR shall be made to LESSOR at the following address:

South Florida Water Management District
Attention: _____
Post Office Box 24680
3301 Gun Club Road
West Palm Beach, Florida 33406

RE: Contract # _____

C. This LEASE shall be totally and absolutely net to LESSOR. In addition to the Rent and Additional Rent stated above, LESSEE shall pay all charges for gas, water, sewer, waste removal, dumpster charges, janitorial services, electricity, telephone, and other utility services used by LESSEE in connection with the Premises during the Lease Term and any and all other costs, expenses, taxes or obligations of every kind related to the Premises and the use, operation, occupancy thereof during the Lease Term, including obligations arising under recorded or unrecorded documents encumbering or relating to the Premises, if any (to the extent such recorded or unrecorded documents exist on the day immediately preceding the Commencement Date). Without limiting the foregoing, if any charges, costs, expenses, taxes or other monetary obligations of LESSEE under this LEASE are not paid by LESSEE as and when due, after expiration of all applicable grace and notice periods, LESSOR, without limiting any of its other rights and remedies under this LEASE, shall have the right, but not the obligation, to pay any of the foregoing, and the amount of the expense or cost of any such obligations so paid by LESSOR shall thereupon become due to LESSOR from LESSEE within five (5) days following LESSOR's written demand, together with interest accruing on such amount at the highest rate allowed by law if not paid to LESSOR within such five (5) day period, as "Additional Rent".

D. If any Rent due from LESSEE to LESSOR hereunder is not received by LESSOR on or before the date due, then, in addition to all other rights and remedies available to LESSOR under this LEASE, LESSOR at LESSOR's sole option may either: (i) charge LESSEE a late fee equal to five percent (5%) of the installment of Rent not paid when due; or (ii) charge interest on the installment of Rent not paid when due at the highest rate allowed by law from the date due until the date received by LESSOR in immediately available funds.

6. Real Estate Taxes:

A. LESSEE understands and agrees that upon execution of this LEASE, the Property shall be placed upon the tax rolls of the county in which the Premises is located without state government exempt status, but with any agricultural use exemption that LESSEE obtains, provided that LESSEE shall be solely responsible for obtaining and maintaining the agricultural exemption. LESSOR agrees that it will not take any affirmative action during the Lease Term which removes the agricultural use exemption. LESSOR may, in LESSOR'S sole and absolute discretion, record a Memorandum of LEASE, executed by the LESSOR. LESSEE shall pay all real property taxes, intangible property taxes and personal property taxes, as well as all assessments, including but not limited to pending, certified, confirmed and ratified special assessment liens, accrued or levied with respect to the Premises or this LEASE during the Lease Term. The amount of taxes or assessments will be determined by the county property appraiser. LESSEE acknowledges that it shall be liable for such real property taxes, personal property taxes and intangible taxes, and assessments as are applicable for the Premises and this LEASE, during the period in which this LEASE is in effect.

B. LESSEE shall pay such taxes and assessments promptly upon receipt of an assessment notice from the taxing authority but no later than their due date, and shall furnish proof of such payment to the LESSOR's Division of Procurement and Contract Administration (see Paragraph 5.B. above) within 30 days of payment. Any penalties or late fees incurred for

failure to pay said taxes and assessments shall be the responsibility of the **LESSEE**.

C. With respect to **LESSEE**'s obligation to pay real estate taxes under this **LEASE**, in the event the assessing authority permits any tax assessments to be paid in installments, **LESSEE** may exercise the option to pay the same in installments and shall pay all such installments that relate to the Lease Term as the same respectively become due and before they become delinquent, and provided that any such assessments which relate to a fiscal period for the taxing authority, part of which period is included in the Lease Term and a part of which is included in a period of time prior to or after the Lease Term, shall be allocated and prorated between **LESSOR** and **LESSEE** as of the Expiration Date of this **LEASE**. Taxes shall be prorated based on the tax for the year of the Expiration Date with due allowance made for exemptions and/or special classifications, if any. If the assessment for the year of the Expiration Date is not available, then taxes will be prorated on the prior year's tax. Any tax proration based on an estimate shall be subsequently readjusted at the request of either Party upon receipt of a tax bill. Upon the Expiration Date, **LESSEE** shall pay all real property taxes accrued with respect to the Premises in accordance with Section 196.295, Florida Statutes, if applicable. The provisions of this subparagraph shall survive the Expiration Date.

D. **LESSEE** shall have the right to contest the amount or validity of any real property taxes or any assessment liens ("Tax Claims"), by appropriate legal proceedings in good faith and with due diligence, provided that this shall not be deemed or construed in any way as relieving, modifying or extending **LESSEE**'s covenants to pay or its covenants to cause to be paid any such charges at the time and in the manner provided in this **LEASE** or operate to relieve **LESSEE** from its other obligations hereunder, and shall not cause the sale of the Premises, or any part thereof, to satisfy the same. **LESSOR** agrees to join in any such proceedings if the same is necessary or required by **LESSEE** to legally prosecute such contest of the validity of such Tax Claims upon the reasonable request of **LESSEE**; provided, however, **LESSOR** will not be required to join in any such proceeding wherein the Tax Claims are imposed by **LESSEE**, provided **LESSOR** does not require its own joinder in connection with such Tax Claims. **LESSEE** shall be entitled to any refund of any Tax Claims and such charges and penalties or interest thereon which have been paid by **LESSEE**. In the event that **LESSEE** fails to pay any Tax Claims when due or fails to diligently prosecute any contest of the same, **LESSOR** may, upon thirty (30) days advance written notice to **LESSEE**, pay such charges together with any interest and penalties and the same shall be repayable by **LESSEE** to **LESSOR** pursuant to Paragraph 5.C above; provided that, should **LESSOR** reasonably determine that the giving of such notice would risk loss to the Premises, or portion thereof, then **LESSOR** shall give such written notice as is appropriate under the circumstances. Nothing herein shall be deemed to limit **LESSOR**'s right to file any Tax Claims for any real property taxes or any assessment liens that are imposed for the period after the Expiration Date.

7. Default; Remedies:

A. Failure by the **LESSEE** to perform or abide by any material term, provision, covenant, agreement, undertaking or condition of this **LEASE**, after the expiration of all applicable grace and notice periods, if any, set forth in this **LEASE**, including Paragraph 4.A above, shall constitute a material default (a "Default") of this **LEASE** for which the **LESSOR** may exercise all such rights and remedies as provided at law, in equity or under this **LEASE** (provided, however, that the foregoing materiality standard for the failure to perform or abide by

a term, provision, covenant, agreement, undertaking or condition of this LEASE shall not apply to any such matter that is already qualified to a materiality standard). Without limiting the foregoing, notwithstanding the notice and cure rights under Paragraph 4.A above, the failure of LESSEE to comply with any of the following within the cure period, if any, specified for any such breach or failure, shall constitute an immediate Default by LESSEE under this LEASE:

(1) Failure of LESSEE to pay any installment of Rent hereunder when payment is due. Notwithstanding the foregoing, LESSEE shall have one (1) five day grace period following written notice of non-payment from LESSOR of one installment of Rent in any twelve (12) month period during the Term of this LEASE.

(2) Failure of LESSEE to pay any Additional Rent or other monetary obligation within five (5) days following LESSOR's written demand therefore.

(3) Failure of LESSEE to maintain all insurance coverages required hereunder in full force and effect at all times during the Term of this LEASE.

(4) Failure of the LESSEE to replenish the Security Deposit in accordance with Paragraph 33.B. of this LEASE.

B. Upon the occurrence of a Default under this LEASE, LESSOR shall have the right, with or without notice or demand, to exercise all such rights and remedies granted or available under this LEASE, the laws of the State of Florida, federal law and/or common law (including, without limitation, the right to terminate this LEASE) without limiting any of the other remedies that LESSOR may have under this LEASE.

C. Mediation: In the event a dispute arises which the Parties cannot resolve between themselves, the Parties shall have the option to submit to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the Parties, and the cost of the mediation shall be borne equally by the Parties. The mediation process shall be confidential to the extent permitted by law.

8. **Notices:** All notices to the LESSEE under this LEASE shall be in writing and sent by certified mail return receipt requested, any form of overnight mail delivery or hand delivery to:

If to LESSEE: c/o United States Sugar Corporation
111 Ponce de Leon Avenue
Clewiston, Florida 33440
Attention: Malcolm S. (Bubba) Wade, Jr. and
Edward Almeida, Esq.
Fax (863) 902-2120

With a copy to: Gunster, Yoakley & Stewart, P.A.
Attorneys At Law
Las Olas Centre
450 East Las Olas Boulevard, Suite 1400
Fort Lauderdale, FL 33301-4206
Attention: Rick Burgess, Esq. and Robert

Hackleman, Esq.
Fax: (954) 523-1722

If to LESSOR: South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406
Attention: Executive Director and General Counsel
Telefax: (561) 681-6233

With a copy to: Chairman of the Governing Board
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406
Attention: Executive Director
Telefax: (561) 681-6233

With a copy to: Florida Department of Environmental Protection
3900 Commonwealth Boulevard, M.S. 49
Tallahassee, FL 32399
Attention: Secretary
Telefax: 850-245-2021

All notices required by this LEASE, provided they are addressed as set forth above, shall be considered delivered: (i) on the date delivered if by hand delivery, (ii) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed by certified mail return receipt requested and (iii) one day after such notice is deposited with any form of overnight mail service for next day delivery. Either Party may change its address by providing prior written notice to the other of any change of address.

9. **Relationship between Parties:** Nothing contained in this LEASE shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the Parties hereto other than the relationship of LESSOR and LESSEE.

10. **Assignment and Subletting:**

A. The LESSEE shall not assign, delegate or otherwise transfer all or any part of its rights and obligations as set forth in this LEASE collectively ("Assignment") or sublease all or any portion of the Premises ("Sublease") without the prior written consent of the LESSOR in each instance, which consent may be withheld by LESSOR in LESSOR's sole and absolute discretion; provided, however, that notwithstanding the foregoing, LESSOR's consent to an Assignment shall not be unreasonably withheld so long as LESSEE complies with subparagraph C. below. Any Assignment made by LESSEE without the prior written consent of LESSOR shall be void and of no force or effect.

B. In the event LESSOR does permit an Assignment by LESSEE, then the assignee shall automatically be deemed to have assumed all duties, responsibilities and obligations of LESSEE under this LEASE from and after the effective date of the Assignment

(including, without limitation, the funding of the Security Deposit Fund pursuant to **Paragraph 33.B.** below) and the LESSEE shall, upon such Assignment, be automatically released of its duties, responsibilities or obligations under this LEASE from and after the effective date of the Assignment; provided, however, that LESSEE shall not be released with respect any of the representation, warranties, duties, responsibilities, liabilities or obligations under this LEASE for matters or conditions arising, occurring or existing prior to the effective date of any Assignment. Any sale or other transfer of at least a fifty percent (50%) majority interest of the voting stock of LESSEE if LESSEE is a corporation (including by way of merger or consolidation), or any sale or other transfer of at least fifty percent (50%) of the general partnership interest in the event LESSEE is a general partnership or limited partnership, shall constitute an Assignment for purposes of this LEASE.

C. If LESSEE shall desire LESSOR's consent to any Assignment, LESSEE shall notify LESSOR, which notice shall include: (a) the name and address of the proposed assignee; (b) the proposed effective date (which shall not be less than 45 nor more than 180 days after LESSEE's notice); (c) reasonable evidence that the proposed assignee has the financial ability to perform its obligations under this LEASE; and (d) reasonable evidence that the proposed assignee is experienced in the operation of the Premises for agricultural operations, and such other information as LESSOR may reasonably require. In the event that LESSOR does not provide written notice of its approval or disapproval of a proposed Assignment within thirty (30) days after receipt of written request from LESSEE, then such Assignment shall be deemed to be approved by LESSOR.

D. Notwithstanding anything herein to the contrary, LESSEE shall have the right to assign its rights under this LEASE to an affiliate or subsidiary of LESSEE (i.e., an entity in which at least one of the entities comprising LESSEE owns more than a 50% voting interest or otherwise effectively controls the same), without LESSOR's consent, provided, however, LESSEE agrees to give LESSOR a copy of the fully executed assignment and assumption of this LEASE evidencing such transfer and LESSEE shall not be released from its obligations hereunder.

E. Notwithstanding anything to the contrary contained in this LEASE, including this **Paragraph 10.**, LESSEE shall have the right to enter into licenses or Subleases for other parties to use all or portions of the Premises for agricultural crop production without LESSOR's consent to the extent the same are entered into in the ordinary course of LESSEE's business consistent with past practices and such licensee or sublessee agrees to comply with Best Management Practices.

F. Notwithstanding anything to the contrary contained in this LEASE, upon the Expiration Date, LESSEE shall assign to LESSOR all permits obtained by LESSEE in connection with the Premises to the extent such permits are assignable. To the extent that any licenses or permits that are required for the operation of the Permitted Uses have been assigned to LESSOR prior to or during the Lease Term, then LESSOR shall take such actions as are reasonably requested by LESSEE in order to maintain such licenses and permits in full force and effect during the Lease Term.

11. **Permits and Approvals:**

A. The **LESSEE** shall obtain all federal, state, local, and other governmental approvals and permits necessary for the occupancy, use, maintenance and operation of the Premises, as well as all necessary private authorizations and permits prior to the Commencement Date and shall maintain same throughout the term of this **LEASE**. Within five (5) days of demand by **LESSOR** to **LESSEE**, **LESSEE** shall provide and/or make available to **LESSOR** copies of all permits and authorizations that **LESSEE** is required to obtain pursuant to the provisions of this **LEASE**.

B. The **LESSEE** shall also obtain, and maintain throughout the term of this **LEASE**, any and all applicable **LESSOR** (South Florida Water Management District) permits, including but not limited to **LESSOR** Right of Way Permits and Consumptive Use Permits, as well as permits required by any of the Counties, if applicable. **LESSEE** acknowledges that there is no guarantee that **LESSEE** will receive any permits.

C. The **LESSEE** shall be responsible for compliance with all permit terms and conditions applicable to the Premises, including but not limited to those terms and conditions required by Environmental Resource Permits, Consumptive Use Permits, Surface Water Management Permits, Wetlands Resource Management Permits, Works of the District Permits, and Right of Way Permits issued by **LESSOR** with respect to the Premises. **LESSEE** further acknowledges that **LESSEE's** responsibility for compliance with all permit terms and conditions applicable to the Premises, shall include, but not be limited to, operating and maintaining the surface water management system and mitigation areas on the Premises in accordance with all permit requirements.

12. **Compliance with Laws, Rules, Regulations and Restrictions:** **LESSEE** shall comply with, and be the responsible entity for remedying all violations of, all applicable federal, state, local and **LESSOR** laws, ordinances, rules and regulations, permits, and private restrictions, applicable to the Premises and **LESSEE's** operations conducted thereon and occupancy thereof, as well as **LESSEE's** performance of this **LEASE**. **LESSOR** undertakes no duty to ensure such compliance. All rules and regulations under Chapter 373, Florida Statutes pertaining to the Premises remain in full force and effect.

13. **Indemnification:** For good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the **LESSEE** shall defend, indemnify, save, and hold the **LESSOR** harmless from and against any and all claims, suits, judgments, loss, damage and liability incurred by **LESSOR**, including but not limited to reasonable attorney's fees and costs incurred by **LESSOR**, ("**Loss**") which arise(s) directly, indirectly or proximately as a result of **LESSEE's** or its officers', employees', contractors' or agents' use or occupation of the Premises, its operations conducted on the Premises, or from the performance or non-performance of any term, condition, covenant, obligation or provision of this **LEASE** by **LESSEE**, even if such **Loss** is caused by negligence on the part of **LESSOR**, but not **LESSOR's** or its officers' or employees' gross negligence or willful misconduct. **LESSEE** acknowledges that it is solely responsible for compliance with the terms of this **LEASE**. **LESSOR** shall have the absolute right to choose its own legal counsel in connection with all matters indemnified for and defended against herein and to the extent that **LESSEE** is providing such defense, **LESSEE** shall have the right, to the fullest extent permitted by law, to assert any defenses that are available to **LESSOR** in such matter.

14. **LESSEE's Property at Risk:** All of LESSEE's personal property, equipment and fixtures located upon the Premises shall be at the sole risk of LESSEE and LESSOR shall not be liable under any circumstances for any damage thereto or theft thereof. In addition, LESSOR shall not be liable or responsible for any damage or loss to property or injury or death to persons occurring on or adjacent to the Premises resulting from any cause, including but not limited to, defect in or lack of repairs to the improvements located on the Premises, unless the same is caused by LESSOR's gross negligence or willful misconduct..

15. **Attorney's Fees:** In any litigation arising out of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and costs from the other Party.

16. **Insurance:**

A. **Types of Insurance.** To the extent applicable and unless otherwise agreed to in writing by the LESSOR, including, without limitation, to the extent provided in **Schedule "5"**, LESSEE shall procure and maintain throughout the Lease Term at LESSEE's sole cost and expense the following types of insurance with deductibles acceptable to LESSOR but in no event greater than \$100,000 (unless otherwise agreed to herein and other than with respect to windstorm, which deductible shall not exceed 5% of the total insurable value):

(1) **Worker's Compensation Insurance.** If applicable, LESSOR shall provide workers' compensation subject to statutory limits and employers liability in the amount of ONE MILLION AND 00/100 DOLLARS (\$1,000,000).

(2) **Liability Insurance.** (A) Comprehensive General Liability Insurance relating to the Premises and its improvements and appurtenances, which shall include, but not be limited to, Premises and Operations, Independent Contractors, Products and Completed Operations and Contractual Liability. Coverage shall be no more restrictive than the latest edition of the Commercial General Liability policies of the Insurance Services Office (ISO). This policy shall provide coverage for death, bodily injury, personal injury, and property damage that could arise directly, indirectly or proximately from the performance of this LEASE. The minimum limits of coverage shall be \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate for Bodily Injury Liability and Property Damage Liability and (B) Umbrella liability insurance containing minimum limits of Fifty Million and No/100 Dollars (\$50,000,000.00) for the Premises and shall follow form to the underlying General Liability The limits of liability insurance shall in no way limit or diminish LESSEE's liability under **Paragraph 13** hereof.

(3) **Business Automobile Liability Insurance.** Business Automobile Liability Insurance protecting LESSEE which shall have minimum limits of \$5,000,000 per occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall be an "any-auto" type of policy including owned, hired, non-owned and employee non-ownership coverage.

(4) **Casualty Insurance.** Property insurance insuring against loss or damage customarily included under so called "all risk" or "special form" policies covering fire, lightning, vandalism, and malicious mischief, and including loss caused by any type of windstorm or hail (including Named Storms) on all Improvements and Personalty To the extent commercially available, coverage must also include Certified Acts of Terrorism per the current

Terrorism Risk Insurance Reauthorization Act of 2007 or any subsequent act, reauthorization or extension thereof. Said Property coverage on the Improvements shall (A) be in an amount equal to one hundred percent (100%) of the full replacement cost with a waiver of depreciation; and (B) contain an agreed amount endorsement with respect to the Property waiving all co-insurance provisions or to be written on a no co-insurance form .

(5) **Environmental Impairment Insurance.** Environmental Impairment Insurance with limits and in form and substance acceptable to LESSOR, in its sole and absolute discretion, with a maximum deductible of \$250,000 and a policy term extending through the Expiration Date of this LEASE. Said policy must provide coverage for on-site clean-up and third-party claims for unknown pre-existing conditions & new conditions. Coverage must also include business interruption on an actual loss sustained basis and coverage for natural resource damage. Coverage must include above ground storage tanks and any other equipment with a risk of causing environmental impairment.. Acquisition of this insurance shall in no way limit or diminish LESSEE's liability under **Paragraph 19** hereof.

B. Proof of Insurance. LESSEE shall provide LESSOR with current insurance certificates or proof of self-insurance (for Worker's Compensation Insurance) evidencing all insurance required pursuant to this LEASE as proof of insurance prior to the Commencement Date and each year, upon renewal, thereafter. Upon request, LESSEE shall provide LESSOR with complete copies of the policies. All insurance required under this LEASE shall be written on a financially sound company acceptable to LESSOR with a rating of "A VIII" or better with AM Best or "A" or better with S&P and shall name LESSOR as loss payee and as additional insured as their interests may appear as applicable and shall contain a waiver of subrogation in favor of LESSOR.

C. Notice of Insurance Cancellation. LESSEE shall notify LESSOR at least fifteen (15) days prior to cancellation or modification of any insurance required by this LEASE. Insurance required under **Paragraphs 16.A. (1) (2), (3), (4), and (5)** above of this LEASE shall contain a provision that it may not be cancelled or modified until thirty (30) days after written notice to LESSOR. In the event LESSEE fails to obtain and keep any insurance required hereunder in full force and effect, LESSOR may at its option obtain such policies and LESSEE shall pay to LESSOR the premiums therefore, together with interest at the maximum rate allowed by law, upon demand as "Additional Rent". Without limiting the foregoing, LESSEE's failure to obtain, pay for and keep any insurance required hereunder in full force and effect and unmodified (unless LESSEE has obtained LESSOR's prior written consent for any such modification) shall constitute an Event of Default under this LEASE.

D. Subcontractor Insurance. It shall be the responsibility of LESSEE to ensure that all subcontractors are adequately insured or covered under its policies.

E. Business Interruption Insurance & Crop Insurance for Loss of Revenue/Yield. To the extent applicable and unless otherwise agreed to in writing by the LESSOR (A) Business Interruption insurance (1) covering all risks required to be covered by the insurance provided for in subsection (iv) above and (2) on an actual loss sustained basis for the period of restoration in an amount equal to one hundred percent (100%) of the projected gross revenues from the operation of the Property for a period of at least eighteen (18) months after the date of casualty and (3) containing an additional extended period of indemnity endorsement

which provides that after the physical loss to the Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss or twelve 12 months, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. In no event shall the period of indemnification, including the extended period of indemnity, be less than thirty (30) months. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on LESSEE's reasonable estimate of the gross revenues from the Property for the succeeding twenty-four (24) month period; and (B) Crop Insurance providing revenue protection or coverage against yield losses Except in the case of a monetary Default under this Agreement or as otherwise set forth in this Agreement, however, in no event shall LESSOR have any claim to any business interruption insurance that LESSEE may procure (or proceeds thereof).

F. Casualty. Notwithstanding anything to the contrary in this LEASE, in the event of a casualty, LESSEE shall be obligated to restore the Premises.

(1) Notwithstanding the foregoing, in the event of a loss or damage to all or any portion of the Premises due to fire or other casualty that causes seventy-five percent (75%) or more of the Premises to be destroyed or damaged during the Lease Term, then LESSEE shall have the option to restore such loss or damage, by electing to do so in a written notice to LESSOR within thirty (30) days after such loss or damage.

(2) In the event that LESSEE elects to restore such loss or damage pursuant to subparagraph 16.F.(1) above, then LESSEE and LESSOR shall endorse any checks received so that the insurance proceeds can be paid into a bank account controlled by a mutually and reasonably acceptable third party escrow agent that will disburse the insurance proceeds to LESSEE from time to time as restoration progresses in order for LESSEE to timely pay all invoices related to same in accordance with the terms of a mutually and reasonably agreed upon escrow agreement, with any excess or surplus following completion of restoration to be paid to LESSEE. To the extent of any loss or damage to the Premises less than or equal to \$500,000, LESSOR's consent shall not be required for the type, plans or manner of such restoration; provided, however, that prior to commencement of the restoration LESSEE shall provide LESSOR with a description of the restoration process, an evaluation of the proposed restoration that demonstrates that the same production capacity (if applicable) that was actually achieved prior to such loss or damage will be met after the restoration is complete. No later than forty-five (45) days after completion of the restoration, LESSEE shall notify LESSOR in writing of such completion and shall provide a certificate from the licensed engineer and/or architect that was engaged by LESSEE in connection with the restoration or, if none, a licensed engineer and/or architect that is reasonably acceptable to both parties, which certification (i) identifies the loss or damage to the Premises, (ii) identifies the nature and the amount of costs incurred by LESSEE in restoring the loss or damage, (iii) states that the restoration costs incurred were reasonable to perform the restoration in accordance with all applicable laws, and (iv) if applicable, states that the restoration work is substantially complete and that the restored facility is at least comparable in production capacity to that which was actually achieved immediately prior to the casualty loss or damage.

(3) In the event that LESSEE does not restore such loss or damage as provided above, then insurance proceeds for the property damage shall be paid by LESSEE's

insurer to LESSOR with all other recoveries being paid to LESSEE.

(4) Notwithstanding anything contained in this LEASE to the contrary, to the extent of any loss or damage to the Premises less than or equal to \$500,000, LESSEE shall have the exclusive right to settle and adjust any claim with its insurance company, at its sole cost and expense, regarding the amount to be paid for any loss or damage under insurance as to which LESSOR is named as an additional insured and/or loss payee without LESSOR's participation or consent (except that LESSOR shall cooperate in executing any documents/assignments relating to such settlement or adjustment, upon LESSEE's request); otherwise, to the extent of any loss or damage to the Premises greater than \$500,000, LESSOR shall have the right (i) to participate with LESSEE in the adjustment, collection and compromise of any and all claims under all Property insurance policies and (ii) during any Event of Default, to execute and deliver on behalf of LESSEE all necessary proofs of loss, receipts, vouchers and releases required by the insurers. If LESSEE does not restore any loss or damage to the Premises as provided in subparagraph 16.F.(1) above, then LESSOR shall have the exclusive right to settle and adjust any claims with the insurance company, at its sole cost and expense, for insurance proceeds for property damage under insurance as to which LESSOR is named as an additional insured and/or loss payee without LESSEE's participation or consent (except that LESSEE shall cooperate in executing any documents/assignments relating to such settlement or adjustment, upon LESSOR's request). Except in the case of a monetary Default under this Agreement or as otherwise set forth in this Agreement, however, in no event shall LESSOR have any claims or rights with respect to any business interruption or business income insurance proceeds which are payable under any insurance maintained by LESSEE.

(5) In the event of a loss or damage to all or any portion of the Premises due to fire or other casualty during the Lease Term, no abatement of rent will occur.

17. **Notice to LESSOR Concerning Specific Acts:** The LESSEE agrees to immediately report any incidence of the following to the LESSOR:

A. Fire (other than controlled burning permitted pursuant to the terms of this LEASE)

B. Death or injury resulting in potential death or permanent disability.

C. Poaching and trespassing

D. Any hazard, condition or situation that is reasonably likely to (i) become a material liability to the LESSOR, or (ii) materially damage the Premises or improvements on the Premises of the LESSOR.

E. Any activity observed by LESSEE on the Premises that LESSEE should reasonably know is a violation of rules and regulations promulgated by the LESSOR, the Florida Fish and Wildlife Conservation Commission or any other State or local agency.

F. Any written notice of any violation of applicable Federal, State or local laws received by LESSEE from the applicable governmental authority.

G. Disposition of pollutants or contaminants per Paragraph 18 hereof.

18. Hazardous Materials and Pollutants.

A. For purposes of this LEASE:

(1) "Pollutant" shall mean any hazardous or toxic substance, chemical, material, or waste of any kind, petroleum, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws.

(2) "Disposal" shall mean Pollution as defined in § 376.301(37) of the Florida Statutes Annotated (provided that for purposes of this Paragraph 18.A(2), "pollutants" in § 376.301(37) shall mean Pollutants as defined in Paragraph 18.A(1) of this LEASE) and the release, storage, use, handling, discharge or disposal of Pollutants.

(3) "Environmental Laws" shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

B. During the Lease Term, LESSOR shall have the right to cause the Premises to be monitored in accordance with the Best Management Practices to be developed by mutual agreement by LESSOR and LESSEE.

C. Prior to the Commencement Date, LESSOR has performed Buyer's Environmental Assessment pursuant to the Agreement for Sale and Purchase and performed sampling in those areas of the Premises where LESSOR identified concerns regarding the likely presence of Pollutants. Pursuant to the Agreement for Sale and Purchase, LESSOR has agreed to perform certain responsibilities for the Remediation of the Pollutants Identified in the Buyer's Environmental Assessment. LESSEE and LESSOR have no responsibility or liability under the terms of this LEASE for the Remediation of the Disposal of Pollutants Identified in Buyer's Environmental Assessment and such Disposal of Pollutants that occurred prior to the Commencement Date.

D. LESSEE shall not cause or permit the Disposal of any Pollutants upon the Premises, or upon adjacent lands, during the Lease Term, which violates Environmental Laws. Any Disposal of a Pollutant, whether caused by LESSEE or any other third party, in violation of Environmental Laws shall be reported to LESSOR immediately upon the knowledge thereof by LESSEE.

E. Within ninety (90) days, or such longer time as is reasonably necessary, of delivery of notice from LESSOR to LESSEE, and except as otherwise provided in subparagraph C, above, LESSEE shall be solely responsible, at LESSEE's sole cost and expense, for commencing and thereafter performing, or causing to be performed, any and all assessments, cleanup and monitoring (collectively, "Remediation") of all Pollutants disposed of or otherwise discovered on the Premises or emanating from the Premises to adjacent lands, in violation of Environmental Laws, as a result of use or occupation of the Premises or surrounding lands by LESSEE, its agents, licensees, invitees, subcontractors or employees during the Lease Term (provided, however, that the foregoing shall not in any way limit any liability, obligations or rights of LESSEE or LESSOR, to the extent independently arising under the Agreement for Sale and Purchase, as modified and amended). In the event Remediation is necessary as required in the previous sentence, then LESSEE shall furnish to LESSOR within a reasonable period of time written proof from the appropriate local, state and/or federal agency with jurisdiction over

the Remediation that the Remediation has been satisfactorily completed in full compliance with all Environmental Laws.

F. LESSEE understands and acknowledges LESSOR'S intended use for portions of the Premises as an everglades restoration project (hereinafter referred to as "LESSOR's Intended Use") and that it is imperative that LESSEE's use of chemicals be monitored in accordance with the Best Management Practices to prevent the release of chemicals in concentrations that may have adverse impacts which jeopardize LESSOR's Intended Use, including, but not limited to, adverse impacts to human health or fish and wildlife. Material non-compliance with the Best Management Practices by LESSEE its agents, licensees, invitees, subcontractors or employees during the Lease Term, after expiration of applicable grace and notice periods, shall constitute a Default under this LEASE.

G. For good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, LESSEE shall indemnify; defend and hold harmless LESSOR, from and against any and all claims, suits, judgments, loss, damage, and liability which may be incurred by LESSOR, including but not limited to LESSOR's reasonable attorney's fees and costs, which arises directly, indirectly or proximately as a result of the Disposal of any Pollutants which violate Environmental Laws and are caused by LESSEE, its agents, licensees, invitees, subcontractors or employees with respect to the Premises during the Lease Term. This responsibility shall continue to be in effect for any Disposal of Pollutants in violation of Environmental Laws for which LESSOR provides written notice to LESSEE on or before the third anniversary of the Expiration Date.

H. While this Paragraph 18 establishes contractual liability for LESSEE regarding Disposal of Pollutants on the Premises as provided herein, it does not alter or diminish any statutory or common law liability of LESSEE for such Disposal of Pollutants, except to the extent provided in subparagraph C above.

I. The provisions of this Paragraph 18 shall survive for three years after the Expiration Date.

19. **Discrimination:** The LESSEE shall ensure that no person shall, on the grounds of race, color, creed, national origin, handicap, or sex, be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in any activity under this LEASE. The LESSEE shall take all measures necessary to effectuate these assurances.

20. **Publicity:** Prior to engaging in any discussions with the news media pertaining to this LEASE, the LESSEE shall notify the LESSOR'S Office of Communications and obtain LESSOR's prior written consent, which may be given electronically. This includes news releases, media requests for interviews, feature articles, fact sheets, or similar promotional materials.

21. **Affidavit Regarding Ability to Enter into LEASE with State Agency:** The LESSEE, by its execution of this LEASE, acknowledges and attests that neither it, nor any of its suppliers, subcontractors, or consultants who shall perform work which is intended to benefit the LESSOR is a convicted vendor or, if the LESSEE or any affiliate of the LESSEE has been convicted of a public entity crime, a period longer than 36 months has passed since that person was placed on the convicted vendor list. The LESSEE further understands and accepts that this

LEASE shall be either voidable by the **LESSOR**, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133, F.S. The **LESSOR**, in the event of such termination, shall not incur any liability to the **LESSEE** for any work or materials furnished.

22. **Vacation of Premises:** Upon the expiration or termination of this **LEASE**, the **LESSEE** shall promptly vacate and surrender the Premises to **LESSOR**. The **LESSEE** shall remove all personal property of the **LESSEE** and shall restore the Premises to its original condition existing as of the Commencement Date of this **LEASE**, subject to reasonable wear and tear, casualty not subject to restoration pursuant to Paragraph 16.F and property taken by condemnation pursuant to Paragraph 36, within a period not to exceed five (5) calendar days from the Expiration Date. Notwithstanding anything in this **LEASE** to the contrary, **LESSEE**, at its sole cost and expense, shall clean up and remove all abandoned personal property (including but not limited to mobile home trailers), refuse, garbage, junk, rubbish, solid waste, trash and debris from the Premises and shall deliver the Premises with cane stubble thereon to the extent the same exists from the then last harvest and, except as provided in Paragraph 2.K above, **LESSEE** is not obligated to replant any harvested crops or to disk any portion of the Premises after any harvest by **LESSEE**.

23. **Holding Over** Any holding over without **LESSOR** consent shall constitute a Default by **LESSEE** and entitle **LESSOR** to reenter the Premises and collect monthly rent of \$250 per acre, together with the Additional Rent.

24. **Insolvency or Bankruptcy:** The appointment of a receiver to take possession of all or substantially all of the assets of **LESSEE**, or an assignment of **LESSEE** for the benefit of creditors, or any action taken or suffered by **LESSEE** under any insolvency, bankruptcy, reorganization or other debtor relief proceedings, whether now existing or hereafter amended or enacted, shall at **LESSOR**'s option constitute a breach of this **LEASE** by **LESSEE**. Upon the happening of any such event or at any time thereafter, this **LEASE** shall terminate five (5) days after written notice of termination from **LESSOR** to **LESSEE**. In no event shall this **LEASE** be assigned or assignable by operation of law or by voluntary or involuntary bankruptcy proceedings or otherwise and in no event shall this **LEASE** or any rights or privileges hereunder be an asset of **LESSEE** under any bankruptcy, insolvency, reorganization or other debtor relief proceedings.

25. **Sale by LESSOR:** Notwithstanding anything contained in this **LEASE** to the contrary, in the event of a sale or conveyance by **LESSOR** of the Premises or any portion thereof or in the event of an assignment of this **LEASE** by **LESSOR**, any such assignment, sale or conveyance shall automatically operate to release **LESSOR** from any future liability upon any of the terms, provisions, covenants or conditions, express or implied, herein contained in favor of **LESSEE**, provided that the purchaser of the Premises or assignee of this **LEASE** executes a non-disturbance agreement in favor of **LESSEE** and agrees to be bound by the terms of this **LEASE** and in such event **LESSEE** agrees to look solely to the successor in interest of **LESSOR** in and to this **LEASE**. This **LEASE** shall not be affected by any such sale, and **LESSEE** agrees to attorn to the purchaser or assignee.

26. **Estoppel Confirmation:** **LESSEE** and **LESSOR** shall, within seven (7) days after written request of the other Party, execute an estoppel letter regarding the status of this

LEASE which may be relied upon by any lender, mortgagee or purchaser of the Premises or the Crops and any assignee of either Party's interest in this **LEASE**. Such estoppel letter shall confirm the terms, conditions and provisions of this **LEASE**; that this **LEASE** is in full force and effect; that this **LEASE** is unmodified, or if modified, the provisions of any modifications; that neither **LESSOR** nor **LESSEE** is in default of any of the terms, conditions or provisions of this **LEASE**; that **LESSEE** has no offsets, counterclaims or defenses to the payment of any Rent or Additional Rent; that **LESSEE** has no options to renew or purchase, and any other statements which **LESSOR** or **LESSEE** reasonably requests. In the event **LESSEE** or **LESSOR** fails to comply with any of the foregoing, such failure to comply shall automatically be deemed a confirmation by such Party that all items contained in the estoppel letter requested by the other Party are true and correct and any lender, mortgagee or purchaser of the Premises or the Crops, and any assignee of **LESSOR**'s interest in this **LEASE** may rely on such confirmation.

27. Capital Improvements and Alterations:

A. **LESSEE** shall not make any alterations, additions or improvements, whether capital, internal or external, (collectively, "Alterations") in, on or to the Premises or any part thereof without the prior written consent of **LESSOR**, which consent may be withheld in **LESSOR**'s sole and absolute discretion.

B. Any Alterations to the Premises, except for **LESSEE**'s movable furniture and equipment, shall immediately become **LESSOR**'s property and, at the end of the Lease Term, shall remain on the Premises without compensation to **LESSEE**; provided, however, that any such movable furniture and equipment, otherwise belonging to **LESSEE**, but remaining on the Premises at the expiration or other termination of this **LEASE** shall also become the property of **LESSOR**.

C. In the event **LESSOR** consents to the making of any Alterations by **LESSEE**, the same shall be made by **LESSEE**, at **LESSEE**'s sole cost and expense, in accordance with the plans and specifications previously approved in writing by **LESSOR**. **LESSEE** shall comply with all applicable laws, including but not limited to Construction Lien Law of the State of Florida, ordinances, regulations, building codes, and obtain all required permits, inspections, and certificates as may be required by all governmental agencies having jurisdiction thereof.

28. Liens

A. **LESSEE** shall keep the Premises free from any liens, including, but not limited to mechanic's liens, arising out of any work performed, materials furnished or obligations incurred by **LESSEE**.

B. The **LESSEE** herein shall not have any authority to incur liens for labor or material on the **LESSOR**'s interest in the Premises and all persons contracting with the **LESSEE** for the destruction or removal of any building or for the erection, installation alteration, or repair of any building or other improvements on the Premises and all materialmen, contractors, mechanics and laborers, are hereby charged with notice that they must look to the **LESSEE** and to the **LESSEE**'s interest only in the Premises to secure the payment of any bill for work done or material furnished during the rental period created by this **LEASE**.

C. In the event that **LESSEE** shall not, within twenty (20) days following the

imposition of any such lien, cause the same to be released of record by payment or posting of a property bond, LESSOR shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by LESSOR, including, but not limited to reasonable attorney's fees and expenses incurred by it in connection therewith, together with interest at the maximum rate allowed by law, shall be considered Additional Rent and shall be payable to LESSOR by LESSEE on demand.

D. LESSOR shall have the right at all times to record in the public records or post and keep posted on the Premises any notice permitted or required by law, or which LESSOR shall deem proper, for the protection of LESSOR, the Premises, the improvements located thereon and any other Party having an interest therein, from mechanic's and materialmen's liens, and LESSEE shall give to LESSOR at least thirty (30) days prior notice of commencement of any construction on the Premises.

E. Pursuant to Sections 713.01(21) and 713.10, the interest of LESSOR in the Premises and the improvements located thereon shall not be subject to liens for improvements made by LESSEE and such liability is expressly prohibited.

F. Notwithstanding anything to the contrary contained in this LEASE, LESSEE may from time to time grant to certain lenders selected by LESSEE and its affiliates (the "Lenders") a lien on and security interest in all assets and personal property located on the Premises and owned by LESSEE, including, but not limited to, all crops (e.g., citrus and sugar cane), crop products, accounts receivable, inventory, goods, machinery and equipment owned by LESSEE (but expressly excluding LESSEE's right, title and interest in, to or under this LEASE) ("LESSEE's Property") as collateral security for the repayment of any indebtedness to the Lenders and all amendments, modifications and renewals thereof, which principal amount of such indebtedness shall in no event exceed \$300,000,000 at any one time (the "Indebtedness"). The Lenders may, in connection with any foreclosure or other similar action relating to the LESSEE's Property, enter upon the Premises (or permit their representatives to do so on their behalf) in order to implement an action for default, foreclosure and/or any other remedy that Lenders may have against LESSEE and/or LESSEE's Property under the terms and conditions of the Indebtedness without liability to LESSOR, to the extent any of LESSEE's Property is located on the Premises. The Lender's rights with respect to access to the Premises and the crops thereon shall be strictly limited to the then current harvest season, subject to Lenders exercise of due care in connection with such access. LESSOR hereby agrees that any security interest, lien, claim or other similar right, including, without limitation, rights of levy or distraint for rent and LESSOR's statutory lien rights that LESSOR may have in or on LESSEE's Property, whether arising by agreement or by law, are hereby subordinate to the liens and/or security interests in favor of the Lenders which secure the Indebtedness, whether currently existing or arising in the future. Nothing contained herein shall be construed to grant or permit a lien upon or security interest in any of LESSOR's assets or LESSEE's right, title or interest in, to or under this LEASE. LESSOR agrees to accept timely performance on the part of any of the Lenders or their agents or representatives as though performed by LESSEE to cure any default or condition for termination (although the Lenders shall have no obligation to do so) to the extent such cure is completed within the applicable cure period LESSEE has to cure any such default under this LEASE. Subject to compliance with the terms and conditions of this Paragraph 28.F., the foregoing subordination shall be automatic and self-effective without the necessity to execute

any further documentation evidencing the same; however, without limiting the effectiveness of such subordination, LESSOR agrees to promptly execute any additional documents reasonably required by the Lenders to evidence LESSOR's subordination of its lien rights described herein. Notwithstanding anything in this LEASE to the contrary, LESSEE hereby agrees that any Loss incurred by LESSOR due to bodily injury or property damage in connection with: (i) the Indebtedness; (ii) actions by any of the Lenders; (iii) any subordination by LESSOR set forth herein; or (iv) any other matters contained in this Paragraph 28.F., all shall fall under the indemnification provisions in favor of LESSOR set forth in Paragraph 13. above.

29. **Repair:** LESSEE covenants and agrees that LESSEE shall maintain the Premises in its original condition existing as of the Commencement Date of this LEASE, subject to reasonable wear and tear, casualty pursuant to Paragraph 16.F and condemnation pursuant to Paragraph 36. LESSEE shall, at LESSEE's expense, maintain and preserve the Premises in the state of condition and repair as required in the immediately preceding sentence and make all necessary repairs to the Premises and all improvements, fixtures and equipment located thereon, if any, including but not limited to repairs to all interior, exterior, roof and structural portions of the Premises, all culverts, all pumps and pumping stations, all paved surfaces, windows, landscaping and all electrical, plumbing, HVAC and other machinery located on the Premises consistent with repair standard set forth in this paragraph. Subject to the other provisions of this LEASE that may provide to the contrary, including Paragraph 16.F, Paragraph 35 and Paragraph 36. LESSEE shall be responsible for all such repairs and maintenance whether caused by acts of LESSEE, its agents, servants, employees, customers, guests, licensees or by acts of third parties, governmental regulations, acts of God, casualties, or any other reason.

30. **Existing Interests in Premises:** Pursuant to Section 373.099, Florida Statutes, LESSOR does not warrant or represent that it has title to the Premises. LESSEE's occupancy of the Premises shall be subject to the rights of others existing as of the day immediately preceding the Commencement Date of this LEASE which are set forth in easements, restrictions, reservations, all matters of public record and all other encumbrances affecting the Premises as of the day immediately preceding the Commencement Date of this LEASE.

31. **LESSOR Inspection, Ingress and Egress:**

A. The right of entry is hereby reserved by the LESSOR, for itself and its officers, agents, employees, contractors, subcontractors, and assigns, to enter upon and travel through and across the Premises for the purposes of: inspections, maintenance, and for any lawful purpose including, but not limited to, inspecting the Premises to ensure the LESSEE's performance of its obligations under this LEASE; sampling and monitoring the LESSEE's use of chemicals and pesticides on the Premises; performing environmental remediation or performing any work or repairs, which the LESSOR may determine is necessary by reason of the LESSEE's default under the terms of this LEASE; exhibiting the Premises for lease, sale or mortgage financing; conducting inspections, investigations, soil borings, surface and groundwater sampling, monitoring, and any other testing, sampling, or other investigation necessary to support the engineering design and/or any other analyses associated with the future use of the Premises. The LESSEE shall have no claim for damages of any character on account thereof against the LESSOR or any officer, agent, or assign thereof to the extent provided in this LEASE.

B. LESSOR agrees that from the Commencement Date through the Expiration Date, all officers, employees, contractors and agents of LESSOR shall have at all reasonable times upon reasonable advance notice to Edward Almeida, Esq., Vice President of Legal Affairs at (863) 902-2120 the right to enter upon the Premises for the purposes set forth in subparagraph A above; provided however that: (a) any contractors or agents of LESSOR shall first provide a certificate of insurance evidencing that such contractor or agent carries commercial general liability insurance in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage liability, which certificate shall name LESSEE as an additional insured thereunder; and (b) all such inspections, investigations and examinations by LESSOR or LESSOR's officers, employees and accredited agents shall be conducted in such a manner so as (i) not to cause any lien or claim of lien to exist against the Premises, (ii) not to unreasonably interfere with the operation of LESSEE or its business or its tenants and occupants; and (iii) at all times to comply with all of LESSEE's or its tenants' safety standards and requirements.

C. LESSOR agrees to be responsible for: (x) any property damage that arises out of or is caused by LESSOR or its officers, employees, contractors and agents while such persons are acting within the proper scope of conducting inspections of, or accessing, the Premises, provided that with respect to any damaged sugarcane crop, LESSEE's exclusive remedy shall be limited to compensation from LESSOR in the amount of \$2,400 per acre of damaged sugarcane crop, subject to proration where the damage is less than a full acre, (y) to the extent found legally responsible, any property damage that arises out of or is caused by LESSOR's gross negligence or willful misconduct, or its officers, employees, contractors and agents, while acting outside the proper scope of conducting inspections of, or accessing, the Premises (e.g., negligence); and (z) to the extent found legally responsible, any personal injury arising from LESSOR's or its officers', employees', contractors' and agents' inspections of or access to the Premises (but the foregoing shall only be applicable to LESSOR only as to its gross negligence or willful misconduct). LESSOR shall promptly restore, if applicable, any property damage described above. For the purposes hereof, the term "to the extent found legally responsible" shall be deemed to mean "to the extent that LESSOR has the legal authority to agree to be responsible for the acts of its officers, employees, contractors and agents". LESSEE acknowledges that LESSOR has not made any representation or warranty to LESSOR as to, nor has LESSOR waived any right to claim that it does not have, legal authority to agree to the

provisions of this Paragraph 31. The provisions of this Paragraph 31 shall survive the Expiration Date or any termination of this Agreement for a period of one (1) year.

32. **Miscellaneous Provisions:**

A. **Invalidity of LEASE Provision:** Should any term or provision of this LEASE be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this LEASE, to the extent that the LEASE shall remain operable, enforceable and in full force and effect to the extent permitted by law.

B. **Inconsistencies:** In the event any provisions of this LEASE shall conflict, or appear to conflict, the LEASE, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.

C. **Governing Law and Venue:** The laws of the State of Florida shall govern all aspects of this LEASE. In the event it is necessary for either Party to initiate legal action regarding this LEASE, venue shall be in the Fifteenth Judicial Circuit for claims under state law and the Southern District of Florida for any claims which are justiciable in federal court.

D. **Amendment:** This LEASE may be amended only with the prior written approval of LESSOR and LESSEE.

E. **Waiver:** Failures or waivers to enforce any covenant, condition, or provision of this LEASE by the Parties, their successors and assigns shall not operate as a discharge of or invalidate such covenant, condition, or provision, or impair the enforcement rights of the Parties, their successors and assigns nor shall it be construed as a waiver or relinquishment for the future enforcement of any such covenant, condition or right but the same shall remain in full force and effect. Furthermore, the acceptance of Rent, any Additional Rent or a partial payment of same by LESSOR shall not constitute a waiver of any preceding breach by LESSEE of any provision of this LEASE nor a waiver of the right to receive full payment of Rent or Additional Rent.

F. **Final Agreement:** This LEASE states the entire understanding between the Parties with respect to the use and occupancy of the Premises after the Commencement Date and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. The LESSEE recognizes that any representations, statements or negotiations made by LESSOR'S staff do not suffice to legally bind the LESSOR in a contractual relationship unless they have been reduced to writing, authorized, and signed by an authorized representative of LESSOR. This LEASE shall bind the Parties, their assigns, and successors in interest.

G. **Time of the Essence:** Time is of the essence with respect to every term, condition and provision of this LEASE.

H. **Survival:** The provisions of Paragraphs 13, 18, 22 and 23 shall survive the expiration or termination of this LEASE. In addition, any covenants, provisions or conditions set forth in this LEASE which by their terms bind LESSEE, LESSOR or both LESSOR and LESSEE after the expiration or termination of this LEASE, shall survive the expiration or termination of this LEASE for a period of two (2) years, except for the provisions of Paragraph

18, which shall survive as and to the extent provided therein.

I. Prohibition Against Recording: LESSEE shall not record this LEASE or any portion or any reference thereto without the prior written consent of LESSOR, which consent may be withheld by LESSOR in LESSOR's sole and absolute discretion. In the event LESSEE violates any of the foregoing, this LEASE shall terminate at LESSOR's option or LESSOR may declare a Default hereunder and pursue any and all of its remedies provided in this LEASE.

J. WAIVER OF JURY TRIAL, AS INDUCEMENT TO BOTH PARTIES AGREEING TO ENTER INTO THIS AGREEMENT, LESSOR AND LESSEE HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY PERTAINING TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE. EACH OF THE PARTIES CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS LEASE BY, AMONG OTHER THINGS, THE ACTUAL WAIVERS AND CERTIFICATIONS OF THIS SUBPARAGRAPH J.

33. Special Clauses:

A. Radon Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

B. Security Deposit:

(1) On the Commencement Date and until the LESSEE has assigned all of its interest under this LEASE pursuant to an Assignment permitted hereunder, the Security Deposit Fund and the Escrow Agreement (as defined below) shall refer to, respectively, the "General Escrow Fund" and the "General Escrow Agreement" (as such terms are defined in the Agreement for Sale and Purchase). Upon an Assignment permitted hereunder, LESSEE shall fund an escrow as a security deposit in the amount of Ten Million and No/100 Dollars (\$10,000,000) to secure the performance of all of LESSEE's obligations under this LEASE (the "Security Deposit Fund") which, at LESSEE's option, shall be in the form of cash (a "Cash Escrow") held by an escrow agent mutually acceptable to LESSEE and LESSOR ("Escrow Agent") pursuant to an escrow agreement in form attached hereto as Schedule "7" ("Escrow Agreement"), or a Letter of Credit (as defined in subparagraph 33.B.(2), below). Upon the funding of such Security Deposit Fund by the assignee, LESSOR shall have no further rights or claims upon or with respect to the General Escrow Fund or General Escrow Agreement for matters related to the LEASE.

(2) Letter of Credit. In the event LESSEE elects to post a letter of credit pursuant to subparagraph 33.B.(1), above for the Security Deposit Fund ("Letter of

Credit"), it shall: (a) be in the form of an irrevocable commercial letter of credit in form attached hereto as Schedule "8" with a term of at least twelve (12) months, (b) be issued by LESSEE's lender under LESSEE's revolving credit facility (subject to LESSOR's approval of such lender at the time of Closing), naming Escrow Agent as beneficiary, pursuant to the Escrow Agreement; (c) provide for Draws (as defined and set forth below) by Escrow Agent; and (d) have an "evergreen" clause and be renewed automatically each year by the issuing bank, unless the bank gives written notice to the beneficiary at least thirty (30) days prior to the expiration date of the then existing Letter of Credit that the bank elects that it not be renewed. In the event the Letter of Credit is not timely renewed and LESSEE has not replaced the same within ten (10) business days prior to the expiration thereof, then Escrow Agent may draw upon the same and hold the proceeds pursuant to the terms of the Escrow Agreement. Each Letter of Credit shall be assignable or transferable to any LESSOR Credit Provider (in connection with any collateral assignment thereof) or any transferees, successors or assigns of LESSOR that becomes landlord under this LEASE. For the purposes of this LEASE, the term "Credit Provider" shall be deemed to mean LESSOR's lender/financing trustee/credit enhancer/underwriter.

(3) Draws Upon Cash Escrow and Letter of Credit. The Escrow Agreement shall provide that the Escrow Agent may only draw upon a Letter of Credit or Cash Escrow in favor of LESSOR (a "Draw") in the event: (a) an agreement has been executed by LESSEE and LESSOR agreeing upon the reason for, and amount of, the Draw; or (b) LESSOR delivers written notice to Escrow Agent of any monetary Default by LESSEE under the LEASE; or (c) all appeal periods have expired following a final order by a court of law rendering a monetary judgment against LESSEE in favor of LESSOR. Upon each such Draw request, Escrow Agent shall promptly release the Draw to LESSOR.

(4) Replenishing of Cash Escrow or Letter of Credit during the Term. LESSEE shall be required to replenish the Security Deposit Fund during the Lease Term in the event any Draws are made against the Security Deposit Fund in accordance with this Paragraph 33.B. within fifteen (15) days of such depletion. Any failure by LESSEE to replenish the Security Deposit Fund within fifteen (15) days of such depletion shall constitute a Default under this LEASE.

(5) Release of Cash Escrow and Letter of Credit Following Expiration Date. The Escrow Agreement for the Security Deposit Fund shall provide that Escrow Agent shall continue to hold the Security Deposit Fund three (3) years after the Expiration Date of this LEASE (the "Scheduled Release Date"), provided that any claims must be made within the applicable survival period as provided under this LEASE, provided, however, that if there are any pending claims relating to any portion of such deposit on such Scheduled Release Date, then Escrow Agent shall continue to hold a portion of such deposit in accordance with the Escrow Agreement in the reasonably estimated amount necessary to satisfy such claim(s) until such claim(s) is resolved, and shall release the remaining amount of such deposit to LESSEE.

C. **Site Investigation:** LESSEE is responsible for examining the Premises and satisfying itself as to the general and local conditions, particularly water level conditions that are likely to impact LESSEE'S operation and those conditions bearing upon the availability of water, electric power, communication and road and access facilities. Failure on the part of LESSEE to acquaint itself with all available information pertaining to the Premises will not relieve LESSEE from the responsibility of furnishing the required facilities and services and for

compliance with the terms and conditions of this **LEASE**. **LESSOR** assumes no responsibility or obligation to provide any roads or other facilities of whatever nature or for any understanding or representation made by any of its officers or agents during or prior to final execution of this **LEASE** unless these provisions expressly provide for the furnishing of such facilities and such understanding or representation is specifically stated in this **LEASE**.

D. Prohibited Activities: **LESSEE** may perform maintenance of personal property, including but not limited to changing oil or fluids and servicing filters, on the Premises and store any fuel, or store or utilize any fuel tanks (whether empty or containing fuel or other hazardous substances), fuel trailers, hoses or any other fueling mechanisms on the Premises as reasonably necessary for normal business operations; provided, however, that any maintenance and fuel storage or handling on the Premises shall comply with Environmental Law and the applicable Best Management Practices and **LESSEE** shall remove all fuel trailers, hoses, tanks or other fueling mechanisms from the Premises that are owned by **LESSEE** prior to the expiration or termination of this **LEASE**.

E. Water Levels: **LESSEE** hereby waives any and all claims on the part of the **LESSEE**, which may arise or be incident to regulation of water levels associated with the Premises by the **LESSOR** and/or the U.S. Army Corps of Engineers, so long as such regulation is in accordance with the rules and regulations applicable thereto.

F. Navigation: **LESSEE** shall not do or cause to be done anything whereby the full and free use by the public of the water areas of and surrounding the Premises will suffer unreasonable interference. This condition does not apply to temporary dockage and/or mooring facilities that may be provided by **LESSEE** pursuant to and in accordance with the provisions of this **LEASE**.

G. Compliance with Minimum Wage Law: The **LESSEE** shall comply with the Fair Labor Standards Act, 29 USCS 201, et seq. The Act is the minimum wage law. Its requirement that the **LESSEE** pay "not less" than the rates so determined presupposes the possibility that the **LESSEE** may have to pay higher rates.

H. Additional Requirements:

(1) The **LESSEE** shall not install or permit to be installed pit or vault latrines.

(2) **LESSEE** will allow the discharge of firearms on the Premises only as permitted by Florida law and consistent with the exercise of reasonable care and prudence, and **LESSEE** will not display or permit others to display firearms in a reckless manner.

(3) **LESSEE** shall not discharge nor permit others to discharge sewage effluent into the water areas of and surrounding the Premises provided, however, that **LESSOR** acknowledges and accepts the presence of currently existing septic systems on the Premises to the extent such systems are in compliance with applicable law.

(4) **LESSEE** shall not engage in any business activity on the Premises not expressly authorized in this **LEASE** unless otherwise authorized in writing by **LESSOR**.

(5) Except for the Permitted Uses (as to which no consent of LESSOR is required), LESSEE: shall not permit or suffer any nuisance on the Premises or the commission of waste thereon; shall not conduct mining operations or drill for oil or gas upon the Premises; shall not remove sand, gravel, or kindred substance from the ground; or shall not, in any manner, substantially change the contour or condition of the Premises unless prior approval is granted in writing by LESSOR, which approval may be withheld in LESSOR's sole discretion.

(6) LESSEE will use the Premises and all rights and privileges herein granted to the extent needed in carrying out the true intent and purpose of this LEASE.

(7) LESSEE shall cooperate with LESSOR, its employees, agents, and assigns in carrying out the intent and purposes of this LEASE.

I. Safety:

(1) It is the LESSEE's sole duty to provide safe and healthful working conditions to its employees on and about the Premises. The LESSOR assumes no duty for supervision of the LESSEE.

(2) The LESSEE shall provide first aid services and medical care to its employees. The LESSOR assumes no duty with regard to the supervision of the LESSEE.

(3) The LESSEE shall develop and maintain an effective fire protection and prevention program and good housekeeping practices on the Premises throughout the Lease Term.

(4) The LESSOR may order that the LESSEE halt operations under this LEASE if a condition of immediate danger to the public and/or LESSOR's employees, equipment or property exists. This provision shall not shift responsibility or risk of loss for injuries or damage sustained from the LESSEE to the LESSOR, and the LESSEE shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property on the Premises.

(5) The LESSEE shall instruct employees required to handle or use toxic materials or other harmful substances regarding their safe handling and use, including instruction on the potential hazards, personal hygiene and required personal protective measures.

(6) The LESSEE shall comply with the standards and regulations set forth by the Occupational Safety and Health Administration (OSHA), the Florida Department of Labor and Employment Security and all other appropriate federal, state, local or District safety and health standards.

(7) The LESSEE shall take the necessary precautions to protect customers and other members of the public that may be on or near the Premises from harm due to the operations of the LESSEE.

J. Advertising and Commercial Activity: There shall be absolutely no advertising, either visual or audio, placed on or conducted on the Premises except for names and

logos appearing on LESSEE'S vehicles, gates or as otherwise may be existing on the date of this LEASE.

K. **Lead Based Paint Disclosure:** See Lead Based Paint Disclosure attached hereto and made a part hereof as Schedule "9", if applicable.

L. **Inspection Rights:** The LESSEE shall maintain records and the LESSOR shall have inspection and audit rights as follows:

(1) **Maintenance of Records:** Subject to confidentiality agreements with third parties and the designation of certain records as "trade secret" documents under Florida law, LESSEE shall maintain all financial and non-financial records and reports related to the Premises or this LEASE, including but not limited to, records related to the application of pesticides and fertilizers. Such records shall be maintained and made available for inspection for a period of five (5) years from completing performance and receiving final payment under this LEASE.

(2) **Examination of Records:** Subject to confidentiality agreements with third parties and the designation of certain records as "trade secret" documents under Florida law, LESSOR or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records related to the Premises or directly or indirectly related to this LEASE. Such examination may be made at any time during the Lease Term and through and including five (5) years from the date of final payment under this LEASE and upon reasonable notice, time and place.

(3) **Records that pertain to the Premises or this Lease:** Notwithstanding the provisions of subparagraph (1) and subparagraph (2) above, in no event shall LESSEE be obligated to maintain or provide any financial or accounting information (e.g., pro-formas, tax returns, production reports, financial statements, appraisals, etc) or other information that pertains to LESSEE's business operations or assets other than the Premises, provided that LESSEE agrees to maintain and provide reports showing the acreage of sugar cane planted, the tons of sugar cane harvested from such planted acreage, and the "sucrose % cane" of such harvested acreage, in order to facilitate land exchanges or dispositions related to surplus portions of the Premises by LESSOR, subject to the trade secret protocol established by LESSEE.

(4) With respect to any such information made available to LESSOR pursuant to this subparagraph L, that is proprietary or "Trade Secret" (as defined under Section 812.081, Florida Statutes), LESSOR shall follow the trade secret protocol established by LESSOR and LESSEE.

(5) **Extended Availability of Records for Legal Disputes:** In the event that the LESSOR should become involved in a legal dispute with a third party arising from performance under this LEASE, the LESSEE shall extend the period of maintenance for all records relating to the LEASE until the final disposition of the legal dispute, and all such records shall be made readily available to the LESSOR.

M. **Public Access:** The LESSEE shall allow public access to all LEASE related documents in accordance with the provisions of Chapter 119, Florida Statutes, subject to all

applicable exemptions and only as and to the extent Chapter 119 is actually applicable to LESSEE (it being agreed that this subparagraph M is not an admission or agreement by LESSEE that Chapter 119 is applicable thereto). Should the LESSEE assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the LESSEE.

N. Cooperation: From the Commencement Date hereof through the Expiration Date, LESSEE shall cooperate in good faith with LESSOR's Credit Providers to provide information related to the Premises (and not the LESSEE's business or other assets) and necessary for the original issuance or refinancing of the Certificates of Participation, so long as such Credit Providers execute and deliver to LESSEE a confidentiality agreement reasonably acceptable to LESSEE. LESSOR shall be responsible for any and all actual, out-of-pocket costs and expenses incurred by LESSEE in providing the information pursuant to this subparagraph (e.g., copying fees, but not including attorneys' fees incurred by LESSEE in connection with such requests).

O. Loss of Trees Due to Canker:

(1) If the citrus trees on the Premises are destroyed by or infected with Canker or other diseases or parasites, or are destroyed by civil authorities in connection with programs to control the spread of Canker or other diseases or parasites, LESSOR shall be entitled to receive all tree replacement payments or awards from the federal, state or local authorities made for, or with respect to, the destroyed trees. LESSOR will decide, in its sole and absolute discretion, how such payments or awards will be used. LESSOR may assign this right or transfer the payments or awards received, if it so elects, to LESSEE; provided, however, that LESSEE shall use any funds received or awards made as the LESSOR directs. LESSEE will support and assist LESSOR in connection with any applications by LESSOR for such payments or awards. LESSEE shall retain all Casualty insurance proceeds from policies carried by LESSEE insuring against the loss of citrus trees as a result of canker or other diseases or parasites.

(2) LESSEE shall be entitled to payments or awards from the federal, state or local authorities made for, or with respect to, lost future production, reduced by any insurance that LESSEE may have for lost future production.

P. Operations Contracts: To the extent that LESSEE may, at any time, desire to enter into any contract, license, sublease or other agreement in connection with LESSEE's operations which is not terminable without penalty upon thirty (30) days notice and is binding on the Premises or LESSOR after the Expiration Date, then LESSEE shall give a copy of such agreement to LESSOR. If LESSOR consents at its sole and absolute discretion to LESSEE's execution of such contract, license, sublease or other agreement, then, to the extent that the term thereof extends beyond the Expiration Date, LESSOR shall be deemed to have agreed to assume the provisions of such contract, license, sublease or other agreement from and after the date thereof (each, a "New Agreement"). Even though the foregoing assumption shall be automatic and self-effective without the necessity to execute any further documentation evidencing the same, LESSOR agrees to promptly execute any additional documents reasonably required by LESSEE to evidence LESSOR's assumption of such contract, license, sublease or other agreement described in this Paragraph. In the event that LESSEE submits a contract, license,

sublease or other agreement to LESSOR for its approval pursuant to this Paragraph and, unless LESSOR advises LESSEE in writing within forty-five (45) days after receipt thereof that LESSOR has not approved such contract, license, sublease or other agreement, then the same shall be deemed to be approved thereby.

34. **Covenant of Quiet Enjoyment.** Provided that LESSEE faithfully performs all duties of LESSEE hereunder and complies with all term and conditions of this LEASE, LESSEE shall not be disturbed by LESSOR in its quiet enjoyment of the Premises, subject to the terms, conditions and provisions of this LEASE.

35. **Act of God.** In the event that the citrus trees or sugar cane crops, citrus crops or any other crops located on the Premises are damaged or destroyed due to any hailstorm, tornado, hurricane, flood, fire, or other act of god or any strike, civil disturbance or act of war or terrorism or due to citrus canker or other diseases or parasites, neither LESSOR nor LESSEE shall have any responsibility or obligation to repair or replace such citrus trees, sugar or citrus crops or to compensate each other or any other Party for the loss thereof.

36. **Condemnation:** Notwithstanding anything to the contrary contained in this LEASE, the following shall apply in the event of a taking, condemnation, or transfer in lieu thereof, of the whole or part of the Premises.

A. **Total Taking.** In the event the entire Premises is taken or condemned, or transferred or purchased in lieu thereof, by any governmental authority or other entity with the power of condemnation, this LEASE shall automatically terminate upon transfer of title. Rent payments shall then be apportioned to the date of such taking or transfer of title. Except for any separate award applicable solely to LESSEE's business, LESSEE shall not be entitled to an apportionment of any award or payment applicable to the Premises, all of which shall be paid to LESSOR. Notwithstanding the foregoing, in the event that LESSOR is entitled to possession of the Premises after transfer of title, this LEASE shall continue during such extended possession pursuant to the terms hereof.

B. **Partial Taking.** In the event of a taking or condemnation of only a portion of the Premises or any other portion of the Premises is taken or condemned, or transferred or purchased in lieu thereof, by any governmental authority or other entity with the power of condemnation and such taking (a) in LESSOR's reasonable determination reduces the value of the Premises by fifty percent (50%) or more, (b) in LESSEE's reasonable determination, renders the Premises uneconomically feasible to operate or (c) prevents, and would prevent after reasonable repair and reconstruction efforts by LESSEE, use of the Premises for its Permitted Uses under applicable law or regulations (including without limitation with respect to required access), then either LESSOR or LESSEE may terminate this LEASE effective upon the date of such taking or transfer of title. If neither LESSOR or LESSEE terminate this LEASE in such event, or in the event of a lesser taking or condemnation, then this LEASE shall continue with respect to all portions of the Premises or personalty not taken, condemned, sold, or transferred and, as applicable, the Rent due under this LEASE shall be equitably adjusted, if applicable, to account for the loss of the portion of the Premises taken. LESSEE shall not be entitled to an apportionment of any award or payment applicable to the Premises, all of which shall be paid to LESSOR.

C. Condemnation Awards; Damages. The Parties hereto agree to cooperate in applying for and in prosecuting any claim for any taking regarding the Premises or any portion thereof and further agree that condemnation awards or damages shall be allocated as follows:

(1) LESSOR shall be entitled to the entire award for the condemned Premises or any portion thereof and LESSEE shall have no rights to an apportionment of such an award or payment, provided, that, if applicable, LESSOR shall make portions of the award available for restoration purposes.

(2) LESSEE shall be entitled to make any available separate claim and recover any award thereon for any damages to LESSEE's business operations under any available legal remedy, including but not limited to a claim for business damages, that may be allowable under applicable law. LESSOR shall have no rights to an apportionment of such an award or payment.

D. Non-Affected Premises. Notwithstanding any other provision of this Paragraph 34, any compensation for a temporary taking shall be payable to LESSEE without participation by LESSOR, except to the proportionate extent such temporary taking extends beyond the end of the Lease Term, and there shall be no abatement of Rent as a result of any temporary taking affecting any of the Premises.

37. **Joint and Several Liability:** The entities constituting LESSEE shall be jointly and severally liable for all obligations of LESSEE under this LEASE. A failure or default by any of the entities constituting LESSEE shall be deemed a failure or default by all of such LESSEE entities. Without limiting the foregoing, LESSEE agrees that Parent may act as the representative of each other LESSEE and that LESSOR may deliver any notice to LESSEE to Parent on behalf of each LESSEE and rely on any notice given or other action or taken by Parent on behalf of LESSEE.

38. **Subordination and Nondisturbance:**

A. Subordination. This LEASE shall be subject and subordinate to any mortgage, deed of trust, trust indenture, assignment of leases or rents or both, or other instrument evidencing a security interest, which may now or hereafter affect any portion of the Premises, or be created as security for the repayment of any loan or any advance made pursuant to such an instrument or in connection with any sale-leaseback or other form of financing transaction and all renewals, extensions, supplements, consolidations, and other amendments, modifications, and replacements of any of the foregoing instruments ("Mortgage"), and to any ground lease or underlying lease of the Premises or any portion of the Premises whether presently or hereafter existing and all renewals, extensions, supplements, amendments, modifications, and replacements of any of such leases ("Superior Lease"). LESSEE shall, at the request of any successor-in-interest to LESSOR claiming by, through, or under any Mortgage or Superior Lease, attorn to such person or entity as described below. The foregoing provisions of this subparagraph (a) shall be self-operative and no further instrument of subordination shall be required to make the interest of any lessor under a Superior Lease (a "Superior Lessor") or any mortgagee, trustee or other holder of or beneficiary under a Mortgage (a "Mortgagee") superior to the interest of LESSEE hereunder; provided, however, LESSEE shall execute and deliver



promptly any certificate or instrument, in recordable form, that **LESSOR**, any Superior Lessor or Mortgagee may reasonably request in confirmation of such subordination.

B. Rights of Superior Lessor or Mortgagee. Any Superior Lessor or Mortgagee may elect that this **LEASE** shall have priority over the Superior Lease or Mortgage that it holds and, upon notification to **LESSOR** by such Superior Lessor or Mortgagee, this **LEASE** shall be deemed to have priority over such Superior Lease or Mortgage, whether this **LEASE** is dated prior to or subsequent to the date of such Superior Lease or Mortgage.

C. Attornment. If at any time prior to the expiration of the term of this **LEASE**, any Superior Lease shall terminate or be terminated by reason of a default by **LESSOR** as tenant thereunder or any Mortgagee comes into possession of the Premises or the estate created by any Superior Lease by receiver or otherwise, **LESSEE** shall, at the election and upon the demand of any owner of the Premises, or of the Superior Lessor, or of any Mortgagee-in-possession of the Premises, attorn, from time to time, to any such owner, Superior Lessor or Mortgagee, or any person or entity acquiring the interest of **LESSOR** as a result of any such termination, or as a result of a foreclosure of the Mortgage or the granting of a deed in lieu of foreclosure, upon the then terms and conditions of this **LEASE**, for the remainder of the term. In addition, in no event shall any such owner, Superior Lessor or Mortgagee, or any person or entity acquiring the interest of **LESSOR** be bound by (i) any payment of Rent or Additional Rent for more than one (1) rental payment in advance, or (ii) any security deposit or the like not actually received by such successor, or (iii) any amendment or modification in this **LEASE** made without the consent of the applicable Superior Lessor or Mortgagee, or (iv) any construction obligation, free rent (other than as provided in this **LEASE**), or other **LESSOR** concession (other than as provided in this **LEASE**), payment obligation or monetary allowance (other than as provided in this **LEASE**), or (v) any set-off, counterclaim, or the like otherwise available against any prior landlord (including **LESSOR**), or (vi) any act or omission of any prior landlord (including **LESSOR**).

D. Rights Accruing Automatically. The provisions of this Paragraph shall inure to the benefit of any such successor-in-interest to **LESSOR**, shall apply and shall be self-operative upon any such demand, and no further instrument shall be required to give effect to such provisions. **LESSEE**, however, upon demand of any such successor-in-interest to **LESSOR**, shall execute, from time to time, instruments in confirmation of the foregoing provisions of this Paragraph, reasonably satisfactory to any such successor-in-interest to **LESSOR**, acknowledging such attornment and setting forth the terms and conditions of its tenancy.

E. Limitation on Rights of Tenant. As long as any Superior Lease or Mortgage shall exist, **LESSEE** shall not seek to terminate this **LEASE** by reason of any act or omission of **LESSOR** until **LESSEE** shall have given written notice of such act or omission to all Superior Lessors and Mortgagees at such addresses as shall have been furnished to **LESSEE** by such Superior Lessors and Mortgagees and, if any such Superior Lessor or Mortgagee, as the case may be, shall have notified **LESSEE** within ten (10) business days following receipt of such notice of its intention to remedy such act or omission, until a reasonable period of time shall have elapsed following the giving of such notice (but not to exceed sixty (60) days), during which period such Superior Lessors and Mortgagees shall have the right, but not the obligation, to

remedy such act or omission. The foregoing shall not, however, be deemed to impose upon LESSOR any obligations not otherwise expressly set forth in this LEASE.

F. SNDA. Notwithstanding anything to the contrary contained in this Paragraph, LESSOR shall obtain on the Commencement Date, for the benefit of LESSEE, a Subordination, Non-Disturbance and Attornment Agreement ("SNDA") from each and every Mortgagee and Superior Lessor to which this LEASE shall be subordinate, such SNDA to be in a commercially reasonable form and content reasonably acceptable to LESSEE and the applicable Mortgagee and Superior Lessor. The subordination of this LEASE by LESSEE provided in subparagraph A hereof is conditioned upon and subject to the execution and delivery of the SNDA described herein, which shall allow LESSEE to remain in possession of the Premises, provided that a Default has not then occurred, even though the Superior Lessor or Mortgagor obtains possession/ownership of the Premises.

39. Right of First Refusal:

A. Offer to Lease Premises. As to any proposed or solicited agricultural leases for all or any portion of the Premises which the LESSOR intends to accept or enter into (the "Proposed Lease") that would provide for commencement within one (1) year following the Expiration Date (the "ROFR Period"), so long as no Default then exists under this LEASE, the LESSOR shall deliver a copy of such Proposed Lease to the Parent and LESSEE shall have a right of first refusal ("ROFR") to lease the Premises from LESSOR on terms and conditions not less favorable to the LESSOR than those set forth in the Proposed Lease. The ROFR shall not apply to any proposed or solicited leases that are for uses other than agricultural uses.

B. Exercise of Right. If the LESSEE desires to lease the applicable portion of the Premises from LESSOR on the terms and conditions set forth in any Proposed Lease, LESSEE shall deliver a written notice of its election to the LESSOR within forty (40) Calendar Days of the date of receipt of the copy of the Proposed Lease by the Parent.

C. Termination of the Right of First Refusal. The ROFR shall expire, terminate and be of no further force and effect on the earliest of (i) the one year anniversary of the Expiration Date, (ii) the Expiration Date if the LEASE is terminated as a result of a Default by LESSEE, (iii) the date LESSEE fails to timely deliver its election as prescribed in Paragraph 39.B above or (iv) the date LESSEE fails to enter into a lease agreement consistent with the terms and conditions set forth in the Proposed Lease after electing to do so.

The Parties or their duly authorized representatives hereby execute this **LEASE** on the date written below by each Party's signature.

LESSOR:

**SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, BY ITS GOVERNING BOARD**

Witness: _____

By: _____

Name: _____

As its: _____

Witness _____

Date of Execution _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200_ by _____ of the South Florida Water Management District, a public corporation of the State of Florida, on behalf of the corporation, who is personally known to me.

Notary Public

Print

My Commission Expires: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200_ by _____ of the South Florida Water Management District, a public corporation of the State of Florida, on behalf of the corporation who is personally known to me.

Notary Public

Print

My Commission Expires: _____



LESSEE:

UNITED STATES SUGAR CORPORATION,
a Delaware corporation

Witness: _____

By: _____

Name: _____

As its: _____

Witness _____

Date of Execution _____

STATE OF
COUNTY OF

The foregoing instrument was acknowledged before me this ____ day of _____, 200_ by _____, the _____ of United States Sugar Corporation, a Delaware corporation, on behalf of the corporation who is personally known to me or has produced _____ as identification.

Notary Public

Print

My Commission Expires: _____



LESSEE:

SBG FARMS, INC., a Florida corporation

Witness: _____

Witness _____

By: _____

Name: _____

As its: _____

Date of Execution _____

STATE OF
COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of _____, 200_ by _____, the _____ of United States Sugar Corporation, a Delaware corporation, on behalf of the corporation who is personally known to me or has produced _____ as identification.

Notary Public

Print

My Commission Expires: _____

DPN