



2. Under the Agreement and the Lease, the District agrees to purchase certain landholdings of USSC for \$1.34 billion in cash, and to then lease back those same lands to USSC on highly preferential, substantially below-market terms, for a period of six years, and then in the seventh year, to charge no rent at all. Not only is USSC allowed to retain all of its lands on those highly preferential terms for a minimum of seven years, but afterwards USSC is guaranteed to retain its lands via a right of first refusal in the Lease. This gives it the power to continue to operate for an indefinite period, and that after extracting the full value of its land from the public treasury, as confirmed by the District's own appraisals.

3. Not only does USSC have a sweetheart deal on the first seven years, and a lock on the future on an indefinite basis after that, but the rent that it is paying is only a small fraction of what the District will pay annually in debt service for those lands.

4. While cloaked under the guise of environmental restoration, the Agency Action is nothing more than an improper and ill-conceived use of public funds to subsidize USSC, and in fact will prevent the District from carrying out its statutory and regulatory mandate with regards to Everglades Restoration and compliance with water quality standards for Lake Okeechobee (the "Lake") and the Everglades Protection Area. It authorizes the acquisition of a large block of land that will *de facto* be used for purposes outside the scope of the District's authority and will remain under USSC's long-term control. At best, any public

purpose is incidental and speculative, as it is contingent upon billions in additional financing that simply does not exist.

5. The District may paint a colorful picture of uses it might make of the USSC land. In fact it has no concrete plans for the USSC land. Nor does it have a funding source to implement anything of significance on them. All the District has at the moment are vague conceptual visions of what it might do with the land, if it had the money, the primary concepts of which contemplate locating projects primarily on land other than that the District would acquire from USSC. Moreover, the District never considered or established such key details as how much the project would cost or where it will get the money to actually build its concept, given that by its own admission the purchase will leave the District so financially strained that it cannot hope to raise the billions needed to actually do anything with the USSC land except hold it for the benefit of USSC.

6. The District does not have the financial ability to fund the acquisition without drastic cuts to ongoing Everglades programs, much less to fund construction and carry the significant associated operational, maintenance, and energy costs of actually making use of the USSC land in the manner that was the supposed rationale for the purchase. In fact, the District has refused and continues to refuse to undertake cost estimates for the supposed public use that is the basis for the USSC purchase. Outside engineering cost analyses, however, show that the cost to implement the conceptual use that was the supposed basis for the land acquisition would be four to six times the acquisition cost that the District already cannot afford, between \$5.4 and \$8.4 billion.

7. Thus, the USSC Purchase would result in the same exact use of the land before and after the transaction, the traditional agricultural use and most likely by the traditional user, USSC, with only one difference, the payment of \$1.34 billion of the taxpayers' money to the traditional user to engage in the traditional use. Since the bulk of the assets cannot be developed into a project because the District does not have the financial ability to do so and therefore will continue to be used for agriculture purposes, the land will not be utilized for a purpose within the District's statutory authority to acquire land. At bottom this is a thinly-veiled, state subsidy to privately-owned USSC in the form of a \$1.34 billion buy-out, with hundreds of millions of extra dollars above the purchase price in lease reductions.

8. The purchase set out in the Agreement will commit the District to abandonment of planned Everglades restoration projects, the money for which will be diverted to debt service. In deposition testimony in related litigation, District staff has admitted that the District has cancelled the Everglades Agricultural Area (EAA) Reservoir Project and, subject to final Governing Board approval, will cancel the related Everglades Agricultural Area Conveyance and Regional Treatment (ECART) as a result of the Agency Action. The EAA Reservoir and ECART are components of a larger plan for water quality compliance and their abandonment adversely affects New Hope's interest in receiving flood control and water supply services from the District. Due to the abandonment of these projects and the necessary abandonment or delay of other related projects, the District's Agency Action constitutes a *de facto*

abandonment of the District's "Long-Term Plan," (discussed below) that is a cornerstone of various Everglades statutes and regulations, compliance schedules, administrative orders and other legal requirements, all of which impact New Hope's substantial interests.

9. Nothing has yet been put forward, nor will the money exist after the acquisition closes, to replace the functions of the projects lost as a result of the Agency Action. This impact to current restoration will become irreversible once the asset purchase is completed. Once the funds are transferred to USSC, there is no recourse to retrieve them, and there will be no way to avoid the impacts to the District's Everglades restoration mandates.

10. As part of what is clearly an intentional refusal to develop key details so as to prejudice administrative or judicial review of the Agency Action prior to closing, the District has refused to calculate or publish implementation and construction costs for the supposed use of the land to be purchased, and, while admitting that cuts will be needed, refused to specify all programs that will be cut or delayed. District staff has testified in other litigation that these details will not be established until after closing, yet the District has claimed that any administrative review is "speculative" until these details are known. In other words, the District has embarked on a campaign of willful blindness so as to avoid even considering key questions and then claims that because these issues were not considered, any charge that its action was arbitrary and capricious is premature and will not ripen until after it is too late to have any meaningful

remedy at all. Failure of an agency to act properly is an occasion for administrative or judicial review, not an impediment to such review.

11. It is critical that review of the proposed agency action occur at this point in time, as any later remedy would be too little too late. Once the transaction authorized by the Agency Action closes, the funding necessary for Everglades Restoration will be irrevocably lost. The substantial and adverse impact on New Hope is immediate and not merely hypothetical or speculative.

### **PRELIMINARY INFORMATION**

12. The affected agency is the South Florida Water Management District, 3901 Gun Club Road, West Palm Beach, Florida. The District, having ratified the Agreement in the Agency Action, is the lead agency in consummating the USSC acquisition. It is also primarily and statutorily responsible for implementation of the Long-Term Plan and is the agency that would issue and service the approximately \$1.34 billion in debt necessary to facilitate the acquisition.

13. Petitioners<sup>2</sup> are New Hope Sugar Company and Okeelanta Corporation. Both Petitioners have a business address of 200 North Clematis, West Palm Beach, Florida.

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

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<sup>2</sup> See Footnote 1 at page 1. New Hope and Okeelanta are collectively referred to as "New Hope" and in the singular throughout this petition.

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15. The specific agency action challenged is the District's December 16, 2008, ratification of the Agreement and Lease and December 23, 2008, signing of the Agreement. The original Petition was filed within 21 days of the date the District signed the Agreement. This amendment is being made in accordance with the District's leave to amend and is therefore timely.

**STATEMENT OF AFFECTED INTERESTS**

16. New Hope and its affiliates are the second largest landowner in the EAA, where they own and farm property. They also operate two sugar mills in the area. These mills along with two others operated by USSC and the Sugar Cane Growers' Cooperative of Florida depend on a supply of sugar cane from the EAA for their operational viability. This supply, in turn, depends directly on management of water levels within the EAA, as the operational functionality of the farms is directly dependent on the District's ability to deliver water supply and flood control services consistent with the regulatory requirements applicable to the District.

17. It is in New Hope's substantial interest, indeed critical to it, to ensure that Everglades restoration is successfully implemented, and that the District is able to maintain and fulfill compliance with regulatory requirements applicable to Lake Okeechobee and the Everglades Protection Area.

18. New Hope is dependent on the District for water supply and flood control services. The Agency Action will place the District in violation of state law and federal court decrees mandating the implementation of the Long-Term Plan and adversely affect the District's ability to provide services to New Hope. Additionally, New Hope implements Best Management Practices on its farms that are one portion of a coordinated system to meet water quality standards. The District's abandonment or delay of its portion of the coordinated compliance structure threatens New Hope's operational and business interest.

19. The primary surface water source for EAA farms is the Lake, which is in severe and continuing violation of applicable water quality requirements, including the narrative nutrient criteria for phosphorus and nitrogen. The District is required under federal law to implement total maximum daily load requirements for the Lake by 2015. At present discharges into the Lake are several times this water quality requirement and are also presently violating narrative criteria for nutrient levels. The Agency Action will result in the redirection of efforts to address these Lake issues in favor of debt service for land acquisition that will not provide any environmental benefit at all.

20. The EAA is located between the Lake and the Everglades Protection Area. The ability of EAA farmers, including New Hope, to meet their

regulatory and BMP requirements is adversely affected by the deteriorating Lake water quality, which the District chooses not to adequately address in favor of servicing the huge debt imposed by the Agency Action. In addition, failure to address Lake water quality affects (i) the ability to discharge water into the Everglades and (ii) the ability to store water in the Lake. These ongoing problems thus adversely impacts the District's ability to provide necessary water supply and flood control services to New Hope's farms.

21. The Agency Action will also eliminate and/or substantially delay numerous planned Everglades restoration projects, which also adversely affect New Hope's recognized interests, including interests for which it pays designated agricultural privilege taxes every year.

22. This action directly affects New Hope's operations as well as diverts its payments to the District for illegal purposes. New Hope:

- (i) is dependent on water services, both water supply and flood control, from the water management district that will be affected by the Agency Action and without which New Hope cannot conduct its farming operations;
- (ii) funds through special purposes taxes the water projects that are designed to meet statutory and regulatory standards;
- (iii) implements a set of on-farm controls required by state law as part of a coordinated system of water quality measures that is jeopardized by the Agency Action; and

- (iv) has been a recognized participant in federal and state litigation and state administrative rulemaking proceedings on matters affecting compliance with Everglades statutes and regulations for decades.

Absent participation in this Agency Action, New Hope would lose any opportunity for formal administrative review of the process of abandoning the current compliance mechanism in favor of some unspecified future replacement project for which no funding exists. Unless New Hope is granted a point of entry and allowed to participate at this point in time, any concept of further agency review and decision-making is illusory.

23. In addition, were the conceptual project of a one-million acre-foot reservoir ever built -- which is highly speculative yet is the District's stated intent for the purchase -- it would adversely affect Petitioner's interest in water supply from the District. A reservoir of that size would constitute the second largest lake in Florida. It would add 80,000 or more acres of water surface area resulting in large water losses via evaporation. Water would be diverted to fill the reservoir, yet by the District's own admission it would provide no inter-year water supply. Diversion of water storage from the Lake to such a reservoir, with the resultant losses by evaporation, would jeopardize Petitioner's ability to depend on the District and the Lake for water supply. This impact on Petitioner is magnified by the fact that the reservoir would cause a huge diversion of resources from Lake restoration that, if properly implemented, would allow for greater water storage.

24. EAA farm interests, such as New Hope, have a clear, special and substantial interest in matters relating to the Everglades in general, and to matters affecting the District's compliance with statutory and regulatory requirements affecting the EAA and Everglades Protection Area in particular. The Agency Action directly impacts these interests, as the USSC acquisition will constitute a *de facto* abandonment of key projects in the Long-Term Plan in favor of other, as yet unstated measures, with no indication as to the timing, efficacy or cost-effectiveness of any replacement projects. The Florida Legislature has clearly stated its intent to expedite plans and programs for improving water quality in the Everglades Protection Area and has specifically recognized the special interest of the agricultural industry in the EAA. See Fla. Stat. § 373.4592(1).

25. New Hope's standing to participate in matters affecting compliance with water quality standards in the Everglades and the Phosphorus Rule was recognized by the Florida Division of Administrative Hearings (DOAH) in *Sugar Cane Growers' Cooperative of Florida v. Florida Department of Environmental Protection*, Case No. 03-02884RP (DOAH 2004), *aff'd*, *Miccosukee Tribe of Indians v. New Hope Sugar Co.*, 906 So. 2d 1064 (Table) (Fla. 1st DCA 2005). The standing of EAA farmers, including New Hope's predecessor Flo-Sun Land Corporation, to participate in such matters was similarly recognized by the United States Eleventh Circuit Court of Appeals in *United States v South Florida Water Management District*, 922 F. 2d 704 (11<sup>th</sup> Cir. 1991) ("US v SFWMD").

26. New Hope was, in its own right, through direct participation by its parent, Florida Crystals Corporation, and through membership in the Florida Sugar Cane League, a recognized stakeholder in the rulemaking proceedings before the Florida Environmental Regulation Commission that led to the adoption of the Phosphorus Rule. New Hope, along with USSC, also participated and was recognized to have standing in the Rule Challenge before the DOAH that upheld the Phosphorus Rule (Case No. 03-2883RP), the appeal to the Florida First District Court of Appeal that affirmed the Final Order in the Rule Challenge, and in related federal litigation over the United State's Environmental Protection Agency (EPA) review of the Phosphorus Rule (Southern District of Florida Case No. 04-21448-GOLD).

27. The Agency Action adversely affects New Hope's substantial interests, as it will delay implementation of projects required under the Phosphorus Rule and the related Everglades Forever Act (the "EFA"; section 373.4592, Florida Statutes) to meet the stringent requirements of the rule.

28. The abandonment or delay of Long-Term Plan Projects will adversely affect the District's compliance with water quality standards for, among other parameters, phosphorus in the Everglades Protection Area. In *US v SFWMD*, 922 F. 2d 704 (11<sup>th</sup> Cir. 1991), the United States Eleventh Circuit Court of Appeals held that legal proceedings affecting such standards implicated EAA farmers' direct substantial and legally protectable interests. The court held that EAA Farmers had a clear and substantial interest in proceedings affecting the translation of the "state's

*narrative water quality standards into numeric criteria.”; i.e., what later became the Phosphorus Rule. US v SFWMD, 922 F. 2d at 706. The Eleventh Circuit also noted that EAA farmers had “a legally protectable right . . . to participate and comment in the administrative development of the [regulation], and to pursue an administrative appeal.” This recognized both a legally protectable interest and one that was direct and substantial in the setting and compliance with Everglades water quality standards, as denial of a right to participate would cut off farmers’ “only means of defending their interest in the water [management] district’s services.” Id at 709.*

29. *US v. SFWMD* is still in active litigation to enforce a series of settlement agreements, the primary one of which is a July 26, 1991, settlement between SFWMD and the United States (the “Settlement Agreement”). The Settlement Agreement is implemented by a consent decree entered by the United States District Court for the Southern District of Florida in 1992 (the “Consent Decree”), *US v. SFWMD*, 847 F. Supp 1567 (S.D. Fla. 1992).

30. In 1994, New Hope’s predecessor, Flo-Sun Land Corporation, became the first and only agricultural company to sign on to the Settlement Agreement and Consent Decrees via a separate settlement with the United States (attached as Ex. C). Flo-Sun entered into that agreement and withdrew from pending challenges to the Settlement Agreement in reliance on the District’s promises to the United States to implement the Settlement Agreement. The Agency Action adversely affects New Hope’s recognized interest in that

Settlement Agreement by departing from projects necessary to achieve compliance. The District's compliance with water quality requirements, also affects New Hope's interest in receiving flood control and water supply services from the District -- as recognized by the United States Court of Appeals for the Eleventh Circuit. See *US v SFWMD*, 922 F. 2d at 706-09.

31. The Long-Term Plan is the current compliance mechanism for the federal settlement agreement at issue in *US v SFWMD*. The District has, in fact, represented to the federal district court that Long-Term Plan projects would be the remedy for past violations of that Agreement. The Agency Action departs from those commitments in favor of a land purchase that replaces firm timelines with speculative promises of replacement projects in the distant future. The District's inability to take appropriate remedial action on a timely basis due to the Agency Action jeopardizes the services upon which New Hope relies for its farming operations and, in turn, for the cane supply to its mills.

32. The District's ability to discharge water through its Stormwater Treatment Areas (STAs) and into the Everglades is critical for it to be able to provide necessary water supply and flood control services to New Hope's farms. The District is presently operating under Administrative Compliance Orders (ACOs) for STA discharges entered into with the Florida Department of Environmental Protection (DEP), which require the District to implement the Long-Term Plan. But for the ACOs, the District would be in violation of applicable water quality standards for phosphorus for its STA discharges. The Agency Action and the resulting abandonment and delay of Long-Term Plan

projects places the District in violation of those ACOs and affects New Hope's substantial interests in receiving critical services from the District. A sample ACO is attached as Exhibit D.

33. In addition to paying substantial *ad valorem* taxes to the District, New Hope and other EAA farmers pay an agricultural privilege tax pursuant to section 373.4592(6), Florida Statutes, the proceeds of which were intended by the Legislature to fund the farmers' share of water quality projects. These special purpose taxes will, according to statements by the District, be diverted to USSC debt service. Service for USSC debt is not among the allowed purposes for these special purpose taxes, and thus the Agency Action will divert them from their original intended purposes, thereby adversely affecting New Hope's substantial and special interests.

34. The District is expending state funds and incurring state debt for the private purpose of subsidizing USSC's ongoing business operations. The transaction grants USSC a preferential, ongoing state subsidy in the form of a below-market lease. Thus, in addition to the operational impacts outlined above, the Agency Action will adversely affect New Hope's business interests, by illegally and preferentially subsidizing the business operations of its largest competitor. As noted above, the Legislature has specifically recognized the economic interests of the agricultural industry and EAA in the enactment of its statutes governing Everglades improvement and management.

35. In addition to Florida's Administrative Procedure Act, which requires an administrative hearing when an agency determines the substantial interests of

a party, the Legislature has mandated that disputes over land management plans of a water management district are to be resolved under Chapter 120, Florida Statutes. Fla. Stat. § 373.1391(1)(c). The management of the USSC land and other land owned by the District directly impacts New Hope's farming operation and its environmental interest. Thus, this Petition is directly contemplated by a statute the District is violating through the Agency Action.

### **DISPUTED ISSUES OF MATERIAL FACT**

36. New Hope has identified the following potentially disputed issues of material fact and mixed issues of fact and law;

a. Whether the District's Agency Action is outside the scope of the District's authority to acquire property under section 373.139, Florida Statutes.

b. Whether the District complied with the requirements for an above-appraised-value purchase of lands under section 373.139, Florida Statutes.

c. Whether the District properly accounted for the value of the preferential lease and right of first refusal.

d. Whether the Agency Action improperly subsidizes USSC's farming operations.

e. Whether the District's inability to implement projects on the USSC land, coupled with the Lease terms, allows USSC to operate its business at public expense for the foreseeable future.

- f. Whether the District's environmental justifications for the USSC acquisition are arbitrary and capricious.
- g. Whether the District has any presently defined use for the USSC land within the scope of its land acquisition powers.
- h. Whether the District has any non-speculative, achievable use for the USSC land within the scope of its land acquisition powers.
- i. Whether and when the District will have the financial capability to utilize USSC land for the purpose that was the supposed basis for the purchase.
- j. Whether the lack of any plan for the implementation of improvements on the land involved in the Purchase within a defined or predictable time frame negates the stated purpose and statutory authority of the transaction.
- k. Whether the Agency Action is a violation by the District of statutory requirements prohibiting it from entering into a contract without a commitment for financing.
- l. Whether the Everglades Forever Act and Phosphorus Rule require the District to implement the Long-Term Plan.
- m. Whether the Agency Action will result in Long-Term Plan projects being cancelled and/or timelines not being met.
- n. Whether the Agency Action, which reflects an abandonment of Projects in the Long-Term Plan, in favor of speculative alternatives, is a *de facto* change in the Long-Term Plan.

o. Whether the Agency Action, which will result in Long-Term Plan projects being cancelled and/or timelines not being met, is inconsistent with the definition of Best Available Phosphorus Reduction Technology (“BAPRT”) in the Phosphorus Rule or results in failure or delay in the implementation of BAPRT.

p. Whether in taking the Agency Action, which will result in Long-Term Plan projects being cancelled and/or timelines not being met, the District was required to demonstrate that the change will include specific replacement projects that constitute the best available technology for the reduction of phosphorus discharges to the Everglades.

q. Whether the District has refused to acknowledge now what specific cuts it will make to existing programs to fund the budget deficits caused by the USSC acquisition debt so as to thwart administrative or judicial review of the Agency Action.

r. Whether the District’s decision to divert funds from the Long-Term Plan toward the purchase of USSC lands without any identification of replacement projects or showing that such replacement projects constitute the best available technology for the reduction of phosphorus discharges to the Everglades is contrary to the EFA, which requires that the Long-Term Plan be implemented and that it constitute the best available technology for the reduction of phosphorus.

s. Whether the District properly considered the effect of diverting Everglades project funding to the USSC acquisition on statutory and

regulatory timelines for water quality requirements in Lake Okeechobee and/or the Everglades Protection Area.

t. Whether the Agency Action, and the resulting cancellation and/or delay of long-term plan projects, violates the compliance schedules in DEP Administrative Compliance Orders approving National Pollutant Discharge Elimination System (NPDES) permits for the STAs thereby placing the District in violation of state and federal law.

u. Whether the District's Agency Action is arbitrary or capricious.

v. Whether the proceeds of the agricultural privilege tax will be unlawfully diverted as a result of the Agency Action.

#### **ULTIMATE FACTS ALLEGED**

37. Petitioners incorporate by reference Paragraphs 1-33 above, as if fully restated herein.

##### **A. The Initial Deal**

38. On June 24, 2008, Governor Charlie Crist and the Vice Chair of the District's Governing Board, Shannon Estenoz, announced that the District would purchase a future interest in the assets of USSC for \$1.75 billion for the purpose of establishing 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 in secret with USSC, and with no public notice or public meetings decided the terms of the sale.

39. On June 24, 2008, USSC and the District entered into a written agreement -- the "Statement of Principles" -- setting out the key terms of the purchase of USSC's assets. This Statement of Principles formalized the terms negotiated in secret, 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.

40. The Statement of Principles was "ratified" by the Board on June 30, 2008. Following that decision, a team of negotiators, led by the Secretary of DEP and including staff from the District, DEP and the Executive Office of the Governor, negotiated the Agreement. That team made all major decisions in secret and later, as will be discussed, presented a final deal for approval by the Governing Board.

41. The Statement of Principles provided that the final price was to be confirmed by appraisals. The District's analysis of the value of USSC, however, came back far below the \$2.2 billion true value of the initial proposal (factoring in the free six-year holdover).

**B. The Land-Only Deal**

42. In an effort to address this valuation crisis, the District and USSC developed the alternative land-only structure reflected in the Agreement. Under this approach, USSC would remain in business and continue to farm for an indefinite period of time after still receiving more than the District's financial consultants' estimate of the total value of the company.

43. As opposed to the initial proposal, where USSC was to cease operations after a defined period, under the land-only alternative, USSC stays in business, retaining ownership of its mill and refinery and other industrial assets (the "Industrial Assets"). Moreover, the critical need of USSC to unload its Industrial Assets in the original deal disappeared in the new land-only deal, suggesting that the lease and "first refusal rights" for future leases for USSC guaranteed in the latter deal prevents those Industrial Assets from becoming an unused liability for USSC. In other words, the transaction contemplates that the land which provides the necessary feedstock for the mill and refinery will remain well utilized, in production and under the control of USSC.

44. While the price is claimed to be \$1.34 billion, it is actually hundreds of millions higher because USSC will also be given a preferential lease of the land it will sell to the state. For the first six years, USSC can lease its lands at \$50 per acre, even though the District's own estimates are that the lease value is much higher. In the seventh year, USSC gets a BONUS -- a free lease of its land for a full year. After that, it is granted a right of first refusal against the District competitively leasing the land, guaranteeing USSC long-term control until such time, if ever, as the District can construct the reservoirs and related projects its staff presented to the Governing Board as the basis for the land purchase.

45. And, that day will be a long-time coming. The District has, tellingly, provided no analysis of what it would cost to actually construct projects on the USSC land, identified what those projects would be, or determined how it would finance such projects. Under the terms of the proposed agreement, this means

that USSC gets to cash out from the public treasury and continues private use of public lands for the indefinite future.

46. Upon information and belief, the District has failed to estimate the construction cost of the projects that it claims are the basis for the Agency Action so as to avoid administrative or judicial review of the issue of whether such a project can ever be implemented.

**C. Project Cuts to Pay for USSC Debt Service**

47. To pay for this, the District will redirect funds away from currently-planned projects, including those in the Long-Term Plan. There is no indication of what, if anything, will be done with the USSC land, and no planning for replacement projects to provide the functions of those projects abandoned. For the foreseeable future, the only effect is to grant a massive public subsidy to USSC, which gets to lease its land indefinitely and at a fraction of the public expense. The District will make annual debt service payments of over \$120 million, that result in little more than subsidizing USSC's business, and in return will get only a small fraction of that back (approximately \$9 million) in rent from USSC. Thus, the District is paying over 12 times as much to finance the \$1.34 billion cash payment to USSC as USSC is paying in rent to retain control of everything it sold. This differential accrues directly to USSC's bottom line as USSC avoids the financial cost of its vast landholdings, but gets to keep its land, all at public expense and at the expense of Everglades Restoration.

48. The District staff has admitted in public presentations to the Board that the USSC purchase debt will lead to budget deficits for the foreseeable

future. Upon information and belief, the District has failed to specify what projects or programs will be cut to pay for these deficits so as to thwart administrative and judicial review of the Agency Action prior to the closing and thus deprive affected parties of any meaningful remedy.

49. The District has attempted to justify the acquisition on the grounds that it is needed for Everglades restoration and its executives have testified in related litigation that the purpose of the acquisition was to build reservoirs holding approximately one million acre feet of water. Yet, the District has wholly failed to consider the cost of such a project and the fact that, after incurring the purchase debt, it has no financial ability to implement the stated public purpose for the transaction.

50. The District is expending nearly all its Everglades financial resources on this acquisition based on little more than a speculative hope that it can make use of some of the USSC lands. Yet, the District (i) has not yet defined any alternative projects to replace those being eliminated; (ii) has no defined plan for the use of the assets being acquired; (iii) has no ability to secure the funding needed to build the new restoration projects it vaguely alludes to in its public presentations; and (iv) requires substantial landholdings of New Hope to accomplish any reasonable alternative, but does not plan to negotiate any terms for such acquisition prior to closing with USSC and would allow the USSC land to be encumbered by the Lease so as to preclude any land exchanges for years.

51. No alternatives to the projects being shelved will be realized from the USSC acquisition for decades at best. Thus, compliance with current

Everglades restoration mandates, including the Settlement Agreement, EFA and Phosphorus Rule, will be directly and adversely affected by the Agency Action.

52. The District also failed to account for the impacts from existing projects, including Long-Term Plan projects, being cancelled or delayed to pay for USSC. Nothing sets out a plan for acquiring and financing the acquisition of the other land needed for the "restoration." And, there is nothing at all to indicate where the \$5.4 to \$8.4 billion needed for the reservoirs and treatments areas that were the stated basis for the land acquisition would come from. Nor is there any analysis of the implications of abandoning the federal-state Comprehensive Everglades Restoration Plan, giving up any federal funding while at the same time spending all the District's resources on the USSC acquisition.

53. Under the Agency Action, the District would indebt itself to a point where it cannot meet its commitments under state and federal law to achieve improvements in Everglades water quality, and misuse both *ad valorem* and EAA agricultural privilege taxes for a land acquisition with no defined purpose. At the end of the day, all the District would achieve is to grant a large public subsidy to USSC -- which will continue to operate its business after receiving over a billion dollars of public funds, action clearly beyond its statutory authority.

54. Finally, the District would acquire significant amounts of land that it cannot use in a flow way under any conceivable scenario, particularly since the USSC land is non-contiguous and spread throughout the EAA. The District 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, USSC has

encumbered the land such that the District cannot do anything other than facilitate USSC's continued farming, on preferential terms, at the public's expense.

**D. The Agency Action is an Improper *De Facto* Abandonment of the Long-Term Plan.**

55. The Long-Term Plan, also known as the "Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals," is a suite of projects and specific timetables to improve water quality and deliveries to the Everglades.

56. The Legislature in 2003 found the Long-Term Plan to be the best mechanism for addressing phosphorus levels in the Everglades and mandated its implementation. Implementation of the Long-Term Plan was Legislatively mandated by the EFA. See, e.g., Fla. Stat. § 373.4592(3)(b).

57. As noted, the cost of the debt service to be incurred by the Agency Action would cause widespread cuts in current projects, and in particular, in the District's Long-Term Plan. While the District may wish it could forget its commitments, the Long-Term Plan is a key component in several federal and state mandates. Its implementation is required by the EFA. It is the Legislature's mandate for reducing phosphorus loads to the Everglades. And, it is a requirement in ACOs entered into between DEP and SFWMD in various permits. It cannot simply be ignored. Likewise the District has clear legal obligations to address growing nutrient problems in Lake Okeechobee, which are similarly impaired by the Agency Action.

58. As a direct result of the USSC acquisition, the District will, among other project cuts, cancel and/or delay projects set out in the District's Long-Term Plan. The Long-Term Plan is incorporated by reference in Rule 62-302.540, F.A.C. (the "Phosphorus Rule"), which mandates the plan's implementation, and constitutes a fundamental part of that regulation. The plan is used as, among other things, the definition of Best Available Phosphorus Reduction Technology (BAPRT), a fundamental concept that ties into several key provisions of the Phosphorus Rule. See F.A.C. §§ 62-302.540(3)(a) and (b) and (6)(a).

59. Section 373.4592(3) of the EFA calls upon DEP and the District to implement BAPRT via the Long-Term Plan. BAPRT is intended to achieve "the most reliable means of optimizing the performance of STAs and achieving reasonable further progress in reducing phosphorus." Fla. Stat. § 373.4592(3)(b). The Legislature in amending the EFA in 2003 specifically found that the Long-Term Plan achieved this goal and mandated its implementation without delay. *Id.*

60. The Phosphorus Rule then incorporates the BAPRT concept at several points, including section (6)(a), set out below, with emphasis added:

(6) Moderating Provisions. The following moderating provisions are established for discharges into or within the EPA as a part of state water quality standards applicable to the phosphorus criterion set forth in this rule:

(a) Net Improvement in Impacted Areas.

1. Until December 31, 2016, discharges into or within the EPA shall be permitted using net improvement as a moderating provision upon a demonstration by the applicant that:

a. The permittee will implement, or cause to be implemented, BAPRT, as defined by Section 373.4592(2)(a), F.S., and further provided in this section, which shall include a continued research

and monitoring program designed to reduce outflow concentrations of phosphorus; and

b. The discharge is into or within an impacted area.

2. BAPRT shall use an adaptive management approach based on the best available information and data to develop and implement incremental phosphorus reduction measures with the goal of achieving the phosphorus criterion. BAPRT shall also include projects and strategies to accelerate restoration of natural conditions with regard to populations of native flora or fauna.

3. For purposes of this rule, the Long-Term Plan shall constitute BAPRT. The planning goal of the Long-Term Plan is to achieve compliance with the criterion set forth in subsection (4) of this rule. Implementation of BAPRT will result in net improvement in impacted areas of the EPA. The Initial Phase of the Long-Term Plan shall be implemented through 2016. Revisions to the Long-Term Plan shall be incorporated through an adaptive management approach including a Process Development and Engineering component to identify and implement incremental optimization measures for further phosphorus reductions.

61. Thus, the Phosphorus Rule, which implements the EFA, specifically requires the District to “implement or cause to be implemented BAPRT.” BAPRT is, in turn, defined as compliance with the Long-Term Plan. The District is therefore obligated by the Phosphorus Rule to implement the Long-Term Plan.

62. A parallel requirement is found in DEP's ACOs approving discharge permits for waters entering the Everglades, which likewise require adherence to the Long-Term Plan as the compliance mechanism for achieving the water quality criterion for phosphorus in the Everglades Protection Area.

63. The debt used to finance the acquisition (the “Purchase Debt”) will place the District near its current maximum debt service limit (the “Debt Cap”), as set out in the District’s Debt Management Policy, Article IV, South Florida Water Management District Policies and Procedures. Upon closing, the District would

have incurred the Purchase Debt, transferred the proceeds to USSC and moved itself to very near its newly-raised 30 percent debt ceiling.<sup>3</sup> The Purchase Debt will leave the District in a financial position where it will not be able to obtain the capital needed to complete all projects called for in the Long-Term Plan. Under the District's own projections, it will need budget cuts of up to 22 percent to "core operations" to meet the debt service requirements. These cuts will, according to the District's public statements, first target planned Everglades restoration projects in the Long-Term Plan, essentially abandoning the current plan.

64. Upon closing, the District will have irrevocably departed from the current Long-Term Plan, having committed the funding to USSC. And, even if new replacement projects might eventually follow the acquisition of the USSC assets, there is no indication that the District has any sources for the capital or debt service revenue needed to implement such projects and replace the functions of the projects lost in the rush to make the USSC acquisition. Absent new revenues (none have been identified), the District will not be able to actually do anything with the land it acquires for the indefinite future.

65. Thus, the Agency Action derails current Long-Term Plan projects, and violates the statutory, regulatory, permit and judicial order requirements that the plan be implemented, in favor of future as yet unspecified replacement projects, that may or may not constitute the best available means to reduce phosphorus, and may not even be financially feasible in light of the Purchase Debt.

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<sup>3</sup> 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.

**E. The Deal Does Not Comply With the Statutory Requirements for Water Management District Land Acquisition.**

66. The power vested in SFWMD to acquire land is not absolute and is limited to the lawful exercise of its discretion, which is subject to challenge by a substantially interested person such as New Hope. The Legislature has specifically declared that land management plan disputes are subject to chapter 120. See Fla. Stat. § 373.1391(1)(c).

67. Section 373.139, Florida Statutes, limits the District'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 USSC Purchase. The acquisition of property from a private party merely to be leased back to that same party for the indefinite future does not meet any public purpose, much less fall within the restrictive list of required uses under §373.139.

68. 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 District commissioned two appraisals and one "fairness opinion"<sup>4</sup> all of which concluded that the District was overpaying and overpaying handsomely. However, no written justification has

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<sup>4</sup> A fairness opinion differs from an appraisal in that it looks at the most a rational buyer would pay for USSC's ongoing business. The fairness opinion indicated that for all of USSC's land and business assets the most any buyer would pay is \$1.3 billion.

been provided that complies with the requirement. And, to the extent the District attempts to justify the purchase under the mantra of "Everglades restoration," such a justification would be arbitrary and capricious, as the District does not have the funding sources available to actually accomplish the conceptual vision that it claims is the basis for acquiring USSC lands, or even to replace the functions lost from the projects that were shelved as a result of the financial impact of the purchase. The statutory requirements are not met for a value in excess of appraisals of multiple hundreds of millions of dollars by a simple statement of an unrealistic, speculative future intent to bring the land within the allowed uses.

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

69. The District'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 USSC, which continues to control its land for at least seven years and thereafter so long as the District remains financially crippled by the purchase debt.

70. Once the purchase price is paid to USSC, the District will have irrevocably committed itself to abandoning the projects in the Long-Term Plan. By replacing projects set forth in the Long-Term Plan in favor of the USSC purchase Debt Service, the District has adopted a proposed Agency Action that is contrary to the Long-Term Plan, BAPRT, the Phosphorus Rule, and the water quality of the Everglades and the Lake. To date, the District has not proposed any alternative projects to replace those that will be cancelled or delayed, has not

indicated where the funding for any such alternatives would come from, and has not shown that a modified long-term plan after the USSC acquisition will be the "best available phosphorus reduction technology" as the Legislature found was the case with the current, now largely abandoned Long-Term Plan.

71. The delay caused by the Agency Action will add years or decades to the compliance period for the Everglades phosphorus criterion. If it is the District's intent to use this new land for projects to replace the current Long-Term Plan, the preferential lease and the impact of the Purchase Debt will add a decade or more to the time needed to move toward water quality compliance. No meaningful evaluation of the effects of this delay has been undertaken by the District. Upon information and belief, as part of a concerted effort to thwart review, no such evaluation is intended to occur prior to the September 25, 2009, closing date set out in the Agreement.

72. Because of the District's lack of analysis of the critical issues discussed above, the Agency Action is arbitrary and capricious.

73. Upon information and belief, other legislatively-mandated projects will also be affected and either cut or delayed as a result of the Agency Action, including, *inter alia*, the projects needed for the Lake Okeechobee Protection Program. Failure to timely complete such projects could place the District in violation of the Northern Everglades and Estuaries Protection Program, section 373.4595, Florida Statutes. These statutory violations independently render the Agency Action invalid, and the failure to properly analyze the impact on, *inter*

*alia*, Everglades and Lake water quality compliance renders the Agency Action arbitrary and capricious.

### **GOVERNING RULES AND STATUTES**

74. For the reasons set forth in this Amended Petition, the specific statutes and regulations requiring that the Agency Action be declared invalid include sections 120.569, 120.57, 373.089, 373.093, 373.139, 373.1391, 373.4592, and 373.4595, Florida Statutes, and chapters 62-302 and 28-106, Florida Administrative Code.

### **RELIEF SOUGHT**

Petitioners request that the District refer this matter to the Division of Administrative Hearings; that an Administrative Law Judge be assigned to conduct a formal hearing concerning the issues raised by this Petition, and that the Agency Action be declared invalid for the reasons set forth above.

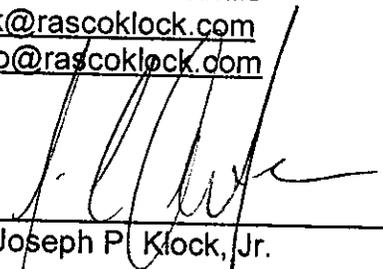
Dated: February 12, 2009

Respectfully submitted,

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By: 

Joseph P. Klock, Jr.

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# 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.

- 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 waives 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.q.
- 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 if 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".

A handwritten signature in black ink, appearing to be the initials 'DDH' with a stylized flourish.

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: Marybeth P. Brown  
Witness Gerard A. Bernard

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

SBG FARMS, INC., a Florida corporation

Witness: Marybeth P. Brown  
Witness Gerard A. Bernard

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

SOUTHERN GARDENS GROVES  
CORPORATION, a Florida corporation

Witness: Gerard A. Bernard  
Witness Marybeth P. Brown

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

**BUYER:**

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
As Its: \_\_\_\_\_  
Date of Execution \_\_\_\_\_

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

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. Burk  
Name: Robert H. Burk, 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. Burk  
Name: Robert H. Burk, 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

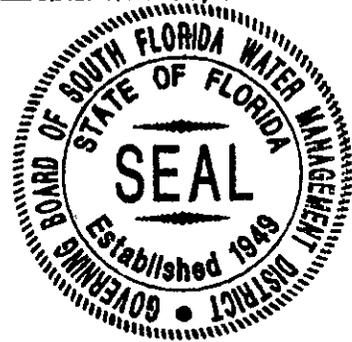
Witness: [Signature]

By: [Signature]  
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]



[Handwritten initials]

**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: Paul A. Bennett

By:

Malcolm S. Wade Jr.

Name:

Malcolm S. Wade Jr.

As its:

President

Witness Myrtle B. Brown

Date of Execution

12. 08. 08

*[Handwritten initials]*

## EXHIBIT B

**EXHIBIT 19.e**

**LEASE**

**[SEE ATTACHED]**



**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 10<sup>th</sup> of each calendar year thereafter, whereupon this **LEASE** shall terminate on (a) May 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup>, as to the portion of the Premises used for LESSEE's sugar operations, and any July 1<sup>st</sup>, 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 1<sup>st</sup> and July 1<sup>st</sup>, 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 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, and October 1<sup>st</sup>) 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.

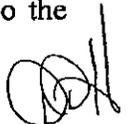
31. **LESSOR Inspection, Ingress and Egress:**



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: \_\_\_\_\_

Witness \_\_\_\_\_

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

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

As its: \_\_\_\_\_

Date of Execution \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

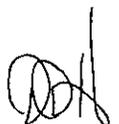
The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_ by \_\_\_\_\_ of the South Florida Water Management District, a public corporation of the State of Florida, on behalf of the corporation, who is personally known to me.

\_\_\_\_\_  
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: \_\_\_\_\_

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:**

SOUTHERN GARDENS GROVES  
CORPORATION, a Florida 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: \_\_\_\_\_

LIST OF SCHEDULES AND EXHIBITS

EXHIBIT "A"	Description of Premises
SCHEDULE "1" (§2.D)	Category I and Category II Exotic/Invasive Pest Plants
SCHEDULE "2" (§2.D)	Class I and Class II Prohibited Aquatic Plants
SCHEDULE "3" (§2.H)	Permitted Herbicides, Pesticides and Agricultural Chemicals
SCHEDULE "4" (§2.J)	Best Management Practices
SCHEDULE "5" (§16.A)	Insurance Provisions
SCHEDULE "6" (§18.F)	Portions of Premises to be used as Everglades Restoration Project
SCHEDULE "7" (§33.B.1)	Escrow Agreement
SCHEDULE "8" (§33.B.2)	Form of Letter of Credit
SCHEDULE "9" (§33.K)	Lead Based Paint Disclosure

**EXHIBIT "A"**

Description of Premises

(LEGAL DESCRIPTION TO BE ATTACHED AT CLOSING)



**SCHEDULE "1"**

Category I and Category II Exotic/Invasive Pest Plants

[TO BE MUTUALLY AGREED UPON DURING THE INSPECTION PERIOD]



**SCHEDULE "2"**

Class I and Class II Prohibited Aquatic Plants

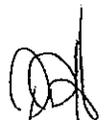
[TO BE MUTUALLY AGREED UPON DURING THE INSPECTION PERIOD]



**SCHEDULE "3"**

Permitted Herbicides, Pesticides and Agricultural Chemicals

[SEE SECTION 6 (FOR CITRUS) AND SECTION 2.6 (FOR SUGAR CANE) IN BEST  
MANAGEMENT PRACTICES ATTACHED HERETO AS **SCHEDULE "4"**]



SCHEDULE "4"

Best Management Practices

[THE ATTACHMENTS IN THIS SCHEDULE ARE TO BE MUTUALLY AGREED UPON  
DURING THE INSPECTION PERIOD]

**D R A F T**

**BEST MANAGEMENT PRACTICES PLAN - DRAFT  
CITRUS**

**UNITED STATES SUGAR CORPORATION  
HENDRY AND GILCHRIST COUNTIES, FLORIDA**

*Prepared for*



South Florida Water Management District  
3301 Gun Club Road  
West Palm Beach, Florida 33406

November 2008



*Prepared by*

**URS**

URS Corporation  
4168 Southpoint Parkway, Ste 205  
Jacksonville, Florida 32216  
T904.281.9251 F904.281.9892





November 14, 2008

Mr. Robert Taylor  
Land Support Acquisition Division  
South Florida Water Management District  
3301 Gun Club Road  
West Palm Beach, Florida 33406

Subject:       **DRAFT**  
                  **Environmental Best Management Practices Plan-Citrus**  
                  **United States Sugar Corporation**  
                  **Hendry and Gilchrist Counties**  
                  **State of Florida**  
                  **Job # 38617-027**

Dear Mr. Taylor,

URS Corporation (URS) is pleased to present this Environmental Best Management Practices (BMP) Plan - DRAFT for the United States Sugar Corporation (USSC) citrus properties in Hendry and Gilchrist Counties, Florida.

It is URS' understanding that as the property owner, the South Florida Water Management District (District) desires to have in place a set of general environmental BMPs for the citrus operations that are designed to maintain/protect water quality in accordance with the State's water quality standards, maintain the soil and water quality at the site which will not prohibit the District from using property as a water attenuation reservoir in the near future, and that will concurrently allow for continued economically-viable agricultural production on the site. This BMP plan is designed to meet these expectations by providing guidance to the USSC property on environmental preventative measures to be proactively implemented.

Sincerely,  
**URS Corporation**

Edward A. Leding, P.G.  
Project Manager

Timothy B. DeBord  
Vice President

URS Corporation  
4168 Southpoint Pkwy Ste 205  
Jacksonville, Florida 32216  
T 904.281.9251  
F 904.281.9892  
FTL 350796.10  
12/4/08



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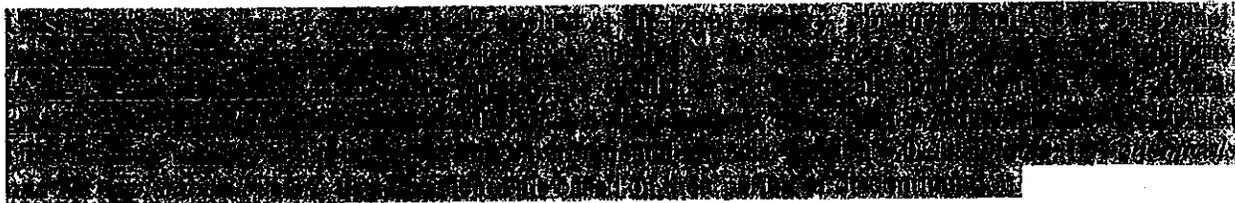
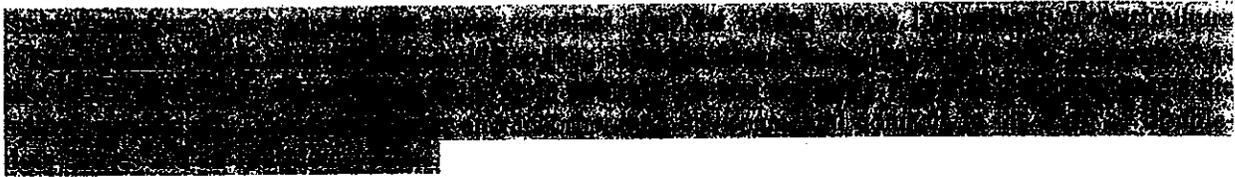
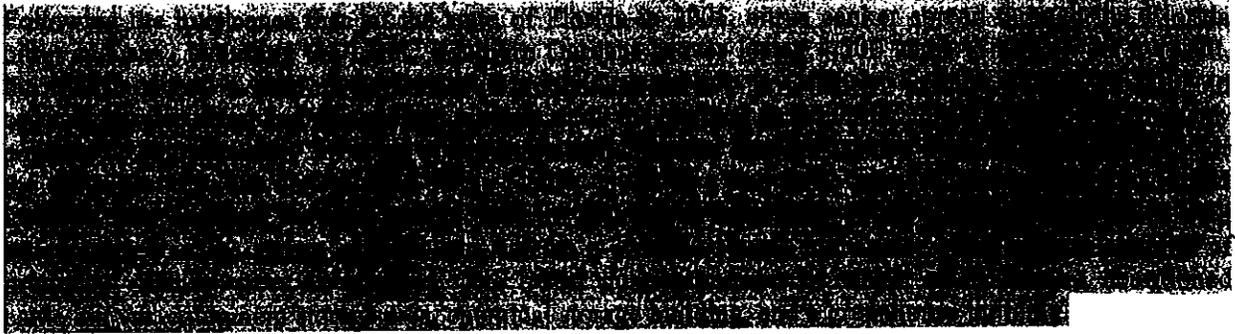
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- Appendix A Best Management Practices Checklist
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### 1.1.1 USSC Citrus Nursery



#### B. [Redacted]

Phase I and Phase II Environmental Site Assessment (ESA) activities were conducted on the property in August and September 2008 by Professional Services Incorporated (PSI). Identified areas of potential point source concerns associated with the citrus operations are:

- Chemical Storage and/or Maintenance Areas
- Equipment Staging Areas
- Mix and Load Areas
- Fuel Storage / Re-fueling Areas
- Diesel Powered Pump Stations
- Canker Wash Stations
- Airplane Landing Strips

Section 2.0 provides descriptions of a variety of environmental BMPs to be considered as part of the citrus operations. Although all BMPs are important with the need for diligent on-going implementation, particular attention needs to be addressed to the following:

[Redacted]  
Pump Stations

[Redacted]  
Chemical Storage Areas



### Copper Based Nutrients

Given below is a summary of the observations made during the Phase I ESA, based on the results of the Phase II ESA at the above referenced areas/issues and LRS recommendations to address the issues.

[REDACTED]

[REDACTED]

[REDACTED]



D. 1.3 Objective

Given below are sets of guidelines proposed for the day-to-day citrus farming operations:

- Continued economically-viable citrus grove operations on the properties that is agreeable for implementation by the lessee/tenant during the interim use,
- Maintain/protect water quality in accordance with the State's water quality standards and maintain the soil conditions with respect to the State's "Soil Cleanup Target Levels" (SCTLs),
- Comply with State regulations that are applicable to the citrus grove operations that result in conditions that will maintain the soil and water quality at the site which will not prohibit the District from using the property as a water attenuation project area at the end of the interim use period.

A list of agrochemicals currently used was provided to the District. The chemical usage list is included in *Section 6.0 Acceptable Agrochemicals and No Application Periods*. In the event that changes are made to the agrochemical list, a revised list should be provided to the District and should consist of a detailed specific agrochemical and pesticide product list, to include the quantity used, rates of application, and an evaluation of crop areas for effectiveness of the pesticides.

The U.S. Fish and Wildlife Service (Service) document titled "Derivation of No Application Periods for Interim Use Pesticides" defines the no application period as *the period of time prior to the conversion of the agricultural land to conservation purposes (i.e. flooding to create wetlands) during which a particular pesticide hazardous to fish and/or wildlife should not be applied, in order to allow adequate time for breakdown of pesticide residues before use of the land by the Service trust resources. This period of time was defined as five times the median half-life, representing 97 percent degradation.* A copy of this document is included in **Appendix A**.

E. 1.4 BMP Checklist

A BMP Checklist has been developed for the citrus grove farming on the property represented by the District. The BMP Checklist is provided as a guide for site inspections, observations and verifications as part of the BMP. This checklist identifies areas, issues, and items requiring inspection and verification. The purpose of the BMP Checklist is to insure consistency for each site visit and for other sites with similar agricultural operations. A copy of the checklist is included in **Appendix A**.

F.



## 2.0 WATER RESOURCE MANAGEMENT

The drainage systems that have been developed in the USSC property to make productive agricultural and urban land have increased drainage frequency, discharge volumes, and the velocity of water discharged from structures within the watershed compared with the natural condition. Excess rainfall from high intensity thunderstorms, tropical storms, and hurricanes must be drained to protect agricultural and urban areas from flooding. Under natural conditions, water from these areas would be cleaned by traveling downstream via tributaries before reaching coastal water bodies. Implementation of the practices and policies in this Section will improve water quality and maintain natural variability and the aquatic ecosystems in the USSC citrus production property.

Wherever feasible, citrus growers should consider implementing surface water management strategies that can provide additional storage and reduce the impacts associated with excessive freshwater discharges. These surface water management strategies can range from improved ditch maintenance and water table management to additional on-site canal storage or the construction of detention reservoirs for holding excess rainfall and tailwater recovery systems. It is important to conduct site-specific evaluations to determine if additional storage can be provided on-site and to plan long-term water management strategies that will minimize off-site discharges during periods of intense rainfall.

### G. 2.1 Water TABLE Management

Water table can be managed more efficiently by having sufficient hydraulic capacity in the ditch/canal system, using water control structures on culverts, laser land leveling where appropriate, constructing and maintaining a properly designed drainage system, and actively monitoring the water table. Based on the Phase II ESA, the existing system is satisfactory and is consistent with the District's goals and objectives.

Effective water management of flatwoods soils requires monitoring the water table depth with enough precision to minimize pumping for irrigation and drainage. Knowledge of the water table depth is essential to ensure that adequate drainage can be provided. Since a significant portion of the tree water requirements can come from upward flux from the water table, water table monitoring should be an essential tool in irrigation management. Water table manipulation, and associated supplemental irrigation reductions, can also assist in salinity management by reducing the use of low quality groundwater.

### H. 2.2 scheduling irrigation and drainage

The main management objective is to minimize the overdrainage of the property by the active control of the site water table. Irrigation mostly affects the movement of water-soluble chemicals while drainage mostly affects the movement of chemicals absorbed to soil particles. Irrigation at the properties principally consists of microjet irrigation. The microjet system on the property is effectively operating and is acceptable by the District. Site verification will include discussion with operation managers to understand property water management approach and visual observation of structures and tools used to assist with water management decisions.

Operation managers should use real-time weather monitoring to proactively manage or limit drainage and/or irrigation events. Effective water management is achieved through water control structures such as



designed culvert sizes and openings or culverts with flashboard risers. Control elevations should be established to initiate and stop draining or pumping. The operation manager should partition the property into hydrologic blocks to allow for internal water management as opposed to one location at a downstream point.

Water level indicators, such as floats, can provide a visual indicator of actual water table levels.

Soil moisture measurements should be recorded to determine optimum times for irrigation and irrigation limits. The properties are currently utilizing the Agrolink system that uses soil monitoring probes to measure the soil moisture at various depths down to 36-inches below land surface.

I. 2.3 MODERATE DISCHARGE RATE

Adjust the rate of discharge proportionate to the rate of lateral movement of water through soils. Slowing the discharge rate will lessen the turbulence, reduce sediment movement, reduce erosion, and moderate the impacts on the receiving water body.

J. 2.4 water furrow maintenance

Maintain a consistent bottom slope on water furrows between beds to achieve uniform drainage. Avoid rutting and sloughing of water furrow areas. Laser or RTK-GPS guided systems on water furrow maintenance equipment can be very effective in producing uniform slopes in water furrows. Where possible, maintain vegetation management programs that minimize soil movement in the event of heavy rains by keeping a grass or vegetation cover on the soil surface in between tree rows. For additional information refer to the Erosion Control and Sediment Management Section in this document.

K. 2.5 MONITOR SOIL MOISTURE

The Agrolink system for soil moisture measurements is used in conjunction with water table observation wells and staff gauged in the canals for irrigation and drainage management to avoid excess soil moisture depletion and minimize water volume requirements during irrigation cycles. This system of soil monitoring is appropriate and acceptable by the District.

L. 2.6 drainage management plan

Implement and maintain a written drainage management plan that provides specific responses to various types and levels of rainfall. The goal of the plan should be a reduction in volume of off-site discharge while maintaining a healthy rooting environment for citrus trees thus maximizing fruit production. The plan should include target water table levels and pump or drainage structure operating procedures that will be used for typical and extreme rainfall events. Consideration should be given to the use of existing canals and ditches for temporary water storage.

M. 2.7 drainage RATE AND VOLUME

Drainage rates and the volume of water released or discharged following intense rainfall events should provide an adequately drained root zone while minimizing off-site impacts. The system operating the drainage rates and volumes should be in compliance with existing drainage permits.

When the water table approaches the target level, off-site discharges should be moderated. Depending on the grove design, irrigation method (e. g. microirrigation and seepage irrigation), and soil characteristics



this may require adjusting pump speed and the discharge structure or pulse drain-age. Pulse drainage involves discharging for short periods of time and then allowing for recharge in the ditches. If adequate drainage in one portion of a grove results in water tables that are below target levels in another area, ditch cleaning, drain-age system redesign, or auxiliary pumps may be needed to achieve more uniform drainage.

N. 2. 8 discharge structures

Structures and/or pumps that regulate off-site water discharge should be adequately designed, constructed, and maintained so that target water table levels within the grove can be achieved.

If safety or operational concerns prevent structures from being adjusted to regulate discharges during storm drainage events, they should be rehabilitated or replaced. (e.g. modifying riser-board structures to allow easier water level control). For additional information see your local NRCS and District representative.

O. 2. 9 DETENTION, TAILWATER RECOVERY, AND SURFACE WATER USES

Where possible, on-site detention should be considered to reduce both the rate and volume of off-site discharges following heavy rains.

Detention areas allow all or a portion of the drainage water to be temporarily stored on-site. The excess water can be stored for tailwater recovery or released later at low flow rates. The size, type, and location of proposed tailwater recovery ponds are variables considered when determining the need for an Environmental Resource Permit. Growers should contact their local District office and land manager for guidance on the issue. Most of the citrus groves in the USSC properties have stormwater retention areas. With some structural modifications, some of the existing stormwater detention areas can be modified to provide on-site water storage for irrigation water supply for the grove for several weeks. If these modifications were to be cost shared by the local, state, and federal agencies, the modified system can provide water quality benefits and supply irrigation water.

This is an optional program and if elected, the planning, construction, evaluation of costs, and permitting will need to be discussed and reviewed by the District.

The properties are all in compliance with Section 2.1 through 2.9 with the exception of Section 2.6 – Drainage Management Plan. It is URS' understanding that USSC is in the process of developing a written Drainage Management Plan for the citrus properties.



### 3.0 EROSION CONTROL AND SEDIMENT MANAGEMENT

Sediments or suspended solids are recognized forms of water pollution and often result in the loss of ditch or canal capacity. Unlike many chemical pollutants, sediment is a natural component of water bodies and the resources they support. Excessive amounts of suspended solids or sediments are often a product of erosion from unstabilized or disturbed land areas. These solids originate from four primary sources:

- Soil-particles eroded into ditches
- Soil-particles eroded from ditches
- Plant material washed into the ditches
- Plant and biological material growing within the ditches and canals.

Excessive sediments deposited on stream bottoms and suspended in the water column can harm fish spawning and impair fish food sources, reduce habitat complexity, potentially harm public water supply sources, and reduce water clarity.

In addition to potential downstream water quality impacts, the build-up of silts and sediments in the grove/farm-level, secondary, and primary drainage canals reduces ditch and canal cross-section. This reduction in cross-sectional area results in higher water velocities, as compared to an unfilled ditch or canal. This higher water velocity (compared to unfilled ditches/canals) may induce greater amounts of erosion of fine and coarse particles from ditch and canal banks. The presence of shoals and sandbars are good indicators of soil losses. Field erosion also results in site degradation resulting in increased costs for ditch-cleaning and reshaping of beds and furrows. In order to minimize effects of sediment transport in surface water, efforts should focus on keeping soils in the fields and along canal and ditch banks.

Minimizing downstream transport of sediments from groves and canal/ditch banks requires an integrated approach of managing erosion at the grove-level, the secondary canal system level and primary canal system level. It should be noted that maximum sediment losses from groves are expected during construction of new groves or renovation of older ones. Losses from mature, well managed groves will be much lower. The following Sections describe BMPs that are applicable for water conveyances within citrus groves. The selection and implementation of particular BMPs must be based upon site-specific circumstances and management styles.

#### P. 3.1 RISER-BOARD WATER CONTROL STRUCTURES

Place and maintain culverts with riser-board control structures at locations where runoff is discharged off-site. Water discharge structures are used to control water table levels and surface water levels in drainage ditches within flatwoods citrus groves. The type of structure selected can significantly influence the quality of water discharges. With riser-board control structures, water is forced to flow over the top of the boards. This flow path creates a low current area towards the bottom of the structure, which facilitates the deposition of sediments and their accompanying nutrients or pesticides, essentially removing them from the discharges. Conversely, screw-gates structures do not create this dead-current zone. Since they open from the bottom, sediments and their accompanying load are swept out along with the discharge water.



Q. 3.2 sediment settling basins

Create and maintain localized settling basins (sumps) throughout the groves to trap sediments prior to water discharge points from the grove. Successful sediment traps require site-specific designs, with the following points to consider:

- Determine runoff volume and intensity.
- Determine transport and settling rates for sediments of concern.
- Size traps to allow adequate residence time for natural settling to occur - include considerations for allowable storage (fill-up) of trapped sediments.
- Make provisions for materials removed from the ditches.
- Maintenance access to settling basin area should be provided.
- When sediments are removed, materials need to be placed in a manner that prevents material from sloughing back into the waterway.
- Sediment excavation and removal should be conducted during low stage conditions or during the dry season. This will reduce the likelihood of increasing turbidity and suspended solid loads.

Settling basins or settling ponds are a quick and simple way to remove sediments out of runoff water. Settling basins simply slow down the water, allowing sediments to settle out of the water before the water returns to the receiving water body.

NOTE: Existing detention impoundments may function as sediment settling basins.

Currently, the Devils Garden, Southern Gardens, and Dunwoody citrus groves each have a series of sediment settling basins. At these properties, each block in the groves contains a ditch that flows to lateral canals and then to a specific retention pond, depending upon the location on the property. The retention ponds then operate as a series of sumps that allow for the sediment to settle to the bottom of the retention ponds. After adequate residence time occurs, the water from the retention ponds flows to a discharge pond where it is discharged off the property. The Southern Gardens and Dunwoody groves each have one discharge pond while the Devils Garden grove contains three discharge ponds. The Alcoma Citrus does not contain retention ponds but rather a canal system that allows for adequate residence time for natural settling prior to being discharged from the property. These sediment settling systems at a minimum need to continue and must be in compliance with offsite discharge and water quality specifications as given in the exiting permits.

R. 3.3 DITCH CONSTRUCTION

Construct ditches and canals with side-slopes consistent with soil types.

S. 3.4 stabilize bare soils

Stabilize bare soils and canal or ditch banks by encouraging coverage by noninvasive vegetation. Vegetation types selected should be adapted to grove conditions and should provide maximum stabilization by roots and foliage. Vegetative buffer strips can also serve to reduce the erosion of soil particles. Whenever practical, plant or encourage establishment of native species.



#### T. 3.5 DITCH BANK CONTOURS

Contour ditch bank top edges or berms to divert water away from the drainage ditch.

This practice will minimize overland flow of storm-water directly down the banks.

#### U. 3.6 DITCH BANK VEGETATION MAINTENANCE

Broadleaf weed control using herbicides or maintenance mowing of slopes and ditch banks increases grass cover and decreases the proliferation of shade-producing shrubs and weeds, thus reducing erosion from wind and rainfall.

Points to Consider:

- Mechanical mowing does not uproot vegetation and expose soil.
- The use of herbicides should be conducted with caution and precision to avoid excessively large areas of bare soil.
- Selective herbicides should be used in order to maintain desired vegetation (e.g. remove broad-leaf vegetation while maintaining grasses).

#### V. 3.7 PROTECT DITCH BANKS

Protect canal and ditch banks from erosion in areas subject to high water velocities.

In areas where water is constricted (usually at discharge points) or at ditch intersections where velocities are high, rip-rap, concrete, headwalls, or other materials that buffer turbulence should be used to protect ditch banks and reduce sediment transport.

#### W. 3.8 VEGETATIVE STABILIZATION (WATER FURROWS)

Plant noninvasive vegetation and/or maintain desirable vegetation within all water furrows to prevent/minimize erosion and trap sediments that may result from stormwater runoff or irrigation drainage.

#### X. 3.9 AQUATIC PLANT MANAGEMENT

When removing vegetation from ditch bottoms, avoid disrupting side slopes.

If a backhoe without a vented bucket is used to remove aquatic plants from grove ditches, special precautions should be taken to prevent washouts. Once a bucketful of vegetation is picked up, the bucket should be raised to allow most of the water to drain out over the deeper part of the ditch. The boom should be swung far enough over the ditch bank so that when the vegetation is dumped, remaining water will flow away from the ditch.

#### Y. 3.10 ditch maintenance cleaning and dredging

Develop and implement a systematic management plan for removing sediments from canals and farm ditches on a regular basis.

Maintenance dredging of existing ditches, canals, and intake and discharge structures should include the following:



- Spoil material should be removed and deposited on an area that will prevent the movement of the water and excavated spoil material into wetlands or other surface waters.
- Do not remove any more material than is necessary to restore the original design specifications or configurations.
- No significant impacts should occur to previously undisturbed natural areas.
- Erosion and sedimentation control devices (e.g., turbidity screens) should be used to prevent bank erosion, scouring, and to prevent turbidity from discharging into adjacent waters during maintenance dredging.

Removal of excess sediment to the originally designed and constructed cross-sectional area generally increases the canal cross-sectional area and reduces water velocities (compared to same water volume in filled-in systems), thus reducing the potential for bank scouring. Caution should be considered as ditch maintenance, cleaning and dredging beyond the originally designed and constructed cross-sectional area may result in upstream and/or downstream adverse water resource impacts. Routine maintenance of the canals are, in general, conducted on a yearly basis.

If not part of standard ditch/canal maintenance, prior to conducting non-routine maintenance, in order to reduce the potential for misunderstandings with regulatory agencies and adjacent property owners, growers are highly encouraged to initially schedule a site visit with a local District representative to discuss and review the non-routine ditch maintenance activities.

#### Z. 3.11 HERICIDE APPLICATIONS (WATER FURROWS)

Restrict the area of tree-row applied herbicides to within the canopy dripline of the citrus trees.

The restricted herbicide band width will maximize the width of grassed water furrow slopes. Grassed water furrows serve as filters, preventing sediment movement from the fields into the drainage systems.

For young plantings, minimize the width of tree-row applied herbicides and establish vegetation in the water furrows. Smaller band widths will reduce the quantity of herbicides applied, thereby reducing material costs while minimizing potential of soil erosion into the drainage systems. As the trees increase in canopy width, the herbicide band width can be increased to match canopy size.

#### AA. 3.12 MIDDLES MANAGEMENT (HERBICIDE)

Suppress undesirable vegetation on bed tops and in water furrows.

#### BB. 3.13 GROVE DEVELOPMENT/RENOVATION

Upon completion of the soil bedding process within citrus groves, all bare soil areas (except tree rows) should be planted with grass or other vegetation species to minimize soil movement from rain and/or wind.

Bare soil surface, during windy conditions, can provide sufficient soil to blast the bark of young trees and allow movement of soil into water furrows and other drainage systems.



CC. 3.14 WATER FURROW DRAIN PIPES

Use PVC drain pipe or flexible pipe to connect all water furrows or field ditches to lateral ditches. Extend the pipe on the downstream side away from the ditch bank to prevent bank scouring.

DD. 3.15 WATER FURROW MAINTENANCE

Use water furrow drain pipes with managed vegetation in furrows to reduce surface water transfer velocity from the furrows to the drainage ditches and canals.

EE. 3.16 CONSTRUCTION AND TEMPORARY EROSION CONTROL MEASURES

In the event that large-scale, non-routine construction is required, then special measures and/or temporary erosion control measures should be taken during construction and renovation of groves, when culverts and control structures are replaced or repaired, and when there is a major disruption of established vegetation such as during irrigation system installation or when buried water lines are repaired.

Erosion control measures are used to minimize sediment transport and protect the quality of water bodies that receive runoff from disturbed areas. The most common temporary erosion control tools include straw or hay bale barriers, silt screens, and silt fences; however, more permanent control can be obtained through the use of specialized blankets and mats, gabions, and other systems used for soil stabilization.

The cost of erosion control options are highly variable and agricultural producers are encouraged to consider economics and site-specific conditions when selecting the most appropriate erosion control system for a particular action. When selecting an erosion and sediment control method, it is recommended that a NRCS representative, engineer, and/or a District Ag-Team member be consulted. This current erosion control on the property is appropriate and acceptable by the District.



#### 4.0 PEST MANAGEMENT

Over the last 20 years, great strides have been made in the development of crop protection (CP) products that are more target specific, less harmful to the environment and safer to those who handle and apply these products. The development and implementation of responsible farm management practices that promote the proper handling of these products also has contributed significantly to reducing the risk of environmental problems and protecting water resources, pesticide handlers and agricultural workers.

##### FF. 4.1 INTEGRATED PEST MANAGEMENT (IPM)

Adopt an Integrated Pest Management (IPM) program. IPM is an integrated system using a combination of mechanical, cultural, biological, and chemical approaches to best meet the goals of the program. This approach provides better and more economical management of most pests.

IPM is a philosophy of managing pests that aims to reduce farm expenses, conserve energy, and protect the environment. IPM is a broad, interdisciplinary approach using a variety of methods to systematically manage pests which adversely affect people and agriculture. IPM does not, as many believe, mean that no CP products are used. Rather, it means that CP products are only one weapon against pests and they should be used judiciously, and only when necessary.

The goals of an IPM program are:

1. Improved control of pests, through a broad spectrum of practices that work together to keep pest populations below economically significant thresholds.
2. More efficient CP product management through less frequent and more selective use of CP products.
3. More economical crop protection from reduced chemical costs and more efficient protection.
4. Reduction of potential hazards to farmers, workers, consumers, and the environment through reduced CP product exposure.

IPM accomplishes these goals using resistant plant varieties, cultural practices, parasites and predators, other biological controls such as *Bacillus thuringiensis* (BT), and other methods including chemical CP products as appropriate.

The basic steps for an IPM program are:

1. Identify key pests and beneficial organisms and the factors affecting their populations.
2. Select preventative cultural practices to minimize pests and enhance biological controls. These practices may include soil preparation, resistant rootstocks/scions, modified irrigation methods, cover crops, augmenting beneficials, etc.
3. Use trained "scouts" to monitor pest populations to determine if or when a control tactic might be needed.
4. Predict economic losses and risks so that the cost of various treatments can be compared to the potential losses to be incurred.
5. Decide the best course and carry out corrective actions.



6. Continue to monitor pest populations to evaluate results and the effectiveness of corrective actions. Use this information when making similar decisions in the future.

USSC currently has an IPM program in place and the policy has been implemented.

#### GG. 4.2 LABEL IS THE LAW

Read and understand the CP product label. The label is the law. Pay special attention to the "Environmental Hazards" section of the label. This applies to all sections following.

#### HH. 4.3 PRODUCT SELECTION

Select target-specific active ingredients that consider natural systems in epidemiological cycles and modes of action (i.e. insect growth regulators, botanicals, and biologicals).

Agricultural use of CP products should be part of an overall pest management strategy, which includes biological controls, cultural controls, pest monitoring and other applicable practices, referred to altogether as Integrated Pest Management or IPM. When a CP product is needed, its selection should be based on effectiveness, toxicity to non-target species, cost, and site characteristics, as well as its solubility and persistence.

While the focus of the IPM program is for field populations of mites, insects, nematodes disease pathogens and weeds, CP products also are prescribed for post-harvest maintenance of fruit quality. Some of these situations require pre-harvest applications as part of the overall management strategy. Due consideration needs to be given to these treatments in the overall crop BMPs.

#### II. 4.4 minimize spray drift

Reduce the potential for drift through appropriate selection of nozzles, spray pressure, and application methods or techniques for the formulation applied and equipment used. Always follow the label.

- Use nozzles that produce as large of a droplet size as possible while yielding adequate plant coverage and pest control.
- Leave a buffer zone according to the crop protection label between the treated field and any sensitive areas.
- Drift control agents can be tank mixed with herbicides to reduce spray drift.

#### JJ. 4.5 APPLICATION TIMING

Time CP product applications in relation to current soil moisture, anticipated weather conditions, and irrigation schedule to achieve greatest efficiency.

For weather information:

Florida Automated Weather Network: <http://fawn.ifas.ufl.edu/>

National Oceanic and Atmospheric Administration: [www.NOAA.gov](http://www.NOAA.gov)

National Oceanic and Atmospheric Administration: <http://weather.noaa.gov/>

The Weather Channel: [www.weather.com](http://www.weather.com)



#### KK. 4.6 PRECISION APPLICATION OF CP PRODUCTS

Use precision applications of reduced amounts of material to smaller trees in order to minimize application of CP products to non-target areas and result in more efficient utilization of applied materials. The method of CP product application, such as ground or aerial spraying, wicking, granules, etc., is important since the degree of drift and volatilization can vary considerably.

Some "intelligent" spraying systems are equipped with three-dimensional range sensors that can map the image of a tree up to 100 ft away on either side of the sprayer. These sensors feed the size, height, and location of the tree into an on-board computer that then turns on spray nozzles inches before the sprayer reaches the tree and turns them off inches past the tree. The nozzles are controlled by electric solenoid valves which are set up in zones so that only the foliage detected by the scanner is sprayed.

It is important that "intelligent" systems be properly maintained and operated and that equipment operators are trained in their use. Proper operation of "intelligent" systems is essential for efficient use of CP products.

Equipment without intelligent systems should have nozzle arrangement to avoid overspray based on tree height. This is sometimes referred to as "nozzling-down" to conserve spray materials and ensure application to target areas.

Other systems have been developed that utilize sonar for detecting foliage. These systems utilize ultrasonic impulses to detect the presence or absence of trees and plants. Sensors are installed on each side of the sprayer that may be aimed in any desired direction to cover optimal zones. The number of sensors can vary depending on the diversity of tree sizes within the grove.

Regardless of application system, proper training of applicators and maintenance of spray systems is essential to good management.

#### LL. 4.7 maintenance and calibration

Proper calibration and maintenance of CP product application equipment is essential for the proper application of agricultural chemicals. Equipment without "intelligent" systems should be manually nozzled down or otherwise adjusted when necessary to ensure proper application rates.

Calibration is the process of measuring and adjusting equipment performance. Application equipment that must be calibrated includes granule-applying devices; hand, backpack, boom, air-blast and other sprayers; soil fumigation devices; and injection equipment used for chemigation work. Calibration is not difficult. Calibration requires some arithmetic. Consult IFAS publication SM-53 or other publications for details and examples of calibration calculations.

CP product application equipment can deliver the correct amount of CP product to the target site only if it is working correctly. Before you start to calibrate any equipment, first make sure that all components are clean and in good working order.

To accurately calibrate any device, you must be familiar with the machinery. Follow the manufacturer's directions carefully – they usually explain how to adjust the equipment. Pay particular attention to the parts (such as nozzles and hopper openings) that regulate how much CP product is released. If these parts are clogged, not enough product will be released. If they are worn, too much product will be released.



Keep application equipment properly calibrated and in good repair. Correct measurement will keep you in compliance with the label, reduce risks to applicators, farm workers, and the environment, and save you money. Calibrate using clean water and do not calibrate equipment near wells, sinkholes, or surface water bodies. Measure CP products and diluents accurately to avoid improper dosing, preparation of excess or insufficient mixture, or preparing a tank-load of mixture at the wrong strength.

Proper application of CP products will help reduce farm costs. Improper application can result in wasted chemicals, marginal pest control, excessive carry-over, or crop damage. As a result, inaccurate application is usually very expensive.

#### MM. 4.8 RECORD KEEPING

The Florida pesticide law requires certified applicators to keep records of all restricted use pesticide (RUP). The federal Worker Protection Standard (WPS) requires employers to post information for employees of all pesticides applied. Maintain accurate CP product records to meet legal responsibilities and to document production methods.

CP product record keeping requires you to have current knowledge concerning the application of CP product materials within your area of influence. In addition, Florida law requires that you record the following items to comply with the restricted use pesticide record-keeping requirement:

- Brand or product name
- EPA registration number
- Total amount applied
- Location of application site
- Size of area treated
- Crop / variety / target site
- Month / day / year of application
- Name and license number of applicator (If applicator is not licensed, record his/her name and the supervisor's name and license number.)
- Method of application
- Name of person authorizing the application, if the licensed applicator does not own or lease the property

Florida regulations require that information on RUPs be recorded within two working days of the application and be maintained for two years from the application date (Chapter 487.2051 Florida Statutes). The Worker Protection Standard (WPS) requires information on all CP products to be recorded and posted when a CP product is about to be applied or has recently been applied. WPS requires that records be made available for 30 days after an expired Restricted Entry Interval (REI). Required records must be made available upon request to FDACS representatives, USDA authorized representatives, and licensed health care professionals.



#### NN. 4.9 protect water sources during mixing

Protect your water source by keeping the water pipe or hose well above the level of the CP product mixture. This prevents contamination of the hose and keeps CP products from back-siphoning into the water source. If you are pumping water directly from the source into a tank, use a check valve, anti-siphoning device or backflow preventer to prevent back-siphoning if the pump fails.

#### OO. 4.10 SPILL MANAGEMENT

Potential for movement of spilled CP products in water is reduced if the spill is controlled, contained, and cleaned-up quickly. Establish a plan-for-action.

Clean up spills as soon as possible. The sooner you can contain, absorb, and dispose of a spill, the less chance there is that it will cause harm. Always use the appropriate PPE as indicated on the MSDS and the label. In addition, consider the following four steps:

- CONTROL actively spilling or leaking materials by setting the container upright, plugging leak(s), or shutting the valve.
- CONTAIN the spilled material using barriers and absorbent material.
- COLLECT spilled material, absorbents, and leaking containers and place them in a secure and properly labeled container.
- Store the CONTAINERS of spilled material until they can be applied as a CP product or appropriately disposed.

Small liquid spills may be cleaned up by using an absorbent such as cat litter, diluting with soil, and then applying the absorbent to the crop as a CP product in accordance with the label instructions.

Farmers, farm managers, and landowners must comply with all applicable federal, state, and local regulations regarding spill response training for employees, spill -reporting requirements, spill containment, and cleanup. Keep spill cleanup equipment readily available when handling CP products or their containers.

If a spill involves a CP product covered by certain state (Chapter 376.30702 Florida Statutes and Chapter 62-150 Florida Administrative Code) and federal laws (Public Law 965 10 and Public Law 925000 - CERCLA) you may need to report any accidental release if the spill quantity exceeds the "reportable quantity" of active ingredient specified

#### PP. 4.11 PERMANENT MIX-LOAD SITES

USSC currently uses one permanent mix-load station at the Dunwood grove to reduce CP product spillage. A well designed permanent mix/load facility is convenient and provides a place where spill-prone activities can be performed over an impermeable surface that can be easily cleaned. This permanent mix-load station meets IFAS guidelines.

To minimize the risk of CP products accumulating in the environment from repetitive spills, you may wish to construct a permanent mix/load facility with an impermeable surface (such as sealed concrete) so that spills can be collected and managed.



A permanently located mixing and loading facility, or chemical mixing center (CMC), is designed to provide a place where spill-prone activities can be performed over an impermeable surface that can be easily cleaned and permits the recovery of spilled materials.

Locate CP product loading stations away from groundwater wells and areas where runoff may carry spilled CP products into surface water bodies. If such areas cannot be avoided, protect wells by properly casing and capping them and use berms to keep spills out of surface waters.

It is crucial that a CMC facility be properly designed and constructed. Several publications are available to explain design, construction and operational guidelines for permanent mix/load facilities. These publications are listed in the reference section.

Do not build new facilities on potentially contaminated sites, since subsequent cleanup efforts may require the operation to be relocated.

#### QQ. 4.12 PORTABLE MIX-LOAD SITES

USSC currently uses portable mix-load stations to reduce CP product spillage over a prolonged period of time. CP product loading areas should be conducted at random locations in the field with the aid of nurse tanks.

Another option for preventing contamination of mixing and loading sites is to use a portable mixing pad. Some are little more than a pad of very durable material, while others are made of interlocking steel sections with a custom fitted liner and built-in sump.

Portable mixing centers usually have no roof, but should be protected from rain. Since the pad may contain CP product residues, the accumulated rain-water may need to be applied as a CP product or disposed of as hazardous waste. A heavy rain can cause the pad to overflow, washing CP products into the environment. A sudden thunderstorm can result in a considerable amount of contaminated runoff, or even a spill. Clean portable mixing centers thoroughly immediately after a spill, because the liner material could be damaged by the CP product formulation. Where practical, portable pads for mixing and loading should be used away from wells or surface water. Never leave a tank unattended while filling.

URS has reviewed the USSC portable mix-load operations and the system is in compliance with IFAS.

#### RR. 4.13 UTILIZE NURSE TANKS FOR RANDOM FIELD MIXING

CP product loading areas should be conducted at random locations in the field with the aid of nurse tanks.

Nurse tanks are tanks of clean water transported to the field to fill the sprayer. Nurse tanks make it possible to move the mixing and loading operation away from permanent sites to random locations in the field. Mixing chemicals at random sites in the field lessens the chance of a buildup of spilled materials in one place.

One variation is a self-contained mix/load trailer with a nurse tank at one end and a mix/load area at the other, where the mixture is pumped directly into the sprayer. Another use is portable containment facilities with nurse tanks to set up a temporary mixing/loading site in a remote field, or on leased land where no permanent structure is practical.



#### SS. 4.14 EXCESS MIXTURE

Mix only the amount of CP products needed during an application period.

It is not always possible to avoid generating excess spray material. The appropriate practices to be followed depend on the type of CP product waste. If there is excess CP product material, use it in accordance with the label instructions.

#### TT. 4.15 container management

Develop and implement procedures to appropriately rinse and dispose of, or recycle agricultural chemical containers.

If permitted by the label and local ordinances, bags, boxes and group I pesticide containers may be burned in an open field by the owner of the crops. Group I containers are containers of organic or metallo-organic CP products, except for organic mercury, lead, cadmium, or arsenic compounds. Plastic jugs and containers are not to be burned on site and must be transported offsite for proper disposal.

Try to avoid the need to dispose of CP product containers as wastes by:

- Using containers that are designed to be refilled by the CP product dealer or the chemical company
- Arranging to have the empty containers recycled or reconditioned
- Using soluble packaging when available

When disposal is needed, rinse CP product containers as soon as they are empty. Pressure rinse or triple rinse containers and add the rinse water to the sprayer. Shake or tap non-rinseable containers such as bags or boxes so that all dust and material falls into the application equipment. Always wear the proper personal protective equipment (PPE) when conducting these rinse operations.

After cleaning, puncture the CP product containers to prevent re-use (except glass and refillable mini-bulk containers). Keep the rinsed containers in a clean area, out of the weather, for disposal or recycling. Storing the containers in large plastic bags is one option to protect the containers from collecting rainwater.

Recycle rinsed containers in counties where an applicable program is available, or take them to a landfill for disposal. Check with your local landfill before taking containers for disposal, as not all landfills will accept them.

For information about CP product container recycling programs in your area, contact:

University of Florida Pesticide Information Office 352-392-4721

#### UU. 4.16 EQUIPMENT SANITATION AND WASH WATER HANDLING

Wash-water from CP product application equipment must be managed properly since it may contain CP product residues. If permanent wash stations are not used, excess mixture needs to be properly disposed of or re-used.

- Wash the outside of equipment at random places in the field to avoid chemical build up at a site.



- Avoid washing contaminated equipment in the vicinity of wells or surface water bodies. Dispose of rinse water according to label instructions.
- If permanent wash stations are used, wash water should be reused or properly disposed.

#### VV. 4.17 STORAGE

Design and build CP product storage structures to keep CP products secure and isolated from the surrounding environment. Store CP products in a roofed concrete or metal structure with a lock-able door. Locate this building at least 50 feet from other structures (to allow fire department access) and 100 feet from surface water and from direct links to ground water. Keep CP products in a separate facility, or at least in a locked area separate from areas used to store other materials, especially fertilizers, feed, and seed.

Do not store CP products near burning materials, hot work (welding, grinding), or in shop areas. Avoid storage of CP products in spaces occupied by people or animals. Do not allow smoking in CP product storage areas.

Store personal protective equipment (PPE) where it is easily accessible in the event of an emergency, but not in the CP product storage area to avoid contamination and since that may make PPE unavailable in time of emergency. Check the label and the Material Safety Data Sheets (MSDS) for the safety equipment requirements. Keep a written CP product inventory and the MSDS file for the chemicals used in the operation on site. Do not store this information in the CP product storage room.

Depending on the products stored and the quantity, you may need to register the facility with the Department of Community Affairs and your local emergency response agency. Check with your CP supplier about Community Right-to-Know laws for the materials that you purchase. An emergency response plan should be in place. All farm personnel should be familiar with the plan before an emergency occurs. Individuals conducting emergency CP product cleanups should be properly trained under the requirements of the Occupational Safety and Health Administration (OSHA).

Do not store large quantities of CP products for long periods of time. Adopt the "first in - first out" principle, using the oldest products first to ensure that the product shelf life does not expire.

Store CP products in their original containers. Do not put CP products in containers that might cause children and others to mistake them for food or drink. Keep the containers securely closed and inspect them regularly for splits, tears, breaks, or leaks. Arrange CP product containers so that labels are clearly visible and legible.

All CP product containers should be labeled. Refasten all loose labeling. Use non-water-soluble glue or sturdy transparent packaging tape to refasten loose labels. Do not refasten labels with rubber bands (these quickly rot and break) or non-transparent tapes such as duct tape or masking tape (these may obscure important product caution statements or label directions for product usage). If a label is damaged, immediately request a replacement from the CP product dealer or formulator. As a temporary supplement to disfigured or badly damaged labels, fasten a baggage tag to the container handle. On the tag write the product name, formulation, concentration of active ingredient(s) and the date of purchase.

Dry bags should be stored on pallets and covered with plastic to ensure they do not get wet. Do not store



liquid materials above dry materials. Store flammable CP products separately from non-flammable CP products.

Segregate herbicides, insecticides and fungicides to prevent cross-contamination and minimize the potential for misapplication. Cross-contaminated CP products often cannot be applied in accordance with the labels of each of the products. This may make it necessary to dispose of the cross-contaminated materials as wastes and could require the services of a consultant and hazardous waste contractor.

Use shelving made of plastic or reinforced metal. Keep metal shelving painted (unless stainless steel) to avoid corrosion. Never use wood shelving because it may absorb spilled CP product materials.

CP product storage structures should be identified such that the nature of the contents is made known to those approaching the building.

The BMPs discussed often address the ideal situation of newly constructed permanent facilities. However, the user is encouraged to apply the principles and ideas put forth to existing facilities, and to portable or temporary facilities that may be used on leased land where permanent structures are not practical.

Plans and specifications for CP product storage buildings are available from several sources, including the NRCS of the United States Department of Agriculture, the Midwest Plan Service, and the UF-IFAS Publications Office.

The current CP storage buildings are in compliance with IFAS guidelines.

#### WW. 4.18 EXCESS FORMULATION

When possible, return excess formulated materials to the CP supplier. In most cases, the excess material must be in an unopened, original container. Contact local dealers for their requirements.

The single best practice to handle excess CP product material is to use it as a cp product in accordance with the label instructions.

#### XX. 4.19 PURCHASE AND TRANSPORT

Appropriately planned and timed purchase of CP products can avoid risks associated with protracted storage.

Adherence to instructions provided by product manufacturers relating to transport of CP products can minimize risks of spillage and contamination in the event of accident or other container failure.

Follow directions for transport provided on product label, taking into consideration exposure to temperature, moisture, UV light and other variables.

Ensure packages and containers are properly closed and secured prior to transport, and are retained in original containers and with original product label attached.

Consider restrictions imposed by manufacturers or transportation agencies on transport within enclosed spaces and/or by personal vehicle.

Appropriate spill response materials should always be transported along with CP products to ensure that immediate spill response can be accommodated.



YY. 4.20 PRODUCT USE TRAINING

Training of field operators responsible for handling, loading, and operating spray machinery is essential for effective application of agricultural chemicals.

It is essential that information learned at continuing education classes be transferred to application personnel. Special efforts should be taken to ensure that non-English-speaking field personnel understand proper handling, loading, and operating techniques.



## 5.0 NUTRIENT MANAGEMENT

Good nutrient management is an integral part of a system of agricultural practices that help conserve and protect natural resources. In fact, water and nutrients are oftentimes linked, and the Florida citrus industry has made great strides in converting many existing groves to low volume irrigation systems. These conversions allow more precise nutrient management via the use of fertigation. As such, implementing appropriate nutrient management practices helps maintain or improve agricultural productivity while minimizing environmental risk.

Management of nitrogen and phosphorus levels, in particular, is essential in maintaining healthy surface water bodies and natural systems in the USSC crop production area. These nutrients originate from a variety of land uses, including: agricultural, urban, suburban, and natural areas. Excess nutrients stimulate algal blooms and growth of noxious plants in receiving water bodies and wetlands. This stimulation of growth may eventually result in reduced dissolved oxygen concentrations due to excessive decomposition of plant material. Moreover, lower dissolved oxygen concentrations may stress desirable game fish, and promote less desirable fish species.

Nitrogen and phosphorus are two of the essential elements for plant and animal growth and are necessary to maintain profitable crop and livestock production. They can also increase the biological productivity of surface waters by accelerating eutrophication, the natural aging of lakes or streams brought on by nutrient enrichment. Although eutrophication is a natural process, it can be accelerated by changes in the land use of a watershed that increase the amount of nutrients added to an aquatic system. Nitrogen and phosphorus both affect eutrophication, but phosphorus is the critical element in most fresh water systems.

Where water salinity increases, as in estuaries, nitrogen generally controls aquatic plant growth. Complicating the problem is the fact that eutrophication sometimes occurs many miles from where high-nutrient runoff originally enters the surface water system. By the time the water quality effects are noticeable (sometimes years to decades after the runoff occurs), remedial strategies can be difficult and expensive to implement. This is why source control of nutrients used in fertilization programs is so important.

### ZZ. 5.1 EDUCATION

Proper training of the field operators responsible for handling, loading, and operating fertilizer spreading equipment, and for correct maintenance of field equipment can help achieve desired placement of fertilizers, avoid waste, and prevent contamination of open waters.

Re-enforce training with checklists of critical operating points before application of materials. Confirm that each assigned employee is adequately informed about machine operation, rates of discharge, and intended zone of nutrient placement that focuses on "feeding the tree."

### AAA. 5.2 NUTRIENT MANAGEMENT

Develop a nutrient management plan based upon soil, water, plant and organic material sample analyses and expected crop yields. USDA-NRCS routinely develops nutrient management plans, and requires them for practices that receive cost-share benefits. Nutrient management is: management of the amount, source, placement, form, and timing of the application of nutrients and soil amendments to ensure



adequate soil fertility for plant production and to minimize the potential for environmental degradation, particularly water quality impairment.

### 5.2.1 General Criteria

1. Nutrient Management Plans should include the following components, as applicable:
  - Aerial site photographs or maps and a soil map.
  - Current and/or planned production sequence.
  - Soil test results and recommended nutrient application rates.
  - Plant tissue test results, when used for nutrient management.
  - A complete nutrient budget for nitrogen, phosphorus, and potassium for the production system.
  - Realistic yield goals and a description of how they were determined.
  - Quantification of all important nutrient sources (this could include but not be limited to commercial fertilizer, animal manure and other organic byproducts, irrigation water, etc.).
  - Planned rates, methods, and timing (month & year) of nutrient application.
  - Location of designated sensitive areas or resources (if present on the conservation management unit).
  - Guidance for implementation, operation, maintenance, and record keeping.
2. Maximum single application rates of nutrients will be determined based on optimum level of production, producer's goals, soil limitations, site factors, and off-site transport potential.
3. Additional conservation practices that keep nutrients in the soil and root zone area should be planned in environmentally sensitive areas.

Environmentally sensitive areas include, but are not limited to: wetlands, sink holes, wells, mixing sites, karst areas, soils with excessive permeability, and areas that drain into state or federal nutrient restricted areas.

### 5.2.2 Considerations

1. A nutrient budget worksheet (FL 590-JS) including an estimate of residual amounts present in the soil and in residues of previous crops, along with any organic waste additions, can determine crop nutrient requirements. (The nutrient budget worksheet is available at: <ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/jobsheets/590js.pdf>) Additional information is needed following further evaluation by the District and USSC.
2. Realistic yield goals should be set based on soil type, crop variety, tree age and condition, tree density, historical yield data, climatic conditions, and fertilizer costs versus returns.



3. The form of fertilizer and its timing, placement, and method of application can be planned to conform to seasonal variations in nutrient uptake throughout crop development.
4. Consider effects of the seasonal water budget on nutrient balance and on the potential loss by surface runoff or leaching into ground water.
5. Evaluate water quality standards and designated use limitations that exist locally or statewide.
6. Avoid excessive or luxury levels of N, P, and K in the soil to reduce the potential for induced deficiencies of micronutrients.
7. Maintain proper soil pH to provide optimum availability of applied nutrients.
8. Use appropriate application methods and fertilizer formulations that minimize nutrient losses.
9. In high water table soils, water table management will affect the availability and movement of nutrients.
10. Proper calibration and use of equipment will improve nutrient material application efficiency and will reduce undesirable over-applications.
11. Avoid same-place loading/transfer sites to preclude excess contamination of soils in working areas.

### BBB. 5.3 NUTRIENT MANAGEMENT AND UTILIZATION OF WASTE RESOURCES

Use of animal waste and other waste products on land in an environmentally acceptable manner can be helpful in maintaining or improving soil, air, plant, and water resources. Wastes include those from farm, feedlot, and dairy operations, municipal waste treatment plants, and agricultural processing plants.

#### 5.3.1 General Criteria

1. Compliance with Federal, state and local laws is required for all utilization of wastes including liquid, slurry, and solid waste. For example, FDEP Rule 62-709 specifies the criteria for use of compost made from solid waste.
2. Waste application should be accomplished in a manner (timing and rate) such that runoff from the application area will not occur due to the application method used.
3. When making applications of waste products to citrus groves, growers should consider factors affecting rate, timing, and application methods as outlined in Florida NRCS Conservation Practice Standard, Nutrient Management (Code 590), available at: <ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/standards/590.pdf>.
4. Waste should be applied based on the most limiting nutrient or metal.
5. Specific conditions for land application of domestic wastewater residuals are contained in the FDEP Rule, Chapter 62-640 Florida Administrative Code (F.A.C.).
6. The soil-limiting nutrient (either N or P) for waste application should be based on the Phosphorus Index calculation (see references for publications showing how the Phosphorus Index is calculated).



7. Crop nutrient removal rates should be based on realistic yields. Crop nutrient removal rates can be obtained from Agricultural Waste Management Field Handbook (AWMFH) or the NRCS has an excellent on-line calculator at: <http://npk.nrcs.usda.gov/>
8. Waste application setbacks shall be increased from surface water bodies, wells, sink holes, or fractures. Setbacks should be based on criteria for effective filter strips as contained in Florida NRCS Conservation Practice Standard, Filter Strip (Code 393) which can be accessed at: <ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/standards/393.pdf>.
9. Content of waste should be analyzed for nutrient and metal content.

### 5.3.2 Considerations

- Supplemental fertilizer may be needed to meet the needs of the crop at various stages of plant growth.
- USSC currently has a FDEP permit of the application of wastewater on the USSC property. Please note that use of wastewater with high conductance could accumulate salts and nutrients into drainage systems, and possibly affect downstream receiving water bodies. These same water bodies may have specific water quality standards or Total Maximum Daily Loads (TMDL) that could be violated through the introduction of high TDS concentrations. The application of wastewater onto the property should remain in compliance with the FDEP permit.

### CCC. 5.4 employ tissue and soil analyses

Fertilizer applications based on leaf tissue and soil tests will help avoid over-fertilization and subsequent losses of nutrients in runoff water.

Application of mobile elements such as N (nitrogen) and K (potassium) should be made on the basis of leaf tissue analysis and production levels. Elements such as Ca (calcium), Mg (magnesium), and P (phosphorus) should be based on soil testing and leaf analysis, instead of regular applications of specific amounts. The comparison of both types of testing will give production standards for applications which are based on plant need and response, rather than routine applications of standard amounts. Proper fertilization results in high yields and minimal environmental effects.

### DDD. 5.5 USE APPROPRIATE APPLICATION EQUIPMENT

Operate machinery as designed so as to achieve precise and desired placement of nutrient materials at specified rates consistent with the form and source of nutrient materials.

Efficient application practices are critical for insuring fertilizer delivery only to target areas, and for reducing losses to leaching and runoff. The following is a list of application techniques for different formulations of fertilizers. Growers may adopt a combination of placement methods exploiting their respective advantages in efficiency and cost. The ultimate goal is to focus on "feeding the tree" by placing nutrients within the root zone of individual trees or drip-line bands along hedgerows of trees. Avoid placement in areas prone to off-site transport of nutrients.

- Precision Agriculture



- Dry Material Spreaders
- Fertigation
- Boom Applications
- Aerial Application

#### EEE. 5.6 EQUIPMENT CALIBRATION AND MAINTENANCE

Proper calibration and maintenance of fertilizer application equipment is essential to avoid misapplication of nutrients.

#### FFF. 5.7 apply materials to target sites

Place nutrients within the root zone of individual trees or drip-line bands along hedgerows of trees. Avoid placement in areas prone to off-site transport of nutrients, especially water furrows.

#### GGG. 5.8 AVOID HIGH RISK APPLICATIONS

Do not apply materials under "high risk" situations, such as before forecasted rainfall. Avoid applications of nutrients during intense rainfall, on bare soils with extreme erosion potential, or when water tables are near the soil surface.

For weather information on the Internet, go to:

FAWN: <http://fawn.ifas.ufl.edu/>

NOAA: <http://www.nws.noaa.gov><http://weather.noaa.gov/>

The Weather Channel: [www.weather.com](http://www.weather.com)

CNN Weather: <http://www.cnn.com/WEATHER/>

AccuWeather: <http://www.accuweather.com>

#### HHH. 5.9 fertilizer storage

Use caution when storing fertilizer to prevent contamination of nearby ground and surface water.

Fertilizer should be stored in an area that is protected from rainfall. Always store fertilizers separately from pesticides, solvents, gasoline, diesel, motor oil, or other petroleum products. Many fertilizers are oxidants and can accelerate a fire.

Storage of dry bulk materials on a concrete or asphalt pad may be acceptable if the pad is adequately protected from rainfall and from water flowing across the pad. Secondary containment of stationary liquid fertilizer tanks larger than 550 gallons is addressed in DEP rule 62-762, F.A.C. Even where not required, the use of secondary containment is a sound practice.

#### III. 5.10 SPILLED FERTILIZERS

Immediately remove any fertilizer materials spilled on ground surfaces and apply at recommended rates to crops.

When possible, place a tarp over ground surfaces where fertilizer transfer operations are conducted.



Spilled materials should be transferred to the spreader for application to target sites. Spillage can contaminate open waters and thereby cause proliferation of aquatic weeds. Operators of fertilizer spreaders should be trained how to recover spilled materials for spreader application. Removal of some soil with the spilled materials is usually necessary and adequate for proper maintenance of this BMP. By its design, the spreader equipment will apply the fertilizer and soil to the target site.

At fixed loading sites, the area can be cleaned by sweeping or vacuuming (or with a shovel or loader, if a large spill), or by washing down the loading area to a containment basin that is specifically designed to permit recovery and reuse of the wash water. Wash water generated should be collected and applied to the target site.

Discharge of this wash water to water bodies, wetlands, storm drains or septic systems is illegal.

#### JJJ. 5.11 USE CAUTION WHEN LOADING NEAR DITCHES, CANALS AND WELLS

Minimize the potential for spilled materials to pollute surface waters. When possible, locate mixing and loading activities away (according to local setback requirements) from ground water wells, ditches, canals, and other areas where runoff may carry spilled fertilizer into surface water bodies. If such areas cannot be avoided, protect wells by properly casing and capping them and use berms to keep spills out of surface waters. Recover and apply spilled materials to intended zone of application.

A concrete or asphalt pad with rainfall protection permits easy recovery of spilled material. If this is not feasible, loading at random locations in the field can prevent a buildup of nutrients in one location. In this case, place a tarp on the ground underneath the fertilizer hopper while loading. Do not load fertilizers on a pesticide Chemical Mixing Center (CMC) because of the potential for cross-contamination. Fertilizers contaminated with pesticides may cause crop damage or generate hazardous wastes.

#### KKK. 5.12 ALTERNATE LOADING OPERATION SITES

Use multiple fertilizer loading and transfer sites to prevent concentration of nutrients in a single area. If this is not feasible, loading at random locations in the field can prevent a buildup of nutrients in one location.

#### LLL. 5.13 USE BACKFLOW PREVENTION DEVICES

Use backflow prevention devices on irrigation and spray tank filling systems to preclude entry of nutrients into surface waters. Never leave a filling-tank unattended.

##### 5.13.1 Filling Tanks in the Field

Special precautions should be taken when filling tanks using a hose. Maintain an air-gap between the filling-hose and the liquid tank-mixture. Never leave a tank unattended when it is being filled.

##### 5.13.2 Fertigation and Backflow Prevention Equipment

An anti-siphon device is a safety device used to prevent backflow of a mixture of water and chemicals into the water source, or vice versa. In the case of fertigation, the chemicals are fertilizers. Currently, Florida state law (Florida Statutes Section 487.064 for pesticides and Section 576.087 for fertilizers) requires that backflow prevention equipment be installed and maintained on irrigation systems in which



chemicals are injected for agricultural purposes. The possible dangers in fertigation include backflow of fertilizers to the water source causing contamination, and water backflow into the fertilizer storage tank. Backflow prevention is an extremely important practice in the prevention of both ground and surface water contamination. Backflow to the storage tank can rupture the tank or cause overflow, contaminating the area around the tank and perhaps indirectly contaminating the water source. Safety equipment is available which, when properly used, will protect both the water supply and the purity of the fertilizer in the storage tank.

#### MMM. 5.14 split applications throughout season

Dividing the annual fertilizer requirement into two or more applications can minimize leaching during the summer rainy season and help maintain the supply of nutrients over the long growing season of Florida.

Frequent fertigations can be an efficient method of application for N and K while minimizing the potential for leaching of nutrients during excessive rainfall events. The trade-off between costs vs. fertilizer use efficiency and resource protection must be considered.

#### NNN. 5.15 EROSION CONTROL

Erosion-control practices should be considered to minimize soil loss and runoff that can carry dissolved and attached nutrients on soil particles to surface waters.

Vegetative filter strips are effective in reducing the levels of suspended solids and nutrients.

#### OOO. 5.16 IRRIGATION MANAGEMENT

Irrigation should be limited to wetting only the root zone where possible. Excessive irrigation can transport nutrients below the root zone through leaching. Proper scheduling and uniform water distribution are necessary to assure control.

#### PPP. 5.17 USE OF ORGANIC MATERIALS

In the event of a surface application (mulching), use of organic materials like horticultural waste and urban plant debris (yard trimmings) should occur when possible to help increase soil organic matter, retain nutrients and moisture, improve biological eco-systems, and supply slowly-released nutrition.

The surface application of slowly-degraded organic waste materials like horticultural waste and urban plant debris can increase soil moisture retention and nutrient-holding capacity. The nutrient additive properties of organic matter support:

- Economical ways to safely use non-hazardous wastes.
- Maintenance or increases in soil organic matter content.
- Protection of water quality.
- Protection of air quality.
- Reduction of energy used in manufacturing chemical fertilizer.

Both microbial mineralization and immobilization can occur during decomposition of high carbon-low nitrogen organic materials like horticultural waste. Mineralization occurs when organic forms of a



nutrient are converted to inorganic forms. Immobilization is the reverse of this process where microorganisms convert inorganic forms of nutrients to organic forms. The organic forms of the nutrients are not available to plants as they are bound in some part of the soil organic matter. Plants take up nutrients in inorganic forms. Thus, immobilization reduces nutrient (particularly nitrogen) availability, while mineralization increases nutrient availability.

Nitrogen-poor organic materials like straw, fresh sawdust and most fresh horticultural waste cause microorganisms to remove large amounts of inorganic nitrogen from the soil during decomposition, since that nitrogen is required to build new microbial cells. This process decreases nitrogen availability to citrus trees. However, the nitrogen consumed by the microorganisms will be slowly released when microbial cells decompose.

#### QQQ. 5.18 well protection

Prevent ground water contamination by back plugging improperly constructed and/or deteriorated irrigation wells.

This practice involves the protection of existing wells and prevention of problems in wells that are being planned. For existing wells, management activities are aimed at reducing the potential for contamination. This includes evaluating and, if necessary, moving or modifying potential sources of pollution. Such sources of pollution may include fueling areas and/or areas where pesticides and fertilizer are handled or mixed.

The permanent plugging and elimination of such wells may be eligible for cost-share assistance through the District. Please contact your local District Service Office for information.

#### Points to Consider:

- Anti-siphon devices should be attached to all system discharge points so that backflow siphoning does not contaminate the aquifer.
- Check with local health departments or state water management districts for setback guidelines regarding wells.
- When no longer in use, proper decommissioning or plugging of a well prevents the re-entry of surface water and transport of contaminants to the ground water. Check with your local water management district or USDA-NRCS office for well decommissioning and plugging guidelines.
- Wells should be capped or fitted with valves that close tightly when not in use to reduce the potential for contamination. Artesian wells should be fitted with control valves so that water flow can be regulated or stopped when water is not needed.

#### RRR. 5.19 USE APPROPRIATE SOURCES AND FORMULATIONS

Reduce the potential for nutrient leaching and off-site movement by choosing appropriate sources and formulations of fertilizer based on nutritional needs, season (rainy vs. dry), and anticipated weather conditions to achieve greatest efficiency and reduce potential for offsite transport. Utilize controlled-release and slow-release formulations when feasible.

Nitrogen source materials are grouped into three categories: inorganic, synthetic organic, or natural



organic. The inorganics and synthetic organics are usually high-analysis materials that are most economical to use in citrus groves. These nutrient source materials are readily available to plants unless they have been formulated in a controlled-release form. Natural organic materials are less readily available and are usually lower in nutrient analysis.

### SSS. 5.20 salinity

Fertilizer sources should be monitored closely in groves with high salinity levels. Fertilizers with high salt index levels can compound existing salinity problems.

Additional discussion on salinity management is found in the Water Resource Management Section.

The frequency of injecting nutrients or of applying granular fertilizer has a direct effect on the concentration of total dissolved solids (TDS) in the soil solution. A fertilization program that uses frequent applications with relatively low concentrations of salts will normally result in less salinity stress than programs using only two or three applications per year. Controlled-release fertilizers and frequent fertigations are ways to economically minimize salt stress when using high salinity irrigation water.

Selecting nutrient sources that have a relatively low osmotic effect in the soil solution can help reduce salt stress. The osmotic effect that a material adds to a soil solution is defined as its salt index relative to sodium nitrate, taken to be equal to 100. Since sources of phosphorus (P) generally have a low salt index, they usually present little problem. However, the salt index per unit (lb) of N and potassium (K) should be considered.

The salt index of natural organic fertilizers and slow-release products are low compared to the commonly used soluble fertilizers. High-analysis fertilizers may have a lower salt index per unit of plant nutrient than lower-analysis fertilizers since they may be formulated with a lower salt index material. Therefore, at a given fertilization rate the high-analysis formulation may have less of a tendency to produce salt injury. For instance, the salt index of a fertilizer blend formulated made from ammonium nitrate and potassium nitrate will be about 30% less than that with the same N-P-K analysis blend formulated from ammonium nitrate and muriate of potash (KCl). In addition, the Cl in KCl or Na in NaNO<sub>3</sub> materials add more toxic salts to the soil solution.

Choose fertilizer formulations that have the lowest salt index per unit of plant nutrients. Increase the frequency of fertilizations, thereby making it possible to reduce the salt content of each application and aid in preventing excess salt accumulation in the root zone. Maintain optimum but not excessive nutrient levels in soil and leaves with rates based on the long-term production from the grove. Fertilizer rates can usually be lower for trees with high salinity since production levels will probably be lower. Leaf tissue analysis should be used to detect excessive Na or Cl levels or deficient levels of other elements caused by nutrient imbalances induced by salt stress. Leaf Na levels greater than 0.2% and Cl levels over 0.5% indicate imminent problems.

High rates of salt application can alter soil pH and thus cause soil nutrient imbalances. Some ions can also add to potential nutrient imbalances in trees. For example, Na can displace K, and to a lesser extent Ca, in soil solutions. This can lead to K deficiency and, in some cases, to Ca deficiency. Such nutrient imbalances can compound the effects of salinity stress. Problems can be minimized if adequate nutritional levels are maintained, especially those of K and Ca.



## TTT. 5.21 CONSERVATION BUFFERS AND SETBACKS

Strategically incorporating vegetative buffers – either naturally occurring ones or planted forbs and grasses – into the citrus grove design can help to protect water quality by providing biological filtration, increasing residence time and/or residual nutrient uptake.

Managed properly, these vegetative areas or conservation buffers may provide pretreatment, formal treatment and other treatment train opportunities. A treatment train effect is simply a combination of nonstructural and structural BMPs, which are generally effective for reducing or preventing non-point source pollution. Generally speaking, there are certain non-cropped areas that could qualify as conservation buffers within a typical agro-eco-system. Vegetated field borders, tree row middles, water furrows, ditch and ditch banks, wetlands/set-back areas and associated reservoir systems are examples.

Depending on the grove's surface water management system design, buffer areas can contribute significantly and help to manage offsite nutrient impacts. This whole farm management approach ultimately reduces a grower's risk of incurring negative environmental consequences. The BMPs discussed below are intended to give the reader information for the practical application of conservation buffers.

### 5.21.1 Pre-Treatment Options

Manage tree row middles by keeping them well grassed and by maintaining a minimum blade height of two inches. Growers should not rotary mow when standing water is present. Growers may also want to investigate the feasibility of incorporating leguminous plant(s) within the middles, as these plants may be used as an additional source of nitrogen.

Water furrows and lateral ditches should also be managed to encourage grass cover in order to help reduce flow velocities, thus providing an opportunity for particulate matter to settle out. See BMPS in the Erosion Control and Sediment Management Section for more information on water furrow and ditch bank maintenance.

### 5.21.2 Formal Treatment Options

- **Riparian Buffers** – A riparian buffer is an area of trees and/or shrubs located adjacent to and up-gradient from associated watercourses. Existing groves that border perennial watercourses and were constructed before SFWMD surface water regulations should, when economically feasible, explore the use of a riparian buffer. Water sheet flowing across this type of buffer will be treated before discharging to the watercourse. Air drain-age is an important aspect of crop and tree damage during cold periods. Prior to implementing a riparian buffer, consideration should be given to its effects on air drainage.
- **Dedicated Conservation Buffers** – Grassed waterways and/or filter strips are both excellent conservation buffer choices, and can be used to convey and treat smaller volumes of discharge water with a moderate degree of success. In general, these passive treatment areas are more effective in removing phosphorus that is attached to soil particles rather than dissolved nitrogen. Groves that have some topographic relief should consider using grassed waterways or filter strips to treat and discharge surface water runoff.



- Treatment Train Effects - Consider using a combination of structural and non-structural controls to mitigate the potential for offsite nutrient impacts, especially when discharging to sensitive downstream water bodies. See B17 in the Erosion Control and Sediment Management Section for more information.

### 5.21.3 Other Required Setbacks

Wetland setback areas, also referred to as wetland buffer zones, provide water quality treatment opportunities. If you have an active Environmental Resource Permit for your grove, you are generally required to abide by an average 25 foot setback. Likewise, NRCS generally requires 50 feet along the path of water flow for a filter strip that is being used to address soluble nutrient problems. NRCS buffer practices are listed below and each practice has slightly different uses that should be matched with the specific site. Each NRCS buffer practice may have different minimum widths and other specifications based on the specific resource problem(s) to be addressed.



## 6.0 ACCEPTABLE AGROCHEMICALS AND NO APPLICATION PERIODS

Because of the intended future land use, care needs to be taken to ensure that at the time of the property's conversion to a reservoir, that the presence of agrochemicals is minimal and will not cause adverse impacts to the anticipated ecosystem. During the interim use of the property, the intent is to phase out the application of identified pesticides on a specified time table to allow for natural degradation.

In addition, as current landowner, the District must ensure that all application of agrochemicals on the grove is conducted in accordance with all applicable laws and regulations.

The attached **Chemical Application Restrictions** matrix should be followed. The agrochemical list should be reviewed annually for the effectiveness of the applied chemical, changes in regulations regarding specific pesticides, and changes in the management and use of the pesticides. The experimental use of pesticides and herbicides is prohibited during the interim period. All agrochemicals must be applied in strict accordance to label instructions and restrictions.



### CHEMICAL APPLICATION RESTRICTIONS

The following is an example list of chemicals, and at the completion of the Phase I and II ESA activities, this list may change. The following chemicals have the potential to be used subject to the restrictions noted below.\* Chemicals not specifically listed below may be evaluated on a case by case basis and added to the appropriate category below. Chemicals with no analytical test method and identified as a potential environmental risk, the chemical manufacturer will be contacted to obtain the chemical standard. The District will then contract a Florida based laboratory to develop an analytical test method for the chemicals.

#### Citrus Grove

A. May be used at any time but only according to label restrictions:

2,4-D ( <i>Landmaster</i> )	Isopropylamine salt ( <i>Arsenal</i> )	Simazine ( <i>Sim-Trol</i> )
435 Spray Oil ( <i>Sun Pure</i> )	Mineral oil ( <i>Saf-t-side</i> )	Triclopyr ( <i>Remedy Ultra</i> )
Diuron ( <i>Karmex, Direx</i> )	Paraffin oil ( <i>Citrufilm</i> )	Dimethyl ammonium chloride ( <i>C-soap</i> )
Glyphosate ( <i>Roundup</i> )	Phosphoric Acid ( <i>Nutriphite Magnum</i> )	

B. Must be discontinued at least 3 months prior to flooding:

Abamectin ( <i>Agri-Mek</i> )	Oxamyl ( <i>Vydate</i> )	Alkyl dimethyl benzyl ammonium chloride ( <i>Bell Quat</i> )
Dimethoate ( <i>Dimethoate</i> )	Phosmet ( <i>Imidan</i> )	Carbaryl ( <i>Sevin</i> )
Fenprothrin ( <i>Danitol</i> )	Trifloxystrobin ( <i>Gem Fungicide</i> )	

C. Must be discontinued at least 6 months prior to flooding:

Aldicarb ( <i>Temik</i> )	Chlorpyrifos ( <i>Nufos</i> )	Dicofol ( <i>Kelthane</i> )
	Imidacloprid ( <i>Provado</i> )	

D. Must be discontinued at least 1 year prior to flooding:

Bromacil (*Krovar*)

E. Period of discontinuation will be based on the rates of application and copper concentrations in the groves:

Copper Hydroxide ( <i>Champ</i> )	Zinc, Manganese, Iron, Magnesium, Nitrogen ( <i>Citrite, Dyna Gro</i> )
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F. Must be discontinued at least 2 years prior to flooding:

Mefenoxam (*Ridomil*)

G. Restricted Pending Further Evaluation (District is currently evaluating the long term affects of the chemical application):

S-Cyano (*Mustang*)



**Citrus Nursery**

A. May be used at any time but only according to label restrictions:

Etridazole ( <i>Banrot</i> )	Organophosphate 75% ( <i>Acephate</i> )	Glyphosate ( <i>Round Up</i> )
Citrus Oil	Azadirachtin ( <i>Neemix</i> )	Diflubenzuron ( <i>Micromite</i> )
Bacillus thuringiensis ( <i>Dipel</i> )	2% Ammoniacal Nitrogen ( <i>Nutriphite Magnum</i> )	Dimethyl ammonium chloride ( <i>C-soap</i> )
Fosetyl aluminum ( <i>Aliette WDG</i> )	Bacillus subtilis ( <i>Serenade</i> )	Saftex Oil
Yeast extract hydrolysate ( <i>Keyplex</i> )	[REDACTED]	

B. Must be discontinued at least 3 months prior to flooding:

Fenprothrin ( <i>Danitol</i> )	Malathion ( <i>Malathion</i> )	Trifloxystrobin ( <i>Gem Fungicide</i> )
Dimethoate ( <i>Dimethoate</i> )	Quaternary aluminum compound ( <i>C-Quat</i> )	[REDACTED]

C. Must be discontinued at least 6 months prior to flooding:

Imidacloprid ( <i>Admire and Provado</i> )	Chloropyrifos ( <i>Chloropyrifos</i> )	Carbary ( <i>Sevin</i> )
Fenoxycarb ( <i>Award</i> )	[REDACTED] ( <i>Headline</i> )	

D. Must be discontinued at least 1 year prior to flooding:

Methoxyacetyl amino ( <i>Ultra Flourish</i> )	4-chloropyridazin-3(2H)-1 ( <i>Nexter</i> )
---	---

E. Period of discontinuation will be based on the rates of application and copper concentrations in the groves:

Copper Hydroxide (*Kocide and Mankocide*)

F. Must be discontinued at least 2 years prior to flooding:

G. Restricted Pending Further Evaluation (District is currently evaluating the long term affects of the chemical application):

Poly-1-P menthene (Nu Film P)	Peroxyacetic acid ( <i>Oxidate</i> )
Spiromesifen ( <i>Judo Miticide</i> )	

\* Any pesticide, regardless of the above categories, that is shown to be present in the soil, at or above the SCTLs, may require additional restrictions, including reductions in use or the complete elimination of its use. These situations will be evaluated on a case-by-case basis.

6.1 Copper Compounds

Copper is an essential element required for the successful and economical growing of citrus. It is



necessary for chlorophyll formulation in the leaves and acts as a catalyst for other plant reactions. It also has beneficial uses as a fungicide, herbicide, and bactericide. It is applied to the soil surface as a granular additive to fertilizer, and directly to the foliage as a spray mix. The Phase II ESA did not identify elevated copper levels in the citrus groves above the Service provisional Snail Kite threshold level of 85 mg/kg. Based on the information provided by USSC, at the current application rates of copper-based agrochemical, the soils within the citrus groves will not be impacted with copper above the 85 mg/kg threshold.

During this interim use period, soil samples should be collected for select areas within the groves to confirm that residual copper concentrations are not accumulating in the soil.



## 7.0 Petroleum and Hazardous Waste Management

### UUU. 7.1 Gasoline and Diesel Fuel Storage and Containment

The goal of AST management is to minimize the possibility of inadvertent petroleum product discharges and properly manage any spills and cleanups. Stationary fuel storage tanks should be in compliance with the FDEP storage tank regulations (Chapter 62-761, FAC (Petroleum Storage Systems)) for both underground and aboveground storage tanks.

Site verification will include discussion with operation managers to understand the agricultural operation petroleum storage and containment management approach. In addition site inspections will be made to observe the following items:

#### 7.1.1 On-Site Equipment

Permanent fuel pumps should be stationed on concrete or asphalt surfaces away from groundwater wells and ditches, laterals and canals where water runoff may carry or transport inadvertently spilled product. Pumps should be equipped with automatic shut off mechanisms. Aboveground petroleum storage tanks with volumes of 550-gallons or greater must be registered and located within secondary containment systems unless of double-wall construction. Visual inspections should be conducted on at least a monthly basis of the storage tanks and hoses to ensure that the system is free from leakage from tank seams, connections, and fittings.

#### 7.1.2 Fuel Delivery

The fuel delivery driver should report to facility manager upon arrival prior to unloading. An agricultural operation employee should verify available tank capacity prior to product transfer and should remain onsite during delivery to monitor the product transfer. Spill and overfill clean-up equipment, such as absorbent booms or absorbent materials, should be stored nearby for immediate spill containment and clean up.

### VVV. 7.2 Equipment Cleaning and Maintenance

The same level of preventive measures should be taken to minimize any adverse water quality impacts from the cleaning of equipment as with agrochemical handling and application. Preventive maintenance and emergency repair of machinery and equipment performed on site should be conducted in a centralized area over an impermeable surface, and be situated at least 100 feet from the closest groundwater well or surface water, grove ditch, lateral, or canal. It is recommended that equipment maintenance be limited to minor or emergency repairs. Onsite maintenance activities, such as engine or mechanical repair, which generate a waste or waste by-product, must be containerized and properly disposed of. Where contamination is already documented in the area, every effort should be made not to increase the existing contamination levels.

Site verification will include discussion with operation managers to understand the agricultural operation hazardous waste management approach. In addition site inspections will be made to observe the following items:



### 7.2.1 Equipment Maintenance

It is recommended to use compressed air to remove clippings and dust from machinery. This will cause less wear to the equipment's hydraulic seals, eliminates wash water, and produces dry material that is easy to handle. For regular field equipment washdown other than pesticide application equipment, and degreaser or solvents, allow wash water to flow to a grassed retention area, swale, or fields. Do not allow wash water to flow directly to surface water, grove ditches, laterals, or canals. Minimize the use of detergents and use only biodegradable, non-phosphate type. Use spray nozzles that generate high-pressure streams and low volumes that can minimize the amount of water used to clean equipment. If equipment is to be intensively washed, conduct over a concrete or asphalt pad that allows the water to be collected. Collected wash water can be handled through a recycling system, treatment system, off-site disposal at an industrial wastewater treatment facility, or use the wash water for field irrigation.

### 7.2.2 Solvents and Degreasers

The current facility does not conduct major repairs of equipment on-site. Only routine maintenance is conducted on-site. The introduction of an equipment maintenance area as well as the use of solvents or degreasers onsite must be reviewed and approved by the District prior to the use or construction of the maintenance facility.

Should such approval be granted by the District, general best management practices, recommends the replacement of solvent baths with recirculating aqueous washing units. Soap and water or other aqueous cleaners are often as effective as solvent-based cleaners.

### 7.2.3 Paint

The USSC properties do not maintain an on-site painting facility. All painting is done manually. The introduction of an equipment painting facility (i.e., paint booth, spray hood, etc.) onsite is not allowed. The painting of equipment by power sprayers is prohibited. Such painting must be conducted off-site.

### 7.2.4 Used Oil, Coolant, and Lead-Acid Batteries

Each of the main properties currently store new oil, used oil, coolants and/or lead acid batteries on-site. These items are properly marked and stored and are in compliance with local and State regulations. The storage of more than what would be used for daily use of these chemicals and products is prohibited. The construction of a storage area onsite to store these chemicals must be reviewed and approved by the District prior to the storage or construction of the facility.

Used oil, coolant and lead-acid battery activities are not currently stored onsite, and are not approved activities by the District. However, if this type activity should be approved by the District, the following BMP guidelines must be implemented.

Used oil and oil filters should be stored in separate marked containers and recycled. Oil filters should be drained and taken to the same place as the used oil, or to a hazardous waste collection site. Coolants and antifreeze must be recycled or disposed as a hazardous waste. Do not mix used oil with used coolant or sludge from solvents. Lead-acid storage batteries are classified as hazardous wastes unless they are recycled. Batteries should be stored on an impervious surface and preferably under cover until delivery to an authorized recycling facility.



All used oil, coolants, and spent lead-acid batteries on the properties are stored in certified containment units until removed for offsite disposal or recycling by a certified contractor.



### 8.0 SAMPLING AND COMPLIANCE PLAN

#### WWW. 8.1 verification sampling

Based upon the historical operations and utilization of agrochemicals on the USSC properties and the potential for petroleum and chemical impacts in surficial soils at the properties, the District shall retain the option to conduct periodic soil sampling in representative areas for a variety of parameters described below. The purpose of this sampling will be to promote environmental stewardship among the site operator and personnel and serve as a means of monitoring the environmental character of the site during the interim period prior to conversion to a regional reservoir or storm water treatment area. Sampling locations will be determined based upon site-specific information.

Cultivated area sampling should be conducted on an annual basis. Soil samples shall be collected from the cultivated area at randomly selected locations based on the grid pattern and numbering system used in the Phase I/II ESA. The BMP annual sampling event will target those grids identified in the Phase I/II ESA. The selected grids sampled during the first annual sampling event will not be re-sampled in subsequent annual sampling events.

Baseline samples collected during the Phase I/II ESA conducted on the USSC property by PSI in August and September 2008 shall be used as a comparison to future sampling results. The results of the periodic future sampling may result in applicable modifications of this BMP Plan to address elevated parameters of concern.

The following table lists the sampling locations, sampling frequency, and sampling parameters for the BMP Plan. The following table lists the sampling locations, sampling frequency, and sampling parameters for the BMP Plan.

The following table lists the sampling locations, sampling frequency, and sampling parameters for the BMP Plan.

Location	Number of Samples	Sampling Frequency	Sampling Parameters
Pump Station	1 sample	Annually	<ul style="list-style-type: none"> <li>Lead</li> <li>Cadmium</li> <li>Chromium</li> <li>Mercury</li> <li>Vanadium</li> <li>Asbestos</li> <li>PCBs</li> <li>PAHs</li> <li>Organic Solvents</li> <li>Heavy Metals</li> </ul>
Citrus Cultivation Area	16 samples	Annually	<ul style="list-style-type: none"> <li>Lead</li> <li>Cadmium</li> <li>Chromium</li> <li>Mercury</li> <li>Vanadium</li> <li>Asbestos</li> <li>PCBs</li> <li>PAHs</li> <li>Organic Solvents</li> <li>Heavy Metals</li> </ul>



		[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In the event that obvious and excessive impacts are visibly detected during periodical site visits conducted by the District, a more comprehensive site specific sampling plan, which would depend on the magnitude of the impact, should be developed under the direction of the District and any applicable regulatory agencies. A list of potential parameters to be analyzed for are given below.

- EPA Method 8141 (Organophosphorus Pesticides)
- EPA Method 8151 (chlorinated herbicides)
- EPA Method 6010/7471 (copper)
- FL-Pro Method (total residual petroleum hydrocarbons)
- EPA Method 8100 (polynuclear aromatic hydrocarbons)
- EPA Method 8020 (volatile organic hydrocarbons)



## 9.0 STANDARDIZED FORM: BMP SITE VERIFICATION FINDINGS SUMMARY

Future BMP site verification visits will be conducted at the request of the District. BMP implementation will be reviewed per the guidelines and 'Implementation Points to Consider' described for each BMP earlier in this document as well as taking site specific issues and time of year into account. The site verification findings, including a written review of observations, site photographs taken, and a summary of records reviewed, are expected to be provided by the field reviewer in a detailed report. The field verified implementation status of each BMP will be classified in one of three categories:

- Implementation Verified**
- Implementation Verified with Comment**
- Additional Attention Required**

The standardized form for reporting *BMP Site Verification Findings Summary* to be included in the BMP field verification report is attached.



**APPENDIX A**  
**Best Management Practice Checklist**

**United States Sugar Corporation**  
**Hendry County**  
**State of Florida**

***Best Management Practices (BMP) Site Verification Checklist***

**Tract No.:**  
**SFWMD**  
**Representative(s):**  
**Property**  
**Representative(s):**  
**Inspection Date:**

<b>BMP</b>	<b>Description/Comment</b>	<b>Implementation Verified</b>	<b>Additional Attention Required</b>
<b>Property Use and Structures</b>			
<b>Housekeeping</b>			
<b>General Site -</b>			
<b>Storage Areas -</b>			
<b>Additional Observations -</b>			
<b>Employee Training</b>			
<b>Schedule -</b>			



<b>Topics -</b>			
<b>Additional Observations -</b>			
<b>Hazardous Material/ Chemical Use</b>			
<b>Chemicals Used -</b>			
<b>Application Type -</b>			
<b>Application Schedule -</b>			
<b>Material Records -</b>			
<b>Additional Observations:</b>			
<b>Petroleum Products</b>			
<b>Product Use -</b>			
<b>Pump Station(s) -</b>			
<b>Storage Location(s) -</b>			
<b>Additional Observations:</b>			
<b>Chemical Storage</b>			
<b>Storage Location -</b>			
<b>Building/Area Type -</b>			



<b>Pump Station(s) -</b>			
<b>Additional Observations:</b>			
<b>Mixing &amp; Loading Areas</b>			
<b>Area Description -</b>			
<b>Area Observations -</b>			
<b>Additional Observations:</b>			
<b>Waste Storage and Disposal</b>			
<b>Waste Types -</b>			
<b>Storage Location -</b>			
<b>Waste Disposal -</b>			
<b>Waste Disposal Records -</b>			
<b>Additional Observations:</b>			
<b>Water Management</b>			
<b>Observations -</b>			
<b>Water Mgmt Controls -</b>			
<b>Weather Monitoring -</b>			
<b>Additional Observations:</b>			



<b>Erosion/Sediment Controls</b>			
<b>Erosion Controls -</b>			
<b>Sediment Controls -</b>			
<b>Additional Observations:</b>			
<b>Exotic Vegetation Management</b>			
<b>Observations -</b>			
<b>Physical Controls -</b>			
<b>Biological Controls -</b>			
<b>Chemical Controls -</b>			
<b>Additional Observations:</b>			
<b>General Field Notes</b>			

Notes:

N/A - Not Applicable

**APPENDIX B  
EMERGENCY RESPONSE PHONE NUMBERS**

**EMERGENCY REPORTING**  
For Ambulance, Fire, or Police **Dial 911**



**State Warning Point**  
(Department of Community Affairs,  
Division of Emergency Management)

24hrs. Toll Free 1-800-320-0519  
or (850) 413-9911

**National Response Center**

(Federal law requires that anyone who releases into the environment a reportable quantity of a hazardous substance [including oil when water is or may be affected] or a material identified as a marine pollutant, must immediately notify the NRC).

24hrs. Toll Free 1-800-424-8802

**FDEP Emergency Response, 24 hrs. Toll Free 1-800-342-5367**

**HELP LINE NUMBERS**

***Chemical hazard information and regulatory questions***

- **CHEMTREC HOT LINE (Emergency only) 24 hrs**
- SARA Title III help line
- CERCLA / RCRA help line
- Pesticide Container Recycling Program  
Pesticide Information Officer at University of Florida

Toll Free 1-800-424-9300  
Toll Free 1-800-535-0202  
Toll Free 1-800-424-9346  
352-392-4721

**COUNTY COOPERATIVE EXTENSION OFFICES**

Pam Beach County	559 N. Military Trail West Palm Beach, FL 33415	(561) 233-1700
Hendry County	1085 Pratt Boulevard Dallas B Townsend Agricultural Center Labelle, FL 33935	(863) 674-4092
Glades County	900 US Highway 27 SW Moore Haven, FL 33471	(863) 946-0244
Gilchrist County	125 East Wade Street Trenton, FL 32693	(352) 463-3174

**STATE OF FLORIDA AGENCIES**

**Florida Department of Agriculture and Consumer Services**

Bureau of Pesticides	(850) 487-0532
Bureau of Compliance Monitoring	(850) 488-3314
Division of Agriculture and Environmental Services	(850) 488-3731

***Florida Department of Environmental Protection***

FDEP Stormwater/Nonpoint Source Management Section (Tallahassee)	(850) 488-3605
FDEP Hazardous Waste Management Section (Tallahassee)	(850) 488-0300
FDEP District offices - West Palm Beach	(561) 681-6800



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Florida Fish and Wildlife Conservation Commission

620 South Meridian Street  
Tallahassee, FL 32301

(850) 488-4066 or  
(850) 488-4069

Water Management Districts

South Florida Water Management District (West Palm Beach)

(561) 686-8800 or  
1-800-432-2045

**University of Florida (Gainesville)**

Pesticide Information Office  
Agricultural Law Policy Office

(352) 392-4721  
(352) 392-1881

**UNITED STATES AGENCIES**

EPA National Offices & Numbers

Office of Water

4604, 401 M Street, SW  
Washington, DC 20460

(202)-382-5700

(Provides Information on Clean Water Act and related water pollution regulations)

Florida Administrator of EPA Pesticide Registration

Bureau of Pesticides/ Division of Inspection  
Dept. of Agriculture and Consumer Services  
3125 Conner Blvd., MD-2  
Tallahassee, FL 32399-1650

(850) 487-2130

National Pesticide Telecommunications Network

Provides information on pesticides and pesticide poisonings.  
Operating 24 hours a day, 365 days a year.

1-800-858-7378



**D R A F T**

**BEST MANAGEMENT PRACTICES PLAN - DRAFT  
SUGAR CANE PRODUCTION**

**UNITED STATES SUGAR CORPORATION  
PALM BEACH, HENDRY, AND GLADES COUNTIES, FLORIDA**

*Prepared for*



South Florida Water Management District  
3301 Gun Club Road  
West Palm Beach, Florida 33406

October 2008

*Prepared by*

**URS**

URS Corporation  
4168 Southpoint Parkway, Ste 205



---

Jacksonville, Florida 32216  
T904.281.9251 F904.281.9892



**URS**



October 28, 2008

Mr. Robert Taylor  
Land Support Acquisition Division  
South Florida Water Management District  
3301 Gun Club Road  
West Palm Beach, Florida 33406

Subject: **DRAFT**  
**Environmental Best Management Practices Plan-Sugar Cane Production and**  
**Vegetable Farming**  
**United States Sugar Corporation**  
**Palm Beach, Hendry, and Glades Counties**  
**State of Florida**  
**Job # 38617-027**

Dear Mr. Taylor,

URS Corporation (URS) is pleased to present this Environmental Best management Practices (BMP) Plan - DRAFT for the United States Sugar Corporation (USSC) sugar cane production and vegetable farming properties in Palm Beach, Hendry, and Glades Counties, Florida.

It is URS' understanding that as the property owner, the South Florida Water Management District (District) desires to have in place a set of general environmental BMP's for the sugar cane operations that are designed to maintain/protect water quality in accordance with the State's water quality standards, maintain the soil and water quality at the site which will not prohibit the District from using property as a water attenuation reservoir in the near future, and that will concurrently allow for continued economically-viable agricultural production on the site. This BMP plan is designed to meet these expectations by providing guidance to the USSC property on environmental preventative measures to be proactively implemented.

Sincerely,  
**URS Corporation**

Edward A. Leding, P.G.  
Project Manager

Timothy B. DeBord  
Vice President

URS Corporation  
4168 Southpoint Pkwy Ste 205  
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12/4/08



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## 1.0 OVERVIEW

### XXX. 1.1 BACKGROUND

The South Florida Water Management District (District) has acquired approximately 187,000 acres of the United States Sugar Corporation (USSC) properties in Palm Beach, Hendry, and Glades Counties, Florida for future restoration purposes such as water storage reservoirs and wetlands. **Figure 1** illustrates the USSC properties. Of the 187,000 acres, an estimated 161,000 acres is used for the cultivation of sugar cane. **Figure 2** illustrates the tracts that are utilized for the cultivation of sugar cane. Additionally, portions of the 161,000 acres are subleased each year for the cultivation of vegetables. The vegetables that are typically grown are corn, beans, and watermelons. This Environmental Best Management Practices (BMP) Plan has been prepared for the sugar cane and vegetable production portions of the acquired properties.

During the interim period (from acquisition to construction/land conversion), the District intends to utilize the property for continued agricultural operations. This BMP plan is not regulatory or enforcement based. BMPs are production systems and management strategies scientifically shown to minimize adverse water quality and other environmental impacts of sugar cane production. BMPs can be defined as those operational procedures designed to achieve greatest agronomic efficiency in food and fiber production, while limiting the off-site effects of agricultural operations and maintaining an economically viable farming operation. All BMPs must protect the environment and be economically viable.

There are several sources of research that have been used to develop BMPs for sugar cane production in Florida. Primary sources include the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS), University of Florida/Institute of Food and Agricultural Sciences (IFAS), Environmental Protection Agency (EPA), Florida Department of Environmental Protection (FDEP), and Florida Department of Agriculture and Consumer Services (FDACS). This document cites pertinent documentation from these sources that may guide the implementation, evaluation, verification and validation of each BMP.

The proposed acquisition areas have been cultivated in since the 1920s. Initially vegetables were cultivated. Beginning in the 1930s, the predominant crop was sugar cane. Maintenance buildings with chemical storage areas are strategically spaced throughout the acquisition areas, as well as diesel powered pump stations and re-fueling areas. A railway system located throughout the properties is used to transport the sugar cane to the mills. Rail sidings, which are used to load the harvested sugar cane onto rail cars are strategically placed along the railway system. Agrochemical application is conducted using mobile equipment and also applied aerially, and the agrochemicals are stored in designated areas at the maintenance buildings. For tracts that are leased for vegetable cultivation, the agrochemicals are stored off-site and transported to the vegetable growing area on an as-need basis. USSG property personnel indicated there have been no central burn pits and the paper, boxes and cartons generated as part of the farming operations were burned in many small areas throughout the properties. Agricultural air strips are located on several properties.



## YYY. 1.2 Environmental Site assessment (ESA)

Phase I and Phase II Environmental Site Assessment (ESA) activities were conducted on the property in August and September 2008 by Professional Services Inc. (PSI). Identified areas of potential point sources associated with the sugar cane operation are primarily:

- Chemical Storage and/or Maintenance Areas
- Airplane Landing Strips
- Equipment Staging Areas
- Rail Sidings
- Diesel Powered Pump Stations
- Fuel Storage / Re-Fueling Areas

Section 2.0 provides descriptions of a variety of environmental BMPs as part of the sugar cane and vegetable operations. Although all BMPs are important with the need for diligent on-going implementation, particular attention needs to be addressed to the following:

- Pump Stations
- Rail Sidings
- Chemical Storage Areas
- Copper Based Nutrients

Given below is a summary of the observations made during the Phase I ESA, as well as the results of the Phase II ESA at the above referenced areas/issues and URS' recommendations to address the issues.

- Diesel powered pump stations with aboveground storage tanks (ASTs) used to store diesel fuel were observed on the properties. The pump stations are used to control water in the cultivated fields. Soil staining and/or petroleum impacted soils were identified at most of the pump stations. **URS recommends implementing preventative measures for petroleum spills and diesel AST leaks. This should include repairing any leaks and use of absorbent material when leaks and/or spills occur. URS also recommends monthly site inspections to verify the pump stations are being properly maintained and in compliance.**
- Rail siding locations were observed along the rail lines throughout the cultivated areas. The rail sidings are used to load the harvested sugar cane onto railroad cars for transportation to the sugar refinery mills. These rail sidings are hydraulically operated and powered by diesel engines. Significant petroleum and hydraulic oil staining was observed at most of the rail siding locations. At several of the locations, hydraulic oil was observed leaking from the motors and hydraulic systems. **URS recommends**



improving housekeeping at the rail sidings. This should include repairing any leaks and use of absorbent material when leaks occur. URS also recommends monthly site inspections to verify the rail sidings are being properly maintained.

- Chemical and equipment storage areas were observed on the properties. Areas of petroleum and agrochemical stained soil and stressed vegetation were observed at numerous chemical and equipment storage areas. **URS recommends improving housekeeping at the storage areas. This should include proper handling and storage of agrochemicals and use of absorbent at the equipment storage areas. URS also recommends monthly site inspections to verify the storage areas are being properly maintained.**
- During the Phase I ESA, PSI identified copper based nutrients from the USSC pesticide application records. Due to these copper based nutrients, PSI analyzed for copper in the sugar cane cultivation areas during the Phase II ESA. PSI divided the sugar cane cultivation area into 40-acre grids and sampled approximately 20% of these 40-acre grids that were historically and currently cultivated with sugar cane. An eight point composite sample was collected from each grid with each aliquot representing approximately 5-acres. All aliquots were collected from a depth of 0 to 6-inches bls using a stainless steel sample barrel. The Phase II ESA sampling identified areas of elevated copper in the sugar cane cultivation areas copper above the Service provisional Snail Kite threshold level of 85 milligrams per kilogram (mg/kg).
- URS identified 105, 40-acre grids with copper concentrations ranging from 70 mg/kg to 85 mg/kg, and reviewed the current rates of application and amounts of copper based nutrients applied on the USSC property. Utilizing this information, a mass balance equation was developed in order to determine if additional acreage would be impacted by copper based on the current application activities. URS determined that copper could potentially increase in the soils, per application, at a rate of 2.08 mg/kg per acre. Based on this application rate, and the fact that the property is leased through 2014, 12, 40-acre grids have the potential to accumulate copper above the Service's interim value for copper of 85 mg/kg during the lease agreement. However, most of the 12, 40-acre grids are located adjacent to soils with copper concentrations exceeding 85 mg/kg and/or are co-located with historically applied agrochemicals (organochlorine pesticides) that are targeted for abatement. **With a minimal amount of acres being affected by elevated levels of copper, the current nutrient application regiment is acceptable. URS recommends sampling select areas within the cultivated fields every other year in order to monitor the copper concentrations in the soil. In the event that USSC plans to increase the applications rate of the copper based nutrients, URS recommends that USSC discuss the application increase with the District.**



### ZZZ. 1.3 STANDARDIZED BMP CHECKLIST

The District's intent is to ensure consistency of BMP implementation and future verifications on two levels:

1. Consistent BMP verification for each visit to the USSC properties; and,
2. Consistent BMP verification for site visits to similar land use operations.

In some cases, previously developed District and USSC BMP plans were earlier generation versions focused on addressing specific issue areas (i.e., phosphorous control) while possibly not addressing additional areas of the District's potential concern (i.e., petroleum management, chemical usage). In addition, there may be supplementary areas of common good management practices, such as general site condition housekeeping, that are to be included in all BMP site verifications.

The following *Standardized BMP Checklist* is provided as a supplement to any previously developed site-specific BMP Plan. The checklist is intended to serve as an additional guide to prepare for BMP site verification by the District representatives. The checklist attempts to identify BMP verification aspects which will require field observations and verification aspects which will consist of records review.

The following matrix provides a *quick-glance* summary of the BMPs established for the agricultural operation. Further discussion of each BMP and key points to assist with advance preparation of BMP site verification are provided in **Section 2**. **Section 3** provides a standardized form to be used to summarize the findings of future BMP site verifications.



### Best Management Practices Checklist

United States Sugar Corporation  
Palm Beach, Hendry, and Glades Counties  
State of Florida

BMP Group/BMP Name	Site Verification		Training & Communications
	Observations	Records	
<b>GENERAL</b>			
<ul style="list-style-type: none"> <li>Education-Employee Training</li> <li>Overall Operations 'Housekeeping'</li> </ul>	✓	✓	✓
<b>WATER MANAGEMENT</b>			
Minimize over drainage and maximize irrigation efficiency	✓		✓
<b>NUTRIENT MANAGEMENT FERTILIZING</b>			
Nutrient Application Optimization <ul style="list-style-type: none"> <li>Nutrient Management Plan</li> <li>Nutrient Record Keeping</li> <li>Use appropriate nutrient sources &amp; formulations</li> <li>Split fertilizer applications</li> </ul>	✓	✓	✓
Nutrient Handling and Placement <ul style="list-style-type: none"> <li>Fertilizer application equipment</li> <li>Fertilizer storage</li> <li>Equipment calibration and maintenance</li> <li>Fertilizer loading sites</li> <li>Apply materials to target areas</li> <li>Avoid high leaching-potential situations</li> <li>Promptly recover spilled fertilizer</li> <li>Use backflow prevention devices</li> <li>Alternate loading operation site</li> </ul>	✓		✓
<b>EXOTIC VEGETATION CONTROL</b>			
Upland Exotic Vegetation Control <ul style="list-style-type: none"> <li>Control and eradicate to the extent practicable Category I and II exotic/invasive pest plants</li> </ul>	✓		✓
Aquatic Exotic Vegetation Control <ul style="list-style-type: none"> <li>Control and eradicate to the extent practicable Class I and II prohibited aquatic plants</li> </ul>	✓		✓
<b>EARTHWORK</b>			
No unpermitted earthwork, excluding ditch and routine maintenance. All non-routine maintenance requires contacting the District for approval.	✓	✓	✓
<b>EROSION/SEDIMENT CONTROL</b>			
<ul style="list-style-type: none"> <li>Use of cover crops</li> <li>Use of vegetation to stabilize water channel banks</li> <li>Ditch bank berms</li> <li>Culvert located above all ditch bottoms</li> <li>Systematic ditch cleaning program</li> <li>Other proposed erosion/sediment control BMP</li> </ul>	✓		✓
<b>PESTICIDE &amp; HERBICIDE MANAGEMENT</b>			
Allowable agrochemical list and No Application Period		✓	✓
Pesticide & Herbicide Management <ul style="list-style-type: none"> <li>Pesticide record keeping</li> </ul>		✓	✓



BMP Group/BMP Name	Site Verification		Training & Communications
	Observations	Records	
<ul style="list-style-type: none"> <li>• <i>Read and understand label</i></li> <li>• <i>Pesticide storage</i></li> </ul>			
<b>Pesticide &amp; Herbicide Application Optimization</b> <ul style="list-style-type: none"> <li>• <i>Integrated pest management</i></li> <li>• <i>Application timing</i></li> <li>• <i>Customized applications</i></li> <li>• <i>Maintain soil pH in optimum range</i></li> <li>• <i>Pesticide selection</i></li> </ul>	✓		✓
<b>Pesticide &amp; Herbicide Handling and Placement</b> <ul style="list-style-type: none"> <li>• <i>Reduce spray drift</i></li> <li>• <i>Equipment calibration and maintenance</i></li> <li>• <i>Pesticide spill management</i></li> <li>• <i>Pesticide application equipment wash water</i></li> <li>• <i>Prevent backflow to water sources</i></li> <li>• <i>Mixing and loading activity locations</i></li> <li>• <i>Pesticide container management</i></li> <li>• <i>Excess pesticide mixture</i></li> <li>• <i>Excess formulation (raw product)</i></li> </ul>	✓		✓
<b>COPPER</b>			
Minimize Use of Copper	✓	✓	✓
<b>PETROLEUM &amp; HAZARDOUS WASTE MANAGEMENT</b>			
<b>Gasoline and Diesel Fuel Storage &amp; Containment</b> <ul style="list-style-type: none"> <li>• <i>Site equipment</i></li> <li>• <i>Fuel delivery</i></li> </ul>	✓		✓
<b>Farm Equipment Cleaning and Maintenance</b> <ul style="list-style-type: none"> <li>• <i>General equipment cleaning</i></li> <li>• <i>Solvents and degreasers</i></li> <li>• <i>Paint</i></li> <li>• <i>Used oil, coolant and lead-acid batteries</i></li> </ul>	✓		✓



## 2.0 BMP PLAN ELEMENTS AND SITE VERIFICATION GUIDELINES

### AAAA. 2.1 GENERAL

#### 2.1.1 Education - Employee Training

The singularly most important part of a BMP plan is the communication, education, and training of employees who will be responsible for its continual implementation on a daily basis.

In the event that obvious and excessive impacts are visibly detected during periodic site visits conducted by the District, a more comprehensive site-specific sampling plan that would depend on the magnitude of the impact should be developed under the direction of the District and applicable regulatory agencies. Many BMPs are good common sense practices which ultimately can produce a cost savings to the site operations, as well as, proactively preventing adverse water quality impacts. An integral part of the employee training should include an overview of the reasons for implementing BMPs as described earlier.

Implementation points-to-consider include:

- Proper training of field operators responsible for handling, loading, and operating fertilizer and chemical application machinery and proper maintenance of field equipment can minimize the potential for misapplication of agriculture related chemicals.
- Training sessions can be formal or informal.
  - Once per year group meetings should be conducted to cover all the BMP topics: overall good housekeeping, water management, fertilizer (nutrient) controls, chemical handling and application, fuel, and equipment maintenance.
  - Frequent (weekly or bi-weekly) reminder sessions keep a more continual message with staff. Frequent meetings can be informal “start-of-day” 15-minute reminders with a different reminder topic referenced each session.
- The transfer of the information received during the required continuing education (such as spray applicator licensing) to the individual chemical application staff is essential.
- A standardized checklist of discussion points could be developed and utilized to ensure all staff are aware of the importance of proper handling and application of fertilizers and chemicals.
- Special efforts should be taken to ensure that non-English speaking field personnel understand proper handling, loading, and operating techniques.
- Record keeping of employee BMP training/communications can include maintaining an Employee Training Checklist such as example provided.

#### 2.1.2 Good Housekeeping

Property infrastructure should be kept in an overall good and repaired condition. Any solid waste, trash and/or discarded equipment should be stored in appropriate areas pending offsite disposal. Equipment and facilities should be kept in a relatively neat and orderly fashion. Fence lines, gates, and signage should be kept in good and repaired condition.



Implementation points-to-consider include:

- BMP implementation is verified by visual observations.

## BBBB.2.2 WATER MANAGEMENT

### 2.2.1 Minimize Property Over Drainage and Maximize Irrigation Efficiency

Potential movement of water quality constituents originating from fertilizers and agrochemicals is substantially related to irrigation and drainage water management. Irrigation mostly affects the movement of water soluble agrochemicals while drainage mostly affects the movement of chemicals absorbed on soil particles. The primary management objective is to minimize the over drainage of the property by the active control of the site water table.

Implementation points-to-consider include:

- Site verification will include discussion with operation managers to understand property water management approach and visual observation of structures and tools used to assist with water management decisions. Observations will include:
  - Real-time weather monitoring to proactive manage or limit drainage and/or irrigation events.
  - Water management achieved through water control structures such as designed culvert sizes and openings or culverts with flashboard risers.
  - For off-site discharge, on/off control elevations should be established to initiate and stop draining or pumping. USSC currently has on/off controls on structures that discharge into offsite canals.
  - Partition property into hydrologic blocks to allow for internal water management (as opposed to one location to downstream point).
  - Installed water level indicators (e.g., float wells, staff gauges) can provide a visual indicator of actual water table levels. U.S. Sugar has a water table monitoring system that is in compliance.
  - Site verification will include discussions with Tenant/Lessee to understand property water management approach and visual observation of structures and tools used to assist with water management decisions.

## CCCC.2.3 NUTRIENT MANAGEMENT (FERTILIZING)

### 2.3.1 Nutrient Application Optimization

Fertilizers can be a significant source of adverse downstream water quality impacts contributing to algal blooms and stimulate growth of noxious plants in receiving water bodies. A comprehensive approach to optimize the amount of nutrients needed for proper vegetation health and productivity while at the same time having a proactive consciousness to minimize the risk to inadvertent potential off-site transport of nutrients is essential. Listed below are the various potential nutrient application optimization BMPs



identified in the site-specific BMP plan:

- Nutrient management plan
- Soil analysis
- Maintain soil pH in optimum range
- Organic material soil amendments
- Slow release commercial fertilizer
- Use appropriate nutrient sources (i.e. non-commercially produced sludge, chicken manure, etc) and formulations
- Split fertilizer applications

Implementation points-to-consider include:

- Site verification will include discussion with operation managers to understand the agricultural operation nutrient application optimization approach.
- Records should be available and reviewed to reinforce the implementation tools used to assist with nutrient management decisions. Records should identify:
  - Areas tested
  - Testing methodology (soil)
  - Test results
  - Application recommendations
  - Application methods (fertigation, soil broadcast, topical spray, etc.)
  - Actual mixture/application rate applied
- Where actual fertilizer formula or quantity varies from soil test recommendations, notation should be made to explain the logic for the variations.

USSC utilizes a nutrient management plan to optimize nutrient applications. In cases where inconsistencies occur between the BMP nutrient management plan and the Everglades Agricultural Area (EAA) nutrient management plan, the EAA plan will take precedence.

### 2.3.2 Nutrient Handling and Placement

Fertilizers can be a significant source of adverse downstream water quality impacts contributing to algal blooms and stimulate growth of noxious plants in receiving water bodies. Proper storage of fertilizers is essential to prevent in advertent transport of these materials to off-site waterways. Formal practices and protocols shall be established as to the handling and placement of fertilizer, storage and disposal of fertilizer containers, and fertilizer transfer on-site. Fertilizer spills shall be cleaned-up immediately. Listed below are the various potential nutrient handling and placement BMPs identified in the site-specific BMP Plan.



- Fertilizer application equipment
- Fertilizer storage
- Equipment calibration and maintenance
- Fertilizer loading sites
- Apply materials to target areas
- Avoid high leaching-potential situations
- Promptly recover spilled fertilizer
- Use backflow prevention devices
- Alternate loading operation sites

Implementation points-to-consider include:

- Site verification will include discussion with operation managers to understand the agricultural operation nutrient handling and placement strategies. In addition, site inspections will be made to observe the following items:
  - Always store fertilizer in an area that is protected from rainfall and away from nearby ground and surface water and separately from solvents, fuels, and pesticides since many fertilizers are oxidants and can accelerate a fire.
  - Storage of dry bulk materials on a concrete or asphalt pad may be acceptable if the pad is adequately protected from rainfall and from water flowing across the pad.
  - Permanent liquid fertilizer tanks stored on impermeable surface curbed surfaces, and within secondary containment structures.
  - Bulk fertilizer transports and field loading located away from canal and ditches. Diligent care with plastic tarps and/or immediate clean-up (shovel) of dry material has been shown to be effective.
  - Random locations of field load fertilizer operations on site to prevent a buildup of nutrients in one location.
  - Clean up spilled material immediately.
  - Collected material may be applied as fertilizer.
  - Collect dry material by shovel, vacuum, loader or wash down area to a containment basin specially designed to permit recovery and application of the wash water to the crop.
  - Discharge of cleanup wash water to ditches or canals is strictly prohibited.



## DDDD. 2.4 EXOTIC VEGETATION CONTROL

### 2.4.1 Upland Exotic Vegetation Control

The intent of this BMP is to control and eradicate to the extent practicable, and prevent the infestation of Category I and Category II exotic/invasive pest plants. Multiple control methods may employed to implement this BMP including:

- Physical control
- Biological control
- Chemical control

Implementation points-to-consider include:

- Site verification will include discussion with operation managers to understand the agricultural operation upland exotic vegetation management approach.
- Site manager should maintain a simple map showing the general areas where exotic/invasive vegetation eradication activities are conducted on an annual basis.
- Visual observations will be conducted to verify no exotic/invasive vegetation.

### 2.4.2 Aquatic Exotic Vegetation Control

The intent of this BMP is to control and eradicate to the extent practicable, and prevent the infestation of Class I and Class II prohibited aquatic plants. Multiple control methods may be employed to implement this BMP including:

- Physical control
- Biological control
- Chemical control

Implementation points-to-consider include:

- Site verification will include discussion with operation managers to understand the agricultural operation upland aquatic exotic vegetation management approach.
- Site manager should maintain a simple map showing the general areas where exotic/invasive aquatic vegetation eradication activities are conducted on an annual basis.
- Visual observations will be conducted to verify no prohibited aquatic plants.

## EEEE. 2.5 EROSION/SEDIMENT CONTROL

It is estimated that approximately 50-75% of the nutrient and chemicals discharged in stormwater runoff are associated with particulates (muck particles, dirt, dust, plant vegetation, etc.). The minimization and prevention of erosion and particulate/muck/dirt transport from blocks, fields, ditches, and canals to drainage pump stations or discharge culverts can have a substantial positive effect in preventing the off-site transport of nutrients and chemicals that can cause adverse downstream water quality problems.



Implementation points-to-consider include:

- Records should be kept identifying description and location of the erosion/sediment control BMPs and all the maintenance and operations conducted through the year to sustain the BMP's effectiveness.

A minimum of four (4) erosion/sediment control BMPs (from the matrix below) are recommended to implemented and maintained at all times on-site.

PRACTICE	DESCRIPTION
Use of Cover Crops	Systematic program of utilizing cover plants between rows and blocks
Use of Vegetation to Stabilize Water Channel Banks	Plant vegetation or maintain existing vegetation in a minimum of 2 foot wide strip of along ditch and canal banks to stabilize soil
Ditch Bank Berms	Place excavated rock and material along top of ditch bank and cover with organic soil and promote vegetation
Culvert Located above All Ditch Bottoms	Place and maintain culverts above bottom of field ditch connections to lateral canals
Systematic Ditch Cleaning Program	Clean all canals and ditches regularly through a systematic management plan to remove sediments preventing off-site discharge
Level Blocks	Systematic maintenance program to level fields which promotes uniform drainage thus, in part, reducing erosion
Grassed Field Ditch Connections to Laterals	Use vegetation as a soil stabilizer at the point of field ditch connections to lateral canal
Pipe in All Field Ditch Connections to Laterals	Use pipe to connect field ditches to laterals and canals to reduce erosion at intersection
Sediment Sump in All Field Ditches	Create and maintain sump to trap sediment at field ditch connections to lateral canals
Sediment Sump in Main Canal Near Discharge Pumps	Construct and maintain sediment sump in canal bottom near discharge pumps to trap bottom sediments
Other Proposed Erosion/Sediment Control BMP	Proposed by owner/operator and accepted by the District

## FFFF. 2.6 PESTICIDE AND HERBICIDE MANAGEMENT

### 2.6.1 Allowable Agrochemical List and No Application Period

The presence of agrochemicals (particularly persistent pesticides) should be minimized and as to not cause adverse impacts to anticipated flora and fauna. As current landowner, the District must ensure that all application of agrochemicals on-site is conducted in accordance with all applicable laws and regulations.

The attached **Chemical Application Restrictions** matrix should be followed. The agrochemical list should be reviewed annually for the effectiveness of the applied chemical, changes in regulations regarding specific pesticides, and changes in the management and use of the pesticides. The experimental use of pesticides and herbicides is prohibited. All agrochemicals must be applied in strict accordance to label instructions and restrictions.



Additionally, USSC will provide the District a quarterly report of agrochemicals in use on the sugar cane production parcels.

A handwritten signature in black ink, appearing to be the initials 'ADH'.



### CHEMICAL APPLICATION RESTRICTIONS

The following are examples of the lists of chemicals used for sugar cane cultivation and vegetable farming, and at the completion of the Phase I and II ESA activities, this list may change. The following agrochemicals have the potential to be used subject to the restrictions noted below.\* Chemicals not specifically listed below may be evaluated on a case by case basis and added to the appropriate category below. For chemicals with no analytical test method and identified as a potential environmental risk, the chemical manufacturer will be contacted to obtain the chemical standard. The District will then contract a Florida based laboratory to develop an analytical test method for the chemicals.

#### SUGAR CANE

H. May be used at any time but only according to label restrictions:

- |  |   |  |
|--|---|--|
| 1,2-propylene glycol ( <i>Mocap</i> )            | Polyacrylamide ( <i>Reign</i> )                 | XXX ( <i>Crop Oil</i> )                              |
| 2,4-Dichlorophenoxyacetic Acid ( <i>Unison</i> ) | Polyacrylic acid ( <i>Quest</i> )               | Xylene ( <i>Asana</i> )                              |
| Ethylbenzene ( <i>Asana</i> )                    | Polyalkyleneoxide ( <i>Kinetic</i> )            | Water and nonionic emulsifiers ( <i>Foambuster</i> ) |
| Glyphosate ( <i>Roundup, Touchdown</i> )         | Nonionic Colloidal water ( <i>Strike Zone</i> ) | Plant nutrients ( <i>Tracite</i> )                   |
| Magnesium Sulfate ( <i>Dyna</i> )                | Quartz ( <i>Mocap</i> )                         | Urrea ( <i>Urea</i> )                                |
| Paraffin based mineral oil ( <i>Crop Oil</i> )   | Sodium salt ( <i>Asulam</i> )                   |  |
| Petroleum solvent ( <i>Prowl</i> )               | Sodium salt ( <i>Yukon</i> )                    |  |
| Phosphatidycholine ( <i>L1700</i> )              | Surfactant ( <i>Roundup</i> )                   |  |

I. Must be discontinued at least 3 months prior to flooding:

- |   |                            |                           |
|---|----------------------------|---------------------------|
| 2-Butoxyethanol ( <i>Dynamic</i> )                        | Methanol ( <i>Asulox</i> ) | Mepiquat ( <i>Reign</i> ) |
| <del>2,4-Dichlorophenoxyacetic Acid (<i>Unison</i>)</del> |                            |                           |

J. Must be discontinued at least 6 months prior to flooding:

- |   |  |   |
|---|--|---|
| Ethoprop ( <i>Mocap</i> )                                 | Naphthalene ( <i>Prowl, Headline</i> ) | Propylene Glycol ( <i>Furadan, Quadris</i> )              |
| Halosulfuron-methyl ( <i>Sempra, Yukon</i> )              | Phorate ( <i>Thimet</i> )              | <del>2,4-Dichlorophenoxyacetic Acid (<i>Unison</i>)</del> |
| <del>2,4-Dichlorophenoxyacetic Acid (<i>Unison</i>)</del> | <del>Phorate (<i>Thimet</i>)</del>     | <del>Propylene Glycol (<i>Furadan, Quadris</i>)</del>     |
| <del>2,4-Dichlorophenoxyacetic Acid (<i>Unison</i>)</del> |  |   |

K. Must be discontinued at least 1 year prior to flooding:

- |                                       |   |                                |
|---------------------------------------|---|--------------------------------|
| Atrazine ( <i>Atrazine</i> )          | Ethylene dichloride ( <i>Prowl</i> )          | Esfenvalerate ( <i>Asana</i> ) |
| <del>Atrazine (<i>Atrazine</i>)</del> | <del>Ethylene dichloride (<i>Prowl</i>)</del> |                                |

L. Must be discontinued at least 2 years prior to flooding:

- |                         |   |   |
|-------------------------|---|---|
| Ametryn ( <i>Evik</i> ) | Trifloxysulfuron-sodium ( <i>Envoke</i> ) | <del>2,4-Dichlorophenoxyacetic Acid (<i>Unison</i>)</del> |
|-------------------------|---|---|



M. Not allowed:  
USSC does not apply any chemicals to the sugar can that are not allowed.

N. Restricted Pending Further Evaluation (District is currently evaluating the long term affects of the chemical application):

Diphacinone (*Ramikk Brown*)    Fluquinconazole (*Jockey*)    Hydroxy carboxylic acid (*Quest*)

**\*\*VEGETABLES – Beans, Watermelon, and Sweet Corn**

A. May be used at any time but only according to label restrictions:

Azadirachtin (*Aza-Direct & Azatin XL*)    Glyphosate (*Roundup, Durango, Touchdown, and Glyphomax*)

Bacillus thuringiensis subspecies (*Agree WG, Biobit HP, Crymax, Deliver, DiPel DF, Javelin WG, Lepinox, and Xentari DF*)    Sulfur (*Kumulus DF, Micro Sulf, Micronized Gold, Microthiol Disperss, Sulfur 90W, Thiolux Jet, and Wettable Sulfur*)

Carfentrazone (*Aim*)  
Copper hydroxide (*Mankocide 61DF, Copper 70W, Champ DP, and Basic Copper 53*)  
EPTC (*Eptam*)

~~Isom Oil (Gilloz)~~



B. Must be discontinued at least 3 months prior to flooding:

Buprofezin (*Courier 40SC*)    Spinosad (*Entrust and SpinTor 2SC*)

Dimethoate (*Dimethoate 4EC*)    Trifloxystrobin (*Flint 50WP*)

Oxydemeton-methyl (*MSR Spray Concentrate*)    ~~Imidacloprid (*Heritage*) and *Quadrif*~~

Pyrethrin (*Pyrellin EC*)  
Pyriproxyfen (*Esteem Ant Bait and Knack IGR*)

C. Must be discontinued at least 6 months prior to flooding:

Bentazon (*Basagran*)    Dicofol (*Kelthane 50WSP*)    Methyl parathion (*PennCap-M*)  
Carbaryl (*Sevin 80S*)    Ethoprop (*Mocap 15G*)    Permethrin (*Ambush 25W and Pounce 25W*)

Cyfluthrin (*Baythroid 2*)    Halosulfuron-methyl (*Sandea*)    Phorate (*Thimet 20G*)  
Cyhalothrin (*Proaxis*)    Imidacloprid (*Admire 2F*)    ~~Imidacloprid (*Proaxis*)~~



*Insecticide)*

Diazinon (*Diazinon 4E*)

Methomyl (*Lannate LV and Lannate SP*)



D. Must be discontinued at least 1 year prior to flooding:

Dichloropropene (*Telone II*)

Esfenvalerate (*Asana XL*)

S-Metolachlor (*Dual Magnum*)

Endosulfan (*Endosulfan 3EC*)

Myclobutanil (*Nova 40W*)

E. Must be discontinued at least 2 years prior to flooding:

Bifenthrin (*Capture 2EC*)

Mefenoxam (*Ridomil Gold 4EC, Ridomil Gold SL, and Ultra Flourish*)

Cyromazine (*Trigard*)

Methoxyfenozide (*Intrepid 2F*)

F. Not allowed:

Paraquat (*Gramoxone Inteon*)

G. Restricted Pending Further Evaluation (District is currently evaluating the long term affects of the chemical application):

Boscalid (*Pristine 38WG*)

Fludioxonil (*Maxim 4FS*)

Potassium phosphite (*Fosphite, Prophyt, and Topaz*)

Hydrogen dioxide (*Oxidate*)

Pelargonic Acid (*Scythe*)

S-Methoprene (*Extinguish*)

Thiophanate-methyl (*Topsin M WSB and Thiophanate-methyl*)

\* Any pesticide, regardless of the above categories, that is shown to be present in the soil, at or above the site specific cleanup target levels, may require additional restrictions, including reductions in use or the complete elimination of its use. These situations will be evaluated on a case-by-case basis.

2.6.2 Copper Compounds

Copper is an essential element required for the successful and economical growing of sugar cane. It is typically applied to the soil surface as a granular additive to fertilizer. The Phase II ESA identify elevated copper levels in the cultivated fields above the Service provisional Snail Kite threshold level of 85 mg/kg.



URS reviewed the current rates of application and amounts of copper based nutrients applied on the USSC property. Utilizing this information, a mass balance equation was developed in order to determine if additional acreage would be impacted by copper based on the current application activities. URS determined that copper could potentially increase in the soils, per application, at a rate of 2.08 mg/kg per acre. Based on this application rate, and the fact that the property is leased through 2014, 12, 40-acre grids have the potential to accumulate copper above the Service's interim value for copper of 85 mg/kg during the lease agreement. However, most of the 12, 40-acre grids are located adjacent to soils with copper concentrations exceeding 85 mg/kg and/or are co-located with historically applied agrochemicals (organochlorine pesticides) that are targeted for abatement. During this interim use period, soil samples should be collected for select areas within the cultivated fields to confirm that residual copper concentrations are not accumulating in the soil.

### 2.6.3 Pesticide and Herbicide Management

Florida pesticide law requires certified applicators to keep records of all restricted use pesticides (RUP). The federal worker protection standard (WPS) requires employers to inform employees of all pesticides applied.

- Pesticide record keeping
- Read and understand label
- Pesticide storage

Implementation points-to-consider include:

- Site verification will include discussion with operation managers to understand the agricultural operation pesticide management approach. In addition, example records should be available and reviewed to reinforce the implementation tools used to assist with pesticide management decisions.
- Required records must be made available upon request to FDACS, USDA authorized representatives, and licensed health care professionals.
- Proper pesticide storage is important for (a) personnel safety and (b) as a preventative spill measure. Visual observations will ensure the following procedures are in place:
  - Storage structures should keep pesticides secure (locked) and isolated from the surrounding environment.
  - Pesticides need to be stored in their original containers.
  - Pesticides should not be stored near burning material, hot work (welding, grinding), or in shop area.
  - No smoking is allowed in pesticide storage areas.
  - Store personal protective equipment where it is easily accessible in the event of an



emergency, but not in the pesticide storage area.

- Maintain a current written inventory and the Material Safety Data Sheets (MSDS) for the chemicals used in the operation. Do not store this information in the pesticide storage room itself.
- Large chemical quantities should not be stored for long periods of time. Adopt the “first in – first out” principle, using the oldest products first to ensure that the product shelf life does not expire.
- Containers need to be arranged so that labels are clearly visible; make sure labels are legible; refasten loose labels.
- Dry bags should be raised on plastic pallets to ensure that they do not get wet. Do not store liquid material above dry materials.
- Flammable pesticides should be stored separately from non-flammable pesticides.
- Segregated herbicides, insecticides, and fungicides to prevent cross-contamination and minimize potential for misapplication.
- Shelving should be made of plastic or reinforced metal. Metal shelving painted (unless stainless steel) to avoid corrosion. No wood shelving because it may absorb spilled pesticide materials.

### 2.6.3 Pesticide and Herbicide Application Optimization

Management of the types and amounts of pesticides applied in or on the soil or on plant foliage is important so the exact problem identified is being addressed and minimize the impacts to surface and ground water. Even pesticides designed for rapid breakdown in the environment can persist for years if present in high concentrations. Worst-case results can be contamination of drinking water; fish kills and other impacts to nontarget organisms; and administrative fines and legal remedies. The most obvious method to reduce the risk from pesticides is to use them only when necessary.

- Integrated pest management
- Application timing
- Customized applications
- Maintain soil pH in optimum range
- Pesticide selection

Implementation points-to-consider include:

- Integrated Pest Management (IPM) is a philosophy of management pests that aims to reduce farm expenses, conserve energy, and protect the environment. IPM is a broad, interdisciplinary approach using a variety of methods to systematically control pests which adversely affect people and agriculture. Basic steps include:

1) Identify key pests/vegetation and beneficial organisms and the factors affecting their



populations.

- 2) Select preventative cultural practices to minimize pests/vegetation and enhance biological controls (e.g. soil prep, crop rotation, resistant varieties, modified irrigation dates, cover crops, augmenting beneficials, etc.).
- 3) Use trained 'scouts' to monitor pest/vegetation populations to determine if or when an emergency control tactic might be needed.
- 4) Predict economic losses and risks so that the cost of various treatments can be compared to the potential losses to be incurred.
- 5) Decide the best course and carry out the corrective actions.
- 6) Continue to monitor pest/vegetation populations to evaluate results of the decision and the effectiveness of correction actions. Use this information when making similar decisions in the future.

USSC currently has an IPM program in place and the policy has been implemented.

- Always follow pesticide/herbicide label instructions. However, pesticide and herbicide recommendations can change frequently. Registrations may be canceled or added at any time. Recommended rates or products that were valid at the start of the growing season may change. For pesticides/herbicides that are not generally used on the property, check with the local Extension agent for the most recent recommendations, or access the computer based Florida Agriculture Information Retrieval System (FAIRS).
- Base pesticide/herbicide selection on characteristics such as soil, geology, depth to water table, proximity to surface water, topography and climate, so that the potential for pollution of surface water and ground water is minimized.
- Consider the effect of a pesticide/herbicide application on any beneficial organism that may be present.

#### 2.6.4 Pesticide and Herbicide Handling and Placement

Routine maintenance, good repair, and calibration of pesticide application equipment will minimize the unintended over (or under) application of chemicals. Correct measurement will keep the operation in compliance with the label, reduce risks to applicators, operation staff, and the environment, and may save money. Locate mixing and loading operations well away from groundwater wells and surface water ditches, laterals and canals where runoff may carry inadvertently transport spilled chemicals. Proper cleaning and disposal of "empty" pesticide containers is just as important as proper application of the chemicals. Listed below is the various potential pesticide handling and placement BMPs identified in the site specific BMP Plan.

- Reduce spray drift
- Equipment calibration & maintenance
- Pesticide spill management



- Pesticide application equipment wash water
- Prevent backflow to water sources
- Mixing and loading activity locations
- Pesticide container management
- Excess pesticide mixture
- Excess formulation (raw product)

Implementation points-to-consider include:

- Site verification will include discussion with operation managers to understand the agricultural operation pesticide handling and placement approach. In addition site inspections will be made to observe the following items:

#### *Permanent Locations*

- A permanently located mixing and loading facility should be designed to provide a place where high-potential spill activities can be performed over an impermeable surface (such as sealed concrete) for easy cleaning and permits the recovery of spilled materials.
- U.S. Sugar currently does not have a permanent mixing and loading facility. Should they elect to construct a permanent mixing and loading facility, the facility must be in compliance with IFAS standards.
- The mix/load facility should be located close to the chemical storage building.
- Permanent areas should have a roof with a substantial overhang on all sides to protect against windblown rainfall.

#### *Temporary Locations*

- Pesticide loading activities should be conducted at random locations in the field lessens the chance of buildup of spilled material at any one place. This will reduce the chance of adversely affecting the natural organisms which biologically degrade pesticides.

#### *Nurse Tanks*

- Use of clean water only in nurse tanks transported to the field to fill the sprayer is encouraged. Never introduce pesticides into a nurse tank.
- Inject pesticides into the transfer line or add them to the spray rig during filling.
- Pesticides may be introduced by conventional pouring, or pumped by a closed system, depending on label requirements and container type.
- Always use a check valve to prevent backflow of pesticides into the clean mix water.

#### *Container Disposal*

- If permitted by the label and local ordinances, bags, boxes and group I pesticide containers may



be burned in an open field by the owner of the crops. Group I containers are containers of organic or metallo-organic CP products, except for organic mercury, lead, cadmium, or arsenic compounds.

- Keep the rinsed containers in a clean area, out of the weather, or in large plastic bags for disposal or recycling to protect the containers from collecting rainwater.

URS has reviewed the USSC portable mix-load operations and the system is in compliance with IFAS.

## GGGG. 2.6 COPPER

Copper has several necessary and beneficial uses within an active agricultural operation including use as fungicides and soil nutrients, and as a canal and ditch aquatic vegetation management tool. Recently, the topic of residual levels of copper in soils of tracts which are intended for conversion to water reservoir areas has had renewed discussion. The District has reported that some analyses and data extrapolations suggest that elevated copper levels have the potential to move through the aquatic food chain and bio-accumulate in the tissue of apple snails. The apple snail is the primary diet of the Snail Kite. It has been reported to the District that it is theorized that elevated copper levels can potentially result in underweight Snail Kite chicks. Since the Snail Kite is listed as an Endangered Species, and the potential for this bird to forage in the future reservoirs, the minimization of the risk for elevated copper levels is desired by the District. Extreme diligence is needed to minimize the amount of copper applied.

Implementation points-to-consider include:

- Site verification will include discussion with operation managers to understand the agricultural operation copper application (if any) optimization approach.
- Records should be available and reviewed to reinforce the implementation tools used to assist with copper management decisions. Records should identify:
  - Locations (e.g. cultivated field, ditch and canal) where copper was applied
  - Time of application
  - Application mixture/application rate applied

## HHHH. 2.7 PETROLEUM AND HAZARDOUS WASTE MANAGEMENT

### 2.7.1 Gasoline and Diesel Fuel Storage and Containment

The first line of management is to minimize the possibility of inadvertent petroleum product discharge and the need for clean-up and disposal. Stationary fuel storage tanks should be in compliance with FDEP storage tank regulations (Chapter 62-761, FAC for underground storage tanks (USTs) and Chapter 62-762, FAC for aboveground storage tanks (ASTs)).

Implementation points-to-consider include:



- Site verification will include discussion with operation managers to understand the agricultural operation petroleum storage and containment management approach. In addition site inspections will be made to observe the following items:

#### ***Site Equipment***

- Placement of permanent fuel pumps on concrete or asphalt surfaces away from groundwater wells and surface water ditches, laterals and canals where runoff may carry inadvertently transport spilled product.
- ASTs with volumes of 550 gallons or larger must be registered and located within secondary containment systems unless of double-wall construction.
- Visual inspections should be conducted on a least a monthly basis of the storage tanks and hoses to ensure the system is free from leakage from tank seams, connections, and fittings.

#### ***Fuel delivery***

- Require delivery driver to report to facility manager upon arrival prior to loading or unloading.
- Agricultural operation employee should verify available tank capacity prior to product transfer.
- Agricultural operation employee should remain onsite during delivery to monitor product transfer.
- Clean-up equipment and/or materials should be located nearby if needed for immediate spill containment and clean up (boom, granular absorbent, etc.).

### **2.7.2 Equipment Cleaning and Maintenance**

(Does not include pesticide application equipment) The same level of preventive measures should be taken to minimize adverse sediment/water quality impacts from the cleaning of equipment as with fertilizer and agrochemical handling and application. Other than preventative maintenance and emergency repair of machinery and equipment conducted on site, maintenance should be conducted in a centralized area a safe distance from the closest well-head or surface water ditch, lateral, and canal. It is recommended that equipment maintenance be limited to minor or emergency repairs. Activities such as engine or mechanical repair, which generate a waste or waste by-product, are not recommended to be conducted in the fields but at designated maintenance areas.

Implementation points-to-consider include:

- Site verification will include discussion with operation managers to understand the agricultural operation hazardous waste management approach. In addition, site inspections will be made to observe the following items:

#### ***General Equipment Maintenance***

- Where possible, it is recommended to use compressed air to remove clippings and dust from machinery. This is less harmful to the equipment's hydraulic seals, eliminates wash water,



and produces dry material that is easy to handle.

- For regular field equipment wash down (other than pesticide application equipment, and with not degreaser or solvents), allow wash water to flow to a grassed retention area, swale, or sod fields as irrigation water. Do not allow wash water to flow directly to surface water ditch, lateral, or canal.
- Minimize the use of detergents and use only biodegradable, non-phosphate type. The amount of water used to clean equipment can be minimized by using spray nozzles that generate high pressure streams and low volumes.
- If equipment is to be intensively washed, conduct over a concrete or asphalt pad that allows the water to be collected. Wash water can contain soaps, fertilizer residues, solids, and lubricating oil residues. Collected wash water can be handled through a recycling system, treatment system, off-site disposal at an industrial wastewater treatment facility, or use the wash water for field irrigation.

### ***Solvents and Degreasers***

- It is the intention that all major repairs and maintenance activities that would potentially require the use of solvents and degreasers be conducted on-site at designated maintenance areas. In the event that such activities occur on-site, the operator will follow the guidelines below:
  - Whenever practical, replace solvent baths with recirculating aqueous washing units.
  - Soap and water or other aqueous cleaners are often as effective as solvent-based cleaners.
  - Store solvents and degreasers in lockable metal cabinets in an area away from ignition sources (e.g. welding areas, grinders) and provide adequate ventilation.
  - Always wear the appropriate protective personal equipment, especially eye protection, when working with or handling solvents.
  - Solvent wash basins that drain into recovery drums can be provided by private firms contracted to pick-up and recycle or properly dispose of the drum content.
  - Never mix used oil and other liquid material with the used solvents.
- Records must be maintained of pick-up and quantities disposed.

### ***Paint***

- The use of power sprayers for painting equipment on-site requires the appropriate precautions to be taken not to impact soil or groundwater. The painting of equipment with solvent based paint by power sprayers is prohibited and must be conducted off-site.
- Touch-up and manual painting may be conducted on a limited basis.
- Care should be taken not to spill material onto soil or into surface water bodies.

### ***Used Oil, Coolant, and Lead-Acid Batteries***



- Collect used oil and oil filters in separate marked containers and recycle.
- Oil filters should be drained and taken to the same place as the used oil, or to a hazardous waste collection site.
- Coolant/Antifreeze must be recycled or disposed as a hazardous waste. Do not mix used oil with used coolant or sludge from solvents.
- Lead-acid storage batteries are classified as hazardous wastes unless they are recycled. Store batteries on an impervious surface and preferably under cover until delivery to an authorized recycling facility.

All used oil, coolant, and lead-acid batteries are stored in a certified containers until being transported offsite for disposal by a certified contractor.



### 3.0 SAMPLING AND COMPLIANCE PLAN

#### III. 3.1 verification sampling

Based upon the historical operation and utilization of agrochemicals on the USSC properties and the potential for petroleum and chemical impacts in surficial soils at the properties, the District shall retain the option to conduct periodic soil sampling in representative areas for a variety of parameters described below. The purpose of the sampling will be to promote environmental stewardship among the site operator and personnel and serve as a means of monitoring the environmental character of the site during the interim period prior to conversion to a regional reservoir or storm water treatment area. Sampling locations will be determined based upon the site-specific information.

Cultivated area sampling should be conducted on an annual basis. Soil samples shall be collected from the cultivated area at randomly selected locations based on the grid pattern and numbering system used in the Phase I/II ESA. The BMP annual sampling event will target those grids identified in the Phase I/II ESA. The selected grids sampled during the first annual sampling event will not be re-sampled in subsequent annual sampling events.

Baseline samples collected during the Phase I/II ESA conducted on the USSC property by PSI in August and September 2008 shall be used as a comparison to future sampling results. The results of periodic future sampling may result in applicable modifications of this BMP plan to address elevated parameters of concern.

[REDACTED]

The following table sets the sampling plan for the site:

Location	Number of Samples		Parameters
Pump Station	1 sample	If no staining/erosion/vegetation  If impact observed (five point composite soil sample - top 6")	EPA Method 602 EPA Method 610 PL-PHC



<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In the event that obvious and excessive impacts are visibly detected during periodic site visits conducted by the District, a more comprehensive site-specific sampling plan that would depend on the magnitude of the impact should be developed under the direction of the District and applicable regulatory agencies. A list of potential parameters to be analyzed for are given below.

- EPA Method 8141 (organophosphorus pesticides)
- EPA Method 8151 (chlorinated herbicides)
- EPA Method 6010/7471 (copper)
- FL-PRO Method (total residual petroleum hydrocarbons)
- EPA Method 8100 (polynuclear aromatic hydrocarbons)
- EPA Method 8020 (volatile organic hydrocarbons)
- Metconazole and pyraclostrobin



#### 4.0 STANDARDIZED FORM: BMP SITE VERIFICATION FINDINGS SUMMARY

Future BMP site verification visits will be conducted at the request of the District. BMP implementation will be reviewed per the guidelines and 'Implementation Points to Consider' described for each BMP earlier in this document as well as taking site specific issues and time of year into account. The site verification findings, including a written review of observations, site photographs taken, and a summary of records reviewed, are expected to be provided by the field reviewer in a detailed report. The field verified implementation status of each BMP will be classified in one of three categories:

**Implementation Verified**

**Implementation Verified with Comment**

**Additional Attention Required**

The standardized form for reporting *BMP Site Verification Findings Summary* to be included in the BMP field verification report is attached.



**APPENDIX A  
SITE VERIFICATION CHECKLIST**

**United States Sugar Corporation  
Palm Beach, Hendry, and Glades Counties  
State of Florida**

***Best Management Practices (BMP) Site Verification Checklist***

Tract No.:  
SFWMD  
Representative(s):  
Property  
Representative(s):  
Inspection Date:

BMP	Description/Comment	Implementation Verified	Additional Attention Required
<b>Property Use and Structures</b>			
<b>Housekeeping</b>			
General Site -			
Storage Areas -			
Additional Observations -			
<b>Employee Training</b>			
Schedule -			
Topics -			



<b>Additional Observations -</b>			
<b>Hazardous Material/ Chemical Use</b>			
<b>Chemicals Used -</b>			
<b>Application Type -</b>			
<b>Application Schedule -</b>			
<b>Material Records -</b>			
<b>Additional Observations:</b>			
<b>Petroleum Products</b>			
<b>Product Use -</b>			
<b>Pump Station(s) -</b>			
<b>Storage Location(s) -</b>			
<b>Additional Observations:</b>			
<b>Chemical Storage</b>			
<b>Storage Location -</b>			
<b>Building/Area Type -</b>			
<b>Pump Station(s) -</b>			



<b>Additional Observations:</b>		
<b>Mixing &amp; Loading Areas</b>		
<b>Area Description -</b>		
<b>Area Observations -</b>		
<b>Additional Observations:</b>		
<b>Waste Storage and Disposal</b>		
<b>Waste Types -</b>		
<b>Storage Location -</b>		
<b>Waste Disposal -</b>		
<b>Waste Disposal Records -</b>		
<b>Additional Observations:</b>		
<b>Water Management</b>		
<b>Observations -</b>		
<b>Water Mgmt Controls -</b>		
<b>Weather Monitoring -</b>		
<b>Additional Observations:</b>		
<b>Erosion/Sediment Controls</b>		
<b>Erosion Controls -</b>		

*QDH*



<b>Sediment Controls -</b>			
<b>Additional Observations:</b>			
<b>Exotic Vegetation Management</b>			
<b>Observations -</b>			
<b>Physical Controls -</b>			
<b>Biological Controls -</b>			
<b>Chemical Controls -</b>			
<b>Additional Observations:</b>			
<b>General Field Notes</b>			

Notes:

N/A - Not Applicable

**APPENDIX B  
EMERGENCY RESPONSE PHONE NUMBERS**

**Emergency Reporting**  
For Ambulance, Fire, or Police Dial 911

**State Warning Point**

24hrs. Toll Free 1-800-320-0519

(Department of Community Affairs,  
Division of Emergency Management)

or (850) 413-9911

**National Response Center**  
8802

24hrs. Toll Free 1-800-424-

(Federal law requires that anyone who releases into the environment a reportable quantity of a hazardous substance [including oil when water is or may be affected] or a material identified as a marine pollutant, must immediately notify the NRC).

**DEP Emergency Response, 24 hrs. Toll Free 1-800-342-5367**

**HELP LINE NUMBERS**

***Chemical hazard information and regulatory questions***

- **CHEMTREC HOT LINE (Emergency only) 24 hrs**
- SARA Title III help line
- CERCLA / RCRA help line
- Pesticide Container Recycling Program  
Pesticide Information Officer at University of Florida

Toll Free 1-800-424-9300  
Toll Free 1-800-535-0202  
Toll Free 1-800-424-9346  
352-392-4721

**COUNTY COOPERATIVE EXTENSION OFFICES**

Pam Beach County	559 N. Military Trail West Palm Beach, FL 33415	(561) 233-1700
Hendry County	1085 Pratt Boulevard Dallas B Townsend Agricultural Center Labelle, FL 33935	(863) 674-4092
Glades County	900 US Highway 27 SW Moore Haven, FL 33471	(863) 946-0244
Gilchrist County	125 East Wade Street Trenton, FL 32693	(352) 463-3174

**STATE OF FLORIDA AGENCIES**

**Florida Department of Agriculture and Consumer Services**

Bureau of Pesticides	(850) 487-0532
Bureau of Compliance Monitoring	(850) 488-3314
Division of Agriculture and Environmental Services	(850) 488-3731

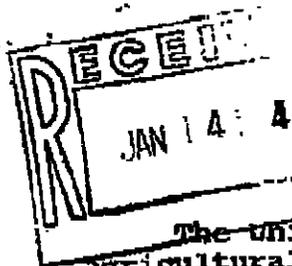
***Florida Department of Environmental Protection***

FDEP Stormwater/Nonpoint Source Management Section (Tallahassee)	(850) 488-3605
FDEP Hazardous Waste Management Section (Tallahassee)	(850) 488-0300
FDEP District offices - West Palm Beach	(561) 681-6800

***Florida Fish and Wildlife Conservation Commission***

620 South Meridian Street	(850) 488-4066 or
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## EXHIBIT C



FINAL  
5:15 1-13-94

AGREEMENT

The United States of America ("U.S.") and the undersigned agricultural parties ("Agricultural Parties") agree as follows:

1. The Agricultural Parties will establish a special account to implement the terms and conditions of this Agreement, such account to be subject to the review and approval of the Secretary of the Interior ("Secretary"). Each Agricultural Party will annually pay into the special account or to the South Florida Water Management District ("District"), as the case may be pursuant to paragraph 6 below, its proportionate share, based on acreage, of the payment contemplated by the provision entitled "The Agricultural Industry's Financial Commitment" in the Statement of Principles entered into in July 1993 ("Statement of Principles"). The payments for each year shall be made on or before December 31 of each year, beginning in 1994.

2. In addition to the 25% BMP requirement of the Works of the District Rule, each Agricultural Party will implement to the best of its ability the on-farm measures contemplated by the provision in the Statement of Principles entitled "Reduced Phosphorus Outputs Achieved Through Performance-Based Best Management Practices (BMPs)." Each Agricultural Party will be entitled to make the minimum payment for each year as set forth in this provision upon a reasonable demonstration, based on actual monitoring, that it has achieved an average phosphorus concentration in its farm discharges of 50 parts per billion (ppb). (The average will be calculated in the same manner as the average calculation applicable to STAs.) In the event an Agricultural Party does not achieve a discharge of 50 ppb of phosphorus, then that Agricultural Party will be entitled to a percentage reduction in the amount of the annual "base" payment based on EAA-wide performance as provided in the provision in the Statement of Principles referred to in this paragraph and Attachment 3 thereto ("Schedule of EAA Annual Payments and BMP Targets").

3. Each Agricultural Party, its agents, subsidiaries, and members of its corporate group shall withdraw from the litigation styled United States v. South Florida Water Management District, et al., pending in the United States District Court for the Southern District of Florida (Case No. 88-1886-CIV-Hoever) and all related litigation in all jurisdictions, including administrative challenges to the EAA SWIM Plan and permit, and will refrain from further funding such litigation either directly or indirectly, including through any dues, assessments, or contributions to any industry association, trade group, or like organization.

4. Unless an Agricultural Party fails to fulfill its obligations under paragraphs 1, 2, or 3 of this Agreement, that Party shall not be a defendant in any civil action brought by the United States or agencies thereof designed to meet "Phase I" or "Interim" standards for phosphorus concentrations in water, or to seek funding to construct a regional water treatment system to assist in meeting such obligations, until June 30, 2003. Thereafter, until June 30, 2008, to the extent that overall average phosphorus concentration in the discharge from the STAs exceeds 50 ppb, the United States will not assert monetary liability against that Party for the difference between the actual average concentrations in those discharges and 50 ppb. However, nothing in this agreement shall preclude the United States from asserting liability on the part of any Agricultural Party beginning July 1, 2003, for reduction of phosphorus from 50 ppb to whatever lower concentration is selected as the "Phase II" concentration standard if such standard has not been reached, or preclude the United States from asserting that liability may attach beginning July 1, 2008, for reducing phosphorus from actual concentrations to 50 ppb.

*Dal* 5. If authorized by amendment to state law, entry into this Agreement and performance of all obligations by the Agricultural Parties shall establish compliance with state water quality requirements in the Everglades Agricultural Area and Everglades Protection Area until December 31, 2006 for such Agricultural Parties. Notwithstanding the foregoing, nothing in this Agreement is intended to relieve any party of any requirement that may be imposed to protect human health and safety.

6. The payments referred to in paragraph 1 shall be made to the special account unless, by December 15, 1994, the District and the State of Florida Department of Environmental Protection ("State") have accepted the terms of this Agreement, in which event the annual payments shall be made to the District, to be used for construction of a regional water treatment system as described in the Settlement Agreement of July 26, 1991 or the Mediated Technical Plan of July 1993, as they may be revised. As long as the Agricultural Parties receive the benefit of water quality compliance and certainty of payment obligations established by this Agreement, this Agreement shall continue in effect between the United States and the Agricultural Parties; the Agricultural Parties shall continue to make payments to the special account or as otherwise provided herein; and the funds in the special account shall be expended by the Agricultural Parties as directed by the Secretary in his discretion first for treatment of water from farms in the EAA and second for Everglades restoration.

7. If the Florida Legislature or state legal entity under authority of the Legislature substitutes another method of payment applicable to Agricultural Parties and to be used for the

*Dal \* for lands*

purposes provided in this agreement (i.e., the implementation of a regional water treatment system), then the taxes or assessments paid under the substitute method shall offset dollar for dollar the payments the Agricultural Parties are required to make under this Agreement.

8. The Agricultural Parties agree that they will, in good faith, join with the State in supporting revision by the Florida Legislature of the Marjory Stoneman Douglas Act, in order to clarify and expedite the institution of a system in which all agricultural parties are assessed their proportionate share of the payments referred to in paragraphs 1 and 2 above for meeting water quality standards and to establish compliance with state water quality requirements (in accordance with this Agreement) for the Agricultural Parties who accept this Agreement.

9. The Agricultural Parties agree that they will support state legislation providing authority to the EAA Everglades Protection District, based upon an affirmative vote of at least 70% of the acres represented in a landowner referendum, to raise the current total assessment ceiling to the total maximum annual payment amount set forth in the provisions described in paragraphs 1 and 2 above, and in the event such legislation is enacted will propose and affirmatively vote their shares in favor of an increased assessment in order to institute a system in which all agricultural interests are assessed payments that total such maximum payment amount (subject to reductions for on-farm treatment in excess of a 25% phosphorus reduction, as called for in the above-referenced provisions).

10. Waters from farm land in the EAA flow to Whitewater Bay and the Gulf of Mexico. The parties nevertheless recognize that Florida Bay, like the Everglades, is a natural resource of national and international importance. The parties will work, in good faith, to support legislation and public funding necessary to restore and preserve the natural values of Florida Bay.

11. The parties agree that prior to seeking judicial resolution of any dispute arising under this Agreement, they shall seek in good faith to resolve such dispute through mediation.

12. The parties will work together in good faith to seek to join all other agricultural parties to current litigation in this Agreement, and to expedite the final determination of all litigation and the construction of a regional treatment system as described in the Settlement Agreement of July 26, 1991, or the Mediated Technical Plan of July 1993, as they may be revised.

13. This Agreement, including those portions of the July 1993 Statement of Principles referred to above, constitutes the entire agreement between the parties and supersedes any prior

oral or written agreement between the United States and the Agricultural Parties. Nothing in this Agreement abrogates the authority of the United States under the Clean Water Act or any other federal law. Nothing in this Agreement affects the rights of any Party to this Agreement with respect to any party that is not a signatory to this Agreement.

This Agreement is dated January 13, 1994.

**SIGNED:**

For the United States:

\_\_\_\_\_

\_\_\_\_\_ Date

For accepting Agricultural Parties:

*Donald W. Carson*  
Flc-Sun Land Corporation,  
by Donald W. Carson,  
Executive Vice President

13 Jan 1994

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oral or written agreement between the United States and the Agricultural Parties. Nothing in this Agreement abrogates the authority of the United States under the Clean Water Act or any other federal law. Nothing in this Agreement affects the rights of any party to this Agreement with respect to any party that is not a signatory to this Agreement.

This Agreement is dated January 13, 1994.

SIGNED:

For the United States:

*[Handwritten Signature]*

1/13/94  
Date

For accepting Agricultural Parties:

*[Handwritten Signature]*  
Flc-Sun Land Corporation,  
by Donald W. Carson,  
Executive Vice President

13 Jan 1994

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## STATEMENT OF PRINCIPLES

The Everglades is a wetland and wildlife resource unique in all the world. It has defined life in South Florida since humankind's introduction to the region. In acting to protect this important resource, we begin to define life for subsequent generations of Americans: what we choose to protect helps define us as a people.

In pursuit of human progress, South Florida has been ditched, diked, and drained for much of this century. By so doing, we have sought to provide a healthy, attractive living environment for millions of people safe from flooding and other natural forces; and to provide a base for a flourishing agricultural industry that provides important products, jobs, and income regionally and nationally.

But in the last decade we have come to realize the tremendous cost this alteration of natural systems has exacted on the region. This agreement will begin the renewal of the Everglades ecosystem, restoring natural flows of clean water. The result will benefit wildlife, urban drinking water supplies, and Florida Bay and other coastal waters and the life they sustain -- waters which are inextricably linked to the health of the Everglades themselves.

The Statement of Principles set out here is the basis on which the parties signing this agreement will seek a stay of pending litigation for 90 days, to reach a detailed settlement agreement resolving disputes that would otherwise continue for many years at enormous cost not just to the parties, but to the Everglades as well -- postponing the initiation of action to address critical threats to the system. Based on these principles, we will seek to include in the settlement discussions all parties to pending litigation who wish to contribute to the process.

We pledge more than a Plan; we pledge to provide the resources necessary for its successful implementation.

Moreover, we pledge to inaugurate an unprecedented new partnership, joining the Federal and State governments with the agricultural industry of South Florida, to restore natural values to the Everglades while also maintaining agriculture as part of a robust regional economy.

In addition, we will jointly conduct future scientific research on the ecological needs of the Everglades system and appropriate means to address those needs.

In so doing, we hope our efforts can become a national and international model for sustaining both the environment and the economy.

### Management Principles

#### An End to Litigation.

In light of our commitment to implement these Principles, the parties to this Statement agree to join in motions to stay all Everglades litigation and administrative proceedings, including pending 298 District Administrative Litigation regarding Lake Okeechobee, for a period of 90 days, except for entry and access and the appeals pending before the Eleventh Circuit Court of Appeals.

This is necessary because, while this Statement signals a commitment to a process of mutual implementation of these Principles, it cannot and does not contain all provisions necessary for a comprehensive resolution of Everglades issues. We will use the 90-day period to resolve remaining issues and develop a complete settlement agreement.

#### A Commitment to Increasing Water Quantity to the Everglades.

A Technical Plan has been developed in intensive discussions over the past 120 days by experts from all sides. That Technical Plan addresses the improvement of water quality reaching the Everglades. It also commits to important steps in addressing pressing water quantity, sheet flow and other hydro-period restoration needs of the Everglades Ecosystem and of agricultural and other elements of South Florida's economy.

The parties recognize the need for continued availability of water for crops and will continue discussions on this issue over the next 90 days.

#### **A Commitment to Implement a Detailed Technical Plan and A Specific Construction Schedule.**

Implementation of the Technical Plan involves acquisition and establishment of flow-through filtration marshes, construction of works, and other activities. In structuring the construction schedule for the Plan, the parties intend to effect immediate reduction of phosphorus entering the Loxahatchee National Wildlife Refuge and portions of the Miccosukee Tribe of Indians of Florida lands. In addition, the Plan will enhance hydro-period restoration to the Everglades. Project construction will be scheduled to provide early delivery of treated water to those areas. *Attachment 1* provides a map of the Technical Plan.

The parties will commit to good faith, best efforts to build the project pursuant to the Technical Plan and the Construction Schedule to be agreed upon, unless all parties agree that new information or technological advances justify modifications.

Implementation of the Technical Plan is an important step in assuring long term protection for Everglades National park, as well as the Refuge, Reservation lands, and downstream waters. The parties believe that the Technical Plan, combined with the incentive plans described below for significantly-improved on-farm phosphorus reduction by industry, is the best way to move forward.

There are also public and resource benefits in the Water Conservation Areas resulting from sheet flow and other hydro-period improvements.

In short, this is right for the Everglades Ecosystem, as well as for the parties to the litigation. It is a good deal for the public, for the environment, and for the economy.

#### **Reduced Phosphorous Outputs Achieved Through Performance-Based Best Management Practices (BMPs).**

The Technical Plan calls for significant reductions of on-farm phosphorous outputs over the 20 year period. To achieve this goal, strong incentives for performance-based Best Management Practices (BMPs) will be established. The BMPs are based on performance, and they acknowledge and encourage development of new technologies that may more efficiently achieve these goals.

The 90-day period will be used, in part, to establish objective and fair methods for calculating the reductions of phosphorous output. Achievement will be evaluated on a rolling-average or similar system, so that industry has incentives for accelerated reduction. Appropriate credit will be supplied to industry in light of the normal annual rainfall variations and will take into account changes in water deliveries by the District that are not under the control of industry.

### **Financial Principles**

#### **A Shared Financial Commitment.**

We contemplate that all parties will contribute financially to the implementation of the Technical Plan. In cases where legislation may be required to meet this commitment, those parties commit to seek and support such legislation. It is the sense of all signing parties that the financial terms outlined below and detailed in the attached achieve the objectives.

*Attachment 2* outlines the contemplated percentage contributions of the agricultural industry, State, District and Federal Government.

To optimize the use of resources committed to this project, the parties will establish an engineering and construction collaborative process to be applied to its design, scheduling and construction.

**The Agricultural Industry's Financial Commitment**

Agricultural interests in the Everglades Agricultural Area commit to the following (detailed in *Attachment 3*).

**\$322 million.** The agricultural industry has agreed to pay up to \$322 million over 20 years to fund construction, research, monitoring, operation and maintenance and other incidental costs as outlined in the Technical Plan. The contributions begin at \$12.5 million per year, increase to \$18.5 million in the 13th year, and continue to the 20th year.

**Limited credits for phosphorous reductions.** Credits against contributions will be granted for achieving targeted reductions of phosphorous. These levels fulfill specific goals of the Technical Plan. The first year goal is a 30% reduction; the goal for the thirteenth year, and thereafter, is a 45% reduction. In no case will the dollar contributions in any given year fall below \$11.625 million. If the reductions in phosphorous through BMP's are not achieved, the reductions in payment will not be realized.

**Secured payments.** During the 90-day period, the method of securing payments from the agricultural industry will be defined and made enforceable, thereby ensuring a consistent flow of funds. A trust fund or like mechanism will be created to ensure that all funds contributed are actually used for the intended purposes.

**The State of Florida's Financial Commitment**

The Department of Environmental Protection will commit to its good faith, best efforts to pursue State funds from several sources during the construction period of the project, and the South Florida Water Management District will vote on an increase in the millage rate for ad valorem tax of .10 mil, generating approximately \$ 21.8 million per year of cash flow which will be dedicated to Everglades restoration.

F 2000 Fund	\$33 million
State Land Exchange Proceeds	\$30 million
FPL Mitigation Fund	\$14 million
SFVWMD ad valorem tax	\$21.8 million/year

A trust fund or like mechanism will be created to assure that additional tax receipts are actually used for Everglades restoration.

**Federal Commitments.**

The Federal government will commit to its good faith, best efforts to pursue the authorized C-51 flood control project and the measures designed to provide substantial amounts of water to the Everglades. The measures designed to provide additional water to the Everglades are included as part of the work effort identified as Item 22 in the Technical Plan. The first cost of the authorized C-51 flood control project, excluding the measures designed to provide additional water to the Everglades, is approximately \$54 million. The first cost of the C-51 flood control project, modified to include measures to provide additional water to the Everglades, is approximately \$107 million. The Department of the Army, Department of the Interior and the local sponsor propose to participate in this work in accordance with applicable law, appropriations, and administration policies.

**Certainty and Enforceability**

All parties must have a clear understanding and recognition of their rights and obligations, and of the process by which those rights and obligations will be determined now and in the future. For the federal government, achievement of the goals of the federal court settlement, including those set forth in both the Phase I and Phase II targets, has remained the touchstone of these discussions.

In return for substantial financial commitments and regulatory requirements, farm interests in the EAA seek to move forward with an assurance that their Everglades environmental responsibilities will be defined under the provisions of the final mediated agreement and under provisions of applicable law and administrative processes.

For the state parties enhancement of the total Everglades ecosystem is paramount, including the removal of phosphorous, correction of longstanding hydro-period problems and increasing the total quantity of water flowing through the system.

The foregoing principles will be the basis for settlement of all outstanding matters among the parties only upon consummation of the entire mediated agreement.

Instruments and procedures will be developed which make the provisions outlined above legally enforceable.

Complex issues must be addressed as the provisions for implementing these principles are defined. We believe that the foundation provided by the experience gained over the past few months in resolving the most difficult matters of design and funding, as part of an overall mediated resolution, provide assurance that additional matters will be satisfactorily resolved as well. To assist in these discussions, detailed briefings will be provided to the principals of the parties 30, 60, and 80 days from now.

**SIGNED:**

**For the United States:**

  
Secretary of the Interior

JUL 13 1993

Date

  
Acting Assistant Secretary  
of the Army (Civil Works)

7/14/93  
Date

**For the South Florida Water Management District:**

The obligations of the South Florida Water Management District will be through action of the Governing Board. The Statement of Principles will be presented to the Governing Board on July 15, 1993.

  
Valerie Boyd

7/13/93  
Date

**For the State of Florida,  
Department of Environmental Protection:**

*Daniel H. Thompson*  
Daniel H. Thompson

13 July 1993  
Date

**For United States Sugar Corporation:**

by: *J. Nelson Fairbank*

JUL 13 1993  
Date

**For South Bay Growers, Inc.:**

by: *J. Nelson Fairbank*

JUL 13 1993  
Date

**For Flo-Sun Incorporated:**

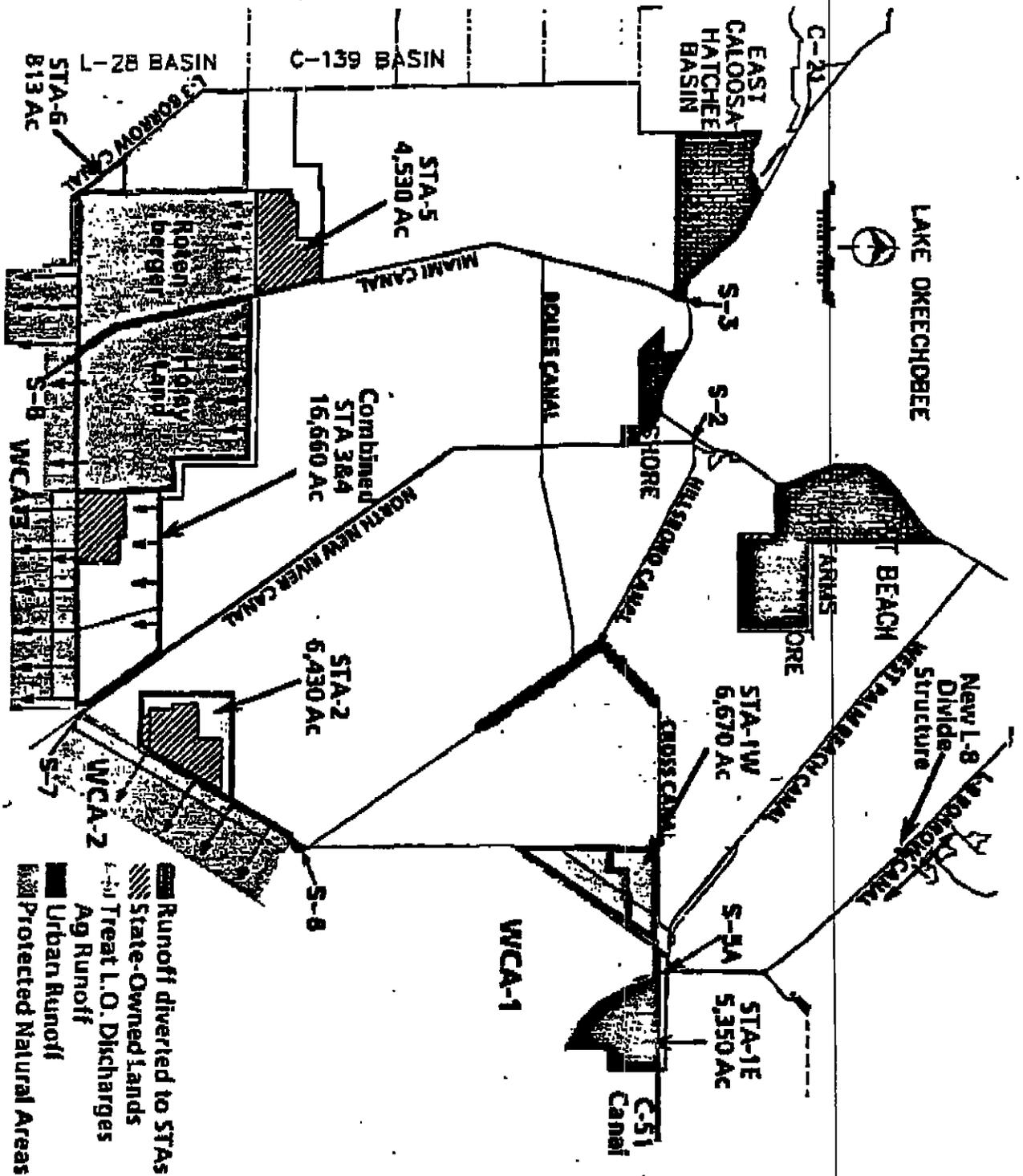
by: *Donald W. Carson*

JUL 14 1993  
Date

- 1. Base payment corresponds to 25% BMPs.
- 2. Minimum payment requires achievement of target BMP percentage.
- 3. Credits will be given for all reductions in excess of the current regulatory requirement of a 25% reduction. The value of each 1% reduction beyond 25% will be as follows:

1994-1997	\$175,000
1997-2001	\$287,500
2001-2005	\$325,000
2005-2013	\$343,750

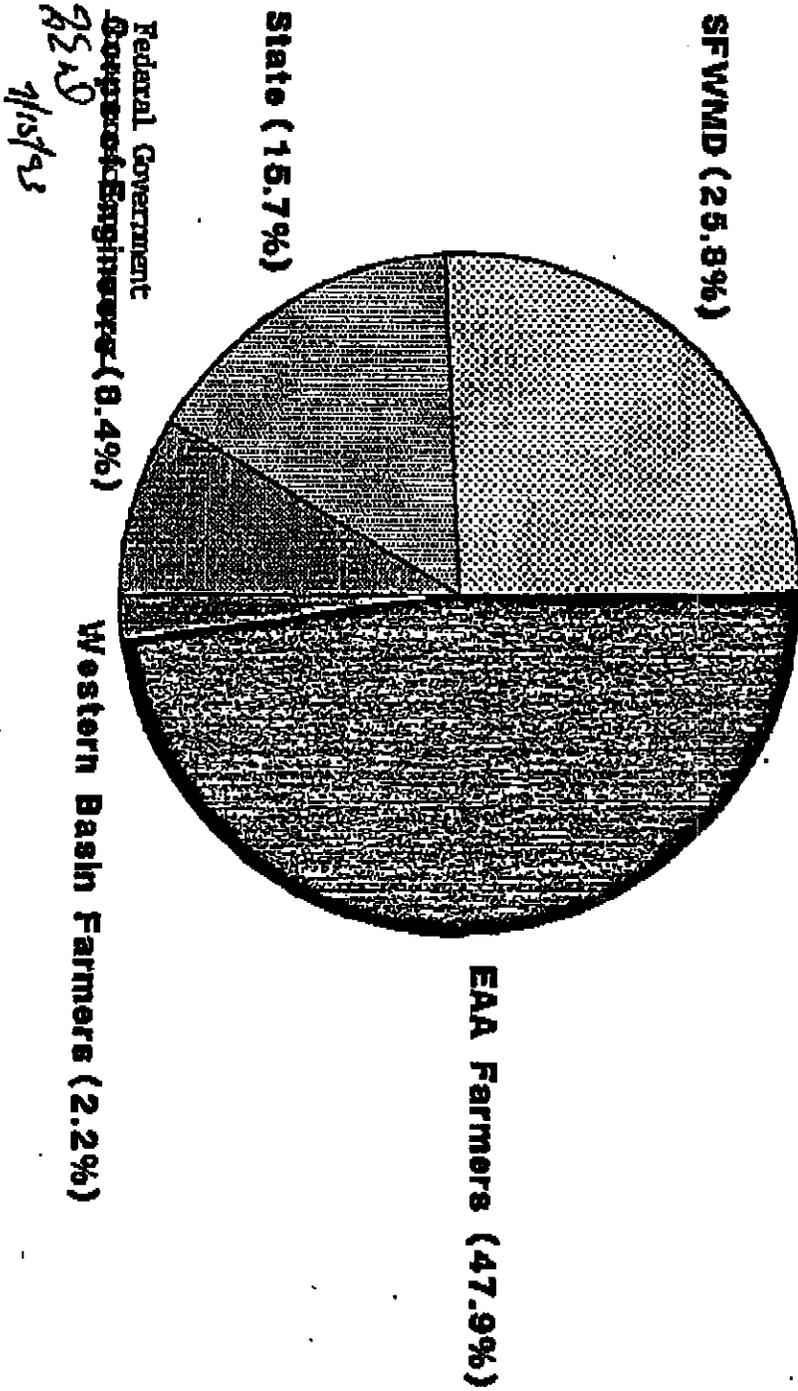
- 4. A rolling average over a multi-year period or similar system will be determined to give incentive for accelerated reductions above target levels. This is not intended to provide long term banking of credits.
- 5. If the BMP target is not achieved in any year, the value of each 1% incentive credit deficit shall be added to the minimum payment unless accumulated credits offset the deficit.
- 6. The methodology for measuring and determining BMP reductions for purposes of the EAA payment schedule shall be agreed upon as part of the final mediated agreement.



Attachment 2

Sources of Funds

Minimum BMP's ( 26 % )



**Attachment 3**

**Schedule of EAA Annual Payments  
and BMP Targets**

<b>Year</b>	<b>Base Payment M\$</b>	<b>Minimum Payment M\$</b>	<b>BMP Target %</b>
1994	12.5	11.625	30%
1995	12.5	11.625	30%
1996	12.5	11.625	30%
1997	12.5	11.625	30%
1998	14.5	11.625	35%
1999	14.5	11.625	35%
2000	14.5	11.625	35%
2001	14.5	11.625	35%
2002	16.5	11.625	40%
2003	16.5	11.625	40%
2004	16.5	11.625	40%
2005	16.5	11.625	40%
2006	18.5	11.625	45%
2007	18.5	11.625	45%
2008	18.5	11.625	45%
2009	18.5	11.625	45%
2010	18.5	11.625	45%
2011	18.5	11.625	45%
2012	18.5	11.625	45%
2013	18.5	11.625	45%

When Mr. Mancusi-Ungaro was questioned directly on these topics, he pirouetted as gracefully as he could as he did almost everything imaginable to duck the question. In the end however, even he conceded that:

Water quality standards are the province of the State to adopt and approve. Then we go through our own review of that. We give great deference to the State's decisions on what they feel is necessarily protective. And we will compare it to whatever national information we have.

Tr. 114, 11-23. Yet, DEP continues in its attempt to pressure you into its chosen decision with the threat that a federal curse will befall the ERC should it choose to follow its state law responsibility and fail to appease the tortured view of federal predilections as viewed through the eyes of DEP. Of course, no one has articulated any reason why (or any federal law under which) a standard that protects fish and wildlife in accordance with the designated use would be disapproved by EPA.

The following is a brief overview of the issues surrounding EPA review, which we hope will put this (non)issue to rest once and for all.

## B. OVERVIEW OF FEDERAL REVIEW

### I. The State has the "Primary Responsibility" to set water quality standards and criteria

Under the federal Clean Water Act it is the states, **not the federal government**, that has the primary responsibility to set water quality standards and criteria. See 33 U.S.C. §1313(c)(2)(A). EPA's own regulations confirm that states are responsible for reviewing, establishing, and revising water quality standards. See 40 C.F.R. §131.4. Thus, "[w]hile the states and EPA share duties in achieving this goal, primary responsibility for establishing appropriate water quality standards is left to the states." *NRDC v. EPA*, 16 F.3d 1395, 1399 (4th Cir. 1993).

The primacy of state authority has, in fact, long been recognized by the courts. See *id.* As has the limited nature of EPA's role:

EPA's sole function, in this respect, is to review those standards for approval . . . to review state water quality standards and determine whether the states' decision is scientifically defensible and protective of designated uses.

*Id.*

Given this, it is clear that states are under no obligation to choose EPA's preferred alternative. EPA has in fact admitted this point in its review of other states' water quality standards and criteria. And, time and time again, the federal courts have agreed:

## EXHIBIT D

**BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**IN THE MATTER OF:**

Stormwater Treatment Area 2 (STA-2)  
South Florida Water Management District  
3301 Gun Club Road  
West Palm Beach, Florida 33406

Administrative Order No.: AO-010-EV

NPDES Permit No. FL0177946-003-IW7A (MINOR)  
EFA Permit No. 0126704-005-EM

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**ADMINISTRATIVE ORDER ESTABLISHING COMPLIANCE SCHEDULE  
PURSUANT TO SECTIONS 403.088(2)(f), F.S., 403.061(8) and 403.151, F.S.**

**I. STATUTORY AUTHORITY**

The Department of Environmental Protection (Department) administers Florida's National Pollution Discharge Elimination System Program (NPDES) permitting and enforcement program under Sections 403.088 and 403.0885, Florida Statutes (F.S.), and Chapters 62-4, 62-302, 62-620, 62-650, and 62-660, Florida Administrative Code (F.A.C.). The Department also has permitting and enforcement authority in connection with the Everglades Construction Project (ECP) pursuant to Subsections (9) and (10) of the Everglades Forever Act (EFA), Section 373.4592, F.S. The Department has jurisdiction over the matters addressed in this Order. The Department issues this Order under the authority of Sections 403.088 and 403 F.S., as well as Subsections 373.4592(10) and (11)(a), 403.061(8), F.S., and Section 403.151, F.S.

The Department makes the following findings of fact.

**II. FINDINGS OF FACT**

1. It has been determined that Stormwater Treatment Area 2 (STA-2) will require a National Pollutant Discharge Elimination System (NPDES) Permit, pursuant to the State of Florida's federally approved NPDES program and Section 403.0885, F.S.
2. In 1994, the Florida Legislature passed the Everglades Forever Act (EFA), Section 373.4592, F.S. This landmark piece of legislation identifies the importance of the Everglades ecosystem, recognizes that the Everglades ecosystem is endangered as a result of adverse changes in water quality and in the quantity, distribution, and timing of flows, and mandates the implementation of the Everglades Construction Project (ECP) as an important component of Everglades restoration. EFA permits are required for the construction, operation, and maintenance of the ECP, pursuant to Subsection 373.4592(9) and (10), F.S.
3. STA-2 is a component of the ECP included in the Everglades restoration effort, pursuant to Subsection 373.4592(4), F.S.
4. The South Florida Water Management District (District) is the Local Sponsor of the Congressionally-mandated Central and Southern Florida Project for Flood Control and Other Purposes, and must operate STA-2 as necessary to fulfill its obligations as Local Sponsor, including but not limited to providing flood control and water supply throughout South Florida.

5. Subsection 373.4592(1), F.S., recognizes that waters flowing into the Everglades Protection Area contain excessive levels of phosphorus. The primary objective of the ECP is to reduce the levels of excess nutrients in the Everglades, in accordance with Subsections 373.4592(1)(d) and (g), F.S. This objective is also consistent with state anti-degradation requirements, which acknowledge excessive nutrients as one of the most severe water quality problems facing the state.
6. Based upon information from the Everglades Nutrient Removal (ENR) Project and performance data that has been collected to date from six existing STAs (*i.e.*, STA-1W, STA-1E, STA-2, STA-3/4, STA-5, STA-6), the STA-2 facility is likely to continue to produce substantial reductions in loads and concentrations of phosphorus being delivered to the Everglades Protection Area.
7. The Florida Legislature has defined Best Available Phosphorus Reduction Technology (BAPRT) as a combination of BMPs and STAs, including a continuing research and monitoring program, to reduce outflow concentrations of phosphorus so as to achieve the phosphorus criterion in the Everglades Protection Area (Subsection 373.4592(2)(a), F.S.). These phosphorus reductions are being achieved through the iterative adaptive implementation of the Everglades Protection Area Tributary Basins Long Term Plan for Achieving Water Quality Goals, October 27, 2003, (Long-Term Plan) and subsequent revisions. The Florida Legislature, in Subsection 373.4592(3)(b), F.S., has determined that the combination of BMPs and STAs contained within the Long-Term Plan constitutes the best available phosphorus reduction technology for achieving the phosphorus criterion in the Everglades Protection Area.
8. Pursuant to Subsection 373.4592(4)(e)2, F.S. the Department adopted a 10 parts per billion (ppb) numeric criterion for phosphorus in the Everglades Protection Area, which was approved by the U.S. EPA on January 24, 2005. The compliance methodology for determining achievement of the phosphorus numeric criterion was revised and adopted by the Department on May 5, 2005, and the revised rule (62-302.540 F.A.C.) was approved by the U.S. EPA on July 27, 2005.

Although the NPDES and EFA permits for STA-2 (Permit No. FL0177946-003-IW7A and 0126704-005-EM) require compliance with the water quality standard for phosphorus, pursuant to Rule 62-302.540, Florida Administrative Code (F.A.C.), the STA-2 discharges may not be able to immediately achieve the permit effluent limit. This Order provides a reasonable period of time for the District to achieve compliance with the permit effluent limit.

9. The Long-Term Plan contains a planning objective of achieving compliance with the phosphorus criterion in the Everglades Protection Area. The October 27, 2003 version of the Long-Term Plan was subsequently revised to include further refinements to the recommended water quality improvement measures consistent with the iterative adaptive implementation process described in the plan. Post-2006 improvements, enhancements, and strategies, which will continue through 2016, are also included within the Long-Term Plan.
10. To address water quality standards and facilitate restoration of the Everglades ecosystem, the EFA, as amended in 2003, requires the Department and the District, by December 31, 2006, to take such action as may be necessary to implement the pre-2006 projects and strategies of the Long-Term Plan so that water delivered to the Everglades Protection Area achieves state water quality standards in all parts of the Everglades Protection Area. Post-2006 improvements, enhancements, and strategies, which will continue through 2016, are also included within the Long-Term Plan.
11. The improvements and enhancements in the Long-Term Plan include structural, operational and vegetation enhancements to STA-2. In accordance with approved revisions to the Long-Term Plan, a new Cell 4 has been constructed. Additional enhancements to STA-2 may occur as part of the adaptive implementation process envisioned in the Long-Term Plan.

12. STA-2 was initially constructed and has been operated to achieve a long-term flow weighted mean of 50 ppb, the Technology Based Effluent Limitation (TBEL) for which is set forth in Exhibit F (Nearhoof *et al.*, 2005). Upon completion of the construction activities associated with the enhancements identified through the Long-Term Plan and approved by the Department, the facility shall complete the Stabilization Phase and enter the Routine Operations Phase. Performance projections for the Routine Operations phase indicate that the facility shall be capable of achieving a TBEL as set forth in Exhibit A (Goforth *et al.*, 2007), consistent with the iterative implementation of BAPRT. During the term of this Order, STA-2 will be assessed as to its progress toward achieving and maintaining the TBEL set forth in Exhibit A and the Water Quality Based Effluent Limitation (WQBEL), when promulgated.
13. Subsection 403.088(2)(e), F.S., states that if a discharge will not meet permit conditions or applicable statutes and rules, the Department may issue, renew, or reissue the operation permit if:
  - a. The applicant is constructing, installing, or placing into operation, or has submitted plans and a reasonable schedule for constructing, installing, or placing into operation, an approved pollution abatement facility or alternative waste disposal system;
  - b. The applicant needs permission to pollute the waters within the state for a period of time necessary to complete research, planning, construction, installation, or operation of an approved and acceptable pollution abatement facility or alternative waste disposal system;
  - c. There is no present, reasonable, alternative means of disposing of the waste other than by discharging it into the waters of the state;
  - d. The granting of an operation permit will be in the public interest; or
  - e. The discharge will not be unreasonably destructive to the quality of the receiving waters.

The Department finds that the proposed discharges from STA-2 meet all of the above-mentioned statutory criteria.

14. Based upon information submitted by the District, the operation and maintenance of the STA-2 project complies with the requirements of Section 403.088, F.S., as follows:
  - a. The District has plans and a reasonable schedule for implementing BAPRT and collecting soil and water column phosphorus data to determine if the discharge is having an adverse impact on water quality.
  - b. The District needs permission to discharge from the STA-2 facility in order to continue Everglades restoration and the removal of pollutants from the watershed, while it also continues to provide water to the Everglades Protection Area and to implement the Everglades research and monitoring program consistent with the overall water quality improvement strategies identified in the Process Development and Engineering (PDE) component of the Long-Term Plan.
  - c. There is no present, reasonable, alternative means to this discharge, other than by discharging it into the waters of the state.
  - d. The granting of this permit will be in the public interest, in accordance with Subsection 373.4592(9)(a), F.S., as the permitted facility is a treatment wetland that is expected to provide significant removal of phosphorus from the contributing basins; and,
  - e. The granting of this permit will not allow discharge of waters unreasonably destructive to the quality of the receiving waters. In fact, since the facility is removing pollutants, including phosphorus, the discharges authorized by the accompanying NPDES and EFA permits permit are seen as beneficial to the quality of downstream waters.

15. The Department has determined that the improvements and enhancements to STA-2, the iterative adaptive implementation process of the Long-Term Plan, and the compliance process contained within this Order are the most environmentally appropriate and expeditious means of achieving compliance with the phosphorus criterion in the Everglades Protection Area. The Department has also determined that these activities provide the basis for a 10 year compliance schedule.

### III. ORDER

Based on the foregoing findings of fact, **IT IS ORDERED,**

16. In Lieu of the annual average discharge limitation required under Condition I.A.5 in the NPDES Permit No. FL0177946-003-IW7A, the permittee shall comply with the following reporting requirements and conditions as set forth in this Order.
17. This Order applies only to those discharges authorized by NPDES Permit FL0177946-003-IW7A and EFA Permit No. 0126704-005-EM. If any provision of this Order conflicts with the conditions in NPDES Permit FL0177946-003-IW7A or EFA Permit No. 0126704-005-EM, then the terms of this Order shall prevail for the duration of the Order.

#### Part I: Actions

18. The District shall continue to implement the activities pertaining to STA-2 identified in the Process Development and Engineering (PDE) component of the October 2003 Long-Term Plan. The permittee shall take such actions as are necessary, and which have been approved by the Department, to implement additional improvements, enhancements, and strategies identified through the PDE component of the Long-Term Plan that are relevant to STA-2 and that will further result in achieving the optimal performance of the facility. Any approved changes to the Long-Term Plan identified for implementation through the PDE component shall be reviewed to determine whether a revision to the permit(s) and/or this Order is required.
19. In accordance with the Long-Term Plan, as may be amended with Department approval, the District shall proceed with the planning, design and construction of additional regional water management projects and internal improvements and enhancements that, when fully implemented, shall result in the improved performance of STA-2 (See Table 1). These projects are described below:
  - a. **STA-2 Internal Improvements and Enhancements.**

Internal improvements and enhancements currently approved under the Long-Term Plan include:

- i. Construction of Cell 4 was completed under the previous STA-2 permits. It is assumed that the Start-up Phase will begin immediately upon cell inundation and that the Start-up test shall be achieved within 6 to 18 months. Upon achieving the Start-up test, Cell 4 would enter the Stabilization Phase. It is assumed that the Stabilization Phase for Cell 4 shall not extend beyond February 2011 or 24 months from achieving the Start-up test, whichever occurs first.

ii. It is anticipated that construction of the Cells 1 and 2 improvements and enhancements shall begin once Cell 4 has passed through the Stabilization Phase. Construction includes approximately 3.3 miles of interior levee; the subdivision of Cell 1 into Cells 1A and 1B; Cell 2 into Cells 2A and 2B; a forward-pumping station along the new interior Cell 2 levee to permit withdrawal from upstream emergent marsh cell to maintain stages in the downstream SAV cell; conversion of emergent vegetation to SAV in the downstream portions of Cells 1B and 2B; and herbicide treatment of Cells 1B and 2B (conversion of remaining emergent vegetation) for removal of emergent macrophyte vegetation to permit development of SAV. The currently approved improvements and enhancements for Cells 1 and 2 are scheduled to be flow-capable by December 31, 2012, in accordance with the Long-Term Plan. Upon completion of all of the internal improvements and enhancements associated with Cells 1 and 2, it is assumed that the stabilization phase of the facility would last approximately 24 months and that the facility shall achieve the TBEL by no later than December 31, 2014.

**b. Regional Water Management Projects**

**i. Conveyance Improvements and Regional Treatment.** As a result of the findings from the Regional Feasibility Study the District is moving forward with the Everglades Agricultural Area Conveyance and Regional Treatment (ECART) Project, which is discussed below, to provide additional treatment areas and conveyance improvements within the EAA.

- Construction of approximately 3 miles of new canal connecting the West Palm Beach Canal to the Sam Senter Canal
- Expansion of approximately 37 miles of existing canals including the Sam Senter, Ocean, Hillsboro, Cross and North New River Canals
- Construction of 2 new water control structures, one in the West Palm Beach Canal and one in the Hillsboro Canal
- Land acquisition

**ii. Additional Treatment Area.** The District is presently designing capital works for approximately 6,800 acres of additional treatment area in Compartment B. This additional treatment area will provide treatment capacity for the North New River Canal basin that is presently treated in STA-3/4, and also provide treatment for a portion of the waters that presently are treated in STA-1W and STA-2. With the completion of the conveyance improvements described above, stormwater that presently enters STA-1W and STA-2 will be routed west to the North New River Canal for treatment in Compartment B, thereby decreasing the flows and loads entering these STAs. The current design for Compartment B anticipates the separation of Cell 4 from STA-2, bringing the total treatment area in Compartment B to over 8,700 acres, while returning STA-2 to its original treatment area size of 6,430 acres. The project will be completed in accordance with the deadlines in the Long-Term Plan. Due to vegetation grow-in and other factors, flow-through operations for the additional treatment area will likely not occur within the 5-year term of this permit.

The District shall report on the progress of the aforementioned projects, project schedule updates, and estimated timeframes for the implementation of future improvements and enhancements as part of the annual report requirements in Section I.E.7 of NPDES Permit FL0177946-003-IW7A and Specific Condition No. 29 of EFA Permit No. 0126704-005-EM.

Activity		Completion Date
STA-2 Internal Improvements and Enhancements	Cell 4 Enters Stabilization <sup>1</sup>	February 2009
	Cell 4 Achieves Stabilization Test <sup>1</sup>	February 2011
	Cells 1 and 2 Improvements and Enhancements (Flow Capable)	December 2012
	Cell 1 and 2 Achieves Stabilization Test	December 2014
Regional Water Management Projects	Conveyance Improvements Completed	2011-2013
	Additional Treatment Area (Compartment B) Flow Capable	December 2013
	Compartment B Enters Stabilization	February 2015
	Compartment B Achieves Stabilization Test	December 2016

<sup>1</sup> See Paragraph 19a

20. The permittee shall conduct monthly monitoring for Total Phosphorus at a series of sites located along two transects downstream of the STA-2 discharge to characterize the effects of the STA-2 discharge on adjacent marsh areas of WCA-2 (Figure 3). Table 3 below identifies nine sampling sites. Of the nine sites, seven are located in areas currently identified as impacted (i.e., sediment TP concentration greater than 500 mg/kg), and two sites (C4 and CA 29) located in areas currently identified as unimpacted. Upon demonstration that an additional sampling site or removal of an existing sampling site is warranted, the permittee may request a modification to the monitoring program as appropriate. The Department shall review and approve such requests on a case by case basis. Any alteration in the monitoring program approved by the Department shall occur in the form of a modification to this Order.

Table 2: Transect Monitoring Locations

Transect 1			
SITE	LAT DEC	LONG DEC	Category
N.25	26.45398	-80.45649	Impacted
N1	26.44735	-80.45613	Impacted
N2	26.43897	-80.45402	Impacted <sup>2</sup>
N4	26.42263	-80.45038	Impacted
C4	26.39515	-80.46808	Unimpacted
Transect 2			
SITE	LAT DEC	LONG DEC	Category
FS0.25	26.34577	-80.52683	Impacted
FS1.0	26.34402	-80.51953	Impacted
FS3.0	26.33773	-80.50045	Impacted
CA 29	26.33036	-80.47837	Unimpacted

21. The District shall conduct a study to determine the relationship between discharges from the ECP components and resulting water quality in the Everglades Protection Area. The design and methodology for this study shall be incorporated into the Long-Term Plan and approved by the Department prior to initiating the study. Subsequent to Department review and approval, the District shall prepare and submit a report of its findings, based on the data collected, by no later than December 31, 2009. Based on the findings of the study and Department concurrence with its results, a WQBEL shall be established pursuant to 62-650 F.A.C., in order for the facility to achieve the phosphorus criterion set forth in 62-302.540 F.A.C.

<sup>2</sup> Transition site

22. In addition to the requirements in Section I.A.6 of the permit, the District shall provide an assessment of the inflow volumes and phosphorus loads during the year relative to the anticipated operational envelope in the technical document describing the derivation of the TBEL (Exhibit A, Goforth et al., 2007) as a part of the annual reporting conditions located in Section I.E.7 of the permit. If annual inflow volumes or phosphorus loads exceed the corresponding maximum values of the operational envelope during an annual compliance period and such an exceedance is determined to have caused or contributed to the facility's inability to achieve the effluent limitation, the District shall conduct a review of potential causes. The review shall include a comparison of the relationships between rainfall, runoff, and phosphorus loads from the compliance year with the rainfall/ runoff/ load relationships derived from the data used in deriving the TBEL.

### **Part II: Interim Discharge Limits**

23. During the Routine and Stabilization phases discharges from STA-2 via the G-335 Pump Station shall meet TBELs based upon BAPRT. Compliance with the TBEL shall be as defined in Paragraph 24 below. During the Routine and Stabilization phases the STA shall be deemed in compliance if the TBEL is being achieved, in conjunction with all other applicable permit conditions not modified by this Order. During the Stabilization Phase, exceedances of the TBEL may occur; however, the STA shall be deemed in compliance with this Order and the permit, as long as the actions described in this condition and in Paragraph 19 of this Order are being taken in conjunction with all other applicable permit conditions not modified by this Order. The TBEL shall be revised as appropriate, consistent with the iterative implementation of BAPRT and consistent with 62-620.620(3), F.A.C., until such time that the TBEL becomes consistent with the permit limit established to achieve the phosphorus criterion in the Everglades Protection Area. The TBEL shall be reviewed subsequent to the completion of construction activities associated with each of the projects in Paragraph 19 of this Order. As part of this review process, the District shall make recommendations as to whether a TBEL revision is warranted based on improved performance of the STA and/or additional data.

A Stabilization Phase shall only occur as a result of the following; subsequent to a new cell or new flow-way achieving the start up test, the implementation of approved Long-Term Plan enhancements that may have adverse impacts on STA performance, a major storm event that compromises the structural integrity or performance of the STA, or planned/unplanned maintenance activities which would cause adverse impacts to the STA's treatment capabilities. If a flow-way is determined to be incapable of operating or performing effectively as a result of the impacts caused by one or more of these circumstances, the District shall submit strategies and timelines identified as being the most effective in restoring the impacted flow-way(s) to the optimal performance level within 60 days from such a determination or occurrence. The District's strategies and timelines shall be prepared in accordance with General Conditions 17 and/or 23 of NPDES Permit 0177946-003-IW7A. The timely submittal and implementation of these strategies and timelines in conjunction with the Department's review and approval of such submittals and compliance with all other applicable conditions set forth in NPDES Permit No.: 0177946-003-IW7A, EFA Permit No.:0126704-005-EM, and this Order shall constitute compliance.

In addition to the reporting associated with the planned changes and upset provisions of NPDES Permit No.: FL0177946-003-IW7A, the District shall also provide an annual assessment of the facility and the steps being taken to meet the TBEL as part of the reporting requirements in Section I.E.7 of the permit. As part of the first annual report following any adverse impact to the facility, and each subsequent year until the facility achieves the TBEL, the 12 month rolling flow-weighted mean TP concentration of the STA outflow shall be assessed as to whether there is a trend in improvement of performance relative to prior years. If the trend analysis that is applied to this data indicates that there is not a trend in improvement of performance, the permittee shall report as to the causes behind the lack of performance improvement. If during a subsequent annual report the trend analysis applied to these data indicate that there is not a trend in improvement of performance after the affected flow-way has been in flow-through operation for 24 months, the annual report shall include any remedial measures necessary to achieve improved facility performance by the end of next year, and shall provide an estimate of when the TBEL shall be achieved.

24. The TBEL described above will be applied as follows:

- a. Compliance shall be tested in each water year (May – April) using data from the monitored representative inflow structures (S-6 and G-328) and outflow structure (G-335), except as noted below. The result of this compliance testing shall be reported by the District as part of the annual reporting requirements in Section I.E. Paragraph 7 of the NPDES permit FL0177946-003-IW7A. The compliance calculations will exclude flows made for low flow water supply deliveries. Low flow water supply deliveries are deliveries that pass through the Everglades Protection Area to Dade, Broward or Palm Beach County, and the Big Cypress Seminole Indian Reservation for water supply (wellfield recharge and salt water intrusion prevention) purposes. In addition, low flow water supply deliveries are made at times when water levels in the Water Conservation Areas (WCAs) are below the minimum elevations presented below:

- WCA-1 – 14.5 ft. NGVD measured at the 1-8C gauge
- WCA-2 – 10.5 ft. NGVD measured at the headwater (HW) of the S-11B structure
- WCA-3A – 7.5 ft. NGVD measured at HW of S-333 or 11.0 ft at HW of G-409

These stage thresholds will be reviewed as part of any future analyses associated with revisions to the current regulation schedules (WCA-1: May 1995; WCA-2: June 1989; WCA-3A: November 2000). This method will also exclude water supply deliveries to the Loxahatchee National Wildlife Refuge (Refuge) or Everglades National Park (ENP), which have been requested by Refuge, ENP or U.S. Army Corps of Engineers staff and which cannot be treated by an STA prior to delivery.

- b. The TBEL shall not apply in water years when rainfall in the source basins tributary to the STA exceeds the maximum annual basin rainfall that occurred during the period of record used for deriving the TBEL (See Goforth et al., 2007). In addition, the TBEL shall not apply in water years when rainfall in the basin tributary to that STA is less than the minimum annual rainfall that occurred during the period of record used for deriving the TBEL for that STA if supplemental flows are not available to maintain wet conditions in that STA. If a year is excluded based upon these criteria, results from adjacent years shall be treated as consecutive in testing compliance.
- c. The STA will be deemed in compliance unless the annual flow-weighted mean phosphorus concentration at the monitored outflows is greater than the annual limit. The annual limit can be calculated using the methods contained on pages 9-12 of the *Technical Support Document for the STA-2 TBEL* (Goforth et al., 2007). The method may be revised in the future as appropriate to reflect lower STA limits. Tables 3 and 4 below contain example calculations of the TBEL based on corresponding phosphorus loading rates (PLR; see Goforth et al. for details on the interim performance periods).

**Table 3. WY2006-2009 Interim Period 1 TBELs for STA-2 as a Function of PLR**

Phosphorus Loading Rate g/m <sup>2</sup> /yr	Annual Phosphorus Limit ppb	Phosphorus Loading Rate g/m <sup>2</sup> /yr	Annual Phosphorus Limit ppb	Phosphorus Loading Rate g/m <sup>2</sup> /yr	Annual Phosphorus Limit ppb	Phosphorus Loading Rate g/m <sup>2</sup> /yr	Annual Phosphorus Limit ppb
1.051	30.4	1.500	32.5	1.900	34.5	2.350	36.9
1.100	30.6	1.550	32.8	1.950	34.8	2.400	37.1
1.150	30.8	1.600	33.0	2.000	35.1	2.450	37.4
1.200	31.1	1.650	33.3	2.050	35.3	2.500	37.6
1.250	31.3	1.665	33.4	2.100	35.6	2.550	37.9
1.300	31.6	1.700	33.5	2.150	35.8	2.600	38.2
1.350	31.8	1.750	33.8	2.200	36.1	2.650	38.4
1.400	32.1	1.800	34.0	2.250	36.3	2.700	38.7
1.450	32.3	1.850	34.3	2.300	36.6	2.736	38.9

**Table 4. WY2006-2009 Interim Period 2 TBELs for STA-2 As A Function of PLR**

Phosphorus Loading Rate g/m <sup>2</sup> /yr	Annual Phosphorus Limit ppb	Phosphorus Loading Rate g/m <sup>2</sup> /yr	Annual Phosphorus Limit ppb	Phosphorus Loading Rate g/m <sup>2</sup> /yr	Annual Phosphorus Limit ppb	Phosphorus Loading Rate g/m <sup>2</sup> /yr	Annual Phosphorus Limit ppb
0.811	22.4	1.200	24.2	1.500	25.7	1.850	27.4
0.850	22.6	1.250	24.5	1.550	25.9	1.900	27.7
0.900	22.8	1.285	24.6	1.600	26.2	1.950	27.9
0.950	23.1	1.300	24.7	1.650	26.4	2.000	28.2
1.000	23.3	1.350	25.0	1.700	26.7	2.050	28.5
1.050	23.5	1.400	25.2	1.750	26.9	2.100	28.7
1.100	23.8	1.450	25.4	1.800	27.2	2.112	28.8
1.150	24.0						

**Part III: Miscellaneous**

25. The permittee shall maintain and operate STA-2 in compliance with the conditions of NPDES Permit FL0177946-003-IW7A and EFA Permit No. 0126704-005-EM, except as otherwise specified herein.
26. Departmental concurrence shall be obtained prior to initiating Lake Okeechobee regulatory or water supply releases that would result in an exceedance of the maximum levels of flow or phosphorus load contained in the STA operational envelope described in Exhibit A.
27. This Order does not operate as, or relieve the permittee of the need for a permit under Section 403.088, F.S. or under Subsection 373.4592(10), F.S.
28. This Order provides a reasonable period of time to come into compliance with the permit effluent limit necessary to ensure compliance with the new phosphorus criterion. This Order shall remain in effect until December 31, 2016.
29. The permittee shall notify the Department at the following address or via electronic correspondence within 48 hours of any non-compliance event. The notification shall provide detail on the occurrences leading to such an event and the measures taken to address the non-compliance.  
  

Florida Department of Environmental Protection  
 Attn: John Hallas  
 2600 Blair Stone Road  
 Mail Station 3560  
 Tallahassee, FL. 32399-2400  
 (850) 245-8422  
[john.hallas@dep.state.fl.us](mailto:john.hallas@dep.state.fl.us)
30. Discharges to the Everglades Protection Area from STA-2 that comply with the conditions of this Order, in addition to all other permit requirements, shall not be deemed to be in violation of water quality standards. Failure to comply with the requirements of this Order or the accompanying permit shall constitute a violation of this Order and may subject the permittee to enforcement action and/or penalties as provided in Section 403.161, F.S.
32. This Order is a final order of the Department pursuant to Section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition this Order will not be effective until further order of the Department.

#### IV. NOTICE OF RIGHTS

A person whose substantial interests are affected by the Department's proposed permitting decision may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Petitions by the applicant or any of the parties listed below must be filed within twenty-one days of receipt of this written notice. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3) of the Florida Statutes must be filed within twenty-one days of publication of the notice or receipt of the written notice, whichever occurs first.

Under Subsection 120.60(3), of the Florida Statutes, however, any person who asked the Department for notice of agency action may file a petition within twenty-one days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- a) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; the Department case identification number and the county in which the subject matter or activity is located;
- b) A statement of how and when each petitioner received notice of the Department action;
- c) A statement of how each petitioner's substantial interests are affected by the Department action;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
- f) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation under Section 120.573, F.S., is not available for this proceeding.

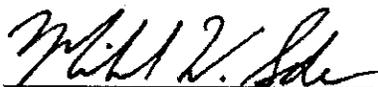
This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

Permittee: South Florida Water Management District  
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Any party to this order has the right to seek judicial review of it under section 120.68 of the Florida Statutes, by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this order if filed with the clerk of the Department.

DONE AND ORDERED on this 4<sup>th</sup> day of September, 2007 in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



Michael W. Sole  
Secretary

MS/jb/jh

**FILING AND ACKNOWLEDGEMENT**

Filed on this date, under section 120.52(11) of the F.S., with the designated Department Clerk, receipt of which is acknowledged.

  
Department Clerk

09/04/07  
Date

**PARTIES REQUESTING NOTICE:**

Miccosukee Tribe of Indians of Florida, c/o Dexter Lehtinen, Esq.  
Miccosukee Tribe of Indians of Florida, c/o Kelly Brooks, Esq.  
United States Sugar Corporation, c/o Bubba Wade  
Seminole Tribe of Indians of Florida, c/o Stephen A. Walker, Esq.  
Sugar Cane Growers Cooperative, Roth Farms, Inc., and Wedgeworth Farms, Inc.,  
c/o William H. Green, Esq.  
Keith Saxe, Esq., U. S. Department of Justice  
Michael Stevens, U.S. Department of the Interior (fax)  
Jeffrey J. Ward, Sugar Cane Growers Cooperative  
Philip S. Parsons, Landers & Parsons  
Helen Hickman, Brown & Caldwell  
Tom MacVicar, MacVicar, Frederico, & Lamb  
Charles Lee, Florida Audubon Society  
Samuel B. Reiner, II, Esq., Lehtinen O' Donnell, Vargas & Reiner, P.A.  
Michelle W. Smith, Esq., Earl, Blank, Cavanaugh & Stotts

**COPIES FURNISHED TO:**

Sharon Fauver, U.S. Fish and Wildlife Service  
Susan Teel, U.S. Fish and Wildlife Service  
Jeff Bielling, FL. Dept. of Community Affairs

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Linda McCarthy, FL. Dept. of Agriculture  
Charles Oravetz, Nat. Marine Fisheries Service  
Don Klima, U.S. Advisory Council on Historic Preservation  
John Childe, Friends of the Everglades  
David Reiner, Friends of the Everglades  
Col. Paul Grosskruger, USACOE, Jacksonville  
Dennis Duke, USACOE, Jacksonville  
Peter Bestrukschko, USACOE, Jacksonville  
Eric Bush, USACOE, Jacksonville  
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Roosevelt Childress, USEPA, Atlanta  
Marshall Hyatt, USEPA Atlanta  
Dan Scheidt, USEPA, Athens  
Eric Hughes, USEPA, Jacksonville  
Janet Bussell, The Everglades Foundation  
Mike Waldon, Loxahatchee National Wildlife Refuge  
Matt Harwell, Loxahatchee National Wildlife Refuge  
Mike Zimmerman, Everglades National Park  
Ken Haddad, Florida Fish and Wildlife Conservation Commission  
Joe Walsh, Florida Fish and Wildlife Conservation Commission, Vero Beach

**ADDITIONAL COPIES FURNISHED TO:**

Eric Eikenberg, Governor's Office  
Carol Wehle, SFWMD, West Palm Beach  
Chip Merriam, SFWMD, West Palm Beach  
Sheryl Wood, SFWMD, West Palm Beach  
Terrie Bates, SFWMD, West Palm Beach  
Ernie Barnett, SFWMD, West Palm Beach  
Linda Lindstrom, SFWMD, West Palm Beach  
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Sean Sculley, SFWMD, West Palm Beach  
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Gary Goforth, Gary Goforth, Inc., Stuart  
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Linda Crean, SFWMD, West Palm Beach  
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Hongying Zhao, SFWMD, West Palm Beach  
Guy Germain, SFWMD, West Palm Beach  
Joseph Jean-Jacques, SFWMD, West Palm Beach  
Kevin Nicholas, SFWMD, West Palm Beach  
Nicole Howard, SFWMD, West Palm Beach  
Greg Knecht, FDEP, Tallahassee  
John Outland, FDEP, Tallahassee

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