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VALERIE L. LORD

BRIAN J. STREET

August 18, 2006

**VIA HAND DELIVERY**

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DIANE D. TREMOR, P.A.  
JOHN L. WHARTON

WAYNE L. SCHIEFELBEIN, OF COUNSEL  
ROBERT M. C. ROSE, (1924-2006)

Blanca S. Bayo, Director  
Commission Clerk & Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RE: Docket No. 060536  
Application for Transfer of Facilities to Governmental Authority

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket is a State stamped copy and 15 additional copies of the Agreement for Sale and Purchase and the First Amendment to Agreement for Sale and Purchase. Please stamp and return a copy of the letter and each enclosure to my office acknowledging their receipt.

Sincerely



John R. Jenkins  
For the Firm

RECEIVED-FPSC  
06 AUG 18 AM 10:51  
COMMISSION  
CLERK

- MP \_\_\_\_\_
- OM \_\_\_\_\_
- TR \_\_\_\_\_ JRJ/der
- CR \_\_\_\_\_ Enclosure
- CL \_\_\_\_\_ Cc: Terry Holihen, Esq. (w/out enclosures)
- PC \_\_\_\_\_ Mr. Chuck DeSanti (w/out enclosures)
- CA \_\_\_\_\_
- CR \_\_\_\_\_
- GA \_\_\_\_\_
- EC 1
- DTH \_\_\_\_\_

**RECEIVED & FILED**  
**FPSC-BUREAU OF RECORDS**

DOCUMENT NUMBER-DATE

07430 AUG 18 06

FPSC-COMMISSION CLERK

**FIRST AMENDMENT  
TO  
AGREEMENT FOR SALE AND PURCHASE**

**WHEREAS**, MSKP III, Inc., a Florida corporation, as Seller, and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("Trustees"), the Florida Fish and Wildlife Conservation Commission ("Commission"), the Florida Department of Agriculture and Consumer Services ("DACs") and Lee County, Florida ("County"), collectively as Purchaser, entered into an Agreement For Sale and Purchase approved by the Trustees on or about November 22, 2005, approved by the Board of County Commissioners of Lee County on or about November 29, 2005, and by the Commission on December 19, 2005, and DACs on January 10, 2006 (the "Agreement") (unless otherwise defined in this first amendment (this "First Amendment"), all capitalized terms used herein shall have the meanings assigned to the same in the Agreement); and

**WHEREAS**, the parties desire to amend the Agreement in the particulars as set forth herein;

**NOW, THEREFORE**, Seller and Purchaser agree as follows:

1. The Property to be conveyed by Seller to Trustees and County under the terms and conditions of the Agreement, as amended hereby, is described on Exhibit "1" attached to this First Amendment, less and except property Seller is retaining as described on Exhibit "2" to this First Amendment. All references in the Agreement to the Retained Property shall mean and refer to the property described on Exhibit "2", hereto. All references in the Agreement to the Property shall mean and refer to Exhibit "1", less and except the Retained Property. Exhibit "1" differs from Exhibit "A" in the Agreement in that it reflects a less out of a 300-foot right-of-way along Highway 31. Exhibit "2" differs from Exhibit "B" in the Agreement in that it reflects a readjustment of the boundaries between the Retained Property and the property to be conveyed by Seller to Trustees and County to adjust in part for the acreage lost by the less-out of the right-of-way and to increase connectivity to the Fred C. Babcock - Cecil M. Webb Wildlife Management Area.
2. As a result of the amendment to the legal description of the Property as provided in Paragraph 1. of this Amendment, the last sentence of the initial paragraph in Paragraph 2.A. of the Agreement is hereby stricken. If the Purchase Price exceeds the DSL approved value of the Property as described in this First Amendment and as determined in accordance with the provisions of section 259.041(7), F.S. (which, for purposes of the Agreement and this Amendment, is herein called the "DSL Approved Value"), then the Purchase Price shall be reduced to the DSL Approved Value; it being agreed that once the DSL Approved Value is obtained, the same may only be reduced solely as

a result of any matters disclosed in the Updated Survey for the Property. In the event that the Closing is accelerated for the entire Property, and the DSL Approved Value is less than the full Purchase Price of \$350,000,000.00 (it being agreed that once the DSL Approved Value is obtained, the same may only be reduced solely as a result of any matters disclosed in the Updated Survey for the Property), then Seller shall have the right, but not the obligation, to increase the amount of the acreage included in the Property so that the DSL Approved Value may increase.

3. Seller and Purchaser agree that the ninety (90) day period set forth in Paragraph 12.G.1 of the Agreement is hereby waived and the parties shall agree upon the items set forth in Paragraph 12.G.1(a) and Paragraph 12.G.1(b) prior to the Phase II Closing Date.
4. Distinctions in the Agreement to "Commission's Purchase Price", "DACS Purchase Price" and "Trustees' Purchase Price" are hereby eliminated. House Bill 1347 (2006), to be codified at section 259.1052, F.S., authorizes distribution from the Florida Forever Trust Fund of the sum of \$310,000,000.00, which sum is in addition to the distributions from the Florida Forever Trust Fund authorized under the provisions of section 259.105(3), F.S. from which Commission, DACS and Trustees were previously to fund their shares of the Purchase Price. As a result Commission, DACS and Trustees will not be required to use their distributions under the provisions of section 259.105(3), F.S. for the subject acquisition. Therefore, references in the Agreement to "Commission's Purchase Price", "DACS Purchase Price" and "Trustees' Purchase Price" shall read, instead, "State's Purchase Price" and the liability therefor shall rest with Trustees. For ease of reference only, Commission and DACS shall continue to be referred to together with Trustees and County, as Purchaser.
5. The cap of \$40,000,000.00 formerly applied to County's Purchase Price is hereby removed and County shall pay, and the County's Purchase Price shall be deemed to be, the full portion of the Purchase Price attributed to the Property situate in Lee County, Florida. The State's Purchase Price shall be reduced commensurate with the increase in County's Purchase Price so attributed.
6. Trustees are applying for a federal grant for the benefit of County in aid of or reimbursement for a nominal portion of County's Purchase Price (\$2,807,531.00). To the extent any such federal grant requires compliance with the Federal Acquisition Procedures found at 49 CFR Subpart B, County shall be responsible for compliance with such procedures and payment of any amounts as required by such procedures, including, but not limited to payment of documentary stamp taxes due for the project area defined by the National Oceanic and Atmospheric Administration ("NOAA") in the grant. If the lands acquired with the grant and County match are conveyed, encumbered or

converted by County without NOAA's consent then County shall be responsible to reimburse NOAA based on the fair market value of its interest in the lands at the time of disposal. Lee County shall cause the lands encumbered by the terms of the grant to be natural lands conserved for habitat and such lands shall not be used currently or in the future for agriculture or forestry operations. County shall assure in selecting the lands to be conserved by the NOAA grant and County match to select lands of a kind and nature that will not increase the burden or costs of management on the lands beyond the requirements of the Management Agreement.

7. Seller agrees if requested at closing so to do by Purchaser to convey that part of the Property lying in Lee County by two separate deeds to County, one to convey the lands encumbered by the NOAA grant conditions and containing the deed legend required by the grant and the other to convey the remaining lands in Lee County that are unencumbered by the NOAA grant conditions and deed legend.

8. Article I, 1. of Exhibit E to the Agreement, the form of management agreement to be executed by the parties at closing, is hereby amended to add the following two sentences:

All management decisions relating to the Lee County portion of the Property must be approved in writing by Lee County. Further, no Management Plan or Business Plan as contemplated herein will be deemed final, nor shall they be transmitted to the Board of Trustees for adoption until written approval is given by Lee County relative to its portion of the Property.

9. Article I, 2. of Exhibit E to the Agreement, the form of management agreement to be executed by the parties at closing, is hereby amended to add the following sentence:

Both the Management Plan and the Business Plan shall be approved in writing by Lee County with respect to its portion of the Property prior to their transmittal to the Board of Trustees for their adoption and subsequent implementation.

10. Seller and Purchaser agree that the management and business plan referenced in the Management Agreement will be agreed upon after the Closing, all in accordance with the terms thereof.

11. Article V.F. of Exhibit F to the Agreement, the form of conservation easement to be granted by Seller to Purchaser at Closing, is amended to: (a) clarify that the right to ingress and egress allowed to Grantor in the easement includes the right to place utilities, including, without limitation, water, sewer, electric, cable and telephone and other communication lines in, on, over, under or

immediately adjacent to the Road (as defined in the conservation easement) and which Road shall be deemed to mean and refer to the transportation, pedestrian, and utility corridor through the Corridor Greenway as referred to in the Charlotte County Comprehensive Plan including the purposes and structures contemplated thereby (e.g., an elevated section of the Road for a wildlife underpass with appropriate fencing to direct wildlife under the Road). The exact language incorporating such matters into the conservation easement shall be reasonably agreed upon by Seller and Purchaser at or prior to the Closing. All other terms and conditions of Article V.F. of the form of conservation easement shall remain unchanged from the form approved by Trustees and County as a part of the Agreement.

12. The Agreement is hereby ratified and confirmed in all respects by Seller and Purchaser and is in full force and effect. Seller hereby represents to Purchaser that Seller has the requisite power and authority to enter into and perform the Agreement, as modified by this Amendment, and the transactions contemplated thereby, and that Seller has duly authorized the execution of the Agreement and this Amendment. Purchaser hereby represents to Seller that Purchaser has the requisite power and authority to enter into and perform the Agreement, as modified by this Amendment, and the transactions contemplated thereby, and that Purchaser has duly authorized the execution of the Agreement and this Amendment. After the date of this Amendment, all references in the Agreement to the "Agreement" shall be deemed to be references to the Agreement, as modified by this Amendment. Each party represents to the other that, the best of the knowledge of each party hereto, neither party is in default of its obligations under the Agreement as of the date of this Amendment. Except as otherwise modified by this Amendment, the Agreement remains unmodified and is in full force and effect. In the event of any conflict between the terms and provisions of the Agreement and this Amendment, then the terms and provisions of this Amendment shall control.

**DONE AND AGREED** the day and year indicated below.

Signatures begin on the following page

SELLER

MSKP III, INC., a Florida corporation

By: [Signature]

Name: Sydney Kitson

Title: President and CEO

[Signature]  
Witness as to ~~Purchaser~~  
Sandra E. Bell  
~~Seller~~  
Witness as to ~~Purchaser~~  
Seller

(Corporate Seal)

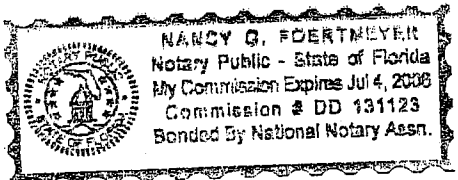
May 18, 2006  
Date signed by Seller

STATE OF FLORIDA     )  
  )  
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this 18 day of May, 2006, by Sydney Kitson, as President and CEO of MSKP, III, a Florida Corporation, on behalf of the corporation. He is personally known to me or has produced \_\_\_\_\_ as identification and did not take an oath.

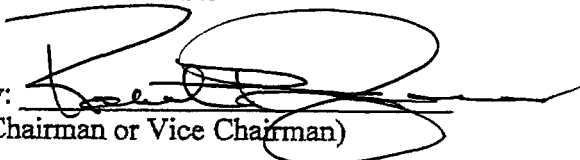
(NOTARY PUBLIC  
SEAL)

Nancy G. Foertmeyer  
Notary Public  
Nancy G. Foertmeyer  
(Printed, Typed or Stamped Name of  
Notary Public)  
Commission No.: DD 131123  
My Commission Expires: July 4, 2006

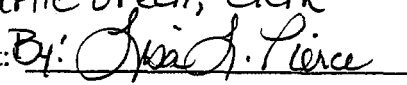




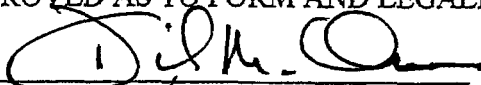
LEE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

By:   
(Chairman or Vice Chairman)

Date: 5/23/06

Charlie Green, Clerk  
Attest: By:   
Date: 5/23/06

APPROVED AS TO FORM AND LEGALITY:

By:   
Date: 5/23/06



FLORIDA FISH AND WILDLIFE  
CONSERVATION COMMISSION

Sabrina Menendez  
Witness as to Purchaser

By: Kenneth Haddad  
Kenneth Haddad as its Executive Director

[Signature]  
Witness as to Purchaser

5/31/06  
Date signed by Purchaser

Approved as to Form and Legality

By: Josue M. Antista

Date: 5-31-06

STATE OF Florida )  
  )  
COUNTY OF Leon )

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of May, 2006, by Kenneth Haddad as Executive Director for and on behalf of the Florida Fish and Wildlife Conservation Commission. He is personally known to me.

(NOTARY PUBLIC SEAL)

Rosemary Mara  
Notary Public



Rosemary Mara  
MY COMMISSION # DD229993 EXPIRES  
October 20, 2007  
BONDED THRU TROY FAIN INSURANCE, INC

(Printed, Typed or Stamped Name of  
Notary Public)  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES, DIVISION OF  
FORESTRY

CHARLES H. BRONSON, COMMISSIONER

Suzi P. Burch  
Witness as to Purchaser

Charles Baker  
Witness as to Purchaser

By: Mike Gresham  
MIKE GRESHAM, DIRECTOR  
DIVISION OF ADMINISTRATION

June 14, 2006  
Date signed by Purchaser

STATE OF FLORIDA \_\_\_\_\_ )  
COUNTY OF LEON \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this 15th day of June, 2006, by Mike Gresham, Director, Division of Administration, Department of Agriculture and Consumer Services. He is personally known to me.

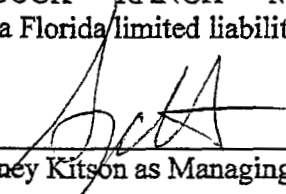
(NOTARY PUBLIC SEAL)



Karen A. Meyer  
Notary Public  
KAREN A MEYER  
(Printed, Typed or Stamped Name of  
Notary Public)  
Commission No.: # DD 346679  
My Commission Expires: 10/20/2008

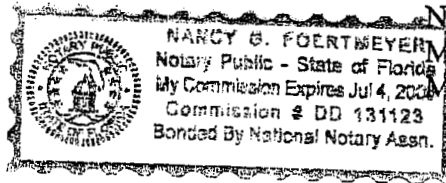
By execution below, the undersigned "Manager" under the Management Agreement hereby agrees to the modifications to the Management Agreement set forth in this Amendment.

BABCOCK RANCH MANAGEMENT,  
LLC, a Florida limited liability company

By:   
Sydney Kitson as Managing Member

STATE OF FLORIDA  
COUNTY OF PALM BEACH

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 18 day of May, 2006, by Sydney Kitson, as Managing Member of Babcock Ranch Management, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or who provided \_\_\_\_\_ as identification.



Nancy G. Foertmeyer  
NOTARY PUBLIC, State of Florida  
My Commission Expires: July 4, 2006  
My Commission No.: DD131123

**EXHIBIT "1"**

**[FOR CONTRACT PURPOSES ONLY]**

**ACQUISITION PARCEL/PROPERTY**

That part of Sections 31 and 32, Township 40 South, Range 26 East, Charlotte County, Florida, lying South of the South right-of-way line of County Road No. 74.

That part of Government Lots 3 and 4, Section 35, Township 40 South, Range 26 East, Charlotte County, Florida, lying South of the South right-of-way line of County Road No. 74.

All of Sections 1 through 36, Township 41 South, Range 26 East, Charlotte County, Florida, LESS right-of-way for County Road No. 74. LESS the West 350.00 feet thereof.

All of Sections 19 through 36, Township 41 South, Range 27 East, Charlotte County, Florida.

All of Sections 1 through 36, Township 42 South, Range 26 East, Charlotte County, Florida, LESS the West 350.00 feet thereof.

All of Sections 1 through 11; The West one-half of Section 12; All of Sections 13 through 36, all being in Township 42 South, Range 27 East, Charlotte County, Florida.

All of Sections 1 through 7; The West one-half of Section 9; The West 150 feet of the Southeast one-quarter of Section 9; All of Section 12, all being in Township 43 South, Range 26 East, Lee County, Florida. LESS right-of-way for County Road No. 78. LESS the West 350.00 feet of Sections 6 and 7.

That part of the Southwest one-quarter of the Northeast one-quarter of Section 9, Township 43 South, Range 26 East, Lee County, Florida, being more particularly described as follows: Commence at the Southwest corner of said Southwest one-quarter of the Northeast one-quarter as the Point of Beginning and run East, along the South line of said Southwest one-quarter of the Northeast one-quarter, a distance of 150.00 feet; Thence Northwest to the Northwest corner of said Southwest one-quarter of the Northeast one-quarter; Thence South, along the West line of said Southwest one-quarter of the Northeast one-quarter, to the Point of Beginning.

All of Sections 4 through 8; Section 9, LESS the South one-half of the Southeast one-quarter; The Northwest one-quarter and the North one-half of the Northeast one-quarter of Section 17; The North one-half of Section 18, all being in Township 43 South, Range 27 East, Lee County, Florida.

LESS,

CHARLOTTE COUNTY PARCEL:

A parcel of land lying within Sections 28, 29, 31 through 33, Township 41 South, Range 26 East, AND, Sections 4 through 10, Sections 15 through 17 and Sections 19 through 36, Township 42 South, Range 26 East, Charlotte County, Florida, being more particularly described as follows:

Commence at the Southwest corner of Section 31, Township 42 South, Range 26 East and run S89°41'45"E, along the South line of said Section 31, a distance of 350.01 feet to the Point of Beginning of the parcel of land herein described;

Thence along a line 300.00 feet East of, and parallel with, the East right-of-way line for State Road No. 31, the following courses and distances: N00°36'46"E a distance of 5336.09 feet, N00°26'10"E a distance of 5282.78 feet and N00°31'45"E a distance of 4197.65 feet; Thence S77°54'41"E a distance of 707.35 feet; Thence N81°38'00"E a distance of 5168.06 feet; Thence N82°12'01"E a distance of 711.51 feet; Thence N62°45'03"E a distance of 4638.50 feet; Thence N28°10'55"W a distance of 1272.65 feet; Thence N69°50'23"E a distance of 1104.32 feet; Thence S45°00'57"E a distance of 266.61 feet; Thence N71°59'01"E a distance of 448.55 feet; Thence N12°51'59"W a distance of 1862.42 feet; Thence N13°56'09"E a distance of 1953.99 feet; Thence N50°03'22"W a distance of 2565.68 feet; Thence S63°01'21"W a distance of 1215.04 feet; Thence N70°04'12"W a distance of 1843.56 feet; Thence N57°46'34"W a distance of 530.23 feet; Thence N24°01'11"W a distance of 975.16 feet; Thence N86°25'58"W a distance of 385.81 feet; Thence N38°10'48"W a distance of 551.49 feet; Thence S59°20'29"W a distance of 577.78 feet; Thence N73°15'18"W a distance of 661.18 feet; Thence N09°11'59"E a distance of 1325.91 feet; Thence N16°46'15"W a distance of 1740.31 feet; Thence N00°01'22"W a distance of 2084.14 feet; Thence N89°25'59"W a distance of 3804.51 feet to a point lying 300.00 feet East of the East right-of-way line for State Road No. 31; Thence along a line 300.00 feet East of, and parallel with, the East right-of-way line for State Road No. 31, the following courses and distances: N00°34'01"E a distance of 789.90 feet and N00°48'43"W a distance of 2979.88 feet; Thence N89°11'17"E a distance of 5661.25 feet; Thence N00°00'03"W a distance of 2799.47 feet; Thence N89°59'57"E a distance of 4295.48 feet; Thence S28°04'21"E a distance of 2408.38 feet; Thence S00°00'00"W a distance of 1967.31 feet; Thence S89°59'52"E a distance of 688.23 feet; Thence S00°00'29"E a distance of 324.64 feet; Thence S39°50'11"E a distance of 190.87 feet; Thence S00°00'03"E a distance of 1218.43 feet; Thence S89°51'42"E a distance of 67.91 feet; Thence S01°26'06"E a distance of 897.46 feet; Thence S74°19'19"E a distance of 1689.13 feet; Thence N79°06'55"E a distance of 475.22 feet; Thence S26°13'22"E a distance of 802.17 feet; Thence S19°47'08"E a distance of 527.22 feet; Thence S05°04'15"E a distance of 1832.85 feet; Thence S32°40'01"E a distance of 186.12 feet; Thence S13°05'30"W a distance of 201.97 feet; Thence S07°19'37"E a distance of 171.40 feet; Thence S42°54'55"E a distance of 643.22 feet; Thence S25°12'33"E a distance of 261.14 feet; Thence S00°28'20"W a distance of 674.54 feet; Thence S03°43'40"W a distance of 687.25 feet; Thence S08°01'21"E a distance of 493.34 feet; Thence S19°48'25"E a distance of 366.26 feet; Thence N78°50'16"E a distance of 687.98 feet; Thence

S13°36'57"E a distance of 2507.44 feet; Thence S52°37'55"W a distance of 867.79 feet; Thence S21°59'06"E a distance of 1739.24 feet; Thence S55°42'26"W a distance of 195.73 feet; Thence S22°47'49"W a distance of 5491.07 feet; Thence S05°03'05"W a distance of 533.38 feet; Thence S20°54'51"E a distance of 336.88 feet; Thence S80°06'18"E a distance of 334.86 feet; Thence N89°59'33"E a distance of 307.21 feet; Thence N62°56'46"E a distance of 516.44 feet; Thence N52°01'16"E a distance of 818.38 feet; Thence S42°01'35"E a distance of 1162.99 feet; Thence S39°20'59"E a distance of 1779.24 feet; Thence S04°14'12"W a distance of 1329.65 feet; Thence S51°39'36"E a distance of 782.57 feet; Thence N89°45'02"E a distance of 4154.67 feet; Thence N00°18'50"W a distance of 1309.98 feet; Thence S74°38'25"W a distance of 1635.76 feet; Thence N20°29'11"W a distance of 1376.98 feet; Thence N21°08'17"E a distance of 865.48 feet; Thence N69°00'57"E a distance of 1518.26 feet; Thence S49°18'31"E a distance of 2362.36 feet; Thence N72°42'44"E a distance of 1430.88 feet; Thence S70°02'41"E a distance of 1332.47 feet; Thence S30°17'33"E a distance of 1686.70 feet; Thence N83°12'47"E a distance of 1373.39 feet; Thence S66°40'38"E a distance of 200.63 feet; Thence S05°46'23"W a distance of 1058.61 feet; Thence S00°00'40"E a distance of 10185.99 feet to a point on the South line of Section 36, Township 42 South, Range 26 East; Thence N89°35'44"W a distance of 3430.81 feet to the Southwest corner of said Section 36; Thence N89°35'44"W a distance of 5294.84 feet to the Southeast corner of Section 34, Township 42 South, Range 26 East; Thence N89°35'44"W a distance of 5294.83 feet to the Southwest corner of said Section 34; Thence N89°37'16"W a distance of 5289.35 feet to the Southeast corner of Section 32, Township 42 South, Range 26 East; Thence N89°41'45"W a distance of 5306.31 feet to the Southwest corner of said Section 32; Thence N89°41'45"W, along the South line of Section 31, Township 42 South, Range 26 East, a distance of 4889.98 feet to the Point of Beginning.

Containing 13,521.6 acres, more or less.

Bearings hereinabove mentioned are based on the South line of Section 31, Township 42 South, Range 26 East to bear S89°41'45"E.

LESS,

LEE COUNTY PARCEL:

A parcel of land lying within Sections 1 through 7 and Section 9, Township 43 South, Range 26 East, Lee County, Florida, being more particularly described as follows:

Commence at the Southwest corner of Section 31, Township 42 South, Range 26 East and run S89°41'45"E, along the South line of said Section 31, a distance of 350.01 feet to the Point of Beginning of the parcel of land herein described; Thence continue S89°41'45"E a distance of 4889.98 feet to the Northeast corner of Section 6, Township 43 South, Range 26 East; Thence S89°41'45"E a distance of 5306.31 feet to the Northeast corner of Section 5, Township 43 South, Range 26 East; Thence S89°37'16"E a distance of 5289.35 feet to the Northeast corner of Section 4, Township 43 South, Range 26 East; Thence S89°35'44"E a distance of 5294.83 feet to the Northeast corner of

Section 3, Township 43 South, Range 26 East; Thence S89°35'44"E a distance of 5294.84 feet to the Northeast corner of Section 2, Township 43 South, Range 26 East; Thence S89°35'44"E, along the North line of Section 1, Township 43 South, Range 26 East, a distance of 165.80 feet; Thence S10°06'09"W a distance of 4669.85 feet; Thence S04°10'14"W a distance of 283.53 feet; Thence S03°53'19"E a distance of 515.34 feet to a point on the South line of Section 2, Township 43 South, Range 26 East (said point being 558.43 feet West of the Southeast corner of said Section 2); Thence N88°38'22"W a distance of 2084.17 feet to the South one-quarter corner of said Section 2; Thence N88°38'42"W a distance of 2642.18 feet to the Southwest corner of said Section 2; Thence N89°51'49"W a distance of 5300.33 feet to the Southwest corner of Section 3, Township 43 South, Range 26 East; Thence N89°51'54"W a distance of 2650.21 feet to the South one-quarter corner of Section 4, Township 43 South, Range 26 East; Thence S00°23'25"W a distance of 1330.71 feet to the Southwest corner of the North one-half of the Northeast one-quarter of Section 9, Township 43 South, Range 26 East; Thence S06°02'41"E a distance of 1338.42 feet to a point on the North line of the Southeast one-quarter of said Section 9 (said point being 150.00 feet East of the Northwest corner of the Southeast one-quarter of said Section 9); Thence S00°22'58"W, parallel with and 150.00 feet East of the West line of the Southeast one-quarter of said Section 9, a distance of 2611.68 feet to a point on the North right-of-way line of County Road No. 78; Thence along said right-of-way line the following courses and distances, N89°54'54"W a distance of 150.27 feet and N89°54'44"W a distance of 2649.07 feet to a point on the West line of said Section 9; Thence N00°22'31"E a distance of 2612.14 feet to the West one-quarter corner of said Section 9; Thence N00°21'56"E a distance of 2663.25 feet to the Southeast corner of Section 5, Township 43 South, Range 26 East; Thence N89°52'00"W a distance of 2666.82 feet to the South one-quarter corner of said Section 5; Thence N89°50'47"W a distance of 2667.54 feet to the Southwest corner of said Section 5; Thence S00°23'16"W, along the East line of Section 7, Township 43 South, Range 26 East, a distance of 5294.24 feet to a point on the North right-of-way line of County Road No. 78; Thence Westerly along the curved right-of-way line, (said curve being curved concave to the North, having a delta angle of 00°53'52" and a radius of 11339.17 feet, with a chord bearing of N89°19'12"W and a chord length of 177.69 feet) a distance of 177.69 feet to the end of the curve; Thence N88°52'16"W, along said North right-of-way line, a distance of 4406.54 feet to the beginning of a curve to the right; Thence along the arc of the curved right-of-way line, (said curve being curved concave to the Northeast, having a delta angle of 24°26'20" and a radius of 522.96 feet, with a chord bearing of N76°39'06"W and a chord length of 221.39 feet) a distance of 223.07 feet to a point that is 300.00 feet East of the East right-of-way line of State Road No. 31; Thence along a line 300.00 feet East of, and parallel with, the East right-of-way line for State Road No. 31, the following courses and distances, N00°19'49"E a distance of 5249.36 feet, N00°18'54"E a distance of 5312.90 feet and N00°36'46"E a distance of 0.97 feet to the Point of Beginning.

Containing 4,086.3 acres, more or less.

Bearings hereinabove mentioned are based on the North line of Section 6, Township 43 South, Range 26 East to bear S89°41'45"E.

**EXHIBIT "2"**

**[FOR CONTRACT PURPOSES ONLY]**

**AREA 6/RETAINED PROPERTY**

**CHARLOTTE COUNTY PARCEL:**

A parcel of land lying within Sections 28, 29, 31 through 33, Township 41 South, Range 26 East, AND, Sections 4 through 10, Sections 15 through 17 and Sections 19 through 36, Township 42 South, Range 26 East, Charlotte County, Florida, being more particularly described as follows:

Commence at the Southwest corner of Section 31, Township 42 South, Range 26 East and run S89°41'45"E, along the South line of said Section 31, a distance of 350.01 feet to the Point of Beginning of the parcel of land herein described;

Thence along a line 300.00 feet East of, and parallel with, the East right-of-way line for State Road No. 31, the following courses and distances: N00°36'46"E a distance of 5336.09 feet, N00°26'10"E a distance of 5282.78 feet and N00°31'45"E a distance of 4197.65 feet; Thence S77°54'41"E a distance of 707.35 feet; Thence N81°38'00"E a distance of 5168.06 feet; Thence N82°12'01"E a distance of 711.51 feet; Thence N62°45'03"E a distance of 4638.50 feet; Thence N28°10'55"W a distance of 1272.65 feet; Thence N69°50'23"E a distance of 1104.32 feet; Thence S45°00'57"E a distance of 266.61 feet; Thence N71°59'01"E a distance of 448.55 feet; Thence N12°51'59"W a distance of 1862.42 feet; Thence N13°56'09"E a distance of 1953.99 feet; Thence N50°03'22"W a distance of 2565.68 feet; Thence S63°01'21"W a distance of 1215.04 feet; Thence N70°04'12"W a distance of 1843.56 feet; Thence N57°46'34"W a distance of 530.23 feet; Thence N24°01'11"W a distance of 975.16 feet; Thence N86°25'58"W a distance of 385.81 feet; Thence N38°10'48"W a distance of 551.49 feet; Thence S59°20'29"W a distance of 577.78 feet; Thence N73°15'18"W a distance of 661.18 feet; Thence N09°11'59"E a distance of 1325.91 feet; Thence N16°46'15"W a distance of 1740.31 feet; Thence N00°01'22"W a distance of 2084.14 feet; Thence N89°25'59"W a distance of 3804.51 feet to a point lying 300.00 feet East of the East right-of-way line for State Road No. 31; Thence along a line 300.00 feet East of, and parallel with, the East right-of-way line for State Road No. 31, the following courses and distances: N00°34'01"E a distance of 789.90 feet and N00°48'43"W a distance of 2979.88 feet; Thence N89°11'17"E a distance of 5661.25 feet; Thence N00°00'03"W a distance of 2799.47 feet; Thence N89°59'57"E a distance of 4295.48 feet; Thence S28°04'21"E a distance of 2408.38 feet; Thence S00°00'00"W a distance of 1967.31 feet; Thence S89°59'52"E a distance of 688.23 feet; Thence S00°00'29"E a distance of 324.64 feet; Thence S39°50'11"E a distance of 190.87 feet; Thence S00°00'03"E a distance of 1218.43 feet; Thence S89°51'42"E a distance of 67.91 feet; Thence S01°26'06"E a distance of 897.46 feet; Thence S74°19'19"E a distance of 1689.13 feet; Thence N79°06'55"E a distance of 475.22 feet; Thence S26°13'22"E a distance of 802.17 feet; Thence S19°47'08"E a distance of 527.22 feet; Thence S05°04'15"E a distance of 1832.85 feet; Thence S32°40'01"E a distance of 186.12 feet; Thence S13°05'30"W a distance of 201.97 feet; Thence S07°19'37"E a distance of 171.40 feet; Thence



S42°54'55"E a distance of 643.22 feet; Thence S25°12'33"E a distance of 261.14 feet; Thence S00°28'20"W a distance of 674.54 feet; Thence S03°43'40"W a distance of 687.25 feet; Thence S08°01'21"E a distance of 493.34 feet; Thence S19°48'25"E a distance of 366.26 feet; Thence N78°50'16"E a distance of 687.98 feet; Thence S13°36'57"E a distance of 2507.44 feet; Thence S52°37'55"W a distance of 867.79 feet; Thence S21°59'06"E a distance of 1739.24 feet; Thence S55°42'26"W a distance of 195.73 feet; Thence S22°47'49"W a distance of 5491.07 feet; Thence S05°03'05"W a distance of 533.38 feet; Thence S20°54'51"E a distance of 336.88 feet; Thence S80°06'18"E a distance of 334.86 feet; Thence N89°59'33"E a distance of 307.21 feet; Thence N62°56'46"E a distance of 516.44 feet; Thence N52°01'16"E a distance of 818.38 feet; Thence S42°01'35"E a distance of 1162.99 feet; Thence S39°20'59"E a distance of 1779.24 feet; Thence S04°14'12"W a distance of 1329.65 feet; Thence S51°39'36"E a distance of 782.57 feet; Thence N89°45'02"E a distance of 4154.67 feet; Thence N00°18'50"W a distance of 1309.98 feet; Thence S74°38'25"W a distance of 1635.76 feet; Thence N20°29'11"W a distance of 1376.98 feet; Thence N21°08'17"E a distance of 865.48 feet; Thence N69°00'57"E a distance of 1518.26 feet; Thence S49°18'31"E a distance of 2362.36 feet; Thence N72°42'44"E a distance of 1430.88 feet; Thence S70°02'41"E a distance of 1332.47 feet; Thence S30°17'33"E a distance of 1686.70 feet; Thence N83°12'47"E a distance of 1373.39 feet; Thence S66°40'38"E a distance of 200.63 feet; Thence S05°46'23"W a distance of 1058.61 feet; Thence S00°00'40"E a distance of 10185.99 feet to a point on the South line of Section 36, Township 42 South, Range 26 East; Thence N89°35'44"W a distance of 3430.81 feet to the Southwest corner of said Section 36; Thence N89°35'44"W a distance of 5294.84 feet to the Southeast corner of Section 34, Township 42 South, Range 26 East; Thence N89°35'44"W a distance of 5294.83 feet to the Southwest corner of said Section 34; Thence N89°37'16"W a distance of 5289.35 feet to the Southeast corner of Section 32, Township 42 South, Range 26 East; Thence N89°41'45"W a distance of 5306.31 feet to the Southwest corner of said Section 32; Thence N89°41'45"W, along the South line of Section 31, Township 42 South, Range 26 East, a distance of 4889.98 feet to the Point of Beginning.

Containing 13,521.6 acres, more or less.

Bearings hereinabove mentioned are based on the South line of Section 31, Township 42 South, Range 26 East to bear S89°41'45"E.

#### LEE COUNTY PARCEL:

A parcel of land lying within Sections 1 through 7 and Section 9, Township 43 South, Range 26 East, Lee County, Florida, being more particularly described as follows:

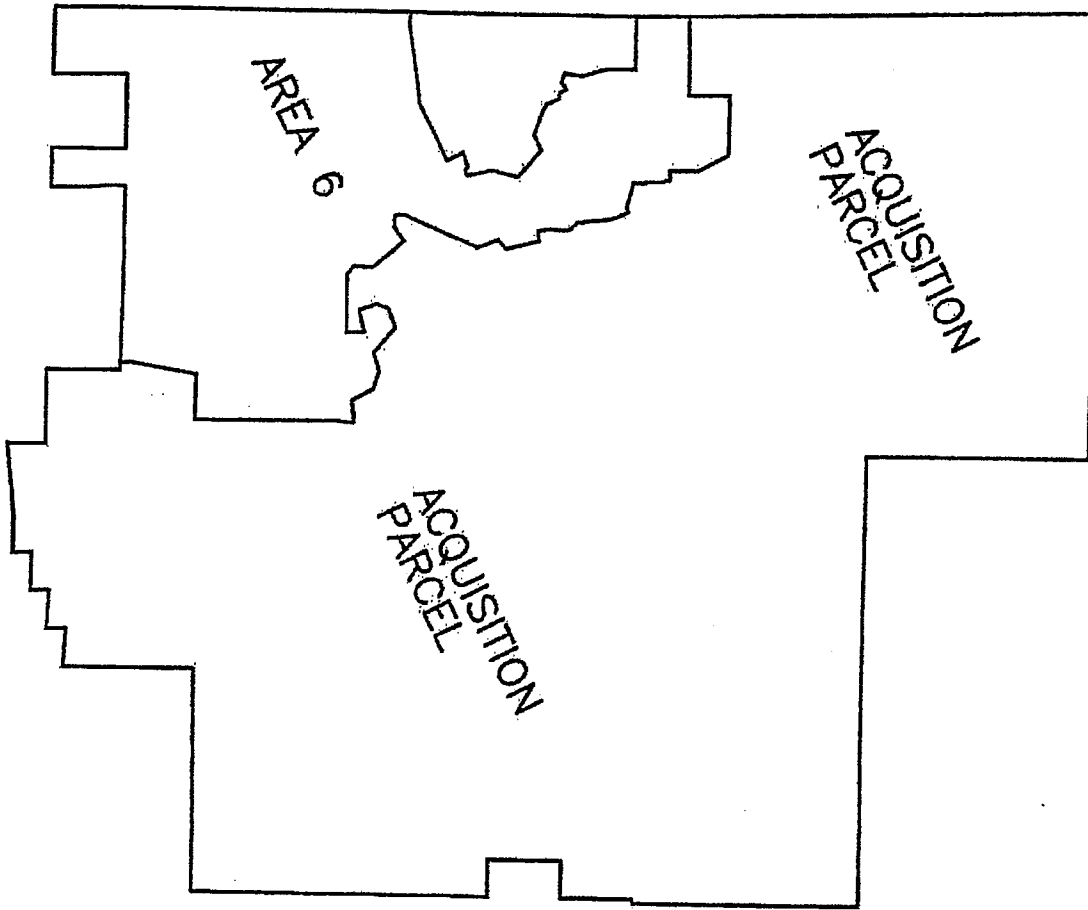
Commence at the Southwest corner of Section 31, Township 42 South, Range 26 East and run S89°41'45"E, along the South line of said Section 31, a distance of 350.01 feet to the Point of Beginning of the parcel of land herein described; Thence continue S89°41'45"E a distance of 4889.98 feet to the Northeast corner of Section 6, Township 43 South, Range 26 East; Thence S89°41'45"E a distance of 5306.31 feet to the Northeast corner of Section 5, Township 43 South, Range 26 East; Thence S89°37'16"E a distance of 5289.35 feet to the Northeast corner of Section 4, Township 43 South,

Range 26 East; Thence S89°35'44"E a distance of 5294.83 feet to the Northeast corner of Section 3, Township 43 South, Range 26 East; Thence S89°35'44"E a distance of 5294.84 feet to the Northeast corner of Section 2, Township 43 South, Range 26 East; Thence S89°35'44"E, along the North line of Section 1, Township 43 South, Range 26 East, a distance of 165.80 feet; Thence S10°06'09"W a distance of 4669.85 feet; Thence S04°10'14"W a distance of 283.53 feet; Thence S03°53'19"E a distance of 515.34 feet to a point on the South line of Section 2, Township 43 South, Range 26 East (said point being 558.43 feet West of the Southeast corner of said Section 2); Thence N88°38'22"W a distance of 2084.17 feet to the South one-quarter corner of said Section 2; Thence N88°38'42"W a distance of 2642.18 feet to the Southwest corner of said Section 2; Thence N89°51'49"W a distance of 5300.33 feet to the Southwest corner of Section 3, Township 43 South, Range 26 East; Thence N89°51'54"W a distance of 2650.21 feet to the South one-quarter corner of Section 4, Township 43 South, Range 26 East; Thence S00°23'25"W a distance of 1330.71 feet to the Southwest corner of the North one-half of the Northeast one-quarter of Section 9, Township 43 South, Range 26 East; Thence S06°02'41"E a distance of 1338.42 feet to a point on the North line of the Southeast one-quarter of said Section 9 (said point being 150.00 feet East of the Northwest corner of the Southeast one-quarter of said Section 9); Thence S00°22'58"W, parallel with and 150.00 feet East of the West line of the Southeast one-quarter of said Section 9, a distance of 2611.68 feet to a point on the North right-of-way line of County Road No. 78; Thence along said right-of-way line the following courses and distances, N89°54'54"W a distance of 150.27 feet and N89°54'44"W a distance of 2649.07 feet to a point on the West line of said Section 9; Thence N00°22'31"E a distance of 2612.14 feet to the West one-quarter corner of said Section 9; Thence N00°21'56"E a distance of 2663.25 feet to the Southeast corner of Section 5, Township 43 South, Range 26 East; Thence N89°52'00"W a distance of 2666.82 feet to the South one-quarter corner of said Section 5; Thence N89°50'47"W a distance of 2667.54 feet to the Southwest corner of said Section 5; Thence S00°23'16"W, along the East line of Section 7, Township 43 South, Range 26 East, a distance of 5294.24 feet to a point on the North right-of-way line of County Road No. 78; Thence Westerly along the curved right-of-way line, (said curve being curved concave to the North, having a delta angle of 00°53'52" and a radius of 11339.17 feet, with a chord bearing of N89°19'12"W and a chord length of 177.69 feet) a distance of 177.69 feet to the end of the curve; Thence N88°52'16"W, along said North right-of-way line, a distance of 4406.54 feet to the beginning of a curve to the right; Thence along the arc of the curved right-of-way line, (said curve being curved concave to the Northeast, having a delta angle of 24°26'20" and a radius of 522.96 feet, with a chord bearing of N76°39'06"W and a chord length of 221.39 feet) a distance of 223.07 feet to a point that is 300.00 feet East of the East right-of-way line of State Road No. 31; Thence along a line 300.00 feet East of, and parallel with, the East right-of-way line for State Road No. 31, the following courses and distances, N00°19'49"E a distance of 5249.36 feet, N00°18'54"E a distance of 5312.90 feet and N00°36'46"E a distance of 0.97 feet to the Point of Beginning.

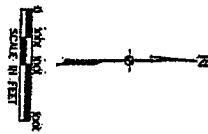
Containing 4,086.3 acres, more or less.

Bearings hereinabove mentioned are based on the North line of Section 6, Township 43 South, Range 26 East to bear S89°41'45"E.

SKETCH OF EXHIBIT "1" AND EXHIBIT "2"



**JOHNSON**  
ENGINEERING  
1000 W. UNIVERSITY BLVD.  
SUITE 100  
TALLAHASSEE, FL 32310  
TEL: 904.204.1111



PROJECT NO.	DATE	DESCRIPTION	DATE	DESCRIPTION	DATE
000	000	000	000	000	000
000	000	000	000	000	000
000	000	000	000	000	000
000	000	000	000	000	000
000	000	000	000	000	000

**DEPT. of ENVIRONMENTAL PROTECTION**  
BUREAU of SURVEY and MAPPING  
8000 COLLEAVILLE RD. TALLAHASSEE, FL 32304  
(904) 488-8477

Project: Babcock Ranch  
Parcel: \_\_\_\_\_

(Form Revised 07/23/96)

DNR \_\_\_\_\_

FDACS CONTRACT #

010697

## AGREEMENT FOR SALE AND PURCHASE

THIS AGREEMENT (this "Agreement") is made this \_\_\_ day of November, 2005, between MSKP III, INC., a Florida corporation, whose address is 9055 Ibis Boulevard, West Palm Beach, Florida, 33412, as "Seller", and the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA ("Trustees"), whose address is 3900 Commonwealth Boulevard, Mail Station 115, Tallahassee, Florida 32399-3000, FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION ("Commission"), whose address is Bryant Building, 620 South Meridian Street, Tallahassee, Florida 32399-1600, the FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES ("DACS"), whose address is The Capitol, Tallahassee, Florida 32399-08000 and LEE COUNTY, FLORIDA ("County"), whose address is whose address is P.O. Box 398, Ft. Myers, Florida 33902-0398, collectively as "Purchaser". The terms and provisions of this Agreement supercede and control over all prior and contemporaneous agreements, representations and understandings of the parties, including, but not limited to, that certain agreement executed by Seller, Trustees and Commission on October 18, 2005, by Babcock Ranch Management, LLC on October 17, 2005, as amended, and that certain agreement executed by Seller, Trustees, County and Babcock Ranch Management, LLC on November 15, 2005.

WHEREAS, the Babcock Florida Company ("Babcock") is the current owner of approximately 91,366.5 acres of predominantly agricultural land, partially in Charlotte County and partially in Lee County (the "Babcock Ranch"); and

WHEREAS, Seller, and certain affiliated entities, have entered into that certain Merger Agreement dated as of July 1, 2005 ("Babcock Contract"), whereby, under certain conditions, Seller's parent company MSKP Southwest Florida Investment Partners, Inc., can acquire 100% of the ownership interests in Babcock; and

WHEREAS, Seller, upon closing under the Babcock Contract, agrees that Babcock shall sell to Purchaser approximately 73,476.5 acres of the Babcock Ranch, contingent upon the execution by Seller, Lee County, Florida, Charlotte County, Florida and the Florida Department of Community Affairs of an Interlocal Agreement regarding the future planning of the Babcock Ranch, and also contingent upon the adoption of certain amendments by Charlotte County for a portion of the Babcock Ranch. Hereinafter "Seller" shall mean and refer to MSKP III, Inc. and/or Babcock as necessary to accomplish the purpose of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. AGREEMENT TO SELL. Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller in accordance with the provisions of this Agreement certain real property located in Lee County and Charlotte County, Florida, described in Exhibit "A" attached hereto, together with all improvements, easements, hereditaments and appurtenances and riparian and littoral rights, if any (collectively,

the "Property"), in accordance with the provisions of this Agreement, it being agreed and understood by Purchaser that Seller shall be retaining (i.e., not selling to Purchaser) the real property as described on Exhibit "B" attached hereto (the "Retained Property"). Seller and Purchaser hereby agree that the Property shall be conveyed to Purchaser in five (5) phases (each phase is herein referred to as "Phase I", "Phase II", "Phase III", "Phase IV" and "Phase V", and each parcel of real property being acquired in a phase is herein referred to as a "Takedown Parcel" or a "Phase"), subject to acceleration as set forth in paragraph 12.F. below. Legal descriptions for each Takedown Parcel described above will not be finalized upon the execution of this Agreement, but the same will be finalized upon delivery of the Survey for each Takedown Parcel as provided in Paragraph 4 below. The parties acknowledge that on the Effective Date of this Agreement Seller has only a beneficial interest in the Property by virtue of the Babcock Contract. Seller's obligation to convey any of the Property acquired by Seller to Purchaser under the provisions of this Agreement shall not arise until immediately prior to Seller merging into Babcock pursuant to the Babcock Contract. Seller has no liability or obligation under this Agreement in the event that the merger does not occur under the Babcock Contract. Purchaser acknowledges that: (a) in no event shall Babcock or any of its affiliates, subsidiaries or shareholders be bound or obligated under the terms of this Agreement prior to the merger under the Babcock Contract; (b) this Agreement shall not be deemed to bind or otherwise adversely impact or prejudice the rights of Babcock or its shareholders with respect to any future potential transaction with Purchaser in the event that the transaction contemplated by the Babcock Contract is not consummated for any reason; and (c) in the event the purchase of any Takedown Parcel does not take place the Seller retains all rights, title and interest present in said Takedown Parcel or as may accrue thereon in the future.

In consideration for County's Purchase Price, as hereinafter defined, such portions of the Takedown Parcels as lie in Lee County, Florida, valued at up to County's Purchase Price shall be titled in the name of County as the same are conveyed by Seller pursuant to the Takedown Schedule. Commission, DACS and County agree that the Trustees shall take fee simple title to all other portions of the Property at the closings notwithstanding that Commission and DACS are required to pay a portion of the Purchase Price. Seller shall convey its entire fee simple interest in the applicable Takedown Parcels to the Trustees and County, as aforesaid, at closing in accordance with the provisions of this Agreement. County agrees that such portions of the Property as are titled in County's name shall nevertheless be uniformly managed with the remainder of the Property under the provisions of the Management Agreement attached hereto as Exhibit "E".

2.A. PURCHASE PRICE. The purchase price for the Property shall be the amount of THREE HUNDRED FIFTY MILLION and no/100 Dollars (\$350,000,000.00) (the "Purchase Price"). The Commission shall pay Five Million and no/100 Dollars (\$5,000,000.00) of the Purchase Price ("Commission's Purchase Price"), DACS shall pay Five Million and no/100 Dollars (\$5,000,000.00) ("DACS' Purchase Price"), the County shall pay Forty Million and no/100 Dollars (\$40,000,000.00) of the Purchase Price ("County's Purchase Price") and the Trustees shall pay the balance of the Purchase Price ("Trustees' Purchase Price"). The Commission's Purchase Price is the sole responsibility of Commission and neither the Trustees nor DACS nor County shall have any obligation under this Agreement to provide any portion of the Commission's Purchase Price, and Seller shall have no recourse whatsoever, at law or equity, against the Trustees, DACS, the County or the applicable Takedown Parcel relating to the Commission's Purchase Price, subject, however, to the provisions of paragraph 16, hereof. The DACS' Purchase Price is the sole responsibility of DACS and neither the Trustees nor the Commission nor the County shall have any obligation under this Agreement to provide any portion of DACS' Purchase Price, and Seller shall have no recourse whatsoever, at law or equity, against the Trustees, the Commission, the County or the applicable Takedown Parcel relating to DACS' Purchase Price, subject, however, to the provisions of paragraph 16, hereof. The County's Purchase Price is the sole responsibility of County and neither the Trustees nor the Commission nor DACS shall have any obligation under this Agreement to provide any portion of the County's Purchase Price, and Seller shall have no recourse whatsoever, at law or equity, against the Trustees, the Commission, DACS or the applicable Takedown Parcel relating to the County's

Purchase Price, subject, however, to the provisions of paragraph 16, hereof. The Trustees' Purchase Price is the sole responsibility of Trustees and neither the Commission nor DACS nor the County shall have any obligation under this Agreement to provide any portion of the Trustees' Purchase Price, and Seller shall have no recourse whatsoever, at law or equity, against the Commission, DACS, the County or the applicable Takedown Parcel relating to the Trustees' Purchase Price, subject, however, to the provisions of paragraph 16, hereof. The parties agree that DSL has issued its approved value of the Property pursuant to Section 259.041(7) of the Florida Statutes, which equals or exceeds the Purchase Price (the amount of such approved value is herein called the "DSL Approved Value"). The Purchase Price shall be payable as follows:

(1) PHASE I PURCHASE PRICE. The purchase price for Phase I shall be the greater of (a) \$100,000,000.00 or (b) the product of the number of acres in Phase I as set forth on the Survey multiplied by \$5,000.00 ("Phase I Purchase Price"), which will be paid by state warrant at the Phase I Closing Date. Seller hereby authorizes Purchaser to issue funds for the purchase price directly to an escrow agent who is authorized by law to receive such payments and who is acceptable to Purchaser, and to require the escrow agent to pay Seller's expenses of sale and real estate taxes. The Phase I Purchase Price is subject to adjustment in accordance with Paragraph 2.B. This Agreement is contingent upon approval of the Final Phase I Purchase Price, hereinafter defined, by Purchaser and upon confirmation that the Final Phase I Purchase Price is not in excess of the maximum value of Phase I as determined in accordance with Section 259.041(7), Florida Statutes ("DSL Phase I Approved Value"). The determination of the DSL Phase I Approved Value and the Final Phase I Purchase Price can only be made after the completion and DSL's approval of the Survey required in Paragraph 4 for Phase I.

(2) PHASE II PURCHASE PRICE. The purchase price for Phase II shall be the greater of (a) \$62,500,000.00 or (b) the product of the number of acres in Phase II as set forth on the Survey multiplied by \$5,000.00 ("Phase II Purchase Price"), which will be paid at the Phase II Closing Date. Seller hereby authorizes Purchaser to issue funds for the Purchase Price directly to an escrow agent who is authorized by law to receive such payments and who is acceptable to Purchaser, and to require the escrow agent to pay Seller's expenses of sale and real estate taxes. Two Million Five Hundred Thousand and no/100 Dollars (\$2,500,000.00) of the Phase II Purchase Price shall be paid by the Commission. The Trustees shall pay the balance of the Phase II Purchase Price. The Phase II Purchase Price is subject to adjustment in accordance with Paragraph 2.B. This Agreement is contingent upon approval of the Final Phase II Purchase Price, hereinafter defined, by Purchaser and upon confirmation that the Final Phase II Purchase Price is not in excess of the maximum value of Phase II as determined in accordance with Section 259.041(7), Florida Statutes ("DSL Phase II Approved Value"). The determination of the DSL Phase II Approved Value and the Final Phase II Purchase Price can only be made after the completion and DSL's approval of the survey required in Paragraph 4 for Phase II.

(3) PHASE III PURCHASE PRICE. The purchase price for Phase III shall be the greater of (a) \$62,500,000.00 or (b) the product of the number of acres in Phase III as set forth on the Survey multiplied by \$4,576.00 ("Phase III Purchase Price") which will be paid by at the Phase III Closing Date. Seller hereby authorizes Purchaser to issue funds for the Purchase Price directly to an escrow agent who is authorized by law to receive such payments and who is acceptable to Purchaser, and to require the escrow agent to pay Seller's expenses of sale and real estate taxes. One Million Two Hundred Fifty Thousand and no/100 Dollars (\$1,250,000.00) of the Phase III Purchase Price shall be paid by the Commission, One Million Two Hundred Fifty Thousand and no/100 Dollars (\$1,250,000.00) of the Phase III Purchase Price shall be paid by DACS, and so much the Phase III Purchase Price as is attributable to lands lying in Lee County shall be paid by the County not to exceed \$40,000,000.00. The Trustees shall pay the balance of the Phase III Purchase Price. The Phase III Purchase Price is subject to adjustment in accordance with Paragraph 2.B. This Agreement is contingent upon approval of the Final Phase III Purchase Price, hereinafter defined, by Purchaser and upon confirmation that the Final Phase III Purchase Price is not in excess of the maximum value of Phase III as determined in

accordance with Section 259.041(7), Florida Statutes ("DSL Phase III Approved Value"). The determination of the DSL Phase III Approved Value and the Final Phase III Purchase Price can only be made after the completion and DSL's approval of the survey required in Paragraph 4 for Phase III.

(4) PHASE IV PURCHASE PRICE. The purchase price for Phase IV shall be the greater of (a) \$62,500,000.00 or (b) the product of the number of acres in Phase IV as set forth on the Survey multiplied by \$4,576.00 ("Phase IV Purchase Price") which will be paid by at the Phase IV Closing Date. Seller hereby authorizes Purchaser to issue funds for the Purchase Price directly to an escrow agent who is authorized by law to receive such payments and who is acceptable to Purchaser, and to require the escrow agent to pay Seller's expenses of sale and real estate taxes. One Million Two Hundred Fifty Thousand and no/100 Dollars (\$1,250,000.00) of the Phase IV Purchase Price shall be paid by the Commission, One Million Two Hundred Fifty Thousand and no/100 Dollars (\$1,250,000.00) of the Phase IV Purchase Price shall be paid by DACS, and County shall pay that portion of the Phase IV Purchase Price attributable to lands in Lee County, Florida, provided the Phase III and Phase IV Purchase Price attributable to lands in Lee County, Florida, shall not exceed \$40,000,000.00 in the aggregate. The Trustees shall pay the balance of the Phase IV Purchase Price. The Phase IV Purchase Price is subject to adjustment in accordance with Paragraph 2.B. This Agreement is contingent upon approval of the Final Phase IV Purchase Price, hereinafter defined, by Purchaser and upon confirmation that the Final Phase IV Purchase Price is not in excess of the maximum value of Phase IV as determined in accordance with Section 259.041(7), Florida Statutes ("DSL Phase IV Approved Value"). The determination of the DSL Phase IV Approved Value and the Final Phase IV Purchase Price can only be made after the completion and DSL's approval of the survey required in Paragraph 4 for Phase IV.

(5) PHASE V PURCHASE PRICE. The purchase price for Phase V shall be the greater of (a) \$62,500,000.00 or (b) the product of the number of acres in Phase V as set forth on the Survey multiplied by \$4,576.00 ("Phase V Purchase Price") which will be paid by at the Phase V Closing Date. Seller hereby authorizes Purchaser to issue funds for the Purchase Price directly to an escrow agent who is authorized by law to receive such payments and who is acceptable to Purchaser, and to require the escrow agent to pay Seller's expenses of sale and real estate taxes. Two Million Five Hundred Thousand and no/100 Dollars (\$2,500,000.00) of the Phase V Purchase Price shall be paid by the DACS. The Trustees shall pay the balance of the Phase V Purchase Price. The Phase V Purchase Price is subject to adjustment in accordance with Paragraph 2.B. This Agreement is contingent upon approval of the Final Phase V Purchase Price, hereinafter defined, by Purchaser and upon confirmation that the Final Phase V Purchase Price is not in excess of the maximum value of Phase V as determined in accordance with Section 259.041(7), Florida Statutes ("DSL Phase V Approved Value"). The determination of the DSL Phase V Approved Value and the Final Phase V Purchase Price can only be made after the completion and DSL's approval of the survey required in Paragraph 4 for Phase V.

In no event shall Purchaser be obligated to pay more than the Purchase Price (i.e., \$350,000,000.00) for the Property and in the event that, for the Phase V Purchase Price would cause the purchase price for the Property to exceed \$350,000,000.00, then the purchase price for such last phase shall be reduced so that for all phases Purchaser shall not have paid more than \$350,000,000.00.

Seller and Purchaser agree that Commission will have the option of funding a portion of the total Purchase Price of the Property with funds from the Commission's Land Acquisition Trust Fund, pursuant Section 372.074, F. S., for the purpose of establishing a Gopher Tortoise Mitigation Park on the Property, subject to the final approval of Seller and Purchaser as described in this Paragraph. In order for the Commission to determine the feasibility of designating a portion of the Property for the establishment of a Gopher Tortoise Mitigation Park, Seller and Purchaser agree to allow Commission to conduct a field analysis of the Property to evaluate and determine whether a suitable and sufficient area of the Property meets the Commission's Gopher Tortoise Site

Selection Criteria for the establishment of a Gopher Tortoise Mitigation Park. Upon completion of the field analysis of the property, the Commission will notify Seller and Purchaser whether or not a suitable and sufficient area of the Property meets the Commission Gopher Tortoise Site Selection Criteria for the establishment of a Gopher Tortoise Mitigation Park. If Commission determines that a suitable and sufficient area of the Property meets such criteria, and Seller and Purchaser approve and agree to designating a portion of the Property for that purpose, Commission will provide funds equal to the per acre Purchase Price of the applicable Takedown Parcel(s) as set forth above for the total acreage of the area on the Property designated as a Gopher Tortoise Mitigation Park. Further, if Seller and Purchaser agree to allow Commission to designate and establish a Gopher Tortoise Mitigation Park on the Property as outlined in this Agreement, Seller and Purchaser agree that the total Purchase Price established for the Property shall remain unchanged. In addition, if Seller and Purchaser agree to allow Commission to designate and establish a Gopher Tortoise Mitigation Park on the Property as described in this Agreement, Seller and Purchaser also agree that the area of the Property designated and established as a Gopher Tortoise Mitigation Park shall be managed by Commission in accordance with the Commission's criteria for the management of Gopher Tortoise Mitigation Parks. However, Seller and Purchaser and Commission agree that nothing contained within this paragraph shall be construed to obligate Seller or Purchaser to allow Commission to designate, establish or provide funds for an area of the Property to be designated and established as a Gopher Tortoise Mitigation Park. To the extent areas of the Property are agreed by the parties to be designated as a Gopher Tortoise Mitigation Park, payment therefor by Commission shall be made at the applicable Takedown Closing for the area or areas of the Property so affected. The payments made by Commission toward the Purchase Price for the establishment of a Gopher Tortoise Mitigation Park shall be in addition to and not in substitution of Commission's Purchase Price, as defined above, and shall result in an equivalent decrease in Trustees' Purchase Price. Commission and Manager shall cooperate to identify and manage additional uses of areas designated as a Gopher Tortoise Mitigation Park that are compatible with use of the areas for such mitigation.

2.B. (1) ADJUSTMENT OF PHASE I PURCHASE PRICE. If, prior to the Phase I Closing Date, DSL determines that the Phase I Purchase Price exceeds the DSL Approved Phase I Value, the Phase I Purchase Price will be reduced to the DSL Approved Phase I Value (herein the "Final Adjusted Phase I Purchase Price") and, in such event, Seller shall have the right, but not the obligation, to increase the amount of the acreage included in Phase I so that the value of the land will equal the original Phase I Purchase Price. For purposes of this Paragraph 2.B.(1), the DSL Approved Phase I Value may only be reduced from the portion of the DSL Approved Value applicable to the phase solely as a result of any matters disclosed in the Updated Survey.

(2) ADJUSTMENT OF PHASE II PURCHASE PRICE. If, prior to Phase II Closing Date, DSL determines that the Phase II Purchase Price exceeds the DSL Approved Phase II Value, the Phase II Purchase Price will be reduced to the DSL Approved Phase II Value (herein the "Final Adjusted Phase II Purchase Price") and, in such event, Seller shall have the right, but not the obligation, to increase the amount of the acreage included in Phase II so that the value of the land will equal the original Phase II Purchase Price. For purposes of this Paragraph 2.B.(2), the DSL Approved Phase II Value may only be reduced from the portion of the DSL Approved Value applicable to the phase solely as a result of any matters disclosed in the Updated Survey.

(3) ADJUSTMENT OF PHASE III PURCHASE PRICE. If, prior to Phase III Closing Date, DSL determines that the Phase III Purchase Price exceeds the DSL Approved Phase III Value, the Phase III Purchase Price will be reduced to the DSL Approved Phase III Value (herein the "Final Adjusted Phase III Purchase Price") and, in such event, Seller shall have the right, but not the obligation, to increase the amount of the acreage included in Phase III so that the value of the land will equal the original Phase III Purchase Price. For purposes of this Paragraph 2.B.(3), the DSL Approved Phase III Value may only be reduced from the portion of the DSL Approved Value applicable to the phase solely as a result of any matters disclosed in the Updated Survey



(4) ADJUSTMENT OF PHASE IV PURCHASE PRICE. If, prior to the Phase IV Closing Date, DSL determines that the Phase IV Purchase Price exceeds the DSL Approved Phase IV Value, the Phase IV Purchase Price will be reduced to the DSL Approved Phase IV Value (herein the "Final Adjusted Phase IV Purchase Price") and, in such event, Seller shall have the right, but not the obligation, to increase the amount of the acreage included in Phase IV so that the value of the land will equal the original Phase IV Purchase Price. For purposes of this Paragraph 2.B(4), the DSL Approved Phase IV Value may only be reduced from the portion of the DSL Approved Value applicable to the phase solely as a result of any matters disclosed in the Updated Survey.

(5) ADJUSTMENT OF PHASE V PURCHASE PRICE. If, prior to the Phase V Closing Date, DSL determines that the Phase V Purchase Price exceeds the DSL Approved Phase V Value, the Phase V Purchase Price will be reduced to the DSL Approved Phase V Value (herein the "Final Adjusted Phase V Purchase Price") and, in such event, Seller shall have the right, but not the obligation, to increase the amount of the acreage included in Phase V so that the value of the land will equal the original Phase V Purchase Price. For purposes of this Paragraph 2.B(5), the DSL Approved Phase V Value may only be reduced from the portion of the DSL Approved Value applicable to the phase solely as a result of any matters disclosed in the Updated Survey.

3.A. ENVIRONMENTAL SITE ASSESSMENT. On or before December 31, 2005, Seller shall furnish to Purchaser an environmental site assessment for the Property that meets the standards and requirements of DSL (the "Initial Assessment"). It is Seller's responsibility to ensure that the environmental consultant contacts DSL regarding these standards and requirements. Seller shall use the services of a competent, professional consultant with expertise in the environmental site assessment process to determine the existence and extent, if any, of Hazardous Materials on the subject Takedown Parcel. Prior to the closing date for each Phase, Purchaser, at Trustees' sole cost and expense, shall obtain an update of Seller's environmental site assessment of the subject Takedown Parcel that meets the standards and requirements of DSL (the "Assessment Update"). If further investigations, testing, monitoring or environmental site assessments are required by DSL to determine the existence or extent of Hazardous Materials on the Property, Purchaser, at its sole option may elect to extend the Closing for the applicable Takedown Parcel for up to 60 days to enable Seller to conduct such procedures. At Closing of each Phase, Trustees shall reimburse Seller an amount calculated by multiplying the cost of the Initial Assessment by a fraction the numerator of which is the number of acres in the subject Takedown Parcel and the denominator of which is the amount of acreage in the Property and then dividing the product of that calculation by 2, for a total cost to Trustees of the Initial Assessment at the conclusion of all closings on all five phases not to exceed \$150,000.00, unless this amount is increased by DSL. Before the first closing, Seller shall submit the necessary documentation to DSL evidencing payment in full of the Initial Assessment. For purposes of this Agreement "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste of any kind or any other substance which is regulated by any Environmental Law (as hereinafter defined in Paragraph 3.B.).

3.B. HAZARDOUS MATERIALS. In the event that the Initial Assessment or any Update Assessment provided for in Paragraph 3.A. confirms the presence of Hazardous Materials on the Property or any Takedown Parcel that violates applicable Environmental Law, then Seller shall commence and diligently pursue any assessment, clean-up and monitoring of the affected Takedown Parcel necessary to bring the Takedown Parcel into full compliance with Environmental Law; provided, however that if the estimated cost of bringing the affected Takedown Parcel into compliance with Environmental Law exceeds \$1,000,000 as reasonably determined by the parties, then Seller may elect to terminate this Agreement by delivering written notice to Purchaser of such election. Provided, however, if Seller so elects to terminate this Agreement, this Agreement shall nevertheless not terminate if Trustee or County, as applicable with respect to the affected Takedown Parcel, delivers written notice (the "Election Notice") to Seller within thirty (30) days after receipt of Seller's termination notice, agreeing to pay that portion of the estimated cost of bringing the affected Takedown Parcel

into compliance with Environmental Law that exceeds \$1,000,000 or agreeing to accept the Takedown Parcel "as is" and receive at closing a credit against the phase purchase price of \$1,000,000.00. If Trustee or County, as applicable, fails to timely provide the Election Notice to Seller, then Trustee or County, as applicable, shall be deemed to have waived any right to rescind Seller's termination of this Agreement as provided in this paragraph. If Seller fails to so elect to terminate this Agreement as provided in this paragraph then Seller shall bring the affected Takedown Parcel into compliance with Environmental Law. Notwithstanding anything herein to the contrary, consistent with and pursuant to Section 376.306, Florida Statutes, and other similar laws, in no event shall Seller be obligated to remediate or clean-up any present or former cattle "dipping vats" on the Property or any applicable Takedown Parcel and Purchaser shall be obligated to close on such affected Takedown Parcel subject to the same. For purposes of this Agreement, "Environmental Law" means all federal, state and local laws, including statutes, regulations, ordinances, codes, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to the protection of the environmental or human health, welfare or safety, or to the emission, discharge, seepage, release or threatened release of any contaminant, chemical, waste, irritant, petroleum product, waste product, radioactive material, flammable or corrosive substance, explosive, polychlorinated biphenyl, asbestos, hazardous or toxic substance, material or waste or any kind into the environment, including, without limitation, ambient air, surface water, ground water, or land including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource and Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Federal Superfund Amendments and Reauthorization Act of 1986, Chapters 161, 253, 373, 376 and 403, Florida Statutes, Rules of the U.S. Environmental Protection Agency, Rules of the Florida Department of Environmental Protection, and the rules of the Florida water management districts now or at any time hereafter in effect.

As to Phases I and II, if Seller is unable to commence or complete assessment, clean-up and monitoring to the extent required herein prior to Closing then Seller may do so after Closing and Purchaser shall withhold the estimated cost of the assessment, clean-up and monitoring, plus 50% of such estimated amount, until the parcels are brought into compliance with Environmental Law.

This Agreement shall not be construed to limit Seller's legal liability under any Environmental Law for Hazardous Materials located on the Property or to limit Purchaser's legal and equitable remedies against Seller under any Environmental Law for Hazardous Materials located on the Property.

4. SURVEY. Seller shall have the perimeter boundary of the Property surveyed at its expense on or before December 31, 2005. The survey ("Survey"), shall be prepared and certified by a professional surveyor and mapper licensed by the State of Florida in accordance with the minimum technical standards required by Florida law, be certified to Seller and Purchaser and Trustees' title insurance agent and title insurance underwriter, contain a certification of the acreage of the Property, and depict all encumbrances on the property, other than liens, that are disclosed by Seller's Commitment (as hereinafter defined). At the Closing of each Takedown Parcel, Trustees shall reimburse Seller an amount calculated by multiplying the cost of the Survey by a fraction the numerator of which is the number of acres in the subject Takedown Parcel and the denominator of which is the amount of acreage in the Property and then dividing the product of that calculation by 2, not to exceed a total for all five phases of \$125,000.00, unless this amount is increased by DSL. Before the first Closing Seller shall submit the necessary documentation to DSL which evidences payment in full of the perimeter Survey by Seller. If the Survey shows any encroachment on the Property or those improvements intended to be located on the Property encroach on the land of others, the same shall be treated as a title defect to the extent that Purchaser objects to the same as provided in Paragraph 6 below. Purchaser agrees that prior to each Closing, Purchaser, at Trustees' sole cost and expense, shall provide Seller with an Updated Survey (the "Updated Survey") which shall contain a legal description for the applicable Takedown Parcel, and a certification of the acreage of the

applicable Takedown Parcel (which shall be no less than 20,000 acres for Phase I, 12,500 acres for Phase II and approximately 13,659 acres for each subsequent takedown parcel, subject to acceleration in accordance with paragraph 12.F. herein. The acreage as provided for herein is subject to adjustment as expressly provided in this agreement or as otherwise agreed upon by the parties hereto). Each Takedown Parcel may be contiguous to the other previous Takedown Parcels and shall have a configuration that cannot unreasonably interfere with access to the then remaining Takedown Parcels that have not yet closed. Prior to Purchaser obtaining an Updated Survey for each Takedown Parcel as provided above, Purchaser and Seller shall mutually and reasonably agree upon the exact boundaries of the applicable Takedown Parcel, which shall be consistent with the Takedown Schedule agreed upon in Paragraph 12.G.1., subject to revisions as reasonably agreed upon by the parties, and subject to acceleration in accordance with paragraph 12.F. herein.

5. TITLE INSURANCE. Seller, at Seller's expense, shall provide Purchaser with a title commitment on the Property (prepared for Seller), together with copies of the exceptions listed therein (the "Seller's Commitment"). Purchaser shall, at Trustees' sole cost and expense, obtain a marketable title insurance commitment, to be followed by an owner's marketable title insurance policy (ALTA Form "B" with Florida revisions) insuring marketable title of Trustees to each Takedown Parcel, in the amount of the final purchase price therefor (the "Takedown Commitments").

6. DEFECTS IN TITLE. Within forty-five (45) days after the date that Purchaser has received (by personal delivery to Sandra Stockwell, Esq. or any successor attorney for DSL) from Seller: (x) the Seller's Commitment or any subsequent update thereof; and (y) the Survey (reflecting the matters set forth in Seller's Commitment) or any subsequent update thereof, whichever occurs last, Purchaser shall provide written notice to Seller if Seller's Commitment or the Survey discloses any defect in title, other than those matters set forth on the list attached hereto as Exhibit "C" – it being agreed that any matters that Purchaser does not object to within such 45-day period shall be deemed to be acceptable to Purchaser. Seller may deliver to Purchaser (by personal delivery to Sandra Stockwell, Esq. or any successor attorney for DSL), from time to time, an Updated Seller's Commitment and Survey, whereupon the time frames described above for Purchaser to review and object to any new title and/or survey matters shall be applicable thereto. The matters set forth on Exhibit "C" and the matters accepted by Purchaser after review of Seller's Commitment and Survey (and any updates thereof) as provided herein are collectively referred to as the "Permitted Exceptions."

If the Takedown Commitments and Updated Surveys disclose any defects in title other than the "Permitted Exceptions", Seller shall, within ninety (90) days after written notice from Purchaser, use diligent efforts to remove said defects in title. Seller agrees to use diligent efforts to correct the defects in title within the time provided therefor (except that Seller shall not be required to bring any lawsuits to eliminate defects in title or to otherwise expend more than \$50,000.00 in legal fees and other costs and expenses to do so (in the aggregate for all Takedown Parcels), provided, however, that, at each Closing, Seller shall be obligated to satisfy, bond-off or otherwise cause the title insurance company to delete from the title policy, liens against the Property, except that in no event shall Seller be obligated to expend more than \$400,000.00 to remove any nonconsensual liens. A "nonconsensual lien" is defined for purposes of this Agreement as a lien that has been recorded or that has arisen contrary to law). If Seller is unsuccessful in removing the title defects within said time, Purchaser shall have the option to either: (a) accept the title as it then is with a reduction in the applicable purchase price mutually agreed to by the parties, as may be determined in each party's sole and absolute discretion; (b) accept title as it then is with no reduction in the applicable purchase price – whereupon such defects shall be deemed to be Permitted Exceptions, (c) extend the amount of time Seller has to cure the defects in title, but if Seller is diligently pursuing title cures and any delays are not within the control of Seller Purchaser may not extend the amount of time by more than ninety (90) days in the aggregate for each Closing on a Takedown Parcel, or (d) terminate this Agreement, thereupon releasing Purchaser and Seller from all further obligations under this Agreement. If Seller fails to make a diligent effort to remove the title defects, Seller shall be in default and the

provisions of Paragraph 16. of this Agreement shall apply. If Purchaser does not give Seller written notice of its election of clause (a), (b), (c) or (d) within forty-five (45) days after receipt of written notice by Seller (which has been hand delivered to Sandra Stockwell) stating that Seller has been unsuccessful in removing a title defect, then Purchaser shall be deemed to have elected clause (b) and this Agreement shall remain in full force and effect.

7. INTEREST CONVEYED. At the respective Closings of each Takedown Parcel, Seller shall execute and deliver to Trustees a statutory warranty deed conveying marketable title to the applicable Takedown Parcel, in fee simple free and clear of all liens, reservations, restrictions, easements, leases, tenancies and other encumbrances, except for the Permitted Exceptions and those matters that are acceptable encumbrances in the opinion of Purchaser pursuant to the terms of this Agreement, except that, in consideration of County's Purchase Price, lands lying within Lee County with a purchase price equal to County's Purchase Price shall be deeded by statutory warranty deed to County on the same terms and conditions. The statutory warranty deed to the Trustees shall include a recital that the property acquired has been acquired under the provisions of Section 259.041, Florida Statutes, as conservation lands. The statutory warranty deed to County shall similarly provide that the lands described therein are restricted to use as conservation lands. As a part of the closing on Phase V, Seller shall also convey to Trustees a conservation easement in substantially the same form as that attached hereto as Exhibit "F" over the lands as generally depicted in Exhibit "G", attached hereto.

Seller warrants and represents that as a result of the merger provided for in the Babcock Contract, after the merger Babcock will be bound by the terms and provisions of this Agreement to the same extent and in the same manner as Seller.

8. PREPARATION OF CLOSING DOCUMENTS. Upon execution of this Agreement, Seller shall submit to DSL a properly completed and executed beneficial interest affidavit and disclosure statement as required by Sections 286.23, 375.031(1) and 380.08(2), Florida Statutes. In connection with each Closing, Purchaser shall prepare the deeds and conservation easement described in Paragraph 7. of this Agreement, Purchaser's and Seller's closing statements, the title, possession and lien affidavit certified to Purchaser and title insurer and an environmental affidavit, both in the form attached hereto as Composite Exhibit "D", the Management Agreement in the form attached hereto as Exhibit "E", and the Easements (as defined in Paragraph 12.G.).

9. PURCHASER'S REVIEW FOR CLOSING. Except as otherwise provided herein, Purchaser will approve or reject in writing each item required to be provided by Seller under this Agreement. Seller will have fifteen (15) days to cure and resubmit any rejected item. In the event Seller fails to timely deliver any item, or Purchaser rejects any item after delivery, DSL may in its discretion extend the applicable Closing date for the subject phase until DSL approves Seller's documents.

10. EXPENSES. Seller and Trustees will each bear one-half the cost of recording the deeds and the conservation easement described in Paragraph 7. of this Agreement and any other recordable instruments that DSL deems necessary to assure good and marketable title to the Property, the cost of the Initial Assessment and the cost of the Survey. Seller shall pay the documentary revenue stamp tax and all other taxes or costs associated with the conveyance and the cost of the issuance of Seller's Commitment. Trustees shall pay the cost of the Takedown Commitments and the issuance of the title insurance policies that pertain thereto, any environmental assessments specific to a Takedown Parcel and which are not the Initial Assessment, and the cost of the Updated Surveys (to the extent provided in Paragraph 4 hereof and in the manner elsewhere described). Each party shall pay the fees of its respective counsel.

11. TAXES AND ASSESSMENTS. All real estate taxes and assessments which are or which may become a lien against Phase I, Phase II, Phase III, Phase IV and Phase V shall be satisfied of record by Seller at each

respective Closing. If Trustees or County acquire fee title to Phase I, Phase II, Phase III, Phase IV or Phase V between January 1 and November 1, Seller shall, in accordance with Section 196.295, Florida Statutes, place in escrow with the county tax collector an amount equal to the current taxes prorated to the date of transfer, based upon the current assessment and millage rates on such parcel. In the event the Trustees or County acquire fee title to Phase I, Phase II, Phase III, Phase IV or Phase V on or after November 1, Seller shall pay to the county tax collector an amount equal to the taxes that are determined to be legally due and payable by the county tax collector on such parcel.

12. CLOSING PLACE AND DATE.

A. The Closing for Phase I shall be on or before April 1, 2006, if funding is secured sufficiently in advance of said date to enable preparation for closing on such date, otherwise on or before July 31, 2006 ("Phase I Closing Date"); provided, however, that if a defect exists in the title to Phase I, title commitment, Survey, environmental site assessment, or any other documents required to be provided or completed and executed by Seller, the closing for Phase I shall occur either on the original Phase I Closing Date or within sixty (60) days after receipt of documentation curing the defects, whichever is later.

B. The closing for Phase II shall be on or before July 31, 2006 ("Phase II Closing Date"); provided, however, that if a defect exists in the title to Phase II, title commitment, Survey, environmental site assessment, or any other documents required to be provided or completed and executed by Seller, the closing for Phase II shall occur either on the original Phase II Closing Date or within sixty (60) days after receipt of documentation curing the defects, whichever is later.

C. The closing for Phase III shall be on or before July 31, 2007 ("Phase III Closing Date"); provided, however, that if a defect exists in the title to Phase III, title commitment, Survey, environmental site assessment, or any other documents required to be provided or completed and executed by Seller, the closing for Phase III shall occur either on the original Phase III Closing Date or within sixty (60) days after receipt of documentation curing the defects, whichever is later.

D. The closing for Phase IV shall be on or before July 31, 2008 ("Phase IV Closing Date"); provided, however, that if a defect exists in the title to Phase IV, title commitment, Survey, environmental site assessment, or any other documents required to be provided or completed and executed by Seller, the closing for Phase IV shall occur either on the original Phase IV Closing Date or within sixty (60) days after receipt of documentation curing the defects, whichever is later.

E. The closing for Phase V shall be on or before July 31, 2009, ("Phase V Closing Date"); provided, however, that if a defect exists in the title to Phase V, title commitment, Survey, environmental site assessment, or any other documents required to be provided or completed and executed by Seller, the closing for Phase V shall occur either on the original Phase V Closing Date or within sixty (60) days after receipt of documentation curing the defects, whichever is later.

F. The date, time and place of each respective closing set forth above (herein referred to as "Closing") shall be set by Purchaser, provided, if Closing on Phase I does not occur on or before July 31, 2006, for reasons outside the control of Seller, Seller may, in its sole discretion, elect to terminate this Agreement by written notice thereof to Purchaser in accordance with Paragraph 28 hereof. It is the intent of Seller and Purchaser to sell and acquire the Property as soon as possible, and in advance of the Takedown Schedule, if funding is available. At Purchaser's option and upon at least thirty (30) days prior written notice to Seller, Purchaser may elect to accelerate the Closing for all or a portion of contiguous lands in the immediately succeeding Phase or Phases. Notwithstanding anything to the contrary in this subparagraph F, nothing herein

shall be deemed to grant Purchaser the right to extend the Closing date for each applicable Phase beyond the applicable Closing date set forth above and Purchaser shall be obligated to Close on all of each Phase on or before the applicable Closing date therefor, as to which time shall be of the essence for the performance of the parties obligations hereunder.

G. It shall be a condition precedent to the obligations of Seller and Purchaser under this Agreement that on or before dates set forth below, the following conditions shall be satisfied or waived in writing by the parties (collectively the "Conditions"), to wit:

(1) No later than ninety (90) days prior to the Phase I Closing:

(a) Seller and Purchaser shall agree upon forms of easement to be reserved by Seller over, across and under the Property for the benefit of the Retained Property and to be granted to Purchaser over, across and under Seller's Retained Property for the benefit of the Property, all for general utility purposes for (i) communication lines, such as, fiber optic cable and access thereto, (ii) utilities (e.g., water, sewage [but the parties agree to use reasonable efforts to minimize the necessity for any such sewage lines across the other's property], drainage, etc.) and (iii) access along corridors mutually agreed to by the parties (the number and location of such corridors to be determined by the parties during the closing preparation for each phase) which shall include an easement for a paved greenway trail for non-motorized transport such as biking, hiking and horseback riding from the Retained Property over and across the Property to the regional park that is adjacent to the Caloosahatchee River and such other greenway trails as may be agreed to by the parties, and shall otherwise be in form and substance reasonably acceptable to Seller and Purchaser. Such easements shall to the best extent practicable utilize present roadways, prior-created swales or turnouts, and other impacted areas; and shall to the best extent practicable avoid negative impacts to environmentally sensitive areas of the Property. Any easement for drainage reserved by Seller shall be for the purpose of: (x) maintaining the Retained Property in its current condition with respect to stormwater drainage and only to the extent such storm water drainage is, at the date of this Agreement, deposited on lands to be acquired by County and Trustees; or (y) accepting drainage from the Retained Property as the same is developed, provided that the South Florida Water Management District issues a permit therefor.

(b) Seller and Purchaser shall agree upon a form of easement in favor of Purchaser for access over and across the Retained Property, along a corridor mutually agreed to by the parties (the location of which shall be determined by the parties prior to the Phase I Closing), and shall otherwise be in form and substance reasonably acceptable to Seller and Purchaser.

(c) Seller and Purchaser shall agree upon a map depicting each of the five (5) Takedown Parcels (the "Takedown Schedule"), with Phases III and IV containing those portions of the Property lying in Lee County, Florida. This map shall also depict the order for additional full and/or partial sections of land to be added to the Takedown Parcel(s) if funding is available as set forth in paragraph 12.F. above.

(2) Prior to the Phase I Closing:

Purchaser's Condition:

(a) Trustees and Commission shall have obtained funding from the Florida State Legislature in a sufficient amount for Purchaser to acquire Phase I for the fiscal year in which the Phase I Closing is to occur.

Seller's Conditions:

(b) Seller shall have merged into Babcock under the provisions of the Babcock Contract.

(c) Seller, Lee County, Florida, Charlotte County, Florida and the Florida Department of Community Affairs shall have entered into an Interlocal Agreement addressing various development issues for the Retained Property.

(d) Charlotte County, Florida shall have adopted certain Overlay Amendments to its Comprehensive Plan and Land Development Code, and those Overlay Amendments shall have become final, unchallengeable and unappealable.

(3) Prior to the Phase II Closing, Phase III Closing, Phase IV Closing and Phase V Closing, respectively, Trustees, Commission and DACS, or whichever of Commission or DACS as is providing purchase funds as provided for in paragraph 2.A., shall have obtained an appropriation for such Closing from the Florida State Legislature in a sufficient amount for Purchaser to acquire the applicable Takedown Parcel for the fiscal year in which the applicable Closing is to occur.

Nothing herein shall be binding upon the Governor and Cabinet in their capacity as the Administration Commission or the Florida Land and Water Adjudicatory Commission. Seller and Purchaser shall use diligent, good faith efforts to attempt to satisfy the Conditions, including, without limitation, the negotiation of the various documents referenced as part thereof. In the event that the Conditions are not satisfied on or before the date(s) set forth above, then either party, with respect to the conditions that are applicable thereto that cannot be cured, shall have the right to terminate this Agreement by written notice to the other up until the time that such Conditions are actually satisfied or waived, whereupon the parties shall be released of all further obligations each to the other, unless such obligations expressly survive the termination hereof. If the conditions as set forth in subparagraph G(2)(c) and (d) above have not been satisfied, but can be satisfied, Seller has 60 days from July 31, 2006 to satisfy those conditions, or DSL or the County as to its interest, has the discretion to terminate this agreement. If the conditions in subparagraph G(2)(c) and (d) can not be satisfied then Seller shall notify DSL and County of its intent to waive the conditions or terminate the agreement by July 31, 2006 or the DSL, or the County as to its interest, has the discretion to terminate this agreement.

13. RISK OF LOSS AND CONDITION OF PROPERTY. Seller assumes all risk of loss or damage to Phase I, Phase II, Phase III, Phase IV and Phase V prior to the date of the respective Closings, and warrants that Phase I, Phase II, Phase III, Phase IV and Phase V shall be transferred and conveyed to Trustees and County, as applicable, in the same or essentially the same condition as of the date of Seller's execution of this Agreement, ordinary wear and tear excepted. However, in the event the condition of Phase I, Phase II, Phase III, Phase IV or Phase V is altered by an act of God or other natural force beyond the control of Seller, Purchaser shall have the right to terminate this Agreement unless Purchaser has been subrogated at closing to all Seller's rights under all applicable casualty insurance on the Property, and provided that the purchase price for the parcel shall not exceed the DSL-approved value for the parcel considering the casualty incurred (taking into account any available insurance proceeds). Any casualty insurance payments made to Seller prior to closing and, therefore, not available to Purchaser under the subrogation, shall have been expended by Seller to cure the casualty, as

evidenced by such documentation as is acceptable to Purchaser on the issue, or Seller shall provide Purchaser with a credit against the purchase price in the amount so paid to Seller. Seller agrees to clean up and remove all abandoned personal property, refuse, garbage, junk, rubbish, trash and debris from Phase I, Phase II, Phase III, Phase IV and Phase V to the satisfaction of Purchaser prior to each respective Closing.

14. RIGHT TO ENTER PROPERTY AND POSSESSION. Seller agrees that from the date this Agreement is executed by Seller, Purchaser and its agents, upon reasonable notice and subject to Seller obtaining all consents required from Babcock under the provisions of the Babcock Contract to the extent that Seller has not yet merged into Babcock, shall have the right to enter the Property for all lawful purposes in connection with this Agreement. Seller shall deliver possession of Phase I, Phase II, Phase III, Phase IV and Phase V to Purchaser at the respective Closing of each phase. Purchaser shall be liable for all damages arising from its presence on the Property under the provisions of this Agreement for which it is found legally responsible.

15. ACCESS. Seller warrants that there is legal ingress and egress for each phase of the Property as it closes over public roads or valid, recorded easements for the use and benefit of and as an appurtenance to the Property.

16. DEFAULT. If any party defaults under this Agreement, the non-defaulting party may waive the default and proceed to Closing, or may seek any other remedy available at law or in equity against the defaulting party. In the event that the County, Commission, DACS or the Trustees does not pay their portion of the Purchase Price with respect to a Closing as provided in this Agreement, then Seller shall have all rights and remedies available against the party that does not pay its applicable portion of the Purchase Price. In such event, in addition to all other rights and remedies available to Seller under this Agreement, at law or in equity, Seller shall have the right to (a) cancel this Agreement in its entirety, or (b) close on a portion of the Property as to which funds are available for the per-acre purchase price described in paragraph 2, in which event the next scheduled Takedown shall include the portion of the Property not included in the originally scheduled Takedown and the applicable Purchase Price shall be adjusted accordingly. If a purchaser is unwilling to provide that purchaser's portion of the Purchase Price at any Closing for which such contribution is due, then, before Seller may use its election as aforesaid, the remaining purchasers or any of them may elect to provide the Purchase Price due from the unwilling purchaser and shall succeed to the interest of the unwilling purchaser to the extent of such payment.

17. BROKERS. Seller warrants that no persons, firms, corporations or other entities are entitled to a real estate commission or other fees as a result of this Agreement or subsequent closing, except as accurately disclosed on the disclosure statement required in Paragraph 8. Seller shall indemnify and hold Purchaser harmless from any and all such claims, whether disclosed or undisclosed. Purchaser states that no persons, firms, corporations or other entities are entitled to a real estate commission or other similar fees as a result of Purchaser's actions with regard to this Agreement or subsequent closing.

18. RECORDING. Purchaser may record this Agreement, or notice of it, in the appropriate county or counties.

19. ASSIGNMENT. This Agreement may not be assigned by either party without the prior written consent of the other party.

20. TIME. Time is of essence with regard to all dates or times set forth in this Agreement.

21. SEVERABILITY. In the event any of the provisions of this Agreement are deemed to be unenforceable, and the unenforceability of said provisions does not adversely affect the purpose and intent of this Agreement the enforceability of the remaining provisions of this Agreement shall not be affected.



22. SUCCESSORS IN INTEREST. This Agreement shall bind and inure to the benefit of Seller and Purchaser and their respective heirs, legal representatives and successors. Whenever used, the singular shall include the plural and one gender shall include all genders.

23. ENTIRE AGREEMENT. This Agreement 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 supplement, modification or amendment to this Agreement shall be binding unless executed in writing by the parties. The parties agree that if, in the opinion of DSL, it becomes necessary to amend the legal description of the perimeter or any Takedown Parcel to correct errors, to more properly describe the Property or the Takedown Parcel, to cut out portions of the Property or a parcel affected by title defects unacceptable to Purchaser that cannot be timely removed by the Seller (as may be mutually agreed upon by Seller and Purchaser in their sole and absolute discretion), or to otherwise revise the legal description of the Property or the Takedown Parcel, the legal description to be used in the Survey (if any) and in the closing instruments required by this Agreement shall be revised by or at the direction of Purchaser, and shall be subject to the final approval of DSL. Anything to the contrary hereinabove notwithstanding, such a revision of the legal description of the Property shall not require a written amendment to this Agreement. In such event, the Seller's execution and delivery of the closing instruments containing the revised legal description and the Purchaser's acceptance of said instruments and of the final Survey (if any) containing the revised legal description shall constitute a full and complete ratification and acceptance of the revised legal description of the Property by the parties.

Seller acknowledges that the Trustees have made various delegations of power for the purpose of land acquisition, and not all representatives of the Trustees or the DSL have authority to act in all situations. Consequently, this Agreement may be terminated by the Trustees only in writing signed by the person or persons who signed this Agreement on behalf of the Trustees or that person's successor.

24. WAIVER. Failure of Purchaser 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 of any such covenant, condition or right; but the same shall remain in full force and effect.

25. AGREEMENT EFFECTIVE (the "Effective Date"). This Agreement or any modification, amendment or alteration thereto, shall not be effective or binding upon any of the parties hereto until it has been executed by all of the parties hereto and approved by or on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, the Lee County Board of County Commissioners and the Florida Fish and Wildlife Conservation Commission.

26. COUNTERPARTS. This Agreement may be executed in one or more counterparts, but all such counterparts, when duly executed, shall constitute one and the same Agreement.

27. ADDENDUM. Any addendum attached hereto that is signed by the parties shall be deemed a part of this Agreement.

28. NOTICE. Whenever either party desires or is required to give notice unto the other, it must be given by written notice, and either delivered personally, transmitted via facsimile transmission, mailed postage prepaid, or sent by overnight courier to the appropriate address indicated on the first page of this Agreement, or such other address as is designated in writing by a party to this Agreement. Notices to the Seller shall also be copied to: Gunster, Yoakley & Stewart, P.A., 777 South Flagler Drive, Suite 500, East Tower, West Palm Beach, Florida 33401, Attn: Ernie Cox, Esq.

29. DISCLAIMER OF REPRESENTATIONS. Purchaser hereby agrees that except to the extent expressly provided to the contrary in this Agreement, Seller makes and has made no warranty or representation, express or implied: (a) as to the condition or suitability of any portion of the Property or as to ANY WARRANTY OF MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OR RELATING TO THE ABSENCE OF LATENT OR OTHER DEFECTS; (b) with regard to the accuracy of any information furnished to Purchaser, or by any statement of any broker, employee, agent or other representative or affiliate of Seller, except that Seller agrees and intends that Purchaser may rely on the surveyors and environmental consultants whose products are required to be provided by Seller under the provisions of this Agreement; and (c) regarding the use of the Retained Property or any other land that Seller may own adjacent to or within the vicinity of the Property, including, without limitation, the type, nature or configuration of the development thereof, and Purchaser acknowledges and agrees that Seller is not obligated to construct or cause the construction of any improvements on any of such other land. Purchaser has made or has been afforded an opportunity to inspect the Property (including without limitation, whether or not hazardous or toxic materials are or have heretofore been located on or under or generated from any portion of the Property), except that Seller agrees and intends that Purchaser may rely on the Survey and Initial Assessment prepared by Seller's consultants in familiarizing itself with the Property and Purchaser has the right so to do under the provisions of this Agreement. Notwithstanding the nature or extent of the inspections Purchaser has made or will make, Purchaser shall purchase and accept every Takedown Parcel in its "as is" condition and, upon acceptance of the deed at each Closing, Purchaser shall be conclusively deemed to have accepted the Property in its "as is" condition (as so corrected or cured by Seller, if applicable) and as represented in the Survey and Initial Assessment provided by Seller on which Seller agrees it intends Purchaser to rely.

30. SURVIVAL. The covenants, warranties, representations, indemnities and undertakings of Seller set forth in this Agreement shall survive each Closing, the delivery and recording of the deed described in Paragraph 7. of this Agreement and Purchaser's possession of the Property for the period of three (3) years.

31. CONTINUING MAINTENANCE OBLIGATION. Seller and Purchaser acknowledge and agree that the present condition of the Property is due to the stewardship components inherent within a well-managed cattle ranch and agricultural operation that has been in existence for over 90 years. The present condition of the Property is the primary reason for Purchaser's desire to purchase, and Seller's desire to manage, the same. In order to assure that the Property will continue to be well managed and for Seller or its successors or assigns to accept the maintenance obligation of the Property, Seller has created an entity to manage the Property and the management entity and Purchaser have agreed to enter into the Management Agreement in the form attached hereto as Exhibit "E" for each Takedown Parcel. The Management Agreement requires, among other things, that Seller use reasonable efforts to control the spread of exotic, non-native vegetation and also manage cattle and wildlife on the Property, and for the creation of a management plan subject to approval by the Trustees.

32. MITIGATION AND RURAL LAND STEWARDSHIP PROGRAM.

(A) Seller reserves the right to cause ecological restoration or mitigation before conveyance of each Takedown Parcel, for wetland mitigation pursuant to Chapter 373, Part 4, Florida Statutes and/or applicable federal permitting requirements. Purchaser agrees that Seller shall retain any benefits from the successful restoration efforts before such conveyance but the portion of the property that is restored will nevertheless be conveyed to the Purchaser pursuant to the terms of this Agreement. No diminution in purchase price caused by a reduction in DSL-approved value as a result of the mitigation efforts as provided by this sub-paragraph shall be grounds for Seller to terminate this Agreement. Purchaser will not accept any transfer from Seller of any long-term maintenance trust required to obtain the credits for continuous management of the Property, but any such long term maintenance, whether provided by trust agreement or otherwise, shall remain the sole and exclusive

responsibility of Seller. Purchaser agrees to provide access to the Property for Seller to undertake any such long-term maintenance. Nothing in this Agreement, however, shall be construed to constitute any proprietary authority required for use of the state-owned lands for such mitigation activities, Seller understanding that Purchaser's proprietary authorization will be required for the use of any lands owned by Purchaser for such purposes and such authorization may be obtained only pursuant to the statutes and rules governing the grant of such authorization, and may not be obtained by contract.

(B) Purchaser acknowledges that Seller may (i) utilize Florida's Rural Land Stewardship Program pursuant to Section 163.3177(11)(d), Florida Statutes, on the Retained Property and Takedown Parcels III, IV and V, (ii) grant easements pursuant to Section 163.3177(11)(d), Florida Statutes, prior to Purchaser's acquisition thereof in form and substance acceptable to the applicable County and DSL in the applicable County's and DSL's reasonable discretion and (iii) apply for panther and other listed species compensation credits generated to satisfy requirements under the Federal Endangered Species Act. No diminution in purchase price caused by a reduction in DSL-approved value as a result of the uses as provided by this sub-paragraph shall be grounds for Seller to terminate this Agreement. Nothing herein shall be construed to limit the regulatory authority of any federal, state or local agency with respect to the permits and authorizations addressed herein.

(C) After Trustees have approved this Agreement the location of the areas described in this Paragraph 32 shall be mutually agreed to by the parties, in their reasonable discretion.

(D) In the event the provisions of this Paragraph 32 are utilized by Seller, and result in a diminution in value of a Takedown Parcel, as determined by the appraiser(s), the phase purchase price for the applicable Takedown Parcel shall be adjusted to reflect such diminution, but Seller shall have the right to add additional acreage to the applicable Takedown Parcel so that the value of such Takedown Parcel will equal the original phase purchase price.

### 33. WATER RESOURCES.

(A) As a result of the merger under the provisions of the Babcock Contract, Town and Country Utility Company will be wholly owned by Seller's parent company. Town and Country Utility Company holds Florida Public Service Commission Certificate No. 613 W as the exclusive water service provider for the Property and the Retained Property. Town and Country Utility Company is also the lessee under the provisions of a lease for well sites and access thereto granted by Babcock. Town and Country Utility Company, its successors and assigns, but not a receiver appointed under the provisions of Section 367.165, Florida Statutes, is hereinafter referred to as "Utility". Seller agrees that Seller shall cause the Utility's Public Service Commission Certificate to be released and terminated with respect to the Property as applied to each Takedown Parcel acquired by the Purchaser as soon as practicable after closing thereon.

(B) On or before each Takedown, Seller shall amend those certain Lease Agreements dated October 5, 1998, and May 17, 1999, as amended, between Babcock Florida Company and Town and Country Utilities Company so that such Leases will be terminated with respect to and no longer encumber the applicable Takedown Parcel.

(C) Prior to the Closing of each Takedown Parcel that has a surface water control structure, the parties hereto will agree upon the following, working in conjunction with the South Florida Water Management District: (i) the range of seasonal control elevations for surface water on such Takedown Parcel; and (ii) the party responsible for the operation, management and maintenance of such structure in order to protect natural areas and for the purposes of flood control on the Property and on Seller's Retained Property.

(D) Pursuant to Chapters 253 and 259, Florida Statutes, and 18-2, Florida Administrative Code, Trustees may grant proprietary authorization for the use of state-owned lands provided that the proposed use is compatible with and consistent with the purpose for which the lands were acquired.

At such a time as Charlotte County has demonstrated the need and demand for a public water supply beyond its current capacity to the satisfaction of the regulatory agency with jurisdiction to allocate and permit the withdrawal of water and it has obtained a consumptive use permit for such a purpose, it may apply for the use of the Property for the location of well sites, the installation of necessary pipelines and the installation of electrical utilities for such withdrawal. It is anticipated that the initial application will be for 10 MGD. Charlotte County may apply for a greater amount of withdrawal if there is a demonstrated need and demand for public water supply beyond 10 MGD to the satisfaction of the regulatory agency with jurisdiction to allocate and permit the withdrawal of water and it has obtained a consumptive use permit for such a purpose. Charlotte County is authorized access to the Property solely for the purpose of applying for the consumptive use permit and conducting studies associated with the same. The Division of State Lands as staff to the Trustees shall accept and process an application from Charlotte County for the use of the Property for such purposes and agenda subh application for consideration by the Trustees if the application meets the criteria of Paragraph 33(D) of this Agreement. Any such application must provide that:

1. No such well site shall be provided on any portion of the Property lying within Lee County; and
2. The use of the Property for withdrawal of water by Charlotte County shall be solely for public water supply purposes and not for wholesale or retail sale outside Charlotte County; and
3. Any pipeline proposed to be used for transferring water across Telegraph Swamp shall be co-located along the existing water control structures or immediately adjacent thereto. Well sites and any easements for water pipelines and electrical utilities necessary to transport the water withdrawn from the Property shall be located along existing roads and in previously impacted areas or designed in such a way as to create the least environmental impact. In no event will any well site or easements for water transport be located in wetlands or environmentally sensitive areas, including but not limited to Telegraph Cypress Swamp.
4. Any proprietary use granted by the Trustees to Charlotte County as provided for in this paragraph 33(D) or otherwise for the placement of water wells on the Property and the transport of water from such wells across the Property shall require consideration to be paid by Charlotte County to Trustees.

Nothing herein shall be construed to affect the exercise of any regulatory authority of the applicable Water Management District under Chapter 373, Florida Statutes, the Florida Department of Environmental Protection or the Florida Land and Water Adjudicatory Commission under Chapter 373, Florida Statutes, or to provide any assurances that a consumptive use permit will be issued to withdraw water from well sites on the Property. Nothing herein shall be construed to constitute Trustees' authorization to Charlotte County or others to use the Property for any purpose not specified herein. Any authorization for the use of the Property may only be granted by the Trustees and is not subject to delegation of authority.

(E) The parties hereto acknowledge and agree that it is the intention of Seller and Utility to provide water and wastewater service wholly within the Retained Property, and that the Seller shall not use any portion of the Property or its resources for such purposes except as provided in paragraph 12. G of this Agreement for Sale and Purchase. Seller will comply with all applicable permitting requirements under Chapter 373, Florida Statutes. Nothing herein shall be construed to affect the exercise of any regulatory authority of the applicable Water Management District under Chapter 373, Florida Statutes, Florida Department of Environmental Protection or the Florida Land and Water Adjudicatory Commission under Chapter 373, Florida Statutes.

34. PROPERTY OWNER'S ASSOCIATION (POA). Prior to the first sale of a dwelling unit to a third party occupant in the Retained Property and in consideration of the benefits to the Retained Property provided by the Property and the provisions of this Agreement, Seller, in its capacity as developer thereof, shall create a POA over the development of the Retained Property that will cause to be set an assessment of at least \$1.00 per month per dwelling unit, as such units are habitated, for the purpose of supporting the environmental stewardship activities on the Property, including environmental research thereon. The requirement for such fee shall be set forth in covenants on the Retained Property and run with the land. The funds so collected by the POA shall be deposited to the management account for the Property and used for the management, maintenance and improvement of the Property and for a research and education center thereon, as more particularly provided by the terms of the Management Agreement attached hereto as Exhibit "E".

35. AGENCY. Purchaser's agent in all matters under this Agreement shall be the Division of State Lands of the Florida Department of Environmental Protection ("DSL"). The foregoing agency shall be deemed to include, without limitation: (a) review and approval or disapproval, as applicable, of Seller's Commitment, the Survey, the Updated Survey and the Takedown Commitments, (b) approval/disapproval of any matter that requires or contemplates Purchaser's approval herein, (c) the approval and execution of any amendments to this Agreement. Provided, however, that in the event that any provision of this Agreement or proposed amendment of this Agreement materially affects or materially relates to the Property located in Lee County, Florida, to which County will take title then such provision shall also require the County's approval, which approval shall not be unreasonably withheld or delayed.

36. MANAGING AGENCY. Trustees shall have sole discretion to select the lead managing agency, pursuant to s.259.032 (9) (d) and (e), Florida Statutes, for the purposes contemplated herein.

[TEXT AND SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IF THIS INSTRUMENT IS NOT EXECUTED BY THE SELLER ON OR BEFORE NOVEMBER 22 2005, PURCHASER SHALL BE UNDER NO OBLIGATION TO ACCEPT THIS INSTRUMENT. PURCHASER'S EXECUTION OF THIS INSTRUMENT IS SUBJECT TO APPROVAL BY THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA, THE APPROVAL OF THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION AT A PUBLIC MEETING OF THE COMMISSION, AND THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA. PURCHASER'S DUTY TO PERFORM HEREUNDER IS CONTINGENT ON: (1) CONFIRMATION THAT THE PURCHASE PRICE FOR THE APPLICABLE TAKEDOWN PARCEL IS NOT IN EXCESS OF THE DSL APPROVED VALUE OF THE SUBJECT TAKEDOWN PARCEL (2) CONFIRMATION THAT THE FINAL ADJUSTED PURCHASE PRICE FOR THE PROPERTY IS NOT IN EXCESS OF THE DSL APPROVED VALUE OF THE PROPERTY, AND (3) DSL APPROVAL OF ALL DOCUMENTS TO BE FURNISHED HEREUNDER. THE STATE OF FLORIDA'S PERFORMANCE AND OBLIGATION TO PAY UNDER THIS AGREEMENT IS CONTINGENT UPON AN ANNUAL APPROPRIATION BY THE LEGISLATURE.

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

SELLER

[Signature]  
Witness as to Purchaser ~~SELLER~~  
ERNEST A. [Signature]  
[Signature]  
Witness as to Purchaser ~~SELLER~~  
L GRANT PEEPLES

By: [Signature]  
Name: Sydney Kitson  
Title: President + CEO

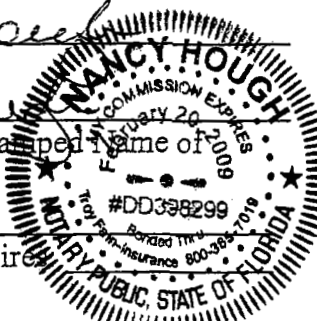
(Corporate Seal)

F.E.I.D. No. \_\_\_\_\_  
Nov. 22, 2005  
Date signed by Purchaser ~~SELLER~~

STATE OF FLORIDA            )  
  )  
COUNTY OF Lee            )

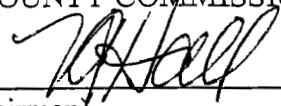
The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of November, 2005, by Sydney Kitson, as President and CEO of MSKP, III, a Florida Corporation, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification and did not take an oath.

(NOTARY PUBLIC  
SEAL)

Nancy Hough  
Notary Public  
Nancy Hough  
(Printed, Typed or Stamped Name of Notary Public)  
Commission No.: #DD398299  
My Commission Expires \_\_\_\_\_  


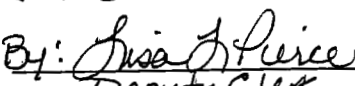


LEE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY COMMISSIONERS

By:   
(Chairman or Vice Chairman)


Date: 11/29/05

Charlie Green  
Clerk of Courts

Attest: By:   
Deputy Clerk

Date: 11/29/05

APPROVED AS TO FORM AND LEGALITY:

By:   
Date: 11/29/05





FLORIDA FISH AND WILDLIFE CONSERVATION  
COMMISSION

Jane C. Jacobs - Chalm  
Witness as to Purchaser  
Sophie Boyett  
Witness as to Purchaser

By: Kenneth Haddad  
Kenneth Haddad as its Executive Director

12-19-05  
Date signed by Purchaser

Approved as to Form and Legality

By: Jamen. Centista

Date: 12-19-05

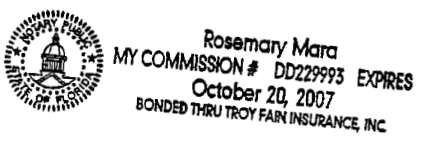
STATE OF Florida )  
  )  
COUNTY OF Leon )

The foregoing instrument was acknowledged before me this 19 day of December, 2005, by Kenneth Haddad as Executive Director for and on behalf of the Florida Fish and Wildlife Conservation Commission. He is personally known to me.

(NOTARY PUBLIC SEAL)

Rosemary Mara  
Notary Public

\_\_\_\_\_  
(Printed, Typed or Stamped Name of  
Notary Public)  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, DIVISION OF FORESTRY  
CHARLES H. BRONSON, COMMISSIONER

[Signature]  
Witness as to Purchaser

By: [Signature]  
MIKE GRESHAM, DIRECTOR  
DIVISION OF ADMINISTRATION

[Signature]  
Witness as to Purchaser

January 10, 2006  
Date signed by Purchaser

STATE OF FLORIDA \_\_\_\_\_ )  
COUNTY OF LEON \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this 10th day of January, 2006, by Mike Gresham, Director, Division of Administration, Department of Agriculture and Consumer Services. He is personally known to me.

(NOTARY PUBLIC SEAL)



[Signature]  
Notary Public  
KAREN A. MEYER  
(Printed, Typed or Stamped Name of Notary Public)  
Commission No.: # DD 346679  
My Commission Expires: 10/20/2008

By execution below, the undersigned "Manager" under the Management Agreement hereby agrees to execute and deliver the Management Agreement at each Closing as provided in Paragraph 8 of this Agreement

BABCOCK RANCH MANAGEMENT, LLC, a Florida limited liability company

[Signature]

By: [Signature]  
Sydney Kitson as Managing Member

Print Name: ERNEST A. COX

Attest: \_\_\_\_\_

[Signature]

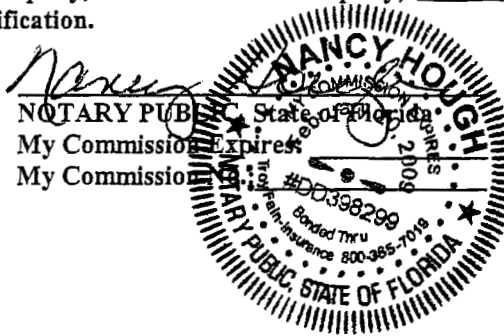
Print Name: \_\_\_\_\_

Print Name: L. GRANT PEEPLAS

Title: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF [Signature]

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of Nov., 2005, by Sydney Kitson and \_\_\_\_\_ as Managing Member and \_\_\_\_\_, respectively, of Babcock Ranch Management, LLC, a Florida limited liability company, on behalf of the company, who are personally known to me or who provided \_\_\_\_\_ as identification.



**ADDENDUM**

**BENEFICIAL INTEREST AND DISCLOSURE AFFIDAVIT  
(CORPORATION/PARTNERSHIP)**

Before me, the undersigned authority, personally appeared Sydney Kitson ("affiant"), this 15<sup>th</sup> day of November, 2005, who, first being duly sworn, deposes and says:

1) That affiant is the Chief Executive Officer and Secretary, of MSKP III, Inc., a Florida Corporation, as "Seller", whose address is 9055 Ibis Boulevard, West Palm Beach, FL 33412, and in such capacity has personal knowledge of the matters set forth herein and has been duly authorized by Seller to make this affidavit on Seller's behalf. That Seller is not currently the record owner of the Property, but has a contract right to merge into the current record owner of the Property and Seller contemplates that it will have merged into Seller at or prior to the closing of the first phase of the property to be acquired by the Board of Trustees. As required by Section 286.23, Florida Statutes, and subject to the penalties prescribed for perjury, the following is a list of every "person" (as defined in Section 1.01(3), Florida Statutes) holding 5% or more of the beneficial interest in the disclosing entity: (if more space is needed, attach separate sheet)

<u>Name</u>	<u>Address</u>	<u>Interest</u>
Morgan Stanley Real Estate Fund V	1585 Broadway New York, New York, 10036	50%
Kitson & Partners, LLC	9055 Ibis Boulevard West Palm Beach, FL 33412	50%
(Members of Kitson & Partners LLC)		
Sydney Kitson – Managing Member	85%	
Richard Brockway – Member	15%	

2) That to the best of the affiant's knowledge, all persons who have a financial interest in this real estate transaction or who have received or will receive real estate commissions, attorney's or consultant's fees or any other fees or other benefits incident to the sale of the Property are: (if non-applicable, please indicate "None" or "Non-Applicable")

<u>Name</u>	<u>Address</u>	<u>Reason for Payment</u>	<u>Amount</u>
Gunster, Yoakley & Stewart PA	777 South Flagler Drive, West Palm Beach, FL 33401	Legal services	\$ 181,000 *
Ard, Shirley & Hartman PA	207 West Park Avenue, Tallahassee, FL 32302	Legal services	\$ 90,000 *
Akerman Senterfitt	1 SE Third Avenue, Miami, FL 33131	Legal services	\$ 25,000 *
Rose, Sundstrom & Bentley, LLP	2548 Blairstone Pines Drive, Tallahassee, FL 32301	Legal Service	\$ 65,000 *
Herrie Communications Group	2000 Apalachee Parkway, Tallahassee, FL 32301	Public Relations	\$ 130,000
Johnson Engineering –GIS	2158 Johnson Street, Ft. Myers, FL 33902	Survey	\$ 300,000
Mirabella, Smith & McKinnon, Inc	521 North Adams Street, Tallahassee, FL 32303	Consultant	\$ 50,000
URS Corporation	7650 Courtney Causeway, Tampa FL 33607	Environmental	\$ 103,000

\* Estimated hourly fees to date on sale

3) That, to the best of the affiant's knowledge, the following is a true history of all financial transactions (including any existing option or purchase agreement in favor of affiant) concerning the Property which have taken place or will take place during the last five years prior to the conveyance of title to the State of Florida: (if non-applicable, please indicate "None" or "Non-Applicable")

<u>Name and Address of Parties Involved</u>	<u>Date</u>	<u>Type of Transaction</u>	<u>Amount of Transaction</u>
None			

This affidavit is given in compliance with the provisions of Sections 286.23, 375.031(1), and 380.08(2), Florida Statutes.

AND FURTHER AFFIANT SAYETH NOT.

AFFIANT

Sydney Kitson  
CEO & ~~Secretary~~ President  
MSKP III, Inc.

STATE OF FLORIDA )

COUNTY OF Lee )

SWORN TO and subscribed before me this <sup>15<sup>TH</sup></sup> ~~17<sup>th</sup>~~ day of <sup>November</sup> ~~October~~, 2005, by Sydney Kitson. Such person(s) (Notary Public must check applicable box):

- is/are personally known to me.
- produced a current driver license(s). FLORIDA
- produced \_\_\_\_\_ as identification.

(NOTARY PUBLIC SEAL)



Susan M Rainey  
My Commission DD187264  
Expires April 06, 2007

Susan M. Rainey

Notary Public

SUSAN M. RAINEY

(Printed, Typed or Stamped Name of Notary Public)

Commission No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

BLA-132 REVISED 10/98

EXHIBIT "A"

**BABCOCK RANCH**

LYING IN

TOWNSHIP 41 SOUTH, RANGE 26 EAST,  
TOWNSHIP 41 SOUTH, RANGE 27 EAST,  
TOWNSHIP 42 SOUTH, RANGE 26 EAST,  
TOWNSHIP 42 SOUTH, RANGE 27 EAST,  
TOWNSHIP 43 SOUTH, RANGE 26 EAST

AND

TOWNSHIP 43 SOUTH, RANGE 27 EAST,  
CHARLOTTE AND LEE COUNTIES

All of Sections 1 through 36, Township 41 South, Range 26 East, Charlotte County, Florida, LESS right-of-way for County Road No. 74 and right-of-way for State Road No. 31.

All of Sections 19 through 36, Township 41 South, Range 27 East, Charlotte County, Florida.

All of Sections 1 through 36, Township 42 South, Range 26 East, Charlotte County, Florida, LESS right-of-way for State Road No. 31.

All of Sections 1 through 11; The West one-half of Section 12; All of Sections 13 through 36, all being in Township 42 South, Range 27 East, Charlotte County, Florida.

All of Sections 1 through 7; The West one-half of Section 9; The West 150.00 feet of the Southeast one-quarter of Section 9; All of Section 12, all being in Township 43 South, Range 26 East, Lee County, Florida. LESS right-of-way for State Road No. 31 and right-of-way for County Road No. 78.

That part of the Southwest one-quarter of the Northeast one-quarter of Section 9, Township 43 South, Range 26 East, Lee County, Florida, being more particularly described as follows: Commence at the Southwest corner of said Southwest one-quarter of the Northeast one-quarter as the Point of Beginning and run East, along the South line of said Southwest one-quarter of the Northeast one-quarter, a distance of 150.00 feet; Thence Northwest to the Northwest corner of said Southwest one-quarter of the Northeast one-quarter; Thence South, along the West line of said Southwest one-quarter of the Northeast one-quarter, to the Point of Beginning.

All of Sections 4 through 8; Section 9, LESS the South one-half of the Southeast one-quarter; The Northwest one-quarter and the North one-half of the Northeast one-quarter of Section 17; The North one-half of Section 18, all being in Township 43 South, Range 27 East, Lee County, Florida.

FOR CONTRACT PURPOSES ONLY

THE BABCOCK RANCH  
OVERALL LEGAL DESCRIPTION  
BABCOCK FLORIDA COMPANY  
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BSM APPROVED  
By RL Date 9/22/05

EXHIBIT "B"

DESCRIPTION

**A PORTION OF BABCOCK RANCH**

LYING IN

SECTIONS 31 AND 32, TOWNSHIP 41 SOUTH, RANGE 26 EAST AND  
SECTIONS 4 THROUGH 10 AND SECTIONS 15 THROUGH 36,  
TOWNSHIP 42 SOUTH, RANGE 26 EAST,  
CHARLOTTE COUNTY, FLORIDA

AND

SECTIONS 1 THROUGH 7 AND SECTION 9,  
TOWNSHIP 43 SOUTH, RANGE 26 EAST AND  
LEE COUNTY, FLORIDA

A tract or parcel of land lying in Sections 31 and 32, Township 41 South, Range 26 East, Sections 4 through 10, and Sections 15 through 36, Township 42 South, Range 26 East, Charlotte County, Florida, and Sections 1 through 7, and Section 9, Township 43 South, Range 26 East, Lee County, Florida said tract or parcel being described as follows:

Commencing at the Southwest Corner of Township 42 South, Range 26 East, Charlotte County, Florida, run South  $89^{\circ}35'27''$  East along the south line of said Township line for 50.00 feet to an intersection with the easterly right-of-way of State Road No. 31 and the Point of Beginning.

From said Point of Beginning run North  $00^{\circ}36'36''$  East along said right-of-way for 5,358.73 feet to an intersection with the common line between Sections 30 and 31, Township 42 South, Range 26 East, thence run North  $00^{\circ}26'09''$  East along said right-of-way for 5,282.31 feet to an intersection with the common line between Sections 30 and 19, Township 42 South, Range 26 East, thence run North  $00^{\circ}31'49''$  East along said right-of-way for 5,320.86 feet to an intersection with the common line between Sections 19 and 18, Township 42 South, Range 26 East, thence run North  $00^{\circ}40'48''$  East along said right-of-way for 5,339.24 feet to an intersection with the common line between Sections 18 and 7, Township 42 South, Range 26 East, thence run North  $00^{\circ}26'43''$  East along said right-of-way for 2,821.81 feet; thence run South  $67^{\circ}25'40''$  East, departing said right-of-way, for 684.04 feet; thence run South  $87^{\circ}52'49''$  East for 258.78 feet; thence run North  $87^{\circ}30'44''$  East for 220.50 feet; thence run North  $84^{\circ}25'52''$  East for 394.56 feet; thence run South  $00^{\circ}00'00''$  East for 105.29 feet; thence run South  $21^{\circ}02'57''$  East for 133.33 feet; thence run South  $30^{\circ}35'43''$  East for 244.64 feet; thence run South  $19^{\circ}18'06''$  East for 608.52 feet; thence run North  $90^{\circ}00'00''$  East for 249.03 feet; thence continue North  $90^{\circ}00'00''$  East for 48.15 feet; thence run South  $01^{\circ}32'57''$  West for 363.87 feet; thence run South  $13^{\circ}24'05''$  West for 206.64 feet; thence run South  $81^{\circ}45'58''$  East for 369.30 feet; thence run South  $21^{\circ}59'14''$  West for 588.40 feet; thence run South

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THE BABCOCK RANCH  
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BSM APPROVED  
By  Date 9.29.05

00°00'00" East for 181.87 feet; thence run South 05°42'51" East for 288.59 feet; thence run South 03°41'40" East for 297.35 feet; thence run South 77°00'47" East for 127.78 feet; thence run South 09°28'05" West for 232.90 feet; thence run North 82°52'47" West for 77.22 feet; thence run South 07°07'50" West for 154.34 feet; thence run South 07°46'15" East for 212.53 feet; thence run South 19°18'04" East for 202.84 feet; thence run South 00°00'00" East for 134.01 feet; thence run South 10°00'50" East for 165.24 feet; thence run South 25°21'38" East for 201.26 feet; thence run South 39°49'25" East for 149.56 feet; thence run North 90°00'00" East for 38.31 feet; thence run South 22°00'13" East for 536.84 feet; thence run South 16°42'33" East for 499.70 feet; thence run South 22°15'44" East for 227.54 feet; thence run South 07°07'45" East for 154.35 feet; thence run South 88°24'36" West for 344.94 feet; thence run South 04°15'30" West for 1,024.48 feet; thence run South 15°09'46" West for 476.03 feet; thence run South 07°25'05" East for 1,735.84 feet; thence run North 81°58'50" East for 3,898.05 feet; thence continue North 81°58'50" East for 103.82 feet; thence run North 62°35'16" East for 4,481.32 feet; thence run North 51°12'50" East for 138.42 feet; thence run North 19°48'38" West for 619.76 feet; thence run North 28°24'29" West for 490.56 feet; thence run North 71°48'09" East for 933.55 feet; thence run South 39°29'26" East for 256.89 feet; thence run North 83°39'50" East for 105.67 feet; thence run North 64°22'24" East for 647.12 feet; thence run North 08°57'29" West for 1,723.64 feet; thence run North 04°05'18" East for 1,964.17 feet; thence run North 51°52'56" West for 2,703.24 feet; thence run South 61°59'08" West for 1,440.76 feet; thence run North 57°28'53" West for 1,548.77 feet; thence run North 64°48'48" West for 211.50 feet; thence run North 26°34'47" West for 150.97 feet; thence run North 66°48'53" West for 171.46 feet; thence run North 42°43'39" West for 199.11 feet; thence run North 09°05'46" West for 284.86 feet; thence run North 35°00'35" West for 137.36 feet; thence run North 30°05'01" West for 247.05 feet; thence run North 45°01'07" West for 175.08 feet; thence run North 76°46'03" West for 196.61 feet; thence run South 86°38'08" West for 246.50 feet; thence run North 26°34'48" West for 305.53 feet; thence run North 55°19'15" West for 177.97 feet; thence run North 90°00'00" West for 191.39 feet; thence run South 58°00'40" West for 212.38 feet; thence run South 35°54'38" West for 215.82 feet; thence run North 81°38'51" West for 604.92 feet; thence run North 41°12'14" West for 1,055.79 feet; thence run North 85°31'41" West for 2,292.18 feet; thence run North 61°25'23" West for 1,739.48 feet; thence run North 89°39'13" West for 5.20 feet to an intersection with the easterly right-of-way of Said State Road No. 31; thence run North 00°33'58" East along said right-of-way for 4,123.72 feet to an intersection with the common line between Township 42 South and Township 41 South; thence run North 00°46'57" West along said right-of-way for 2,966.80 feet; thence run North 89°47'56" East, departing said right-of-way, for 8,120.72 feet; thence run South 00°35'46" West

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for 2,977.24 feet; thence run South 00°04'26" East for 2,215.02 feet; thence run North 90°00'00" East for 4,294.93 feet; thence run North 81°46'30" East for 2,297.42 feet; thence run South 15°42'45" East for 641.12 feet; thence run South 04°56'17" East for 2,358.62 feet; thence run South 46°27'21" East for 756.23 feet; thence run South 02°41'45" West for 1,450.46 feet; thence run South 08°28'04" East for 460.43 feet; thence run South 84°54'22" West for 255.86 feet; thence run South 08°35'01" East for 213.51 feet; thence run South 32°11'45" East for 108.27 feet; thence run South 65°03'22" East for 183.77 feet; thence run North 75°04'07" East for 256.29 feet; thence run North 77°22'50" East for 626.20 feet; thence run South 52°25'53" East for 323.01 feet; thence run South 14°39'42" East for 1,415.71 feet; thence run South 03°17'21" East for 870.60 feet; thence run South 75°39'52" West for 623.89 feet; thence run South 17°27'43" East for 2,159.51 feet; thence run South 25°49'16" West for 1,055.53 feet; thence run North 77°28'16" West for 775.33 feet; thence run South 59°10'20" West for 412.36 feet; thence run South 50°46'28" West for 342.70 feet; thence run South 05°51'22" West for 82.84 feet; thence run South 38°23'43" East for 459.69 feet; thence run South 09°18'36" East for 1,016.08 feet; thence run South 10°27'36" West for 547.78 feet; thence run South 19°07'20" West for 2,148.08 feet; thence run South 07°22'09" East for 385.46 feet; thence run South 81°44'26" East for 241.50 feet; thence run South 90°00'00" East for 805.53 feet; thence run North 70°35'19" East for 982.83 feet; thence run South 29°49'38" East for 815.76 feet; thence run South 42°14'40" East for 967.85 feet; thence run South 31°40'32" East for 897.19 feet; thence run South 03°19'50" East for 1,816.21 feet; thence run North 88°09'22" East for 3,546.92 feet; thence run South 33°26'24" East for 471.54 feet; thence run South 90°00'00" East for 100.78 feet; thence run North 63°42'19" East for 517.15 feet; thence run North 12°13'30" East for 314.70 feet; thence run North 05°07'41" East for 442.54 feet; thence run North 45°00'00" West for 212.81 feet; thence run South 88°54'32" West for 686.19 feet; thence run North 81°15'14" West for 580.04 feet; thence run North 47°33'50" West for 477.84 feet; thence run North 23°11'55" West for 929.68 feet; thence run North 17°34'47" East for 994.05 feet; thence run North 70°04'28" East for 1,576.65 feet; thence run South 31°31'44" East for 1,480.66 feet; thence run South 85°27'44" East for 321.66 feet; thence run North 87°36'36" East for 865.67 feet; thence run North 87°49'51" East for 779.21 feet; thence run North 37°26'22" East for 49.05 feet; thence run North 68°44'15" East for 509.09 feet; thence run South 89°12'06" East for 156.22 feet; thence run South 57°48'27" East for 243.11 feet; thence run South 57°42'35" East for 153.01 feet; thence run South 74°49'26" East for 168.22 feet; thence run South 84°47'35" East for 148.31 feet; thence run South 58°26'00" East for 203.55 feet; thence run South 71°23'35" East for 141.71 feet; thence run South 83°23'42" East for 170.13 feet; thence run South 42°19'39" East for 240.14 feet; thence run South 11°16'45" East for 270.55

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feet; thence run South 08°59'13" East for 211.03 feet; thence run South 07°11'17" East for 102.93 feet; thence run South 40°26'24" East for 437.89 feet; thence run North 69°37'10" East for 30.12 feet; thence run South 46°20'31" East for 310.11 feet; thence run South 23°41'29" East for 525.37 feet; thence run North 81°49'36" East for 699.22 feet; thence run North 70°01'36" East for 293.50 feet; thence run North 66°02'56" East for 246.96 feet; thence run South 60°16'06" East for 202.15 feet; thence run South 15°51'21" East for 305.19 feet; thence run South 14°30'17" East for 384.14 feet; thence run South 29°04'22" East for 389.34 feet; thence continue South 29°04'22" East for 160.62 feet; thence run South 04°24'07" East for 82.77 feet; thence continue South 04°24'07" East for 45.98 feet; thence run North 76°11'31" West for 569.04 feet; thence run South 00°00'00" East for 9,928.42 feet; thence run South 89°54'29" West for 2120.47 feet; thence run South 52°45'55" West for 301.66 feet; thence run South 69°37'25" West for 590.06 feet; thence run South 79°52'31" West for 418.98 feet; thence run South 76°22'23" West for 488.82 feet; thence run South 82°44'49" West for 797.01 feet; thence run South 80°32'16" West for 292.19 feet; thence run South 13°34'14" West for 624.10 feet; thence run North 83°28'49" East for 15.50 feet; thence run South 73°04'21" East for 579.48 feet; thence run South 04°34'26" West for 539.06 feet; thence run South 03°21'59" West for 1,085.92 feet; thence run South 82°44'48" East for 183.57 feet; thence run South 77°54'19" East for 638.21 feet; thence run South 71°59'45" East for 412.62 feet; thence run South 54°27'44" East for 428.59 feet; thence run South 45°00'00" East for 378.44 feet; thence run South 20°33'22" East for 362.76 feet; thence run South 13°37'37" East for 357.78 feet; thence run South 09°27'44" West for 365.89 feet; thence run South 33°41'24" West for 406.86 feet; thence run South 53°28'16" West for 324.87 feet; thence run South 76°22'57" West for 177.77 feet; thence run North 86°38'28" West for 250.39 feet to an intersection with the Northeast corner of Section 11, Township 43 South, Range 26 East; thence run North 89°22'47" West along the North line of Sections 11, 10 and 9, Township 43 South, Range 26 East for 13,230.90 feet to the Northwest corner of the Northeast-1/4 of said Section 9; thence run South 01°09'54" East for 5275.05 feet along the East line of the West-1/2 of said Section 9 to an intersection with the Southeast corner of the Southwest-1/4 of said Section 9; thence run South 89°59'33" West along the South line of the Southwest-1/4 of said Section 9 for 2800.37 feet to the Southwest corner of said Section 9; thence run North 00°30'53" East along the West line of said Section 9 for 5,263.78 feet to the Northwest corner of said Section 9; thence run S 89°50'25" West along the North line of Section 8, Township 43 South, Range 26 East for 5,326.14 feet to an intersection with the Northwest corner of said Section 8; thence run South 00°36'25" West along the West line of said Section 8 for 5,254.33 feet to an intersection with the Southeast corner of Section 7, Township 43 South, Range 26 East; thence run North 88°51'48" West along the South line of said Section 7 for 5,101.43 feet to an intersection with the East right-of-way line of State Road 31

**FOR CONTRACT PURPOSES ONLY**

THE BABCOCK RANCH  
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(100 feet wide); thence run North 00°20'27" East along said East line for 5,293.15 feet to an intersection with the common line between Sections 7 and 6, Township 43 South, Range 26 East; thence run North 00°19'00" East, continuing along said right-of-way line for 5,291.71 feet to the Point of Beginning; LESS right-of-way for County Road No 78;

AND

The West 150.00 feet of the Southeast-1/4 of Section 9, Township 43 South, Range 26 East, Lee County, Florida; LESS right-of-way for County Road No 78.

AND

That part of the Southwest-1/4 of the Northeast-1/4 of Section 9, Township 43 South, Range 26 East, Lee County, Florida, being more particularly described as follows: Commence at the Southwest corner of said Southwest-1/4 of the Northeast-1/4 as the Point of Beginning and run East, along the South line of said Southwest-1/4 of the Northeast-1/4, a distance of 150.00 feet; Thence Northwest to the Northwest corner of said Southwest-1/4 of the Northeast-1/4; Thence South, along the West line of said Southwest-1/4 of the Northeast-1/4, to the Point of Beginning.

**FOR CONTRACT PURPOSES ONLY**

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**EXHIBIT "C"**

**PERMITTED EXCEPTIONS\***

**EXISTING LEASES**

- a) **Crown Castle – Radio Transmission Tower**
- b) **Crossroads Wilderness Institute, Inc. – expires 11/15/2011 - may be terminated 180 days prior to 11/15 of any year**
- c) **Charlotte County – Fire Station**
- d) **Florida Board of Forestry – expires 10/7/2007**
- e) **Tenant Farming Leases provided that such leases do not have a term of greater than one (1) year from the applicable Closing.**

\* Subject to amendment or modification to delete from such encumbrances any indemnities from or remedy waivers by the landowner in favor of third parties, unless Seller provides Purchaser with an indemnity for such matters.

COMPOSITE EXHIBIT "D"

ENVIRONMENTAL AFFIDAVIT

(OTHER)

\_\_\_\_\_ ("Affiant"), being first duly sworn, deposes and says that Affiant on behalf of Seller (as hereinafter defined) makes these representations to the **BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA** ("Purchaser"), and Affiant further states:

1. That the Affiant is the \_\_\_\_\_ of \_\_\_\_\_ ("Seller") and in such capacity has personal knowledge of the matters set forth herein, and he has been authorized by the Seller to make this Affidavit on Seller's behalf.

2. That Seller is the sole owner in fee simple and now in possession of the following described property together with improvements located thereon located in \_\_\_\_\_ County, Florida, to-wit:

See Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter the "Property").

3. That Seller is conveying the Property to **BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA**.

4. For purposes of this Affidavit the term "Environmental Law" shall mean any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the protection of the environment or human health, welfare or safety, or to the emission, discharge, seepage, release or threatened release of Hazardous Materials (as hereinafter defined) into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the handling of such Hazardous Materials. For purposes of this Affidavit the term "Hazardous Materials" shall mean any contaminant, chemical, waste, irritant, petroleum product, waste product, radioactive material, flammable or corrosive substance, explosive, polychlorinated biphenyls, asbestos, hazardous or toxic substance, material or waste of any kind, or any other substance which is regulated by any Environmental Law.

5. As of the date of Seller's conveyance of the Property to **BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA**, Seller warrants and represents to Purchaser, its successors and assigns that, except as may be disclosed in any environmental assessments that have been furnished to Purchaser prior to the date hereof:

(i) To the best of Seller's knowledge, Seller has not placed, or permitted to be placed, any Hazardous Materials on the Property, and, to the best of Seller's knowledge, no other person or entity has placed, or permitted to be placed, any Hazardous Materials on the Property.

(ii) To the best of Seller's knowledge, there does not exist on the Property any condition or circumstance which requires or may, in the future, require cleanup, removal or other remedial action or other response under Environmental Laws on the part of Seller or a subsequent owner of all or any portion of the

Property or which would subject Seller or a subsequent owner of all or any portion of the Property to liability, penalties, damages or injunctive relief.

(iii) To the best of Seller's knowledge, no underground treatment, buried, partially buried or above ground storage tanks, storage vessels, sumps, drums, containers, water, gas or oil wells, or landfills are or have ever been located on the Property.

(iv) To the best of Seller's knowledge, Seller is presently in compliance with all Environmental Laws applicable to the Property.

(v) To the best of Seller's knowledge, no warning notice, notice of violation, administrative complaint, judicial complaint or other formal or informal notice has been issued by any federal, state or local environmental agency alleging that conditions on the Property are in violation of any Environmental Law.

(vi) To the best of Seller's knowledge, Seller is not subject to any judgment, decree, order or citation related to or arising out of Environmental Laws, and Seller has not been named or listed as a potentially responsible party by any governmental body or agency in a matter arising under any Environmental Law.

In connection with Seller's representations set forth in clauses (i) through (vi) above, Seller hereby advises Purchaser that the Property has been used as a working ranch for a long period of time. In connection therewith, many third parties have entered the Property and many activities have taken place on the Property, including, without limitation, the operation of cattle dipping vats, that have involved the use of Hazardous Materials. Except for the foregoing and any matters that have been disclosed to Purchaser in any environmental assessments that have been furnished to Purchaser, Seller has no specific knowledge of any specific violations of any Environmental Laws.

6. That Seller makes this Affidavit for the purpose of inducing Purchaser to purchase the Property, and Seller acknowledges that Purchaser will rely upon the representations and warranties set forth in this Affidavit.

---

**Affiant**

ENVRCORP.DOC  
REV. 03/20/97  
DNR 61-35(16)

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

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

SWORN TO and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by  
\_\_\_\_\_ as \_\_\_\_\_,  
of \_\_\_\_\_ Such person(s) (Notary Public must check  
applicable box):

- is/are personally known to me.
- produced a current driver license(s).
- produced \_\_\_\_\_ as identification.

(NOTARY PUBLIC SEAL)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Printed, Typed or Stamped Name of Notary Public)

Commission No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

By: \_\_\_\_\_  
DEP Attorney

Date: \_\_\_\_\_

ENVRCOPR.DOC  
REV. 03/20/97  
DNR 61-35(16)

## TITLE, POSSESSION & LIEN AFFIDAVIT

(OTHER)

\_\_\_\_\_ ("Affiant"), being first duly sworn, deposes and says that Affiant on behalf of Seller (as hereinafter defined) makes these representations to the **BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA** ("Purchaser"), and to \_\_\_\_\_ (collectively, "title insurer"), to induce Purchaser to purchase and title insurer to insure the fee simple title to that certain real property described below, and Affiant further states:

1. That \_\_\_\_\_ the Affiant is the \_\_\_\_\_ ("Seller") and in such capacity has personal knowledge of the matters set forth herein, and he has been authorized by the Seller to make this Affidavit on Seller's behalf.
2. Seller is the record owner and is in possession of the real property together with the improvements located thereon described as follows:

See Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter the "Property").
3. There are no matters pending against the Seller that could give rise to a lien that would attach to the Property or cause a loss of title or impair the title between the last title insurance commitment effective date, and the recording of the fee simple title to be insured, and the Seller has not and will not execute any instrument that would adversely affect the fee simple title to be insured.
4. Seller is in possession of the Property; there is no other person or entity in possession or who has any possessory right in the Property; except for the leases described in Exhibit "B" attached hereto [attach list of Permitted Exceptions].
5. Within the past 90 days there have been no improvements, alterations, or repairs to the Property for which the costs thereof remain unpaid, and that within the past 90 days there have been no claims for labor or material furnished for repairing or improving the same, which remain unpaid.
6. No proceedings in bankruptcy have ever been brought by or against Seller, nor has an assignment for the benefit of creditors been made at anytime, nor is there now in effect any assignment of rents of the Property or any part thereof.
7. The real estate taxes will be paid to the date of closing pursuant to Section 196.295, Florida Statutes.
8. That Seller is not a "non-resident alien" for the purposes of United States income taxation, nor is Seller a "foreign person" (as such term is defined in Section 1445 of the Internal Revenue Code of the United States and its related Income Tax Regulations); that Seller's F.E.I.D. Number(s) is/are \_\_\_\_\_; that Seller understands that the certification made in this paragraph may be disclosed to the Internal Revenue Service by the Purchaser; that any false statement contained in this



paragraph could be punished by fine, imprisonment, or both; and that the information contained in this paragraph is true and correct and as provided under penalties of perjury.

9. This Affidavit is executed in duplicate, each of which shall be considered an original, with one original to be delivered to the title insurer.

THIS AFFIDAVIT is made pursuant to Section 627.7842, Florida Statutes, for the purpose of inducing the title insurer to insure the fee simple title to the Property and to disburse the proceeds of the sale. Seller intends for the title insurer to rely on these representations.

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**Grantor**

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

SWORN TO and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 1997, by  
\_\_\_\_\_ as,  
\_\_\_\_\_. Such person (Notary Public must check applicable  
box):

- is personally known to me.
- produced a current driver license.
- produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
(Printed, Typed or Stamped Name of Notary  
Public)  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

By: \_\_\_\_\_  
DEP Attorney

Date: \_\_\_\_\_

Revised: 03/20/97  
TPLCORP.DOC  
DEP 61-41(16)

## MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (this "Management Agreement"), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between BABCOCK RANCH MANAGEMENT, LLC, a Florida limited liability company, whose central contact address is 9055 Ibis Boulevard West Palm Beach, FL 33412 (hereinafter referred to as "Manager") and the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA, whose central contact address is 3900 Commonwealth Blvd. MS 100 Tallahassee, Florida 32399 (hereinafter referred to as the "Board of Trustees") FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION (FWCC), whose address is Bryant Building, 620 South Meridian Street, Tallahassee, Florida 32399-1600, the DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (DACS), whose address is 3125 Conner Boulevard, Tallahassee, Florida 32399-1650 (FWCC and DACS are sometimes jointly referred to herein as the "Managing Agencies"), and LEE COUNTY, FLORIDA ("County"), whose address is whose address is P.O. Box 398, Ft. Myers, Florida 33902-0398 (the Board of Trustees and County are collectively referred to herein as "Owners" – all references herein to the term "Owners" shall be deemed to mean Board of Trustees and County with respect to the portions of the Property that each owns)

### W I T N E S S E T H:

**WHEREAS**, the Board of Trustees and County are the owners in fee simple of certain real property lying and being situated in Charlotte and Lee Counties, Florida, more specifically described in Exhibit "A", attached hereto and incorporated herein by reference (hereinafter referred to as the "Property") and Commission is the Board of Trustees' lead managing agency for the Property; and

**WHEREAS**, the Owners and Manager mutually recognize the agricultural, natural, scenic and special character of the Property and its soils and have the common purpose of conserving certain natural and agricultural values and character of the Property by management of the Property to conserve those values, rural and agricultural character, ecological integrity and hydrological integrity of the Property and conserve and protect the animal and plant populations on the Property.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owners and Manager agree that the foregoing recitals are true and correct and incorporated herein and further agree as follows:

### I. PURPOSE

1. **Purpose.** It is the purpose of this Management Agreement to provide for the management and conservation of the Property as a working ranch and silviculture operation, which shall include: cattle ranching, timber management and timber harvesting, Florida native plant nursery, apiary operations, sod farm and related

operations, or any form of agriculture, as defined in Section 570.02(1), Florida Statutes, in present use on the Property; eco-tourism, natural resource based recreation (such as hiking, hunting and fishing), horticultural debris disposal business and tenant farming (which tenant farming shall be phased out over time), all as more particularly described herein, to: (i) provide sustainable and relatively natural habitat for fish, wildlife, plants or similar ecosystems; (ii) conserve the Property as productive agricultural land that sustains for the long term the economic and conservation values of the current uses of the Property, including important soils, and its environs through management; and (iii) prevent any use of the Property that will cause or result in degradation of the present environmental and conservation quality of the Property. At or before the closing of the first "Takedown Parcel" (as hereinafter defined) under the Agreement (as hereinafter defined) and execution by Owners of this Management Agreement Manager shall assist the Owners with the development of the management plan for the operation of the Property as required by law, and the business plan, which plans shall include items of operational expense and cost factors, as well as items particular to the purposes herein stated, with the understanding that Manager shall be responsible for all costs of these operations and shall be entitled to all revenues from these operations, subject to all other provisions of this Management Agreement. All management decisions relating to the Lee County portion of the Property must be approved in writing by Lee County. Further, no Management Plan or Business Plan as contemplated herein will be deemed final, nor shall they be transmitted to the Board of Trustees for adoption until written approval is given by Lee County relative to its portion of the Property. During the initial term of this Management Agreement and, if extended, the first year of the extended term, Manager shall reinvest no less than 50% of all net revenues from the Property in the management, maintenance and improvement of the Property, in accordance with the provisions of this Management Agreement (revenues from the Property that are used to pay salaries and benefits of employees that are employed solely in connection with the Property shall be included within the aforesaid 50% reinvestment requirement). During the second through fifth years of the extended term of this Management Agreement the percentage of reinvestment in the Property as aforesaid shall increase by 10% per year so that 60% is reinvested in the second year of the extended term, 70% in the third year of the extended term, 80% in the fourth year of the extended term, and 90% in the fifth year of the extended term. The management plan adopted by the Board of Trustees and the business plan approved by the Board of Trustees shall become a part of this Management Agreement by this reference. Once adopted and approved by the Board of Trustees, the management and business plans may not be materially amended or modified in any way without the prior written consent of the Board of Trustees, except where such change is required immediately to prevent or mitigate significant risk to the health, safety and welfare of personnel or to prevent or mitigate significant damage to the resources on the Property. Where changes to the plans are so required without the prior written consent of the Board of Trustees, Manager shall bring the need for such changes and the nature of the changes to the attention of DSL and Owners as soon as practicable after the danger has passed. Budgets for the operation of the Property shall be developed annually in cooperation with the Board of Trustees', Managing Agencies, and any changes to the budget during the budget year shall be made in cooperation with said Managing Agencies. Upon the closing of each Takedown Parcel, Manager shall be deemed to be

appointed as the sole and exclusive manager for the applicable Takedown Parcel in coordination with the Board of Trustees', Managing Agencies, and as such will have the sole and exclusive right to occupy the Property in accordance with the provisions of this Management Agreement, unless otherwise expressly permitted in Section IV, Paragraphs 25 and 25.1 hereof. If a not-for-profit corporation is created for the management of this property it shall act only in an advisory role until termination of this Management Agreement. If net revenues from the Property at the date this Management Agreement becomes effective are reduced as a result of changes in operations required by the adopted management plan to the extent the operation operates at a loss, then funds required to cause the operation to break even shall be provided by the Managing Agencies, subject to a legislative appropriation to the Managing Agencies for the purpose.

2. **Preparation of management and business plan.** Manager shall participate in the preparation of the management and business plans for the Property and, in connection therewith, the Owners agree that the management and business plans shall not be in conflict with the existing use and operation of the Property. The parties understand that the management plan will be adopted in accordance with the provisions of section 253.034(5), Florida Statutes by the Board of Trustees after review by the Acquisition and Restoration Council. The business plan will be approved by the Board of Trustees in accordance with the requirements of the adopted management plan. The Manager and the Owners shall participate in the preparation of the management plan and the business plan. Both the Management Plan and the Business Plan shall be approved in writing by Lee County with respect to its portion of the Property prior to their transmittal to the Board of Trustees for their adoption and subsequent implementation.

## **II. PROPERTY**

The Property is being acquired by the Board of Trustees and County in phases pursuant to that certain Agreement For Sale and Purchase (the "Agreement") dated \* \_\_\_\_\_ \*, 2005 between MSKP III, Inc., as seller, and the Board of Trustees, Commission and County as purchaser. In connection therewith, upon each "Closing" under the Agreement, the parties hereto shall execute an amendment to this Management Agreement which will add the "Takedown Parcel", as defined in the Agreement, then being acquired as part of the Property that is to be managed by Manager under the provisions of this Management Agreement as part of Exhibit "A" attached hereto.

## **III. TERM**

1. **Term.** The term of this Management Agreement (the "Term") shall commence upon the Commencement Date and end on the fifth (5th) anniversary after said Commencement Date, unless sooner terminated as hereinafter provided.

2. **Extension of Term.** The Term shall be automatically extended for one (1) additional five (5) year period, unless Manager provides written notice to the Board of Trustees no later than one hundred eighty (180) days prior to the expiration of the then existing Term that Manager does not elect to extend the Term for an additional five (5)

years. Notwithstanding the foregoing, this Management Agreement shall not be extended beyond a termination date of July 31, 2016.

3. **Right of Termination.** Manager may terminate this Management Agreement by providing written notice (the "Termination Notice") to the Board of Trustees of such termination at least 180 days prior to the date that this Management Agreement is to be terminated. Upon Manager giving the Termination Notice, this Management Agreement shall terminate on the 180th day after such notice is given. The Owners may only terminate this Management Agreement in accordance with the provisions of Section VI, Paragraph 1 hereof.

4. **Commencement Date.** Notwithstanding the date that this Management Agreement is signed by the Board of Trustees and Manager, the "Commencement Date" of the Term of this Management Agreement, and each of the terms and conditions hereof, shall commence upon the acquisition of the first "Takedown Parcel" under the Agreement. Manager shall implement the management and business plans adopted and approved by the Board of Trustees for the Property when the plans are adopted or approved in accordance with Section I above.

#### IV. **USES**

The Manager shall have the right and obligation to comply with the following matters pertaining to the use of the Property, subject to the requirements of, and to the extent not inconsistent with, the management and business plans that are adopted and approved by the Board of Trustees in accordance with Section I above. All activities conducted on the Property by or on behalf of Manager shall be conducted in accordance with all federal, state and local laws applicable thereto.

1. **Uses.** No commercial, residential or industrial activity shall be undertaken or allowed on the Property except as now may exist on the Property or as otherwise expressly allowed by the terms of this Management Agreement, including, without limitation, Section I above, nor shall any license, easement or right-of-passage across or upon the Property be allowed or granted to a third party, if that right of passage is used in conjunction with residential, commercial or industrial activity, except upon the express written approval of the Board of Trustees and, as to the Property located in Lee County, County, which approval shall not be unreasonably withheld, and with such approval being conditioned upon a determination by the Board of Trustees and County, if applicable, that such use and right of passage is consistent with the purpose of this Management Agreement. Agricultural activities by Manager hereunder shall be conducted in accordance with applicable BMPs (as hereinafter defined), if any.

2. **Roads.** All road construction and maintenance shall be included within the management plan, and shall be in accordance with the applicable Best Management Practices ("BMPs" as hereinafter defined) contained therein. Typical construction and maintenance activities may include disking, plowing, grading, excavating and the application of clay, gravel, shell or other like material, or any other activity necessary to

Manager's performance of its responsibilities under the provisions of this Management Agreement.

3. **Firelines and Breaks.** Manager may maintain existing fire lines and breaks, as well as plow new fire lines and breaks as reasonably required for fire prevention and control. All construction and maintenance of such firelines shall be subject to any applicable permitting process of the State of Florida or the United States or of any political subdivision or agency of either, shall be included within the management plan, and shall be in accordance with the applicable BMPs (as hereinafter defined). Such firelines and breaks are recognized to be in anticipation of authorized controlled burns or wildfire control.

4. **Waters.** Manager shall maintain existing culverts, ditches, drains, swales, and other control structures on the property. Manager may, subject to applicable permitting, (including applicable BMPs (as hereinafter defined)) install wells for the activities allowed to Manager under the provisions of this Management Agreement.

5. **Nurseries.** Manager may establish nurseries on the Property, not to exceed 5,000 acres in total at a location or locations to be agreed upon between Manager and Owners, to propagate native species for use on the Property, for use by Trustees off-site and for use on the "Retained Property", as that term is defined in the Agreement, subject to payment by the user at wholesale rates therefor, and for retail sale to the public. These nurseries must use state of the art systems to ensure land and water conservation and stewardship. Manager may use products produced at the nurseries to develop a greenway system(s) throughout the Property for the enjoyment of the public and ecosystem reestablishment.

6. **Purposely omitted.**

7. **Public Access.** Manager shall allow public access to the Property in areas deemed safe by the Owners, and as provided in the management plan. The Owners understand that areas of active cattle grazing, hunting, mechanical agricultural operations, and other functions that could cause risk to public users will not be allowed open access. Manager shall use reasonable effort to ensure that all gates and fences will remain functional and secure. Until adoption of the management plan, the parties shall cooperate to develop an interim access agreement to provide public access to the public to the greatest extent safe and practicable and to the extent reasonably consistent with the existing use and operation of the Property.

8. **Purposely omitted.**

9. **Purposely omitted.**

10. **Research and Education Center.** Manager shall establish a Research and Education Center on the Property, subject to mutual agreement between the Board of Trustees and Manager as to location and size. The Owners shall fully cooperate in the

establishment of a Research and Education Center in cooperation with the Florida Gulf Coast University to enhance the overall environment of the Property and to improve and augment curriculum at the University. The Center shall engage in the research and study of the environment, agricultural practices and horticultural practices.

11. **Off Highway Vehicles.** Off Highway Vehicles, as defined in Section 317.0003(1), Florida Statutes, shall not be allowed on the Property except for manager's maintenance activities, in emergency situations, and when necessary for compliance with the Americans with Disabilities Act.

12. **Construction.** There shall be no construction of or the placing of buildings, infrastructure, or roads, signs, billboards or other advertising, utilities, or other structures on, under, or above the ground, except as otherwise authorized in this Management Agreement.

13. **Dumping.** Unless specifically authorized by the Board of Trustees, or County as to lands in Lee County, there shall be no dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, solid or liquid waste (including sludge material), or hazardous materials, wastes or substances, toxic waste or substances, pollutants or contaminants, or unsightly or offensive materials. This prohibition shall not be construed to prohibit customary lawful accumulations of waste or the use and lawful application of chemicals, pesticides, herbicides or fertilizers, dirt, soil, rock, shell and other materials in accordance with the activities allowed under this Management Agreement.

14. **Exotics and Invasive Species.** No nuisance, exotic and non-native invasive vegetation may be planted on or encouraged to grow on the Property. Manager shall use reasonable efforts to control the spread of nuisance, exotic and non-native invasive vegetation on the Property.

15. **Horticultural Debris Disposal.** Manager may continue the debris disposal operations on the Property through the term of the Management Agreement. The Board of Trustees is aware of the necessity to keep this operation on-going to alleviate disposal of plant waste generated through normal agricultural operations, and to assist Manager in disposal of exotic and non-native invasive vegetation on the Property.

16. **Pesticides/Herbicides and Fertilizer.** Pesticides, herbicides and fertilizer must be applied in accordance with label instructions. All such applications shall further be subject to any applicable permitting process, shall be included within the Rural Land Stewardship plan that is to be established for the Property, and shall be in accordance with the applicable BMPs (as hereinafter defined).

17. **Mining and Excavation.** Unless specifically authorized by the Board of Trustees or this Management Agreement, or County as to lands lying in Lee County, no mining, excavation, filling or dredging shall be allowed on the Property.



18. **Conversion of Natural Areas.** Areas identified as natural areas shall not be converted to other land uses. The parties shall identify such areas before each closing of a Takedown Parcel using such maps or aerial photographs as agreed to by the parties.

19. **Replacement Structures and New Working Facilities.** Existing structures may be replaced at their current location as required. Any such replacement structures may be increased to a footprint size no larger than 125% of the size of the original structure (square footage may be increased with more than one story structures). Additionally, Manager may construct up to three (3) new working facilities (e.g., working cattle pens, maintenance barns, etc.) as required to accommodate existing ranch operations or as required to accommodate any agricultural enterprise expansion. Each of these allowed, newly constructed working facilities will be limited to an area no greater than 15,000 sq ft. and may not be located in natural areas, designated as set forth in Paragraph 18 above, or wetlands.

20. **Improved Pasture.** Pastures currently improved for cattle and equine operations may continue to be used as improved pasture (the "Improved Pasture Area"). The parties shall identify such areas before each closing using such maps or aerial photographs as agreed to by the parties. For the purposes hereof, generally accepted habitat management practices shall include rotation of forage crops in Improved Pasture Areas.

a. Manager may plant cover and forage crops in the existing pasture areas, provided any such crop is of a non-invasive, non-exotic species. Forage harvesting from these Improved Pasture Areas, and processing of these forages for enhanced animal consumption, is allowed. Agricultural activities reserved by Manager hereunder shall be conducted in accordance with applicable BMPs (as hereinafter defined), if any. Consistent with the applicable BMPs (as hereinafter defined), Manager may maintain the Improved Pasture Areas through generally accepted habitat management practices, such as controlled burning, mowing, rotary chopping and disking as required to further good husbandry and game management.

b. Manager may harvest pasture-grass sod, hay and seed in the Improved Pasture Areas as a part of ongoing soil stabilization and rotation of grasses for pasture maintenance in accordance with good horticultural practices, provided that no more than twenty percent (20%) of the Improved Pasture Areas shall be harvested for pasture-grass sod in any one calendar year.

c. The Owners understand that past tenant farming was for the limited purpose of converting previously unproductive sites to useful improved pasture, done through limited agreements with third parties responsible for labor and operational costs which were recouped through income derived from planted crops. Manager shall ensure no tenant farming exists by the end of the first term of this Management Agreement.

21. **Silviculture.** Manager may conduct commercial forestry operations (silviculture) and timber harvesting on the Property as described below, in accordance with the applicable BMPs (as hereinafter defined) and subject to the following conditions and restrictions:

a. **Wetland Harvesting.** There shall be no harvesting in wetlands and no harvesting of cypress trees anywhere on the Property.

b. **Upland Harvesting.** Management of the upland harvesting areas shall be in accordance with applicable BMPs (as hereinafter defined) and in consultation with the Managing Agencies and may include generally accepted habitat management practices such as controlled burning, mowing, rotary chopping and disking as required to further good husbandry and game management. Manager may harvest pine trees, if low thinning methodology is utilized and BMPs (as hereinafter defined) are followed; provided, however, there shall be no clear cutting except to control or eradicate disease, hazard mitigation, or salvage operations. After such harvesting, the remaining stand shall be approximately thirty (30) square feet of basal area per acre and the leave trees shall be selected from the dominant and the co-dominant species. Site preparation, application of fertilizers, use of pesticides and herbicides, and implementation of prescribed burning, and harvesting methods shall be addressed in accordance with applicable BMPs (as hereinafter defined).

c. **Salvage Harvesting.** Salvage harvesting following natural disasters, including but not limited to insect infestations or wildfires, shall be allowed in all areas of the Property in accordance with applicable BMPs (as hereinafter defined), if any. Following such disaster, all site preparation and re-establishment activities will be conducted according to applicable BMPs (as hereinafter defined), if any, and consistent with the condition of such area prior to the disaster.

d. **Palm Tree Removal.** Manager may systematically remove and sell palm trees as part of an ongoing thinning operation.

22. **Ranch Operation.** Manager shall maintain commercial cattle and equine operations in accordance with the Natural Resources Conservation Service ("NRCS"), local soil and water district, or State of Florida Department of Agriculture and Consumer Services' ("DACS") BMPs (as hereinafter defined), as and to the extent contemplated by the management and business plans. Manager shall repair and maintain existing fences and may fence and cross-fence as reasonably required for the conduct of ranch operations, provided, however any such fencing shall not substantially impede the movement of wildlife onto, across or upon the Property. Manager may maintain existing wells on the Property, and use the same for irrigation subject to regulatory approval as applicable.

23. **Signs.** Manager shall have the right to construct, place and maintain signs on the Property solely for the purpose of identifying the Property or the allowed activities thereon. The total square footage of any allowed signage for the Property shall not exceed sixty-four (64) square feet.

24. **Roads, Game Plots, Vehicular Game Trails and Utilities.** Manager shall maintain existing roads, game plots, vehicular game trails and utilities, and construct, expand and install such impervious roads, trails and utilities as may be, or become, reasonably necessary to manage the Property and the installations and facilities now existing or hereafter constructed upon the Property as allowed by this Management Agreement. Absent any contrary agreement, any additional roads, game plots and game trails to be constructed shall be limited to no more than fifteen percent (15%) (in terms of length or size) of such roads, game plots and game trails in existence as of the date of each closing, exclusive of (a) roads necessary to provide access for new construction allowed under this Management Agreement and (b) conversion of tenant farms to wildlife habitat and forage areas. The design, construction and location of such roads, plots, trails and utilities shall be decided upon in cooperation with the Board of Trustees', Managing Agencies, and in accordance with the NRCS, local soil and water district, or applicable BMPs (as hereinafter defined).

25. **Hunting, Wildlife Management, and Nature Study Rights.** Manager may exercise wildlife viewing and nature study rights on or related to the Property during the term of this Management Agreement, and Manager may grant licenses and sell privileges in respect of such rights on the Property; subject, however, to obtaining such permits as may be required. Manager acknowledges that the FWCC shall manage the hunting and wildlife management activities on the Property. Notwithstanding the foregoing there shall be no hunting on the Property or changes to wildlife management from those in existence at the date of this Management Agreement until the management plan relating to same has been approved by the FWCC. Manager acknowledges that the state currently provides certain funds to the Managing Agencies for the management of state-owned lands. Consequently, the parties expect the Managing Agencies to receive such management funds, which will be invested as determined appropriate by the Managing Agencies for management purposes.

25.1 **Gopher Tortoise Mitigation Park.** If FWCC has established a Gopher Tortoise Mitigation Park on the Property in accordance with the provisions of the Agreement, then the area of the Property so designated and established as a Gopher Tortoise Mitigation Park shall be managed by FWCC in accordance with the FWCC's criteria for the management of Gopher Tortoise Mitigation Parks. FWCC and Manager shall cooperate to identify and manage additional uses of areas designated as a Gopher Tortoise Mitigation Park that are compatible with use of the areas for such mitigation.

26. **Cypress Lodge and Other Dwellings.** Manager shall operate and manage the Cypress Lodge and may coordinate with a member of the state university and community college systems to advance hotel/restaurant management job training.

Manager shall also operate and manage the other structures on the Property, including, without limitation, the dwellings that are used by the employees of Manager who are employed in connection with the Property.

27. **Camping Areas.** Manager shall cooperate with the Owners to develop and place a camp/cottage system on the Property in accordance with the terms of the management plan. Such system may include ecotourism activities, such as canoeing, bird watching, or horseback trail rides in areas deemed safe for public use. Manager shall also cooperate with the Owners to develop primitive campsites where feasible. Such cooperation will include locating necessary infrastructure such as utilities and emergency vehicle access routes.

28. **Greenway System.** Manager may develop a comprehensive greenway system for the use of the public, which greenway system may be connected to a greenway system planned for the Retained Property. It is anticipated that this greenway system shall be connected south to the regional park to provide access to the Caloosahatchee River for the owners within the Retained Property and the public.

29. **Ecosystem tours.** Manager shall continue to manage and operate the ecosystem tour program currently in operation on the Property.

30. **Property Owner's Association (POA).** One hundred percent of the funds collected by the POA for the purpose of supporting the environmental stewardship activities of the Property, as more particularly provided for in the Agreement, shall be deposited to the management account for the Property and used for the management, maintenance and improvement of the Property and for the Research and Education Center, as provided by this Management Agreement.

31. **Ponds.** Manager may excavate ponds in the Improved Pasture Area for the benefit of livestock and wildlife only in accordance with applicable BMPs (as hereinafter defined). Ponds may not be excavated in the identified natural areas.

32. **Manager's Interest.** The Owners acknowledge and agree that for the purposes of this Management Agreement, Manager is an independent contractor and not an agent of the Owners.

## V. **ENFORCEMENT.**

The Board of Trustees and County shall have the right to enforce, by proceedings at law or in equity, compliance with this Management Agreement, including, but not limited to, the right to require restoration of the Property by Manager to the condition at the date of this Management Agreement. In addition to the above rights, should Manager not restore the Property upon reasonable notice, the Board of Trustees and County shall

have the right to undertake such restoration and recover the reasonable cost of such restoration from Manager.

Manager shall have the right to enforce, by proceedings at law or in equity, compliance with this Management Agreement.

## VI. GENERAL PROVISIONS.

1. **Board of Trustees' and County's Remedies.** In the event the Board of Trustees or County becomes aware of a violation of the terms of this Management Agreement, the management plan or the business plan (the "documents") the Board of Trustees or County shall give written notice to Manager in accordance with the notice provisions herein. Manager, shall only be deemed to be in default under the terms the documents in the event Manager fails to keep, observe or perform any material covenant, material agreement or material term or provision of the documents to be kept, observed or performed by it and such failure continues for a period of thirty (30) days after written notice thereof by the Board of Trustees or County; provided, however, that if such failure is not susceptible of cure within such 30-day period and Manager has commenced such cure within such period and thereafter diligently pursues such cure, then Manager shall have such additional time as is reasonably necessary to cure such failure. In the event a default by Manager occurs under the documents after expiration of the aforesaid applicable grace and notice periods, then the Board of Trustees and County shall have the right to bring an action at law or in equity before a court of competent jurisdiction to: (i) enforce the terms of the documents; (ii) require the restoration of the Property to the condition that existed prior to such activity; (iii) recover liquidated damages in lieu of restoration of harvested timber, and in the event Manager harvests or causes to be harvested timber in violation of the documents, Manager stipulates to liquidated damages for such violation in an amount equal to two hundred percent (200%) of the then fair market value of the harvested timber together with restoration of any portions of the Property altered in violation of the documents; (iv) enjoin such noncompliance by a temporary or permanent injunction in a court of competent jurisdiction; (v) seek a mandatory injunction in a court of competent jurisdiction to compel Manager to take such corrective action as required to remedy the violation; (vi) recover any actual damages arising from noncompliance with the documents, except as provided in clause (iii) above; and/or (vii) terminate this Management Agreement.

(a) If the Board of Trustees or County, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the Board of Trustees or County may pursue its remedies under this paragraph without prior notice to Manager or without waiting for the period for cure to expire; provided, however, that (i) the Board of Trustees or County shall provide written notice to Manager of the violation and the Owners' actions to prevent or mitigate said damage at the earliest feasible time and (ii) in no event shall the Board of Trustees or County have the right to terminate this Management Agreement under this subparagraph (a).

(b) The Board of Trustees and County do not waive or forfeit the right to take such action as may be necessary to ensure compliance with this Management Agreement by any prior failure to act and Manager hereby waives any defenses of laches with respect to any delay by the Board of Trustees or County in acting to enforce any restriction or exercise any rights under this Management Agreement.

(c) Nothing herein shall be construed to entitle the Board of Trustees or County to institute any enforcement proceedings against Manager for any changes to the Property or plant or animal life thereon due to causes beyond Manager's control, such as, without limitation, changes caused by fire, flood, storm, earthquake, major plant or animal disease, or acts of God.

(d) Nothing herein shall be construed to prohibit the Board of Trustees or County from terminating this Management Agreement in addition to any other remedies provided at law or in equity, after expiration of applicable notice and grace periods set forth above in this Paragraph 1.

2. **Taxes and Assessments.** Manager agrees to pay when due any real estate taxes or other assessments levied on the Property. Any funds received from an governmental agency or authority for the management of the Property pursuant to this Management Agreement may not be used for the payment of such taxes or other assessments, but Manager shall be individually liable for any such taxes and assessments on its own behalf and not on behalf of the Owners. Upon request of the Board of Trustees, Manager shall furnish to the Board of Trustees timely proof of such payment. In the event that Manager fails to pay any tax or assessment on the Property when due, the Board of Trustees, subject to the notice and cure provision of this Management Agreement and in the Board of Trustees' absolute discretion, may pay such tax or assessment. Such payment by the Board of Trustees on behalf of Manager shall bear interest at the statutory rate for money judgments then in effect in the State of Florida from date of demand therefor.

3. **Amendment.** This Management Agreement may be amended only if in the sole and exclusive judgment of the Board of Trustees, or County as to lands lying within Lee County, such amendment furthers or is not inconsistent with the purposes of this Management Agreement and the conservation and protection of the Property. Any such amendment must be mutually agreed upon by Manager and the Board of Trustees or County, as appropriate, signed and duly recorded by the parties, or their respective successors or assigns, and in compliance with all applicable laws and regulations.

4. **Manager Remedies.** In the event of a default under the "documents" (as defined in subparagraph 1 of this Section) by the Board of Trustees, County or the Managing Agencies, Manager shall be entitled to exercise any and all rights and remedies that Manager may have as a result of such default, under the documents, at law or in

equity. The foregoing rights and remedies shall be deemed to include, without limitation: (a) if the default is the failure to pay sum of money, then Manager shall be the right to expend such sums and seek reimbursement from the appropriate party, together with interest at the statutory rate for money judgments then in effect in the State of Florida from date of demand therefor; (b) if the default is the failure to take any action or result of any action in violation of the terms of this Management Agreement, then Manager shall have the right to seek specific performance, injunction or any other equitable remedy with respect thereto, it being agreed that Manager, Board of Trustees, County and Managing Agencies all acknowledge that the unique and unusual nature of the Property is a material inducement for Manager to enter into this Management Agreement, and in the event that this Management Agreement is terminated by the Board of Trustees, County and Managing Agencies in violation of the express terms of this Management Agreement, then Manager shall have the right to seek an injunction or other equitable remedy to have Manager's right to manage the Property under the terms of this Management Agreement enforced; (c) the right to seek any and all damages; and/or (d) the right to terminate this Management Agreement.

5. **Attorneys' Fees and Costs.** In any dispute between the Owners and Manager arising out of this Management Agreement that results in the filing of a lawsuit, each party in such action shall bear its own attorney fees (including fees on appeal) incurred by such party in regard to this dispute.

6. **Successors and Assigns.** The terms "Owners" and "Manager" as used herein shall include, without limitation, the successors and assigns of the Owners and Manager. The covenants, terms, conditions and restrictions of this Management Agreement shall be binding upon and inure to the benefit of Manager and the Owners. Manager shall not assign this Management Agreement in whole or in part without the prior written consent of the Owners. Any assignment made either in whole or in part without the prior written consent of the Owners shall be void and without legal effect. In the event that Manager assigns its rights under this Management Agreement, with the approval of the Owners, to an entity that is affiliated with Manager to a not-for-profit entity that is created under Internal Revenue Code Section 501(c)(3) or to another entity, specifically for the management of the Property, then assignor shall be released from all liability under this Management Agreement upon the effective date of such assignment except for matters arising before the approved assignment and while assignor was managing the Property.

7. **Notices.** Any notice, demand, consent, or communication that either party is required to give to the other hereunder shall be in writing and either served personally by hand-delivery, next-day courier delivery, or by registered or certified mail, postage prepaid, addressed as follows:

**To the Board of Trustees:**

Board of Trustees of the Internal Improvement Trust Fund of the

State of Florida  
3900 Commonwealth Blvd. MS 100  
Tallahassee, Florida 32399  
850-245-2555 FAX 850-245-2572

**To County:**

Board of County Commissioners  
of Lee County, Florida  
P.O. Box 398  
Ft. Myers, Florida 33902-0398

**To FWCC:**

Florida Fish and Wildlife Conservation Commission  
Bryant Building  
620 South Meridian Street  
Tallahassee, Florida 32399-1600

**To Division of Forestry:**

Department of Agriculture and Consumer Services  
Division of Forestry  
3125 Conner Boulevard, Suite J  
Tallahassee, Florida 32399-1650

**To Manager:**

Babcock Ranch Management, LLC,  
9055 Ibis Boulevard  
West Palm Beach, FL 33412  
(561) 624-4000 (561) 624-4537 FAX

**With a copy to:**

Ard, Shirley & Hartman, PA  
207 West Park Avenue, Suite B  
Tallahassee, FL 32301  
ATT: Sam Ard, Esq.  
(850)577-6500, (850)577-6512 FAX

**With a copy to:**

Gunster, Yoakley & Stewart, P.A.  
777 South Flagler Drive  
Suite 500, East Tower  
West Palm Beach, Florida 33401



ATT: Ernie Cox, Esq. and Daniel Mackler, Esq.  
561/655-1980, 561/655-5677 FAX

Or to such other address as any of the above parties shall from time to time designate by written notice, delivered pursuant to the terms of this paragraph. All such notices delivered hereunder shall be effective upon delivery, if by hand-delivery or next-day courier delivery, or within three (3) days from the date of mailing if delivered by registered or certified mail.

8. **Mediation.** From time to time, the terms and conditions of this Management Agreement will require the Owners and Manager to reach agreement on certain plans and courses of action described and contemplated herein. The Owners and Manager agree to attempt to reach agreement on such plans and courses of action in good faith. In the event that, after a reasonable effort, the Owners and Manager fail to reach agreement on a plan or course of action required to be undertaken pursuant to this Management Agreement, then in that event, the Owners or Manager may submit such issue to mediation. Mediation shall be held at a time and place mutually agreeable to the Owners and Manager provided, however, in no event shall the mediation be scheduled earlier than thirty (30) days or later than sixty (60) days after notice provided by one party to the other requesting mediation on the issue in dispute. The mediation shall be held before a panel of three mediators chosen in the following manner: The Owners shall choose one mediator, Manager shall choose one mediator, and the two mediators selected shall confer and choose a mutually acceptable third mediator having expertise in the subject matter in dispute. The cost of the mediation shall be borne equally by Owners and Manager. This mediation provision is intended to apply to good faith disputes regarding mutual decisions to be reached by the Owners and Manager under the terms and conditions of this Management Agreement. In no event shall this mediation provision supplant or impede election of the remedies otherwise set forth herein.

9. **No Waiver of Regulatory Authority.** Nothing herein shall be construed to restrict or abrogate the lawful regulatory jurisdiction or authority of the State of Florida or the United States or any political subdivision or agency of either.

10. **Environmental Indemnification.** Manager hereby indemnifies and agrees to save, defend and hold harmless the Owners, from and against any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs and other liabilities (whether legal or equitable in nature including, without limitations, attorneys fees and costs) claimed or asserted by or on behalf of any person or governmental authority and caused by a violation by Manager (or Manager's agents or employees, invitees or guests) of Environmental Laws. Provided, however, in the event that the Owners or any of them are named or joined as a party in a suit or proceeding alleging a violation by Manager of Environmental Laws (or a violation by Manager's agents, employees, invitees or guests), the Owners shall give Manager timely notice of such suit or proceeding. Upon receipt of such notice, Manager shall tender a defense of the Owners in such action or proceeding. The Owners shall have the right to reasonably approve Manager's selection of counsel for such defense. So long as

Manager tenders and maintains such defense on behalf of the Board of Trustees, the indemnity provisions of this Paragraph shall not extend to attorneys' fees and costs incurred or paid in defense of such suit or proceeding if such fees and costs are independent of the defense tendered by Manager. The term "Environmental Law" shall mean all federal, state and local laws including statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements relating to the environment or hazardous substances including, but not limited to, as amended, the Federal Solid Waste Disposal Act ("SWDA"), the Federal Clean Air Act ("CAA"), the Federal Clean Water Act ("CWA"), the Federal Resource Conservation and Recovery Act of 1976 ("RCRA"), the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Federal Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Federal Emergency Planning and Community Right-To-Know Act ("EPCRA"), the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), the Toxic Substances Control Act ("TSCA"), Chapters 161, 253, 373, 376, and 403, Florida Statutes, and the rules and regulations of the (i) United States Environmental Protection Agency, (ii) the State of Florida Department of Environmental Protection, and (iii) the South Florida Water Management District, now or at any time hereafter in effect. Notwithstanding anything herein to the contrary, in no event shall Manager be obligated to remediate, clean-up any or indemnify the Owners or any other party for, present or former cattle "dipping vats" on the Property or any applicable Takedown Parcel and the existence of the such "dipping vats" shall not be deemed, as between Manager and the Owners, to be a violation of any Environmental Law.

11. **Best Management Practices.** As used in this Management Agreement, the term "Best Management Practices" ("BMPs") shall be deemed to be those applicable Best Management Practices that are approved by any of the following: DACS, University of Florida Institute of Food and Agricultural Sciences, NRCS, the local soil and water conservation district, or in the absence of the foregoing, those BMPs then utilized as the prevailing practices for commercial ranching and silviculture operations in Florida. Provided, however, that in following such BMPs, Manager shall explore improved methods of conducting farm and ranch operations to better protect the resources and environment to the extent the same are consistent with the approved business plan for the Property. Manager shall adopt any improved methods so discovered and consistent with the business plan even though such methods may exceed then-current BMPs.

12. **Duty of Care.** The Owners and Manager recognize and acknowledge the natural, scenic, aesthetic, ecological, and hydrological character of the Property and have the common purpose and intent of the conservation and preservation of the Property in perpetuity. Accordingly, both parties hereby acknowledge a continuing duty of care to each other imposed by this Management Agreement carry out the intent and purpose of this Management Agreement in regard to the management of the Property.

13. **Consideration.** The Owners and Manager acknowledge that there are no provisions for the payment of rent or management fees in this Management Agreement. However, the Owners and Manager acknowledge and agree that the covenants in this

Management Agreement that are binding upon the Owners and Manager provide sufficient consideration for this Management Agreement.

14. **Agency.** Owners' agent in all matters under this Management Agreement shall be the Division of State Lands of the Florida Department of Environmental Protection ("DSL"). The foregoing agency shall be deemed to include, without limitation: (a) review and approval or disapproval, as applicable, of any matter that requires or contemplates Owners' approval herein, and (b) the approval and execution of any amendments to this Management Agreement. Provided, however, that in the event that any provision of this Management Agreement or proposed amendment of this Management Agreement materially affects or materially relates to the Property located in Lee County, Florida, owned by County then such provision shall also require the County's approval. The parties' approval under the provisions of this paragraph 14. shall not be unreasonably withheld or delayed.

15. **Title Disclaimer.** The Owners do not warrant or guarantee any title, right or interest in or to the Property.

16. **Unauthorized Use.** Manager shall, through its agents and employees, use reasonable efforts to prevent the unauthorized use of the Property or any use thereof not in conformance with this Management Agreement.

17. **Sub-Management Agreements.** This Management Agreement is for the purposes specified herein and sub-management agreements of any nature are prohibited, without the prior written approval of the Owners. Any sub-management agreement not approved in writing by the Owners shall be void and without legal effect; provided, however, that nothing in this Paragraph 17 shall prohibit Manager from entering into service contracts with third parties to provide services that the Manager has the right or obligation to provide under this Management Agreement.

18. **Ownership of Improvements/Surrender of Property.** Possession and use of the Property together with all improvements located thereon and all livestock and equipment then in use and reasonably necessary for the operation of the Property (such improvements and livestock then in use and reasonably required for the operation of the Property are herein collectively called the "Personalty"), upon the permitted termination of this Management Agreement (and for reasons other than default by the Board of Trustees, County, FWCC, or DACS, shall automatically vest in the Board of Trustees free and clear of any liens and encumbrances. Manager shall, nonetheless, thereafter execute and deliver to the Board of Trustees such evidence of title as the Board of Trustees may reasonably request. Upon such termination of this Management Agreement, Manager shall peaceably and quietly surrender to the Owners the Property together with all improvements located thereon and said Personalty. Personal property placed on the Property by Manager that does not become a permanent part of the Property and is not Personalty, as defined above, will remain property of Manager and may be removed by Manager upon termination of this Management Agreement. If Manager fails to remove its personal property within 30 days after termination of this

Management Agreement, the Owners may retain said personal property and the same may be disposed of, without accountability, in such manner as the Owners sees fit.

19. **Insurance Requirements.** During the term of this Management Agreement Manager shall procure and maintain policies of fire, extended risk, and liability insurance coverage. The extended risk and fire insurance coverage shall be in an amount equal to the full insurable replacement value of any improvements or fixtures located on the Property. The liability insurance coverage shall be in amounts not less than \$100,000 per person and \$200,000 per incident or occurrence for personal injury, death, and property damage on the Property. Such policies of insurance shall name Manager, the Owners and the State of Florida as co-insureds. Manager shall submit written evidence of having procured all insurance policies required herein prior to the effective date of this Management Agreement and shall submit annually thereafter, written evidence of maintaining such insurance policies to the Bureau of Public Land Administration, Division of State Lands, Department of Environmental Protection, Mail Station 130, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000. Manager shall purchase all policies of insurance from a financially responsible insurer duly authorized to do business in the State of Florida. Manager shall immediately notify the Owners and the insurer of any erection or removal of any building or other improvement on the Property and any changes affecting the value of any improvements and shall request said insurer to make adequate changes in the coverage to reflect the changes in value. Manager shall be financially responsible for any loss due to failure to obtain adequate insurance coverage, and Manager's failure to maintain such policies in the amounts set forth shall constitute a breach of this Management Agreement.

20. **Indemnity.** Manager hereby covenants and agrees to investigate all claims of every nature at its own expense, and to indemnify, protect, defend, save and hold harmless the Owners and the State of Florida from any and all claims, actions, lawsuits and demands of any kind or nature, all to the extent arising out of Manager's default under the terms of this Management Agreement. Neither this indemnification nor any other indemnity, term or provision of this Management Agreement shall be deemed to be a waiver of or release by any of the governmental entities that are a party to this Management Agreement of any sovereign immunity or other similar limitation of liability in favor thereof, including, without limitation, those set forth in Chapter 768 of the Florida Statutes and Manager, to the fullest extent permitted by law, is hereby granted the right to assert such sovereign immunity or other similar limitation on behalf of any governmental party to this Management Agreement for any matters that Manager is required to indemnify, defend or otherwise be responsible for under this paragraph or any other provision of this Management Agreement.

21. **No Waiver Of Breach.** The failure of the Owners to insist in any one or more instances upon strict performance of any one or more of the covenants, terms and conditions of this Management Agreement shall not be construed as a waiver of such covenants, terms or conditions, but the same shall continue in full force and effect, and no waiver of the Owners of any of the provisions hereof shall in any event be deemed to have been made unless the waiver is set forth in writing, signed by the Owners.

22. **Time.** Time is expressly declared to be of the essence of this Management Agreement.

23. **Non-Discrimination.** Manager shall not discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring on the Property or upon lands adjacent to and used as an adjunct of the Property.

24. **Venue Privileges.** The Owners and Manager agree that the Board of Trustees and Managing Agencies have a venue privilege as to any litigation arising from matters relating to this Management Agreement. Any such litigation between the Board of Trustees or Managing Agencies and Manager shall be initiated and maintained only in Leon County, Florida.

25. **Utility Fees.** The Owners shall not be responsible for the furnishing of any services of any kind to Manager during the term of this Management Agreement. Manager shall be responsible for the payment of all charges for the furnishing of gas, electricity, water and other public utilities to the Property and for having all utilities turned off when the Property is surrendered.

26. **Mineral Rights.** This Management Agreement does not cover petroleum or petroleum products or minerals and does not give the right to Manager to drill for or develop the same, and the Owners specifically reserve the right to lease the Property for purposes of exploring and recovering oil and minerals by whatever means appropriate so long as such activities do not materially affect the water resources on and under or natural beauty of the Property.

27. **Right of Audit.** Manager shall make available to the Owners all financial and other records relating to this Management Agreement and the management of the Property, and the Owners shall have the right to either audit such records at any reasonable time or require the submittal of an annual independent, detailed, financial audit, performed by a certified public accountant according to generally accepted accounting principles and auditing standards verifying all financial records pertaining to this Management Agreement, during the term of this Management Agreement. This right shall be continuous until this Management Agreement expires or is terminated. This Management Agreement may be terminated by the Owners should Manager fail to allow public access to all documents, papers, letters or other materials made or received in conjunction with this Management Agreement, pursuant to, but only to the extent such public access is required by the provisions of Chapter 119, Florida Statutes. In addition, Manager shall be required to maintain and allow public access to all documents, papers, letters or other materials made or received in conjunction with this Management Agreement for a period of three years after the expiration or termination of this Management Agreement, solely to be the extent required by applicable law.

28. **Condition Of Property.** The Owners assume no liability or obligation to Manager with reference to the condition of the Property. Manager accepts the Property in an "as is" condition, and the Owners assume no responsibility for the care, repair, maintenance or improvement of the Property for the benefit of Manager.

29. **Compliance With Laws.** Manager agrees that this Management Agreement is contingent upon and subject to Manager obtaining all applicable permits and complying with all applicable permits, regulations, ordinances, rules, and laws of the State of Florida or the United States or of any political subdivision or agency of either.

30. **Damage To The Property.** (a) Manager shall not do, or suffer to be done, in, on or upon the Property or as materially affecting said Property or adjacent properties, any act which may result in damage or depreciation of value to the Property or adjacent properties, or any part thereof, so long as the foregoing is not required by the management or business plans adopted pursuant to Section I hereof. (b) Manager shall not generate, store, produce, place, treat, release or discharge any contaminants, pollutants or pollution, including, but not limited to, hazardous or toxic substances, chemicals or other agents on, into, or from the Property or any adjacent lands or waters in any manner not allowed by law. For the purposes of this Management Agreement, "hazardous substances" shall mean and include those elements or compounds defined in 42 USC Section 9601 or which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (EPA) and the list of toxic pollutants designated by the United States Congress or the EPA or defined by any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance, material, pollutant or contaminant. "Pollutants" and "pollution" shall mean those products or substances defined in Chapters 376 and 403, Florida Statutes, and the rules promulgated thereunder, all as amended or updated from time to time. In the event of Manager's failure to comply with this paragraph, Manager shall, at its sole cost and expense, promptly commence and diligently pursue any legally required closure, investigation, assessment, cleanup, decontamination, remediation, restoration and monitoring of (1) the Property, and (2) all off-site ground and surface waters and lands affected by Manager's failure to comply, as may be necessary to bring the Property and affected off-site waters and lands into full compliance with all applicable federal, state or local statutes, laws, ordinances, codes, rules, regulations, orders and decrees, and to restore the damaged property to the condition existing immediately prior to the occurrence which caused the damage. Manager's obligations set forth in this Paragraph shall survive the termination or expiration of this Management Agreement. This Paragraph shall not be construed as a limitation upon Manager's obligations regarding indemnification and payment of costs and fees as set forth in Section VI, Paragraphs 2, 10 and 20 of this Management Agreement, nor upon any other obligations or responsibilities of Manager as set forth herein. Nothing herein shall relieve Manager of any responsibility or liability prescribed by law for fines, penalties and damages levied by governmental agencies, and the cost of cleaning up any contamination caused directly or indirectly by Manager's activities or facilities. Upon discovery of a release of a hazardous substance or pollutant, or any other

violation of local, state or federal law, ordinance, code, rule, regulation, order or decree relating to the generation, storage, production, placement, treatment, release or discharge of any contaminant, Manager shall report such violation to all applicable governmental agencies having jurisdiction, and to the Owners, all within the reporting periods of the applicable governmental agencies.

31. **Environmental Audit.** At the Owners' discretion, which shall be based upon reasonable grounds, Manager shall provide the Owners with a current Phase I environmental site assessment conducted in accordance with the Department of Environmental Protection, Division of State Lands' standards prior to termination of this Management Agreement, and if necessary a Phase II environmental site assessment.

32. **Public Lands Arthropod Control Plan.** Manager shall identify and subsequently designate to the respective arthropod control district or districts within one year of the effective date of this Management Agreement all of the environmentally sensitive and biologically highly productive lands contained within the Property, in accordance with Section 388.4111, Florida Statutes and Chapter 5E-13, Florida Administrative Code, for the purpose of obtaining a public lands arthropod control plan for such lands.

33. **Prohibitions Against Liens Or Other Encumbrances.** The Board of Trustees and County hold fee title to the Property. Manager shall not do or permit anything to be done which purports to create a lien or encumbrance of any nature against the Property including, but not limited to, mortgages or construction liens against the Property or against any interest of the Board of Trustees or County therein.

34. **Partial Invalidity.** If any term, covenant, condition or provision of this Management Agreement shall be ruled by a court of competent jurisdiction, to be invalid, void, or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the term, covenant, condition or provision that is rendered invalid does not invalidate a material term of this Management Agreement.

35. **Archaeological And Historic Sites.** Execution of this Management Agreement in no way affects any of the parties' obligations pursuant to Chapter 267, Florida Statutes. The collection of artifacts or the disturbance of archaeological and historic sites on state-owned lands is prohibited unless prior authorization has been obtained from the Department of State, Division of Historical Resources. Manager shall be required to work with the Division of Historical Resources to insure that adequate measures have been planned to locate, identify, protect and preserve the archaeological and historic sites and properties on the Property.

36. **Sovereignty Submerged Lands.** This Management Agreement does not authorize the use of any lands located waterward of the mean or ordinary high water line of any lake, river, stream, creek, bay, estuary, or other water body or the waters or the air space thereabove.

37. **Radon Gas Disclosure.** Florida law requires the following notification: "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

38. **Conviction Of Felony.** If Manager or any principal thereof is convicted of a felony during the term of this Management Agreement, such conviction shall constitute, at the option of the Owners, grounds for termination of this Management Agreement.

39. **Maintenance Of Improvements.** Manager shall, at its sole cost and expense, maintain the Property and any improvements located thereon, in a state of good condition, working order and repair including, but not limited to, keeping the Property free of trash or litter and meeting all building and safety codes, all in accordance with and as contemplated by the management and business plans adopted as described in Section I hereof.

40. **Governing Law.** This Management Agreement shall be governed by and interpreted according to the laws of the State of Florida.

41. **Section Captions.** Articles, subsections and other captions contained in this Management Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Management Agreement or any provisions thereof.

42. **Operational Report.** Manager shall prepare and submit an Operational Report to the Board of Trustees annually detailing all activities on the Property of any nature during the prior year, including those matters addressed in the management and business plans and this Management Agreement, together with information regarding funding, expenditures, permit applications, and design or building contracts for the prior year.

43. **Interest Exclusion on Bonds.** Anything in this Management Agreement to the contrary notwithstanding, Manager shall do nothing hereunder to cause the interest on the bonds issued for the acquisition of the Property by the Board of Trustees or County to lose exclusion from gross income for federal income tax purposes. Any provision of this Management Agreement that would so cause the loss of the exclusion shall be void. Notwithstanding the foregoing, in no event shall this paragraph be deemed to require Manager to incur any additional expense or cost if any of the foregoing requires Manager to perform any action or undertake any liability or obligation that is not contemplated by the management and business plans that are adopted pursuant to Section I hereof.



44. **Conflicts.** If any conflict exists between the provisions of this Management Agreement and any management plan adopted by the Board of Trustees, the terms of the management plan shall control. Any disputes by Manager with the terms of the management plan shall be subject to mediation in accordance with the provisions of Section VI, paragraph 8, of this Management Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Management Agreement, to become effective as of the day and year first above written.

Signed, Sealed and Delivered  
In the Presence of:

\_\_\_\_\_

Print name: \_\_\_\_\_

\_\_\_\_\_

Print name: \_\_\_\_\_

**BOARD OF TRUSTEES OF THE  
INTERNAL IMPROVEMENT TRUST  
FUND OF THE STATE OF FLORIDA**

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

**Deborah Poppell, Assistant Director  
Division of State Lands, State of  
Florida Department of  
Environmental Protection, as agent  
for and on behalf of the Board of  
Trustees of the Internal Improvement  
Trust Fund of the State of Florida**

**STATE OF FLORIDA  
COUNTY OF LEON**

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by Deborah Poppell, Assistant Director, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. She is personally known to me.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC, State of Florida  
My Commission Expires: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_

LEE COUNTY, FLORIDA

BY ITS BOARD OF COUNTY  
COMMISSIONERS

By: \_\_\_\_\_  
(Chairman or Vice Chairman)

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

By \_\_\_\_\_

Date: \_\_\_\_\_

MANAGING AGENCIES

FLORIDA FISH AND WILDLIFE  
CONSERVATION COMMISSION

Jane C. Stebbins-Chebe  
Witness  
Socio Bayett  
Witness

By: Kenneth Haddad  
Kenneth Haddad as its Executive Director

12-19-05  
Date signed

Approved as to Form and Legality

By: Javier Antista  
Date: 12-19-05

STATE OF Florida )  
                                  )  
COUNTY OF Leon )

The foregoing instrument was acknowledged before me this 19 day of December, 2005, by Kenneth Haddad as Executive Director for and on behalf of the Florida Fish and Wildlife Conservation Commission. He is personally known to me.

(NOTARY PUBLIC SEAL)

Rosemary Mara  
Notary Public

\_\_\_\_\_  
(Printed, Typed or Stamped Name of  
Notary Public)  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



Rosemary Mara  
MY COMMISSION # DD229993 EXPIRES  
October 20, 2007  
BONDED THRU TROY FAIR INSURANCE, INC

MANAGING AGENCIES

FLORIDA DEPARTMENT OF  
AGRICULTURE AND CONSUMER  
SERVICES

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Mike Gresham, Director,  
Division of Administration

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date signed

Approved as to Form and Legality

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

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

\_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by Mike Gresham, Director, Division of Administration. He is personally known to me.

(NOTARY PUBLIC SEAL)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Printed, Typed or Stamped Name of  
Notary Public)

Commission No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**BABCOCK RANCH MANAGEMENT,  
LLC, a Florida limited liability company**

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

By: \_\_\_\_\_  
Sydney Kitson as Managing Member

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

Attest: \_\_\_\_\_

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

Title: \_\_\_\_\_

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by Sydney Kitson and \_\_\_\_\_ as Managing Member and \_\_\_\_\_, respectively, of Babcock Ranch Management, LLC, a Florida limited liability company, on behalf of the company, who are personally known to me or who provided \_\_\_\_\_ as identification.

\_\_\_\_\_  
**NOTARY PUBLIC, State of Florida**  
My Commission Expires: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

EXHIBIT "F"

Project Name:

This instrument prepared by and returned to  
Sandra P Stockwell, Counsel  
Division of State Lands  
3900 Commonwealth Blvd  
Mail Station 115  
Tallahassee, FL 32399-3000

**DEED OF CONSERVATION EASEMENT**

THIS GRANT OF CONSERVATION EASEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by Babcock Florida Company, whose address is \_\_\_\_\_ ("Grantor"), in favor of the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA ("Trustees"), whose address is Florida Department of Environmental Protection ("DEP"), Division of State Lands, 3900 Commonwealth Blvd., Mail Station 115, Tallahassee, Florida 32399-3000, ("Grantee").

*The terms "Grantor" and "Grantee" shall include the singular and the plural, and the heirs, successors and assigns of Grantor and Grantee, and the provisions of this easement shall be binding upon and inure to the benefit of Grantor, Grantee and their heirs, successors and assigns.*

**RECITALS**

A. Grantor is the sole owner in fee simple of certain real property in Charlotte County, Florida, more particularly described in Exhibit A attached hereto and incorporated by reference (hereinafter, the "Property").

B. Grantor and the Grantee mutually recognize the special character of the Property and have the common purpose of conserving certain values and character of the Property by conveyance to the Grantee of a perpetual conservation easement on, under, over, and across the Property, to conserve the character of the Property, continue certain land use patterns that do not significantly impair the character of the Property, and prohibit certain further development activity on the Property.

C. The specific conservation values of the Property are documented in the "Baseline Inventory Report for the Babcock Florida Company Conservation Easement Tract in Charlotte County, Florida", dated \_\_\_\_\_ ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant, and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. The Baseline Documentation is maintained in the offices of the Florida Department of Environmental Protection and is incorporated by this reference. A copy of the Baseline Documentation is available from the Department on request.

D. Grantee is an agency authorized under the provisions of §704.06, Florida Statutes, to hold conservation easements for the preservation and protection of land in its natural, scenic, historical, agricultural, forested, or open space condition.

E. Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come.

F. The fact that any use of the Property that is expressly prohibited by the terms of this Easement may become greatly more economically valuable than uses allowed by the terms of this Easement, or that neighboring properties may, in the future, be put entirely to uses that are not allowed by this Easement has been considered by Grantor in granting this Easement and by Grantee in accepting it.

To achieve these purposes, and in consideration of \$10.00 and other good and valuable consideration, including but not limited to the above and the mutual covenants, terms, conditions, and restrictions contained herein, the receipt and sufficiency of which is acknowledged, and pursuant to the laws of Florida, and in particular §704.06, Florida Statutes, but without intending the validity of this Easement to be dependent on the continuing existence of such laws, Grantor hereby voluntarily grants and conveys to Grantee a non-exclusive conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

#### ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, Grantor's personal representatives, heirs, successors and assigns, lessees, agents, and licensees.

#### ARTICLE II. PURPOSE OF EASEMENT

It is the purpose of this Easement to assure that the Property will be retained forever in its natural, scenic, wooded condition to provide a relatively natural habitat for fish, wildlife, plants or similar ecosystems that sustains for the long term the conservation values of the Property and its environs, through management guided by the following principles:

- Protection of scenic and other distinctive rural character of the landscape;
- Maintenance and enhancement of wildlife and game habitat;
- Protection of unique and fragile natural areas and rare species habitats;
- Protection of surface water quality, the Floridan Aquifer, wetlands, and riparian areas.

The above purposes are hereinafter sometimes referred to as "the Conservation Purposes". Grantor intends that this Easement will confine the use of the Property to such activities as are consistent with the purpose of this Easement.



### ARTICLE III. RIGHTS GRANTED TO THE GRANTEE

To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- A. The right to enforce protection of the conservation values of the Property;
- B. Intentionally deleted.
- C. The right to enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.
- D. The right to prevent any activity on or use of the Property that is inconsistent with the purpose or provisions of this Easement and to require the restoration of or to restore such areas or features of the Property that may be damaged by any inconsistent activity or use, at Grantor's cost.
- E. The right of ingress and egress to the Property.
- F. The right to have the ad valorem taxes, assessments and any other charges on the Property paid by Grantor.
- G. A right to notice of intent to sell. The terms of this right are such that if Grantor intends to sell the Property, or any interest therein or portion thereof, Grantor shall deliver to Grantee notice of such intent, and shall, in good faith, afford Grantee an opportunity to negotiate the acquisition of the Property, or such portion thereof or interest therein that Grantor intends to sell. If Grantee desires to negotiate the acquisition of the Property, or such portion thereof or interest therein, Grantee shall so notify Grantor within 30 days after receipt of Grantor's notice of intent. If Grantor and Grantee are unable, in good faith to agree to terms of an acquisition of the Property, or such interest therein or portion thereof as applicable, within 120 days thereafter, Grantor may sell the Property free of the right granted herein. Provided, however, that closing on such sale shall occur within one year of the date of Grantor's notice to Grantee. If the Property, or such portion thereof or interest therein as is applicable, has not sold within one year after Grantee's notice to Grantor that Grantee does not intend to negotiate acquisition of the property or within one year after failure to reach agreement to terms of an acquisition, then any intent to sell the Property thereafter shall require renewed notice to Grantee. This right of notice shall not be triggered by sales or transfers between Grantor and lineal descendants of Grantor or entities in which Grantor or the party(ies) that control Grantor, owns a majority of the controlling interests. The right or notice granted herein applies to the original Grantor and to said original Grantor's, heirs, successors and assigns.
- H. The right to be indemnified pursuant to Article VI.E. hereof.
- I. Intentionally deleted.
- J. The right to have the Property maintained as reflected on the Baseline Documentation, as the Property may develop through the forces of nature hereafter.

K. If Grantor fails to cut and remove timber damaged by natural disaster, fire, infestation or the like, then the right, but not the duty, of Grantee, in its sole discretion to cut and remove said timber. Any such cutting and removal by Grantee shall be at the expense of Grantee and all proceeds from the sale of any such timber shall inure to the benefit of Grantee.

#### ARTICLE IV. PROHIBITED USES

The Property shall be maintained to preserve the Conservation Purposes of this Easement. Without limiting the generality of the foregoing Grantor agrees that the following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are expressly prohibited or restricted:

A. No soil (except in connection with restoration activities), trash, liquid or solid waste (including sludge), or unsightly, offensive, or hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants, including, but not limited to, those as now or hereafter defined by federal or Florida law defining hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants shall be dumped or placed on the Property.

B. The exploration for and extraction of oil, gas, minerals, dolostone, peat, muck, marl, limestone, limerock, kaolin, fuller's earth, phosphate, common clays, gravel, shell, sand and similar substances either directly or indirectly by Grantor or on Grantor's behalf or with the joinder or consent of Grantor in any application for a permit so to do, under and by virtue of the authority of a grant or reservation or other form of ownership or interest in or control over or right to such substances (provided however that this Easement shall not be deemed to be a transfer of any such rights from Grantor to Grantee).

C. Activities that will be detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation. There shall be no dredging of canals, construction of dikes, manipulation of natural water courses, or disruption, alteration, pollution, depletion, or extraction on the Property of existing surface or subsurface water flow or natural water sources, fresh water lakes, ponds and pond shores, marshes, creeks or any other water bodies, nor any activities or uses conducted on the Property that would be detrimental to water purity or that could alter natural water level or flow in or over the Property.

D. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of any portions of the Property having historical or archaeological significance. Grantor shall notify the Florida Department of Historical Resources or its successor ("FDHR") if historical, archaeological or cultural sites are discovered on the Property, and any sited deemed to be of historical or archaeological significance shall be afforded the same protections as significant sites known to exist at the time of entering into this easement. As to such sites Grantor will follow the Best Management Practices of the Division of Historic Resources, as amended from time to time.

E. The removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of trees, shrubs or other natural vegetation, including but not limited to cypress trees. There shall be no planting of nuisance exotic or non-native plants as listed by the Exotic Pest Plant Council (EPPC) or its successor. The Grantor shall, to the extent practical, control and prevent the spread of nuisance exotics or non-native plants on the Property. Grantor hereby grants to Grantee the right, in Grantee's sole discretion and at Grantee's expense, to develop and implement an exotic plant removal plan for the eradication of exotics or non-native plants on the Property. Under no

circumstances, shall this right conveyed to Grantee be construed to diminish Grantor's responsibilities under this paragraph or be construed as an obligation of the Grantee.

F. Commercial or industrial activity, or ingress, egress or other passage across or upon the Property in conjunction with any commercial or industrial activity including but not limited to swine, dairy and poultry operations and confined animal feed lot operations, subject, however, to Grantor's reserved rights under Article V hereof.

G. Construction or placing of temporary or permanent buildings, mobile homes or other structures in, on or above the ground of the Property.

H. The construction or creation of roads or jeep trails.

I. There shall be no operation of motorized vehicles on the Property, except in connection with Grantor's maintenance activities, in emergency situations and when necessary for compliance with the Americans with Disabilities Act.

J. If the Property is in a spring recharge area, fertilizer use for agriculture activities shall be in accordance with agricultural best management practices recommended therefor by the Natural Resources Conservation Service or the Florida Department of Agriculture and Consumer Services, whichever is more stringent, as those best management practices may be amended from time to time. No agricultural activities shall occur within a 100-foot buffer around sinkholes and other karst features that are connected to spring conduits.

K. Actions or activities that may reasonably be expected to adversely affect threatened or endangered species.

L. Any subdivision of the Property.

M. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Property except as needed for directional purposes for the public to cross the Property, as more particularly described in Article VII, herein.

N. There shall be no commercial water wells on the Property.

O. There shall be no commercial timber harvesting on the Property.

P. There shall be no agricultural activity on the Property.

#### ARTICLE V. GRANTOR'S RESERVED RIGHTS

Grantor reserves to Grantor, and to Grantor's personal representatives, heirs, successors, and assigns, the following specified rights, which are deemed to be consistent with the purpose of the Easement. The exercise of the Reserved Rights shall be in full accordance with all applicable local, state and federal law, as amended from time to time, as well as in accordance with the purposes of this Easement.

A. The right to observe, maintain, photograph, introduce and stock native fish or wildlife on the Property, to use the Property for non-commercial hiking, camping, and horseback riding, so long as the same do not constitute a danger to Grantee's employees, agents, officers, directors and invitees, and so long as such activities do not violate any of the prohibitions applicable to the Property or Grantee's rights, as stated above. Grantor reserves, and shall continue to own, the hunting and fishing rights on, or related to, the Property and Grantor may lease and sell privileges of such rights.

B. The right to conduct controlled or prescribed burning on the Property; provided, however, that Grantor shall obtain and comply with a prescribed fire authorization from the local and state regulatory agencies having jurisdiction over controlled or prescribed burning.

C. The right to mortgage the Property; provided, however, that the Mortgagee's lien shall be inferior to and lower in priority than this Easement.

D. The right to contest tax appraisals, assessments, taxes and other charges on the Property.

E. The right to transfer any and all existing and future residential, commercial, industrial and incidental development rights and/or density credits that are now or hereafter allocated to, implied, reserved, or inherent in the Property to any other property.

F. The right to construct, operate and maintain a roadway, including, without limitation, lighting, drainage and other related purposes, through, across and over the Property for the purposes of providing access to and from the property that is adjacent on the north and the south of the Property (the foregoing roadway is herein called the "Road" and the property adjacent to the Property is herein called the "Adjacent Property"). Grantor agrees that the Road shall be constructed and maintained in accordance with applicable laws, which obligation shall be deemed to include, without limitation, the elevation of the Road above the existing grade of the Property, if so required by applicable laws. Grantee acknowledges that Grantor intends to develop the Adjacent Property and the Road shall provide access for all of Grantor's agents, invitees, licensees, assignees and designees and all owners, occupants, guests, and invitees of the Adjacent Property.

#### ARTICLE VI. GRANTEE'S REMEDIES

A. Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing such violation within the 30-day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, and to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including damages for the loss of scenic,

aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor (provided that notice be provided to Grantor as soon as reasonably practicable thereafter) or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**B. Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

**C. Waiver of Certain Defenses.** Grantor hereby waives any defense of estoppel, adverse possession or prescription.

**D. Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

**E. Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in paragraph VIII.A. and VIII.B.; and (3) the existence or administration of this Easement.

## ARTICLE VII. PUBLIC ACCESS

The granting of this Easement also conveys the right to the public to traverse the easement on a marked trail between Curry Lake and Telegraph Swamp if the management plan for the Babcock Ranch property owned by Grantee determines that Curry Lake is appropriate and safe for public access for passive recreation, such as hiking and birdwatching.

## ARTICLE VIII. MISCELLANEOUS

A. **Costs and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

B. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized but in no event obligated to make or advance any payment of taxes, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.

C. **Extinguishment.** If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Florida law at the time, in accordance with paragraph VIII.D. Grantee shall use all such proceeds in a manner consistent with the Conservation Purposes of this grant or the purposes of the bond or statutory program under which Grantee obtained the purchase money for this Easement. Grantor believes that any changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability of Grantor to conduct or implement any or all of the uses allowed under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

D. **Proceeds.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph VIII.C., the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by

the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

E. **Condemnation.** If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

F. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to a governmental entity or nonprofit organization whose purposes include the conservation of land or water areas or the preservation of sites or properties. As a condition of such transfer, Grantee shall require that the Conservation Purposes that this grant is intended to advance continue to be carried out.

G. **Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which Grantor divests any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity or priority of this Easement or limit its enforceability in any way.

H. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed to the parties as set forth above, or to such other addresses such party may establish in writing to the other.

I. **Recordation.** Grantee shall record this instrument and any amendments in timely fashion in the official records of Charlotte County, Florida, and may re-record it at any time as may be required to preserve its rights in this Easement.

J. **Amendments.** The terms and provisions of this Easement may be amended by the mutual consent of the parties hereto. No amendment shall be effective until executed with the formality of a deed and recorded in the public records. The parties hereto agree that even though all of Grantor's agents, invitees, licensees, assignees and designees and all owners, occupants, guests, and invitees of the owners and occupants of the Adjacent Property will have the right to use the Road, none of such parties shall have the right or be obligated to join in to any amendment of this Conservation Easement (even if the same affects the rights of such parties that are granted the right to use the Road under this Conservation Easement), except for any successor of Grantor as the owner of the Property and only Grantor and Grantee may amend this Conservation Easement by written instrument executed by both parties hereto and recorded in the Public Records of Charlotte County, Florida.

K. **Controlling Law.** The laws of the State of Florida shall govern the interpretation and performance of this Easement.

L. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of §704.06, Florida Statutes. If any provision in this instrument is found

to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

M. **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

N. **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

O. **Joint Obligation.** The obligations imposed by this Easement upon Grantor shall be joint and several.

P. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

Q. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

R. **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

S. **Recitals.** The above recitals are true and correct and incorporated herein by reference.

**TO HAVE AND TO HOLD** unto Grantee, its successors, and assigns forever.

**IN WITNESS WHEREOF** Grantor and Grantee have set their hands on the day and year first above written.



Witnesses:

\_\_\_\_\_  
Signature of first witness

\_\_\_\_\_  
Grantor

\_\_\_\_\_  
Printed name of first witness

\_\_\_\_\_  
Signature of second witness

\_\_\_\_\_  
Printed name of second witness

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

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid, to take acknowledgments, appeared \_\_\_\_\_ who is personally known to me or who has produced a state driver license as identification, and who did not take an oath and executed the foregoing instrument and he/she/they acknowledged before me that he/she/they executed the same for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 200\_\_

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed  
NOTARY PUBLIC  
My Commission Expires:

Witnesses:

BOARD OF TRUSTEES OF THE INTERNAL  
IMPROVEMENT TRUST FUND OF THE STATE OF  
FLORIDA

\_\_\_\_\_  
Signature of first witness

BY DIVISION OF STATE LANDS OF THE FLORIDA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

\_\_\_\_\_  
Printed name of first witness

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
AS ITS: \_\_\_\_\_

\_\_\_\_\_  
Signature of second witness

\_\_\_\_\_  
date signed by Buyer

\_\_\_\_\_  
Printed name of second witness

STATE OF FLORIDA  
COUNTY OF LEON

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid, to take acknowledgments, appeared \_\_\_\_\_, who is personally known to me or who has produced a state driver license as identification, and who did not take an oath and executed the foregoing instrument and he/she/they acknowledged before me that he/she/they executed the same for the purposes therein expressed on behalf of the Board of Trustees.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed  
NOTARY PUBLIC

My Commission Expires:

EXHIBIT "A"

LEGAL DESCRIPTION OF WETLANDS BETWEEN CURRY LAKE AND TELEGRAPH SWAMP

# EXHIBIT "G"

## DEPICTION OF CONSERVATION EASEMENT AREA

