

Lee County Board Of County Commissioners

Blue Sheet No. 20051487

Agenda Item Summary

1. **ACTION REQUESTED/PURPOSE:** Authorize a 3<sup>rd</sup> extension of a 30 day due diligence period and payment of \$50,000 to the sellers for the extension per the Contract for acquisition of the Lee County Fisherman's Cooperative.

2. **WHAT ACTION ACCOMPLISHES:** The extension of due diligence period is needed for further fiscal analysis of the purchase of the Lee County Fisherman's Cooperative, Inc. site.

3. **MANAGEMENT RECOMMENDATION:** Continue in accordance with Board direction.

#6

CGA

5. Meeting Date: DATE CRITICAL

10-25-2005

6. Agenda:

- Consent
- Administrative
- Appeals
- Public
- Walk-On

7. Requirement/Purpose: (specify)

- Statute 125
- Ordinance
- Admin. Code
- Other

8. Request Initiated:

Commissioner \_\_\_\_\_  
 Department \_\_\_\_\_ Independent  
 Division \_\_\_\_\_ County Lands *RC 10-12-05*  
 By: Karen L.W. Forsyth, Director *RC for RW*

9. **Background:** On August 23, 2005, the Board of County Commissioners approved the pursuit of the purchase of the Lee County Fisherman's Cooperative parcel. On August 30, 2005, the Board of County Commissioners approved the acceptance of the Assignment of Contract for the purchase of the Lee County Fisherman's Cooperative, Inc. parcel. The approval of this Blue Sheet will authorize the 3<sup>rd</sup> extension of a 30 day due diligence time period, and payment of \$50,000 for the 3<sup>rd</sup> extension.

**Account:** Funds are available in account 20898530100.506110.

**Attachments:** Purchase Contract

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
<i>R. Clemens</i>				<i>[Signature]</i>	Analyst	Risk	Grants	Mgr.	<i>[Signature]</i>
<i>K. Forsyth</i>				<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

Rec. by CoAtty  
 Date: 10/13/05  
 Time: 1:43 PM  
 Forwarded To: Budget  
 10/13/05 8:25 AM

RECEIVED BY  
 COUNTY ADMIN:  
 10-13-05  
 8:30  
 COUNTY ADMIN  
 FORWARDED TO:  
 10-13-05  
 P.M.

**ASSIGNMENT OF REAL ESTATE CONTRACT**

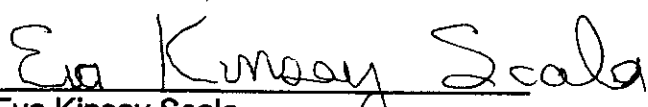
This Assignment of Real Estate Contract ("*Assignment*") is made this 30th day of August, 2005, ("*Assignment Date*") by and between **Eva Kinsey Scala** ("*Assignor*"), whose mailing address is 15696 Bromelaid Drive, Bokeelia, Florida 33922, in consideration of \$10.00 in lawful money and reimbursement of the initial deposit pursuant to the terms of the contract in the sum of \$100,000.00 and other good and valuable consideration paid by **Lee County**, a political subdivision of the State of Florida, whose mailing address is P.O. Box 398, Fort Myers, Florida 33902 ("*Assignee*"), the receipt and sufficiency of which is hereby acknowledged. Assignor hereby transfers and assigns unto Assignee, its successors and assigns, all right, title and interest of Assignor, to the extent thereof, in and to the Contract for Sale and Purchase, first dated May 13, 2005, between Lee County Fisherman's Cooperative, Inc. ("*Seller*" therein) and Eva Kinsey Scala ("*Buyer/Purchaser*" therein), and as subsequently amended under the terms of the Counteroffer, first dated June 1, 2005, with copies of each attached hereto as Exhibit "A" and incorporated herein by reference ("*Agreement*"), and covering the real property, with all improvements thereon, located at 6001 Maria Drive, St. James City, Lee County, Florida ("*Property*"), which Property is more particularly described in the Agreement, and to have the same unto Assignee, its successors and assigns, from and after the Assignment Date set forth above.


Assignee, in accepting this assignment, hereby acknowledges Assignor's obligations and assumes Assignor's obligations of performance contained in the Agreement to be performed from and after the Assignment Date and will diligently and in good faith perform Assignor's obligations in accordance with all of the terms, covenants and conditions contained in the Agreement with respect to obligations of Assignor accruing or arising from and after the Assignment Date, all as if Assignee was an original party to the Agreement and pursuant to the limitations as set forth in Florida Statute 768.28, will save harmless the Assignor against any claims, demands, or actions arising out of the Agreement.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals, intending to be bound as of the day and year first written above.

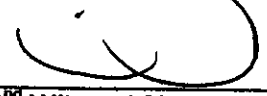
Signed, sealed and delivered  
in the presence of

**ASSIGNOR**  
**Eva Kinsey Scala**

  
\_\_\_\_\_  
Eva Kinsey Scala

  
\_\_\_\_\_  
[1<sup>st</sup> Witness' Signature]  
Deborah J. Scheid

\_\_\_\_\_  
[Type or Print Name]

  
\_\_\_\_\_  
[2<sup>nd</sup> Witness' Signature]  
Eileen M. Grover

**COPY**

[Type or Print Name]

Approved and accepted for and on behalf of the Assignee, Lee County, Florida,  
this 30~~th~~ day of August, 2005.

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: Michelle S. Cooper  
Deputy Clerk

BY: [Signature]  
Chairman

Michele G. Cooper  
[Type or Print Name]



Approved as to form by:

[Signature]  
County Attorney's Office

CONTRACT FOR SALE AND PURCHASE

Lee County Fisherman's Cooperative, Inc., a Florida Corporation as ("Seller") and Eva Kinsey Scala or assigns, as ("Buyer" or "Purchaser") in consideration of \$10.00 and the covenants contained herein, hereby agree that Seller shall sell and Buyer shall buy the following Property ("Property") upon the terms and conditions set forth herein.

FILE COPY

GENERAL TERMS AND CONDITIONS

1. PROPERTY: See Attached Exhibit "A"/ Strap Numbers: Parcel 1: 33-44-22-00-00005.0000; Parcel 2: 33-44-22-00-00006.0000; (6001 Maria Drive, St James City, Fl 33956)

2. PURCHASE PRICE: (subject to adjustments herein) .....\$ 16,000,000.00

3. PAYMENT SCHEDULE:

(a) Deposit(s) to be held in an non interest-bearing account by "Seller" .....\$ 100,000.00

(b) Balance to close (U.S.) cash or cashier's check, subject to adjustments or prorations.....\$ 15,900,000.00

3. TIME FOR ACCEPTANCE: If this offer is not executed by all parties, and the fact of execution communicated in writing between the parties on or before May 23, 2005, 5 p.m., this offer shall be deemed withdrawn and null and void.

4. EFFECTIVE DATE: The Effective Date for this contract shall be the last date upon which the contract is executed by all parties.

5. CLOSING: The closing of title ("Closing") for the purchase and sale under this contract shall occur at the offices of Buyer's attorney in Bokerelia, Florida, at a mutually agreeable time sixty (60) days after the expiration of the Due Diligence Period contained herein.

6. TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Typewritten or handwritten provisions inserted herein, and initialed by both Buyer and Seller, shall control all printed provisions of Contract in conflict therewith.

7. EVIDENCE OF TITLE: Seller shall provide Buyer a copy of Seller's existing title insurance policy, if any for the property within five (5) days of the Effective Date. Additionally, Seller shall issue a title insurance commitment, at Buyer's expense, at least five (5) business days prior to completion of the Inspection Period. The title insurance commitment will constitute the title insurance company's commitment to issue to Buyer, subject to the requirements set forth therein, a marketable type (without surcharge) owner's title insurance policy in the amount of the Purchase Price insuring Buyer's title to the Property. Buyer shall pay the cost of title insurance.

(a) Seller shall convey good and marketable title to the Premises to the Purchaser, insurable in accordance with an ALTA form of Owner's policy at the regular rates of any reputable title company licensed to do business in the State of Florida and selected by Purchaser (the "Title Company"), vacant of all tenancies and other occupants, and free and clear of all liens and encumbrances, except exceptions to title as may be approved of by Purchaser in writing (the "Permitted Exceptions).

(b) Buyer will have fifteen (15) days from the date of receiving the title policy to review same and create a schedule of Permitted Exceptions. If the title to the Property is shown to be subject to any item other than (a) the Permitted Exceptions, or (b) an item that will be discharged at closing, each such item will be treated as a "Title Defect." Promptly following the execution and delivery hereof, Purchaser shall order a title commitment with respect to the purchase of the Premises ("Title Commitment") from the Title Company, with instructions that the Title Commitment is to be delivered simultaneously to Purchaser's and Seller's attorneys. Any matter appearing in the Title Commitment other than the Permitted Exceptions shall be deemed to be a "Title Objection". The existence of mortgages, liens and encumbrances shall not be objections to title provided that properly executed instruments in recordable form necessary to satisfy, discharge or remove the same (as the case may be) are delivered to the Purchaser at the Closing, together with applicable recording and/or filing fees, and provided that the Title Company shall omit any such mortgage, lien or encumbrance from its title insurance policy. Such mortgages, liens and encumbrance may be paid by Seller from the Purchase Price. Purchaser, if request is made not less than two (2) business days prior to the Closing, agrees to provide at the Closing separate certified or cashier's checks as requested, aggregating not more than the balance (as adjusted, pursuant to the provisions of Section 4) of the Purchase Price, to facilitate the satisfaction of any such mortgages, liens and encumbrances. Notwithstanding anything contained herein to the contrary, Seller shall be required to remove any Title Objections (i.e., any objection to title other than the Permitted Exceptions) which may be satisfied by the payment of a liquidated sum of money ("Monetary Encumbrances"), and to the extent that Seller fails to do so, the amount thereof (including interest, penalties and recording charges) shall reduce the Purchase Price on a dollar-for-dollar basis. The foregoing provision shall not be construed as requiring Purchaser to take title to the Property "subject to" any mortgage or other monetary lien or the like.

(c) In the event that Seller shall be unable to convey title to the Premises subject only to the Permitted Exceptions and otherwise in accordance with the provisions of this Agreement (it being agreed and understood that Seller shall not be deemed "unable to convey title" if the defect in title is a defect which is capable of being cured by the payment of money or is due to any willful action or willful inaction of Seller), Seller may, at Seller's option, take such appropriate action (including the prosecution of legal proceedings, if necessary) to perfect the title, by and at the expense of Seller, whereupon the Closing Date (hereinafter defined) shall be extended for up to thirty (30) days for the taking of such action. Notwithstanding the foregoing, in the event that Seller is unable to convey title to the Premises as provided in this Agreement within thirty (30) days from the Closing Date (hereinafter defined), then Purchaser may, at its election (i) accept such title as Seller is able to convey, without abatement or reduction of the Purchase Price or any credit or allowance on account thereof (except as may otherwise be expressly set forth herein), or (ii) cancel this Agreement, in which event Escrow Agent shall return the Deposit to Purchaser and Seller shall pay to Purchaser the net cost of title examination and survey for the Premises, and neither party shall have any further liability or obligations except for those obligations that are expressly stated to survive the cancellation hereof. If, after delivery of the title commitment to Seller, but prior to the Closing Date, a new Title Objection is disclosed by an updated endorsement to the title commitment, the same rights and obligations of both parties as set forth above shall be applicable.

8. **ABSENCE OF LIENS:** Seller shall, both as to the Property and/or personalty, if any, being sold hereunder, furnish to Buyer at time of Closing an affidavit attesting to the absence of any financial statements, claims of lien or potential lienors and further attesting that there have been no improvements or repairs to the Property for ninety (90) days immediately preceding the date of closing. If the Property has been improved, or repaired within said time, Seller shall deliver releases or waivers of mechanic's liens, executed by all general contractors, subcontractors,

suppliers, and materialmen, in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers, materialman and description of said improvements and/or repairs, and further reciting that fact all bills for work or materials to the Property or personalty which could serve as a basis for a mechanic's lien of a claim for damages.

9. **TIME:** Time periods herein of less than six (6) days shall exclude Saturdays, Sundays and legal holidays, and any time period provided for herein which shall end on Saturday, Sunday, or legal holiday shall extend to 5:00 p.m. of the next business day.
10. **DOCUMENTS FOR CLOSING:** Seller shall furnish the deed in form required herein, bill of sale if applicable, mechanic's lien affidavit, assignments of leases, if applicable and acceptable to Buyer, and any corrective instruments that may be required in connection with perfecting the title.
11. **EXPENSES:** The costs of an Owners Title Insurance Policy in the amount of the purchase price are to be paid by the Buyer and the state documentary stamp taxes which are required to be paid in connection with the instrument of conveyance, and recording, are to be paid by Seller.
12. **PRORATIONS:** Taxes, assessments, insurance and other expenses and revenue, if any, of Property shall be prorated through the day prior to closing. Cash at closing shall be increased or decreased as may be required by said prorations. All prorations will be made through the day of closing. Taxes shall be prorated based on the current year's tax with allowance made for maximum allowable discount, homestead and other exceptions. If closing occurs at a date when the current year's millage is not fixed and a current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If current year's assessment is not available, then taxes will be prorated based upon the prior year's tax to be subsequently readjusted upon receipt of tax bill. A statement to that effect shall be on the closing statement.
13. **SPECIAL ASSESSMENT LIENS:** Certified, confirmed and ratified special assessment liens as of date of closing are to be paid by Seller. Liens pending as of the date of closing shall be assumed by Buyer, provided however, that if the improvement has been substantially completed as of Effective Date, such pending lien shall be considered as certified, confirmed or ratified.
14. **CLOSING PROCEDURE, INSURING THE "GAP":** In the event Buyer fails to object to title, Buyer shall take title as is, waiving all rights against Seller as to such intervening defect, except as may be available to Buyer by virtue of warranties, if any, contained in the deed. In the event a portion of the purchase price is to be derived from institutional financing or refinancing, the requirements of the Lending institution as to place, time of day and procedures for closing, and for disbursement of mortgage proceeds, shall control, anything in the Contract to the contrary notwithstanding. The attorney, title agent or closing agent issuing Buyer's owner's title insurance commitment and policy and/or the mortgagee's title insurance commitment and policy must insure against adverse matters pursuant to Section 627.7841, F.S. (1983), as amended.
15. **ATTORNEY'S FEES AND COST:** In any litigation arising out of the Contract, the reasonably prevailing party shall be entitled to recover reasonable attorney's fees and costs.
16. **FAILURE OF PERFORMANCE:** If Buyer fails to perform this Contract within the time specified (including timely payment of all deposits required hereunder), the deposit(s) paid by Buyer may be retained by or for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims, whereupon Buyer and Seller shall be relieved of all obligation under this Contract. If for any reason other than

the inability of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, then Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages caused by Seller's breach.

17. **CONVEYANCE:** Seller shall convey title to the Property by statutory form of warranty deed, subject only to matters explicitly set forth herein as being acceptable to Buyer and those otherwise accepted by Buyer. Personalty, if any, shall, at request of Buyer, be conveyed by an absolute bill of sale with warranty of title, subject to such matters as may be otherwise provided for herein.
18. **OTHER AGREEMENTS:** No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification or change in this contract shall be valid or binding upon the parties unless in writing and executed by the party or parties to be bound thereby.
19. **NO REMOVAL OF MATERIAL:** Absent the prior written consent of Buyer, thereafter Seller will not remove anything (including, without limitation, soil, sand, or rock) from the Property.
20. **PROPERTY INFORMATION:** Seller agrees to furnish to Buyer or to make available to Buyer within fifteen (15) business days after the Effective Date of this contract, any and all documents in Seller's possession or under Seller's control regarding the physical characteristics and dimensions of the Property, including, without limitation, surveys, topographical maps, environmental and geotechnical reports, site plans and other relevant documents (collectively the "Property Information"). Seller shall advise Buyer of all Seller's professionals, including, but without limitation, surveyors, architects, engineers and attorneys, who have assisted Seller in development of the Property to date.
21. **DUE DILIGENCE PERIOD:** Buyer shall have ninety (90) days from date of execution to review and investigate any aspect of the Property which Buyer deems significant including, but without limitation, a thorough review of the Property Information. Matters to be investigated shall include but not be limited to:
  - (i) geo-technical soils testings/borings
  - (ii) an endangered species survey, if applicable, and
  - (iii) Phase I or II Environmental Study.

Seller herewith permits Buyer and/or its agents full and complete access to any technical information in Seller's possession with respect to the property as well as access to the property to conduct its inspections and tests. After completing its inspection of the Property, Buyer shall, at Buyer's sole cost and expense, repair any damage it has caused to the Property. Buyer shall indemnify and hold Seller harmless from any and all liability resulting from Buyer's inspections. If Buyer does not terminate this Contract during the Inspection Period, then Buyer shall accept the Property in "As Is" and "Where Is" condition.

In the event any aspect of the Property is not acceptable to Buyer as determined in Buyer's sole and absolute discretion, then Buyer may terminate this Contract within the inspection period by providing written notice to Seller postmarked prior to the end of the Inspection Period of Buyer's desire to terminate, whereupon Buyer shall receive the return of the Deposit and the parties shall be released of all obligations hereunder. In the event that Buyer shall fail to provide notice of termination as provided in the preceding sentence, then Buyer shall be deemed to have waived

Buyer's right to terminate pursuant to this paragraph and this contract shall remain in full force and effect.

In addition to the initial ninety (90) day "Due Diligence" period above, the Buyer shall have the Right to extend the "Due Diligence" period for thirty (30) days at a time by placing an additional Fifty-thousand dollars (\$50,000.00) into escrow for each additional thirty (30) days needed. Under No circumstances shall the "Due Diligence" period be extended for longer than an additional ninety (90) days in total (three (3) additional extensions). In the event of a closing, all additional escrowed funds shall be credited towards the purchase price.

22. **CONDITIONS PRECEDENT:** The obligation of Buyer to consummate the transactions contemplated by this Contract is subject to the following conditions precedent being complied with in full prior to the closing, each of which conditions may be waived or modified in whole or in part by Buyer in its sole discretion:
- (a) The representations and warranties made by the Seller in this Contract shall be true, complete, accurate and correct in all material respects with the same force and effect as though such representations and warranties had been made on and as of the closing.
  - (b) The Seller shall have performed all covenants and obligations and complied with all conditions required by this Agreement to be performed or complied with by it on or before the closing.
  - (c) The fee simple title to the Property shall be subject only to the title exceptions to which Buyer has not objected shall be insurable at standard rates in the amount of the purchase price therefore.
  - (d) The Property shall be delivered vacant, free of tenancies and other rights of occupancy, and in the condition required by this Contract.
23. **INITIAL DEPOSIT:** One Hundred Thousand (\$100,000.00) Dollars shall be paid as an initial earnest money deposit, in the form of cash, to be held pursuant to the terms of this Contract. It is acknowledged by Buyer and Seller that the initial deposit has been made by Buyer and received by Seller as a condition precedent to this contract. Buyer shall increase the Deposit according to the terms set forth above in Paragraph #21,
24. **CONTINGENCIES:** This Contract for Sale and Purchase is contingent upon the Buyer assuming all responsibilities under that certain current lease agreement with Lee County for the barging of solid waste from the barrier Islands.
25. **SELLER'S WARRANTIES AND REPRESENTATION TO BUYER:** Seller warrants and represents to Buyer the following:
- (i) Seller is the sole owner and/or authorized officer, partner, or trustee of the Property and that Seller is fully empowered and authorized to enter into this contract and to consummate the sale contemplated hereby.



- (ii) To the best of Seller's knowledge there are no violations of any law, rule or regulation, code ordinance or other governmental authority or any board of fire underwriters involving use of the premises or any outstanding notices or orders with respect to the premises.
- (iii) To the best of Seller's knowledge, the Property information to be delivered pursuant to paragraph 20 above will be complete in all respects.
- (iv) Seller represents and warrants that it knows of no condition presently on or under the subject Property which would constitute an "environmental hazard" or which would qualify as hazardous waste under the Resource Conservation Recovery Act, Federal Water Pollution Control Act, National Environmental Policy Act, or any other governmental act or authority having jurisdiction of the subject Property and it has done no act with respect to the Property which would constitute or create an environmental hazard thereon. If Buyer desires an environmental audit, it shall have the Property audited at Buyer's expense and during the "Due Diligence" period.
- (v) To the best of Seller's knowledge, Seller is not subject to, nor a party to, any charter, by-law, mortgage, lien, lease, agreement, contract instrument, law or any valid order, judgment or decree or any other restrictions of any kind or character which would prevent or be violated by the execution of this Contract, the consummation of the transactions contemplated hereunder, or the compliance by Seller with the terms, conditions and provisions hereof.
- (vi) There are not pending, and Seller has received no written notice of, any proposed condemnation proceedings, or private purchase in lieu thereof, affecting or which may affect the Property, or any part thereof. Seller agrees to furnish Buyer with a copy of any notice of any such proceeding within five (5) days after receipt thereof or before the Closing date, whichever is sooner.
- (vii) To the best of Seller's knowledge, no person, firm or entity has any present, conditional or contingent rights to acquire all or any portion of or any interest in the Property.
- (viii) To the best of Seller's knowledge, there are no lawsuits or other proceedings pending or threatened against or related to the Property, or the operation thereof which are not covered.
- (ix) Seller has not granted or entered into any, nor, to Seller's actual knowledge, do there exist any leases (other than the lease mentioned above) with respect to the Property and no party has occupancy with respect to the property.
- (x) Seller has not entered into any unrecorded development or use restrictions with respect to the Property and, to Seller's actual knowledge, there are no unrecorded development or use restrictions affecting the Property.
- (xi) On the Closing Date, there will be no employees for the Property.
- (xii) On the Closing date, there will be no service, maintenance, supply or other similar contracts or agreements in effect with respect to the Property

- (xiii) Seller represents that the transactions contemplated by this Contract have been duly authorized by its shareholders and that the person executing this Contract has been duly authorized.
- (xiv) The Property is not now being used nor, to the best of Seller's knowledge, has it been used in the past for activities involving, directly or indirectly, nor does the Property contain, any hazardous or toxic chemical, material, substance, or waste which is prohibited, limited or regulated by any Federal, State, County, regional, or local authority. To the best of Seller's knowledge there exists no toxic substances on or under the land of others that (1) were discharged from or under the Property, or (2) that threatens to be discharged on or under the Property.
- (xv) There are no underground storage tanks located on the Property to the best of the Seller's knowledge, other than the existing underground fuel tank.

The Buyer's obligation to Close on the purchase and sale set forth in the Contract and contemplated herein, "Close Title" is conditioned upon the truth and accuracy of the foregoing representations on the Closing Date.

If any of the foregoing representations and warranties prove to be untrue in any material respect, then at any time thereafter, Buyer at its sole option, by written notice, may elect to (a) cancel and terminate this Contract, in which event the Escrow Agent shall immediately return the Deposit and interest earned thereon to Buyer; or (b) proceed to close and reserve the right to seek legal action in connection with the curing of any misrepresentations.

- 26. **COOPERATION:** Seller and Buyer agree with each other to cooperate with Buyer with the making or applying for any permit, development agreement, license or other governmental approval which may be required to construct, operate and use the facilities which Buyer intends to use upon the site. Seller further agrees upon the expiration of the "Due Diligence" Period to execute, acknowledge all documents, applications and other papers which may be necessary to make such applications, to obtain such licenses and permits or the transfer all such permits to Buyer at no additional cost to the Buyer; provided that Seller shall not be required to pay any fees, charges or costs thereon.
- 27. **CONFLICT:** In the event of any conflict between the terms, covenants and conditions of the Contract and other attachments hereto, the terms, covenants and conditions of the Contract shall control.
- 28. **REAL ESTATE COMMISSION:** Each party agrees to indemnify the other against any real estate company which may assert a claim for commission in this transaction and hereby acknowledges that there is no other real estate brokerage firm involved in this transaction.
- 29. **ASSIGNMENT:** Buyer has the right to assign its interest herein without notice to, or permission from, Seller.
- 30. **SURVEY:** Seller shall provide Buyer copies of any and all surveys, sketch of survey, and topographies in Seller's possession within fifteen (15) days of the effective date. However, should updates of these items be necessary as a result of Buyer's intended use of the Property, Buyer shall obtain these updates at Buyer's sole cost and expense.

31. **NOTICES:** Notices hereunder shall be in accordance with this Notice provision. Notices hereunder shall be deemed properly delivered when sent by fax or by certified mail, return receipt requested. Notices shall be deemed properly received as of the date indicated on the fax or on the return receipt of certified mail forwarded to the parties as set forth below:

AS TO SELLER:

AS TO BUYER:

John Pataich President  
PO Box 792  
St. James City, FL  
 Phone: 282-4508  
 Fax: \_\_\_\_\_

Bva Kinsey Scala  
 15696 Bromeliad Dr.  
 Bokeelia, FL 33922  
 Phone: (239) 283-6477  
 Cell: (239) 410-4172

WITH A COPY TO:

S. Dalton  
P.O. Drawer 1507  
Ft Myers, FL

WITH A COPY TO:

Timothy J. Bruehl, Esquire  
 Law Office of Waggoner & Bruehl, P.A.  
 5400 Pine Island Rd. Suite D  
 Bokeelia, FL 33922  
 Phone: (239) 283-1076  
 Fax: (239) 283-7567

32. **MEMORANDUM OF CONTRACT:** Seller and Buyer shall execute, prior to the expiration of the Due Diligence, a Memorandum or Short Form of Contract in recordable form together with all documents required to be filed in connection therewith. If this Contract is not terminated in the Due Diligence Period, Buyer may thereafter record the Memorandum or Short Form of Contract. Concurrently with the execution of the Memorandum or Short Form of Contract, Seller and Buyer shall execute a termination or release (the "termination") thereof, which shall be held in escrow with Seller's attorneys and shall only be released upon the release of the Deposit. In the event this Contract is terminated, Buyer and Seller agree that the Termination shall be disbursed in accordance with the provisions of the Contract.

33. **ENVIRONMENTAL EVENT:** Seller shall immediately report in writing to Buyer regarding Seller's knowledge of any discharge onto or contamination of the Property by any substance for which clean up is required by local, state, or federal law, ordinance, rule or regulation ("Environmental Event"), whether such Environmental Event occurred prior to or subsequent to the date hereof. If a material Environmental Event shall occur, Buyer may terminate this Contract, in which event the Deposit shall be returned to Buyer, and the parties hereto shall have no further obligations pursuant to this Contract.

34. **NOTICES RECEIVED:** Seller shall provide Buyer with copies of all notices it receives, within five days of such receipt, during the term of this contract from any and all governmental agencies.

35. **ENVIRONMENTAL PROVISIONS:** Promptly following the execution hereof, Seller shall provide Buyer with all past Environmental reports in its possession regarding the Property. Buyer shall also have the right to perform such tests of the environmental condition of the Property as Buyer shall deem advisable (provided that Buyer shall (a) indemnify Seller for any physical injury or property damage resulting from the performance of such tests and (b) repair any material damage to the Property caused by such tests). If such reports or the result of such tests are not satisfactory, as may

be determined in the sole discretion of the Buyer, Buyer may, at any time prior to expiration of the Due Diligence Period, cancel this Contract in which event the Deposit shall be returned to Borrower.

**38. MAINTENANCE OF PROPERTY PRIOR TO CLOSING:** Between the date hereof and the Closing Date, Seller covenants and agrees as follows:

- (a) No liability shall be incurred nor any transaction entered into relating to the Property which liability or transaction will not be fully satisfied and discharged as of the Closing Date.
- (b) Seller shall not create or consent to any encumbrances which will affect the Property as of the Closing Date.
- (c) Seller will comply with all laws, ordinances, regulations, orders of or issued by any Governmental Authority relating to the nature of the use of the Property.
- (d) Seller shall pay or cause to be paid as of the Closing Date all amounts of real estate taxes, sales tax, use tax, personal property taxes, water and sewer charges and utility assessments and charges due and payable on or before the Closing Date with respect to the Property (subject to adjustment as provided herein).

**39. ITEMS TO BE DELIVERED AT CLOSING:** At the Closing, as a condition to Buyer's obligation to Close Title, the Seller shall deliver the following to the Buyer:

- (a) The Statutory Warranty Deed together with an Affidavit of Consideration;
- (b) All applicable transfer tax or other forms required to be filed in connection with the transaction contemplated by this Agreement together with certified checks for the payment of all applicable transfer taxes, documentary stamp or other charges required to be paid in connection with the transaction contemplated by this Agreement;
- (c) A certification pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, that Seller is not a "foreign person" within the meaning of said Section;
- (d) A Seller's Affidavit of Title in customary form and such other documents as required by the Title Company certifying against work done or supplies delivered to the Property which might be grounds for a mechanic's or materialmen's lien, and certifying that there are no judgments or bankruptcy proceedings against Seller and that there are no tenants entitled to occupy the Property, in form sufficient to enable the Title Company to affirmatively insure against such liens and to otherwise issue title subject only to the Permitted Exceptions;
- (e) Seller's certification that the representations and warranties set forth in this Contract are true and correct as of the Closing Date;
- (f) Transfer of all permits including but not limited to South Florida Water Management District, U.S. Army Corps of Engineers, Florida DEP and Lee County.
- (g) Any other documents customarily required or required by this Contract to be delivered by the Seller.

**40. VIOLATIONS:** Purposely Omitted.

41. ACCESS TO PROPERTY Seller shall provide to Buyer access to the Property during the term of this Contract as long as the Buyer keeps the property in substantially similar condition and does nothing to impair its marketability.

42. CONDEMNATION: In the event of the institution of proceedings, judicial, administrative or otherwise, or Seller receives notice of the aforesaid, which shall relate to the proposed taking of any portion of the Property by eminent domain prior to the Closing Date thereof, or in the event of the taking of any portion of the Property by eminent domain prior to the Closing Date therefore, Buyer shall have the right and option to terminate this Contract by giving the Seller written notice to such effect at any time after its receipt of written notification of any such occurrence. Should Buyer so terminate this Contract, the Deposit shall be returned to Buyer and neither party shall have any further liability or obligation to the other, except as set forth herein. In the event Buyer shall not elect to cancel this Contract, Seller shall assign all proceeds of such taking to Buyer and same shall be Buyer's sole property, and Buyer shall have the sole right to settle any claim in connection with the Property. Seller agrees to promptly deliver a copy of any notice of the institution of the proceedings described in this Paragraph 13 to Buyer.

43. MISCELLANEOUS:

- (a) This Contract shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, executors, administrators, successors and permitted assigns.
- (b) No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.
- (c) This Contract may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original.
- (d) Any singular word or term herein shall also be read as in the plural whenever the sense of this Contract may require it.
- (e) The headings used in this Contract are for convenience only and do not constitute substantive matters to be considered in construing same.

SELLER:

Lee County Fisherman's Cooperative, Inc.

By: [Signature]

Its: President

Date: 6/1/05

BUYER:

Eva Kinsey Scala

By: [Signature]  
Eva Kinsey Scala

Date: 5/13/05

\*Upon execution of this Contract, Seller agrees to provide Buyer with a written Corporate Resolution authorizing the Seller to enter into this agreement and to fulfill the terms herein.

\* Subject to terms of Counter offer

COUNTEROFFER

1. REJECTION OF OFFER. Seller rejects the offer to purchase dated May 13, 2005 for the property briefly described by STRAP Nos.33-44-22-00-00005.0000 and 33-44-22-00-00006.0000.

2. TERMS. This Counteroffer consists of all of the terms of the Offer with modifications to particular clauses as follows:

1. Section 3 of the Offer TIME OF ACCEPTANCE is deleted and in place thereof, a new Paragraph 3 is inserted TIME OF ACCEPTANCE:

If this offer is not executed by all parties, and the fact of execution communicated in writing between the parties on or before June 10, 2005, 5 p.m., this offer shall be deemed withdrawn and null and void.

2. Section 21 of the Contract is amended to delete the final paragraph thereof and replace it with the following language:

In addition to the ninety (90) day due diligence period above, the Buyer shall have the right to extend the due diligence period for thirty (30) days at a time by paying an additional \$50,000.00 to Seller for each additional thirty (30) days needed. Under no circumstance shall the due diligence period be extended longer than an additional ninety (90) days in a total of three additional extensions. In the event of closing, all additional escrowed funds shall be credited to the purchase price. In the event that Buyer has elected to proceed forward after the initial ninety (90) day due diligence period, the initial \$100,000.00 deposit and any funds paid for extensions as provided herein shall be non-refundable except in the event of Seller default. If an extension or extensions are obtained then the closing date shall be thirty (30) days after the expiration of the extension or extensions obtained.

3. Section 32 of the Offer is deleted.

3. ACCEPTANCE AND EXPIRATION OF COUNTEROFFER. This Counteroffer must be signed and delivered back to Seller on or before June 10, 2005 at 5 p.m.

4. RIGHT TO WITHDRAW COUNTEROFFER. The party making this Counteroffer reserves the right to withdraw the Counteroffer at any time prior to acceptance by the other party.

Signatures of Parties Making Counteroffer:

[Signature]
John Patrick, President
Lee County Fisherman's Cooperative, Inc.

Date: 6/1/05

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

Signatures of Parties Accepting Counteroffer:

[Signature]
Eva Murray Scala

Date: 6/19/05

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

**Exhibit "A" Attachment****Description of a Parcel of Land  
Lying in  
Sections 32 and 33, Township 44 South, Range 22 East  
Pine Island, Lee County, Florida**

Beginning at the southeast corner of the West One Half ( $W \frac{1}{2}$ ) of the Southwest One Quarter ( $SW \frac{1}{4}$ ) of said Section 33; thence  $N00^{\circ}11'48''E$  along the east line of said fraction of a section for 450.09 feet to the north line of the south 450 feet of the West One Half ( $W \frac{1}{2}$ ) of the Southwest One Quarter ( $SW \frac{1}{4}$ ) of said Section 33; thence  $S89^{\circ}04'16''W$  along said north line for 1312.52 feet to the northeast corner of the south 450 feet of Government Lot 3 of said Section 32; thence continue  $S89^{\circ}04'16''W$  along said north line for 306.45 feet to the northeast corner of a parcel described in Official Records Book 2307 at Page 4662; thence  $S00^{\circ}55'44''E$  along the east line of said parcel for 123.34 feet (125 feet – record) to the southeast corner of said parcel; thence  $S89^{\circ}04'16''W$  along the south line of said parcel for 20.00 feet; thence  $N00^{\circ}55'44''W$  along the west line of said parcel for 50.00 feet to a concrete monument on the south line of said parcel; thence  $S89^{\circ}04'16''W$  along the south line of said parcel for 127.65 feet (128 feet – record) to a concrete monument; thence continue  $S89^{\circ}04'16''W$  along said south line for 48.45 feet, more or less, to the water side face of a concrete seawall on Pine Island Sound; thence  $S19^{\circ}36'10''E$  along said water side face of seawall for 4.19 feet; thence  $S14^{\circ}40'14''E$  along said water side face of seawall for 18.67 feet; thence  $S04^{\circ}16'13''E$  across the opening of (Lee County Fisherman's Cooperative, Inc.) a boat ramp for 15.95 feet; thence  $S06^{\circ}19'09''E$  along said waterside face of seawall for 66.15 feet; thence  $S49^{\circ}27'49''E$  across the opening of a manmade canal for 118.87 feet to the Mean High Water Line of a mangrove island bordering Pine Island Sound; thence  $S04^{\circ}39'07''E$  along said Mean High Water Line for 40.29 feet; thence  $S06^{\circ}58'01''E$  along said Mean High Water Line for 29.14 feet; thence  $S00^{\circ}00'00''E$  along said Mean High Water Line for 24.38 feet; thence  $S06^{\circ}13'05''E$  along said Mean High Water Line for 29.28 feet; thence  $S06^{\circ}02'42''E$  along said Mean High Water Line for 40.04 feet; thence  $S02^{\circ}25'17''E$  along said Mean High Water Line for 31.49 feet to the south line of said Government Lot 3 of Section 32; thence  $N89^{\circ}04'16''E$

Continued on next page

along the south line of said Government Lot for 372.49 feet to a concrete monument (stamped LB 3377) marking the southeast corner of said Section 32; thence N89°04'16"E along the south line of Section 33 for 31.45 feet to said Mean High Water Line; thence N 35°32'52"E along said Mean High Water Line for 26.23 feet; thence N09°09'40"E along said Mean High Water Line for 96.89 feet; thence N 13°57'18"E along said Mean High Water Line for 114.40 feet; thence N13°57'16"E along said Mean High Water Line for 56.49 feet; thence S83°04'00"E along said Mean High Water Line for 29.67 feet; thence S87°58'33"E along said Mean High Water Line for 52.89 feet; thence N89°56'14"E along said Mean High Water Line for 46.57 feet; thence N 84°21'26"E along said Mean High Water Line for 98.64 feet; thence S79°58'51" E along said Mean High Water Line for 55.44 feet; thence N88°13'45"E along said Mean High Water Line for 13.17 feet; thence S01°21'41"E along said Mean High Water Line for 29.97 feet; thence S02°30'17"E along said Mean High Water Line for 31.39 feet; thence S01°21'41"E along said Mean High Water Line for 52.32 feet; thence S02°41'21" E along said Mean High Water Line for 40.63 feet; thence S11°40'30"W along said Mean High Water Line for 47.88 feet; thence S06°48'33"E along said Mean High Water Line for 43.75 feet; thence S04°11'59"W along said Mean High Water Line for 27.52 feet to the south line of said Section 33; thence N89°04'16"E along the south line of said Section 33 for 922.48 feet to the Point of Beginning.