WALK ON #2

Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No. 20051575

1. ACTION REQUESTED/PURPOSE: Consider entering into an "Agreement for Sale and Purchase" with SKP, III (Mosaic Investment Partners - Parent Company for Kitson and Partners), the Board of Trustees for the Internal Improvement Trust Fund and the Florida Fish and Wildlife Conservation Commission for the acquisition and management of certain lands within the Babcock Ranch, to include a Management Agreement for the acquired properties to be implemented ultimately by the State.

2. WHAT ACTION ACCOMPLISHES: Initiates the process for the acquisition and management of environmentally sensitive lands within the Babcock Ranch by the State of Florida and the County.

3. MANAGEMENT RECOMMENDATION: Consider the terms and conditions of the "Agreement for Sale and Purchase" and the Management Agreement and determine if the proposal is in the best interests of the County at this time.

4. Departmental Category: /2 WO #2			**5. Meeting Date:** 11-1-2005
6. Agenda:	**7. Requirement/Purpose:** *(specify)*		**8. Request Initiated:**
___ Consent	___ Statute		**Commissioner**
X Administrative	___ Ordinance		**Department** County Attorney
___ Appeals	___ Admin. Code		**Division**
___ Public	X Other	**Purch. & Sale Agmt.**	**By:** David M. Owen, County Attorney
X Walk-On			

Background:

On October 18, 2005 at its regular meeting, the Board of County Commissioners received presentations from the Division of State Lands (FDEP) and Kitson & Partners, Inc., concerning the proposed "Agreement for Sale and Purchase" for the acquisition and management of certain Babcock property. At that meeting, the Board deferred action on the matter until the November 1st meeting in order to review and evaluate the proposed Agreement.

County administrative and legal staff have reviewed the proposal in conjunction with the also-proposed four-party planning Interlocal Agreement, and have included their comments, observations and analyses as back-up to this agenda item.

Staff is recommending that the Board consider and evaluate the proposals as contained in the Agreements, staff's comments, the facts of the transaction and their ramifications in order to weigh the benefits against the detriments so as to determine if entering into the Agreement is in the best interests of the County at this time.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
					RK 10/28	10/31	10/26	10/31/05	

11. Commission Action:

___Approved
___Deferred
___Denied
___Other

RECEIVED BY COUNTY ADMIN: CR
10-28-05
3:29
COUNTY ADMIN FORWARDED TO: PF
10/28/05
2:30pm

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: October 28, 2005

TO: Board of County Commissioners

FROM: David M. Owen
County Attorney

RE: Goes w/ "Original" Walk-on Blue Sheet for Babcock.
WALK-ON I[illegible]ETING OF NOVEMBER 1, 2005
AGREEMEN[illegible]FLORIDA ("STATE") AND KITSON &
PARTNERS,[illegible]E PURCHASE AND MANAGEMENT
OF CERTAIN[illegible]E COUNTY

Commissioners;

The above is being walked on for your consideration following input from the State and Kitson at your meeting of October 18, 2005. The request for Board action is being made by the State and Kitson due to certain established timetables for the Parties relative to the Kitson acquisition of the Babcock Ranch from the Babcock family. The request from the State and Kitson is that the Board make its decision with respect to entering into the subject Agreements prior to consideration and ratification by the Governor and Cabinet sitting as the Trustees of the Internal Improvement Trust Fund ("TIITF").

Your legal and administrative staff have in the short time available for such endeavor, reviewed the proposed documents (the Purchase and Sale, and Management Agreements) and made preliminary comment. They have also been reviewed in conjunction with other documents, notably the proposed, now in discussion "Four-Party Planning Interlocal Agreement" and the Memorandum of Agreement ("MOA") of May 25, 1999 by and between Town & Country Utilities and Lee County relative to the issuance of Town & Country's utility franchise from the Florida Public Service Commission as applied for in 1998 (attached).

Three memoranda are attached; one each from Tim Jones, Wayne Daltry and Paul O'Connor according to their respective disciplines outlining issues with respect to the Agreements and their connection to the Four-Party Planning Interlocal Agreement. Each generally addresses "key" issues and does not represent a total analysis or position. We all reserve the right to discuss further details with you at your individual briefings and during discussions at your regular meeting on Tuesday.

2005175

RE: WALK-ON ITEM NO. 2, REGULAR MEETING OF NOVEMBER 1, 2005 AGREEMENTS WITH THE STATE OF FLORIDA ("STATE") AND KITSON & PARTNERS, INC. ("KITSON") FOR THE PURCHASE AND MANAGEMENT OF CERTAIN BABCOCK LANDS IN LEE COUNTY

The upshot of the May 25, 1999 MOA between Town & Country Utilities is that Town & Country and Lee County Utilities by agreement, will determine which entity is in "...the best position to provide such [utility] service in the public's interest." to the customers located within the Lee County portion of the Town & Country franchise area. (Paragraph 3, Page 2 of the MOU). The dispute was of a service area nature with the County objecting to Town & Country Utilities servicing potential Lee County Utilities' customers if Lee County Utilities had the ability to do so.

I apologize if this memorandum is somewhat cryptic, however, and as you know, "Wilma" took up some of our time over the past few days.

This is a very complex, important consideration for the County and as you have noticed, seems to be very fluid right now. We will do our best to provide and interpret information for you so that you can reach a decision that is in the best interests of the County with respect to this potential acquisition when you take up this item on Tuesday.

DMO/dm
Attachments
xc: Donald D. Stilwell, County Manager
Holly Schwartz, Assistant County Manager
Wayne Daltry, Director, Smart Growth
Mary Gibbs, Director, Department of Community Development
Paul O'Connor, Director, Planning
Timothy Jones, Chief Assistant County Attorney

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: October 28, 2005

TO: David M. Owen
County Attorney

FROM: Timothy Jones
Chief Assistant County Attorney

RE: Babcock Legal Issues
LU-02-02-2187

The following are significant legal issues contained in the Agreement for Purchase and Sale (Agreement) of the Babcock property between Kitson (MSKP III, INC.), as Seller; and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Trustees), Florida Fish and Wildlife Conservation Commission (Commission), and Lee County (County) collectively as Purchaser. Items considered "normal" or "standard" in these type agreements are not discussed below.

1. The contract is contingent on:

   a. Seller closing on its contract with the Babcock Florida Company for purchase of the Babcock Ranch.

   b. Execution of an interlocal planning agreement by Seller, Lee County, Charlotte County and the Florida Department of Community Affairs.

   c. Adoption of comprehensive plan amendments by Charlotte County that significantly increase the available density on the Retained Property in Charlotte County.

2. The purchase is in 5 Phases or Takedowns with the identification of the property in each Phase to occur **after** execution of the Agreement. Takedown of the property in Lee County will not occur until Phases III and IV which are scheduled **on or before** July 31, 2007 and July 31, 2008 respectively. Each Phase is conditional on the Florida Legislature appropriating the funds required for the Trustees' share.

   a. If Phase I does not close on or before July 31, 2006, Seller may terminate the Agreement.

Re: Babcock Legal Issues
LU-02-02-2187

b. Approximate total Phase prices, subject to acreage adjustments, are I - $100 million; II - $62.5 million; III - $62.5 million; IV - $62.5 million; V - $62.5 million.

c. Lee County's share will be based on a per acre price of $4,576.00 times the number of acres in Phases III and IV that are within the county.

3. Lee County will receive fee title to lands in Lee County purchased with the county's funds - $40 million.

4. All property purchased, including Lee County lands, will be subject to the Management Agreement.

5. The Trustees' share is limited to $350 million and the Commission's share is $10 million.

6. Lee County lands will be subject to the following:

a. Easements to Seller for the benefit of the Retained Property for general utility purposes, communication lines, drainage, and access; including an easement for a paved greenway trail for non-motorized transport such as biking, hiking and horseback riding from the Retained Property to the regional park adjacent to the Caloosahatchee River.

b. The Management Agreement.

c. Seller's right to use land for ecological restoration or mitigation **before** conveyance.

d. Seller's right to utilize the Rural Land Stewardship Program (RLSP) on such lands; and the right to grant easements pursuant to Section 163.3177(11)(d) Florida Statutes (conservation easements) before Takedown; and, the right to apply for panther and other listed species compensation credits.

e. Lee County cannot use water from its property except for the existing and future agricultural operations, normal ranch operations and ancillary management or public access requirements and management of the property pursuant to the Management Plan.

Re: Babcock Legal Issues
LU-02-02-2187

7. Owners of residential units within the future development on the Retained Property will pay an assessment of at least $1.00 per month per dwelling unit for the purpose of supporting the environmental stewardship activities on the Property. There is no requirement or indication that commercial properties will be assessed for any purpose.

8. County has no absolute right to continue to purchase lands within the county if the Agreement is terminated by the Seller or the Trustees before completion of Phases III and IV.

TJ:tlb

MEMORANDUM

FROM
OFFICE OF THE COUNTY MANAGER
SMART GROWTH

Date: October 28, 2005

To: David Owen
County Attorney

From: Wayne Daltry
Smart Growth Director

RE: Babcock Agreement for Sale and Purchase

Recommendation: Agree to participate in the purchase of the Babcock Ranch, pursuant to the resolution of the issues as you have noted in your briefing of the Board of County Commissioners.

Background
I have been in consultation with the Department of Community Development regarding the Purchase and Sale agreement, and the review of the Charlotte County Comprehensive Plan amendment. The memorandum from Paul O'Connor dated October 27th, 2005 encapsulates the greater part of the issues we have identified in those reviews.

The purpose of this memo is to provide greater background and context to these discussions. First, it should be remembered that the County first began discussion of public ownership of Babcock Ranch (the Ranch) in 2002. This came about due to the proposal for Comprehensive Plan amendments to the Lee and Charlotte County Comprehensive Plans. The Plan amendments were for increases in development in Charlotte and Lee Counties. At the same time sale in fee and less than fee simple for part of the Ranch was being negotiated with the State of Florida. After preliminary discussions with both Counties, the owners and the State began discussions for sale and purchase of the entire Corporation (Babcock Florida Company, the Company). After these discussions began, the Lee County Board of County Commissioners did offer to assist the State of Florida in acquisition.

The discussions for sale and purchase persisted for years. During this time, Lee County Board of County Commissioners continued to offer assistance, even up to the stated offer of buying all the property within Lee County, within a reviewed and accepted appraisal, and with the strictures of Conservation 2020. The Company's discussions for sale to the State ended this spring. On or around July 21, the County was informed that the property was under a contract for sale to Syd Kitson, of Kitson and Partners (MSKP III).

The Discussions
From the beginning, MSKP III has been constant in stating three requirements. First, the sale of a large part of the Ranch to the public; second, a substantial amount of development on the unsold part; third, some sort of marketing of water. These requirements are conjoined for the purchase for sale contract to be completed.

From the beginning, I have been responding as summarized. (1) We understand MSKP III's requirements. (2) We support the sale of as much of the property to the public as possible, including all in Lee County. (3) We will not commit to more or less development than currently allowed to make the sale between the Company and MSKP work. We will discuss and accept applications for more development than currently allowed, but only through applications through some appropriate statutorily approved processes. (4) We will not commit to purchase water outside of the regional water supply planning process, but can agree to work within such a process.

Part of the discussions in (3) above has been in the form of a 4 Party agreement. The Board was informed and agreed to at least discuss such an agreement at a September 14th Management and Planning meeting. We have not reached consensus on such an agreement yet.

The Contract for Purchase and Sale references that the sale will not go through without a 4 Party agreement.

Summary of Review

My review of the Purchase and Sale agreement concludes that the property proposed for Lee County purchase does further the Board of County Commission direction to pursue purchase as much as possible of the Lee County portion. It does not include all of Lee County, but it should be remembered that this is the part the STATE OF FLORIDA is proposing to purchase. Should MSKP III decide to purchase the property, this purchase does not close out further discussions on public management or ownership in fee or less than fee simple of additional acres. Within the filed and proposed Charlotte Plan amendment, there is a bubble plan that shows flow ways and public areas; consequently, the State's purchase is the first contract, it may not be the last.

My review of the current draft 4 Party Agreement has concerns, the dominant one being the inability to challenge other entities' plans or permits over issues not resolved by the agreement. The 4 Party agreement itself defers issue resolution to other actions subsequent to signing the agreement, which I do not find agreeable.

My recommendation is simply, (contingent one caveat and upon resolution of the legal issues raised by the County Attorney's Office and resolution of the issue in Sec 32 raised by Mr. O'Connor), *to offer to the State to participate in the purchase of the property to the amount requested.* The caveat is to ensure that the State understands and MSKP III understands that agreeing to participate in the purchase and sale does not commit to executing an unsatisfactory 4 Party Agreement. This caveat also extends to ensuring that there is an awareness that this may cause MSKP III to terminate the contract pursuant to section 12 of the Purchase and Sale agreement.

MEMORANDUM

FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT
DIVISION OF PLANNING

DATE: October 27, 2005

TO: David Owen
County Attorney

FROM: Paul O'Connor
Paul O'Connor, Director

RE: Babcock Agreement for Sale and Purchase

The following are Planning Staff's issues and concerns regarding the proposed Agreement for Sale and Purchase (Contract) between MSKP III, Inc., the Seller, and the State of Florida, and Lee County, the Purchaser, for portions of the Babcock Ranch. There are certain provisions of the Contract that require planning and policy decisions. Some of these decisions are included in the Contract itself and some are defered to future documents and actions, such as the Interlocal Planning Agreement and the proposed amendments to the Charlotte County comprehensive plan. Many of these issues are tightly interwoven and it is difficult to separate them from one another. The following two issues concern the Contract itself, the remaining issues relate to the future documents and actions issues that are so closely related.

CONTRACT ISSUES

SECTION 12, CLOSING DATE AND PLACE

This section of the Contract gives the Seller, prior to the Phase I closing, the sole right to terminate the Contract if the Interlocal Planning Agreement, which addresses various development issues for the Retained Property, and the proposed amendments to the Charlotte County comprehensive plan have not been adopted to the satisfaction of the Seller. This is, in essence, the Sellers right to terminate the Contract if their desired development entitlements of 19,500 dwelling units and 6,000,000 square feet of non-residential use for the Retained Property are not achieved.

SECTION 32, MITIGATION AND RURAL LAND STEWARDSHIP PROGRAM

Section 32 of the Contract deals with certain provisions regarding mitigation and the proposed Rural Lands Stewardship Program (RLSP). In this section the Seller reserves the right to perform ecological restoration for wetland mitigation prior to conveying the property to the Purchaser. These mitigation benefits can then be retained by the Seller to offset wetland impacts. This section also reserves to the Seller the right to utilize the Rural Land Stewardship Program to create Rural Stewardship Credits from the property prior to conveyance of the property to the Purchaser. Finally, this section retains the right for the Seller to apply for panther and other listed species compensation credits prior to conveyance of the property to the Purchaser.

These credits, in effect, remove certain mitigation value of the property from the public realm and place it into private development interests. In a worst case scenario, all of the mitigative aspects of the property could be retained by the Seller. This may well be in conflict with current County policy on Conservation 2020 property acquisitions.

PROPOSED INTERLOCAL PLANNING AGREEMENT AND
PROPOSED CHARLOTTE COUNTY COMPREHENSIVE PLAN AMENDMENTS
RURAL LANDS STEWARDSHIP PROGRAM

The amendments as currently proposed are interim in nature, to be followed by an application for and expected adoption of a Rural Lands Stewardship Program. Unfortunately, the proposed RLSP does not meet the principles or intent of the RLSP as outlined in Florida Statutes. RLSP's rely on the creation of rural land use credits for the preservation of natural resource or other beneficial use characteristics of the land in exchange for the ability to transfer those credits to lands designated as suitable to accommodate development. The RLSP achieves the preservation and conservation of the land creating the rural land use credits at no cost to the public. Under the Babcock proposal, however, the State is being offered an opportunity to purchase, at full market value, preservation and conservation land with additional development entitlements being assigned to the new Babcock Ranch Overlay land use category. Therefor, the Babcock proposal is contrary to the intent of the RLSP.

Rather than these proposed multi step plan amendments, the project should be re-filed as a Development of Regional Impact with a concurrent Comprehensive Plan amendment for the Southwest corner of the property. The DRI process can provide for the sequencing of development with the necessary services, jobs, transportation and other impacts that are not being adequately addressed in the current amendments.

FISCAL ISSUES

The "interim" comprehensive plan amendment does not contain any commitments to mitigate its numerous impacts. The proposed policies cited in the amendment are vague, and many place the burden of mitigation on Charlotte and Lee County governments. These policies, as proposed, likely conflict with other provisions of the Charlotte County's Comprehensive Plan that promote growth paying its own way.

There are no assurances that there will not be negative impacts to both counties. Additionally, the application proposes the commitment of public funds (county funding through both impact fees and ad valorem taxes) to the Babcock development. Earmarking funding in this way is contrary to sound public budgeting principles and may very well establish an undesirable precedent.

TRANSPORTATION ISSUES

The applicant's analysis has identified several transportation network improvements necessary to support the development that are not funded, placing a burden on both counties to mitigate this project's impacts. The application indicates the project will generate $46 million in impact fees, but will require road improvements of $125 million. The additional improvements identified in the application as necessary to mitigate the proposal are not included in either county's Metropolitan

Planning Organization work plan, are not funded, and no alternative funding sources have been identified.

The applicant apparently assumes that the density shown in the Comprehensive Plan future land use map is the buildout density that will be achieved by the year 2020. This assumption has overlooked Lee County's Year 2020 density allocation limitations. Under the current Lee Plan, these densities cannot be realized.

In all likelihood the actual traffic impacts will be greater than those identified in the application since the application was based on an unrealistic internal capture rate based on a self sustained community. Commitments to ensure that this degree of internal capture will ever be achieved are lacking. There needs to be a mechanism identified that will ensure proper phasing for residential, commercial, schools, and other uses, and the proper mitigation of impacts. The Comprehensive Plan amendment and RLSA do not provide for this.

AFFORDABLE HOUSING ISSUES

There are no policies that specifically address the issue of affordable or workforce housing. The proposed policy states that a diversity of housing types will be provided, but there is no specificity or commitment.

WATER ISSUES

The application includes a map that indicates that the subject property is not an area of significant recharge. This information conflicts with information contained in the recent Groundwater Recharge & Mining Study for the adjacent property in Lee County to the south. However, there is a concern that if these water resources are utilized by the Town and Country Water Company there may be conflicts with existing water users in Lee County, including Lee County Utilities.

Another water concern is the maintenance of Minimum Flow Levels of clean fresh water for the Caloosahatchee River. Currently, dry season minimum flows are not met. The Telegraph Swamp is an important source of clean fresh water. If these flows are diverted, the counties may encounter larger recovery problems in the future.

ADDITIONAL ISSUES

There are numerous policies in the application that commit the counties and not the developer to specific actions, placing the burden on the counties instead of the developer. There are no commitments from the applicant to ensure that what is described as a "self sustained community" will be achieved. The application defers dealing with issues until later phases, such as rezoning or Land Development Code amendments. These issues need to be addressed now.

cc: *Wayne Daltry, Director, Smart Growth*
Mary Gibbs, Director of Community Development
Tim Jones, Assistant County Attorney

From: "Poppell, Deborah" <Deborah.Poppell@dep.state.fl.us>
To: <dist1@leegov.com>, <dist2@leegov.com>, <dist3@leegov.com>, <dist4@leegov.com>, <dist5@leegov.com>, <owend@leegov.com>, <Tom.D'Aprile@charlottefl.com>, <Adam.Cummings@charlottefl.com>, <Tom.Moore@charlottefl.com>, <Matthew.DeBoer@charlottefl.com>, <Sara.Devos@charlottefl.com>
Date: 10/28/05 4:15PM
Subject: Babcock Ranch

Please find attached the most current Purchase Agreement and Management Agreement for Babcock Ranch by the State of Florida. Also attached for your review are key provisions for both. Should you have any questions please contact me at (850) 245-2555. dp

Babcock Purchase Agreement Contract October 26, 2005

Key Provisions:

1- 73,476.5 acres for $350 M to public ownership

2- 17,884.5 reserved by MSKP III, Inc.

3- 5 Phases:
Phases 1&2 is $162.5M and the acreage to equal $5000/acre (approx. 32,500 acres)
Phases 2-5 are $62.5M and the acreage to equal $4576/acre (approx. 13,659 acres) each

4- Updated appraisals establish the value for the land the state is buying at $395M and $390M. The biggest increase in value was on the Agricultural Lands: from $3500 per acre to $5000 per acre. The Transitional Lands, which for the most part is the area MSKP III, Inc. is keeping only went up $500/acre: from $10,500 to $11,000/acre.

The proposed purchase price of $350 M is 83% of the $395M appraisal.

5- Funding Sources:

$200M Florida Forever
$100M General Revenue/ Proposed
$ 40M Lee County 20/20 Conservation Program (pending vote of Commission on 11/1)
$ 10M FWCC Inholdings & Additions Program (pending vote on 11/30)

6- The agreement is contingent upon

-MSKP, III, Inc. and Babcock have merged
-BOT has obtained funding from the Legislature
-MSKP, Charlotte, Lee and DCA have addressed the development issues for Retained property, and
-Charlotte County adopts Overlay amendments to its Comprehensive Plan

7- Establishment of easement areas for recreation trails between what will eventually be the state property and the private development will be provided upon along corridors mutually agreed upon by the parties (number and location determined prior to closing of each phase) to provide greenway trail for non-motorized transport such as biking, hiking, horseback riding.

Additionally, Seller and Purchaser shall agree upon a form of conservation easement across the retained property from Curry Lake to Telegraph Swamp to address an ecological connection allowing for a road for the seller but minimizing environmental impacts (dirt road there now). The contract

provides MSKP, III, Inc., will build an environmentally sensitive road and will elevate, if necessary, with public hiking and birdwatching access.

8- Mitigation- The contract will allow the purchaser to use lands destined for State ownership for restoration purposes and get mitigation credits for that restoration, but requires that the work be completed prior to the phase coming under state ownership and any ongoing maintenance of the site be performed by the seller (MSKP, III, Inc.). The parties will mutually agree upon mitigation sites. The credits remain with the seller.

9- Rural Lands Stewardship Program—The seller reserves the right to utilize this program on phases prior to state ownership on Takedown Parcels III, IV, & V, the right to grant easements pursuant to this program (163.3177, F.S.) again, prior to state ownership, in order to secure development credits based on the values of the highest quality conservation lands and in a form and substance acceptable to the County (Lee, if any in that county) and the state (DSL). The state will get full fee ownership over all the acreage it purchases, although those acres that are used under the Rural Lands Stewardship Program will come with a conservation easement on them to prevent any future development. Phase V will be used to balance the purchase price and any acreages needed to make up for reduction in value from conservation easements applied under the Rural Lands Stewardship Program.

10- Water Access --- Under PSC Certificate #613-W, Town and Country Utilities Company is the exclusive water service provider for the Babcock Ranch proper. There are currently 31 potable wells and about 420 agriculture wells scattered around the entire 91,000+ acres. Under the purchase agreement, Town and Country will be providing the current water needs for Babcock Ranch and the future needs when the public facilities are added (cabins, campgrounds/showers, public bathrooms, etc.) at no cost. The state can also choose to seek CUP's and add additional wells for its own use if it chooses. The contract provides that the utility will use its best efforts to use existing wells and roads for locating commercial wells and pipes. The seller is retaining fee ownership of the proposed commercial well sites (10x100 sq ft), along with the access easements and the locations will be established before the takedown of each parcel with both parties consulting on those locations. As each parcel is taken down and the new well sites are designated, the existing lease will be lifted from that piece of property for all wells not reserved by Town & Country. There will be a maximum of 75 wells across the state owned property reserved for Town & Country, no wells within Telegraph Swamp, wetlands or natural areas, and the only pipes across Telegraph Swamp will be co-located or immediately adjacent to the water control structures currently located across the swamp. For new well locations, MSKP, III, Inc., will exchange land acre for acre at closing. If and when wells are permanently abandoned, the seller will cap, remove all equipment, fences, etc. and donate the land to the BOT. The BOT agrees not to compete with Town & Country in the sale of water, nor to lease any of it's property to an entity that would then sink a well and do the same.

MSKP, III will be assessed an easement fee for the water facilities on the BOT property. The fee will based on the gallons withdrawn from the wells on the property. It will only be assessed on the active wells and is payable annually at $0.20 per thousand gallons of water. The number of active wells shall be determined as of January 1 of each year and payment is due to the BOT by February 1 of each year.

11- Flood Control/Water Control Structures --- The contract provides that as each parcel with a water control structure is being prepared for closing, the parties to the contract working with SFWMD will establish a schedule for controlling the waters to avoid flooding the retained parcel and who will maintain the water control structures for that purpose. Two structures, one near the HQ's and one lower near the development (see attached map-I have circled the approximate locations – hard to see through the trees). They will probably come in two separate parcels/closings.

12- Drainage -- Any easements reserved by MSKP for drainage shall be for the purpose of maintaining the Retained Property (what MSKP is keeping for development) in it's current condition with respect to stormwater drainage and only to the extent that it drains to what will be BOT/County owned lands in the future (some of land drains that direction now). As the development is designed, accepting drainage from the Retained area onto BOT/county owned property will be subject to SFWMD permits.

13- Environmental Site Cleanup -- MSKP III, Inc., will not have possession of the property until April of 2006. IF hazardous material is found that requires extensive cleanup, it is doubtful the Babcock Family will allow that cleanup to start before the land is transferred out of their ownership (liability concerns). We have provided in the contract for cleanup that may be needed on Phases I &/or II that can't be completed until after closing. If that happens, the staff will withhold funds at closing to cover the cost of the rest of the cleanup and place them in escrow until the work is finished. There is nothing to indicate so far, however, anything out of the ordinary that would require this. MSKP, III, Inc. will have ownership of the rest of the property, and have knowledge of any contamination in enough time to clean up prior to closing for the remaining parcels.

14- Property Owners Association--- The MSKP III, Inc., development is including a deed provision for each residence (homes, townhomes, apartments, etc) within the developed area requiring a $1.00/month fee per dwelling unit that will be used for the management of the Babcock Ranch, and specifically an environmental research and education center to be established on the ranch.

15- Lee County --- Since Lee County is contributing $40M to the acquisition of The Babcock Ranch, they will have to sign on the contract. We have provided for their signature and made several changes to the document that pertain to their participation. Armstrong & Kitson gave a presentation to the Commission on 10/11 and the Commission will vote on the contract on 11/1. The Chairman, Doug St. Cerny, is scheduled to attend the Cabinet meeting on 11/8.

16- FWC --- Ken Haddad is signing on behalf of the Commission, but contingent upon their approval in a public meeting scheduled for Nov. 30-Dec 1 in Key Largo. The Commission will be contributing additional funds to the acquisition through the Gopher Tortoise Mitigation Program if acceptable sites are found on the property (up to $10 million) that will be used to offset BOT Florida Forever funds.

HIGHLIGHTS OF THE MANAGEMENT AGREEMENT

- The Management Agreement (Agreement) will preserve and sustain the quality of the Property as conservation land and habitat for many valuable plant and animal ecosystems and prevent any use which would threaten conservation value.
- This agreement will be for a five year period from the Commencement Date, and will automatically be extended for an additional five year period.
- The Manager and the Board of Trustees will cooperate to provide interim public access to the greatest extent practicable until adoption of the management and business plans.
- The Manager will provide public access to the Property in areas deemed appropriate and safe by the Board of Trustees, and as provided in the management and business plans.
- The Manager, Board of Trustees, and Florida Gulf Coast University will cooperate to establish a Research and Education Center on the Property.
- The Manager shall operate and manage the Cypress Lodge and may coordinate with a member of the state university system or community college system to advance hotel/restaurant management job training.
- The Manager may develop a Native Plant Horticulture Operation for use on state-owned lands, the development, and retail sales.
- The Manager shall cooperate to develop cabin and camping areas and may develop a comprehensive greenway system for public use pursuant to the approved Management Plan.
- Manager will continue to manage the ecosystem tour program currently in operation on the Property.
- A Property Owners' Association (POA) will be established. Funds raised will be dedicated to management and maintenance of the property and the Environmental Research and Education Center.
- Manager will make all relevant financial records available to the Board of Trustees and submit an annual activities report.

Project: Babcock Ranch
Parcel: _____

(Form Revised 07/23/96)
DNR _____

AGREEMENT FOR SALE AND PURCHASE

THIS AGREEMENT (this "Agreement") is made this ____ day of October, 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, and LEE COUNTY, FLORIDA ("County"), whose address is whose address is P.O. Box 398, Ft. Myers, Florida 33902-0398, collectively as "Purchaser".

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 Mosaic 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") and as referred to in Paragraph 33 herein. 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"). 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. This Agreement shall not be effective unless it is accepted and approved by the Trustees on or before November 8, 2005, unless such date is delayed by a declared emergency, act of God, or mutual written agreement by Seller and Trustees.

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 and County agree that the Trustees shall take fee simple title to all other portions of the Property at the closings notwithstanding that Commission is 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 Ten Million and no/100 Dollars ($10,000,000.00) of the Purchase Price ("Commission's 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 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, the County or the applicable Takedown Parcel relating to the Commission's 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 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 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 or 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, 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. Two Million Five Hundred Thousand and no/100 Dollars ($2,500,000.00) of the Phase III Purchase Price shall be paid by the Commission, 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. Two Million Five Hundred Thousand and no/100 Dollars ($2,500,000.00) of the Phase IV Purchase Price shall be paid by the Commission, 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 Commission. 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 ufficient 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 of the Property, the Phase I Purchase Price will be reduced to the DSL Approved Phase I Value of the Property (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 of the Property 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 Survey.

(2) (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 of the Property, the Phase II Purchase Price will be reduced to the DSL Approved Phase II Value of the Property (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 of the Property 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 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 of the Property, the Phase III Purchase Price will be reduced to the DSL Approved Phase III Value of the Property (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 of the Property 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 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 of the Property, the Phase IV Purchase Price will be reduced to the DSL Approved Phase IV Value of the Property (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 of the Property 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 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 of the Property, the Phase V Purchase Price will be reduced to the DSL Approved Phase V Value of the Property (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 of the Property 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 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 that 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. 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.

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 Paragraph 6 and 33 hereof, 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 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 it sole discretion, elect to terminate this Agreement by written notice thereof to Purchaser in accordance with Paragraph 28 hereof.

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 a form of Water Facilities Easement (as defined in Paragraph 33) that will be reserved by Seller over each Takedown Parcel which shall be in form and substance reasonably acceptable to Seller and Purchaser and shall provide that it may be relocated at the requesting parties expense.

(b) 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. 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.

(c) 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.

(d) 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.

(2) Prior to the Phase I Closing:

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

(b) 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.

(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 and Commission 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.

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 (except that only Seller [and not Purchaser] shall have the right to terminate this Agreement if the Conditions set forth in subparagraphs G(2)(c) and (d) above have not been satisfied or waived by Seller).

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 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. Such 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.

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 federal "404" permitting. 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) Seller reserves the (i) right to 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) the right to 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) the right to 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 reservation of the right 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 result in a diminution in value of a Takedown Parcel 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 the applicable Takedown Parcel so that the value of such Takedown Parcel will equal the original phase purchase price

33. REAL ESTATE PARCELS FOR WATER FACILITIES.

(A) As a result of the merger under the provisions of the Babcock Contract, Town and Country Utilities Company will be wholly owned by Seller's parent company. Town and Country Utilities 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 Utilities Company is also the lessee under the provisions of a lease for well sites and access thereto granted by Babcock. Town and Country Utilities Company, its successors and assigns, is hereinafter referred to as "Utility".

(B) No later than 90 days prior to each Closing of a Takedown Parcel, Seller will identify well sites within the applicable Takedown Parcel that Seller shall retain in fee for the purpose of enabling Utility to install and operate water wells for potable and/or non-potable water. Seller shall also reserve easements for access, piping and providing utilities (e.g., electric) to the well sites (the "Water Facilities Easement"). No well sites or Water Facilities Easement shall be reserved on any portions of the Property lying within Lee County. Nor shall County use those portions of the Property lying in Lee County and acquired by the County under the provisions of this Agreement for the extraction of any potable or non-potable water other than as expressly allowed in this subparagraph. Seller shall restrict its use of the reserved well sites described in this paragraph to the extraction of water for public water supply only and not for the commercial sale of bottled water, and no extraction of water by Seller on the well sites so reserved shall result in any unacceptable adverse environmental impact to the Property, as determined and in accordance with the statutes, rules and regulations applicable thereto.

The location of the well sites and Water Facilities Easement shall be subject to Purchaser's reasonable approval, it being agreed that any pipeline used for transferring water across Telegraph Swamp shall be co-located along the existing water control structures or immediately adjacent thereto, if co-location is not practically feasible. Seller agrees to convey additional land to Purchaser in the applicable closing for a Takedown Parcel so that the same acreage of land as contemplated in the Takedown Schedule is conveyed to Purchaser notwithstanding the reservation of well sites as provided herein. Seller estimates that each well site shall be approximately 100 feet : 100 feet. Seller's right to reserve such well sites shall be limited to 75 well sites in the aggregate throughout the Property. Seller shall cause the PSC certificate and the Utility lease from Babcock to be released as to all

sites not so reserved by Seller. Seller shall use its best effort to reserve existing well sites and the Water Facilities Easement along existing roads and in previously impacted areas or will design the reservations in such a way as to create the least environmental impact as is reasonably practicable. In no event will any well site or the Water Facilities Easement be located in wetlands or natural areas, including but not limited to Telegraph Swamp. If a well site is abandoned by Utility then Seller, at Seller's cost and expense, shall abandon the well in accordance with applicable laws, remove all equipment, machinery and fences and then donate the abandoned well site to the Trustees. "Abandonment" shall mean that the well facilities on a site have been duly abandoned under the provisions of statutes and rules providing for well abandonment or that, on a date twenty years from the date of the applicable Phase Closing a well site within the applicable phase has not been improved or is not being used to extract water in commercial amounts. Seller shall cause Utility to provide or cause to be provided water to the Trustees and County for the existing and future agricultural operations, normal ranch operations and any ancillary management or public access requirements and management of the Property pursuant to the management plan, as adopted, at no charge to Trustees or County, but water will be made available to Trustees or County on the same basis as Utility's other customers on the terms and conditions provided herein, provided Trustees and County shall provide the equipment required to receive and distribute the water. In addition, Purchaser shall only have the right to construct and operate wells on the Property for the purposes of using water for the existing and future agricultural operations, normal ranch operations and any ancillary management or public access requirements and management of the Property pursuant to the management plan, as adopted, and shall limit water withdrawals to its own usage within the Property; otherwise, Purchaser shall not have the right to use or grant any third parties the right to use, remove and/or pump water from the surface or subsurface of the Property for commercial uses or otherwise. Provided, however, that any successor to Trustees or County who is unable to obtain water for such successor's uses from Utility after diligent good faith efforts may use, remove and/or pump water from the surface or subsurface of the Property for it own uses on site, as determined and in accordance with the statutes, rules and regulations applicable thereto. At each Closing, an instrument shall be recorded in the public records of the county where the applicable Takedown Parcel is located evidencing the foregoing restriction. Seller is responsible for obtaining all permits required by law for any of its activities with respect to any real property Seller reserves for use in connection with the installation and operation of water wells for potable and non-potable water. Seller acknowledges that there is no guarantee that Seller will receive any permits. During the applicable permitting process with respect to the well sites that Seller retains as set forth herein, Seller shall not make any request that would affect the overall water necessary to maintain the operation and management of the Property without Trustee's or County's consent, as the same applies to each applicable portion of the Property.

(C) The parties shall agree on the form and amount of a Water Facility Easement fee prior to approval of this Agreement by Trustees.

(D) 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.

(E) The provisions of this Paragraph 33 shall survive the Closing of each Takedown Parcel. The rights, duties and obligations of the parties under this provision will be reflected in the deed conveying each Takedown Parcel to Purchaser and in the Water Facilities Easement, all of which shall be deemed to be Permitted Exceptions.

(F) 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.

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.

[TEXT AND SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IF THIS INSTRUMENT IS NOT EXECUTED BY THE SELLER ON OR BEFORE *_____, 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

Witness as to Purchaser
David Allen Evans Jr

Witness as to Purchaser
MERCEDES VERGNE

By: _____
Name: Sydney Kitson
Title: President + CEO

(Corporate Seal)
F.E.I.D. No. _____

Date signed by Purchaser

STATE OF FLORIDA)
)
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 18th day of OCTOBER, 2005, by *SYDNEY KITSON*, as *PRESIDENT + CEO* of *MSKP III*, a Florida *ENTITY*, on behalf of the corporation. He/she is personally known to me and did not take an oath.

(NOTARY PUBLIC SEAL)

Dinah L. Johnson
Notary Public
DINAH L. JOHNSON
(Printed, Typed or Stamped Name of Notary Public)
Commission No.: DD 248375
My Commission Expires: SEPT 9, 2007

PURCHASER

Dinah L Johnson
My Commission DD248375
Expires September 09, 2007

Witness as to Purchaser
Timothy Jones

Witness as to Purchaser
Ron Ferguson

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

By: _____
EVA ARMSTRONG, DIRECTOR DIVISION OF STATE LANDS, 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

10.18-05
Date signed by Purchaser

Approved as to Form and Legality

By: _____

Date: 10-18-05

STATE OF FLORIDA)
)
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 18th day of OCTOBER, 2005, by Eva Armstrong, Director, Division of State Lands, 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.

(NOTARY PUBLIC SEAL)

Dinah L. Johnson
Notary Public
DINAH L. JOHNSON
(Printed, Typed or Stamped Name of Notary Public)
Commission No.: DD248375
My Commission Expires: SEPT. 9 2007

Dinah L Johnson
My Commission DD248375
Expires September 09, 2007

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: _____

BABCOCK RANCH MANAGEMENT, LLC, a Florida limited liability company

Lisa Hall

Print Name: Lisa Hall

By: _____
Sydney Kitson as Managing Member

Sharon Michie

Print Name: Sharon Michie

Attest: _____

Print Name: _____

Title: _____

STATE OF FLORIDA
COUNTY OF Lee

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 17th day of October, 2005, by Sydney Kitson and n/a as Managing Member and n/a, 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 FL Drivers license as identification.

Lorena C Smart
My Commission DD133613
Expires July 14 2006

_____
NOTARY PUBLIC, State of Florida Lorena C Smart
My Commission Expires: 7/14/2006
My Commission No.: DD133613

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

By: _____
Kenneth Haddad as its Executive Director

First Witness

Second Witness

10-18-05
Date signed by Purchaser

Approved as to Form and Legality

By: _____

Date: 10-18-05

STATE OF Florida)
)
COUNTY OF Leon)

The foregoing instrument was acknowledged before me this 18th day of October, 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)

_____
Notary Public

Jo Ann M. Fain
(Printed. Typed or Stamped Name of Notary Public)
Commission No.:
My Commission Expires:

Jo Ann M. Fain
MY COMMISSION EXPIRES June 1, 2006
#DD092821
NOTARY PUBLIC, STATE OF FLORIDA

FTL 287859 23

ADDENDUM

BENEFICIAL INTEREST AND DISCLOSURE AFFIDAVIT
(CORPORATION/PARTNERSHIP)

Before me, the undersigned authority, personally appeared Sydney Kitson ("affiant"), this 17th day of October, 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)

Name	Address	Interest
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")**

Name	Address	Reason for Payment	Amount
Gunster, Yoakley & Stewart PA	777 South Flagler Drive, West Palm Beach, FL 33401	Legal services	$ 150,000
Ard, Shirley & Hartman PA	207 West Park Avenue, Tallahassee, FL 32302	Legal services	$ 100,000
Akerman Senterfitt	1 SE Third Avenue, Miami, FL 33131	Legal services	$ 25,000
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

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")**

Name and Address of Parties Involved	Date	Type of Transaction	Amount of Transaction

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
MSKP III, Inc.

STATE OF Florida)
)
COUNTY OF Lee)

SWORN TO and subscribed before me this 17th day of 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).
[ ] produced _____ as identification.

(NOTARY PUBLIC SEAL)

Lorena C Smart
My Commission DD133813
Expires July 14 2008

Notary Public
Lorena C. Smart
(Printed, Typed or Stamped Name of Notary Public)
Commission No.: DD133813
My Commission Expires: 7/14/2008

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

BSM APPROVED
By KL 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°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°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°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°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°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°26'43" East along said right-of-way for 2,821.81 feet; thence run South 67°25'40" East, departing said right-of-way, for 684.04 feet; thence run South 87°52'49" East for 258.78 feet; thence run North 87°30'44" East for 220.50 feet; thence run North 84°25'52" East for 394.56 feet; thence run South 00°00'00" East for 105.29 feet; thence run South 21°02'57" East for 133.33 feet; thence run South 30°35'43" East for 244.64 feet; thence run South 19°18'06" East for 608.52 feet; thence run North 90°00'00" East for 249.03 feet; thence continue North 90°00'00" East for 48.15 feet; thence run South 01°32'57" West for 363.87 feet; thence run South 13°24'05" West for 206.64 feet; thence run South 81°45'58" East for 369.30 feet; thence run South 21°59'14" West for 588.40 feet; thence run South

BSM APPROVED
By [illegible] 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

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

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

(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.

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, poly-chlorinated 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 f 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.

_____

Grantor

STATE OF _____

COUNTY OF _____

SWORN TO and subscribed before me this _____ day of _____, 1997, by _____**as,** _____**of** _____. 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)

EXHIBIT "E"

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 ("Commission" or "lead managing agency"), whose address is Bryant Building, 620 South Meridian Street, Tallahassee, Florida 32399-1600, 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 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. 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 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' lead managing agency, and any changes to the budget during the budget year shall be made in cooperation with said lead managing agency. 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' lead managing agency, 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 current revenues from the Property are reduced as a results of changes in current operations required by the management plan, when adopted, then the lost revenues will be replaced by the lead managing agency subject to a legislative appropriation 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.

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 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 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 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 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' lead managing agency and in accordance with the NRCS, local soil and water district, or DACS' 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 Commission shall, but only to the extent required by applicable law, 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 Commission. Manager acknowledges that the state currently provides certain funds to its lead managing agencies for the management of state-owned lands. Consequently, the parties expect the Commission to receive such management funds, which will be invested by Commission as it determines for the management of the Property.

25.1 **Gopher Tortoise Mitigation Park.** If the Commission 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 Commission in accordance with the Commission's criteria for the management of Gopher Tortoise Mitigation Parks. 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.

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 Commission , 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 Commission all acknowledge and agree 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 Managing Agreement is terminated by the Board of Trustees, County and Commission in violation of the express terms of this 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 Commission:

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

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 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 or Commission), 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 Commission 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 Commission and Manager shall be initiated and maintained only in Leon County, Florida.