

Prepared by and Return to:



**Babcock Ranch Water Utilities**

as operated by Town & Country Utilities and Babcock Ranch Irrigation

**UTILITY EASEMENT (IRRIGATION)**  
Utility Acceptance Package

Phase: \_\_\_\_\_  
Property Appraiser's Strap No. \_\_\_\_\_

THIS UTILITY EASEMENT is made and executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_, whose mailing address is \_\_\_\_\_ (hereinafter referred to as the "Grantor") to **BABCOCK RANCH IRRIGATION, LLC**, a Delaware limited liability company, whose mailing address is 42850 Crescent Loop – Ste 200, Babcock Ranch, FL 33982, (hereinafter referred to as the "Grantee"):

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations, partnerships (including joint ventures), public bodies and quasi-public bodies.)

WITNESSETH:

WHEREAS, Grantor is lawfully seized in fee simple and is in possession of that certain property situated in Charlotte County, Florida, as more particularly described on Exhibit "A" by metes and bounds and by sketch of the easement which is attached to and by this reference made a part of this Utility Easement (hereinafter referred to as the "Easement Land").

NOW, THEREFORE, in consideration of the sum of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby states as follows:

1. Grantor does hereby grant unto the Grantee, a non-exclusive perpetual utility easement in, on, over, under, through and across the Easement Land, with the full and free right of ingress and egress for the purposes of the construction, installation, reconstruction, rebuilding, replacement, repairing, operation, distribution, and maintenance of lift stations, force mains, water lines, gravity

wastewater mains, well production facilities, Irrigation Quality Water lines, telecommunications systems, data, information and telephone systems, hybrid fiber and coaxial cable systems and all appurtenances relative to these facilities or systems serving the development area.

2. Grantee shall have the right and privilege, from time to time, to alter, improve, enlarge, add to, change the nature or physical characteristics or replace, remove or relocate such facilities or systems in, upon, over, under, through and across the Easement Land along with all rights and privileges necessary or convenient for the full benefit and the use thereof for purposes described in this instrument, including, but not limited to, the right to clear obstructions within the Easement area that might interfere with the purposes for which such facilities or systems which is or might be constructed, along with the right of ingress and egress for personnel and equipment of Grantee, its contractors, agents, successors or assigns, over the adjoining lands of the Grantor, its successors and assigns, including successors in title, for the purpose of maintaining the above facilities and systems which are located in the Easement Land.
3. The Easement granted shall be binding upon the Grantor and its successors and assigns. This Utility Easement shall not be released or amended in any manner without the written consent of all entities having facilities or systems located within the Easement Land, and which consent must be evidenced by an instrument executed with the same formalities as this Utility Easement.
4. Grantor warrants that Grantor has good and indefeasible fee simple title to and possession of the Easement Land and that it has good and lawful right to grant this Easement, and that the Grantee, its successors and assigns shall have all of the rights to the Easement Land as stated herein.
5. All provisions of this Easement, including the benefits and burdens, run with the land and are binding upon and inure to the heirs, assigns, successors, tenants and personal representatives of the parties hereto.
6. Grantor warrants that to the best of Grantor's knowledge and belief, the Easement Land is free and clear of soil and ground water contamination. For and in consideration of Ten and No/Dollars (\$10.00), receipt of which is acknowledged, Grantor shall indemnify and hold Grantee harmless for all claims and damages resulting from any such contamination.
7. **INDEMNIFICATION**. Grantor agrees to indemnify, defend, and hold Grantee harmless from and against any and all damages, losses or claims, including, but not limited to legal fees and expenses, to the extent that such damages, losses or claims are attributable to actions, omissions or negligence in the use of the Easement Land by Grantor, its agents, employees, invitees or independent contractors.

8. **INCONSISTENT USE.** Grantor agrees and covenants that it shall not grant or exercise any rights in the Easement Land inconsistent with, or which interfere with, the rights herein accorded to Grantee. Grantor shall be free to make any use of the Easement Land which is consistent with Grantee's intended use and the requirements of the Babcock Ranch Community Independent Special District (the "District") Design and Specifications Manuals, as may be amended, and the District Water Utilities Policies Manual, as may be amended.
  
9. **DEFAULT.** A default by any party under this Utility Easement shall entitle the other party to all remedies available at law or in equity, which may include but not be limited to the right of actual damages, injunctive relief and/or specific performance.
  
10. **MODIFICATION; WAIVER.** No modification, termination, or amendment of this Utility Easement Agreement may be made except by written agreement between the parties. No failure by any person or entity now or hereafter bound by this Utility Easement to insist upon the strict performance of any covenant, duty agreement or condition of this Utility Easement, or to exercise any right or remedy upon a breach of this Utility Easement, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. Any person or entity now or hereafter bound by any provision of this Utility Easement may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto; provided, however, that such waiver must be affected by a written instrument signed by the waiving party.
  
11. **ATTORNEYS' FEES.** In the event that either Grantor or Grantee seeks to enforce this Utility Easement by court proceedings or otherwise, then the prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution or appellate proceedings.
  
12. **NOTICES.** Any notice, demand, consent, authorization, request, approval or other communication that any party is required, or may desire, to give to or make upon the other party pursuant to this Utility Easement shall be effective and valid only if in writing, signed by the party giving notice and delivered personally to the other parties or sent by express 24-hour guaranteed courier or delivery service or by certified mail of the United States Postal Service, postage prepaid and return receipt requested, addressed to the other party as follows (or to such other place as any party may by notice to the others specify):

To Grantor:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Grantee:

Babcock Ranch Irrigation, LLC  
42850 Crescent Loop – Ste 200  
Babcock Ranch, FL 33982  
Attn: COO

With a copy to:

Kitson & Partners  
4500 PGA Blvd – Suite 400  
Palm Beach Gardens, FL 33418  
Attn: General Counsel

Notice shall be deemed given when received, except that if delivery is not accepted, notice shall be deemed given on the date of such non-acceptance. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day shall be deemed received on the next business day. If any time for giving notice would otherwise expire on a non-business day, the notice period shall be extended to the next succeeding business day. Saturdays, Sundays and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for Grantee and counsel for Grantor may deliver Notice on behalf of Grantee and Grantor.

- 13. **THIRD PARTIES**. This Utility Easement is solely for the benefit of the formal parties hereto, and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Utility Easement. Nothing in this Utility Easement, expressed or implied, is intended or shall be construed to confer upon any person or corporation other than the parties hereto any right, remedy, or claim under or by reason of this Utility Easement or any of the provisions or conditions hereof. Grantee shall be solely responsible for enforcing its rights under this Utility Easement against any interfering third party. Nothing contained in this Utility Easement shall limit or impair the Grantee’s right to protect its rights from interference by a third party.
- 14. **ASSIGNMENT**. Neither party may assign, transfer, or license all or any portion of its rights under this Utility Easement without the prior written consent of the other party. Any assignments attempted to be made by any party without the prior written approval of the other party are void. Notwithstanding the foregoing, any sale or transfer of any portion of the Property by Grantor, which sale or transfer is made subject to this Utility Easement, shall not require the approval or consent of any

party. Further, the parties agree that Grantee may assign its rights hereunder to the District, if done so in connection with that certain Water and Sewer System and Irrigation Quality Water System Lease/Option to Purchase Agreement with MSKP and Babcock Ranch Irrigation, LLC dated December 15, 2016, as amended, and such assignment shall not require consent or approval of any party. This Utility Easement shall constitute a covenant running with title to Easement Land, binding upon the Grantor and its successors and assigns as to the Easement Lands or portions thereof, and any transferee of any portion of the Easement Lands as set forth in this Section. Any such successor, assign, or transferee shall take title subject to the terms of this Utility Easement, be deemed the "Grantor" hereunder and shall assume the Grantor's obligations herewith.

15. **CONTROLLING LAW**. This Utility Easement shall be construed, interpreted and controlled according to the laws of the County of Charlotte, State of Florida without reference to any provision of Florida law which would select the laws of another jurisdiction. Venue of any proceeding related to this Utility Easement shall be exclusively in the appropriate Florida court of the Twentieth Judicial Circuit located in Charlotte County, Florida.
16. **SEVERABILITY**. If any term, covenant, condition, or provision of this Utility Easement or the application thereof to any person, entity, or circumstance shall, at any time or to any extent, be held to be invalid or unenforceable, the remainder of this Utility Easement, or the application of such term or provision to persons, entities, or circumstances other than those in which it is held invalid or unenforceable, shall not be affected thereby, and each remaining provision of this Utility Easement shall be valid and/or enforceable to the fullest extent permitted by law.
17. **BINDING EFFECT**. This Utility Easement and all of the provisions of this Utility Easement shall inure to the benefit of and be binding upon the parties set forth herein and their respective successors and permitted assigns, and the agents, employees, invitees, tenants, subtenants, licensees, lessees, mortgagees in possession and independent contractors thereof, as a covenant running with and binding upon the Easement Area.
18. **AUTHORIZATION**. By execution below, the undersigned represent that they have been duly authorized by the appropriate body or official of their respective entity to execute this Utility Easement, and that each party has complied with all the requirements of law and has full power and authority to comply with the terms and provisions of this instrument.
19. **ENTIRE AGREEMENT**. This Utility Easement contains the entire understanding and agreement between the parties relating to the subject matter hereof, and all prior or extrinsic agreements, understandings, representations and statements, oral or written, are merged herein and/or superseded hereby. There are no other

agreements, oral or written, between the parties with respect to the subject matter hereof except as contained in this Utility Easement.

- 20. **COUNTERPARTS.** This instrument may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original and such counterparts together shall constitute one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.
- 21. **SINGULAR AND PLURAL USES.** Wherever in this Utility Easement the singular is used, the same shall include the plural, and vice-versa, and wherever in this Utility Easement the masculine gender is used, the same shall include the feminine and neuter genders, and vice versa.
- 22. **PARAGRAPH HEADINGS.** The captions, headings, and paragraph numbers appearing in this Utility Easement are inserted as a convenience only and in no way define, limit, construe, or describe the scope or intent of such sections nor in any way affect the interpretation hereof.

**IN WITNESS WHEREOF,** the Grantor has caused this Utility Easement to be executed in Grantor's name, and official seal by the proper officer(s) or representative(s) duly authorized, as of the day and year first above written.

**WITNESSES:**

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

**GRANTOR:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

On \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, as  
\_\_\_\_\_ of \_\_\_\_\_

(Grantor), who is authorized to execute the foregoing on behalf of the Grantor, personally appeared before me and executed this instrument and is: \_\_\_\_\_ is personally known to me or \_\_\_\_\_ produced \_\_\_\_\_ as identification; and who \_\_\_\_\_ did take an oath or \_\_\_\_\_ did not take an oath.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**  
**EASEMENT LAND**