

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: June 3, 2008	<input type="checkbox"/>	Consent	<input checked="" type="checkbox"/>	Regular
	<input type="checkbox"/>	Ordinance	<input type="checkbox"/>	Public
Department			<input type="checkbox"/>	Workshop

By: COUNTY ATTORNEY'S OFFICE

For: ENVIRONMENTAL RESOURCES MANAGEMENT

I. EXECUTIVE BRIEF

Motion and Title: Staff Recommends Motion to approve:

- (A) Settlement in the total amount of \$1,000,000, inclusive of all attorneys fees and costs, in the case of Palm Beach County v. West Boynton Farms, Case No. 502004CA011435XXXXMBAG; and
- (B) A Budget Transfer of \$1,000,000 in the Natural Areas Fund Reserves to the Ag Reserve project account to purchase the property.

SUMMARY: On March 31, 2004, the County entered into contracts with West Boynton Farms (WBF) to purchase three (3) parcels of land in the Agricultural Reserve known as the North King, South King, and Woskob parcels. The parcels were to be used for environmental preservation purposes. After several unsuccessful attempts to close on the parcels, the County filed a lawsuit against WBF for specific performance and breach of contracts and WBF filed a counterclaim against the County for breach of contract. This Settlement will result in the County acquiring two (2) of the three (3) parcels (North King and South King) for \$1,000,000, which is \$121,880 more than the contract purchase price and \$71,500 more than the 2003 appraised value and will cover all legal fees, costs and expenses of the acquisition. The Budget Transfer will provide the funding for the settlement agreement from the Natural Areas Fund. **Countywide (DRO/SF)**

BACKGROUND AND JUSTIFICATION:

In this case the County filed a lawsuit against West Boynton Farms (WBF), for specific performance and breach of contract and WBF filed a Counterclaim against the County for breach of contract.

On March 31, 2004, the County entered into three (3) separate contracts with WBF to purchase three (3) parcels of land known as the North King, South King, and Woskob parcels. A closing on the three (3) parcels was scheduled for April 30, 2004, but had to be rescheduled because of unresolved issues regarding the closing documents.

On June 25, 2004, after the County reviewed the closing documents delivered by WBF for the three (3) parcels, the County decided not to close on the Woskob parcel because of a Transfer of Development Rights Agreement (TDR) recorded on the Woskob parcel between WBF and GL Homes that contained provisions the County could not agree to. The contracts did not require the parties to close on all three (3) parcels simultaneously, however, WBF canceled the three (3) contracts claiming that the County defaulted by not agreeing to close on the Woskob parcel. This was essentially the basis of West Boynton Farm's Counterclaim.

(CONTINUED ON PAGE 3)

ATTACHMENTS:

- 1. Budget Transfer
- 2. Proposed Settlement Agreement

Recommended by:  5/23/08
 Department Director Date

Approved By: _____
 Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	<u>\$1,000,000</u>	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	<u>- 0 -</u>	<u>- 0 -</u>	<u>- 0 -</u>	<u>- 0 -</u>
Program Income (County)	<u>- 0 -</u>	<u>- 0 -</u>	<u>- 0 -</u>	<u>- 0 -</u>	<u>- 0 -</u>
In-Kind Match (County)	<u>- 0 -</u>	<u>- 0 -</u>	<u>- 0 -</u>	<u>- 0 -</u>	<u>- 0 -</u>
NET FISCAL	<u>\$1,000,000</u>	_____	_____	_____	_____

Is Item Included In Current Budget? Yes ___ No XX

Budget Account No.: Fund _____ Agency _____ Org. _____ Object Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Natural Areas Fund *JP*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

adwillwhite 5-28-08
5/27/08 OFMB *5/27/08*
5/25/08 *Jan. J. Jacobson 5/28/08*
 Contract Administration

B. Legal Sufficiency:

[Signature]
 David R. Ottey, Esquire
 Assistant County Attorney

C. Other Department Review:

[Signature]
 Department Director

This summary is not to be used as a basis for payment.

BACKGROUND AND JUSTIFICATION: (Continued)

The total contract price for the two remaining parcels of land being purchased as part of this settlement (North and South King) was \$878,120 (\$21,953/acre) and the proposed settlement is for one million dollars (\$1,000,000), a difference of \$121,880. The property was appraised in 2003 at \$928,500 (\$23,213/acre). While values have declined somewhat recently, Staff believes that the settlement price at \$25,000/acre remains below market value. The Woskob parcel is not being purchased by the County and is not part of this settlement. These two (2) properties are currently occupied by a tenant with an agricultural lease and the County will take title to the property subject to the existing lease, which the County has an option to renew and continue to collect rent from the tenant.

Taking into consideration the County's potential exposure, particularly on the Woskob parcel, and the current value of the land, the Department Directors for Environmental Resources Management and Property and Real Estate Management concur with this proposed settlement as being in the County's best interest. While Staff believes that the County would ultimately prevail in the lawsuit, the 13% increase in the price is worth avoiding the risks inherent in any trial.

Acquisition of this land will round out the County's assemblage of fourteen (14) parcels in the northwestern sector of the Agricultural Reserve, and ultimately facilitate a coordinated restoration project by South Florida Water Management District and the County.

2008 - 1006

BGEX - 051208000000002732

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA

RECEIVED
MAY 20 2008
P.B. COUNTY ATTORNEY

BUDGET TRANSFER
Fund 1226 Natural Areas Fund

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENC/EXP 5/12/2008	REMAINING BALANCE
<u>Appropriations</u>							
<u>Reserve-Natural Areas Stwdship</u>							
380-3195 9909 - Res-Improvement Progm	2,489,200	1,460,661	0	1,000,000	460,661	0	460,661
<u>Ag Reserve</u>							
380-E500 6101-Land *Sobj	0	0	1,000,000	0	1,000,000	0	2,857,406
			1,000,000	1,000,000			

Environmental Resources
Management

Signatures & Dates

BY BOARD OF COUNTY COMMISSIONERS
AT MEETING OF

INITIATING DEPARTMENT/DIVISION
Administration/Budget Department Approval
OFMB Department - Posted

Richard E. Walby 5/12/08
At Willhite 5-28-08

June 3, 2008
Deputy Clerk to the
Board of County Commissioners

on
5/28/08

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 2008, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and WEST BOYNTON FARMS, INC. ("WBF").

WHEREAS, the COUNTY sued WBF in a lawsuit presently styled PALM BEACH COUNTY, a/k/a PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS v. WEST BOYNTON FARMS, INC., a Florida Corporation, CASE NO.: 50 2004CA011435XXXXMBAG, in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach COUNTY, Florida (the "Pending Lawsuit"), for Specific Performance and Breach of Contract for two parcels of real property known as the North King, and South King Parcels (Subject Parcels) owned by WBF. The Pending Lawsuit includes a counterclaim filed by WBF for breach of contract.

WHEREAS, the COUNTY and WBF have denied liability and raised several affirmative defenses in the Pending Lawsuit; and

WHEREAS, the parties hereto wish to amicably resolve the Pending Lawsuit without further litigation of the claims made and defenses raised therein.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Subject to approval of this Settlement Agreement by the Board of COUNTY Commissioners, on or before June 13, 2008, upon full execution of the closing on the Subject Parcels pursuant to the contracts relating to the Subject Parcels as modified by this Settlement Agreement subject only to the Standard Survey Exceptions and Schedule B-2 exceptions for coverage numbers 6 through 12 set forth on the title insurance commitment attached hereto as Exhibit A, the COUNTY shall pay WBF, the amount of **ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00)** for the Subject Parcels, by a check made payable to Law Office of Jones Foster Johnston & Stubbs, P.A., Trust Account (Tax I.D. No. 59-1292566) and WBF 65-051335).
3. At Closing, WBF, shall (i) execute a Release in the form of that attached hereto as Exhibit B, and (ii) execute a Stipulation and Final Order of Dismissal with Prejudice, in the form of that attached hereto as Exhibit C, which, in turn, the Palm Beach COUNTY will also execute and thereafter forward to the Court for execution, service by mail and filing. At Closing, the COUNTY will execute a Release in the form of that attached hereto as Exhibit "D" and deliver a Release of the Lis Pendens filed by COUNTY in the Pending Lawsuit in the form attached hereto as Exhibit "E".
4. The Law Office of Jones Foster Johnston & Stubbs, P.A., shall not disburse and WBF, shall not accept, any proceeds from the settlement check described in paragraph 2 unless and until the Release has been delivered to the COUNTY and the Stipulation and Final Order of Dismissal With Prejudice has been executed by counsel for WBF and delivered to COUNTY.

5. The COUNTY acknowledges and agrees that K&M Nursery is currently a Tenant on the Subject Parcels under an Agricultural Lease Agreement (Lease) with WBF, a copy of which Lease is attached hereto as Exhibit F. The COUNTY agrees that upon closing on the Subject Parcels title shall transfer subject to the existing Lease with the K&M Nursery.

6. COUNTY agrees to perform the on-site mitigation which is the subject of South Florida Water Management District application number 050919-18. The COUNTY shall not be responsible for the civil penalties assessed by South Florida Water Management District. COUNTY agrees to the issuance of South Florida Water Management District application number 050919-18. Upon closing, COUNTY shall assume the obligation of WBF as it relates to the property owner in South Florida Water Management District ERP and WUP permits.

7. With the exception of the terms specified in this Settlement Agreement, all terms of the contracts for the Subject Parcels in the Pending Litigation remain unchanged.

8. Each party shall bear its respective attorney's fees and costs.

9. This Settlement Agreement does not constitute an admission of liability by either party.

10. In any litigation brought to enforce the terms or remedy a violation of this Settlement Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to any other recovery.

11. WBF declares and acknowledges that the terms of this Settlement Agreement have been completely read, fully understood, discussed with counsel, and voluntarily accepted as a full and final compromise of any and all claims they may have against the COUNTY regarding the Subject Parcels.

12. This Settlement Agreement shall be binding on the parties hereto, their assigns, transferees, heirs, and other successors in interest.

13. The parties represent that no claim that has been, or could have been, raised in the Pending Lawsuit, and no claim to which this Settlement Agreement applies, has been assigned or otherwise transferred to any other person or entity not a party hereto.

Settlement Agreement

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed as of the date first set forth above.

WITNESS:

Michael T. Kvan
Print Name: Michael T. Kvan

Defendant, West Boynton Farms

By: [Signature]
Scott Brown
Its: Vice President

WITNESS:

Defendant, West Boynton Farms

ATTEST:

Sharon R. Bock, Clerk and Comptroller

PALM BEACH COUNTY, a Political
Subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson
Board of COUNTY Commissioners

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: [Signature]
Assistant COUNTY Attorney

Attorneys' Title Insurance Fund, Inc.
COMMITMENT FORM
Schedule A

Commitment No.:
C-7282179

Effective Date:
April 4, 2008 @ 11:00 PM

Agent's File Reference:
08-166P

1. Policy or Policies to be issued: Proposed Amount of Insurance:
OWNER'S: ALTA Owner's Policy (10/17/92). (If other, specify.) \$1,000,000.00
Proposed Insured: Palm Beach County, a Political subdivision of the State of Florida
MORTGAGEE: ALTA Loan Policy (10/17/92). (If other, specify.) \$
Proposed Insured:
2. The estate or interest in the land described or referred to in this commitment is a fee simple (if other, specify same) and title thereto is at the effective date hereof vested in:

West Boynton Farms, Inc., a Florida corporation

3. The land referred to in this commitment is described as follows:

The North one-half (N 1/2) of the South One-half (S 1/2) of the North one-half (N 1/2) of the Southeast quarter (SE 1/4) of Section 14, Township 45 South, Range 41 East, Palm Beach County, Florida.
(AKA Tract C of King South, King North, Niebel, Townsend West and Townsend East Plat contained in Plat Book 104, Page 47, Public Records of Palm Beach County, Florida.)

Together with an easement for ingress and egress over the North 50 feet of the South half (S 1/2) of the North half (N 1/2) of Section 13, Township 45 South, Range 441 East, Palm Beach County, Florida.

and

The South one-half (S 1/2) of the North one-half (N 1/2) of the North one-half (N 1/2) of the Southeast quarter (SE 1/4) of Section 14, Township 45 South, Range 41 East, Palm Beach County, Florida.
(AKA Tract B of King South, King North, Niebel, Townsend West and Townsend East Plat contained in Plat Book 104, Page 47, Public Records of Palm Beach County, Florida.)

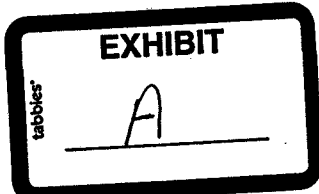
Together with an easement for ingress and egress over the North 50 feet of the South half (S 1/2) of the North half (N 1/2) of Section 13, Township 45 South, Range 41 East, Palm Beach County, Florida.

Issuing Agent: Perry & Kern, P.A. 50 S.E. Fourth Avenue Delray Beach, FL 33483

Agent No.: 6815



Agent's Signature
T.J. Corbin, Esq.



Attorneys' Title Insurance Fund, Inc.
COMMITMENT FORM
Schedule B-I

Commitment No.:
C-7282179

Agent's File Reference:
08-166P

- I. The following are the requirements to be complied with:
1. Payment of the full consideration to, or for the account of, the grantors or mortgagors.
 2. Instruments creating the estate or interest to be insured which must be executed, delivered and filed for record:
 - A. Warranty Deed from West Boynton Farms, Inc., a Florida corporation, to Palm Beach County, a Political subdivision of the State of Florida, a Florida not for profit corporation.
 3. Affidavit to be executed by West Boynton Farms, Inc. a Florida corporation stating: 1) There are no matters pending against the affiant that could give rise to a lien that would attach to the property between 04/04/2008 and the recording of the interest to be insured. 2) That the affiant(s) have not and will not execute any instruments that would adversely affect the interest to be insured.
 4. Closing funds are to be disbursed by or at the direction of the agent of The Fund identified at the bottom of Schedule A.
 5. A search commencing with the effective date of the commitment will be performed at or shortly prior to the closing of this transaction. If this search reveals a title defect or other objectionable matters, an endorsement will be issued requiring that this defect or objection be cleared on or before closing.
 6. Agent is to record the insured instruments as soon as possible after closing.
 7. Proof of payment of taxes for the year 2007 must be furnished, and any tax certificates issued with respect thereto must be canceled by the clerk of court.
 8. Corporate resolution of Board of Directors authorizing the sale and conveyance and confirming the authority of the director, officer, or nominee who will be signing the deed.
 9. Satisfactory evidence must be furnished establishing that West Boynton Farms, Inc. is duly organized, validly existing, and in good standing under the laws of Florida at date of purchase and at date of sale. [When it is other than a Florida legal entity, add: If there is no governmental agency in charge of business entity records from which a certificate of good standing can be obtained, then an attorney or notary public in the state or country of origin, who has examined the appropriate business entity records, can provide the certificate.]
 10. Dismissal of court action with prejudice and discharge of Lis Pendens recorded in O.R. Book 19216, Page 1352 in that certain Case No. 2005CA0111435XXXXMB in the Circuit Court of Palm Beach County, Florida, and expiration of the applicable appeals period.
 11. A survey meeting The Fund's requirements must be furnished. If such survey reveals any encroachments, overlaps, boundary line disputes, or other adverse matters, they will appear as exceptions in the policy to be issued based upon this commitment.

Attorneys' Title Insurance Fund, Inc.
COMMITMENT FORM
Schedule B-II

Commitment No.:
C-7282179

Agent's File Reference:
08-166P

- II. Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of The Underwriter:
1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.
 2. Any owner and mortgagee policies issued pursuant hereto will contain under Schedule B the standard exceptions set forth at the inside cover hereof unless an affidavit of possession and a satisfactory current survey are submitted, an inspection of the premises is made, it is determined the current year's taxes or special assessments have been paid, and it is determined there is nothing of record which would give rise to construction liens which could take priority over the interest(s) insured hereunder (where the liens would otherwise take priority, submission of waivers is necessary).
 3. Any owner policy issued pursuant hereto will contain under Schedule B the following exception: *Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the lands insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.*
 4. The lien of all taxes for the year 2008 and thereafter, which are not yet due and payable.
 5. Any lien provided by County Ordinance or by Ch. 159, F.S., in favor of any city, town, village or port authority, for unpaid service charges for services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.
 6. FPL Easement recorded in Official Records Book 1802, Page 1239, of the Public Records of Palm Beach County, Florida.
 7. Non-Use Commitment recorded in Official Records Book 2008, Page 475, Public Records of Palm Beach County, Florida.
 8. Subject to the Right of Way Agreement Recorded in Deed Book 1013, Page 246, Public Records of Palm Beach County, Florida.
 9. Easement recorded in Official Records Book 3710, Page 3, Public Records of Palm Beach County, Florida.
 10. Lake Worth Drainage District Easement recorded in Official Records Book 4212, Page 112 and Page 114, both of the Public Records of Palm Beach County, Florida.
 11. All matters contained on the Plat of King South, King North, Niebel, Townsend West and Townsend East Plat, as recorded in Plat Book 104, Page 47, of the Public Records of Palm Beach County, Florida.
 12. Easement in favor of Palm Beach Count and Lake Worth Drainage District Easement recorded in O.R. Book 18012, Page 502, of the Public Records of Palm Beach County, Florida.
 13. Un-recorded Conservation Easement executed 03/17/2008 between West Boynton Farms, Inc. and South Florida Water Management District.

PCN: 00-41-45-14-01-002-0000

Taxes for the year 2007 were PAID in the gross amount of \$1,725.21 on 04/03/2008.

PCN: 00-41-45-14-01-003-0000

Taxes for the year 2007 were PAID in the gross amount of \$1,875.96 on 04/03/2008.

SPECIFIC RELEASE

KNOW ALL MEN BY THESE PRESENTS;

That, West Boynton Farms, Inc., First Party, for and in consideration of the sum of TEN DOLLARS, or other valuable considerations, received from or on behalf of Palm Beach County, Second Party, the receipt whereof is hereby acknowledged,

HEREBY remise, release, acquit, satisfy, and forever discharge the said Second Party, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which said First Party ever had, now has, or which any successor, or assign of said First Party, hereafter can, shall or may have, against said Second Party, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of these presents which said First Party had or may have, relating to the claims asserted or which might have been asserted as a result of the facts set forth in the litigation in Case No. 50 2004 CA 011435XXXXMB (AG), Circuit Court of the Fifteenth Judicial Circuit of Florida, entitled, *Palm Beach County, a/k/a Palm Beach County Board of County Commissioners v. West Boynton Farms, Inc.*, and which relate to the Option Agreements for Sale and Purchase dated September 3, 2003 between West Boynton Farms, Inc. and The Conservation Fund pertaining to the property described as the North King Parcel, South King Parcel and the Woskob Parcel, the First Amendments thereto dated March 31, 2004, and the Assignment of said Option Agreements and the First Amendments to Palm Beach County. First Party reserves any and all claims which it may have against Second Party which pertains to the Settlement Agreement entered

Exhibit B

into by and between the parties on May _____, 2008, including but not limited to the right to enforce the Settlement Agreement.

IN WITNESS WHEREOF, We hereunto set our hands and seals this _____ day of May, 2008.

Witness:

WEST BOYNTON FARMS, INC.

By: _____
Scott Brown
Its: Vice President

STATE OF FLORIDA
COUNTY OF PALM BEACH

Before me, the undersigned authority, personally appeared Scott Brown as Vice President of West Boynton Farms, Inc., to me well known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that he executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this _____ day of _____, 2006.

Print Name: _____
Notary Public, State of Florida

My commission expires

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO. 50 2004 CA 011435XXXMB (AG)

PALM BEACH COUNTY, a/k/a
PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS,

Plaintiff

v.

WEST BOYNTON FARMS, INC.,
a Florida corporation,

Defendant,
_____ /

STIPULATION FOR DISMISSAL WITH PREJUDICE

Plaintiff, Palm Beach County, a/k/a Palm Beach County Board of County Commissioners and Defendant, West Boynton Farms, Inc., by and through its undersigned counsel, hereby stipulate to the dismissal of this action with prejudice with each party to bear its own attorney fees and costs.

PBC Attorney's Office
Attorneys for Palm Beach County
300 North Dixie Highway, Suite 359
West Palm Beach, FL 33401
Tel.: (561) 355-6557
Fax.: (561) 355-4234

Jones, Foster, Johnston, Stubbs, P.A.
Attorneys for West Boynton Farms
505 S. Flagler Drive, Suite 1100
West Palm Beach, FL 33401
Tel.: (561) 659-3000
Fax.: (561) 832-1454

By: _____
David R. Ottey, Esq.
Assistant County Attorney
Florida Bar No. 015590

By: _____
Michael T. Kranz, Esquire
Florida Bar No. 351180

Dated: _____

Dated: _____

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Exhibit C

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 50 2004 CA 011435XXXXMB (AG)

PALM BEACH COUNTY, a/k/a
PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS,

Plaintiff,

v.

WEST BOYNTON FARMS, INC.,
a Florida corporation,

Defendant.

ORDER DISMISSING ACTION

THIS CAUSE came before the Court upon the Stipulation of Dismissal With Prejudice by the parties. The Court being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that said action is dismissed with prejudice with each party to bear its own attorney fees and costs.

DONE AND ORDERED in Chambers in West Palm Beach, Palm Beach County, Florida this ____ day of April, 2008.

Circuit Court Judge

Copies furnished to:

Michael T. Kranz, Esq., Jones, Foster, Johnston & Stubbs, P.A., 505 S. Flagler Drive, Ste. 1200, West Palm Beach, FL 33401

David Ottey, Esq., Assistant County Attorney, 301 North Olive Avenue, 6th Floor, West Palm Beach, FL 33401

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Exhibit C

SPECIFIC RELEASE

KNOW ALL MEN BY THESE PRESENTS;

That, Palm Beach County, First Party, for and in consideration of the sum of TEN DOLLARS, or other valuable considerations, received from or on behalf of West Boynton Farms, Inc., Second Party, the receipt whereof is hereby acknowledged,

HEREBY remise, release, acquit, satisfy, and forever discharge the said Second Party, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which said First Party ever had, now has, or which any successor, or assign of said First Party, hereafter can, shall or may have, against said Second Party, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of these presents which said First Party had or may have, relating to the claims asserted or which might have been asserted as a result of the facts set forth in the litigation in Case No. 50 2004 CA 011435XXXXMB (AG), Circuit Court of the Fifteenth Judicial Circuit of Florida, entitled, *Palm Beach County, a/k/a Palm Beach County Board of County Commissioners v. West Boynton Farms, Inc.*, and which relate to the Option Agreements for Sale and Purchase dated September 3, 2003 between West Boynton Farms, Inc. and The Conservation Fund pertaining to the property described as the North King Parcel, South King Parcel and the Woskob Parcel, the First Amendments thereto dated March 31, 2004, and the Assignment of said Option Agreements and the First Amendments to Palm Beach County. First Party reserves any and all claims which

Exhibit D

it may have against Second Party which pertains to the Settlement Agreement entered into by and between the parties on May _____, 2008, including but not limited to the right to enforce the Settlement Agreement.

IN WITNESS WHEREOF, We hereunto set our hands and seals this _____ day of May, 2008.

PALM BEACH COUNTY, a Political
Subdivision of the State of Florida

By: _____
Richard Walesky, Director
Environmental Resources Management

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Assistant COUNTY Attorney

STATE OF FLORIDA
COUNTY OF PALM BEACH

Before me, the undersigned authority, personally appeared Richard Walesky, as Director of Environmental Resources Management to me well known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that he executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this ____ day of May, 2008.

Print Name: _____
Notary Public, State of Florida

My commission expires

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO. 50 2004 CA 011435XXXXMB (AG)

PALM BEACH COUNTY, a/k/a
PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS,

Plaintiff

v.

WEST BOYNTON FARMS, INC.,
a Florida corporation,

Defendant,

NOTICE OF DISMISSAL AND DISCHARGE OF LIS PENDENS

Plaintiff, Palm Beach County, a/k/a Palm Beach County Board of County Commissioners, hereby gives notice of its dismissal and discharge of the Lis Pendens recorded on the property described on Exhibit "A" in Official Record Book 19216 at pages 1352-1353 and the Amended Notice of Lis Pendens which was recorded in Official Record Book 19266 at Pages 1744-1745, in the Official Records of Palm Beach County, Florida. The action has been dismissed with prejudice by the Plaintiff.

Dated this ____ day of _____, 2008.

PBC Attorneys Office
Attorney for Palm Beach County
300 N. Dixie Highway, Ste. 359
West Palm Beach, FL 33401
Telephone: 561-355-6557
Facsimile: 561-355-4234

By: _____
David R. Ottey, Esq.
Assistant County Attorney
Florida Bar No. 015590

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Exhibit E

NORTH KING PARCEL:

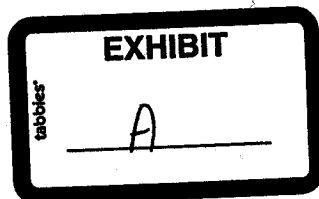
S 1/2 OF N 1/2 OF N 1/2 OF SE 1/4 OF SECTION 14,
TOWNSHIP 45 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA.
20.00 ACRES PER COUNTY PROPERTY APPRAISER RECORDS
PARCEL CONTROL NUMBER: 00-41-45-14-00-000-5000.

SOUTH KING/WEST BOYNTON FARMS PARCEL:

N 1/2 OF S 1/2 OF N 1/2 OF SE 1/4 OF SECTION 14,
TOWNSHIP 45 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA.
20.00 ACRES PER COUNTY PROPERTY APPRAISER RECORDS
PARCEL CONTROL NUMBER: 00-41-45-14-00-000-5020.

WOSKOB/WEST BOYNTON FARMS PARCEL:

S 1/2 OF S 1/2 OF SW 1/4 OF SE 1/4 OF SECTION 14,
TOWNSHIP 45 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA.
10.00 ACRES PER COUNTY PROPERTY APPRAISER RECORDS
PARCEL CONTROL NUMBER: 00-41-45-14-00-000-5040



AGRICULTURAL LEASE AGREEMENT

THIS AGRICULTURAL TREE AND NURSERY LEASE AGREEMENT, made and entered into this _____ day of _____, 2008, ("Effective Date") by and between WEST BOYNTON FARMS, INC., a Florida Corporation, hereinafter referred to as "Landlord", whose address for the purpose of rental payments and notice is P.O. Box 740631, Boynton Beach, Florida 33474, and K & M NURSERY, INC., a Florida Corporation hereinafter referred to as "Tenant".

WHEREAS, Landlord is the owner of certain real property lying, being and situate in Palm Beach County, Florida and being more particularly described in Exhibit "A" attached hereto and made a part hereof comprising 40 acres more or less; and

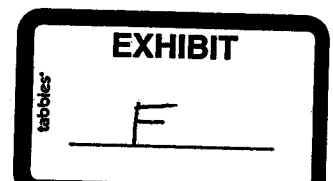
WHEREAS, Landlord desires to lease a portion of the property comprising approximately 18.5 acres as depicted on the sketch attached hereto as Exhibit "B" (the "Property") to Tenant for agricultural purposes.

WHEREAS, Tenant is in the agricultural business including, but not limited to, growing nursery plants, shrubs, trees, and etc; and

WHEREAS, Landlord and Tenant desire to memorialize the terms and conditions under which the Tenant shall lease the Property from Landlord.

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by both parties hereto, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Recitations.** The foregoing recitals are true and correct.
2. **Term of Agreement.** The term of this Lease ("Term") shall be for a period of One Year commencing on the Effective Date and terminating on April 30, 2009 ("Expiration Date"), unless terminated sooner as herein provided. The Terms shall automatically renew for successive one (1) year periods (the "Renewal Term(s)") unless either party shall provide the other notice of its intent not to renew the Term of this Lease. Such notice of non-renewal shall be delivered not less than one hundred and twenty (120) days prior to expiration of the current Term or Renewal Term.
3. **Rent and Security Deposit.** Tenant shall pay Landlord annual Rent in the amount of \$33,300.00. The annual Rent shall be payable in advance in equal monthly installments of \$2,775.00 on the first day of the month. The annual Rent shall be subject to three percent (3%) increases on the commencement of each Renewal Term.



All Rent due hereunder shall be paid to Landlord, without demand, set-off or deduction whatsoever, at Landlord's address for receipt of Notices as hereinafter specified, or at such other places as Landlord shall designate in writing to Tenant.

Tenant will also be responsible for providing the Landlord a full month's rent in advance as security deposit for the rental agreement.

Landlord will be responsible for real estates taxes of the demised premises for the term of the lease.

4. **Purpose of Lease and Use of Property.** The purpose of this Lease is to allow Tenant to operate an agricultural tree and nursery business for profit upon the Property. During the term solely of this lease, Tenant shall continuously use the entire Property at Tenant's sole expense for the foregoing bona fide commercial agricultural purposes. Tenant agrees to indemnify and hold Landlord harmless from any and all liability that may arise as a result of Tenant's actions, omissions, use, or maintenance of the Property during the Term, including but not limited to any loss or cost incurred by Landlord resulting from Tenant's failure to maintain an agricultural property tax exemption on the Property.

5. **Care, Maintenance, Taxes, and Other Costs and Expenses of the Property.** Tenant at its sole cost and expense shall maintain the Property in its current condition, including, but not limited to, all fences, canals, ditches, and all other improvements thereon. Such care and maintenance shall be consistent with all Laws, with the operation of Tenant's bona fide commercial agricultural nursery business thereon, and with all other terms of this Lease. Tenant shall also be responsible for all costs, expenses, and taxes arising out of the Property. Tenant shall pay all charges promptly as they become due for the furnishing of water, gas, electric, and other public utilities to the Property. Tenant shall cooperate fully with Landlord in order that Landlord may obtain the benefit of any favorable tax exemption or classification including, but not limited to, the agricultural classification. Tenant shall not make or permit to be made any alterations of or improvements to the Property without Landlord's prior written consent. Landlord acknowledges that Tenant has submitted an application for a Surface Water Management permit and Environmental Resource Permit to the South Florida Water Management District. Landlord shall sign such consents, authorizations or other documentation required by South Florida Water Management District to evidence Landlord's authorization of Tenant's submission of said applications. Tenant shall obtain Landlord's prior written consent to any proposed conditions of said permit which would bind or encumber the Property subsequent to termination of the permit.

6. Assignment and Subletting.

a. Tenant expressly covenants that it shall not assign, mortgage, or encumber this Lease, nor sublet the Property or any part thereof or license or permit the Property or any part thereof to be used by others, without the prior written consent of Landlord in each instance. It will be the Landlord's sole and absolute discretion as whether to allow the Tenant to sublease or assign the lease.

b. No assignment of this Lease or subletting of the Property shall release or discharge the Tenant hereunder from any of its obligations to be performed under this Lease. The consent by Landlord to an assignment or subletting shall not in any way be construed to relieve Tenant from obtaining the express written consent of Landlord to any further assignment or subletting.

c. If Tenant is a corporation or if Tenant is a partnership, and if any transfer, sale, pledge or other disposition of the common stock or partnership interests of Tenant shall occur which changes the power to vote the majority of the outstanding capital stock or partnership interests of Tenant, such action shall be considered an assignment under the terms of this Lease.

7. Default.

a. The occurrence of any one or more of the following events shall constitute a default hereunder by Tenant (individually, an "Event of Default" and collectively, "Events of Default"): (i) if Rent is not paid within ten (10) days after it is due payable; or (ii) if Tenant shall have failed to comply with any one or more of the other terms, covenants or provisions of this Lease (except the payment of Rent) within ten (10) days after written notice thereof, or if such failure to comply is of a nature that it cannot reasonably be completely within said ten (10) day period and Tenant shall not commence within said ten (10) days and/or shall not thereafter diligently prosecute to completion all steps necessary to remedy such failure to comply; or (iii) if a petition in bankruptcy shall be filed by or against Tenant or if Tenant shall make a general assignment for the benefit of creditors, or receive the benefit of any insolvency or reorganization act; or (iv) if a receiver or trustee is appointed for any portion of Tenant's property and such appointment is not vacated within thirty (30) days; or (v) if an execution or attachment shall be issued under which the Property shall be taken or occupied or attempted to be taken or occupied by anyone other than Tenant; or (vi) if the Property becomes and remains vacant, deserted or abandoned for a period of ten (10) consecutive days; or (vii) If the Property are not used for the purposes specifically authorized herein.

b. Upon the occurrence of any one or more Events of Default, Landlord, at any time thereafter, at Landlord's option, may give Tenant a three (3) day notice of termination of this Lease. Upon the expiration of the three (3) day notice period, this Lease shall come to an end and shall terminate as completely as if that were the date originally fixed for the expiration of the Term of this Lease, but Tenant shall remain liable as hereinafter provided.

c. Upon an Event of Default, or if Landlord is otherwise required to take any action to enforce this Lease, then Landlord shall be entitled to recover all costs and expenses incurred thereby, including court costs and reasonable attorneys' fees. Such fees and expense shall be deemed to be additional rent hereunder and shall be paid by Tenant to Landlord upon demand.

8. Remedies. If Tenant should default under this lease, Landlord shall have all rights and remedies available at law or in equity including, but not limited to, the right to accelerate payment of rent, to terminate this lease and to repossess the premise and cause the Tenant to vacate the premises in the manner provided by law. If this should occur, Tenant shall pay Landlord the expense in obtaining of the premises and all other damages sustained by Landlord to the extent permitted by law. If the Tenant should default under this lease, Tenant shall pay all Landlord's collection cost, expenses, and damages, including attorney's fees through appellate proceedings, as part of the rent under the terms of this lease.

In the event of a default by Tenant under this lease, the Landlord may terminate Tenant's right to possession of the premises by any lawful means, in which case this lease shall be terminated and Tenant shall immediately surrender possession of the premises to Landlord. Landlord may take possession of the premises for the benefit of the Tenant, Landlord shall have the right to accelerate payment of rent reserved for the balance of the term of this lease and to declare said amount immediately due and payable, or Landlord may elect to take possession of the premises for its own benefit. Additionally, after a default by Tenant under this lease, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of such default, including, but not limited to, the cost of recovering possession of the premises, attorney's fees (through appellate proceedings) and that portion of any leasing commission paid by Landlord with respect to the unexpired term of this Lease. Landlord may also avail himself of any other legal or equitable remedies now or hereafter available to it under applicable law.

9. Landlord May Cure Defaults. If Tenant shall fail to perform any covenant or condition of this Lease to be performed by Tenant, Landlord may perform the same for the account of Tenant, and Tenant shall reimburse Landlord for any expense incurred thereof as additional rent.

10. Liens.

a. The interest of the Lessor in and to the Demised Premises shall not be subject to liens for improvements made by Tenant, and any agreement entered into by Tenant for any improvements made to the Demised Premises shall specifically disclose this.

b. Tenant agrees that Tenant will pay all charges of contractors, subcontractors, mechanics, laborers, materialmen, and all other charges of like character incurred by Tenant with respect to the Demised Premises, and will indemnify, defend, and hold Landlord harmless from and against any and all expenses, costs and charges (including bond premiums for release of liens and attorneys' fees reasonably incurred in connection with any suit in discharging the said Demised Premises or any part thereof from any liens, judgments, or encumbrances) arising from improvements made by Tenant to the Demised Premises. In the event any such construction or related lien shall be filed or recorded, Tenant shall take all actions necessary to release the Demised Premises from same within twenty (20) days after the same has been filed or recorded. It is understood and agreed between the parties hereto that the expenses, costs, and charges above referred to shall be considered as additional rent and shall be included in any lien for rent.

c. The Tenant herein shall not have any authority to create any liens for construction, labor, or material on the Landlord's interest in the Demised Premises and all persons contracting with the Tenant for the construction, erection, installation, alteration, repair, destruction or removal of any facilities or other improvements on or about the Demised Premises, and all materialmen, contractors, mechanics, and laborers, are hereby charged with notice that they must look only to the Tenant and the Tenant's interests in the Demised Premises to secure the payment of any bill for work done, labor performed or material furnished for or on behalf of Tenant.

11. Compliance. Tenant shall, at its expense, comply with all laws, orders, and regulations of any governmental authority having or asserting jurisdiction in connection with the Demised Premises or the use or occupancy thereof.

12. Insurance. Tenant agrees to maintain, at Tenant's sole cost and expense, comprehensive general public liability insurance in standard form in favor of Landlord and Tenant against claims for bodily injury, death, and property damage occurring in or upon the Property, effective as of the Effective Date and continuously thereafter throughout the Term. Such insurance shall be in the amount of not less than One Million and No/100 Dollars (\$1,000,000.00) per person and not less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence. Any insurance policies required hereunder shall be written on an insurance

carrier licensed to do business in the State of Florida and with an A.M. best rating of A- or better. Additionally, all policies of insurance shall name Landlord as an additional insured and shall provided that they may not be modified or terminated without thirty (30) days advance notice to Landlord. At or prior to the Effective Date, tenant shall furnish to Landlord evidence of such insurance coverage by way of either a copy if the actual insurance policy and any amendments and endorsements thereto or a certificate of insurance clearly evidencing each of the coverages and provisions set forth in this Section. Upon Tenant's default in obtaining or delivering the policy or certificate for any such insurance or Tenant's failure to pay the charges therefore, Landlord may, but shall not be obligated to, procure or pay the charges for any such policy or policies and charge the Tenant therefore as Additional Rent.

13. End of Term.

a. Upon the expiration or sooner termination of the Term of this Lease, Tenant shall quit and surrender to Landlord the Property, in good order and condition, ordinary wear and tear expected, and Tenant shall remove all of its personal property and shall repair all damage to the Property occasioned by such removal. Any personal property not removed from the Property shall, at Landlord's option, be deemed abandoned by Tenant and may be disposed of in any manner deemed appropriate by the Landlord. Tenant owns the personal property and fixtures installed by Tenant which shall include but no be limited to the pipes, culverts, irrigations system, pumps, wells, gates, and fencing located on the property and shall have the right to remove these items at the termination of this lease.

b. Tenant acknowledges that possession of the Property must be surrendered to Landlord at the expiration or sooner termination of the Term of this Lease. Tenant hereby agrees to indemnify and save Landlord harmless from and against any and all costs, damages, claims, loss or liability resulting from delay by Tenant in so surrendering the Property, including, without limitation, any claims made by any succeeding tenant or a purchaser founded on such delay. The parties recognize and agree that the damage to Landlord resulting from any failure by Tenant timely to surrender possession of the Property as aforesaid will be extremely substantial, will exceed the amount of monthly Rent payable hereunder, and will be impossible of accurate measurement. Therefore, Tenant agrees that if possession of the Property is not surrendered to Landlord on or before the date of the expiration or other termination of the Term of this Lease, time being of the essence, then, in addition to any other remedies and/or damages otherwise available to Landlord hereunder or at law, Tenant agrees to pay Landlord, for each month and for each portion of any month during which Tenant holds over in possession of the Property after the expiration or sooner termination of the

Term of this Lease, a sum equal to two (2) times the Rent that was payable per month under this Lease. Nothing contained herein shall be construed to constitute Landlord's consent to Tenant's remaining in possession of the Property after the expiration or sooner termination of the Term of this Lease nor shall Landlord's acceptance of any holdover Rent from Tenant cause a waiver of any of Landlord's rights under any Law or under this Lease. Landlord shall be entitled to pursue any action necessary to recover immediate possession of the Property, notwithstanding Tenant's payment of the aforementioned sum. The aforesaid provisions of Section shall survive the expiration or sooner termination of the Term of this Lease.

14. Quiet Enjoyment. Landlord covenants and agrees with Tenant that, upon Tenant paying the rent and observing and performing all of the other terms, covenants, and conditions of this Lease on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Property during the Term of this Lease, subject to the terms, covenants, and conditions of this Lease.

15. Tenant's Indemnity. Tenant shall indemnify, defend, hold and save Landlord harmless from and against any and all claims by and on behalf of any person arising from the operation of, or from any work or thing whatsoever done (other than by Landlord or Landlord's agents or employees) in and on, the Property and/or arising from any act or omission or negligence of Tenant or any of its agents, contractors, servants, employees, licensees or invitees, and from and against all costs, expenses, damages, liabilities, and attorney's or other professional's fees incurred by Landlord in connection with any such claim or claims or action or proceeding brought thereon. Tenant's liability under this Lease extends to the acts and omissions of any subtenant and of any agent, contractor, employee, invitee or licensee of any subtenant. Attorney's fees shall include, but not be limited to, costs and fees at, before and through all administrative, arbitration, bankruptcy, trial and appellate levels and post judgment proceedings and regardless of whether or not any actions may be instituted. Any amounts payable to Landlord by reason of the application of this Section, shall become immediately due and payable and shall bear interest at the rate of fifteen percent (15%) per annum from the date loss or damage is sustained by Landlord until paid by Tenant. The obligations of the Tenant under this Section shall survive the expiration or any earlier termination of this Lease.

16. Eminent Domain.

a. In the event that the whole of the Property shall be lawfully condemned or taken in any manner for any public or quasi-public use, this Lease and the Term and leasehold estate hereby granted shall forthwith cease and terminate as of the date of vesting of title in the condemning authority.

b. In the event that a part of the Property shall be so condemned or taken, resulting in Tenant's inability to use the remainder of the Property for the uses permitted under this Lease, then (a) Landlord may, at its option, terminate this Lease and the term and estate hereby granted by notifying Tenant in writing of such termination within sixty (60) days following the date on which Landlord shall have received notice of vesting of title in the condemning authority, and (b) Tenant may, at its option, terminate this Lease and the term and estate hereby granted by notifying Landlord in writing within sixty (60) days following the date on which Tenant shall have received notice of vesting of title in the condemning authority.

c. In the event that any partial condemnation or taking does not prevent Tenant from using the Property for the uses permitted under this Lease, or in the event that neither Landlord nor Tenant elects to terminate this Lease pursuant to this Section, then this Lease shall be and remain unaffected by such condemnation or taking, except that the rents due hereunder shall be reduced in an amount apportioned according to the part of the Property so taken or condemned. For example, if 2% of the Property is taken or condemned, then the rent shall be reduced by 2%.

d. In the event of a termination in any of the cases hereinabove provided, this Lease and the Term and leasehold estate granted shall expire as of the date of such termination with the same effect as if that were the date hereinbefore set for the expiration of the Term of this Lease, and the Rent hereunder shall be apportioned as of such date.

e. In the event of any condemnation or taking hereinabove mentioned of all or a part of the Property, Landlord shall be entitled to all awards of compensation from the taking authority, except for any claims that Tenant may have for loss of its leasehold interest or Tenant's business damages. Each party shall file their own claims and receive their respective portions of any awards in the condemnation proceedings.

17. Successors and Assigns. The covenants, conditions, and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors, and except otherwise provided in this Lease, their respective assigns.

18. Captions and Index. The captions are included only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this Lease nor the intent of any provisions thereof.

19. Recovery from Landlord. Tenant shall look solely to the estate and property of Landlord in the Demised Premises for the satisfaction of Tenant's remedies from the collection of a judgment (or other judicial process) requiring the payment of money by Landlord in the event

of any default or breach by Landlord with respect to any of the terms, covenants and/or conditions of the Lease to be observed and/or performed by Landlord, and no other property or assets of such Landlord shall be subject to levy, execution, or other enforcement procedure for the satisfaction of Tenant's remedies.

20. **Attorneys' Fees.** In the event of any litigation arising out of this Lease and/or subject matter hereof, the prevailing party shall be entitled to costs and attorney's fees at, before, and through all administrative, trial, and appellate levels and post-judgment proceedings.

21. **Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than that stipulated herein for any Rent due hereunder or any other charge shall be deemed to be a waiver by Landlord of the full amount owed (unless expressly provided otherwise by Landlord in writing), nor shall any endorsement or statement on a check or letter accompanying any check or payment be deemed an accord and satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such rent or other charge and may pursue any other remedy in this Lease, at law or in equity.

22. **Applicable Law and Venue.** This lease shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action shall be exclusively in Palm Beach County, Florida unless otherwise required by law.

23. **Environmental Laws and Hazardous Substances.**

a. As used in this paragraph:

i. "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 et seq., and all federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a Hazardous Substance (as defined herein).

ii. "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare, or the environment according to federal, state or local law. The terms includes, without limitation, any substances defined as hazardous material, toxic substances, hazardous waste or hazardous substance under any Environmental Law.

b. Tenant represents, warrants, and agrees that:

i. No Hazardous Substance will be located, placed, transported, manufactured, treated, refined, or handled by any person on, under or about the Property

except in the ordinary course of business and in strict compliance with all applicable Environmental Laws.

ii. Tenant shall not cause, contribute to or permit the release of any Hazardous Substance on, under or about the Property.

iii. Tenant shall immediately notify Landlord if (1) release or threatened release of a Hazardous Substance occurs on, under or about the Property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Tenant shall take all necessary remedial action in accordance with any applicable Environmental Laws.

iv. Tenant shall immediately notify Landlord as soon as Tenant has knowledge of any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any hazardous substance located on, under or about the Property or (2) any violation by Tenant or any tenant of the Property of any Environmental Law. In such event, Landlord has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceeding.

v. Tenant and tenant of the Property shall remain in full compliance with any applicable Environmental Laws.

vi. Landlord shall have the right, at its expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property, and Tenant shall provide the environmental engineer with access to the Property.

vii. As a consequence of any breach of any representation, warranty, or promise made in this paragraph, Tenant shall indemnify and hold Landlord and Landlord's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and reasonable attorney's fees, which Landlord or Landlord's successors or assigns may sustain.

24. Waste or Nuisance. Tenant shall not commit or permit the commission by others of any waste on the Property. Tenant shall nor maintain, commit, or permit the maintenance or commission of any nuisance on the Property.

25. Time is of the Essence. The prompt and punctual performance by Tenant and Landlord of each and every of the terms and provisions of this Lease is of the every essence of this Lease.

26. Sale of Property by Landlord. Tenant acknowledges that Landlord is in settlement negotiations with Palm Beach County regarding a lawsuit filed by Palm Beach

County against Landlord seeking specific enforcement of a contract between Palm Beach County and Landlord for sale of the Property. In the event that Landlord sells the Property to Palm Beach County, whether in settlement of said lawsuit or otherwise, Tenant agrees that it shall and hereby does release and forever discharge Landlord, Palm Beach County and the Property from and against any and all claims arising out of, or in any manner connected with, Palm Beach County's purchase of the Property, the filing of the referenced law suits, negotiations and/or contract between Landlord and Tenant with respect to the Property, and any and all claims, demands, actions, liabilities, damages, costs, expenses and fees existing, expended or incurred as of the date hereof.

In the event Landlord conveys the Property to Palm Beach County, title shall be transferred subject to this Lease.

27. Notices. Except as provided herein to the contrary, all notices required hereunder and/or furnished pursuant or in regard to this Lease or any matter contemplated hereby shall be in writing and shall be considered delivered and received (a) if delivered personally, or (b) if mailed by United States certified mail, return receipt requested, postage prepaid, or shipped prepaid by reliable overnight courier (such as, but not limited to, Federal Express), to the other party at the respective addresses set forth below (or at such other address for a party as shall be specified by notice give pursuant hereto) upon the earlier to occur of (i) the third (3rd) mail or overnight courier delivery date after the mailing or sending thereof; (ii) the date of actual receipt thereof; or (iii) the date of the first attempted delivery thereof if such delivery is refused. Such notices shall be delivered or sent as follows:

If to Landlord:

West Boynton Farms, Inc.
P.O. Box 740631
Boynton Beach, Florida 33474

With a copy to:

Mark A. Perry, Esq.
Perry & Kern, P.A.
50 SE 4th Avenue
Delray Beach, Florida 33483

If to Tenant:

K&M Nursery, Inc.
c/o Kevin Costello
8300 93rd Lane S.
Boynton Beach, Florida 33437

28. **Waivers.** The waiver by either party hereto of any breach of any of the provisions of this Lease must be in writing and shall not constitute a continuing waiver or a waiver of any subsequent breach by the party hereto, either of the same or of another provision of this Lease.

29. **Entire Agreement and Amendment.** This Lease shall constitute the entire understanding of the parties hereto with respect to the subject matter hereof, and no amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and signed by the parties hereto.

30. **Effective Date.** The Effective Date of this Lease shall be April 25
_____, 2008.

31. **Interpretation.** The parties acknowledge that each has had the opportunity to have this Lease reviewed by counsel and that all parties have participated equally in the final wording of this Lease, and in the event of any dispute regarding the meaning or construction of any of the terms or phrases herein, such terms or phrases shall be interpreted or construed as if a neutral person drafted this Lease.

32. **Minerals.** Tenant shall not have any right whatsoever to search for, remove, or develop gas, petroleum, soil, or minerals that may be on, upon or below the Property. However, Tenant shall have the right to use shell rock on the premises, for roadway and road repair purposes associated with the Premises.


IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the date given herein.

Signed, sealed, and delivered
In the presence of:



Witness

Witness



Witness

Witness

LANDLORD

WEST BOYNTON FARMS, INC.,
a Florida Corporation

By: 

Title: Vice Presiden

TENANT

K&M NURSERY, INC., a Florida Corporation

By: 

Title: PRESIDENT

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel "A" (a/k/a "South King"), 20 acres more or less

The South Half of the North Half of the North Half of the Southeast Quarter of Section 14,
Township 45 South, Range 41 East, Palm Beach County, Florida

Parcel "A" (a/k/a "North King"), 20 acres more or less

The North Half of the North Half of the North Half of the Southeast Quarter of Section 14,
Township 45 South, Range 41 East, Palm Beach County, Florida

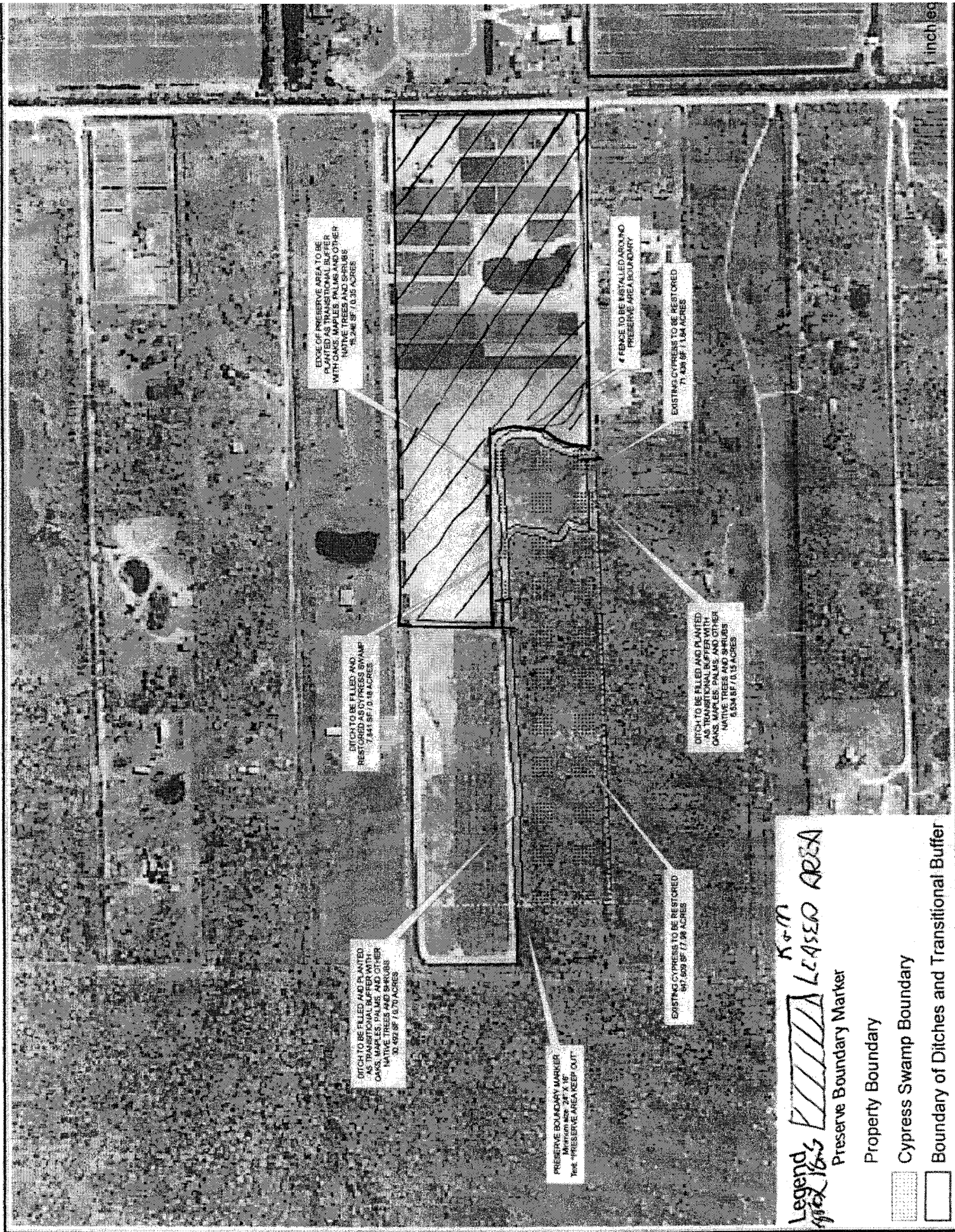


Exhibit "B"