

RESOLUTION NO. 96 -98

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA APPROVING A CERTAIN PURCHASE AND SALE AGREEMENT FOR THE ACQUISITION OF PROPERTY REQUIRED FOR RETENTION POND SITES FOR THE DEERPARK BOULEVARD AND STATE ROAD 207 PROJECT AND AUTHORIZING THE EXECUTION BY THE COUNTY ADMINISTRATOR.

WHEREAS, St. Johns County has entered into a Grant Agreement with the State of Florida, Department of Commerce, to construct an industrial access road, known as Deerpark Boulevard, and to widen a portion of State Road 207, westerly of I-95 for a distance approximately ½ mile; and

WHEREAS, this project requires two retention pond sites located at the southeast and southwest corner of Cypress Lakes Boulevard and State Road 207; and

WHEREAS, the owners of that property have executed and delivered to the County their offer to sell the required property in the form of a Purchase and Sale Agreement, attached hereto as Exhibit "A", incorporated by reference and made a part hereof.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida as follows:

Section 1. The County Administrator is hereby authorized to execute the above described Purchase and Sale Agreement in substantially the form attached hereto.

Section 2. Upon his determination that all conditions of said Agreement are met, the County Administrator is authorized to complete the purchase of land described in said Agreement for a sum of \$195,000.00, plus closing costs to be paid from Road Impact Fees.

Section 3. The Clerk is authorized to record the Warranty Deed for such purchase and file the Purchase and Sale Agreement in the public records of St. Johns County, Florida and forward a Certified Copy of this Resolution and a copy of the recorded Warranty Deed to the Grantor.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, State of Florida, this 11 day of June, 1996.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: Donald Jordan
Its Chair, Donald Jordan

ATTEST: CARL "BUD" MARKEL, CLERK

By: Sema Paeth
Deputy Clerk

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and effective as of _____, 1996 by and between **PALM SPRING CAPITAL ASSETS, INC.**, a Florida corporation, whose address is: c/o Richard G. Hathaway, P.A., 10151 Deerwood Park Blvd, Bldg 100, Suite 250, Jacksonville, Florida 32256 ("Seller"), and **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is: _____ ("Buyer").

1. **Sale of Property.** Seller agrees to sell and convey to Buyer and Buyer agrees to purchase and acquire from Seller upon the terms and conditions set forth herein the property located in St. Johns County, Florida consisting of the property described on Exhibit A attached hereto and all improvements located thereon (collectively, the "Property"). Included in the Purchase Price and the sale hereunder is all of Seller's right, title and interest (if any) in and to the following (subject, however, to the "Permitted Encumbrances" as hereinafter defined):

(a) all transferable licenses and permits utilized in connection with the Property, if any; and

(b) all easements, rights-of-way, streets and other appurtenances incidental to the Property.

2. **Purchase Price and Deposit.**

(a) The purchase price (the "Purchase Price") is \$195,000, subject to the prorations hereinafter provided. The Purchase Price shall be paid as follows:

<u>Payment</u>	<u>Due Date</u>	<u>Amount</u>
(i) Deposit to be held in Escrow by Escrow Agent (hereinafter defined)	Due within five (5) days of Commission Approval (as hereinafter defined)	\$19,500
(ii) Cash to Close	Closing	\$175,500
TOTAL PURCHASE PRICE		\$195,000

Payment of the Purchase Price shall be in cash or other immediately available funds.

3. **Title Evidence.**

(a) Within ten (10) days from the date of being provided with the legal description of the Property by Buyer as contemplated in Section 10 below. Seller shall obtain (it is agreed that

Escrow Agent shall be Title Agent) and deliver to Buyer a title insurance commitment (the "Commitment") issued by title company authorized to do business in Florida (the "Title Company") agreeing to issue to Buyer, upon recording the Deed an owner's policy of title insurance in the amount of the Purchase Price, insuring Buyer's title to the Property subject only to the following (the "Permitted Encumbrances"):

(i) zoning, restrictions, prohibitions, regulations, ordinances and other requirements of any applicable governmental authority;

(ii) the lien of taxes and assessments for the calendar year of the Closing and all subsequent years;

(iii) restrictions and matters appearing on the plat of the Property; and

(iv) any lien, encumbrance or other matter as to which the Title Company shall commit to affirmatively "insure over" at the minimum risk rate;

(b) Buyer shall notify Seller in writing ("Title Notice") within 10 days after Buyer's receipt of the Commitment if the Commitment discloses any defects in the title to the Property, other than the Permitted Encumbrances. Any such defects appearing in the Commitment not timely noted by Buyer in the Title Notice shall be deemed to have been waived by Buyer. In the event the Commitment discloses any defect and such defect is timely noted in a Title Notice, Seller, at Seller's sole option and expense, shall have 60 days from the date it receives the Title Notice within which to cure such defect (with a corresponding extension of the Closing Date as necessary). If after the expiration of such 60-day period, Seller has not cured title defects, then in such event, Buyer's remedies shall be limited solely to either (x) accepting such title to the Property as Seller shall be able to convey, without adjustment to or diminution of the Purchase Price or (y) terminating this Agreement and receiving a return of the Deposit.

4. Identity and Obligation of Escrow Agent.

(a) Commonwealth Land Title Insurance Company ("Commonwealth") shall be asked to serve as Escrow Agent by Seller, at no additional charge to Seller or Buyer but with the right to serve as underwriter for the title insurance policy. If Commonwealth is unwilling to so serve, then the Buyer shall ask North Florida Title Company ("North Florida") to serve as Escrow Agent, and its compensation, if any, shall be paid by Buyer. As used herein, the term "Escrow Agent" shall mean either Commonwealth, North Florida or such other third party as is mutually agreeable to Buyer and Seller.

(b) If there is any dispute as to whether Escrow Agent is obligated to deliver the Deposit, or any other monies or documents which it holds or as to whom such Deposit, monies or documents are to be delivered, Escrow Agent shall not be obligated to make any delivery, but, in such event, may hold same until receipt by Escrow Agent of an authorization, in writing, signed by

all of the parties having an interest in such dispute directing the disposition of same, or, in the absence of such authorization, Escrow Agent may hold such Deposit, monies or documents until the final determination of the rights of the parties in an appropriate proceeding. If such written authorization is not given or proceeding for such determination is not begun and diligently continued, Escrow Agent may, but is not required to, bring an appropriate interpleader action or proceeding for leave to deposit such Deposit, monies or documents in court, pending such determination. Escrow Agent shall not be responsible for any acts or omissions unless the same constitutes gross negligence or willful misconduct and upon making delivery of the Deposit, monies or documents which Escrow Agent holds in accordance with the terms of this Agreement, Escrow Agent shall have absolutely no further liability hereunder. In the event Escrow Agent places the Deposit, monies or documents that have actually been delivered to Escrow Agent in the Registry of the Circuit Court in and for the County in which the Property is located and files an action of interpleader, naming the parties hereto, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith.

5. Closing. Unless extended by the terms of Section 3 or the other provisions hereof, the closing of the sale of the Property ("Closing") shall take place at the offices of Richard G. Hathaway, P.A., 10151 Deerwood Park Blvd, Bldg 100, Suite 250, Jacksonville, Florida 32256, commencing at 10:00 a.m. on August 31, 1996 (the "Closing Date"), TIME BEING OF THE ESSENCE.

6. Prorations. Real property taxes shall be prorated on the basis of the current year's taxes, if known, at the highest allowable discount. If the Closing shall occur before the amount of current taxes shall have been determined, such taxes shall be apportioned upon the basis of the taxes for the most recent calendar year available and shall be promptly readjusted when the current taxes (at the highest allowable discount) are ascertained.

7. Seller's Representations. Seller represents to Buyer that it is a valid existing Florida corporation in good standing, the owner of the Property and has full right and authority to execute this Agreement and consummate the transactions contemplated hereby subject to the terms, provisions and conditions hereof. Except as to the foregoing or as otherwise expressly set forth herein, Seller makes no representations or warranties with respect to the Property or this transaction.

8. Closing Procedure and Documents.

(a) At the Closing, simultaneously with the payment of the Purchase Price by Buyer, Seller shall deliver or cause to be delivered to Buyer the following:

(i) a special warranty deed (the "Deed") conveying the fee simple title to the Property, subject to the Permitted Encumbrances and the matters referred to on the Commitment;

(ii) an assignment, without recourse to or warranty by, Seller, of any transferable licenses and permits respecting the Property;

(iii) a FIRPTA affidavit;

(iv) an affidavit in the form required by the Title Company to delete the standard printed exception relating to the "gap" and to remove the standard printed exceptions for mechanics' liens and parties in possession other than Occupancy Tenants (except to the extent the same constitute Permitted Encumbrances).

(b) At the Closing, Escrow Agent shall deliver the Deposit and Buyer shall deliver the cash to close, to Seller, in accordance with Section 2. Buyer shall execute and deliver to Seller such consents and authorizations as Seller may reasonably deem necessary to evidence the authority of Buyer to purchase the Property and to consummate all of the actions required to be taken by Buyer under this Agreement.

(c) At the Closing, Seller and Buyer shall mutually execute and deliver to each other a closing statement in customary form.

(d) At the Closing, either the Deed shall contain deed restrictions or the parties shall execute and deliver unto one another an agreement in recordable form evidencing the agreements regarding the Property restrictions specified in the Sections 13 below.

(e) At the Closing, Seller and Purchase shall execute such further documents and agreements as are appropriate or necessary to consummate the transaction as herein contemplated.

9. Closing Expenses. Buyer shall pay the state documentary stamps required to be affixed to the Deed, the cost of the owner's title policy issued pursuant to the Commitment (even though the same shall be obtained by Seller), the cost of recording the Deed, all of the expenses and fees in connection with any mortgage or financing obtained by Buyer in connection with the Property, including, without limitation, any Florida documentary and intangible taxes and recording fees and the cost of the survey and the preparation of the legal description as contemplated in Section 10 below. Each party shall bear the expense of its own legal counsel and appraisals.

10. Survey and Legal Description. Between this date and Closing, Buyer, at its election and expense, may have the Property surveyed. Buyer shall provide written notice (the "Survey Notice") to Seller within 10 days after Buyer's receipt of any such new survey (the "Survey") if the Survey discloses any encroachments or any other title defects affecting the Property (other than Permitted Encumbrances). All such encroachments or defects so noted in the Survey Notice are to be regarded for all purposes under this Agreement as title defects and, as such, are to be treated in the manner provided in Section 3. Any such title defects shown on the Survey and not timely noted in the Survey Notice to Seller shall be deemed to have been waived by Buyer. Attached hereto as Exhibit A is a sketch graphically depicting the Property, consisting of an east parcel and a west

parcel as so noted on Exhibit A. It is the responsibility of Buyer, at its cost, to obtain and provide Seller at least twenty (20) days before the Closing Date legal descriptions of both parcels of the Property. Such legal descriptions shall generally conform to the parcel sketches as shown on Exhibit A which contemplate that the west parcel shall contain 93,600 square feet and the east parcel shall contain 70,200 square feet. If the legal descriptions for the parcels show greater square footages, then the Purchase Price shall be increased at the rate of \$.78 per square foot for the west parcel and/or \$1.74 per square foot for the east parcel. In no event shall the Purchase Price be decreased.

11. Risk of Loss. If, prior to the Closing, the Property or any portion thereof shall be taken pursuant to an exercise of the power of eminent domain or condemnation or shall be damaged by fire or other casualty Buyer may elect to terminate this Agreement and receive the return of the Deposit, or to proceed with the Closing, without adjustment to the Purchase Price, but Buyer shall receive an assignment of Seller's right to any condemnation or insurance proceeds.

12. Condition of Property and Buyer's Right of Inspection.

(a) Between this date and that day which is thirty (30) days after Commission Approval (the "Inspection Termination Date"), Buyer shall have the right to inspect the Property to determine its suitability for Buyer's intended purpose including the right, if it elects, to have environmental tests and inspections done at the Property. Seller hereby gives Buyer the right to enter upon, test and inspect the Property; provided always, (i) that Buyer's entry, testing and inspection shall be at Buyer's sole cost and risk and (ii) that, as limited by applicable Florida law, Buyer shall indemnify Seller and hold it harmless from all losses, claims, demands, costs and expenses, excluding attorney and paralegal expenses, arising out of Buyer's entry, testing and/or inspection of the Property. If Buyer determines that the Property is unsuitable, Buyer shall give written notice to Seller advising of such unsuitability and electing to terminate this Agreement on or prior to the Inspection Termination Date. Such notice of termination must be given on or before the Inspection Termination Date. If such notice is timely given, the Deposit shall be returned to Buyer, and upon such return, this Agreement shall terminate. TIME IS OF THE ESSENCE FOR THE PURPOSE OF THIS SECTION WITH RESPECT TO THE EXERCISE OF THE RIGHT TO TERMINATE BY BUYER HEREUNDER. IF, FOR ANY REASON, BUYER DOES NOT TIMELY EXERCISE ITS RIGHT TO TERMINATE AS SPECIFIED ABOVE, THEN IT SHALL BE CONCLUSIVELY DEEMED THAT BUYER SHALL HAVE WAIVED ITS RIGHT TO TERMINATE AND TO HAVE AGREED TO ACCEPT THE PROPERTY "AS IS."

(b) Buyer has or will inspect the Property and is familiar or will become familiar with the physical condition thereof. Anything to the contrary contained in this Agreement notwithstanding, Seller has not made and does not make any representations or warranties as to the physical or other condition of the Property; expenses, operation, maintenance, profit, rents, loss or use to which the Property or any part thereof may be put; or any other matter or thing affecting or pertaining to the Property, except to the extent specifically provided otherwise in this Agreement, and the Buyer herein expressly acknowledges and agrees at Closing to take the same "as is" as of the Closing Date. It is understood and agreed that all understandings and agreements hereto had

between the parties are merged into this Agreement and that the same is entered into after full investigation, neither party relying upon any statements or representations not embodied in this Agreement, made by the other. Buyer acknowledges that Seller has afforded the opportunity for a full and complete investigation, examination, and inspection of the Property and all matters and items relating thereto or connected therewith. Buyer expressly releases and relieves Seller from any liability, warranty, or obligation relating to the condition of the Property, specifically including: latent and patent conditions; the presence or release of hazardous or toxic wastes, substance and materials on or from the Property or any adjoining property; zoning requirements; subsoil conditions; storm water drainage conditions; the existence or condition of utilities, if any, at the Property; and any and all other matters relating to the physical or other condition of the Property. The provisions of this Section 12 shall survive the Closing.

13. Property Restrictions. Either in the Deed or in a separate recordable agreement, as elected by Seller, Buyer and Seller agree to restrict the Property, and Buyer's ownership and use thereof, as follows:

(a) Seller approves Buyer's improvement of the Property for the utilization thereof as two (2) drainage ponds generally conforming to the sketches as shown on Exhibit A. Except therefore, Buyer may not improve or otherwise alter the condition of the Property without Seller's prior written consent, which consent shall not be unreasonably withheld or delayed.

(b) If and when Buyer improves the Property for drainage ponds, Seller shall have the right to connect to and expand such drainage ponds so as to accommodate stormwater drainage and retention from Seller's adjoining property, provided (i) such improvement and expansion shall be at Seller's sole expense and (ii) such improvement and expansion shall not adversely effect the drainage capacity or utilization of the Property for Buyer. If such connection and/or expansion is effected by the Seller, the Seller shall bear a prorata portion of the maintenance of the expanded drainage pond.

(c) As part of its improvement of the Property, Buyer shall landscape the banks adjoining the drainage ponds with sod and maintain the same in a neat, attractive manner. Any other landscaping shall require Seller's prior written consent, which consent shall not be unreasonably withheld or delayed.

(d) Buyer shall not fence the Property or otherwise construct visual barriers impeding the visibility of Seller's adjoining property from all surrounding rights of way and properties except with Seller's prior written consent, which consent shall not be unreasonably withheld or delayed. It is anticipated that Seller, or its successors, may improve its adjoining property with office building(s), shopping center(s), residential subdivision(s) or other improvements and that visibility of such improvements from surrounding rights of way and properties are of recognized significance and importance to Seller. Accordingly, it is specifically agreed that Seller's prohibition against fencing or other barriers is not unreasonable. The provisions herein are subject to the understanding

that if Seller's fence prohibition results in an increase in the cost of Buyer's liability insurance, then as a condition of its prohibition, Seller shall pay the increased liability insurance cost.

14. Prohibition of Recording. Neither party may record this Agreement or any memorandum hereof without the prior written consent of the other.

15. Default.

(a) If Buyer shall default in the payment of the Purchase Price (including, but not limited to, any portion of the Deposit) or otherwise default in the performance of any of the terms, covenants, and conditions under this Agreement on the part of the Buyer to be performed and such default continues for a period of ten (10) days after notice thereof, Seller may receive and retain as full and agreed upon liquidated damages the Deposit, whereupon Buyer and Seller shall be relieved, each as to the other, of all obligations hereunder, or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Agreement. The right to retain the Deposit or to proceed in equity as set forth above shall be Seller's sole remedy.

(b) If Seller shall default in the performance of any of the terms, covenants and conditions under this Agreement on the part of Seller to be performed and such default continues for a period of ten (10) days after notice thereof, Buyer may demand and receive from Seller as agreed upon liquidated damages the sum of \$19,500.00, whereupon Buyer and Seller shall be relieved, each as to the other, of all obligations hereunder, or Buyer, at Buyer's option, may proceed in equity to enforce Buyer's rights under this Agreement. The right to receive \$19,500.00 as liquidated damages or to proceed in equity to specifically enforce this Agreement shall be Buyer's sole remedy.

16. Survival. All covenants, terms, provisions, representations and warranties set forth in this Agreement, except as specifically provided otherwise herein, shall at the Closing be merged into the Deed.

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

18. TIME OF ESSENCE. TIME SHALL BE DEEMED OF THE ESSENCE ON THE PART OF Buyer IN PERFORMING ALL OF THE TERMS AND CONDITIONS ON THE PART OF Buyer TO BE PERFORMED HEREUNDER.

19. Modification Must Be In Writing. No modification or termination of this Agreement shall be valid unless executed in writing and signed by the applicable duly authorized representatives of Seller and Buyer.

20. No Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted, and any such written waiver shall

only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

21. Captions and Section Headings. Captions and Section headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement, nor the intent of any provision thereof.

22. Acceptance of the Deed. The acceptance of the Deed by Buyer shall be deemed to be the full performance and discharge of every agreement, obligation, and covenant, guaranty, representation, or warranty on the part of Seller to be performed pursuant to the provisions of this Agreement in respect of the Property, except for those Sections or sub-sections specifically stated to survive the Closing.

23. Assignability; Binding Effect. Neither this Agreement, nor any of the rights or privileges conferred upon Buyer hereunder, may be assigned by Buyer without the prior written consent of Seller, which consent may be withheld by Seller in Seller's sole and absolute discretion. Subject to the foregoing limitation as to assignability, this Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

24. INTENTIONALLY OMITTED.

25. Notices. All notices, offers, acceptances, rejections, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been given (i) when delivered in person, or (ii) when sent by telecopier (with receipt confirmed), or (iii) when sent by first class certified or registered mail, postage prepaid, return receipt requested, or (iv) on receipt after being sent by express mail or a reputable delivery service guaranteeing overnight delivery; provided that in the case of notice given by the methods described in (i) or (ii) above, a copy is immediately mailed by first class registered or certified mail, postage prepaid, return receipt requested, in each case addressed as follows:

If to Seller: Palm Spring Capital Assets, Inc.
 c/o Richard G. Hathaway, P.A.
 10151 Deerwood Park Blvd, Bldg 100, Ste. 250
 Jacksonville, FL 32256
 904-998-1130 (fax)

with a copy to: Richard G. Hathaway, P.A.
 10151 Deerwood Park Blvd, Bldg 100, Ste. 250
 Jacksonville, FL 32256
 904-998-1130 (fax)

If to Buyer:

with a copy to:

If to Escrow Agent: TO BE DETERMINED WHEN
IDENTITY OF ESCROW AGENT
IS KNOWN

26. Waiver of Strict Construction against Drafting Party. Should any provision of this Agreement be subject to judicial interpretation, it is agreed that the court interpreting or considering such provision not apply the presumption or rule of construction that the terms of this Agreement be more strictly construed against the party which itself or through its counsel or other agent prepared the same, as all parties hereto have participated in the preparation of the final form of this Agreement through review by their respective counsel and the negotiation of changes in language in any provision deemed unsuitable or inadequate as initially written, and, therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.

27. Governing Law and Jurisdiction. This Agreement shall be deemed to be governed by, construed and enforced in accordance with the laws of the State of Florida.

28. Third Parties. This Agreement shall not be deemed to confer in favor of any third parties any rights whatsoever as third-party beneficiaries, the parties hereto intending by the provisions hereof to confer no such benefits or status.

29. Calculation of Time Periods. Whenever this Agreement calls for or contemplates a period of time for the performance of any term, provision or condition of this Agreement, all of the days in such period of time shall be calculated consecutively without regard to whether any of the days falling in such period of time shall be a Saturday, Sunday or other non-business day; provided, however, if the last day of any such time period shall happen to fall on a Saturday, Sunday or other non-business day, the last day shall be extended to the next succeeding business day immediately thereafter occurring.

30. Radon Gas Notification. In accordance with the requirements of Section 404.056(8), Florida Statutes the following notice is hereby given:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding

radon and radon testing may be obtained from the local County Public Health Center.

31. Commission Approval. This Agreement is subject to the adoption of a resolution by the St. Johns County Board of County Commissioners authorizing the County Administrator to execute this Agreement and approving the performance of this Agreement by Buyer ("Commission Approval"). Buyer shall exert good faith, best efforts to obtain Commission Approval as expeditiously as reasonably possible. If Commission Approval is not obtained on or before July 31, 1996, Seller, but not Buyer, may terminate this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of the date first above written.

BUYER:

ST. JOHNS COUNTY, FLORIDA

Norma G. Pirkle
Witness name: NORMA G. PIRKLE

Nicholas M. Meiszer
Name: NICHOLAS M. WEISZER
Title: COUNTY ADMINISTRATOR

Margarette Laidlaw
Witness name: MARGARETTE LAIDLAW

SELLER:

PALM SPRING CAPITAL ASSETS, INC.

Shelley
Witness name: _____

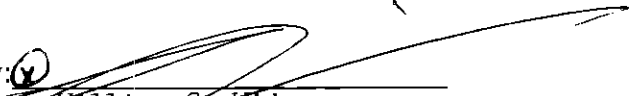
Ameer A. Edo
Name: AMEER A. EDO
Title: PRESIDENT

Linda S. de Nobrega
Witness name: LINDA S. DE NOBRIGA

Commonwealth Land Title Ins. Co. Inc. Escrow Agent

Deposit received by _____ (Escrow Agent) which the Escrow Agent agrees to retain in accordance with the terms and conditions of the within Agreement.

ESCROW AGENT:

By: 
Name: William G. Widner
Title: Asst. Vice Pres. & Branch Mgr.
Date: 6/25/96

