

market lease rate, and at a price that is a small fraction of what the District will pay annually in debt service for those lands. After those seven years USSC is guaranteed to retain its lands via a right of first refusal in the lease, which gives it the power to continue to operate for an indefinite period, and that after extracting the full value of its land from the public treasury.

3. While cloaked under the guise of environmental restoration, the agency action at issue is nothing more than an improper and ill-conceived use of public funds to subsidize USSC. 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.

4. The District may paint a colorful picture of uses it *might* make of the USSC land, but there are in fact no concrete plans for the USSC land and, even if there were, there is no 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. These plans, furthermore, contemplate locating projects primarily on land *other* than that the District would acquire from USSC. And, even putting aside that the District is acquiring the wrong land for its purposes (vaguely defined as they are), the District has not considered or established such key details as how much the project would cost (which could be billions more above the land acquisition cost) or where it will get the money given that the purchase will leave it so financially strained that it

cannot hope to raise the billions needed to actually do anything with the USSC land.

5. The bulk of the assets purchased under the Agreement will be used for purposes outside the scope of the District's authority to acquire real property. The District has no financial capability to effectuate any public use of the USSC land. The lands will, instead, be leased back to USSC on preferential, below market-value terms -- a *de facto* state subsidy of hundreds of millions of dollars in value to privately-owned USSC over and above the purchase price.

6. The purchase set out in the Agreement will also commit the District to abandonment of planned Everglades restoration projects, the money for which will be diverted to debt service. The USSC transaction thus constitutes a *de facto* abandonment of the District's "Long-Term Plan," (discussed below) which is a cornerstone of various Everglades regulations, compliance schedules, administrative orders and other legal requirements. 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.

PRELIMINARY INFORMATION

7. The affected agency is the South Florida Water Management District, 3901 Gun Club Road, West Palm Beach, Florida. The District ratified the Agreement in the Agency Action, is the lead agency in consummating the USSC acquisition, is primarily 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.

8. Petitioners are New Hope Sugar Company and Okeelanta Corporation. Both Petitioners have a business address of 200 North Clematis, West Palm Beach, Florida.

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

Joseph P. Klock, Jr. Juan Carlos Antorcha EPSTEIN BECKER & GREEN, P.C. 200 S. Biscayne Boulevard 43rd Floor Miami, FL 33131-2398 (305) 579-3222 Jklock@ebqlaw.com jantorcha@ebqlaw.com	Gabriel E. Nieto BERGER SINGERMANN, P.A. 200 S. Biscayne Boulevard 10th Floor Miami, FL 33131-2398 (305) 714.4365 gnieto@bergersingerman.com
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10. 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. This Petition is filed within 21 days of the date the District signed the Agreement and is therefore timely.

STATEMENT OF AFFECTED INTERESTS

11. New Hope and Okeelanta each own and farm property and is a taxpayer within the jurisdiction of the District. New Hope, Okeelanta and their affiliates own land and conduct farming operations on over 175,000 acres of the Everglades Agricultural Area (EAA).

12. In addition to paying substantial *ad valorem* taxes to the District, New Hope, Okeelanta and other EAA farmers pay an agricultural privilege tax

pursuant to §373.3592(6), Fla. Stat., 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, which will, in turn, place at risk their original intended purposes.

13. The transaction, as presently structured, grants USSC, a preferential, ongoing state subsidy (in the form of a below-market lease), which will adversely affect the business interests of all sugarcane growers in the EAA.

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

15. Petitioners were, in their own right, through direct participation by their parent Florida Crystals Corporation, and through membership in the Florida Sugar Cane League, recognized stakeholders in the rulemaking proceedings before the Environmental Regulation Commission that led to the adoption of the Phosphorus Rule. Petitioners, along with USSC, also participated and were recognized to have standing in the Rule Challenge before the Division of Administrative Hearings (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 prior 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). The Agency Action adversely affects Petitioners recognized 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.

16. Through the agricultural privilege taxes paid pursuant to section 373.4592(6) and through general *ad valorem* taxes paid to the District, EAA farmers such as Petitioners are funding their share of implementing the Long-Term Plan for treating water flowing into the Everglades Protection Area. EAA farm interests, such as Petitioners, have a clear and substantial interest in matters relating to the Everglades in general, and to matters affecting the District's compliance with water quality standards and criteria for the Everglades 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.

DISPUTED ISSUES OF MATERIAL FACT

17. Petitioners have 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, achievable, use for the USSC land within the scope of its land acquisition powers.
- h. Whether and when the District will have the financial capability to utilize acquired land for any stated public purpose.
- i. 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.
- j. Whether the Everglades Forever Act and Phosphorus Rule require the District to implement the Long-Term Plan.
- k. Whether the Agency Action will result in Long-Term Plan projects being cancelled and/or timelines not being met.
- l. 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.

m. 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.

n. Whether in approving 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.

o. 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.

p. 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

q. 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.

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

ULTIMATE FACTS ALLEGED

18. Petitioners incorporate by reference Paragraphs 1-17 above, as if fully restated herein.

A. The Initial Deal

19. 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.

20. 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 the 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.

21. The Statement of Principles was "ratified" by the Governing Board of the District 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.

22. 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 six-year holdover).

B. The Land-Only Deal

23. In an effort to address this valuation problem 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. 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.

24. 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 free lease of its land. For subsequent years, 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 projects on the lands.

25. 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 or 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.

C. Project Cuts to Pay for USSC Debt Service

26. 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 \$100 million, that result in little more than subsidizing USSC's business, and in return will get only a small fraction of that back in rent from USSC.

27. The District has attempted to justify the acquisition on the grounds that it is needed for Everglades restoration. The District is expending essentially all its Everglades resources on this acquisition based on little more than a speculative hope that it can make use of some of the 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 and Okeelanta 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. No alternatives to the projects being shelved will be realized from the USSC acquisition for decades at best.

28. 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 money would come from to build a flow way, reservoirs, or any other water infrastructure on the land being acquired. 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.

29. 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.

30. Finally, the District has acquired 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.

31. 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.

32. 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).

33. As noted, the cost of the debt service 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 consent orders 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 would similarly be impaired by the deal

34. 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).

35. 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. *Id.*

36. 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.

37. 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.

38. A parallel requirement is found in DEP's Administrative Compliance Orders 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.

39. 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.¹ 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 between 5 and 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.

40. 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. Because the District is expending its available project funds for land that is encumbered

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

by leases and intends to use a portion of that land for any new replacement projects, it could not even begin implementing projects until 2016 to replace those that were due to be completed in the near future. That is of course assuming there was money to do anything, which there is not. 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.

41. Thus, the Agency Action derails current Long-Term Plan projects, and violates the legal 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.

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

42. 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 acquisition. The acquisition of property merely to be leased back to the seller on preferential terms does not meet any public purpose, much less fall within the restrictive list of required uses under §373.139.

43. 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”² all of which concluded that the District was overpaying. No written justification has 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 any Everglades projects on the 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.

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

44. 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 so long as the District remains financially crippled by the purchase debt.

45. Once the purchase price is paid to USSC the District will have effectively 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, 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

² 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.

Everglades and Lake Okeechobee. 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.

46. 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 is 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 publicly released by the District and upon information and belief, no such evaluation is intended to occur prior to the closing date set out in the Agreement.

47. Because of the District's lack of analysis of this critical issue, the Agency Action is arbitrary and capricious.

48. 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 Okeechobee water quality compliance renders the Agency Action arbitrary and capricious.

GOVERNING RULES AND STATUTES

49. The specific statutes and regulations requiring that the Agency Action be declared invalid include sections 120.569, 120.57, 373.139, 373.4592, and 373.4595, Florida Statutes, and Chapters 62-302 and 28-106, Florida Administrative Code.

RELIEF SOUGHT

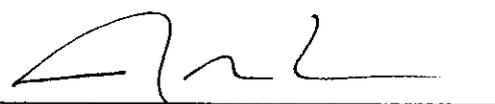
Petitioners request that the District refer this matter to the Division of Administrative Hearings; that an Administrative Law Judge be assigned to conduct a hearing concerning the issues raised by this Petition, and that the Agency Action be declared invalid for the reasons set forth herein.

Dated: January 6, 2009

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Respectfully submitted,

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By: 

Joseph P. Klock, Jr.



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

December 24, 2008

Edward Almeida, Vice President
Legal Affairs
United States Sugar Corporation
111 Ponce De Leon Avenue
Clewiston, Florida 33440

RE: Agreement for Sale and Purchase between United States Sugar Corporation, SBG Farms, Inc. and Southern Gardens Groves Corporation and the South Florida Water Management District, for approximately 180,000 acres located in Palm Beach, Glades and Hendry Counties.

Dear Mr. Almeida:

Enclosed are two originals of the Agreement for Sale and Purchase executed by Chairman Buermann yesterday. In addition to sending them to you by regular mail, they will also be posted on the District's website.

This also confirms that the Due Diligence Information Request transmitted by Sheryl Wood on December 19, 2008 (a copy of which is attached) was deemed delivered pursuant to Sections 6.a. & 19.b. of the Agreement for Sale and Purchase and that the information requested therein will be provided on or before December 29, 2008.

Thanks for your help in getting these documents completed and executed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carlyn H. Kowalsky".

Carlyn H. Kowalsky
Managing Attorney
Office of Counsel
South Florida Water Management District

Enclosures

c:
Michael W. Sole, Secretary, Florida Department of Environmental Protection
Carol Wehle, Executive Director, South Florida Water Management District
William S. White, Chairman of the Board of Directors of United States Sugar Corporation
Sheryl Wood, General Counsel, South Florida Water Management District

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.

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- 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, or 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,

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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 a 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 an 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.g.
- iii. **Closing.** The closing of the sale of Offered Assets to the BUYER pursuant to this Section shall be made at the offices of the BUYER on such date as may be agreed by the SELLER and the BUYER (but in no event later than the closing date specified in the Offer). Such sale shall be effected by the SELLER's delivery to the BUYER of commercially reasonable documentation, including, without limitation, a purchase and sale agreement, that is necessary to evidence the transfer and conveyance of the Offered Assets to be purchased by the BUYER and the payment to the SELLER of the purchase price in immediately available funds (or other mutually acceptable arrangement).
- iv. **Sale of Offered Assets to Proposed Transferee.** If BUYER declines to purchase the Offered Assets or fails to respond to the Offer in a timely manner as prescribed above, the Offered Assets may be sold by the SELLER at any time thereafter. Any such sale shall be only to the Proposed Transferee or its assignee (to the extent the Bona Fide Offer permits such assignment), at not less than the price and upon other terms and conditions, if any, not more favorable to the Proposed Transferee than those specified in the Offer. Promptly after completing the sale to the Proposed Transferee or its assignee, the SELLER shall provide notice of such sale (the "Notice") to the BUYER. Any Offered Assets not sold pursuant to the Offer shall again be subject to the requirements of a prior offer pursuant to this Section.
- v. In no event shall the provisions of this Section be assigned by BUYER, other than to the Florida Department of Environmental Protection ("FDEP").

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

20. **DISPUTE RESOLUTION PROCEDURES.**

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

b. **Mediation.**

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

c. **Litigation.**

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

d. Confidentiality.

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

e. Costs of Dispute Resolution.

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

21. ENVIRONMENTAL MATTERS.

a. Certain Definitions.

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

- vi. "BUYER's Environmental Assessment" means the Environmental Due Diligence Investigation Reports of the Premises prepared by or through Professional Service Industries, Inc., including all observations, findings, cost estimates, conclusions, data, risk evaluation, statistical evaluation and geospatial analyses and interpolation, tables, figures, appendices, maps, graphs, and charts, contained therein, as follows:
- Volume I, Executive Summary, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008;
 - Volume II, Phase I Environmental Site Assessment, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008;
 - Volume III, Phase II Environmental Site Assessment, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008;
 - Volume IV, Ecological Risk Assessment to Support the Phase I and Phase II Environmental Site Assessment of the United State Sugar Corporation Properties, prepared for Professional Service Industries, Inc. by Newfields, dated November 21, 2008;
 - Volume V, Asbestos Survey, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008.
- vii. "BUYER Indemnified Parties" means BUYER and its Affiliates and each of their respective officers, officials, directors, employees, partners, trustees, members, agents, and representatives, but does not include any of BUYER's successors in title to any portion of the Premises.
- viii. "Cleanup Target Level" means:
- For all areas: shall be the groundwater criteria in Table I of Chapter 62-777 of the Florida Administrative Code, and for all environmental media other than groundwater, shall be the most stringent applicable concentration for the medium of concern identified in Table I or Table II of Chapter 62-777 of the Florida Administrative Code for either direct commercial/industrial exposure or leachability based on groundwater criteria, or an alternative leachability standard approved by the FDEP; provided that sediment in a Class IV (Agricultural Water Supplies) body of water on the Premises shall be considered soil and that sediment in a Class III body of water on the Premises shall meet the Florida Department of Environmental Protection Guidelines for Florida Inland Waters (MacDonald et al, 2003). If no Soil Cleanup Target Level ("SCTL"), Groundwater Cleanup Target Level ("GCTL"), or Florida Surface Water Cleanup Target Level ("FSCTL") exists in Table I or Table II of Chapter 62-777 of the Florida Administrative Code, the SCTL, GCTL or FSCTL for it shall be established in accordance with the procedures in Chapter 62-777 for establishing an SCTL, GCTL or FSCTL. A Cleanup Target Level may be achieved with the use of (1) a site specific risk assessment conducted pursuant to, as applicable, Chapter 62-770, 62-730, or 62-780 of the Florida

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

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

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

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

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

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

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

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

xxxviii. "Third Party Claim" means any claim made or any Action commenced by any Person (other than a Party hereto or an Affiliate of a Party hereto), in either case that can reasonably be expected to give rise to a right of indemnification for any Indemnified Party from an Indemnifying Party.

xxxix. "Third Party Claim Notice" means a written notification of a Third Party Claim to an Indemnifying Party, which notice shall describe the factual and legal basis of such claim in reasonable detail (taking into account the information then available to such Indemnified Party), including the sections of this Agreement that form the basis of such claim, copies of all notices, pleadings, documents, and all other material written evidence thereof, if any, and, if then known and calculable, the amount or if not then known or calculable, a good faith estimate of the Liabilities that have or may be sustained by the Indemnified Party.

b. Remediation of Matters Identified in BUYER'S Environmental Assessment BUYER has performed BUYER's Environmental Assessment and performed sampling in those areas of the Premises where BUYER identified concerns regarding the likely presence of Pollutants. BUYER's Environmental Assessment has revealed the presence of Pollutants. In exchange for the payment of \$21,500,000.00 by SELLER at closing, BUYER shall perform the Remediation of the Pollutants Identified in the BUYER'S Environmental Assessment as required by Environmental Laws as the Person Responsible for Site Rehabilitation ("PRSR"), and secure all applicable Governmental Confirmations with respect thereto and SELLER, except as provided in Section 21.c. below, shall thereafter have no obligation or liability to BUYER to perform Remediation of the Pollutants Identified in the BUYER's Environmental Assessment.

c. Remediation of Point of Source Pollutants

i. If after the Effective Date BUYER learns of any Release of Pollutants on, to or under the Premises that occurred or exists in excess of the Environmental Standard, or groundwater contamination that may be associated with Non-Point Source of Pollutants that exceeds the Natural Attenuation Default Concentrations established in Table V of Chapter 62-777, Florida Administrative Code, on or before the Lease Termination Date, but which was not Identified in BUYER's Environmental Assessment, and BUYER provides an Additional Remediation Notice to SELLER on or before three (3) years after the Lease Termination Date, the provisions of this Section 21.c. shall apply. If within forty-five (45) business days of receipt of the Additional Remediation Notice, SELLER delivers written notice to BUYER that it disputes that the Release of Pollutants identified in the Additional Remediation Notice occurred or exists in excess of the Environmental Standard on or before the Lease Termination Date, or that same was not Identified in BUYER's Environmental Assessment, either SELLER or BUYER may initiate dispute resolution procedures as provided in Section 20. If within forty-five (45) business days after SELLER's receipt of the Additional Remediation Notice from BUYER, which must be delivered in accordance with Section 24, SELLER does not deliver written notice to BUYER that it disputes that the Release of Pollutants identified in the Additional Remediation Notice occurred or exists in excess of the Environmental Standard on or before the Lease Termination Date, or that same was not Identified in BUYER's Environmental Assessment, then, in that event, SELLER will not subsequently dispute its liability in connection with such notice. Unless the dispute resolution procedures are initiated as set forth above, within fifty (50) business days of receipt of the Additional

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

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

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

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



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

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

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

g. Procedure for Indemnification.

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

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

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

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

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

h. Satisfaction of Indemnification Payments.

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

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

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

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

Handwritten signature or initials in black ink, appearing to be 'DDH'.

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

SELLERS:

UNITED STATES SUGAR CORPORATION,
a Delaware corporation

Witness: Margaret P. Brown

By: Robert H. Baker, Jr.

Name: Robert H. Baker, Jr.

Witness: Gerard A. Bernard

As its: President

Date of Execution 12.08.08

SBG FARMS, INC., a Florida corporation

Witness: Margaret P. Brown

By: Robert H. Baker, Jr.

Name: Robert H. Baker, Jr.

Witness: Gerard A. Bernard

As its: President

Date of Execution 12.08.08

SOUTHERN GARDENS GROVES
CORPORATION, a Florida corporation

Witness: Gerard A. Bernard

By: Gerard A. Bernard

Name: Gerard A. Bernard

Witness: Margaret P. Brown

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: _____

By: _____

Name: _____

Witness: _____

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. Baker, Jr.

Name: Robert H. Baker, 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. Baker, Jr.

Name: Robert H. Baker, 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

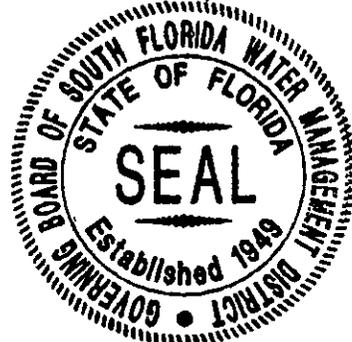
Date of Execution 12/23/08

Witness: [Signature]

Attest: Cathy Widner

Secretary

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



[Signature]

JOINDER OF SOUTH CENTRAL FLORIDA EXPRESS, INC.

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

SOUTH CENTRAL FLORIDA EXPRESS,
INC., a Florida corporation

Witness: Glenn A. Bennett

By: Malcolm S. Wade Jr.

Name: Malcolm S. Wade Jr.

As its: President

Date of Execution 12.08.08

Witness Mychal Brown

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EXHIBIT 19.e

LEASE

[SEE ATTACHED]

