

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

Blue Sheet No. 20060597

**1. ACTION REQUESTED/PURPOSE:**

Approve attached Purchase Agreement by and between Mariner Properties Development, Inc. and Lee County to reassign funds Lee County has on deposit with Mariner Properties Development, Inc. for credits reserved at Little Pine Island Mitigation Bank to credits at the Corkscrew Regional Mitigation Bank.

**2. WHAT ACTION ACCOMPLISHES:**

Transfers funds on deposit for credits at the Little Pine Island Mitigation Bank to credits at the Corkscrew Regional Mitigation Bank. The transfer of credits will provide in basin and in jurisdiction mitigation for the wetland impacts associated with the construction of the Lee County DOT CIP project known as Three Oaks Parkway North

**3. MANAGEMENT RECOMMENDATION:** Approve

**4. Departmental Category:** 09

**C9A**

**5. Meeting Date:** 05-30-2006

**6. Agenda:**

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

**7. Requirement/Purpose: (specify)**

- Statute
- Ordinance
- Admin. Code
- Other

**8. Request Initiated:**

Commissioner \_\_\_\_\_  
 Department Transportation  
 Division \_\_\_\_\_  
 By: Scott M. Gilbertson

**9. Background:**

Lee County DOT requested the attached Purchase Agreement by and between Mariner Properties Development, Inc. and Lee County to transfer funds used to reserve credits at the Little Pine Island Mitigation Bank to reserve 12.12 credits at the Corkscrew Regional Mitigation Bank. The credits were reserved at the Little Pine Island Mitigation Bank for wetland impacts associated with the Lee County DOT CIP project known as Three Oaks Parkway North. The transfer of credits to the Corkscrew Regional Mitigation bank will provide in basin and in jurisdiction wetland mitigation credits for the project.

The purchase price for the credits is \$545, 641 (\$45,000 per credit vs. the current list price of \$48,000 per credit) and will be paid by the reassignment of this same dollar amount which Lee County currently has on deposit with Mariner Properties Development, Inc. for 17.43 Little Pine Island Mitigation Bank credits.

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>S. Gilbertson</i> Date: 5/18/06	<i>[Signature]</i> Date: 5/18/06	NA		<i>[Signature]</i>	<i>[Signature]</i> 5/17/06	<i>[Signature]</i> 5/18/06	<i>[Signature]</i> 5/18/06	<i>[Signature]</i> 5/18/06	<i>[Signature]</i> Date: 5-9-06

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY  
 COUNTY ADMIN  
 5-15-06  
 9:50  
 COUNTY ADMIN  
 5/15/06  
 3:30 PM

Rec. by CoAtty  
 Date: 5/12/06  
 Time: 3:15 PM  
 Forwarded To:  
 8:45 AM  
 5/15/06

## **PURCHASE AGREEMENT**

**FOR**

### **CORKSCREW REGIONAL MITIGATION BANK CREDITS**

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between Mariner Properties Development, Inc. dba Corkscrew Regional Mitigation Bank (the "Banker") and Lee County (the "Purchaser").

WHEREAS, Banker is a lawfully organized corporation in good standing under the laws of the State of Florida doing business as a Mitigation Bank; and

WHEREAS, Banker entered into a Contract (No. C-8302) with the South Florida Water Management District ("SFWMD") dated January 6, 1998 to design, permit, and operate a mitigation bank on SFWMD lands; and

WHEREAS, Chapter 373 F.S. and Section 62-342 FAC encourage the development and use of wetland mitigation banking in order to minimize the uncertainty associated with traditional mitigation practices, provide greater assurance of mitigation success, and in order to yield long-term sustainable regional ecological benefits; and

WHEREAS, Banker has obtained the necessary permits for Banker's operation of the Bank from the State of Florida, Department of Environmental Protection (Permit Number 0198035-001) and the Army Corps of Engineers [Permit Number SAJ-1998-4673 (IP-MN)] and the Federal Interagency Banking Instrument dated September 2003; and

WHEREAS, Purchaser is developing the property as more particularly described on Exhibit "A" attached hereto (the "Impacted Site"); and

WHEREAS, in connection with Purchaser's development of the Impacted Site, Purchaser is required by the applicable authorities, as defined below, to mitigate the impact that Purchaser's development will have on wetlands located on the Impacted Site, either through on-site mitigation or through the purchase of Mitigation Credits; and

WHEREAS, Purchaser desires to achieve the above described mitigation through the purchase of Mitigation Credits from Banker.

NOW THEREFORE, in consideration of the above premises, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. Agreement to Purchase. Banker hereby agrees to sell, and Purchaser hereby agrees to purchase 12.12 Forested Freshwater wetland mitigation credits subject to the terms and conditions of this Agreement.

2. Purchase Price, Deposit and Cash to Close. The Purchase Price for the credits is \$545,641. A deposit of \$545,641 is due upon execution of this Agreement. Said deposit will be paid by the reassignment of this same dollar amount which Lee County currently has on deposit with Mariner Properties Development, Inc. for Little Pine Island Mitigation Bank credits.

3. Delivery Date. Banker shall deliver the credits to Purchaser on January 1, 2009 (the "Delivery Date") or before if the credits are available on the Bank Ledger and the Purchaser has paid the balance due. The Delivery Date is subject to the date when the applicable authorities, including but not limited to the Florida Department of Environmental Protection and the Army Corps of Engineers, have deemed the Credits available and withdrawable by way of minor modifications of the Bank Permits. Banker shall have fifteen (15) days from the Delivery Date to physically transfer the Credits to Purchaser.

4. Use of Deposit Funds. Purchaser hereby agrees that all deposit funds paid to Banker by Purchaser may be used by Banker, in Banker's sole discretion, to offset any and all costs associated with the operation of the Bank.

5. Approval for use of Credits at Impacted Site. Purchaser shall be solely responsible for obtaining, and shall use its best efforts to obtain, all necessary agency approval for the use of the Credits at the Impacted Site. Should Purchaser fail to obtain said agency approval for any reason, Banker shall not be obligated to deliver the Credits to Purchaser. Purchaser hereby represents and covenants that the agencies listed on Exhibit "B" attached hereto are all of the agencies whose approval is necessary for use of the Credits at the Impacted Site. Purchaser further represents and covenants with Banker that the estimated date Purchaser believes said approvals will be obtained is January 1, 2009.

6. Purchaser's Responsibilities. In addition to the above, Purchaser hereby agrees to timely provide copies to Banker of all permit applications to each and every agency necessary for approval of the use of the Credits at the Impacted Site, as well as any and all amendments thereto. Purchaser further agrees to timely provide Banker with copies of all correspondence to and from said agencies, as well as any other documents relating to the approval of the use of the Credits at the Impacted Site that may reasonably be requested by Banker. Purchaser shall provide copies of the final permit(s) to the Banker within 30 days of the permit date. If permit(s) are provided to the Banker more than 30 days after their issuance date, Purchaser shall provide a letter of explanation for the delay in providing copies of permit(s) to the Banker.

7. Purchaser's Acknowledgment. Purchaser acknowledges and understands that Banker is solely responsible and liable for developing the Corkscrew Regional Mitigation Bank on SFWMD lands and for marketing and selling the mitigation bank credits pursuant to the terms of Banker's Contract with SFWMD. Purchaser further acknowledges and understands that Banker is developing the Corkscrew Regional Mitigation Bank as an independent contractor to the SFWMD, that Banker is not an agent of the SFWMD, nor may Banker in any manner create any obligations or liability on behalf of the SFWMD other than as an obligation authorized by the SFWMD ERP process or other SFWMD permitted activities such as an enforcement case. Accordingly, Purchaser releases SFWMD and SFWMD's agents, employees, officers, Governing Board members, successors, and assigns from any and all claims, demands, losses, judgments, damages, causes of action, or other liability (including reasonable attorney's fees and costs, whether suit be brought or not and at all levels of litigation) arising in any manner from Purchaser's purchase or prospective purchase of mitigation bank credits from Banker.

8. Banker's Responsibilities. Banker shall be obligated to deliver the Credits to Purchaser in accordance with Paragraph 3 above, subject to agency approval of the minor modifications of the Bank Permits and forces beyond the control of Banker. Banker shall promptly notify Purchaser if it is anticipated that the Credits will not be available on the Delivery Date. Further, Banker shall provide periodic updates to Purchaser every sixty (60) days to confirm the Delivery Date. If Banker notifies Purchaser that agency approval for the minor modifications of the Bank Permits will not occur on or before the Delivery Date, Banker shall have a sixty (60) day grace period beyond the Delivery Date to secure said agency approval without being in default under this Agreement. Should Banker be unable to obtain said agency approval within the above described grace period, Purchaser or Banker shall have the option of terminating this Agreement and Purchaser shall be entitled to a refund of all deposit funds paid by Purchaser and Banker shall be relieved of any and all liability under this Agreement. Banker shall have ten (10) days from the date of receipt of Purchaser's demand for a return of the deposit funds to return said funds to Purchaser.

9. Attorney's Fees. In any action, including breach, enforcement or interpretation, arising out of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney's fees, costs and expenses, including those incurred on appeal.

10. Applicable Law. This Agreement and the parties' rights and obligations hereunder shall be construed in accordance with the laws of the State of Florida.

11. Binding Effect. This Agreement shall inure to the benefit and be binding upon the successors, administrators and assigns of the parties.

WHEREFORE, the Parties have hereunto set their hands the day and year first above written.

Banker: MARINER PROPERTIES DEVELOPMENT, INC.

\_\_\_\_\_  
By: Raymond A. Pavelka  
Its: President

Purchaser: LEE COUNTY

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit "A"**

Legal Description for \_\_\_\_\_, subject parcel.

## Exhibit "B"

Please check all applicable permits for this project:

- Florida Department of Environmental Protection
- South Florida Water Management District
- Southwest Florida Water Management District
- US Army Corps of Engineers

To be initialed by Purchaser \_\_\_\_\_

To be initialed by Banker \_\_\_\_\_