

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20060639

1. ACTION REQUESTED/PURPOSE: Consider approval and authorize the Chairwoman's execution of a "First Amendment to Agreement for Sale and Purchase" relating to the acquisition of the Babcock Ranch from Kitson & Partners ("MSKP III").

2. WHAT ACTION ACCOMPLISHES: Amends the original Purchase and Sale Agreement entered into between and among the several State agencies, Lee County and Kitson & Partners ("MSKP III") of November 29, 2005 (Lee County execution) to bring certain provisions current and incorporate the Lee County revised version of the Management Agreement.

3. MANAGEMENT RECOMMENDATION: Consider approval of the First Amendment to the Purchase and Sale Agreement.

| | | |
|--|--|---|
| 4. Departmental Category: A12B | | 5. Meeting Date: 5-23-2006 |
| 6. Agenda: | | 7. Requirement/Purpose: (specify) |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Statute | 8. Request Initiated: Commissioner _____ Department <u>County Attorney</u> Division _____ By: <u>David M. Owen</u> [Signature] |
| <input checked="" type="checkbox"/> Administrative | <input type="checkbox"/> Ordinance | |
| <input type="checkbox"/> Appeals | <input type="checkbox"/> Admin. Code | |
| <input type="checkbox"/> Public | <input checked="" type="checkbox"/> Other <u>Purchase Contract</u> | |
| <input type="checkbox"/> Walk-On | | |

9. Background:
On November 29, 2005, the County entered into a Purchase and Sale Agreement with the several agencies of the State and Kitson & Partners ("MSKP III") for acquisition of the Babcock Ranch.

In the ensuing months, certain changes have taken place with respect to the terms and conditions of the Agreement, and an amendment to the original Agreement is necessary to bring the Agreement current.

The relevant changes are these:

- Paragraph 1. revises the description of the property to be sold and retained by the Parties as as the result of the survey.
- Paragraph 2. addresses the per acre price distribution based upon the revisions to the acreage from the survey.

(BACKGROUND CONTINUED - NEXT PAGE)

10. Review for Scheduling:

| Department Director | Purchasing or Contracts | Human Resources | Other | County Attorney | Budget Services | | | | County Manager/P.W. Director |
|---------------------|-------------------------|-----------------|-------|---|-----------------|---------|---------|---------|------------------------------|
| | | | | [Signature] 5/10/06 | Analyst | Risk | Grants | Mgr. | |
| | | | | | | RK 5/11 | 5/10/06 | 5/10/06 | 5/11/06 |

11. Commission Action:

- Approved
 Deferred
 Denied
 Other

| |
|----------------------------|
| RECEIVED BY COUNTY ADMIN: |
| 5-10-06 |
| 4:00 |
| COUNTY ADMIN FORWARDED TO: |
| 5/11/06 |
| 4:20 |

| |
|------------------------------------|
| CO. ATTY'S FORWARDED TO CO. ADMIN. |
| 5/10/06 |
| 3:50 PM |

BACKGROUND: (Continued)

- Paragraphs 3. and 4. take into account the County's commitment to purchase all of the available property in Lee County with the proportionate decrease in the State acquisition cost and recognizes the application for the NOAA Grant with its possible attendant expenses for closing (which are applicable in any regard).
- Paragraph 5. adds the "Lee County" verbiage adopted by the Board on November 29, 2005 into the Management Agreement.
- Paragraph 6. adds the right for Kitson to place utilities over or under roadway(s) as a part of the conservation easement being placed over certain portions of the property. All other conservation easement terms as adopted on November 29, 2005 remain the same.
- Paragraph 7. reinforces that all other terms and conditions of the Purchase and Sale Agreement remain the same.

**FIRST AMENDMENT
TO
AGREEMENT FOR SALE AND PURCHASE**

WHEREAS, MSKPIII, Inc., a Florida corporation, as Seller, and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (“Trustees”), the Florida Fish and Wildlife Conservation Commission (“Commission”), the Florida Department of Agriculture and Consumer Services (“DACS”) and Lee County, Florida (“County”), collectively as Purchaser, entered into an Agreement For Sale and Purchase approved by the Trustees on or about November 22, 2005, approved by the Board of County Commissioners of Lee County on or about November 29, 2005, and by the Commission on December 19, 2005, and DACS on January 10, 2006 (the “Agreement”); and

WHEREAS, the parties desire to amend the Agreement in the particulars as set forth herein;

NOW, THEREFORE, Seller and Purchaser agree as follows:

1. The property to be conveyed by Seller to Trustees and County under the terms and conditions of the Agreement, as amended hereby, is described on Exhibit “1” attached to this First Amendment, less and except property Seller is retaining as described on Exhibit “2” to this First Amendment. All references in the Agreement to the Retained Property shall mean and refer to the property described on Exhibit “2”, hereto. All references in the Agreement to the Property shall mean and refer to Exhibit “1”, less and except the Retained Property. Exhibit “1” differs from Exhibit “A” in the Agreement in that it reflects a less out of a 300-foot right-of-way along Highway 31. Exhibit “2” differs from Exhibit “B” in the Agreement in that it reflects a readjustment of the boundaries between the Retained Property and the property to be conveyed by Seller to Trustees and County to adjust in part for the acreage lost by the less-out of the right-of-way and to increase connectivity to the Fred C. Babcock – Cecil M. Webb Wildlife Management Area.
2. The Purchase Price shall be adjusted by the per acre prices provided for in the Agreement depending on the phase or phases within which the acreage adjustments described in Exhibit “1” and Exhibit “2” are located, subject always to the provision in the Agreement that the Purchase Price shall not exceed \$350,000,000.00, or DSL-approved value per phase.
3. Distinctions in the Agreement to “Commission’s Purchase Price” and “Trustees’ Purchase Price” are hereby eliminated in view of the provisions of House Bill 1347, to be codified at section 259.1052, F.S., authorizing distribution from the Florida Forever Trust Fund of the sum of \$310,000,000.00 in addition to the distributions authorized under section

259.105(3), F.S. References in the Agreement to "Commission's Purchase Price" and "Trustees' Purchase Price" shall read, instead, "State's Purchase Price".

4. The cap of \$40,000,000.00 formerly applied to County's Purchase Price is hereby removed and County shall pay the full purchase price attributed to the Property situate in Lee County, Florida. State's Purchase Price shall be reduced commensurate with the increase in County's Purchase Price so attributed. Trustees are applying for a federal grant for the benefit of County in aid of or reimbursement for a nominal portion of County's Purchase Price (\$2,807,531.00). To the extent any such federal grant requires compliance with the Federal Acquisition Procedures found at 49 CFR Subpart B, County shall be responsible for compliance with such procedures and payment of any amounts as required by such procedures, including, but not limited to payment of documentary stamp taxes due for the project area defined by the National Oceanic and Atmospheric Administration in the grant.
5. a) Article I, 1. of Exhibit E to the Agreement, the form of management agreement to be executed by the parties at closing, is hereby amended to add the following two sentences:

All management decisions relating to the Lee County portion of the Property must be approved in writing by Lee County. Further, no Management Plan or Business Plan as contemplated herein will be deemed final, nor shall they be transmitted to the Board of Trustees for adoption until written approval is given by Lee County relative to its portion of the Property.

5. b) Article I, 2. of Exhibit E to the Agreement, the form of management agreement to be executed by the parties at closing, is hereby amended to add the following sentence:

Both the Management Plan and the Business Plan shall be approved in writing by Lee County with respect to its portion of the Property prior to their transmittal to the Board of Trustees for their adoption and subsequent implementation.

6. Article V.F. of Exhibit F to the Agreement, the form of conservation easement to be granted by Seller to Purchaser at closing, is amended to include the right to place utilities, including cable, over or under the roadway. All other terms and conditions of Article V.F. of the form of conservation easement shall remain unchanged from the form approved by Trustees and County as a part of the Agreement.
7. All other terms and conditions of the Agreement not expressly provided for herein shall remain in full force and effect.

DONE AND AGREED the day and year indicated below.

Signatures begin on the following page

SELLER

Witness as to Purchaser

By: _____
Name: _____
Title: _____

Witness as to Purchaser

(Corporate Seal)

Date signed by Seller

STATE OF FLORIDA)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of May, 2006, by Sydney Kitson, as President and CEO of MSKP, III, a Florida Corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification and did not take an oath.

(NOTARY PUBLIC
SEAL)

Notary Public

(Printed, Typed or Stamped Name of
Notary Public)
Commission No.: _____
My Commission Expires: _____

PURCHASER

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

Witness as to Purchaser

Witness as to Purchaser

By: _____
EVA ARMSTRONG, DIRECTOR
DIVISION OF STATE LANDS,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, as agent for and on behalf
of the Board of Trustees of the Internal
Improvement Trust Fund of the State of
Florida

Date signed by Purchaser

Approved as to Form and Legality

By: _____

Date: _____

STATE OF _____)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Eva Armstrong, Director, Division of State Lands, Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. She is personally known to me.

(NOTARY PUBLIC SEAL)

Notary Public

(Printed, Typed or Stamped Name of
Notary Public)

Commission No.: _____

My Commission Expires: _____

LEE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
(Chairman or Vice Chairman)

Date: _____

Attest: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY:

By _____

Date: _____

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION

Witness as to Purchaser

By: _____
Kenneth Haddad as its Executive Director

Witness as to Purchaser

Date signed by Purchaser

Approved as to Form and Legality

By: _____

Date: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Kenneth Haddad as Executive Director for and on behalf of the Florida Fish and Wildlife Conservation Commission. He is personally known to me.

(NOTARY PUBLIC SEAL)

Notary Public

(Printed, Typed or Stamped Name of
Notary Public)

Commission No.: _____

My Commission Expires: _____

DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES, DIVISION OF
FORESTRY

CHARLES H. BRONSON, COMMISSIONER

Witness as to Purchaser

By: _____
MIKE GRESHAM, DIRECTOR
DIVISION OF ADMINISTRATION

Witness as to Purchaser

Date signed by Purchaser

STATE OF FLORIDA _____)
)
COUNTY OF LEON _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Mike Gresham, Director, Division of Administration, Department of Agriculture and Consumer Services. He is personally known to me.

(NOTARY PUBLIC SEAL)

Notary Public

(Printed, Typed or Stamped Name of
Notary Public)

Commission No.: _____

My Commission Expires: _____

By execution below, the undersigned "Manager" under the Management Agreement hereby agrees to execute and deliver the Management Agreement at each Closing as provided in Paragraph 8 of this Agreement

BABCOCK RANCH MANAGEMENT,
LLC, a Florida limited liability company

By: _____
Sydney Kitson as Managing Member

Attest: _____

Print Name: _____

Title: _____

STATE OF FLORIDA
COUNTY OF _____

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this ____ day of _____, 2006, by Sydney Kitson and _____ as Managing Member and _____, respectively, of Babcock Ranch Management, LLC, a Florida limited liability company, on behalf of the company, who are personally known to me or who provided _____ as identification.

NOTARY PUBLIC, State of Florida
My Commission Expires: _____
My Commission No.: _____