

**FOURTH AMENDMENT OF**  
**FARMING TRANSITION AND**  
**LEASE AGREEMENT**  
**AMONG**  
**OKEELANTA CORPORATION,**  
**NEW HOPE SUGAR COMPANY,**  
**AND**  
**THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

This Fourth Amendment of the Farming Transition and Lease Agreement ("Fourth Amendment"), is made and entered into as of this 21 day of April, 2014 ("Date of this Agreement"), by and among OKEELANTA CORPORATION, a Delaware corporation ("Okeelanta"), with a mailing address of One North Clematis Street, Suite 200, West Palm Beach, Florida, 33401, NEW HOPE SUGAR COMPANY, a Florida corporation ("New Hope" or "Lessee"), with a mailing address of One North Clematis Street, Suite 200, West Palm Beach, Florida, 33401, and the SOUTH FLORIDA WATER MANAGEMENT DISTRICT, a government entity created by Chapter 373, Florida Statutes ("District"), whose address is 3301 Gun Club Road, West Palm Beach, Florida, 33406, referenced jointly herein as the "Parties," or singularly as the "Party."

**WITNESSETH:**

WHEREAS, the Parties entered into that certain Farming Transition and Lease Agreement, dated January 5, 2006, as modified by the Extension and First Amendment of the Agreement, dated February 12, 2009, as further modified by Second Amendment of the Agreement, dated February 7, 2011, and as further modified by Third Amendment of the Agreement, dated March 10, 2013, (which are collectively referred to herein as the "Agreement"); and

WHEREAS, the parties desire to extend the Term of the Lease of Parcel 2 of the Leased Property for four (4) additional years with an effective termination date of March 31, 2019; and

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. **Recitals.** The statements set forth in the above Recitals are true and correct and incorporated herein by reference.
2. **Terms.** All capitalized terms used herein shall have the meanings assigned to the same in the Agreement).
3. **Term of Lease of Leased Property as to Parcel 2:** Subject to the terms and conditions as set forth in the Agreement, the Parties hereby extend the Term of the Lease of the Leased Property as to Parcel 2 of the Leased Property, from April 1, 2015 through March 31, 2019 ("Extended Term"), unless further extended by mutual agreement of the Parties.

4. Memorandum of Agreement. The Parties agree that either Party may prepare and record a memorandum of this Agreement, such memorandum to be subject to the other Party's prior approval, not to be unreasonably withheld or delayed.

5. Full Force and Effect as Amended. The Agreement, including the Lease of the Leased Property remains in full force and effect, as amended by this Agreement.

**IN WITNESS WHEREOF**, this Fourth Amendment has been executed by the Parties.

Signed, sealed and delivered  
in the presence of:

Denise G Singleton  
Witness Signature  
DENISE G SINGLETON  
Witness Print Name  
Joan C. DiPaola  
Witness Signature  
JOAN C. DiPaola  
Witness Print Name  
Denise G Singleton  
Witness Signature  
DENISE G SINGLETON  
Witness Print Name  
Joan C. DiPaola  
Witness Signature  
JOAN C. DiPaola  
Witness Print Name

OKEELANTA CORPORATION,  
a Delaware corporation

By: Armando A. Tabernilla  
Print Name: Armando A. Tabernilla  
As its: Vice President

NEW HOPE SUGAR COMPANY,  
a Florida corporation

By: Armando A. Tabernilla  
Print Name: Armando A. Tabernilla  
As its: Vice President

[signatures continued on the following page]

Signed, sealed and delivered  
in the presence of:

Witness

Witness Print Name

Witness

Witness Print Name

**SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT**, a  
government entity created by Chapter 373,  
Florida Statutes

By:

Print Name:

As its:

Legal Form Approved By:

South Florida Water Management  
Office of Counsel

Florida Crystals executes this Agreement solely for the purpose of ratifying that it continues to be  
bound by the terms of Section 10(n) of the Farming Agreement.

Witness Signature

Witness Print Name

Witness Signature

Witness Print Name

FLORIDA CRYSTALS CORPORATION,  
a Delaware corporation

By:

Print Name: Armando A. Tabernilla

As its: Vice President

ORIGINAL

SFWMD Contract No. OT050802

**THIRD AMENDMENT OF**  
**FARMING TRANSITION AND**  
**LEASE AGREEMENT**  
**AMONG**  
**OKEELANTA CORPORATION,**  
**NEW HOPE SUGAR COMPANY,**  
**AND**  
**THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

This Third Amendment of the Farming Transition and Lease Agreement ("Third Amendment"), is made and entered into as of this 10 day of March, 2013 ("Date of this Agreement"), by and among OKEELANTA CORPORATION, a Delaware corporation ("Okeelanta"), with a mailing address of One North Clematis Street, Suite 200, West Palm Beach, Florida, 33401, NEW HOPE SUGAR COMPANY, a Florida corporation ("New Hope" or "Lessee"), with a mailing address of One North Clematis Street, Suite 200, West Palm Beach, Florida, 33401, and the SOUTH FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida ("District"), whose address is 3301 Gun Club Road, West Palm Beach, Florida, 33406, referenced jointly herein as the "Parties," or singularly as the "Party."

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

WHEREAS, the Parties entered into that certain Farming Transition and Lease Agreement, dated January 5, 2006, as modified by the Extension and First Amendment of the Agreement, dated February 12, 2009, and as further modified by Second Amendment of the Agreement, dated February 7, 2011, (which are collectively referred to herein as the "Agreement"); and

WHEREAS, the parties desire to extend the Term of the Lease of Parcel 2 of the Leased Property for two additional years with an effective termination date of March 31, 2015; and

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Recitals. The statements set forth in the above Recitals are true and correct and incorporated herein by reference.
2. Terms. All capitalized terms used herein shall have the meanings assigned to the same in the Agreement).
3. Term of Lease of Leased Property as to Parcel 2: Subject to the terms and conditions as set forth in the Agreement, the Parties hereby extend the Term of the Lease of the Leased Property as to Parcel 2 of the Leased Property, from April 1, 2013 through March 31, 2015 ("Extended Term"), unless further extended by mutual agreement of the Parties.

4. Memorandum of Agreement. The Parties agree that either Party may prepare and record a memorandum of this Agreement, such memorandum to be subject to the other Party's prior approval, not to be unreasonably withheld or delayed.
5. Full Force and Effect as Amended. The Agreement, including the Lease of the Leased Property remains in full force and effect, as amended by this Agreement.

IN WITNESS WHEREOF, this Third Amendment has been executed by the Parties.

Signed, sealed and delivered  
in the presence of:

Denise G Singleton  
Witness Signature  
DENISE G SINGLETON  
Witness Print Name  
Maricela Torres  
Witness Signature  
Maricela Torres  
Witness Print Name

Denise G Singleton  
Witness Signature  
DENISE G SINGLETON  
Witness Print Name  
Maricela Torres  
Witness Signature  
Maricela Torres  
Witness Print Name

OKEELANTA CORPORATION,  
a Delaware corporation



By: [Signature]  
Print Name: ARMANDO A TABERNILLA  
As its: VICE PRESIDENT

NEW HOPE SUGAR COMPANY,  
a Florida corporation

By: [Signature]  
Print Name: ARMANDO A. TABERNILLA  
As its: VICE PRESIDENT

SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT,  
a public corporation of the State of Florida

By: [Signature]  
Print Name: DOROTHY A. BRADSHAW  
As its: BUREAU Chief, PROCUREMENT

Florida Crystals executes this Agreement solely for the purpose of ratifying that it continues to be bound by the terms of Section 10(n) of the Farming Agreement.

*Denise G Singleton*  
Witness Signature

DENISE G SINGLETON  
Witness Print Name

*Maricela Torres*  
Witness Signature

Maricela Torres  
Witness Print Name

FLORIDA CRYSTALS CORPORATION,  
a Delaware corporation

By: *[Signature]*

Print Name: ALVARADO A TABARUELA

As its: VICE PRESIDENT





## SOUTH FLORIDA WATER MANAGEMENT DISTRICT

February 8, 2011

Mr. Armando Taberville, V.P.  
New Hope Land Corporation  
1 N. Clematis Street, Suite 200  
West Palm Beach, FL 33401

Dear Mr. Taberville:

**Subject: Contract # 4600000229-A03  
Lease Amendment – OT050802**

Please find enclosed one (1) fully executed copy of the above referenced document.

Thank you for your efforts on behalf of the South Florida Water Management District (District). Should there be any questions, or if you require any additional information, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda Greer".

Linda Greer, CPPB  
Senior Contract Specialist  
Procurement Department  
lgreer@sfwmd.gov  
(561) 682-6396  
FAX: (561) 681-6275

RECEIVED

FEB 9 2011

LAND  
ACQUISITION DEPARTMENT

LG/kr

Enclosure

c: P. Kochan, MSC 5213  
Bruce Hall, MSC 7324  
Abe Cooper, MSC 1412  
Andrea Stringer, MSC 7320  
Procurement/Original File

ORIGINAL

SFWMD Contract No. OT050802 (460000229)

**SECOND AMENDMENT OF  
FARMING TRANSITION AND  
LEASE AGREEMENT  
AMONG  
OKEELANTA CORPORATION,  
NEW HOPE SUGAR COMPANY,  
AND  
THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

This Second Amendment of Farming Transition and Lease Agreement (this "Second Amendment"), is made and entered into as of this 7 day of February, 2011 ("Date of this Agreement"), by and among OKEELANTA CORPORATION, a Delaware corporation ("Okeelanta"), with a mailing address of One North Clematis Street, Suite 200, West Palm Beach, Florida, 33401, NEW HOPE SUGAR COMPANY, a Florida corporation ("New Hope" or "Lessee"), with a mailing address of One North Clematis Street, Suite 200, West Palm Beach, Florida, 33401, and the SOUTH FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida ("District"), whose address is 3301 Gun Club Road, West Palm Beach, Florida, 33406, referenced jointly herein as the "Parties," or singularly as the "Party."

**WITNESSETH:**

**WHEREAS**, the Parties entered into that Extension and First Amendment Of Farming Transition And Lease Agreement Among Okeelanta Corporation, New Hope Sugar Company, and the South Florida Water Management District, dated February 12, 2009, ("First Amendment") which amended that certain Farming Transition and Lease Agreement made as of January 5, 2006 ("Farming Agreement"), and the First Amendment and Farming Agreement are collectively referred to hereinafter as the "Amended Farming Agreement"; and

**WHEREAS**, under the Amended Farming Agreement the Term of the Lease of Parcel 2 of the Leased Property (as described in the attached Exhibit A), made a part hereof automatically expires at 12:00 midnight on March 31, 2011; and

**WHEREAS**, the parties desire to extend the Term of the Lease of Parcel 2 of the Leased Property, and to amend the Lease of the Leased Property only as to Parcel 2; and

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Recitals. The statements set forth in the above Recitals are true and correct and incorporated herein by reference.



2. Term of Lease of Leased Property as to Parcel 2. Subject to the terms and conditions as set forth in the Amended Farming Agreement as amended by this Second Amendment, the Parties hereby extend the Term of the Lease of the Leased Property as to Parcel 2 of the Leased Property from April 1, 2011 through March 31, 2013 ("Extended Term"), unless further extended by mutual agreement of the parties.

3. Rent for Parcel 2 for April 1, 2011- March 31, 2013. As to Parcel 2, for the period April 1, 2011 to March 31, 2013, the rent to be paid by the Lessee shall be determined in accordance with the provisions of Section 32 of the Lease Conditions. The parties acknowledge that for purposes of determining the rent, the period of April 1, 2011 to March 31, 2012 and period April 1, 2012, to March 31, 2013 are the second and third twelve month periods, respectively, of the Additional Consideration Period. The parties agree to the following clarification with respect to the adjustments for the second and third twelve month periods of any Additional Consideration Period:

Paragraph 32.E. provides that the Additional Consideration for the second and third years of each three year period (Additional Consideration Period) specified in Paragraph 32 shall be changed if the Producer Price Index (PPI) for raw cane sugar and byproducts (base year 1982 = 100) changes from the "Base Period Index." The Base Period Index shall be compared with the PPI for the month of April for each subsequent year during the applicable Additional Consideration Period. Since the preliminary indexes are subject to revision four months after original publication, the parties have agreed to wait until the indexes are final to calculate the rent for the Additional Consideration. For example, Additional Consideration for the second year (April 1, 2011 through March 31, 2012) of the Additional Consideration Period shall be computed using the April index of 2010 which shall be compared to the April index of 2011 and the consideration adjusted based on the increase or decrease. Similarly, the Additional Consideration for the third year (April 1, 2012 through March 31, 2013) of the Additional Consideration Period shall be computed using the April index of 2011 compared to the April index of 2012, and the consideration adjusted based on the increase or decrease.

The Additional Consideration for the second year of the Additional Consideration Period becomes effective with the quarterly payment due April 1, 2011 and the Additional Consideration for the third year of the Additional Consideration Period becomes effective with the quarterly payment due April 1, 2012. The actual amount of rent owed will be adjusted with the October 1st quarterly payment.

4. Memorandum of Agreement. The Parties agree that either Party may prepare and record a memorandum of this Agreement, such memorandum to be subject to the other Party's prior approval, not to be unreasonably withheld or delayed.

5. Full Force and Effect as Amended. The Amended Farming Agreement, including the Lease of the Leased Property remains in full force and effect, as amended by this Second Amendment.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties.

Signed, sealed and delivered  
in the presence of:

Maricela Yan  
Witness Signature  
Maricela Yan  
Witness Print Name  
Denise Singleton  
Witness Signature  
DENISE G SINGLETON  
Witness Print Name

OKEELANTA CORPORATION,  
a Delaware corporation

By: [Signature]  
Print Name: Armando A. Tabernilla  
As its: Vice President

Maricela Yan  
Witness Signature  
Maricela Yan  
Witness Print Name  
Denise Singleton  
Witness Signature  
DENISE G SINGLETON  
Witness Print Name

NEW HOPE SUGAR COMPANY,  
a Florida corporation



By: [Signature]  
Print Name: Armando A. Tabernilla  
As its: Vice President

SFWMD Procurement Approved:

By: [Signature]

Date: 2/1/11

LEGAL FORM Approved!

By: [Signature] 2-2-2011

SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT,  
a public corporation of the State of Florida

By: [Signature]  
Print Name: Jessica J Flathmann  
As its: Procurement Director sr

Florida Crystals executes this Agreement solely for the purpose of ratifying that it continues to be bound by the terms of Section 10(n) of the Farming Agreement.

Maricela Yan  
Witness Signature  
Maricela Yan  
Witness Print Name  
Denise Singleton  
Witness Signature  
DENISE G SINGLETON  
Witness Print Name

FLORIDA CRYSTALS CORPORATION,  
a Delaware corporation

By: [Signature]  
Print Name: Armando A. Tabernilla  
As its: Vice President

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE LEASED PROPERTY**

Parcel 2

The East one-half (E 1/2) of Sections 24, 25 and 36 Township 46 South, Range 36 East, Palm Beach County, Florida;

LESS and not including the Northeast one-quarter (NE 1/4) of the Northeast one-quarter (NE 1/4) of the Northeast one-quarter (NE 1/4) of said Section 25, Township 46 South, Range 36 East, Palm Beach County, Florida;

AND LESS the South 380 feet of the East one-half (E 1/2) of Section 36.

Approved:  
REB 12/13/10

*(this memo was prepared by Abe Cooper 8-31-2010)*

8/31/010

### **Summary of Termination Provision for Talisman Reservations**

Each reservation provides that the reservation continues through March 31, 2005 (March 31, 2007 for U.S.Sugar lands ) and **thereafter annually** until the Property is needed for a Project as determined by the District and the Army Corps.

The reservations, if not otherwise terminated earlier, **expires on March 31, 2014.** Provided however, that if the lands are determined by the District and Army Corps to be not needed for a Project, such surplus property (and all other property subject to the reservation) shall continue to be made available for farming by the reservation holder through the **earlier of March 31, 2019** or the date an exchange of such lands is consummated between the District and the reservation holder. After March 31, 2019, the reservation holder has a right of first refusal to any lease of such lands for agricultural use.

The process for termination based on Project need is set forth in sections 31.B. and C. of each reservation. The farmers have the right to continue farming any field covered by the reservation annually **unless and until the Property is needed for a Project as determined by the District and the Corps.** Grantor has the right to continue farming any field unless and until:

farming or access for farming purposes becomes incompatible with, as reasonably determined by the District and the Corps, the initiation of actual construction or the Implementation of a District/Corps Project("Project") and the notices set forth in section 31.C are given..

The term "Project" is defined in section 31.B.(1) of the Reservation to include (1) the Everglades Construction Project pursuant to section 373.4592, (2) a water storage, water quality, or other facility pursuant to the Restudy and further acts of Congress authorizing Implementation, (3) an Everglades restoration project unrelated to the Corps Restudy approved by the District and the United States Department of the Interior.

"Implementation" is defined in section 31.B.(2) as the actual operation of a Project or the need for possession of a field to condition or prepare the Property or the actual operation of a Project.

Three successive winding down notices are required in section 31.C. The intent of the notice provision as stated in the reservations is to facilitate the planning, design, scheduling, construction and implementation of Project in a manner that will allow farming to continue on as much of the Property for as long as is practicable to do so without interfering with or materially adding to the cost of a Project. Notices shall be

issued consistent with the terms of the Project Cooperation Agreement to be entered into between the District and the Army Corps respecting the initiation, construction or Implementation of the Project to assure that the lands are available when needed for a Project. The Project Cooperation Agreement to be entered into by the Corps and District will provide for the issuance of customary notices by local sponsor and that the local sponsor will make the property available to the Corps when the Corps determines, with the District, that such property is needed for the initiation of actual construction or Implementation of the Project.

The three successive notices are:

1. Advance Notice of Construction - Upon a determination by the **Secretary of the Army** or the **Governing Board** that based upon reasonable expectations a Project will commence within the last 12 months of the next 42 month period, advance notice of construction will be provided in accordance with the Project Cooperation Agreement. Because the reservation term runs until March 31, 2005 (except for the U.S Sugar reservation which runs through March 31, 2007), the advance notice of construction must be given prior to **October 1** thirty months in advance to effectuate a termination on April 1 thirty months later. Using April 2005 as the earliest termination date, notice would have to be given prior to October 1, 2002. This allows the farmers one more planting and two more harvests prior to vacating the property.

It shall not be necessary that the planning and design of a Project be completed or that NEPA and other federal and state requirements be satisfied at the time of issuing such notice.

2. Notice of Construction Impact - This notice [form is Exhibit in Reservation] must be given prior to **September 1** preceding the earliest construction commencement date (first April 1, 30 months after Adv. Notice Construction) and prior to each September 1 of each year thereafter. This notice identifies the portions of the property which will require to be vacated no sooner than 6 months after the notice and the portions of the property which may continue to be farmed during the 18 months following the notice. In the above example, this notice would be given prior to September 1, 2004. It would identify lands needed for the Project April 1, 2005, and those lands which could continue to be farmed through March 31 2006. **[Note the farmers believe that this notice must be given 18 months in advance not 6 months and we have been providing 18 mos. notice to be cautious.]**
3. Notice to Vacate - This notice is sent at least 90 days prior to contractors' notice to proceed with construction. This notice requires that the property be vacated the later of 30 days after the date of the notice or 60 days prior to commencement date of construction as identified in the notice, whichever is later.

**EXTENSION AND FIRST AMENDMENT OF**  
**FARMING TRANSITION AND**  
**LEASE AGREEMENT**  
**AMONG**  
**OKEELANTA CORPORATION,**  
**NEW HOPE SUGAR COMPANY,**  
**AND**  
**THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

This Extension and First Amendment of Farming Transition and Lease Agreement (this "Agreement"), is made and entered into as of this 12<sup>th</sup> day of February, 2009 ("Date of this Agreement"), by and among OKEELANTA CORPORATION, a Delaware corporation ("Okeelanta"), with a mailing address of One North Clematis Street, Suite 200, West Palm Beach, Florida, 33401, NEW HOPE SUGAR COMPANY, a Florida corporation ("New Hope" or "Lessee"), with a mailing address of One North Clematis Street, Suite 200, West Palm Beach, Florida, 33401, and the SOUTH FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida ("District"), whose address is 3301 Gun Club Road, West Palm Beach, Florida, 33406, referenced jointly herein as the "Parties," or singularly as the "Party."

**WITNESSETH:**

WHEREAS, the Parties entered into that certain Farming Transition and Lease Agreement made as of January 5, 2006 ("Farming Agreement"), which included the Lease Conditions attached thereto as Exhibit E ("Lease Conditions"); and

WHEREAS, the parties acknowledge that in accordance with Section 3(b) of the Farming Agreement, the Okeelanta Reservation and the New Hope Reservation, as defined in the Farming Agreement, automatically terminate with respect to that portion of the Okeelanta Reservation Area and New Hope Reservation Area identified in paragraph 2 of Exhibit F to the Farming Agreement effective 12:00 Midnight, March 31, 2009, without penalty or charge against the District; and

WHEREAS, Section 1B of the Lease Conditions provides inter alia that the Term of the Lease of Parcel 2 of the Leased Property (as described in the Exhibit D of the Farming Agreement) under the Lease Conditions shall automatically expire and be of no further force or effect at 12:00 midnight on March 31, 2009; and

WHEREAS, Talisman Sugar Corporation has conveyed title to the District in that certain parcel known as Deferred Parcel T-6 and Tract No. V6-100-039, which is specifically excluded from the legal description for Parcel 2 of the Leased Property and within which there is a pump station ("PS-2") used in connection with Parcel 2 and other lands west of Parcel 2 also leased by New Hope; and



WHEREAS, the parties desire to extend only the Term of the Lease of Parcel 2 of the Leased Property, and to amend the Lease of the Leased Property only as to Parcel 2; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Recitals. The statements set forth in the above Recitals are true and correct and incorporated herein by reference.

2. Term of Lease of Leased Property as to Parcel 2: Subject to the terms and conditions as set forth in the Farming Agreement as amended by this Agreement, the Parties hereby extend the Term of the Lease of the Leased Property as to Parcel 2 of the Leased Property from April 1, 2009 through March 31, 2011 ("Extended Term").

3. Deferred Parcel T-6/Tract No. V6-100-039: Parcel 2 of the Leased Property is modified to include Deferred Parcel T-6, aka Tract No. V6-100-039. Also, notwithstanding the March 31, 2011 termination of the Extended Term, New Hope shall retain a right of entry for the use of and the access to the PS-2 pump station on Deferred Parcel T-6/Tract No. V6-100-039 as long as New Hope or Okeelanta is still leasing or holds a reservation of use of other lands from the District for Permitted Uses, which lands rely on drainage and irrigation provided by said pump station ("PS-2 Serviced Lands"). In the latter event where New Hope no longer leases Parcel 2 but retains a right of entry for access to and use of the PS-2 pump station: (1) the District and New Hope shall mutually agree to designate the means of access to the pump station along existing roads, (2) the District may relocate the designated access to the pump station if the relocation provides reasonably comparable access, and (3) the District may relocate or replace the pump station, at its expense, off of Deferred Parcel T-6/Tract No. V6-100-039, if (a) there is no interruption in the drainage and irrigation of the PS-2 Serviced Land at the existing capacities of PS-2 and associated canals, provided that if the area of the PS-2 Serviced Land used for Permitted Uses by New Hope or Okeelanta under reservations and leases with the District decreases due to termination, partial termination or amendments to such leases and reservations, then the decreased capacities are reasonably related to the size and location of the remaining area; (b) the new location of the PS-2 pump station or replacement pump station is jointly approved by the parties, which approval will not be unreasonably withheld; and (c) the District provides reasonably comparable access to the relocated or replaced pump station. All terms and conditions of the Lease Conditions not inconsistent with the terms of this Section 3 shall apply with respect to said right of entry for access and use.

4. Risk of Water Damage to Crops on Parcel 2: New Hope, as Lessee under the Lease of the Leased Property, acknowledges that the District through its contractors is engaged in construction of the A-1 Reservoir project on land to the immediate east and southeast of Parcel 2, that water may be stored in the A-1 Reservoir project area during the Extended Term, and that water from the A-1 Reservoir project area may cause impacts to the water table in Parcel 2 due to hydraulic

pressure differences between the A-1 Reservoir area and Parcel 2 ( "Adverse Water Impacts"). New Hope assumes all risk of damage to crops on Parcel 2 caused by Adverse Water Impacts, and waives all claims against the District and its contractors for damages to crops caused by Adverse Water Impacts. Without modifying the foregoing assumption of risk, District shall require its contractors working on the A-1 Reservoir project to use good faith efforts to keep New Hope advised of activities that may cause Adverse Water Impacts.

5. Rent for Parcel 2 for April 1, 2009- March 31, 2010: As to Parcel 2 for the period April 1, 2009 to March 31, 2010, the rent to be paid by the Lessee shall be, pursuant to the letter dated February 12, 2007 from Ruth Clements, Director of Leased Property Acquisition of the District, to Armando Tabernilla, Vice President of Florida Crystals Corporation, an amount equal to \$60.00 per Gross Planted Acre per year, subject to adjustments based on the Producer Price Index – raw cane sugar and by products, not seasonally adjusted ("PPI") as set forth in said letter.

6. Rent for Parcel 2 for April 1, 2010 – March 31, 2011: As to Parcel 2 for the period April 1, 2010 to March 31, 2011, the rent to be paid by the Lessee shall be set in accordance with the provisions of Section 32 of the Lease Conditions.

7. Memorandum of Agreement. The Parties agree that either Party may prepare and record a memorandum of this Agreement, such memorandum to be subject to the other Party's prior approval, not to be unreasonably withheld or delayed.

8. Full Force and Effect as Amended. The Farming Agreement, including the Lease of the Leased Property remains in full force and effect, as amended by this Agreement.

**IN WITNESS WHEREOF**, this Agreement has been executed by the Parties.

Signed, sealed and delivered  
in the presence of:

Daniel D. Ross  
Witness Signature

DANIEL D. ROSS  
Witness Print Name


Denise C. Singleton  
Witness Signature


DENISE C. SINGLETON  
Witness Print Name

OKEELANTA CORPORATION,  
a Delaware corporation


By: [Signature]  
Print Name: VICE PRESIDENT ARMANDO A. TABERNILLA  
As its: VICE PRESIDENT



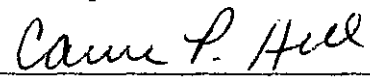
  
Witness Signature  
DANIEL D. ROSS  
Witness Print Name

  
Witness Signature  
DENISE G. SINGLETON  
Witness Print Name

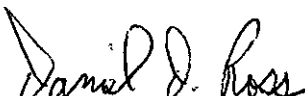
NEW HOPE SUGAR COMPANY,  
a Florida corporation

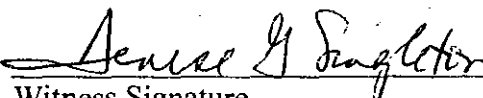
By:   
Print Name: ARMANDO A. TADELWILLA  
As its: VICE PRESIDENT

SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT,  
a public corporation of the State of Florida


By:   
Print Name: CARRIE P. HILL  
As its: Acting Procurement Director

Florida Crystals executes this Agreement solely for the purpose of ratifying that it continues to be bound by the terms of Section 10(n) of the Farming Agreement.

  
Witness Signature  
DANIEL D. ROSS  
Witness Print Name

  
Witness Signature  
DENISE G. SINGLETON  
Witness Print Name

FLORIDA CRYSTALS CORPORATION,  
a Delaware corporation

By:   
Print Name: ARMANDO A. TADELWILLA  
As its: VICE PRESIDENT

## **LAND ACQUISITION EXECUTIVE SUMMARY**

**PROJECT:** Everglades Agricultural Area ("EAA")  
**PURPOSE:** Lease Renewals  
**CONTRACT NOS:** OT050802 (New Hope Sugar Company)  
4600001039 (Okeelanta Corporation)  
**TRACTS:** V6-100-104 (New Hope)  
D7-100-152 (Okeelanta)

**REQUEST:** Approval of amendments to Contract OT050802 with New Hope Sugar Company and Contract 4600001039 with Okeelanta Corporation, both subsidiaries of Florida Crystals, to extend the applicable lease terms by two years from March 31, 2009 to March 31, 2011, and add an additional tract to Contract OT050802.

### **BACKGROUND:**

The District has been leasing certain lands to New Hope Sugar Company (Contract OT050802) and Okeelanta Corporation (Contract 4600001039) since 2006 and 2007, respectively, for sugar cane farming. A 950-acre parcel within the lands leased under the Contract OT050802 is identified as Parcel 2 of Tract V6-100-004. The total of 763.44 acres leased under Contract 4600001039 is identified as Tract D7-100-152. Both parcels are located within the general footprint of the EAA lands acquired by the District in the March 1999 Talisman Sugar Corporation ("Talisman") acquisition and exchange transaction. In connection with the Talisman transaction, virtually all of the lands acquired by the District were and have been continuously leased by various sugar farming entities. Those leases contain certain lease terms and formulas for determining rent rates for the sugar cane lands owned by the District. The original rent rate formula was established based on the District's ability to terminate those leases on a short term basis of less than three (3) years. Upon the commencement of Contract OT050802 and Contract 4600001039, the lease terms and rent rates were made consistent with the District's other sugar cane lands leased pursuant to the Talisman leases. The current rent being paid under both Contracts is \$59.10 per planted acre. That rate is calculated from a base rate that is adjusted and will be adjusted pursuant to the U.S. Department of Labor Producer Price Index for raw cane sugar. Currently, both leases expire March 31, 2009. The District's Policy Code for administration of Agricultural Leases (Section 140-10) recognizes that existing leases may be renewed under certain circumstances without a competitive bid process. Generally, the competitive bid process may be waived if the renewal is at a market rent subject to annual adjustments based on an agricultural commodity index and future District appraisal review. In this instance, the rent for both Contracts is subject to the commodity index for raw cane sugar and an appraisal review process.

In addition, staff has determined that the lease duration for the subject lands should be two (2) years. Such a short term lease restricts the ability of any other new sugar cane farmer to adequately plant, cultivate, and harvest the subject lands. The current rent has therefore been determined by staff to be at least equal to a reasonable market rent. Therefore, the waiver of competition complies with District policy.

Also at the time of the Talisman transaction, certain tracts that were to be acquired by the District were identified as having environmental contaminants. The District deferred accepting a fee title conveyance of those tracts until clean up had occurred. The remaining contaminated tracts have now been cleaned up and have been conveyed to the District. One of those tracts, identified as Deferred Parcel T-6 and also known as Tract No. V6-100-039, is a one acre parcel located in the aforementioned Parcel 2 and within which there is a pump station used in connection with a number of other lands also leased by New Hope Sugar Company for sugar cane farming. Under the lease renewal, the Parcel 2 lands will now include Deferred Parcel T-6. Additionally, the renewal will reflect the fact that even at the March 31, 2011 termination of the lease for Parcel 2, New Hope will retain the use of and the access to the pump station on Deferred Parcel T-6 as long as New Hope is still leasing other adjacent District lands for sugar cane farming.

**RECOMMENDATION:** That the Governing Board of the South Florida Water Management District approve the execution of an amendment to Contract OT050802 with New Hope Sugar Company, as to Parcel 2 of the Contract, and Contract 4600001039 with Okeelanta Corporation to revise the termination language and extend the term by two years from March 31, 2009 to March 31, 2011, and with respect to Parcel 2 of Contract OT050802, add a one acre tract owned by the District and allow for New Hope Sugar Company's continued use of and access to said tract as long as New Hope Sugar Company is still leasing other adjacent District lands for sugar cane farming.

**Prepared by:** \_\_\_\_\_  
Robert A. Schaeffer  
Lead Professional-Acquisition  
Land Acquisition

\_\_\_\_\_  
Date

**Reviewed by:** \_\_\_\_\_  
Ruth P. Clements  
Director  
Land Acquisition

\_\_\_\_\_  
Date

Governing Board Members  
February 12, 2009  
Page Three

**Approved by:** \_\_\_\_\_  
Kenneth G. Ammon, P.E.  
Deputy Executive Director  
Everglades Restoration Resource Area

\_\_\_\_\_  
Date

Conflict Check: See attached



**FARMING TRANSITION AND**  
**LEASE AGREEMENT**  
**AMONG**  
**OKEELANTA CORPORATION,**  
**NEW HOPE SUGAR COMPANY,**  
**NEW HOPE LAND CORPORATION**  
**AND**  
**THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

This Farming Transition and Lease Agreement (this "Agreement"), is made and entered into as of this 5<sup>th</sup> day of January, 2006 ("Date of this Agreement"), by and among OKEELANTA CORPORATION, a Delaware corporation ("Okeelanta"), with a mailing address of One North Clematis Street, Suite 200, West Palm Beach, Florida, 33401, NEW HOPE SUGAR COMPANY, a Florida corporation ("New Hope"), with a mailing address of One North Clematis Street, Suite 200, West Palm Beach, Florida, 33401, NEW HOPE LAND CORPORATION, a Florida corporation ("NHLC"), with a mailing address of One North Clematis Street, Suite 200, West Palm Beach, Florida, 33401, and the SOUTH FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida (the "District"), whose address is 3301 Gun Club Road, West Palm Beach, Florida, 33406, referenced jointly herein as the "Parties," or singularly as the "Party."

**WITNESSETH:**

WHEREAS, Okeelanta granted to the District fee simple title to certain real property, including the property commonly known as EAA Tract V-6-100-105, pursuant to that certain Warranty Deed recorded March 30, 1999 in Official Records Book 11015, Page 1892 of the Public Records of Palm Beach County, Florida (the "Okeelanta Warranty Deed"); and

WHEREAS, in conveying the real property commonly known as EAA Tract V-6-100-105 and other property, Okeelanta reserved a possessory estate for years for farming EAA Tract V-6-100-105 and other property in accordance with Reservation Conditions set forth in Exhibit B to the Okeelanta Warranty Deed. Such reservation is hereinafter referred to as the "Okeelanta Reservation" and a portion of the area that is subject to the Okeelanta Reservation is more particularly described in Exhibit A attached hereto and made a part hereof (as such area may hereafter be reduced as a result of a termination(s) set forth in Section 3 of this Agreement, the "Okeelanta Reservation Area"); and

WHEREAS, Talisman Sugar Corporation, a Florida corporation ("Talisman"), granted to the District fee simple title to certain real property commonly known as EAA Tract V-6-100-104 and other property pursuant to that certain General Warranty Deed recorded March 30, 1999 in Official Records Book 11016, Page 546 of the Public Records of Palm Beach County, Florida (the "Talisman Warranty Deed"), subject to Talisman's reservation of a possessory estate for years for farming EAA Tract V-6-100-104 and other property in accordance with the Reservation

Conditions set forth in Exhibit C to the Talisman Warranty Deed (the "Talisman Reservation"); and

WHEREAS, pursuant to the Assignment and Assumption of Reservation recorded March 30, 1999 in Official Records Book 11016, Page 632 of the Public Records of Palm Beach County, Florida, Talisman assigned to New Hope a portion of the Talisman Reservation. Such assigned portion of the Talisman Reservation, as amended by Amendment Number One to Talisman Lower Ranch Reservation recorded March 30, 1999 in Official Records Book 11016, Page 686 of the Public Records of Palm Beach County, Florida, is hereinafter referred to as the "New Hope Reservation" and a portion of the area that is subject of the New Hope Reservation is more particularly described in Exhibit B attached hereto and made a part hereof (as such area may hereafter be reduced as a result of a termination(s) set forth in Section 3 of this Agreement, the "New Hope Reservation Area"); and

WHEREAS, the District desires an orderly transition of the lands farmed by Okeelanta and New Hope out of farming to accommodate the District's implementation of the District's project that is commonly known as EAA Reservoir A-1 or another water management project (the "District Project"), on District lands depicted in Exhibit C attached hereto and made a part hereof (the "District Project Area"); and

WHEREAS, in exchange for Okeelanta and New Hope agreeing to the termination of use of certain lands for farming as set forth below, the District agrees to lease to New Hope for farming the portion of EAA Tract V-6-100-104 more particularly described in Exhibit D attached hereto and made a part hereof (as such area may hereafter be reduced as a result of a termination(s) set forth in Sections 20, 31.A, 31.B, or 37 of the Lease Conditions (as defined below), the "Leased Property"); and

WHEREAS, in order to assist the District in the implementation of the District Project, the District desires that NHLC provide to the District certain land management services for lands within the District Project Area which are not being farmed by Okeelanta or New Hope.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Recitals. The statements set forth in the above Recitals are true and correct and incorporated herein by reference.
2. Lease of Leased Property. Subject to the terms and conditions set forth in this Agreement and Exhibit E attached hereto and made a part hereof ("Lease Conditions"), the District hereby leases the Leased Property to New Hope.
3. Termination of Reservations; Additional Consideration.

(a) The schedule of termination dates set forth in Section 3(b) shall control as to the termination of the portions of the Okeelanta Reservation Area and the New Hope Reservation Area identified in Exhibit F attached hereto and made a part hereof, notwithstanding any other terms to the contrary in the Okeelanta Reservation and the New Hope Reservation. Sections 31.B

and 37 of each of the Okeelanta Reservation and the New Hope Reservation with respect to the portions of the Okeelanta Reservation Area and the New Hope Reservation Area identified in Exhibit F are hereby void and no longer in force or effect and are hereby superseded by the terms of this Agreement. Except as otherwise modified pursuant to this Agreement, all other terms and conditions of the Okeelanta Reservation and the New Hope Reservation shall remain in full force and effect. The District may require that Okeelanta and New Hope, as applicable, execute and deliver a recordable termination of reservation form at the time of expiration or termination of the Okeelanta Reservation Area or the New Hope Reservation Area or any portion thereof.

(b) The termination dates for the portions of the Okeelanta Reservation Area and the New Hope Reservation Area identified in Exhibit F are as follows, unless the Okeelanta or New Hope, as applicable, and the District by written agreement extend the termination date:

(i) With respect to the portions of the New Hope Reservation Area and the Okeelanta Reservation Area identified in paragraph 1 of Exhibit F, the termination date is March 31, 2006.

(ii) With respect to the portions of the New Hope Reservation Area and Okeelanta Reservation Area identified in paragraph 2 of Exhibit F, the termination date is the earlier of 12:00 midnight, March 31, 2009 or the date of the District's receipt of written notice from New Hope or Okeelanta that the 2008-2009 sugar cane harvest with respect to the remainder of the New Hope Reservation Area or the Okeelanta Reservation Area, as the case may be, is complete, except that Okeelanta or New Hope may elect by providing written notice to the District not more than two times a calendar year, to terminate portions of the New Hope Reservation Area in contiguous 160-acre blocks that are contiguous to the District Project Area, portions of the Okeelanta Reservation Area in contiguous 160-acre blocks that are contiguous to the District Project Area, or the remainder of both the New Hope Reservation Area and the Okeelanta Reservation Area in their entirety.

(c) If, as of December 1, 2006 and each subsequent December 1<sup>st</sup> thereafter through December 1, 2013, the District has not (i) entered into a contract for the construction of the District Project (the "Construction Contract"), (ii) assigned to the construction contractor the District's obligations with respect to payment of fees for land management services to be performed by NHLHC under Section 4 of this Agreement and (iii) commenced Construction (as defined below), the termination date set forth in Section 3(b)(ii) shall automatically extend for up to an additional one year period (i.e., the earlier of March 31 of the year following the then current expiration date or the date of the District's receipt from Okeelanta of notice of completion of the harvest for the year following the then current expiration date); provided, however, that no extensions pursuant to this Section 3(c) shall extend the termination date of the Okeelanta Reservation Area or the New Hope Reservation Area beyond March 31, 2014 (for example, if as of December 1, 2006, the above-criteria are not met, the term with respect to that portion of the Okeelanta Reservation Area and New Hope Reservation Area that was to terminate effective March 31, 2009, shall be extended to the earlier of March 31, 2010 or the District's receipt from Okeelanta of notice of completion of the 2009-2010 harvest with respect such areas).

Additionally, if the foregoing conditions have been satisfied and, for any fiscal year, the District fails to appropriate funding for (x) payment of the performance by NHLHC of land

management services under Section 4 of this Agreement or (y) construction of the District Project, the termination date set forth in Section 3(b)(ii) shall be extended for successive one year periods following the then applicable expiration date until the District appropriates funding for payment of the performance by NHLC of land management services under Section 4 of this Agreement and construction of the District Project; provided, however, that no extensions pursuant to this Section 3(c) shall extend the termination date of the Okeelanta Reservation Area or the New Hope Reservation Area beyond March 31, 2014 (for example, if the District fails to appropriate such funds for land management services in District fiscal year 2006-2007, the term with respect to the Okeelanta Reservation Area and New Hope Reservation Area identified in Section 3(b)(ii) which would have expired no later than March 31, 2009, is extended to the earlier of March 31, 2010 or the date of the District's receipt from Okeelanta of notice of completion of the 2009-10 harvest with respect such areas, and, if the District fails again to appropriate such funds for land management services in District fiscal year 2007-2008, the term with respect to the Okeelanta Reservation Area and New Hope Reservation Area identified in Section 3(b)(ii) which would have expired no later than March 31, 2010, is extended to the earlier of March 31, 2011 or the date of the District's receipt from Okeelanta of notice of completion of the 2010-2011 harvest with respect such areas).

For purposes of this Section 3(c) the term "Construction" means that (i) the District has (A) obtained all required permits and board approvals to commence the District Project, (B) received funding to commence the District Project, and (C) authorized the construction manager under the Construction Contract by issuing a notice to proceed to commence the District Project and (ii) the construction manager has commenced the construction activities.

Notwithstanding the above two paragraphs in this Section 3(c) if the District reasonably believes that the District Project will be completed ahead of schedule and provides written notice to Okeelanta and New Hope, Okeelanta and New Hope agree to use reasonable efforts to accelerate completion of their respective harvesting activities for the Okeelanta Reservation Area and the New Hope Reservation Area to accommodate the filling of the District Project reservoir or the earlier operation of the District Project.

(d) For the purpose of determining Additional Consideration under Section 32 of each of the Okeelanta Reservation and the New Hope Reservation, the rent shall continue to be based on an Advance Notice of Construction (as such term is defined in each of the Okeelanta Reservation and the New Hope Reservation) having been delivered to Okeelanta and New Hope pursuant to Section 32.D.(2)(j) of each of the Okeelanta Reservation and the New Hope Reservation. Additional Consideration shall be based on the "Gross Planted Acres," which is defined as each gross acre of the land consisting of planted farm fields, roads, ditches and canals and shall not include any acres that have not been planted for any reason whatsoever. Gross Planted Acres shall be equal to net farm field crop acres multiplied by 1.144 but for the purposes of calculating Additional Consideration in no event shall Gross Planted Acres be less than 50% of the actual number of gross acres of the Okeelanta Reservation Area and New Hope Reservation Area.

4. Land Management Services. NHLC shall provide to the District land management services within the District Project Area, less any portion thereof which is still included as part of the Okeelanta Reservation Area or the New Hope Reservation Area, as applicable, in accordance with the terms of the statement of work set forth in Exhibit G attached hereto and made a part

hereof (the "Statement of Work"), and the District shall pay NHLC a quarterly fee for such land management services as set forth in the Statement of Work. During the term of Exhibit G, NHLC shall at all times have assets in an amount reasonably acceptable to the District. Written approval from the District is required prior to NHLC changing the assets owned by NHLC as of the Date of this Agreement. The District acknowledges and agrees that (a) it shall look solely to NHLC for any claim arising out of or in any way related to the land management services provided pursuant to Exhibit G, including any claim made pursuant to Section 9 of the Agreement or Section 3 of Exhibit G, and (b) that it shall not file any action or otherwise seek recovery from Florida Crystals Corporation or any of its affiliates (including any affiliate to which any of the land management obligations have been delegated by NHLC) other than NHLC for any claim arising out of or in any way related to the land management services provided pursuant to Exhibit G.

5. Access.

(a) District Access. The District and its employees, agents, contractors, subcontractors, licensees, and invitees have the right to enter upon and travel through the portion of the Leased Property more particularly described in Exhibit D-1 attached hereto and made a part hereof (the "Eastern Portion of the Leased Property"), the Okeelanta Reservation Area, and the New Hope Reservation Area (collectively, the "Subject Area"), in accordance with Section 3 of each of the Okeelanta Reservation, the New Hope Reservation and the Lease Conditions, as the case may be; provided that such access does not (i) unreasonably interfere with the farming operations of Okeelanta or New Hope or their respective rights under the Okeelanta Reservation, the New Hope Reservation or the Lease Conditions or (ii) damage any roads located in the Subject Area. If the District or its employees, agents, contractors, subcontractors, licensees, and invitees elect to use any roads located in the Subject Area pursuant to this Section 5(a) for hauling construction materials, which election shall be made by written notice to Okeelanta identifying the roads to be used for hauling construction materials, the District agrees to be solely responsible for the maintenance and repair of such roads to a condition that is appropriate for the farming, harvesting and hauling activities of Okeelanta and New Hope but to no better condition than that in which the roads were in prior to their use for hauling construction materials, and if the District does not comply with its obligation to maintain and repair such roads within fifteen (15) days after receipt of written notice from Okeelanta or New Hope, as applicable, Okeelanta or New Hope may undertake such maintenance and repairs as Okeelanta or New Hope shall deem appropriate and the District shall reimburse Okeelanta or New Hope, as the case may be, upon demand for the reasonable costs of such maintenance and repairs.

(b) Okeelanta, New Hope and NHLC Access. Each of Okeelanta, New Hope, and NHLC and their respective employees, agents, contractors, subcontractors, licensees, and invitees have the right to enter upon and travel through at any time those roads within the District Project Area (excluding the Okeelanta Reservation Area and the New Hope Reservation Area) specifically authorized by the District or its designee in writing; provided that the District hereby permanently authorizes Okeelanta, New Hope and NHLC and their respective employees, agents, contractors, subcontractors, licensees, and invitees to use the main access road adjacent to EAAPSS; and provided further that the District hereby authorize NHLC to use roads within the District Project Area reasonably necessary for it to perform the land management services under Section 4. Access over any other road must be approved by the District on-site Project manager or a District designee in writing prior to entry. Such access is for the purpose of (i) conducting their respective

farming operations in the Okeelanta Reservation Area, the New Hope Reservation Area and the Leased Property in accordance with the terms of this Agreement, the Okeelanta Reservation, the New Hope Reservation and the Lease Conditions, and (ii) performing the land management services as set forth in Exhibit G of this Agreement; provided that Okeelanta, New Hope and NHLC and their respective employees, agents, contractors, subcontractors, licensees, and invitees comply with the reasonable safety regulations of the District and its contractors and subcontractors within the District Project Area (excluding the Okeelanta Reservation Area and the New Hope Reservation Area). Okeelanta, New Hope and NHLC shall be severally responsible for repairing any damage caused to said roads by their respective use. If not repaired within 15 days after receipt of written notice from the District or its designee, the District may undertake such repairs as the District shall deem appropriate and Okeelanta, New Hope or NHLC, as the case may be, shall reimburse the District or its designee upon demand for the reasonable costs of such repairs. Each of Okeelanta, and New Hope shall have the right to use at any time without any advance notice to the District existing irrigation, drainage, and other water management facilities, including water retention/detention control equipment and structures, canals, ditches, dikes, pipes, culverts, berms, and water management infrastructure, located on the Okeelanta Reservation Area, the New Hope Reservation Area or the Leased Property. Okeelanta, New Hope and NHLC acknowledge that the access roads within the District Project Area (excluding the Okeelanta Reservation Area and the New Hope Reservation Area) may be removed or blocked by the District during implementation of the District Project. The District shall provide reasonable alternative access of similar quality prior to removing or blocking any such access roads.

(c) Insurance.

(i) The District shall require that prior to any contractor or subcontractor entering the District Project Area, including any portion of the Leased Property, the Okeelanta Reservation Area, or the New Hope Reservation Area in which Okeelanta's or New Hope's use and occupancy has not expired or otherwise terminated, such contractor or subcontractor shall provide to Okeelanta, New Hope and NHLC, as appropriate, certificates of insurance evidencing the insurance coverages set forth in Section 17 of each of the Okeelanta Reservation, the New Hope Reservation and the Lease Conditions. The District shall require that Okeelanta, New Hope, and NHLC, as appropriate, and their affiliates be named as an additional insured on such coverages and that said liability insurance shall be primary to any liability or property insurance carried by Okeelanta, New Hope, and NHLC, as appropriate, and their affiliates.

(ii) During the period that Okeelanta, New Hope, NHLC and their respective contractors and subcontractors use or access the District Project Area as set forth in this Agreement, Okeelanta, New Hope, and NHLC shall and shall cause any of their contractors or subcontractors to, prior to entering the District Project Area, provide to the District, certificates of insurance with respect to access and use of the District Project Area evidencing the insurance coverages equivalent to the insurance coverages required to be maintained by Okeelanta as set forth in Section 17 of the Okeelanta Reservation. Okeelanta, New Hope, and NHLC shall require the District to be named as an additional insured on such coverages and that said liability insurance shall be primary to any liability or property insurance carried by the District.



6. Transition Impacts and Coordination.

(a) Okeelanta and New Hope each acknowledge that the District's implementation of the District Project may impact Okeelanta's and New Hope's respective farming operations and activities within the Subject Area during the term of the Lease Conditions, the Okeelanta Reservation or the New Hope Reservation, as the case may be. Conversely, the District acknowledges that the ability of Okeelanta and New Hope to continue their respective farming operations without unreasonable interference is an essential element of the consideration inducing each of Okeelanta and New Hope to enter into this Agreement. A benefit of NHLC providing land management services within the District Project Area under Section 4 is to assist in preventing adverse impacts from land management operations, including water management, on the respective farming operations of Okeelanta and New Hope within the Subject Area. The sole cause of action and remedy of each of Okeelanta and New Hope with respect to impacts to its farming operations within the Subject Area from the District's implementation of the District Project shall be limited to the remedies as set forth in Section 6(g) and Section 9.

(b) Okeelanta and New Hope shall provide to the District a plan and schedule of activities for their operations on the Subject Area, and the District shall provide Okeelanta, New Hope and NHLC a plan and schedule of activities for its operations in the District Project Area, to facilitate the coordination of such activities between the Parties. Each Party shall notify the other Parties when the activities of any other Party are unreasonably impacting the Party so the other Party may mitigate the impacts and prevent or minimize future occurrences.

(c) Subject to the terms of this Agreement, Okeelanta or New Hope, as the case may be, shall be responsible, at their respective expense, for the management of water within the Subject Area. Such management includes:

(i) using reasonable efforts to avoid adverse hydrological impacts resulting from the farming operations of Okeelanta and New Hope within the Subject Area to the District Project Area;

(ii) to the extent Okeelanta and New Hope determines it is reasonably required for their respective farming operations, operating and maintaining the existing irrigation, drainage, and other water management facilities, including water retention/detention control equipment and structures, canals, ditches, dikes, pipes, culverts, berms, pumps, pump motors, pump houses, pump stations, and water management infrastructure;

(iii) to the extent Okeelanta and New Hope determines it is reasonably required for their respective farming operations, increasing irrigation and drainage by increasing the duration of pumping and by the reasonable use of portable pumps, if necessary;

(iv) to the extent Okeelanta and New Hope determines it is reasonably required for their respective farming operations, operating the EAAPSS pump station identified in the Statement of Work; and

(v) obtaining irrigation water from the Okeelanta Reservation Area if, due to implementation of the District Project, water quality or quantity in the New Hope Reservation Area is not acceptable, and installing, operating, maintaining, and repairing all

the necessary water management infrastructure and facilities to convey such water to and from the Okeelanta Reservation Area and New Hope Reservation Area.

(d) The Parties shall meet at least bi-monthly to coordinate and address water management matters and to discuss water management plans for the Subject Area and the District Project Area. The Parties agree to use reasonable efforts to conduct such bi-monthly meetings at the same time that the Parties meet as set forth in Section 2(a)(3) of Exhibit G.

(e) The District hereby agrees that neither Okeelanta, New Hope or NHLC shall be responsible for obtaining any permits required for the District's activities, including all water discharge and related permits required for construction of the District Project and all permits required for the operation of the EAAPSN and EAAPSM pump stations, and, subject to NHLC's obligations to provide land management services in accordance with Section 4 of this Agreement, the District shall be responsible for the quality of any water related to its activities, including any water resulting from dewatering activities for construction of the District Project. The District shall not cause (nor will it permit any of its employees, agents, contractors, subcontractors, licensees or invitees to cause) any discharge water, including any water resulting from dewatering activities for construction of the District Project to flow into any portions of the Okeelanta Reservation Area, the New Hope Reservation Area, and the Leased Property.

(f) Except as provided in Section 6(g), Okeelanta and New Hope hereby absolutely, irrevocably and forever release the District and its board members, directors, officers, or employees, from any and all claims, demands, losses, suits, judgments, damages, causes of action, or other liability arising directly or indirectly out of:

(i) the impacts of implementation of the District Project on the respective farming operations of Okeelanta and New Hope on the Subject Area; and

(ii) past fees, costs, and expenses in connection with Okeelanta's or New Hope's operation of water management facilities that are located in the District Project Area, including the EAAPSS pump station as identified in the Statement of Work.

(g) Excepted from the release provision in Section 6(f) are the following matters:

(i) a cause of action for personal injury or property damage (other than to crops, except as provided in clause (ii) below) and, to the extent permitted by law and subject to and without waiving applicable sovereign immunity limitations, the District hereby agrees to indemnify Okeelanta, New Hope and their respective affiliates for any claims for personal injury or property damage (other than to crops) resulting from the negligent or willful misconduct of the District or any of its officers or employees; provided further, however, that the foregoing sovereign immunity limitation shall not apply to any assignee of this Agreement or to any contractor or subcontractor of the District;

(ii) a cause of action against the District for damage or destruction of crops attributable to actions or omissions of the District or its employees or for damages attributable to actions or omissions of the District or its employees that prevent or hinder Okeelanta or New Hope from planting, cultivating, harvesting or hauling crops in accordance with good agricultural practices, but excluding damages arising directly or

indirectly from the failure of Okeelanta or any of its affiliates or designees, agents, contractors, or subcontractors to perform the land management services pursuant to Section 4. The compensation for a claim under this Section 6(g)(ii) shall not exceed for any one year (from October 1 to September 30) the amount determined by multiplying the number of acres of crops damaged or destroyed or with respect to which planting, cultivating, harvesting or hauling was prevented or hindered by the District or its employees, agents, contractors, subcontractors, licensees, and invitees in any year by the damages per acre set forth in Exhibit H attached hereto and made a part hereof. The damages set forth in Exhibit H are based on per acre values that assume 100% destruction of the crop per acre for the entire year. To the extent crop damage or destruction is less than 100% per acre for the year the compensation shall be adjusted; and

(iii) any claims arising from the District's non-performance under this Agreement.

(h) Okeelanta and New Hope shall comply with all their respective pre-termination obligations as identified in the Lease Conditions, Okeelanta Reservation and New Hope Reservation, as applicable.

(i) The District shall, at its expense, construct or install such water management infrastructure or facilities as shall be necessary to isolate the farming operations of Okeelanta and New Hope from any surface water discharge, including any water resulting from dewatering, construction activities, or any water stored related to the construction of the District Project.

(j) The District shall, at its expense, take such actions as may be necessary to assure that the construction or implementation of the District Project does not result in a reduction of the water source currently available to the Subject Area; provided that Okeelanta or New Hope shall be responsible at its expense for installing, operating, maintaining, and repairing all the necessary water management infrastructure and facilities to convey such water to and from the Subject Area.

(k) Nothing contained in Subparagraphs (f) or (g) above shall limit Okeelanta's or New Hope's rights to recover for personal injury or property damage resulting from the acts or omissions of any party other than the South Florida Water Management District or its directors or employees; provided that with respect to a claim against an assignee of this Agreement for damage to crops within the Subject Area, the limitation on damages set forth in Subparagraph (g)(ii) shall apply.

7. District Representations and Warranties. As a material inducement to Okeelanta, New Hope and NHLC entering into this Agreement, the District represents and warrants to Okeelanta, New Hope and NHLC that the following matters are true as of the date hereof:

(a) There is no pending, or to the District's knowledge, threatened federal, state or local judiciary, county or administrative proceeding (i) to which the District is or will be a party that could affect the District's ability to comply with its obligations under this Agreement or (ii) affecting the Leased Property or in which the District is or will be party by reason of the District's ownership of the Leased Property, including, without limitation, proceedings for or involving zoning violations, or personal injuries, or damage alleged to have occurred on or with

respect to the Leased Property or by reason of the condition or use of the Leased Property. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to the District's knowledge, threatened against the District.

(b) The execution and delivery of this Agreement by the signatories hereto, on behalf of the District, and the performance of this Agreement by the District have been duly authorized by the District, and this Agreement is binding upon the District and enforceable against the District in accordance with its terms, conditions and provisions. No consent to such execution, delivery and performance of the District is required from any person, judicial or administrative body, governmental authority or any other party other than any such consent which already has been unconditionally given. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will violate any restriction, law, court order, or agreement to which the District or the Leased Property is subject.

(c) No persons, firms, corporations or other entities claiming by, through or under the District are entitled to a real estate commission or other similar fees as a result of this Agreement or the transactions contemplated hereby.

(d) The District is the legal, fee simple title holder of the Leased Property, subject only to all easements, restrictions, conditions and other matters described in paragraphs 8 through 52 of Schedule B of Chicago Title Insurance Company's policy of title insurance bearing Policy No. 10287710600000007 dated March 30, 1999.

(e) Except as disclosed in the environmental reports listed in Exhibit I attached hereto and made a part hereof, if any, with respect to the Leased Property, and the occupancy, use and operation thereof, the District has no knowledge of any failure by the former occupant to materially comply with all (i) Environmental Laws (as defined in Section 10.A.(3) of the Lease Conditions) and (ii) other applicable federal, state and local governmental laws, ordinances, regulations, licenses, permits, and authorizations, including, without limitation, applicable zoning laws and regulations and governmental approvals, and the District has no knowledge of any violations for which an action is either pending or threatened against the occupant or the District.

(f) There is no civil, criminal or administrative action, suit, claim, demand, investigation, or notice of violation pending or, to the knowledge of the District, threatened against the District relating in any way to the Leased Property.

(g) The District has not entered into any agreement for the purchase and sale or other transfer of the Leased Property other than this Agreement.

(h) There are no other parties other than the District in occupancy or possession of any part of the Leased Property, and no other person or entity, has any right to occupy, possess or lease any portion of the Leased Property except with respect to portions of Parcel 3 of the Leased Property that are presently occupied and possessed by the Sugar Cane Growers Cooperative of Florida (the "Cooperative"). The Cooperative has sent a termination notice to the District in which it will vacate all of Parcel 3 of the Leased Property effective December 31, 2005.

8. Okeelanta, New Hope and NHLC Representations and Warranties. As a material inducement to the District entering into this Agreement, each of Okeelanta, New Hope and NHLC represents and warrants to the District that the following matters are true as of the date hereof:

(a) There is no pending, or to the knowledge of Okeelanta, New Hope or NHLC, as the case may be, threatened federal, state or local judiciary, county or administrative proceeding to which Okeelanta, New Hope or NHLC is or will be a party that could affect the ability of Okeelanta, New Hope or NHLC to comply with its respective obligations under this Agreement. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to the knowledge of Okeelanta, New Hope or NHLC, as the case may be, threatened against Okeelanta, New Hope or NHLC.

(b) The execution and delivery of this Agreement by the signatories hereto, on behalf of each of Okeelanta, New Hope and NHLC, and the performance of this Agreement by each of Okeelanta, New Hope and NHLC have been duly authorized by Okeelanta, New Hope and NHLC, as applicable, and this Agreement is binding upon each of Okeelanta, New Hope and NHLC and enforceable against each of Okeelanta, New Hope and NHLC in accordance with its terms, conditions and provisions. No consent to such execution, delivery and performance of Okeelanta, New Hope or NHLC is required from any person, judicial or administrative body, governmental authority or any other party other than any such consent which already has been unconditionally given. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will violate any restriction, law, court order, or agreement to which Okeelanta, New Hope or NHLC is subject.

(c) No persons, firms, corporations or other entities claiming by, through or under Okeelanta, New Hope or NHLC are entitled to a real estate commission or other similar fees as a result of this Agreement or the transactions contemplated hereby.

9. Specific Performance. Subject to the terms and conditions set forth in the second paragraph of Section 2 of Exhibit G and Sections 6(f) and (g) above, if a Party fails to perform any of the terms or conditions of this Agreement, in addition to any other remedies available at law or in equity, the Party harmed by such breach shall have the right to seek specific performance of such other Party's obligations, without thereby waiving any action for damages resulting from such breach. The rights set forth in this section shall be in addition to and shall not be limited by any rights of indemnification that are set forth in this Agreement.

10. Miscellaneous Provisions.

(a) Attorney's Fees. In the event it becomes necessary for a Party to file a suit to enforce this Agreement or any provisions contained herein, the prevailing Party or Parties in such suit shall be entitled to recover, in addition to all other remedies set forth herein, reasonable attorney's fees, and costs of court incurred in connection with such suit including all appeals.

(b) Entire Agreement and Modification. This Agreement constitute the entire agreement between the Parties and supersedes all prior agreements and understandings (if any) relating to the subject matter hereof. This Agreement cannot be amended, modified or altered except by an agreement in writing executed by the Parties.

(c) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors, assigns and legal representatives.

(d) Headings. Section headings are for convenience of reference only and shall in no way affect the interpretation of this Agreement.

(e) Governing Law. The laws of the State of Florida and of the United States of America shall govern the validity, construction, performance, enforcement and interpretation of this Agreement.

(f) Full Execution. This Agreement shall be deemed fully executed and binding upon each Party when all Parties have executed this Agreement as set forth below and are in possession of the original, a photocopy or faxed copy of the fully executed Agreement.

(g) Severability. If any provision of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent as contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

(h) Third Parties. Unless expressly stated herein to the contrary, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any Party, nor shall any provision give any persons any right of subrogation or action over or against any Party.

(i) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy or facsimile copy of this Agreement and any signatory hereon shall be considered for all purposes as an original.

(j) Waiver. Failure of a Party to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future enforcement of any such covenant, condition or right; but the same shall remain in full force and effect.

(k) Construction. The Parties acknowledge that they have had equal bargaining strength, and that any rule of construction to the effect that ambiguities are to be resolved against one party or the other or the drafter shall not apply in the interpretation of this Agreement.

(l) Further Assurances; Additional Documents. Each Party hereby agrees to execute and deliver such other documents, instruments or agreements as may reasonably be requested to further effectuate the transaction contemplated herein.

(m) Jurisdiction and Venue. The Parties acknowledge that a substantial portion of negotiations and anticipated performance and execution of this Agreement occurred or shall occur in Palm Beach County, Florida, and that, therefore, each of the Parties irrevocably and unconditionally (i) agrees that any suit, action, or legal proceeding arising out of or related to this Agreement may be brought in the courts of record of the State of Florida in Palm Beach County or the court of the United States, Southern District of Florida; (ii) consents to the jurisdiction of each such court in any suit, action or proceeding; and (iii) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts.

(n) Obligations of Florida Crystals Corporation. Florida Crystals Corporation, a Delaware corporation ("Florida Crystals"), shall be jointly and severally liable with Okeelanta and New Hope for the respective obligations of Okeelanta and New Hope under this Agreement.

(o) Survival. In addition to any other terms set forth in this Agreement which by their terms bind Okeelanta, New Hope and NHLHC after the termination of this Agreement, the provisions of Sections 4, 5, and 6 shall survive the termination of this Agreement.

(p) Assignment/Delegation. Absent a provision elsewhere in this Agreement with respect to a specific assignment of certain rights, Okeelanta, New Hope and NHLHC may not assign any of their respective rights under this Agreement (excluding any rights under the Okeelanta Reservation, the New Hope Reservation and the Lease Conditions, as applicable) without the prior written consent of the District (which shall not be unreasonably withheld or delayed); provided, however, that Okeelanta, New Hope and NHLHC may assign all or any portion of their respective rights hereunder to any affiliate. The District may assign any and all rights under this Agreement by providing prior written notice to Okeelanta, New Hope and NHLHC. Okeelanta, New Hope and NHLHC may assign all or any portion of their obligations under this Agreement or delegate the performance thereof to any affiliate or third party; provided that no such assignment or delegation shall relieve Okeelanta, New Hope or NHLHC of their respective obligations hereunder. The District may delegate performance under this Agreement to third parties, including District contractors, by providing written notice to Okeelanta, New Hope and NHLHC; provided that no such delegation shall relieve the District of its obligations hereunder. Any purported assignment of rights or delegation of performance in violation of this Section is void.

(q) Memorandum of Agreement. The Parties agree that either Party may prepare and record a memorandum of this Agreement, such memorandum to be subject to the other Party's prior approval, not to be unreasonably withheld or delayed.

(r) Notification for Tax Classifications. The District shall provide such assistance as is reasonably requested by Okeelanta or New Hope in order to ensure that any portions of the Okeelanta Reservation Area, the New Hope Reservation Area and the Leased Property that are terminated in accordance with this Agreement are accurately described and classified on the Palm Beach County tax roll. The assistance required to be provided by the District shall include providing written notice to the Palm Beach County Property Appraiser and the Palm Beach County Tax Collector, as appropriate, but shall not include generating Geographic Information System data, legal descriptions, tax maps, or surveys. Okeelanta and New Hope, as the case may be, shall cooperate with the District in this regard.

(s) Force Majeure. Notwithstanding any provisions of this Agreement to the contrary, the Parties shall not be held liable for any failure or delay in performing their respective obligations under this Agreement, including NHLHC's obligations to provide land management services under Section 4, that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the Parties. Failure to perform shall be excused during the continuance of such circumstances, but the Agreement shall otherwise remain in effect. Nothing contained herein shall relieve the Parties of their obligations to make payments as required pursuant to this Agreement.

(t) Independent Contractor Status. Okeelanta, New Hope and NHLHC shall be considered independent contractors, and nothing in this Agreement shall be construed to establish any relationship other than that of independent contractor between the District and its respective employees, agents, contractors, subcontractors, or assigns with regard to performance under this Agreement. District and its employees, directors, contractors, consultants, and agents will not supervise or have authority over or be liable or responsible for the performance of Okeelanta, New Hope and NHLHC and their employees, consultants, contractors, subcontractors, suppliers, agents, and representatives.

(u) Challenges to District Project. Except as provided under Section 6(f) of this Agreement, if Florida Crystals Corporation or its affiliates initiate or participate as a party in an administrative or judicial proceeding, or directly and knowingly finance or cause the initiation of an administrative or judicial proceeding, challenging the design, permitability, construction, or operation of the District Project, New Hope and Okeelanta shall not receive any extensions pursuant to Section 3(c) following such challenge and will vacate the Subject Area on the then applicable termination date. For purposes of this Section, "affiliate" means the parent, subsidiaries and other entities controlled by Florida Crystals Corporation, and their respective directors and officers.



IN WITNESS WHEREOF, this Agreement has been executed by the Parties.

Signed, sealed and delivered  
in the presence of:

Abner Cooper  
Witness

Abner Cooper  
Witness Print Name

Kenneth G. Ammon  
Witness

Kenneth G. Ammon  
Witness Print Name

Signed, sealed and delivered  
in the presence of:

Abner Cooper  
Witness

Abner Cooper  
Witness Print Name

Kenneth G. Ammon  
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in the presence of:

Abner Cooper  
Witness

Abner Cooper  
Witness Print Name

Kenneth G. Ammon  
Witness

Kenneth G. Ammon  
Witness Print Name

OKEELANTA CORPORATION,  
a Delaware corporation

By: Armando A. Tabernilla  
Print Name: Armando A. Tabernilla  
As its: Vice President

NEW HOPE SUGAR COMPANY,  
A Florida corporation

By: Armando A. Tabernilla  
Print Name: Armando A. Tabernilla  
As its: Vice President

NEW HOPE LAND CORPORATION

By: Armando A. Tabernilla  
Print Name: Armando A. Tabernilla  
As its: Vice President

SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT,  
a public corporation of the State of Florida

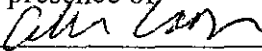
By: Kevin McCarty  
Print Name: Kevin McCarty  
As its: Chairman

LEGAL FORM APPROVED  
SFWMD OFFICE OF COUNSEL


By: Abner Cooper DATE 1/05/2006

Florida Crystals executes this Agreement solely for the purpose of agreeing to be bound by the terms of Section 11(n) and 11(u) of this Agreement.

Signed, sealed and delivered  
in the presence of:




Witness



Witness Print Name




Witness



Witness Print Name

FLORIDA CRYSTALS CORPORATION,  
a Florida corporation

By:



Print Name: Armando A. Tabernilla

As its: Vice President and General Counsel

## EXHIBIT LIST

- Exhibit A – Legal Description of Okeelanta Reservation Area
- Exhibit B – Legal Description of New Hope Reservation Area
- Exhibit C – District Project Area Map
- Exhibit D – Legal Description of the Leased Property
- Exhibit D-1 – Legal Description of the Eastern Portion of the Leased Property
- Exhibit E – Lease Conditions for the Leased Property
- Exhibit F – Reservation Areas to be Terminated 2006 and 2009
- Exhibit G – Land Management Services Statement of Work
- Exhibit H – Maximum Damages
- Exhibit I – Environmental Reports

**EXHIBIT A**

**LEGAL DESCRIPTION OF OKEELANTA RESERVATION AREA**

All of Sections 20, 21, 22, 26, 27, 28 and 29, and those parts of Sections 23, 24 and 25 lying West of Highway No. 27 in Township 46 South, Range 37 East, Palm Beach County, Florida.

TOGETHER WITH:

All of Sections 19 and 30, Township 46 South, Range 37 East, Palm Beach County, Florida, EXCEPT the West 380.00 feet thereof.

TOGETHER WITH:

All of Section 31, Township 46 South, Range 37 East, Palm Beach County, Florida, EXCEPT the West 380.00 feet thereof, ALSO EXCEPT the South 1815.00 feet thereof.

TOGETHER WITH:

All of Sections 32, 33, 34 and 35, Township 46 South, Range 37 East, Palm Beach County, Florida, EXCEPT the South 1815.00 feet thereof.

TOGETHER WITH:

All of Section 36 lying West of Highway No. 27, in Township 46 South, Range 37 East, Palm Beach County, Florida, EXCEPT the South 1815.00 feet thereof.

TOGETHER WITH:

All of Section 31 lying West of Highway No. 27, in Township 46 South, Range 38 East, Palm Beach County, Florida, EXCEPT the South 1815.00 feet thereof.

EXCEPT:

Those lands conveyed to the State of Florida, for the use and benefit of the State of Florida Department of Transportation by the deed recorded in Official Records Book 6870, Page 1080, Public Records of Palm Beach County, Florida.

## **EXHIBIT B**

### **LEGAL DESCRIPTION OF NEW HOPE RESERVATION AREA**

All of Sections 5, 8 and 17 Township 46 South, Range 37 East, Palm Beach County, Florida.

AND

All of Section 4, LESS the Southeast one-quarter (SE ¼) thereof, Township 46 South, Range 37 East, lying South and West of S.R. 25, (US 27) Right-of-Way, Palm Beach County, Florida;

LESS AND EXCEPTING those lands conveyed to the State of Florida for the use and benefit of the State of Florida Department of Transportation, dated July 31, 1991, and recorded in Official Record Book 6991, Page 814 of the Public Records of Palm Beach County, Florida, being more particularly described as follows:

A Portion of Parcel 101

That part of Section 4, Township 46 South, Range 37 East, in Palm Beach County, Florida, lying West of State Road 25 (U.S. 27) and being more particularly described as follows:

Commence at the Southeast corner of said Section 4;

Thence, run North 00°16'47" West along the East line of said Section 4, a distance of 1,050.35 feet to a point on the Easterly Existing Right-of-Way line of said State Road 25 and the POINT OF BEGINNING;

Thence, North 35°03'17" West along said Existing Right-of-Way line, a distance of 5,141.42 feet to a point on the North line of said Section 4;

Thence, South 89°35'40" West along said North line, a distance of 115.48 feet;

Thence, South 35°03'17" East, a distance of 5,335.96 feet;

Thence, South 35°02'49" East, a distance of 7.93 feet to a point on the East line of said Section 4;

Thence, North 00°16'47" West along said East line, a distance of 166.56 feet to the POINT OF BEGINNING.

AND ALSO LESS AND EXCEPT:

All rights of access, egress, ingress, light, air and view between Section 4, Township 46 South, Range 37 East, in Palm Beach County, Florida, and State Road 25 (U.S. 27) along the following described line:

Commence at the Southeast corner of said Section 4;

Thence, run North 00°16'47" West along the East line of said Section 4, a distance of 883.79 feet to the BEGINNING of said described line;

Thence, North 35°02'49" West, a distance of 7.93 feet;

Thence, North 35°03'17" West, a distance of 1,534.56 feet to the END of the herein describe line;

Thence, continue North 35°03'17" West, a distance of 80.00 feet to the BEGINNING of said described line;

Thence, continue North 35°03'17" West, a distance of 3,721.40 feet to the END of the herein describe line and a point on the North line of said Section 4;  
Thence, South 89°35'40" West, a distance of 2,248.98 feet to the Northwest corner of said Section 4.

AND

All of the West one-half (W ½) of Section 9 and 16, Township 46 South, Range 37 East, all in Palm Beach County, Florida.

LESS AND NOT INCLUDING the following described parcels: (DEFERRED)

Tract No. V6-100-029 T-5

A parcel of land situate in Sections 5, 7 and 8, Township 46 South, Range 37 East, Palm Beach County, Florida, more particularly described as follows:

The West one-half (W ½) of said Section 5 and the West 200 feet of the East one-half (E ½) of said Section 5, LESS the South 330 feet of said West 200 feet; together with the South 330 feet of the West 330 feet of the East one-half (E ½) of said Section 5; the Northwest quarter of said Section 8 and the West 330 feet of the Northeast quarter of said Section 8 and that portion of the Northeast quarter of said Section 7 lying Southeasterly of a line which intersects the South line of said Northeast quarter at a point 360.79 feet Westerly of the Southeast corner of said Northeast quarter and then runs in a Northeasterly direction to a point on the East line of said Northeast quarter at a point 981.91 feet Northerly of said Southeast corner of the Northeast quarter of said Section 7.

**EXHIBIT C**

**DISTRICT PROJECT AREA MAP**

# Reservoir A-1 Site

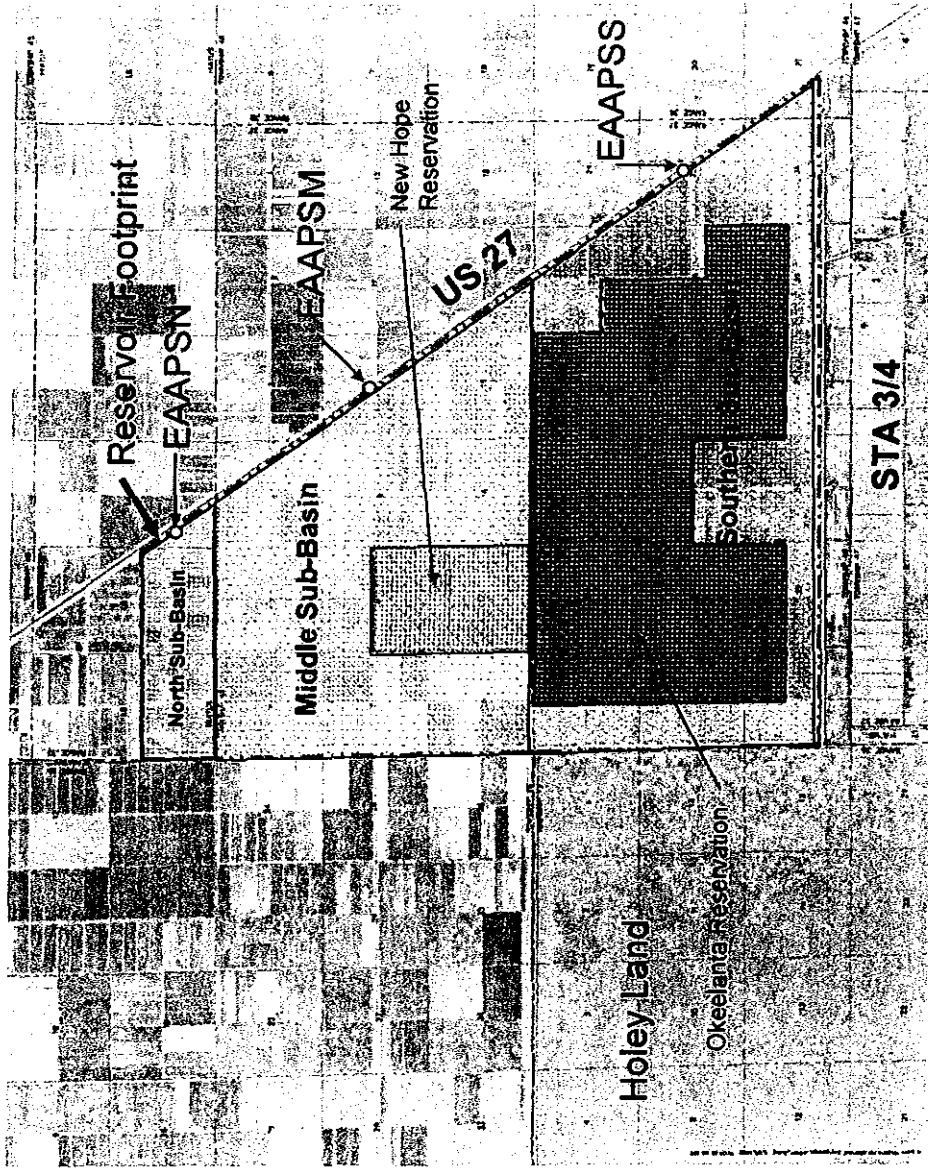


EXHIBIT "C"



## **EXHIBIT D**

### **LEGAL DESCRIPTION OF THE LEASED PROPERTY**

#### **Parcel 2**

The East one-half (E ½) of Sections 24, 25 and 36 Township 46 South, Range 36 East, Palm Beach County, Florida;

LESS and not including the Northeast one-quarter (NE ¼) of the Northeast one-quarter (NE ¼) of the Northeast one-quarter (NE ¼) of said Section 25, Township 46 South, Range 36 East, Palm Beach County, Florida;

AND LESS the South 380 feet of the East one-half (E ½) of Section 36.

LESS the following described parcel: (DEFERRED)

Tract No. V6-100-039 T-6

A parcel of land situate in Section 25, Township 46 South, Range 36 East, Palm Beach County, Florida, more particularly described as follows:

Said parcel being a 210 foot by 210 foot square whose East and West boundaries run due North-South and whose North and South boundaries run due East-West. The Northeast corner of said parcel bears South 46°09'29" East, a distance of 3677.84 feet from the Northwest corner of said Section 25.

Containing 1 acre, more or less.

Bearings are based on the Florida State Plane Coordinate System NAD 1927

#### **Parcel 3**

All of the East one-half of Sections 23, 26 and 35 and all of the West one-half (W ½) of Sections 24, 25 and 36, Township 46 South, Range 36 East, Palm Beach County, Florida; LESS and not including the South 380 feet of said Sections 35 and 36.

LESS the following described parcel: (DEFERRED)

Tract No. V6-100-039 T-6

A parcel of land situate in Section 25, Township 46 South, Range 36 East, Palm Beach County, Florida, more particularly described as follows:

Said parcel being a 210 foot by 210 foot square whose East and West boundaries run due North-South and whose North and South boundaries run due East-West. The Northeast corner of

said parcel bears South  $46^{\circ}09'29''$  East, a distance of 3677.84 feet from the Northwest corner of said Section 25.

Containing 1 acre, more or less.

Bearings are based on the Florida State Plane Coordinate System NAD 1927.

**EXHIBIT D-1**

**LEGAL DESCRIPTION OF THE EASTERN PORTION OF THE LEASED PROPERTY**

The East one-half (E ½) of Sections 24, 25 and 36 Township 46 South, Range 36 East, Palm Beach County, Florida;

LESS and not including the Northeast one-quarter (NE ¼) of the Northeast one-quarter (NE ¼) of the Northeast one-quarter (NE ¼) of said Section 25, Township 46 South, Range 36 East, Palm Beach County, Florida;

AND LESS the South 380 feet of the East one-half (E ½) of Section 36.

LESS the following described parcel: (DEFERRED)

Tract No. V6-100-039 T-6

A parcel of land situate in Section 25, Township 46 South, Range 36 East, Palm Beach County, Florida, more particularly described as follows:

Said parcel being a 210 foot by 210 foot square whose East and West boundaries run due North-South and whose North and South boundaries run due East-West. The Northeast corner of said parcel bears South 46°09'29" East, a distance of 3677.84 feet from the Northwest corner of said Section 25.

Containing 1 acre, more or less.

Bearings are based on the Florida State Plane Coordinate System NAD 1927

## EXHIBIT E

### LEASE CONDITIONS

1. The Lease.

A. Possessory Estate For Years.

The District hereby grants to New Hope (the "Lessee") and its successors and assigns a possessory estate for years in the Leased Property, all as provided in the Agreement to which these Lease Conditions are a part (the "Lease"), and grants to the Lessee all right, title and interest in and to any crops now or hereafter located on the Leased Property.

The Lessee acknowledges and understands that the District has not performed any inspection or environmental audit or assessment of the Leased Property. Consequently, except as set forth in the Agreement to which these Lease Conditions are a part, the District makes no representation or warranty with respect to the use or condition of the Leased Property and the Leased Property is leased to the Lessee in its "AS IS," "WHERE IS" and "WITH ALL FAULTS" condition.

The District shall cause the Cooperative and United States Sugar Corporation to comply with all of their respective obligations under the agreements by which the Cooperative or United States Sugar Corporation are farming any portion of the Leased Property, including, without limitation, their obligation to perform environmental inspections or remediation or allow New Hope to pursue such claim on behalf of the District.

To the extent that the District, the Cooperative or United States Sugar Corporation performs any inspections or environmental audit of the Leased Property it shall provide the Lessee with a copy of such information.

B. Term.

The term of the Lease of the Leased Property shall commence on the date of the Agreement to which these Lease Conditions are attached (the "Commencement Date") and, unless terminated earlier as provided in the Agreement or Sections 20, 31.A. or 37 of these Lease Conditions: (i) with respect to Parcel 2 of the Leased Property, shall automatically expire and be of no further force or effect at 12:00 midnight on March 31, 2009, without the requirement of any action on the part of either the District or the Lessee and (ii) with respect to Parcel 3 of the Leased Property, shall expire on March 31, 2009, subject to automatic annual renewals thereafter until Parcel 3 of the Leased Property is needed for the District Project as reasonably determined by the District and the Lease is terminated in accordance with the procedures set forth in Section 31.B. of these Lease Conditions, after which date the term of the Lease shall automatically expire and be of no further force or effect, without the requirement of any action on the part of either the District or the Lessee. The District may require that New Hope execute and deliver a recordable termination of Lease at the time of termination or expiration. The term "Leased Property" shall mean the Leased Property, less such portion of the Leased Property as may no longer be subject to the terms hereof as a result

of a termination or release of such portion of the Leased Property in accordance with the terms and conditions hereof.

2. **Permitted and Required Use of Leased Property.**

During the term of the Lease, the Lessee shall have the right to exclusive possession, occupancy and use of the Leased Property, provided however, that in order to protect the District's interest in the Leased Property, the Lessee agrees to limit its activities on or with respect to the Leased Property to those reasonably appropriate to continuing its business of planting, cultivating, farming, growing, harvesting, fertilizing, removing, using and selling sugar cane and all activities incidental or related to the foregoing, including, without limitation, the planting, cultivating, farming, growing, harvesting, fertilizing, removing, using and selling of appropriate rotation crops and the hunting, trapping or capturing of wildlife on the Leased Property (these items and/or activities being hereinafter collectively referred to as "Permitted Uses"). The Lessee shall conduct its Permitted Uses in accordance with the provisions of these Lease Conditions and it will comply in all material respects with all state, federal and local environmental, health, safety and other laws, regulations and rules applicable to such use of the Leased Property. The Lessee will not use or permit any use or entry upon the Leased Property for any other purpose, including, but not limited to, labor camps or residential use, provided, however, this shall not prohibit the Lessee from allowing workers to use existing or temporary housing on the Leased Property for such purposes.

3. **District Rights.**

The District's rights during the term of the Lease to protect its interest shall include, but not be limited to, the right of the District and its employees, agents, contractors, subcontractors, licensees, and invitees and the United States Army Corps of Engineers (the "Corps") to enter upon and travel through, over and across the Leased Property at any time to: carry out the terms, rights, duties and obligations of the District under these Lease Conditions, to ensure compliance with the Lessee's agreements in these Lease Conditions, and to conduct and perform any and all inspections, investigations, soil borings, pre-engineering, design, and other activities on any and every field covered by the Lease, including, but not limited to, core borings, topographic and land surveys, environmental assessments, water quality samplings, and obtaining of soil samples, with regard to the District's potential future uses of the Leased Property, provided such access, inspection or investigations do not unreasonably interfere with the Lessee's rights hereunder with respect to the Leased Property, including, without limitation, the Lessee's ability to pursue its agricultural endeavors and/or complete any improvements with respect to the Leased Property.

In addition, the District and its employees, agents, contractors, subcontractors, licensees, and invitees and the Corps have the right to enter upon and travel through, over and across the Leased Property on the presently existing roads at any time for the purpose of implementation of the District Project on those portions of the Leased Property, the Okeelanta Reservation Area and the New Hope Reservation Area in which the use of occupancy of Okeelanta or New Hope has terminated. The parties shall use their best efforts to coordinate access over such roads so that each party's access is not unreasonably interfered with by the other party.

4. **Sale of Leased Property.**

Prior to the sale or conveyance by the District of any interest in the Leased Property, or any portion thereof, the District shall provide the Lessee written notice of such sale or conveyance, and in such event the Lessee agrees to look solely to the successor in interest of the District in and to the Leased Property, or portion thereof, as applicable with respect to any obligations of the District hereunder arising or accruing from and after the date of such sale or conveyance. The Lease shall not be affected by any such sale or conveyance. The District shall thereupon be released from all future liabilities and obligations under the Lease with respect to the Leased Property, or portion thereof, sold or conveyed in accordance with the terms hereof arising or accruing from and after the date of such sale or conveyance, and all such future liabilities and obligations shall thereupon be binding upon the successor owner or transferee, subject to the terms and conditions hereof. Such sale or conveyance shall not relieve the District of any obligations or liabilities arising or accruing prior to the date of such conveyance.

5. **Taxes.**

Subject to the Lessee's rights to contest the Tax Claims (as hereinafter defined), the Lessee understands and agrees that, until the termination of the term of the Lease, the Leased Property shall remain upon the tax rolls of the county in which the Leased Property is located without exempt status. The District shall provide such assistance as is reasonably requested by New Hope in order to ensure that the Leased Property is accurately described and classified on the Palm Beach County tax roll, but such assistance shall not include generating Geographic Information System data, legal descriptions, tax maps, or surveys. Upon the partial or full termination of the Lease, the District shall notify the Palm Beach County Property Appraiser and Palm Beach County Tax Collector to have the Leased Property or parts thereof no longer under the Lease removed from the tax roll and to amend the applicable tax parcels to accurately show the legal description of the portions of the Leased Property remaining under the Lease. The District shall cooperate with the Lessee in connection with the Lessee's efforts to ensure that the Leased Property is taxed as agricultural lands in accordance with Section 193, Florida Statutes, as amended. The Lessee shall pay when due all real property taxes, as well as all pending, certified, confirmed or ratified special assessment liens levied against the Leased Property through the term of the Lease; provided, however, that if, the assessing authority permits any such assessments to be paid in installments, the Lessee may exercise the option to pay the same in installments and pay only such installments as may become due during the term of the Lease as the same respectively become due and before they become delinquent, and provided that any such assessments which relate to a fiscal period of the taxing authority, part of which period is included in the term of the Lease and a part of which is included in a period of time prior to or after the term of the Lease, shall be allocated and prorated between the Lessee and the District as of the commencement and termination of the term of the Lease; provided that, if the Lease is terminated with respect to a portion of the Leased Property, such allocation and proration between the Lessee and the District with respect to such portion of the Leased Property shall be made as of the effective date of such termination. Upon the termination of the Lease, the Lessee shall pay all real property taxes accrued with respect to the Leased Property in accordance with Section 196.295, Florida Statutes, if applicable; otherwise taxes shall be prorated based on the tax for the year of the termination of the Lease with due

allowance made for exemptions (if any); provided that, if the Lease is terminated with respect to a portion of the Leased Property, such proration between the Lessee and the District with respect to such portion of the Leased Property shall be made as of the effective date of such termination. If the assessment for the year of the termination of the Lease is not available, then taxes will be prorated on the prior year's tax. Any tax proration based on an estimate of the prior year's tax shall be subsequently readjusted at the request of either the District or the Lessee upon receipt of a tax bill. The provisions of this Section 5 shall survive the termination of the Lease. The Lessee shall also be responsible for any penalties or late fees for failure to pay taxes in accordance with the terms hereof. The District shall pay all real property taxes, as well as all pending, certified, confirmed or ratified special assessment liens, levied against the Leased Property, or applicable to any period of time, prior to the term of the Lease.

The Lessee shall have the right to contest the amount or validity of any real property taxes or any assessment liens ("Tax Claims"), by appropriate legal proceedings in good faith and with due diligence, provided that this shall not be deemed or construed in any way as relieving, modifying or extending the Lessee's covenants to pay or its covenants to cause to be paid any such charges at the time and in the manner provided in the Lease or operate to relieve the Lessee from its other obligations hereunder, and shall not cause the sale of the Leased Property, or any part thereof, to satisfy the same or cause the Lessee to be in default under any mortgage or deed of trust encumbering the District's interest in the Leased Property or any part thereof. The District agrees to join in any such proceedings if the same be required to legally prosecute such contest of the validity of such Tax Claims upon the reasonable request of the Lessee; provided, however, the District will not be required to join in any such proceeding wherein the Tax Claims are imposed by the District, provided the District does not require its own joinder in connection with such Tax Claims. The Lessee shall be entitled to any refund of any Tax Claims and such charges and penalties or interest thereon which have been paid by the Lessee. In the event that the Lessee fails to pay any Tax Claims when due or fails to diligently prosecute any contest of the same, the District may, upon thirty (30) days advance written notice to the Lessee, pay such charges together with any interest and penalties and the same shall be repayable by the Lessee to the District within thirty (30) days of receipt of written request therefor, provided that, should the District reasonably determine that the giving of such notice would risk loss to the Leased Property, or portion thereof, then the District shall give such written notice as is appropriate under the circumstances.

6. **Notification of Certain Events.**

To assist the District in protecting its interest in the Leased Property, the Lessee agrees to promptly report any incidence of the following affecting the Leased Property to the District:

- A. Accidental Fire causing damage in excess of \$200,000.00.
- B. Injury or death which the Lessee is required by law to disclose to the Occupational Safety Health Administration.
- C. Persistent and continued poaching and trespassing that materially and adversely affects the Lessee's use of the Leased Property.

D. Any hazard, condition or situation that has become a liability to the District or has caused damage to the Leased Property or improvements on the Leased Property of the District if such liability or damage is in excess of \$100,000.00.

E. Any written notice of a violation received pertaining to applicable State and local laws or rules and regulations promulgated by the District, the Florida Game and Fresh Water Fish Commission or any other State or local agency which is not resolved or contested within a 30 day period after receipt of such notice.

F. Disposal (as defined in Section 10 of these Lease Conditions) of Pollutants (as defined in Section 10 of these Lease Conditions) if notification of such Disposal of Pollutants is required to be given to any Federal or State governmental authority under applicable Environmental Laws (as defined in Section 10 of these Lease Conditions).

7. **Improvements and Alterations.**

Subject to the condition, if applicable, requiring the District's consent set forth in the last sentence of this Section, the Lessee may, at the Lessee's expense, construct on the Leased Property from time to time, any fences, structures, pumps, pump motors, pump houses, piping, additions, or other improvements or alterations on or to the Leased Property (collectively, the "New Improvements"), and make such repairs, additions, alterations and improvements thereto as the Lessee, in its sole, but reasonable discretion, deems desirable in connection with the Permitted Uses, subject, however, to the terms of these Lease Conditions. The Lessee shall have the right to construct roads for transportation purposes and canals and dikes used in connection with irrigation and drainage systems on the Leased Property and use the rock and other minerals located on the Leased Property for such construction, provided that any construction of new roads, canals or dikes which cost in excess of \$250,000.00 shall be subject to the prior written approval of the District, which approval shall not be unreasonably withheld or delayed.

8. **Operating Expenses and Repair and Maintenance.**

From and after the Commencement Date, the Lessee shall be responsible, at the Lessee's expense and as the Lessee determines is reasonably necessary to conduct the Lessee's farming operations on the Leased Property, for the operation, maintenance and repair of the Leased Property and all structures and other improvements situated thereon as of the Commencement Date (the "Existing Improvements") or which may hereafter be located on the Leased Property during the term of the Lease by the Lessee; provided, however, the Lessee, shall be responsible, at its expense, for the proper water management of the Leased Property to prevent any adverse water management impact from or to the implementation of the District Project, including (a) properly operating and maintaining existing irrigation, drainage, and other water management infrastructure, including water retention/detention control equipment and structures, canals, ditches, dikes, pipes, culverts, berms, pumps, pump motors, pump houses, pump stations, and water management infrastructure and (b) properly installing, operating, and maintaining new irrigation, drainage, and other water management infrastructure, including water retention/detention control equipment and structures, canals, ditches, dikes, pipes, culverts, berms, pumps, pump motors, pump houses, pump stations, and water management infrastructure.



In addition, the Lessee shall pay all expenses for the Leased Property from the Commencement Date through the termination of the Lease.

9. **Best Management Practices.**

With respect to the Leased Property, the Lessee shall adhere to any and all management practices and all other requirements and standards described in any applicable permit issued by the District.

10. **Environmental Matters and Indemnification.**

A. **Definitions.**

The following terms when used in these Lease Conditions shall have the following meanings:

(1) Disposal means the release, treatment, storage, use, handling, discharge, or disposal of Pollutants after the Commencement Date, as defined under applicable Environmental Laws.

(2) Environmental Claims and Liabilities means any notices of investigation (other than routine inspections) or potential liability, demands for payment, law suits for damages, penalties or injunctive relief, or any other claims of any sort whatsoever of any nature, kind, or description, which in any way arise out of, are connected with, pertain to, refer to, or relate to either directly or indirectly or which may result in whole or in part from the presence of Pollutants on, under or emanating from the Leased Property in violation of any Environmental Laws, except for any of which pertains to, refers to or relates to the presence of Pollutants prior to the term of the Lease.

(3) Environmental Laws mean any federal, state, regional, or local laws, statutes, ordinances, rules, regulations or judicial or administrative orders now or hereinafter enacted regulating or governing the use, handling, storage, disposal, presence, acceptable concentrations, impact assessment, or remediation of Pollutants including, but not limited to, the Comprehensive Environmental Response, Compensation & Liability Act, 42 USC § 9601 et seq. ("CERCLA"), the Resource Conservation & Recovery Act, 42 USC § 6901 et seq. ("RCRA"), the Federal Water Pollution Control Act, 33 USC § 1251 et seq., the Toxic Substances Control Act, 15 USC § 2601 et seq., the Emergency Planning and Community Right to Know Act of 1986, 42 USC § 11001 et seq., the Clean Air Act, 42 USC § 7401 et seq., the Endangered Species Act, 16 USC § 1521 et seq., the Occupational Safety and Health Act, 29 USC § 651 et seq., the Safe Drinking Water Act, 42 USC § 300(f) et seq., the Hazardous Materials Transportation Act, 40 USC § 1801 et seq., the Pollution Prevention Act of 1990, 42 USC § 13101 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, and Chapters 376 and 403, Florida Statutes, including the rules promulgated thereunder, as all of the foregoing statutes have been and hereafter may be amended.

(4) Governmental Confirmation means a written confirmation from the Florida Department of Environmental Protection (the "DEP") and any state or local government agency with regulatory jurisdiction and, if applicable, any Federal regulatory authority, stating that the environmental condition of the Leased Property requires no further action by such agency or agencies based upon their review of the District's Environmental Assessment and District's Final Environmental Assessment, the Remediation Plan and Remediation actions.

(5) Pollutants mean any hazardous or toxic substance; solid waste, or waste of any kind; or any material, contaminant, petroleum, petroleum product or petroleum by-product as defined or regulated by Environmental Laws.

(6) Remediation means the environmental assessments, clean-up, remediation and monitoring of Pollutants and the taking of all actions required to cause the Leased Property to be in compliance with all applicable Environmental Laws, except for any assessment, clean-up, remediation, monitoring or other action related to Pollutants on, under or emanating from the Leased Property prior to the term of the Lease.

(7) Remediation Plan means a written plan to complete Remediation of the Leased Property, including an estimate of the cost of such Remediation.

**B. Lessee's Duty to Comply with Environmental Laws and Remediate.**

To the extent Disposal of Pollutants occurs on the Leased Property, such activity by or through the Lessee, directly or indirectly, shall be in accordance with all Environmental Laws, and the Lessee shall obtain and shall continuously maintain any and all necessary permits, licenses and approvals with respect to such activities. The Lessee shall, at its sole cost and expense, complete any and all necessary Remediation. Except as otherwise provided in this Section 10, the Lessee shall cause Remediation of all of the Leased Property to be completed prior to the termination of the Lease.

**C. Lessee's Notice of Proposed Remediation Plan.**

The Lessee shall provide to the District a Remediation Plan at least forty-five (45) days prior to initiating the work contemplated by such plan but in no event later than one hundred twenty (120) days after the Lessee's receipt of the District's Environmental Notice or in the event of termination of the Lease by the Lessee, within ninety (90) days of receipt of the District's Environmental Notice. The District may provide comments to the Lessee on the proposed Remediation Plan. The Lessee may consider any such comments but the ultimate content of the Remediation Plan shall be in the sole discretion of the Lessee, as long as the implementation of the Remediation is reasonably expected to bring the Leased Property into compliance with all Environmental Laws.

**D. District's Environmental Notice to Lessee.**

Prior to the termination of the Lease, the District may, at the District's sole cost and expense, conduct environmental investigations of the part of the Leased Property to be released from the Lease ("District's Environmental Assessment") and give the Lessee a notice of any environmental problems requiring Remediation ("District's Environmental Notice"). District's Environmental

Notice shall be delivered to the Lessee at any time prior to the termination of the Lease or in the event of termination of the Lease by the Lessee, within sixty (60) days after the District's receipt of the Lessee's notice of such early termination of the Lease, or a portion thereof.

**E. Notice of Completion.**

On or prior to the date of termination of the Lease, the Lessee shall provide the District written notice of the Lessee's completion of its Remediation obligations as to the Leased Property released from the Lease, which notice shall include the applicable Governmental Confirmation ("Notice of Completion"). A "deactivation letter" or completion report from an agency shall be deemed to be a confirmation that no further action is required by such agency. Notwithstanding the foregoing, the Lessee and the District shall use their best efforts and cooperation to arrange for the DEP to act as a clearing house and assume lead agency responsibility for acquiring the above confirmations from other state and local regulatory authorities and, if applicable Federal regulatory authorities. If the DEP agrees to assume lead agency responsibility, then written confirmation from the DEP shall be deemed to be conclusive evidence of Governmental Confirmation.

**F. District's Final Environmental Notice.**

At any time within thirty (30) days after the termination of the Lease, the District may conduct a final environmental assessment of the Leased Property, or that portion of the Leased Property for which the Lease is to expire or terminate ("District's Final Environmental Assessment") and deliver to the Lessee a final environmental notice specifying matters requiring Remediation ("District's Final Environmental Notice"). If the Lessee does not complete such additional Remediation in accordance with the applicable provision of these Lease Conditions, within thirty (30) days after receipt of the District's Final Environmental Notice, then, in addition to all other remedies for the Lessee's failure to complete Remediation as required pursuant to this Lease, the District may cause such Remediation to be completed.

**G. Indemnification by Lessee.**

The Lessee shall absolutely, irrevocably, and forever indemnify, defend, release, save, and hold harmless the District and the District's representatives, successors and assigns, of, from, and against any and all Environmental Claims and Liabilities, including, but not limited to, court costs, reasonable attorney fees, and other reasonable costs of defense, including expert consultant and witness fees and costs arising from, connected with, or as a result of, the condition of the Leased Property (but excluding those arising from the action or failure to act of the District or the District's employees, agents or representatives) through the date of the Lessee's surrender of possession of the Leased Property. Each of the District and the Lessee shall notify the other in writing of any Environmental Claims and Liability relating to the Leased Property of which it becomes aware, and the Lessee, at the Lessee's sole expense, shall assume on behalf of the District, and conduct with due diligence and good faith, the defense thereof with counsel satisfactory to the District in the District's reasonable discretion; provided, however, the District shall have the right, at its option, to be represented in such matters by advisory counsel of its own selection at its own expense. Notwithstanding anything contained in these Lease Conditions to the contrary, the Lessee shall not be liable to the District hereunder for Environmental Claims and Liabilities to the

extent caused or created by the District or the District's agents, employees, contractors, licensees or invitees. In the event of failure by the Lessee to fully perform in accordance with this subsection, the District, at its option and without relieving the Lessee of its obligations hereunder, may so perform, but all costs and expenses so incurred by the District in such event shall be reimbursed by the Lessee to the District, together with interest on the same from the date any such expenses were paid by the District until reimbursed by the Lessee, at the prime rate of interest in effect at Citibank, N.A. at the time such expense was paid by the District.

H. **Statutory and Common Law Liability Survives.**

While these Lease Conditions establish contractual liability regarding Pollutants on the Leased Property, it does not alter or diminish any of the Lessee's statutory or common law liability for such pollution.

I. **Limitation of Liability.**

Notwithstanding anything contained in the Lease Conditions to the contrary, except as provided in other agreements executed by the Lessee in favor of the District, the Lessee shall not be responsible or liable for, and the District shall not require the Lessee to:

- (1) Conduct or cause the Remediation of any Pollutant existing on the Property as of the Commencement Date, even if such Pollutant is not discovered until after, or is released after, the Commencement Date;
- (2) Cure violations of: Environmental Laws; applicable federal, state or local laws, ordinances, rules and regulations, including any requirements imposed by the District; building, house, fire or health codes; or private restrictions; in each case applicable to the Leased Property and occurring prior to the Commencement Date; or
- (3) Remove or dispose of tanks, trucks, trailers, discarded machinery, scrap metal, construction debris, chemical products, petroleum products or by-products, inventories of pesticides or any solid waste (collectively, "Products") located on the Leased Property as of the Commencement Date.

11. **Notices.**

All notices, requests, consents and other communications required or permitted under these Lease Conditions shall be in writing and shall be (as elected by the person giving such notice) (a) hand delivered, or (b) mailed (airmail if international) by registered or certified mail (postage prepaid) return receipt requested, or (c) sent by any form of overnight mail, or (d) sent by facsimile to the numbers set forth below, and addressed to:

If to District: THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
3301 Gun Club Road  
West Palm Beach, Florida 33406  
Attention: Procurement Department  
Telefax: (561) 681-6275

If to Lessee: NEW HOPE SUGAR COMPANY  
One North Clematis Street, Suite 200  
West Palm Beach, Florida 33401  
Attention: General Counsel  
Telefax: (561) 366-5123

or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered on (a) the date delivered if by personal delivery, or (b) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed, or (c) one delivery day after mailing by any form of overnight mail service, or (d) confirmed receipt of the fax.

12. **Assignment and Other Transfers of Lease.**

The Lease is assignable either in whole or in part by the Lessee. However, the Lessee shall give thirty (30) days advance written notice of any such assignment or transfer to the District and, notwithstanding such assignment, the Lessee shall remain liable for compliance with the terms of the Lease. Additionally, the Lessee may sell or otherwise transfer all or any portion of its right, title or interest in the Lease or any of the New Improvements on or to the Leased Property, to a third party subject, however, to the terms of these Lease Conditions and notwithstanding such sale or transfer, the Lessee shall remain liable hereunder. The Lessee may subject its interest herein, or in the crops or any of the New Improvements on or to the Leased Property to a mortgage or security interest. The District hereby waives any statutory, common law or other lien or other similar lien rights, with respect to the crops and New Improvements, and agrees that the owner or secured party may remove and dispose of the same without reference to, and free and clear of, any such lien rights or other claims of the District.

13. **Compliance With Laws.**

The Lessee shall comply in all material respects with, and be responsible for remedying all violations first occurring after the Commencement Date of, all applicable federal, state, local and the District laws, ordinances, rules and regulations; building, housing, fire, and health codes; and private restrictions, applicable to the Leased Property and the Lessee's operations conducted thereon and occupancy thereof, as well as the Lessee's performance of these Lease Conditions and the rights reserved herein.

14. **Permits.**

The Lessee shall obtain and maintain throughout the term of the Lease any and all applicable, federal, state, and local permits, as well as any other governmental approvals as may be required by law in the exercise of any of the Lessee's reserved rights, including but not limited to the District permits. The Lessee shall be solely responsible for compliance with all permit terms and conditions. To assist the District in protecting its interest in the Leased Property, within ten (10) days of written demand by the District to the Lessee, the Lessee shall submit to the District copies

of all permits and authorizations that the Lessee is required to obtain pursuant to the provisions of these Lease Conditions not more often than once on an annual basis or as otherwise reasonably requested by the District.

15. **Indemnification.**

A. The Lessee shall absolutely, irrevocably, and forever indemnify, defend, release, save, and hold harmless the District of, from, and against any and all claims, suits, judgments, loss, damage and liability incurred by the District (including, but not limited to, court costs and reasonable attorney's fees and other reasonable costs of defense, including expert consultant and witness fees, whether suit be brought or not and at all levels of litigation) which arise directly, indirectly or proximately as a result of the use or occupation of the Leased Property by the Lessee, or the Lessee's employees, agents, invitees, licensees or subcontractors; the Lessee's operations conducted on the Leased Property; or the performance or non-performance of any term, condition, covenant or provision of these Lease Conditions by the Lessee, provided, however, the Lessee shall not release or indemnify the District for any claim, suit, judgment, loss, damage or liability to the extent caused or created by any act or failure to act of the District or the District's agents, employees, contractors, licensees or invitees. The Lessee, at the Lessee's sole expense, shall assume on behalf of the District and conduct with due diligence and good faith the defense of any claim which the Lessee is obligated to release or indemnify the District as provided herein, with counsel satisfactory to the District in its reasonable discretion; provided, however, that the District shall have the right, at its option, to be represented in such matters by advisory counsel of its own selection at its own expense, subject, however, to the Lessee's right to control such defense.

B. To the extent permitted by law and subject to applicable sovereign immunity limitations, the District shall absolutely, irrevocably, and forever indemnify, defend, release, save, and hold harmless the Lessee of, from, and against any and all claims, suits, judgments, loss, damage and liability incurred by Lessee (including but not limited to court costs and reasonable attorney's fees and other reasonable costs of defense, including expert consultant and witness fees, whether suit be brought or not and at all levels of litigation) which arise directly, indirectly or proximately as a result of the activities on the Leased Property by District, or District's employees, agents, invitees, licensees or subcontractors; provided, however, District shall not release or indemnify Lessee for any claim, suit, judgment, loss, damage or liability to the extent caused or created by any act or failure to act of Lessee or Lessee's agents, employees, contractors, licensees or invitees. District, at District's sole expense, shall assume on behalf of Lessee and conduct with due diligence and good faith the defense of any claim which District is obligated to release or indemnify Lessee as provided herein, with counsel satisfactory to Lessee in its reasonable discretion; provided, however, that Lessee shall have the right, at its option, to be represented in such matters by advisory counsel of its own selection at its own expense, subject, however, to District's right to control such defense.

C. Except as provided in Paragraph 3 above, to the extent permitted by law, each legal, equitable or contractual right, power and remedy of Lessee or District now or hereafter provided either in these Lease Conditions or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy and the exercise or

beginning of the exercise by Lessee or District of any one or more of such rights, powers and remedies and shall not preclude the simultaneous or subsequent exercise by Lessee or District of any or all of such other rights, powers and remedies.

16. **Lessee's Risk.**

Except as set forth in Section 3 of the Agreement of which these Lease Conditions are a part, the District makes no representations or warranties with respect to the condition of the Leased Property. All of the Lessee's personal property, equipment, improvements, structures and fixtures located upon the Leased Property shall be at the sole risk of the Lessee and the District shall not be liable under any circumstances for any damage thereto or theft thereto. In addition, the District shall not be liable or responsible for any damage or loss to property or injury or death to persons occurring on or adjacent to the Leased Property resulting from any cause, including but not limited to, defect in or lack of repairs to any personal property, equipment, improvements, structures or fixtures located on the Leased Property. Notwithstanding the foregoing provisions of this Section 16, the District shall remain liable hereunder in accordance with applicable law for any loss or damage to property or injury or death to persons occurring on or adjacent to the Leased Property to the extent such loss or damage was caused or created by any act or failure to act of the District or the District's agents, employees, contractors, licensees or invitees or any act or failure occurring prior to the Commencement Date.

17. **Insurance.**

A. To assist the District in protecting its interest in the Leased Property, the Lessee shall procure and maintain throughout the term of the Lease at the Lessee's sole cost and expense the following types of insurance which must be in form and substance reasonably acceptable to the District:

(1) **Worker's Compensation Insurance:** Worker's Compensations insurance as required by Florida Statute.

(2) **Liability Insurance:** Comprehensive General Liability Insurance relating to the Leased Property and its improvements and appurtenances, which shall include, but not be limited to, Leased Property and Operations; Independent Contractors, Products and Completed Operations and Contractual Liability. Coverage shall be no more restrictive than the latest edition of the Commercial General Liability policies of the Insurance Services Office (ISO). This policy shall provide coverage for death, bodily injury, personal injury, and property damage that could arise directly, indirectly or proximately from the performance or non-performance of the duties, responsibilities and obligations of the Lessee under the Lease. This policy shall also provide coverage for death, bodily injury, personal injury, and property damage that could arise directly, indirectly or proximately from the use or occupancy of the Leased Property by any other person or entity. The minimum limits of coverage shall be \$10,000,000 per occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. The limits of comprehensive general liability insurance shall in no way limit or diminish the Lessee's liability under Section 15 hereof.

(3) **Business Automobile Liability Insurance:** Business Automobile Liability Insurance which shall have minimum limits of \$1,000,000.00 per occurrence. Combined Single Limit for Bodily Injury Liability and Land Damage Liability. This shall be an "any-auto" type of policy including owned, hired, non-owned and employee non-ownership coverage.

(4) **Casualty Insurance:** Land insurance which shall include fire and extended coverage insurance on all buildings and structures in an amount which will equal the replacement cost of such buildings and structures.

B. **Proof of Insurance.**

The Lessee shall provide the District with insurance certificates for all insurance required under these Lease Conditions as proof of insurance prior to occupancy of the Leased Property. The Lessee shall also provide the District with insurance certificates evidencing renewal of all insurance policies for all insurance required under these Lease Conditions prior to its policy's expiration date. The Lessee shall, within thirty (30) days of receipt of written request by the District, have its insurance agent provide certified copies of all policies providing the insurance coverage required under these Lease Conditions, provided such request is made not more than once during the term of the Lease. All insurance required under these Lease Conditions shall be in a form reasonably acceptable to the District, written on a financially sound company reasonably acceptable to the District and shall name the District as additional insured.

C. **Notice of Insurance Cancellation.**

The Lessee shall notify the District within thirty (30) days after the modification of any insurance required under these Lease Conditions if such modification reduces the coverage afforded by the policy affected by such modification. Insurance required under these Lease Conditions shall contain a provision that it may not be canceled until thirty (30) days after written notice to the District. In the event the Lessee fails to obtain and keep any insurance required hereunder in full force and effect, the District may at its option obtain such policies and the Lessee shall pay to the District the premiums therefore, together with interest at the maximum rate allowed by law, upon demand.

D. **Subcontractor Insurance.**

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

18. **Effect of Termination of Lease.**

A. Prior to the termination of the Lease:

(1) The District shall notify the Lessee in writing if the District reasonably needs any or all of the New Improvements for purposes of drainage of the Leased



Property. If the District provides such written notice to the Lessee as provided herein, the Lessee shall not remove such New Improvements from the Leased Property until the earlier of: (i) such time as the District no longer reasonably needs the subject New Improvements; or (ii) twenty-four (24) months after the date of termination of the Lease as to such property, at which time the Lessee may, but shall not be obligated to, remove any remaining New Improvements from the Leased Property.

During such time that the District is in possession of any or all of the New Improvements, following the termination of the Lease the District covenants and agrees to operate and maintain such New Improvements in substantially the condition that it was in at the termination of the Lease, ordinary wear and tear excepted, and the District shall not be obligated to replace New Improvements so long as it has exercised reasonable maintenance with respect to its use thereof, provided that if the cost to fully repair any New Improvement exceeds \$5,000.00, then the District may elect not to make such repair but shall notify the Lessee in writing so that the Lessee may determine whether to exercise its right to remove the New Improvement in accordance with the immediately preceding Section. Any replacements the District elects to make shall be the property of the District and may be removed by the District at its election. At such time that the District no longer reasonably needs (as described above) the New Improvements, but in no event later than twenty-four (24) months after termination of the Lease as to such property, the Lessee shall be notified in writing by the District and shall determine whether it elects to remove the New Improvements pursuant to the Lessee's rights set forth in the immediately preceding section. In such event, the District hereby agrees to allow the Lessee to enter upon and travel through, over, and across the Leased Property at all reasonable times for a period of thirty (30) days after the Lessee's receipt of such notice from the District to remove such New Improvements.

(2) The Lessee shall remove and appropriately dispose of tanks, trucks, trailers, discarded machinery, scrap metal, construction debris, chemical products, petroleum products and by-products, inventories of pesticides and any solid waste on the Leased Property that were not on the Leased Property on the Commencement Date.

(3) The Lessee shall provide the District with a certificate confirming that except as disclosed in such certificate (a) the Lessee has neither any actual knowledge of, nor has it received any written notice of, any past or present, conditions, activities or practices which is or was not in compliance with any applicable law of any federal, state or local government or authority which may give rise to any liability or form a basis for any claim, demand, cost or action relating to the Permitted Uses or the disposal of Pollutants, which have not been remedied; (b) the Lessee is aware of no civil, criminal or administrative action, suit, claim, demand, investigation or notice of violation pending against the Lessee relating in any way to the agricultural operations or the disposal of Pollutants on the Leased Property; and (c) there are no claims of lien or potential lienors known to the Lessee and that there have been no improvements or repairs to the Leased Property for the ninety (90) days immediately preceding, the cost of which remain unpaid.

(4) The Lessee shall arrange for final utility meter readings and facilitate the transfer of utility accounts to the District.

B. **Title to Personal Property.** The District shall at all times retain title to all Existing Pump Property and other Existing Improvements. Subject to the District's rights to use the New Improvements as set forth above, the Lessee (i) shall retain title to all New Improvements located on and/or used in connection with the operation of the Leased Property and shall be entitled to avail itself as to any and all depreciation and/or tax credits arising from or available to the owner thereof, and (ii) may remove any New Improvements placed on the Leased Property by the Lessee after the Commencement Date. However, upon expiration or termination of this Lease for any reason, the New Improvements owned by the Lessee, if not previously removed and/or razed by the Lessee, at the Lessee's sole option, shall become the property of the District (whether or not in working order).

C. **Cane Stubble.** Notwithstanding the foregoing, upon termination of the Lease pursuant to Section 20 or Section 31, as to any portion of the Leased Property, the Lessee shall deliver the Leased Property released from this Lease to the District with the cane stubble existing on such Leased Property at the time of completion of the last harvest, if any, at no charge or expense to the District.

19. **Liens.**

A. To assist the District in protecting its interest in the Leased Property, the Lessee shall keep the Leased Property free from any liens, including, but not limited to construction liens, arising out of any work performed, materials, furnished or obligations incurred by the Lessee; provided, however, nothing contained herein shall be construed to restrict the Lessee's right to place liens on its crops cultivated on the Leased Property.

B. The Lessee shall not have any authority to incur liens for labor or material on the District's interest in the Leased Property and all persons contracting with the Lessee for the destruction or removal of any building or for the erection, installation, alteration, or repair of any building or other improvements on the Leased Property, and all materialmen, contractors, mechanics and laborers are hereby charged with notice that they must look to the Lessee and to the Lessee's interest only in the Leased Property, the crops, and the New Improvements to secure the payment of any bill for work done or material furnished during the term of the Lease.

C. In the event that the Lessee shall not, within 45 days following written notice to the Lessee of the imposition of any such lien, either contest such lien or cause the same to be released of record by payment or transfer to a bond, the District shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by the District, including, but not limited to reasonable attorney's fees and expenses incurred by it in connection therewith, together with interest at the prime rate in effect at Citibank, N.A. at the time such sums become due, shall be payable to the District by the Lessee on demand.

D. The District shall have the right at all times to record in the public records or post and keep posted on the Leased Property any notice permitted or required by law, for the

protection of the District, the Leased Property, the improvements located thereon and any other party having an interest therein, from construction and materialmen's liens.

20. **Default.**

If the Lessee fails to cure any monetary default hereunder or fails to commence and diligently pursue its Remediation obligations under Section 10.B. hereof within thirty (30) days of receipt of written notice of such default, the District shall have the right, in addition to any claim for damages or any other remedy at law or in equity, to terminate the Lease. If the Lessee fails in any other manner to fulfill any of its other duties, responsibilities and obligations under the Lease in a timely and proper manner, the District shall have the right, after giving written notice of any deficiency and by allowing the Lessee ninety (90) days to correct the deficiency or such longer period of time as may be reasonably necessary to correct the deficiency, in addition to any claim for damages or any other remedy at law or in equity, to terminate the Lease as to that portion of the Leased Property which shall be no less than 320 contiguous acres which is affected by the Lessee's default and the Lessee's possession of such portion of the Leased Property hereunder. If the Lessee fails to correct the deficiency within this time, the Lessee shall vacate such portion of the Leased Property which is affected by the Lessee's default at the expiration of such time period and grant to the District for the benefit of the vacated portion of the Leased Property to the extent reasonably necessary, a non-exclusive easement for construction, operation, and maintenance of, at the District's expense, pedestrian and vehicular ingress and egress rights, access and use, drainage rights and utilities and other services, in, to, on, under, over, and across that portion of the Leased Property which is then being used for such purposes, and the District shall grant to the Lessee for the benefit of the Leased Property still subject to the Lease, which rights granted to the Lessee shall expire upon termination of the Lease as to the benefited Leased Property still subject to the Lease, to the extent reasonably necessary, a non-exclusive easement for construction, operation and maintenance of, at the Lessee's expense, pedestrian and vehicular ingress and egress rights, access and use, drainage rights and utilities and other services, in, to, on, under, over, and across that portion of the Leased Property which is then being used for such purposes, and which is terminated pursuant to this Section 20.

If the District fails to commence and diligently pursue the curing of any default of the District under this Lease, within thirty (30) days after receipt of written notice from the Lessee, the Lessee shall have the right, in addition to any claim for damages or any other remedy at law or in equity to cure such default, and the District shall promptly reimburse the Lessee for the cost of curing such default, together with interest on the same from the date any costs were incurred by the Lessee to cure such default until reimbursed by the District at the prime rate of interest in effect at Citibank, N.A. at the time such costs were incurred by the Lessee.

21. **Waiver.**

Failures or waivers to enforce any covenant, condition, or provision of the Lease by the parties, their successors and assigns shall not operate as a discharge of or invalidate such covenant, condition, or provision, or impair the enforcement rights of the parties, their successors and assigns.

22. **Survival.**

In addition to any other terms or provisions set forth in these Lease Conditions which by their terms bind the Lessee after the termination of the Lease, the provisions of Sections 10, 12, 15, 18, 19, and 20 shall survive the termination of the Lease.

23. **Entire Understanding/Amendment.**

These Lease Conditions, the Agreement of which these Lease Conditions are a part and the Transfer of Permits/Notification of Transfer of Interests in Real Land set forth on Attachment E-1 state the entire understanding between the District and the Lessee with respect to the occupancy and use of the Leased Property and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. Except as otherwise expressly provided herein to the contrary, no modification or change in these Lease Conditions shall be valid or binding upon the District and the Lessee unless in writing and executed by the party or parties intended to be bound by it.

24. **Time.**

Time is of the essence with regard to every term, condition and provision set forth in these Lease Conditions.

25. **Severability.**

If any provision of these Lease Conditions is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision of these Lease Conditions may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

26. **Rights of Third Parties.**

Unless expressly stated herein to the contrary, nothing in these Lease Conditions, whether express or implied, is intended to confer any rights or remedies under or by reason of these Lease Conditions on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in these Lease Conditions is intended to relieve or

discharge the obligation or liability of any third persons to any party to these Lease Conditions, nor shall any provision give any third persons any right of subrogation or action over or against any party to these Lease Conditions.

27. **Governing Law and Venue.**

These Lease Conditions shall be governed by, construed, and enforced in accordance with the internal laws of the State of Florida without regard to principles of conflicts of laws. In the event it is necessary for the District or the Lessee to initiate legal action regarding the Lease, venue shall be in the Fifteenth Judicial Circuit for claims under state law and the Southern District of Florida for any claims which are justiciable in federal court.

28. **Presumptions Regarding Drafter.**

The Lease shall be interpreted without regard to any presumption or other rule requiring interpretation against the party causing these Lease Conditions or any part thereof to be drafted.

29. **Handwritten Provisions.**

Handwritten provisions inserted in these Lease Conditions and initialed by the District and the Lessee shall control all printed provisions in conflict therewith.

30. **Attorney's Fees.**

In the event the District or the Lessee hereto brings suit to enforce any of the provisions of the Lease, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees and costs incurred by the prevailing party, at all levels of litigation, including but not limited to costs recoverable under the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions, other provisions of the Florida Statutes and Florida Administrative Code, as well as any and all costs associated with litigation that are not taxable costs under the cited authorities.

31. **Options to Terminate.**

A. The Lessee shall have the option to unilaterally terminate the Lease as to all or any portion of the Leased Property as the Lessee may at its sole option elect from time to time during the term of the Lease, without cost or penalty, upon written notice thereof, which notice must include a legal description identifying the portion of the Leased Property desired to be released from the terms and provisions of the Lease and which property desired to be so released shall contain no less than one hundred sixty (160) contiguous acres contiguous to the District Project Area; provided, however, that: (i) the Lessee may reserve, for the remainder of the term of the Lease for the benefit of the Leased Property still subject to the Lease, to the extent reasonable necessary, a nonexclusive easement for construction, Implementation, operation, and maintenance of, at the Lessee's expense, pedestrian and vehicular ingress and egress rights, access and use, drainage rights, and utilities and other services in, to, on, under, over, and across any Leased Property so released from the terms and provisions of the Lease which is then being used for such purposes, for the purpose of facilitating the Lessee's use of the Leased Property remaining subject

to the Lease as the same may exist from time to time, and further provided that such construction shall be subject to the prior reasonable approval of the District and further provided that such easement will not, as reasonably determined by the District, unreasonably interfere with the construction or commencement of operations of the District Project; and (ii) the Lessee shall grant to the District for the benefit of the terminated portion of the Leased Property, to the extent reasonably necessary, a non-exclusive easement for construction, operation, and maintenance of, at the District's expense, pedestrian and vehicular ingress and egress rights, access and use, drainage rights and utilities and other services, in, to, on, under, over, and across that portion of the Leased Property which is then being used for such purposes. The Lessee may deliver a notice of termination to the District at any time and the termination described in such notice shall be effective immediately upon delivery of such notice to the District. The Lessee agrees that after it has terminated a portion of the Leased Property from the Lease, it shall not make any claims that the terminated portion is a seed source for species which are harmful to the Lessee's farming of the remaining portion of the Leased Property subject to the Lease.

In the event there is a reduction in the acreage farmed by the Lessee pursuant to this Lease as a result of a termination under this Section 31 or under Section 20 of these Lease Conditions, the Additional Consideration paid pursuant to the Lease by the Lessee shall be proportionately reduced and the Lessee shall receive a credit against future payments to the extent Additional Consideration has been prepaid for any portion of the Leased Property which will no longer be subject to the Lease.

B. Except as otherwise expressly provided in Section 20, this Section 31, or Section 37 of these Lease Conditions, the Lease shall expire as set forth in Section 1.B. of these Lease Conditions; and thereafter shall be extended annually until the Property is needed for the District Project as determined by the District in its reasonable discretion. The Lessee shall have the right to continue farming any field covered by the Lease unless and until: (i) farming or access for farming purposes becomes incompatible with, as reasonably determined by the District, the initiation of actual construction, or the implementation, of the District Project; and (ii) the notices set forth in Section 31.C. below are given. For purposes of these Lease Conditions "Implementation" shall mean the actual operation of the District Project or the need for possession of a field to condition or prepare the Leased Property for the actual operation of the District Project.

C. The intent of this Section 31.C. is to set forth the procedures to be used by the parties in cooperating with each other to facilitate the planning and design, the scheduling and carrying out of construction, and the Implementation, of the District Project in a manner which will allow farming to continue on as much of the Leased Property for as long as it is practicable to do so without interfering with, or materially adding to the cost of the District Project. Therefore, at any time after September 30, 2006, the three winding down notices necessary to ensure the Leased Property is available when needed for the District Project, as detailed below, shall be issued to the Lessee:

(1) Advance Notice of Construction. Upon a reasonable determination by the District, that, based upon its reasonable expectations, the District Project will commence within the last twelve (12) months of the next forty-two (42) month period,

advance notice of construction (the "Advance Notice of Construction") will be provided to the Lessee. The earliest date the commencement of construction of the District Project may occur pursuant to the Advance Notice of Construction shall be the first April 1 occurring thirty (30) months after the date of the Advance Notice of Construction (the "Earliest Construction Commencement Date"). For example, if the District provides an Advance Notice of Construction on September 30, 2006, termination would be effective April 1, 2009.

It shall not be necessary for any of the following to have been satisfied or completed prior to providing the Advance Notice of Construction: (i) the planning and design of the District Project; and (ii) the determination of the District Project's compliance with the National Environmental Policy Act of 1970, as amended, Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, or with any other federal or State of Florida statutes, laws, rules, regulations or policies.

(2) Notice of Construction Impact. Prior to the first September 1 preceding the Earliest Construction Commencement Date and prior to each September 1 of each year thereafter, a "Notice of Construction Impact on Farming Operations" (the "Notice of Construction Impact"), shall be provided to the Lessee notifying the Lessee which parcels of the Leased Property may continue to be farmed by the Lessee through the first March 31 occurring eighteen (18) months following the date of the Notice of Construction Impact, and which will, therefore, not be impacted by the construction or Implementation of the District Project during such period. The effective date(s) of termination as to the specific fields of the Leased Property subject to the Lease which will be impacted by the construction or Implementation of the District Project shall be the first March 31 occurring eighteen (18) months following the date of the applicable Notice of Construction Impact issued pursuant hereto. For example, if the District provided the Advance Notice of Construction in the above example and then the District provides the Notice of Construction Impact on September 30, 2007, termination would be effective April 1, 2009.

(3) Notice to Vacate. At least ninety (90) days prior to the issuance by the District of a "Notice to Proceed" to contractors, a "Notice to Vacate," shall be provided to the Lessee notifying the Lessee which parcels of the Leased Property, which have been identified as "Impact Parcels" in a timely Notice of Construction Impact, will be: (i) impacted by the construction or Implementation of the District Project contemplated by such Notice to Proceed; and (ii) required to be vacated and possession by the Lessee surrendered to the District on the later of: (a) thirty (30) days after the date of Notice to Vacate; or (b) sixty (60) days prior to the date for the commencement of construction or Implementation as set forth in the applicable Notice to Proceed pursuant to which the Notice to Vacate was issued. The initial Notice to Proceed shall have an effective date for the commencement of initial construction of the District Project no earlier than the Earliest Construction Commencement Date. Notwithstanding the Lessee's receipt of the Advance Notice of Construction and the Notice of Construction Impact, the Lessee shall not be required to vacate the Lease Property until the date of termination as set forth in the Notice

to Vacate. For example, if the District provided the Advance Notice of Construction and Notice of Construction Impact in the above two examples and then on December 31, 2008 sent the Lessee Notice to Vacate effective April 1, 2009, the Lessee would have to vacate no later than April 1, 2009. Also, for example, if no Notice to Vacate was issued by the District, then Lessee may continue to farm the Leased Property until a Notice to Vacate is issued and becomes effective.

D. In the event the Lease on any portion of the Leased Property is terminated by the District, the District shall grant to the Lessee for the benefit of the Leased Property still subject to the Lease, to the extent reasonably necessary, a non-exclusive easement for construction, operation and maintenance of, at the Lessee's expense, pedestrian and vehicular ingress and egress rights, access and use, drainage rights and utilities and other services, in, to, on, under, over and across that portion of the Leased Property which is terminated pursuant to this Section 31, which is then being used for such purposes, for the purpose of facilitating the Lessee's use of the Leased Property remaining subject to the Lease; provided that such easement will not, as reasonably determined by the District, unreasonably interfere with the construction or Implementation of the District Project.

E. In the event there is a reduction in the acreage farmed by the Lessee pursuant to this Lease as a result of a termination under this Section 31 or under Section 20, the Additional Consideration paid pursuant to the Lease by the Lessee shall be proportionately reduced and the Lessee shall receive a credit against future payments to the extent Additional Consideration has been prepaid for any portion of the Leased Property which will no longer be subject to the Lease.

### 32. **Additional Consideration.**

The Lessee agrees to pay to the District, without notice, offset, deduction, or set-off as additional consideration for the continuation of the Lease, including, without limitation, the exclusive use and occupancy of the Leased Property and the rights and privileges set forth herein (including all right, title and interest in and to any crops now or hereafter located on the Land), additional consideration (the "Additional Consideration") in an amount equal to (i) \$47.15 per Gross Planted Acre (as defined below) for the period beginning on the Commencement Date and ending on March 31, 2006 of the First Additional Consideration Period (as defined below) in accordance with that certain letter agreement dated April 16, 2004, among the District, Florida Crystals for itself and its affiliates, United States Sugar Corporation and the Cooperative, subject to an adjustment effective April 1, 2006 and each subsequent April 1 of the First Additional Consideration Period in accordance with Section 32.E, and (ii) the fair market rental value of the Leased Property determined in accordance with Section 32.D ("Fair Market Rental Value") for each Additional Consideration Period (other than the First Additional Consideration Period), subject to yearly adjustment in accordance with Section 32.E. Payment of the Additional Consideration shall be made, in advance, in equal quarterly installments, each on or before the first day of each January, April, July, and October occurring during the term of the Lease; provided that the Additional Consideration for the first quarter of the First Additional Consideration Period shall be paid no later than the beginning of the first full quarter along with the Additional Consideration for the first full quarter. The Additional Consideration shall be prorated to the extent the inception



and/or termination of the term of the Lease (or portion thereof) occurs during any quarter; provided that any proration upon termination of the Lease with respect to the Leased Property or any portion thereof shall be made as of the effective date of such termination. Gross Planted Acres shall include the number of gross acres of farm fields with crops, roads, ditches and canals and shall not include any other acres that have not been planted for any reason whatsoever. Gross Planted Acres shall be equal to net farm field crop acres multiplied by 1.144. For purposes of this section, the term "Gross Planted Acre" shall mean each gross acre of the Leased Property consisting of planted farm fields, roads, ditches and canals and shall not include any acres that have not been planted for any reason whatsoever. For the purpose of determining Additional Consideration for the Leased Property, the number of Gross Planted Acres shall be the greater of the actual Gross Planted Acres or 50% of the actual number of gross acres of the Leased Property. The Additional Consideration in clause (i) above shall be effective from the Commencement Date until March 31, 2007 ("First Additional Consideration Period") and the Additional Consideration in clause (ii) above as determined in accordance with the procedure described below shall be effective for three year periods commencing April 1, 2007 (each such three year period or the First Additional Consideration Period being referred to as an "Additional Consideration Period").

A. If the Lessee and the District are unable to agree upon the Additional Consideration for any Additional Consideration Period (other than the First Additional Consideration Period), then on or before the August 1 immediately preceding the applicable Additional Consideration Period, the Lessee and the District shall work together in good faith to appoint a mutually acceptable MAI appraiser to determine the Fair Market Rental Value of the Leased Property, whose fees shall be borne one-half by the Lessee and one-half by the District. Such appraisers' determination of Fair Market Rental Value shall be the Additional Consideration paid by the Lessee for the applicable Additional Consideration Period. If the Lessee and the District are unable to agree upon a mutually acceptable MAI appraiser on or before the August 1 preceding the applicable Additional Consideration Period, the following subsections shall be applicable.

B. During the month of August preceding each applicable Additional Consideration Period, the Lessee and the District shall each select an MAI appraiser, having appropriate appraisal experience and who is knowledgeable as to appraising tracts of agricultural lands for the purpose of independently estimating the Fair Market Rental Value of the Leased Property and each of such appraisers shall, prior to commencing their work, agree to be bound by and perform their calculation of the Fair Market Rental Value of the Leased Property in accordance with the provisions of Section 32.D. In the event that the District or the Lessee shall fail to employ such an appraiser on or before the September 1 preceding the applicable Additional Consideration Period, such party shall waive its right to an appraisal in accordance with these Lease Conditions for such period, and the Fair Market Rental Value of such appraiser for such period shall be deemed to be the same fair market rental valuation derived by the other party's appraiser. The appraisers must submit their independent appraisals of the Fair Market Rental Value of the Leased Property to the Lessee and the District on or before the close of business on the December 31 preceding the applicable Additional Consideration Period.

C. In the event that the two appraisals do not set forth the same Fair Market Rental Value of the Leased Property, then the following shall apply:

(1) If the higher of the two appraisers' findings of Fair Market Rental Value of the Leased Property exceeds the lower by less than twenty percent (20%), then the Fair Market Rental Value of the Leased Property shall be the average of the findings of the two (2) appraisals of the Fair Market Rental Value of the Leased Property.

(2) If the higher of the two appraisers' findings of Fair Market Rental Value of the Leased Property exceeds the lower by more than twenty percent (20%), the two appraisers shall meet and attempt to jointly agree upon a Fair Market Rental Value of the Land, both of whom shall continue to be bound by and perform his/her calculation(s) of Fair Market Rental Value of the Leased Property in accordance with the provisions of Section 32.D., and shall prepare addenda, as applicable, to the appraisal report previously submitted setting forth in writing any modifications to the appraisal(s) based upon a review of the other party's appraisal and meetings between the two appraisals designed to attempt to reconcile differences between the two appraisers. If the two appraisers are able to jointly agree upon a fair market rental value of the Leased Property, on or before the close of business on the January 31 immediately preceding the Applicable Consideration Period, then such agreed upon Fair Market Rental Value of the Leased Property shall be binding upon the Lessee and the District as the Fair Market Rental Value. If the two appraisers are unable to agree upon a fair market rental value of the Leased Property, but, as a result of the attempt to reconcile differences between the two appraisers, the higher of the two exceeds the lower by less than twenty percent (20%), then the Fair Market Rental Value of the Leased Property shall be the average of the two appraisals.

(3) If the Fair Market Rental Value of the Leased Property has not been determined in accordance with the provisions of Section 32.C.(2) above on or before the close of business on the January 31 preceding the applicable Additional Consideration Period, then the two appraisers within the next ensuing ten (10) days shall select a third appraiser (who shall also be an MAI appraiser, having appropriate experience in appraising for the purpose of independently estimating the Fair Market Rental Value of the Leased Property on or before the March 15 preceding the applicable Additional Consideration Period, which third appraiser shall be bound by and perform his/her calculation of Fair Market Rental Value of the Leased Property in accordance with the provisions of Section 32.D. below, and submit his/her appraisal on or before the March 15 preceding the applicable Additional Consideration Period. The final determination of Fair Market Rental Value of the Leased Property shall be calculated as the average of the three appraisers' valuations.

(4) If the two appraisers' estimations of Fair Market Rental Value of the Leased Property differ by more than twenty percent (20%), as aforesaid, and the two appraisers are unable to mutually agree upon the Fair Market Rental Value of the Leased Property and are unable to agree upon a third appraiser within the time provided above, then the parties hereto, or either of them, will submit the matter of selecting a third qualifying appraiser to the Chief Judge of the Fifteenth Judicial Circuit of the State of Florida, whose decision as to the third appraiser shall be final. The Fair Market Rental

Value of the Leased Property shall then be determined as provided in Section 32.C.(3) of this Exhibit E.

(5) The Lessee shall pay for the Lessee's appraiser's fees and costs and the District shall pay for its appraiser's fees and costs, and if the matter goes to the third appraiser and/or Court, the fees, costs and expenses incurred by the third appraiser and the Court shall be borne one-half by the Lessee and one-half by the District.

D. For the purposes of the appraisal of the Leased Property, Fair Market Rental Value shall be defined as follows:

(1) The most probable price in cash, for which the appraised property will rent to a single creditworthy tenant for the purpose of growing sugar cane in an open market, including consideration of each party's obligations under these Lease Conditions, each acting prudently and knowledgeably with no compulsion to demise or let, and for self interest, and assuming that neither is under duress or undue stimulus.

(2) Fundamental assumptions and conditions presumed in this definition are:

(a) The Lessee and the District are motivated by self interest.

(b) The Lessee and the District are well informed and are acting prudently.

(c) The Land is exposed for a reasonable time on the open market.

(d) Payments are made quarterly in advance in cash, or its equivalent.

(e) The rental represents the normal rental consideration for the Land to be demised and let unaffected by special or creative financing or monetary concessions granted by anyone in any way associated with the transaction.

(f) The rental is to be determined on the basis that (1) all of the Land subject to these Lease Conditions and (2) all land of the District subject to any lease or reservation in favor of Okeelanta, Florida Crystals or any of their affiliates pursuant to any agreement, including that certain Exchange and Purchase and Sale Agreement dated March 25, 1999 entered into by and among the District, Okeelanta, Florida Crystals and others, are to be appraised together as one property being offered for rent.

(g) The fact that there is a growing crop on such land shall not be considered in the appraisal of the Land.

(h) The rental shall take into account the fact that the Lessee is presently mobilized on the site.

(i) The rental shall be determined on the basis of a one year extension of an existing lease on cane land which is subject to a two year economic life or cane cycle.

(j) The rental shall take into account the following additional circumstances to the extent they may occur during the period to be covered by the appraisal:

- 1) the relative uncertainty, if any, associated with the possible disruption of a planting cycle resulting from the District's right to stop the Lessee's farming operations pursuant to Section 31 of these Lease Conditions;
  - 2) the relative disruption, if any, associated with the construction or commencement of operations of a District project ;
- and

E. The Fair Market Rental Value determined as provided above shall be the additional consideration paid by the Lessee for the first twelve month period of the applicable Additional Consideration Period, and shall be subject to adjustment each subsequent twelve month period of the applicable Additional Consideration Period in accordance with the following formula:

The Additional Consideration specified in this Section 32 of these Lease Conditions shall be changed if the Producer Price Index for raw cane sugar and byproducts (base year 1982 = 100), as published in the U.S. Department of Labor, Bureau of Labor Statistics ("PPI") changes from the "Base Period Index." The Base Period Index shall be compared with the PPI for the month of April (the "Comparison Month") for each subsequent year during the applicable Additional Consideration Period. If the PPI for any Comparison Month is different from (i.e., more than or less than) the Base Period Index, then the Additional Consideration for the next year of the applicable Additional Consideration Period shall be changed upward or downward, as appropriate, by the same percentage as the PPI has changed upward or downward, commencing with the April payment due on the next year of the applicable Additional Consideration Period.

Notwithstanding the foregoing, the Lessee or the District may elect to have the Additional Consideration determined pursuant to the process described in Sections 32.A. through 32.D of these Lease Conditions, and the Lessee and the District shall promptly commence such process, notwithstanding the dates set forth in such Sections.

33. **Binding on Successors.**

The provisions of the Lease shall inure to the benefit of and shall be binding upon the assigns and successors in interest of each of the parties hereto and all persons claiming by, through or under them.

34. **Radon Gas.**

Pursuant to Florida law, the following disclosure is made: "Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present

health risks to Persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.”

35. **Estoppel Certificate.**

Within ten (10) days following any written request which the District or the Lessee may make from time to time (the “Requesting Party”), the other party (the “Responding Party”) shall execute and deliver to the Requesting Party or its mortgagee or prospective mortgagee, purchaser, assignee or subtenant, a sworn statement certifying: (a) the Commencement Date, (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications), (c) the date to which the rent and other sums payable under this Lease have been paid, (d) the fact that there are no current defaults under this Lease by either the District or the Lessee except as specified in the Responding Party’s statement, and (e) such other matters reasonably requested by the Requesting Party. The District and the Lessee intend that any statement delivered pursuant to this Section 35 may be relied upon by any mortgagee, beneficiary, purchaser, assignee or subtenant of the Leased Property or any interest therein or the leasehold interest created by this Lease.

36. **Facilitation.**

Each party agrees to promptly perform any and all further acts and to execute, acknowledge and deliver any and all documents, information and other data which may be reasonably necessary to carry out the provisions of the Lease, or effect its purposes, including the Lessee becoming the holder of all licenses, permits and other authorizations and approvals needed to conduct the Permitted Uses on the Leased Property in the name of the Lessee or its designee.

37. **Controlling Intent of the Parties.**

It is the intention and the expectation of the Lessee and the District that the Leased Property be available for the District Project by April 1, 2009. It is the further intent of the District and the Lessee that the Lessee obtain a vested possessory estate for years (“Lessee’s Estate”) in the Leased Property. The Lessee and the District agree that it is in their respective best interests that Lessee’s Estate will continue until terminated as set forth in the following paragraphs or as otherwise provided in these Lease Conditions.

It is the further intent of the Lessee and the District that these Lease Conditions not be construed under Florida law as a tenancy at will. However, the Lessee and the District recognize that Florida law may be construed by some to require that a possessory estate for years identify a date for expiration with greater specificity than what is expressed in Section 31 of these Lease Conditions. For the sole and limited purpose of ensuring compliance with the requirements of Florida law regarding the need for certainty in the term of duration of a tenancy for years, but in no way restricting the rights of the District and the Lessee set forth in these Lease Conditions, including without limitation, the rights of the Lessee and the District under Section 31 of these Lease Conditions, the District and the Lessee have agreed to include this section confirming the intent of

the District and the Lessee regarding the term of these Lease Conditions. To effectuate their intent, the Lessee and the District hereby agree that in the event these Lease Conditions have not otherwise been terminated in accordance with the provisions hereof, the Lessee's rights pursuant to these Lease Conditions shall expire on March 31, 2014 (the "Expiration Date"), subject to the provisions of the following paragraphs.

Although it is contemplated that all of the Leased Property will be used for the District Project prior to the Expiration Date, it is possible that due to future circumstances or events the District may determine that some portions of the Leased Property may not be needed for the District Project ("Surplus Property"). As of the Expiration Date, the Surplus Property and all other property then subject to the Lease Conditions (the "Remaining Property") shall be governed by the following provisions from and after the Expiration Date through March 31, 2019 (the "Extension Period"):

A. The Remaining Property shall continue to be available to the Lessee for farming under the terms of these Lease Conditions, including, without limitation, subject to the District's rights to terminate these Lease Conditions in accordance with Section 31 of these Lease Conditions;

B. Surplus Property shall continue to be available for farming under the terms of these Lease Conditions until the earlier of: (i) the end of the Extension Period; or (ii) the date an exchange of the Surplus Property is consummated by the District with one or more of the Transferors (as defined in that certain Exchange and Purchase and Sale Agreement entered into by and among the District, the Lessee, DOI and others).

C. The District and the Lessee agree to negotiate in good faith with respect to any such exchange.

D. After the Extension Period, the Lessee shall have a right of first refusal to lease any of the Property that the District determines will be used for agricultural purposes.

E. The Lease Conditions shall terminate at the end of the Extension Period and shall be of no further force or effect, except for those provisions, which by their terms survive expiration or termination, or are contemplated to be performed thereafter.

Nothing contained in this Section 37 shall in any way modify or restrict the rights of either the District or the Lessee set forth in these Lease Conditions, including without limitation, the District's and the Lessee's rights under Section 31 of these Lease Conditions, nor be construed to extend the term of the Lease beyond the periods otherwise determined pursuant to the provisions of Section 31 and 37 of these Lease Conditions.

FORM OF NOTICE OF CONSTRUCTION IMPACT

[Intentionally Omitted]

**TRANSFER OF PERMITS/NOTIFICATION OF TRANSFER  
OF INTERESTS IN REAL PROPERTY**

**1. CONSIDERATION, DEFINITIONS AND APPLICABLE PERMITS**

- (a) The Parties acknowledge that the transfer of the permits for the Leased Property covered by this Agreement, such that the Lessee is assured of valid District permits, is part of the consideration for this Agreement. As to the Leased Property, the District shall not use its regulatory authority or proprietary rights to impose any condition or limitation on activities or practices that is more stringent than those applicable to privately-owned farms in the EAA.
- (b) For purposes of this exhibit, "new co-permittees" refers to New Hope Sugar Company, Florida Crystals Corporation or their subsidiaries and affiliates. "New permittees" means New Hope Sugar Company, Florida Crystals Corporation or their subsidiaries and affiliates.
- (c) This Agreement applies to: District Surface Water Management/Environmental Resource Permits pursuant to Rules 40E-4, 40E-40 and 40E-400; Consumptive Water Use Permits, pursuant to Rules 40E-2 and 40E-20; Works of the District Permits, also known as Right of Way Permits, pursuant to Rule 40E-6; and, Works of the District Permits, also known as Everglades Permits, pursuant to Rule 40E-63, Florida Administrative Code; and permits, if any, issued by other agencies as provided in section 6 of this Attachment E-2.

**2. REPRESENTATION AND FINDINGS: DELIVERY OF DOCUMENTS.**

- (a) The District agrees that the representations contained in this Agreement when submitted to the District, together with the completed and executed forms listed below, are complete and sufficient to comply with the requirements for transfer of the District permits and notification of transfer of interest in real property, pursuant to Rules 40E-1.6105; 40E-1.6107; 40E-4.351; 40E-40.351; 40E-63.162; 40E-2.351; 40E-6.351; and, 40E-63.142, Florida Administrative Code. The District agrees that information contained in permit files and this Agreement is sufficient to satisfy the requirement for a legal description, sketch, and proof of identity of the new permittees and co-permittees. The new permittees and co-permittees have reviewed the District permits and project designs, certify that no changes to permit facilities or permit boundaries are currently proposed, and that the land use and practices will remain the same, and agree to be bound by all applicable provisions of Chapter 373, Florida Statutes, and the applicable rules adopted pursuant to that Chapter, and the terms and conditions of the permits to be transferred to each of them individually or as co-permittees, including compliance requirements, for the duration of the permits. The District agrees to transfer the permits listed on Schedule 1 to this Attachment E-2 from the existing permittees to the new permittees or co-permittees provided that the new permittees or co-permittees submit completed and executed Form 0438 (revised 8/95); completed and executed Form 0483 (revised 2/91) if required; completed and executed Form 0779, Parts 1 and 4; pay the appropriate permit transfer fees pursuant to Rules 40E-1.607 and 40E-63.134, F.A.C.; and, in the case of co-permittees,



submit such agreement as reasonably required. The co-permittees hereby agree to be jointly and severally liable for the operation and maintenance of permitted systems and facilities.

- (b) Schedule 1 to this Attachment E-2 is a list of known permits. Any existing valid permits identified after the date of the Agreement which are not on Schedule 1 to this Attachment E-2 shall be transferred on the same terms provided herein.
- (c) New permittees and co-permittees may operate the facilities while permit transfers are processed by the District.

### **3. PERMIT CONDITIONS AND RENEWALS.**

The District agrees to impose no new permit conditions on any permit being transferred, and agrees that any future permit actions for farming activities covered by this Agreement will impose no restrictions that are not contained in applicable laws and rules. By entering into this agreement, the parties are not waiving any rights to challenge any such future permit actions.

### **4. NOTIFICATION OF TRANSFER OF INTEREST IN REAL PROPERTY.**

Rules 40E-1.6105, 40E-6.351, 40E-63.142, and 40E-63.162, F.A.C., require a permittee to notify the District of any transfer of real property. This Agreement shall serve as this notification. For those permits where the District has become the underlying fee owner as a result of this Agreement, the permits shall remain in the name of the existing permittee until the existing permittee vacates the premises. However, the District, at its option, may be added to each such permit as a named permittee.

### **5. NOTIFICATION OF RECEIPT OF APPLICATION FOR PERMIT TRANSFER.**

This Agreement serves as notification to existing permittees that an application for permit transfer has been received for the permits listed on Schedule 1 to this Attachment E-2.

### **6. CONTACT PERSON.**

The new co-permittees agree to designate a single contact person for compliance issues associated with the Everglades Works of the District permits. In the event any formal proceedings or warning notices are issued by the District, the District agrees to provide notice to all permittees.

**SCHEDULE 1 TO ATTACHMENT E-2**

**PERMITS**

The District shall deliver to the Lessee the list of permits to be transferred within 21 days after the Date of this Agreement.

## **EXHIBIT F**

### **RESERVATION AREAS TO BE TERMINATED**

1. All of the Okeelanta Reservation Area and the New Hope Reservation Area except for the area identified below:

A Parcel of land situate in Township 46 South, Range 37 East, Palm Beach County, Florida and more particularly described as follows:

The South half of Section 8, all of Section 17, the East half of Section 19, all of Sections 20, 21 and 22, the South three quarters of the Southwest quarter of Section 23, the West half and the South three quarters of the Southeast quarter of Section 26, all of Section 27, the North half of Section 28, all of Section 29, the East half of Section 30, the North three quarters of the Northeast quarter of Section 31, the North three quarters of the North half of Sections 32, 34 and 35.

2. A Parcel of land situate in Township 46 South, Range 37 East, Palm Beach County, Florida and more particularly described as follows:

The South half of Section 8, all of Section 17, the East half of Section 19, all of Sections 20, 21 and 22, the South three quarters of the Southwest quarter of Section 23, the West half and the South three quarters of the Southeast quarter of Section 26, all of Section 27, the North half of Section 28, all of Section 29, the East half of Section 30, the North three quarters of the Northeast quarter of Section 31, the North three quarters of the North half of Sections 32, 34 and 35.

## EXHIBIT G

### LAND MANAGEMENT SERVICES STATEMENT OF WORK

#### 1. **Commencement/Termination of Land Management Services.**

(a) Commencing on the Date of this Agreement, NHLC shall provide land management services in accordance with the Statement of Work set forth in this Exhibit G to those portions of the District Project Area that are not subject to the Okeelanta Reservation or the New Hope Reservation (collectively, the "Managed Lands"), in accordance with the Agreement to which this Exhibit G is a made a part. With respect to the portions of the Okeelanta Reservation Area and New Hope Reservation Area vacated by Okeelanta or New Hope after the Date of this Agreement, land management services shall commence on the day after Okeelanta or New Hope vacate such portions of the District Project Area in accordance with the terms of this Agreement and the applicable reservation conditions.

(b) Except for termination of pump station services as set forth in paragraph 2(c) of this Exhibit G, all land management services provided by NHLC shall terminate on the earlier of October 1, 2009 or 30 days following the date that the District provides NHLC with written notice that the District has reasonably determined that the District Project will be capable of storing water without impacting remaining construction within such 30 days; provided that such notice may not be given earlier than March 31, 2009; and provided further that the District shall have the right to terminate the land management services provided by NHLC if the Okeelanta Reservation is terminated by the District pursuant to a notice of termination provided in accordance with Section 20 thereof.

#### 2. **Statement of Work and Fee for Land Management Services.**

The land management services to be provided by NHLC are: (a) operation and maintenance of canals and water management facilities in accordance with Section 2(a), (b) operation and maintenance of pump stations in accordance with Section 2(b), (c) inspection services in accordance with Section 2(c), and (d) optional services in accordance with Section 2(d). The statement of work for such services and fees are set forth in the applicable subsection below. The fees are subject to annual adjustment as provided in Section 2(e) of this Exhibit G.

The District's obligation to pay fees and NHLC's right to receive payment for providing land management services pursuant to this Exhibit G are subject to the funding allocations for each District fiscal year for this Statement of Work. The District's fiscal year runs from October 1 through September 30. Funding of this Statement of Work for each applicable fiscal year is subject to District Governing Board budgetary appropriation. The District represents that funding for this Agreement has been appropriated for the 2005-2006 fiscal year. The District will notify NHLC in writing after the adoption of the final District budget for any fiscal year in which funding is not approved for this Statement of Work. If the District does not approve funding for any fiscal year and upon expenditure of the current funding, the Parties shall be relieved of all rights and obligations under Section 4 of the Agreement to which this Exhibit G is a part and under this Statement of Work for the fiscal year in which the funding did not occur, notwithstanding other provisions in the Agreement to the contrary. Nothing contained in this paragraph shall modify

Section 3(c) of the Agreement to which this Exhibit G is a part providing for an extension to the term of the Okeelanta Reservation and the New Hope Reservation if the District does not provide adequate funding for this Statement of Work in any fiscal year.

The total fees to be paid by the District to NHLC for the land management services to be provided pursuant to this Exhibit G through termination as provided in Section 1(b) shall not exceed \$8,994,230; provided, however, that such cap on the total fees shall not apply to the District's obligation to pay (i) fuel costs or excess operating hours pursuant to Section 2(b) of this Exhibit G, or (ii) additional fees with respect to any additional services provided by NHLC to the District pursuant to written agreement of the Parties that are not specifically required to be performed by NHLC pursuant to this Exhibit G. If the fee cap of \$8,994,230 is reached prior to termination as provided in Section 1(b), NHLC shall be responsible for continuing to provide land management services through the termination as provided in Section 1(b) at no expense to the District other than (i) fuel costs and excess operating hours pursuant to Section 2(b) of this Exhibit G, and (ii) additional fees with respect to any additional services provided by NHLC pursuant to written agreement of the Parties.

NHLC's performance of land management services is critical to the success of the construction and implementation of the District Project. The District or its designee may during an emergency at any time and for any period during such emergency take over all or part of the such services. The District shall notify NHLC within a reasonable period of time after the emergency has commenced. The District shall cease its take over of such services when it determines it is appropriate to do so and the fee provided under Section 2(b) for operation, maintenance and repair of pump stations shall be adjusted downward on a prorated basis if the take over period is more than four days.

In the event NHLC materially breaches its obligations to perform land management activities in accordance with this Exhibit G, including its obligations to perform in accordance with the operating plans described in Section 2(a) and 2(b), the District may, after providing written notice and a reasonable opportunity to cure such breach, in addition to any other remedies available under the Agreement, terminate NHLC's land management services.

(a) Operation, Maintenance, and Repair of Canals and Water Management Infrastructure. NHLC shall operate and provide routine maintenance and repairs of the existing canals and water management infrastructure (excluding pump stations, pumps, pump houses and associated works which are separately dealt with in Section 2(b)) on the Managed Lands for purposes of preventing disruption of or any adverse impacts to (A) lands (including the District-owned lands) farmed by Okeelanta or New Hope or the activities or operations thereon, (B) the District Project Area and construction activities thereon, and (C) the lands, activities, or operations of adjacent property owners. NHLC shall have no obligation to replace existing water management infrastructure or to build new water management infrastructure or to undertake any maintenance or repairs other than routine maintenance and repairs unless the District has agreed to pay a fee acceptable to NHLC for such replacement or new infrastructure or non-routine maintenance and repairs. For purposes of this Statement of Work, routine repairs shall include all repairs to the existing water management infrastructure on the Managed Land which, in the aggregate during any one calendar year period, do not exceed \$50,000. NHLC shall immediately notify the District of any necessary repairs to the

water management infrastructure in excess of such amount, and the District shall be responsible for such repairs promptly at its expense.

The services to be performed by NHLC in operating and providing routine maintenance and repair to the canals and existing water management infrastructure are:

- (1) operating and providing routine (as described above) maintenance and repairs for existing irrigation, drainage, and other water management infrastructure, including but not limited to water retention/detention control equipment and structures, canals, ditches, dikes, levees, pipes, culverts, water control structures, and berms, but excluding pump stations (pump, pump houses, and associated works) which are separately dealt with in Section 2(b) below, to manage water within the Managed Lands, including using reasonable efforts, subject to applicable constraints set forth in Subparagraph 2(f), to keep certain areas identified by the District or its representatives dry for construction purposes while maintaining other areas in a flooded condition to minimize the discharge of water from the District Project Area;
- (2) spraying approved chemicals two times annually for maintenance of all primary and secondary canals to prevent growth of vegetation which would impede the movement of the water within such canals;
- (3) attending weekly coordination meetings at District offices to address NHLC's land management services and the District's current and future activities on the Managed Lands;
- (4) developing and periodically updating an operating plan with the District or its designee with respect to the operation, maintenance and repair of canals and water management infrastructure that addresses the construction needs of the District Project; and
- (5) operating, and providing routine (as described above) maintenance and repairs for any new irrigation, drainage, and other water management infrastructure constructed or installed on the Managed Lands by the District, including water retention/detention control equipment and structures, canals, ditches, dikes, levees, pipes, culverts, and berms, but excluding pumps, pump motors, pump houses, pump stations.

Fee. The District shall pay NHLC a flat fee for the services set forth in this Section 2(a) in the amount of \$96.00 per gross acre of Managed Lands per year; provided, however, that if Okeelanta or New Hope exercise their right to terminate portions of the Okeelanta Reservation Area or the New Hope Reservation Area in accordance with Section 3(b) of the Agreement to which this Exhibit G is a part, such terminated portions of the Okeelanta Reservation Area and the New Hope Reservation Area shall not be included in the calculation of the fee payable to NHLC for the services set forth in this Section 2(a) until the earlier of the completion of the 2007-2008 harvest on the applicable land or March 31, 2008. The District shall make payment on a quarterly basis in arrears based on a quarterly invoice submitted by NHLC. Payment shall be made in

accordance with Section 2(g) of this Statement of Work. The fee is subject to yearly adjustment as provided in Section 2(e) of this Exhibit G.

(b) Operation, Maintenance, and Repair of Pump Stations.

NHLC shall operate and provide routine maintenance and also shall make repairs which repairs shall not exceed in the aggregate \$25,000 per calendar year to pump stations EAAPSN and EAAPSM, including the pumps, pump houses, engines, fuel storage tanks and associated works and facilities until the earlier of (1) termination or expiration of the land management services under this Statement of Work or (2) the date of receipt of written notice from the District of the District's removal of the pump station from service as provided below; provided that the District shall not be permitted to remove EAAPSM from service if during the term of the New Hope Reservation it is required for New Hope's farming activities unless the District provides a comparable alternate source of irrigation water and pump capacity which eliminates the need for such pump station. New Hope shall be responsible, at its expense, for installing, operating, maintaining, and repairing all the necessary water management infrastructure and facilities to convey such water to and from the New Hope Reservation Area. NHLC shall immediately notify the District of any repairs required to pump stations EAAPSN and EAAPSM in excess of \$25,000 per calendar year and the District shall be responsible for such repairs at its expense.

Services to be performed by NHLC in operating and providing routine maintenance of the pumps stations shall be specifically limited to:

(1) Developing and periodically updating an operating plan with the District or its designee with respect to the operation, maintenance and repair of pump stations that addresses the construction needs of the District Project and operating the pump stations in accordance with such plan.

(2) Providing routine maintenance for the pump stations on a 24 hours a day, 7 days a week basis, and promptly notifying the District of any required repairs in excess of an aggregate of \$25,000 per calendar year.

(3) Providing qualified personnel and support vehicles and equipment for the operation and routine maintenance and repair of the pump stations as required by this Exhibit G.

(4) Operating pump stations EAAPSN and EAAPSM for the purpose of draining the District Project Area, including, use of EAAPSM for purpose of draining the New Hope Reservation Area but excluding the Okeelanta Reservation Area. If a conflict in use of the operation of the EAAPSM is anticipated, the parties will meet to coordinate pump schedules and to use their reasonable efforts and available resources to accommodate the agricultural needs. However, absent satisfactory resolution of the conflict in writing, NHLC shall be responsible for operating the EAAPSM to meet the District's priority use of EAAPSM.

(5) The EAAPSS pump station is intended to be used by Okeelanta, at its expense, solely in its agricultural operations at least until the harvest of the 2007-2008 crop in the Okeelanta Reservation Area. Prior to completion of the harvest of the 2007-2008 crop, NHLC will not use the EAAPSS pump station to route water in connection with the land management services and construction activities pursuant to this Exhibit G without the prior written consent of the District and a written agreement with the District to reimburse NHLC for the costs associated with such use. Following the completion of the harvest of the 2007-2008 crop, NHLC shall operate and maintain EAAPSS on the same basis as provided in this Section 2(b) for EAAPSN and EAAPSM and the cost of fuel for such pump station shall be allocated as provided under "Fee" below; provided that NHLC shall operate, maintain and repair such pump station at its expense. Following completion of the harvest of the 2008-2009 crop, NHLC shall operate, maintain and repair EAAPSS on the same basis as provided in this Section 2(b) for EAAPSN and EAAPSM and shall be paid in full for such services as provided under "Fee" below.

(6) Monitoring existing fuel supplies and refueling in order to permit operation of the pump stations in accordance with the approved operating plans.

(7) Conducting on-site safety programs related to operation, maintenance, and repair of the pump stations.

(8) Maintaining written operations logs, including all necessary documentation and reporting of operation and maintenance activities as required by existing permits or in this Statement of Work to properly demonstrate/document systematic operation, maintenance, and repair of the pump stations. The operation logs shall clearly identify the person and title of the person making the log entry. Quarterly operation reports will be provided by the fifteenth working day of the next quarter. These reports shall be delivered as part of the quarterly inspection report referenced in Section 2(c) of this Exhibit G. These reports will contain all daily pump logs, operation and maintenance documentation for each pump, in the following format:

1. Pump Station Location
2. Pump # being operated
3. Purpose of pump operation (specifically identify if the purpose is to drain or irrigate the District Project Area, excluding the New Hope Reservation Area or Okeelanta Reservation Area)
4. Start Time, when pump is started
5. Engine hours at start time
6. Head water stage level at pump start
7. Tail Water level at pump start
8. Stop time, when pump is shut off
9. Engine hours at stop time
10. Head water stage at pump stop
11. Tail water stage at pump stop



1	2	3	4	5	6	7	8	9	10	11
Pump Station	Pump Number	Purpose Irrigation or Drainage	Start Time	Eng. Hour Start	Start HW Stage	Start TW Stage	Stop Time	Eng. Hour Stop	Stop HW Stage	Stop TW Stage

NHLC shall use the District Numbering system for the pump log.

(9) On a yearly basis, commencing in January 2007 and each January thereafter, NHLC shall provide to the District in writing the total hours of running time of the pump stations.

(10) Within 90 days after the District provides written notice to NHLC that the District has entered into a Construction Contract for the District Project, NHLC shall provide the District with a written backup plan that includes the use of temporary or moveable pumps in case of equipment or other systems failure to ensure that the pumps, canals and other water management infrastructure are operational at all times. The backup plan shall ensure that the water management system is capable of providing the same capacities of the refurbished pump stations. NHLC shall not be responsible for implementing any such or other back-up plan, including the costs of making any alterations to the existing water management infrastructure or facilities or installing any new water management infrastructure or facilities, including back-up or portable pumps. Following such alterations or installations by the District, NHLC shall, as part of the services, operate, maintain, and repair such infrastructure and facilities under the same terms and conditions as it operates, maintains, and repairs the canals and water management infrastructure in Section 2(a) above.

Fee. The District shall pay NHLC a flat fee for the services set forth in this Section 2(b), exclusive of fuel, in the amount of \$70.00 per gross acre of Managed Lands per year; provided, however, that if Okeelanta or New Hope exercise their right to terminate portions of the Okeelanta Reservation Area or the New Hope Reservation Area in accordance with Section 3(b) of the Agreement to which this Exhibit G is a part, such terminated portions of the Okeelanta Reservation Area and the New Hope Reservation Area shall not be included in the calculation of the fee payable to NHLC for the services set forth in this Section 2(b) until the earlier of the completion of the 2007-2008 harvest on the applicable land or March 31, 2008. The District shall make payment on a quarterly basis in arrears based on an invoice submitted by NHLC. Payment shall be due in accordance with Section (2)(g) below. The fee is subject to yearly adjustment as provided in Section 2(e) of this Exhibit G.

On a yearly basis, commencing on the anniversary Date of this Agreement and upon termination of land management services provided by NHLC, the parties shall review the total hours of running time of the Pump Stations for drainage of the Managed Lands. If the amount is greater than 2500 hours, then, in addition to the flat fee, the District shall also pay NHLC \$15/hour for the number of hours of running time in excess of 2500 hours. If the amount is less than 1000 hours, the District shall receive a credit of \$15/hour for the amount by which total hours of running time is less than 1000. If the total hours of running time in any year is less than 750 or greater than 3000 hours, the parties shall negotiate a new per acre rate. Prior to the earlier of the completion of

the 2007-2008 harvest on the applicable land or March 31, 2008, the calculation of total hours of running time of the pump stations shall not include running time hours required to perform land management services on any portion of the Managed Lands which are no longer subject to the Okeelanta Reservation or the New Hope Reservation because of Okeelanta's or New Hope's exercise of their right to terminate portions of the Okeelanta Reservation Area or the New Hope Reservation Area in accordance with Section 3(b) of the Agreement to which this Exhibit G is a part.

NHLC shall keep a written record of fuel consumption as part of its operation log. The District shall reimburse NHLC its actual reasonable fuel costs incurred for operating pump stations EAAPSN and EAAPSM. Prior to completion of the harvest of the 2007-2008 crop, Okeelanta shall be solely responsible for fuel costs of operating EAAPSS. Following the completion of the harvest of the 2007-2008 crop, the District shall reimburse NHLC its actual reasonable fuel costs incurred for operating EAAPSS based on the proportion of the area served by EAAPSS that is not subject to the Okeelanta Reservation to the total area served by EAAPSS. Following the completion of the harvest of the 2008-2009 crop, the District shall reimburse NHLC its actual reasonable fuel costs incurred for operating EAAPSS. NHLC shall submit with its quarterly invoice for payment for land management services its actual paid invoices for pump station fuel.

After April 1, 2009, if the District decides, in its sole discretion, to no longer operate a pump station and provides written notice to NHLC, then the flat fee of \$70.00 per acre of Managed Lands per year will be reduced as follows:

EAA PSN Pump No Longer to be Operated - Fee reduced 10%  
EAA PSS Pump No Longer to be Operated - Fee reduced 30%  
EAA PSM Pump No Longer to be Operated - Fee reduced 30%

If the District decides to no longer operate all three pump stations then flat fee of \$70 per acre of Managed Lands per year is eliminated entirely.

(c) Inspection Services.

On a quarterly basis NHLC shall prepare a report that shall:

- (1) include a copy of the operation logs and daily pump station logs;
- (2) certify that the operation logs and daily pump station logs are in the form required by this Agreement;
- (3) certify NHLC's (or its designated affiliate's) quarterly and yearly pump running times and fuel charges as true and correct and excludes any running time or fuel costs for irrigation purposes; and
- (4) include a report prepared by a Florida Professional Licensed Engineer (the "Engineer") that (A) documents the Engineer's field visits to inspect the condition of the canals and water management infrastructure on the Managed Lands and pump stations and

(B) identifies any conditions on the Managed Lands that may disrupt or adversely impact (i) lands (including District-owned lands) farmed by Okeelanta or New Hope and the activities or operations thereon, and (ii) the District Project Area and construction activities thereon, and (iii) the lands, activities, or operations of adjacent property owners, and recommend solutions to any conditions identified. Such conditions include exotic vegetation, condition of pump stations, canals, water management infrastructure or facilities, general condition of the Managed Lands, and vandalism.

Fee. The District shall pay NHLC a flat fee for the inspection services in the amount of \$10,000 per quarter. The District shall make payment on a quarterly basis in arrears based on an invoice submitted by NHLC. Payment shall be due in accordance with Section 2(g) of this Statement of Work. The fee is subject to yearly adjustment as provided in Section 2(e) of this Exhibit G.

(d) Optional Services

Based on the recommendations from the quarterly inspection reports or additional land management needs of the District, the District may request additional land management services from NHLC in accordance with a statement of work and fee to be agreed to by the parties in writing.

(e) Yearly Fee Adjustment For Land Management Services

The fee shall be adjusted yearly commencing on January 1, 2007. The fee adjustment shall be based on the U.S. Department of Labor's Annual Consumer Price Index - All Urban Consumers, South Urban (Series Id: CUUR0300SA0) ("Annual CPI"). The yearly adjustment may result in increase or decrease in the fees and shall be computed using the following formula:

Annual CPI for Current Year (current land management service year January – December)	X
Annual CPI for the Previous Year (prior land management service year, January – December)	Y
Annual CPI for Current Year Less Annual CPI for Previous Year = index point change	X - Y
Index Point change Divided by CPI for Previous Period	$\frac{X - Y}{Y}$
Equals	Z
Z multiplied by 100 = Percentage Adjustment To Fees for Current Year	Z x 100

The adjustment shall be implemented for the Current Year (current land management service year, January – December) no later than thirty days after publication of the Annual CPI for the Current Year and included in the fees for land management service for the next year. At the District's option by providing written notice to NHLC, the adjustment to the fees for the final year of land management service shall be made either by (1) including the adjustment in the District's

final quarterly fee payment if the Annual CPI is published in time to make such an adjustment, or (2) cash payment made by the applicable party to the other party no later than thirty days after publication of the Annual CPI for the final year. If the CPI for All Urban Consumers, South Urban is no longer published by the Department of Labor the parties instead shall use the Annual Consumer Price Index - All Urban Consumers. The first adjustment will be effective as of January 1, 2007 and will be based on the increase in the applicable CPI from the Date of this Agreement until December 31, 2006.

(f) NHLC and the District understand that proper operation, maintenance, and repair of the existing water management infrastructure and facilities, including canals and pump stations, on the Managed Lands is critical for the District to successfully implement the District Project and to avoid adverse impacts to Okeelanta's and New Hope's farming operations and to adjacent lands. NHLC understands that it shall be solely responsible for controlling water on the Managed Lands through the use of the existing water management infrastructure and facilities in accordance with approved operating plans with the goal of minimizing disruption of or any adverse impacts to (i) lands (including District-owned lands) farmed by Okeelanta or New Hope or the activities or operations thereon, (ii) the District Project Area and construction activities thereon, and (iii) the lands, activities, or operations of adjacent property owners. During the construction phase of the District Project, the District will be engaged in dewatering of the District Project Area and discharging such water onto fields and into the existing canal system. NHLC shall use reasonable efforts to route this water as well as storm water through existing canal systems to the drainage pump stations without adversely impacting the lands or activities referred to in the previous sentence or adversely impacting the water quality. NHLC shall be responsible for the quality of any water related solely to its land management activities. The District hereby acknowledges and agrees that NHLC's ability to control water on the Managed Lands in accordance with this Statement of Work is limited by and subject to, among other things, the capabilities of the existing water management infrastructure and facilities (including the pumps, pump motors, pump houses and pump stations), rain and other weather events, the quantity, quality and discharge location of construction water, the operating instructions of the District or its designees, and the District's performance of its obligations hereunder, including the making of any repairs which are not required to be made by NHLC pursuant to this Statement of Work.

NHLC and its affiliates and their contractors shall have no liability to the District or its contractors or subcontractors for adverse impacts to (i) lands (including District-owned lands) farmed by Okeelanta or New Hope or the activities or operations thereon, (ii) the District Project Area and construction activities thereon, and (iii) the lands, activities, or operations of adjacent property owners, resulting from its or their failure to properly manage water in the District Project Area, including the Subject Area, to the extent such failure is directly or indirectly attributable to the limitations of the existing water management infrastructure and facilities, following the operating instructions of the District or its designees, or the District's failure to perform any of its obligations hereunder, including its obligation to make repairs which are not required to be made by NHLC pursuant to this Statement of Work.

(g) District payment for the land management services shall be made in a timely manner and interest payments shall be made on late payments. NHLC shall submit invoices for services under this Exhibit G as promptly as possible following the end of each calendar quarter for services rendered during such quarter. Such invoices shall be in the form to be

agreed upon by the District and NHLC. Payment shall be due from the District within thirty (30) days from receipt of an invoice in the agreed-upon form. Payments not made within the time specified in this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Any overdue period of less than one month shall be considered one month in computing interest. Unpaid interest shall be compounded monthly. NHLC shall invoice the District for payment of any accrued unpaid interest.

### **3. Indemnification.**

NHLC hereby agrees to indemnify, save and hold harmless the South Florida Water Management District and its board members, officers, and employees ("Indemnified Parties") from any and all demands, losses, suits, judgments, damages, causes of action, or other liability to third parties (including but not limited to court costs and reasonable attorney's fees and other reasonable costs of defense, including expert consultant and witness fees, whether suit be brought or not and at all levels of litigation) arising from NHLC's failure to perform or to cause to be performed any of the land management services pursuant to this Exhibit G; provided, however, that in no event shall NHLC have any liability resulting from or in any way related to any failure to perform or properly manage water as a result of the limitations of the existing water management infrastructure and facilities, rain or other weather events, the quantity, quality and discharge location of construction water, following the operating instructions of the District or its designees, and the District's failure to perform its obligations hereunder (including its obligation to make repairs which are not required to be made by NHLC pursuant to this Exhibit G).

The Indemnified Party or Parties shall notify NHLC in writing of any such claims demands, losses, suits, judgments, damages, causes of action, or other liability, of third parties of which it becomes aware, and NHLC, at NHLC's expense, shall assume on behalf of the Indemnified Parties, and conduct with due diligence and good faith, the defense thereof with counsel satisfactory to the Indemnified Parties in their reasonable discretion; provided, however, the Indemnified Parties shall have the right, at their option, to be represented in such matters by advisory counsel of their own selection at their own expense.

### **4. Description of Sub-basins.**

In accordance with this Statement of Work, the parties will develop an operating plan for managing water within the District Project Area on the Managed Lands to address the construction needs of the District Project.

The operating plan will take into account the following basic water management operating regime and coordination:

(a) The North Sub-basin is identified in Exhibit C. It includes the canals and water management facilities and infrastructure interconnected throughout the basin that drain and irrigate this sub-basin through the Pump Station EAAPSN, which receives intake water from and discharges into the North New River Canal. These facilities and infrastructure operate independently of and do not drain or irrigate the New Hope Reservation Area or Okeelanta Reservation Area. This sub-basin is to be operated solely for benefit of the District Project construction activities.

(b) The Middle Sub-basin is identified in Exhibit C and includes the New Hope Reservation Area. Its canals and water management facilities and infrastructure are interconnected throughout the basin and drain and irrigate this sub-basin through the EAAPSM, which receives intake water from and discharges into the North New River Canal. The District will use the EAAPSM on a priority basis to drain the District Project Area. If the Pump Station is running to drain the District Project Area and any part of the New Hope Reservation Area is also drained secondarily such pump running time will be included in the total pump running time for the purpose of calculating adjustments to the fee in accordance with in Section 2(b) of the Statement of Work and such fuel costs shall be included for reimbursement in accordance with Section 2(b) of the Statement of Work.

EAAPSM may be run for the benefit of the New Hope Reservation Area only when not needed for the drainage or water supply for the District Project Area. If EAAPSM is run primarily for the benefit of draining or irrigating the New Hope Reservation Area such run time shall not be excluded in the total pump running time for the purpose of calculating adjustments to the fee under the third paragraph in Section 2(b) of the Statement of Work and such fuel costs shall be excluded from reimbursement under the fourth paragraph in Section 2(b) of the Statement of Work

(c) The Southern Sub-basin is identified in Exhibit C and includes the Okeelanta Reservation Area. The sub-basins canals and water management facilities and infrastructure are interconnected throughout the basin and drain and irrigate the basin through Pump Station EAAPSS which receives intake water from and discharges into the North New River Canal. The EAAPSS is intended to be used by Okeelanta, at its expense, solely in its agricultural operations at least until the harvest of the 2007-2008 crop in the Okeelanta Reservation Area and the District shall pay Okeelanta no fee with respect to its operation thereof. The District will be responsible for construction dewatering of those portions of the District Project Area within the Southern Sub-basin that are not subject to the Okeelanta Reservation. After the completion of the harvest of the 2007-2008 crop, operation of the EAAPSS and payment of fees and fuel costs therefore shall be in accordance with Section 2(b) of this Statement of Work.

(d) Okeelanta has applied for permit(s) modification to drain and irrigate the New Hope Reservation Area through the Okeelanta Reservation Area. If such permit(s) modification are approved then the EAAPSM would be operated exclusively for the benefit of the District Project Area excluding the New Hope Reservation Area.

(e) Okeelanta and New Hope, as applicable, are solely responsible for operating the water management infrastructure and facilities within the Okeelanta Reservation Area, the New Hope Reservation Area and the Leased Property. NHLC is solely responsible for operating the water management infrastructure and facilities within the Managed Lands. NHLC shall closely coordinate with the District or its designee in operating water management infrastructure and facilities on the Managed Lands for the benefit of the construction and operation of the District Project. Okeelanta and New Hope shall promptly identify and bring to the attention of the District or its designee any potential impacts of their operations on the construction and operation of the District Project as well as any potential impacts of the District Project on their operations.

5. The parties agree that, for purposes of calculating the fees due NHLC under Sections 2(a) and 2(b), the number of acres included in the District Project Area is 16,687 gross acres, and the number of acres included in the New Hope Reservation Area and the Okeelanta Reservation Area as of the Date of this Agreement is 6,513 gross acres.

**EXHIBIT H**

**MAXIMUM DAMAGES**

(\$600 Per Acre Per Year. A Year is the period from October 1 to September 30)



## **EXHIBIT I**

### **ENVIRONMENTAL REPORTS**

(1) Phase I/II Environmental Assessment reports completed for the Talisman Ranch property. The first was completed by CRB for Talisman in 1996 and the second was completed by URS Corporation formerly Dames & Moore on behalf of the District in 1998. These have been previously provided to Florida Crystals Corporation, and are more particularly described as follows:

(i) Phase I and Phase II Environmental Assessment for the Property Known as the Plant, The Plant Palm Beach County and Hendry County, March 1996. Prepared by CRB Corporation On behalf of Talisman Corporation

(ii) Phase I/II Environmental Site Assessment Talisman Sugar Corporation, November 9 1998. Prepared by URS Corporation formerly Dames & Moore on behalf of the South Florida Water Management District

(2) Based on the findings in the URS Corporation (fka/ Dames & Moore) Phase I/II Environmental Site Assessment for Talisman Sugar Corporation, dated November 1998, additional assessment and corrective action activities were completed by the responsible party for numerous point source areas within the Talisman Main Ranch Property and generally referred to as "Deferred Parcels" in the Talisman Exchange Transaction. The Deferred Parcels are still in Talisman Sugar Corporation ownership. While these parcels are not included within the Leased Property some of these parcels are contiguous to the Leased Property. These additional assessment and corrective action activities were conducted by Professional Service industries Inc (PSI) on behalf of The St Joe Company, the parent corporation of Talisman Sugar Corporation. The assessment and corrective action activities were completed under the direction of the Florida Department of Environmental Protection-Southeast District (FDEP-SED) office. Technical reports for each of these areas were submitted to FDEP-SED for review and FDEP has issued Site Rehabilitation Completion Orders (SRCO's) for these areas. Copies of these reports and the accompanying SRCO's are on file at the FDEP-SED office in West Palm Beach, Florida.

(3) Pump Station Evaluations Report, Talisman Ranch Property and former U.S. Sugar Property Mott Farm, dated February 3, 2005. Prepared by USR Corporation for the South Florida Water Management District.. Accompanying Three Page Memorandum from Robert Taylor to Ruth Clements, dated February 3, 2005.

# Land Management - Key Dates with Comments

Contract OT050802

## Palm Beach

Contract	Type	Lessee	Term	Exc. Date	Exp. Date	Purpose	Term Notice	Renewals	Org
OT050802	Lease	Okeelanta/New Hope	36	1/5/2006	3/31/2009	Sugar Cane	160 days	Yearly	LSD

### Comments

Okeelanta/New Hope Reservation  
Tract D7100-104  
6496.92 Acres  
Term – 3 yrs (36 months)  
Revenue 245,063.82

#### 3. Termination of Reservation

The District may require that Okeelanta and New Hope execute and deliver a termination of reservation at any the time of expiration or termination.

3.(b).(ii) With respect to reservation area, the termination date is March 31, 2009, or the date the of the District's receipt of written notice from New Hope or Okeelanta that the sugar cane harvest for 2008-2009 is complete, except that New Hope and Okeelanta may elect by providing written notice not more than twice a year, to terminate portions of the New Hope and Okeelanta reservation areas in contiguous 160-acre blocks that are contiguous with the District's project area, or the remainder of both New Hope and Okeelanta in its entirety.

3.(c).If, as of December 1, 2006 and each subsequent December 1st thereafter through December 13, 2013, the District has (i) entered into a contract for construction project, (ii) assigned to the construction contractor, (iii) commenced construction, the reservation shall extend for up to one additional year no later than March 31, 2014.

Additionally, if the District fails to appropriate funding for the performance by NHLC or construction of the District project, the termination date shall be extended for successive one year periods until the District appropriates funds, but not to extend beyond March 31, 2014.

If the District reasonably believes the project will be completed ahead of schedule and provides written notice, New Hope and Okeelanta agrees to use reasonable efforts to accelerate completion of their respective harvesting activities.

4. Land Management Services - NHLC shall provide land management services, less any portion which is still included as part of New Hope or Okeelanta reservation area. The District agrees to pay NHLC a quarterly fee for such land services set forth in the SOW.

5. District Access – The District and its employees, agents, contractors, subcontracts, licensees and invitee have the right to enter and travel through the leased property. If the District use any roads located in the subject area for hauling construction materials, the District must notify Okeelanta of the roads to be used and the District agrees to be solely responsible for the maintenance and repair of such roads, but to no better use prior to their use .

5.(b) New Hope/Okeelanta Access – have access to enter and travel through roads within the District's project area specifically authorized by the District in writing. New Hope, Okeelanta and NHLC shall be responsible for repairing any damage cause to said roads.

***Palm Beach***

5.(c) Insurance (see section 17)

6(a). Transition Impacts and Coordination – New Hope and Okeelanta acknowledge that the District's implementation of the Districts project may impact their respective farming operations and activities during the term of the lease.

6(b) New Hope and Okeelanta shall provide a plan and schedule of activities for their operations and the District shall provide New Hope and Okeelanta a plan and schedule of activities for its operations.

**Terms and Conditions**

5. Taxes – Property shall remain upon tax rolls. Leased land is taxed as agricultural lands.

7. Improvements and Alterations – Lessee may construct any fences, structures, pumps, pump motors, pump houses, piping, additions or other improvements or alterations on the property. Lessee shall have the right to construct drainage systems and use the rock and other materials located on the property for such construction provided that any construction of new roads, canals or dikes which cost in excess of \$250,000 shall be subject to prior written approval of the District.

Environmental Matters and Indemnification – See Section 10 (pg. 30)

7(c) Lessee shall provide the District a Remediation Plan at least 45 days prior to initiating work, but not later than 120 after the lessee's receipt of the District's environmental notice or in the event of termination notice.

7(d) Prior to the termination of the lease, the District may at its sole expense conduct environmental investigation of the leased property being released and give notice to the lessee of the environmental problems requiring remediation.

12. The lease is assignable either in whole or in part by the lessee. Lessee shall give 30 days advance written notice of any such assignment or transfer. Additionally, the lessee may sell or otherwise transfer all or any portion of its right, title or interest in the lease or new improvements.

18.(c) Cane Stubble – Upon termination the lessee shall deliver the property with the cane stubble existing at the time of completion of the last harvest at no charge or expense to the District.

31(2) Notice of Construction Impact – Prior to the first September 1 preceding the earliest construction commencement date and prior to each September 1 of each year thereafter, the District shall provide the lessee notification of which parcels may continue to be farmed through the first March 31 occurring eighteen months following the date of notice of construction impact.

31(3) Notice to Vacate – At least 90 days prior to the issuance of Notice to Proceed, a Notice to Vacate shall be provided notifying the lessee which parcels will be (i) impacted by the construction implementations (ii) required to vacate thirty days after the date of Notice to Vacate was issued.

32. Additional Consideration – The lessee agrees to pay the District additional consideration in an amount of (i) \$47.15 per gross planted acres for the period beginning on the commencement date and ending of March 31, 2006, (ii) the fair market rental value for each additional consideration period. For more details see SECTION 32. – 32.E (pgs. 45-49).

37. Controlling Intent of the Parties -- It is the intention of the lessee and the District that the property be available for the project by 4/1/2009

***Keydates and Comments***