

RESOLUTION NO. 2002- 183

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE EXECUTION OF THE PURCHASE AND SALE AGREEMENT FOR THE ACQUISITION OF PROPERTY FOR FUTURE OFF-BEACH PUBLIC PARKING.**

**RECITALS**

**WHEREAS**, the owner of approximately 2.4 acres of property has agreed to the terms described in the Purchase and Sale Agreement, attached hereto as Exhibit "A", incorporated by reference and made a part hereof; and

**WHEREAS**, this property has been identified by the Recreation Department as desirable for off-beach parking since it is directly across from the Matanzas Beach Access Ramp and is of ample size to accommodate beachgoers, as shown on attached map hereto as Exhibit "B", incorporated by reference and made a part hereof; and

**WHEREAS**, the land is adjacent to 1.108 acres of property the County purchased on June 5, 2001 for future off-beach parking adding additional acreage for this purpose at the same location; and

**WHEREAS**, acquisition of this site will allow the County to demolish the boarded up cottages and provide a more pleasing landscape for the neighboring community; and

**WHEREAS**, the average of the two appraisals valued the property for \$734,000.00 and negotiations with the property owner have resulted in the established selling price of \$890,000.00; and

**WHEREAS**, due to increasing values and the lack of vacant property located in close proximity to beach access points, approval of the purchase of this parcel even at higher than appraised value is recommended by the Recreation Department; and

**WHEREAS**, given that the recommended purchase price exceeds the average appraised price of the two appraisals, this transaction is governed by Section 125.355(b) Florida Statutes approving the purchase requires an extraordinary vote by the Board of County Commissioners.

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

Section 1. The above Recitals are incorporated by reference and are findings of fact.

Section 2. The County Administrator is authorized to take action to close this Agreement and complete the purchase upon compliance with all terms of the Agreement.

Section 3. The Clerk is instructed to file the original Purchase and Sale Agreement and mail executed copies of this Resolution and the Agreement to the Seller as defined in the Agreement.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 17<sup>th</sup> day of September 2002.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

By: James E. Bryant  
James E. Bryant, Chairman

ATTEST: Cheryl Strickland, Clerk

By: Patricia DeGrande  
Deputy Clerk

RENDITION DATE 9-20-02

EXHIBIT "A" TO RESOLUTION

**PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT** ("Agreement") is made and effective as of \_\_\_\_\_, 2002, by and between **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32084 ("Buyer") and **SAMY F. BISHAI**, whose address is 4040 Vaill Point Terrace, St. Augustine, Florida 32086 ("Seller").

**WITNESSETH:**

**WHEREAS**, the County is desirous of purchasing property owned by the Seller and Seller is desirous of selling upon the terms and conditions hereinafter expressed; and

**WHEREAS**, it is in the public interest for the Buyer to acquire fee simple ownership of approximately 2.4 acres located on the northwest corner of A1A and Matanzas Avenue in Windswept Acres for future off beach parking. The property is described in Exhibit "A", attached hereto, incorporated by reference and made a part hereof, (hereinafter "Property"); and

**NOW THEREFORE**, it is mutually agreed as follows:

1. Purchase Price and Deposit.

(a) The purchase price ("Purchase Price") is **\$890,000.00** 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 fifteen (15) days of Commission Approval (hereinafter defined)	<b>\$8,900.00</b>
(ii) Cash to Close	Closing Day	<b>\$881,100.00</b>
<b>TOTAL PURCHASE PRICE</b>		<b>\$890,000.00</b>

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

2. Title Evidence.

(a) Buyer agrees, at its sole option and expense, to take all reasonable action to obtain within 45 days from the effective date, a title guarantee commitment ("Commitment") issued by a title company authorized to do business in the State of Florida ("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

(b) Buyer shall notify Seller in writing (“Title Notice”) within 10 day after Buyer’s receipt of the Commitment if the Commitment cannot be obtained or it 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 to 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.

### 3. Identity and Obligation of Escrow Agent.

(a) **INDEPENDENT TITLE OF ST. AUGUSTINE**, 2676 US 1 South , St. Augustine, Florida 32086, shall be Escrow Agent, at no additional charge to Seller or Buyer but with the right to serve as underwriter for the title insurance policy.

(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 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 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.

4. Closing. Unless extended by the terms of Section 2, or other provisions hereof, the closing of the sale of the Property ("Closing") shall take place at the offices of the Escrow Agent, Independent Title of St. Augustine, 2676 US 1 South, St. Augustine, Florida 32084, on or before 90 days from the date of this Agreement ("Closing Date"), TIME BEING OF THE ESSENCE.

5. Prorations. Any real property taxes shall be prorated on the basis of the 2002 taxes at the highest allowable discount.

6. Seller's Representations. Seller represents to Buyer that he owns fee simple title to 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.

7. 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 general warranty deed ("Deed") conveying the fee simple title to the Property, subject only to the Permitted Encumbrances and the matters referred to on the Commitment;

(ii) a Non-Foreign Certificate and Request for Taxpayer Identification Number "FIRPTA" affidavit to be signed by seller.

(iii) 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' lien 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 1. 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 other 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, Seller and Buyer shall execute such further documents and agreements as are reasonably appropriate or reasonably necessary to consummate the transaction as herein contemplated.

8. Closing Expenses. Buyer shall pay the cost of the owner's title policy issued pursuant to the Commitment, the cost of recording the deed, all of the expenses in connection with recording fees. Each party shall bear the expense of its own legal counsel.

9. Survey and Legal Description. Between this date and Closing, Buyer shall have the Property surveyed. Buyer shall provide written notice ("Survey Notice") to Seller within 10 days after Buyer's receipt of any such new survey ("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 2. 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.

10. Condition of Property and Buyer's Right of Inspection. Buyer shall have the right for ninety (90) days from the date of this Agreement ("Inspection Termination Date") to enter upon the Property for the purpose of physically inspecting the Property and conducting surveys, studies and tests or assessments including but not limited to Phase I Environmental Study, Real Estate Appraisal, and Engineering analysis to determine the Property's suitability for Buyer's intended purpose. Seller hereby gives Buyer the right to enter upon, test and inspect the Property at Buyer's sole cost and risk. Buyer agrees to provide Seller with copies of all reports conducted on 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.

11. Default. (a) Default by Seller. If Seller defaults by performance of any of Seller's obligations in this Agreement or breaches any warranty or representation, Buyer may receive an immediate refund of the Deposit, and then at its option either may terminate this Agreement and sue for damages or sue for specific performance. (b) Default by Buyer. If Buyer defaults in the performance of any of Buyer's obligations in this Agreement for any reason, other than the Seller's default or the termination of this Agreement pursuant to the specific provisions hereof, Seller will be entitled to receive the Deposit as Seller's sole and exclusive remedy for any such default, Seller hereby waiving any rights it might otherwise have to sue for damages or specific performance, and this Agreement and the rights of the parties hereunder shall immediately and automatically terminate.

12. 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.

13. 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.

14. 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.

15. 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.

16. Assignability. This Agreement may not be assigned by Seller or Buyer without the written consent of all parties.

17. Time. Time is of the essence of all provisions of this Agreement.

18. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Florida. The invalidation of one or more of the terms of this Agreement shall not affect the validity of the remaining terms. It is agreed venue for determination of such disputes shall be in St. Johns County.

19. Notices. Any notice hereunder must be in writing and delivered personally or by United States Mail, Registered or Certified, Return Receipt Requested; United States Express Mail; or Federal Express or equivalent courier service, and shall be effective only if and when received by the party to be notified. For purposes of notice, the addresses of the parties shall be set forth below or as may be designated by notice to the other from time to time.

Seller:           **Samy F. Bishai**  
4040 Vaill Point Terrace  
St. Augustine, Fl 32086

Buyer:           **St. Johns County**  
Ben W. Adams, Jr., County Administrator  
4020 Lewis Speedway  
St. Augustine, Florida 32095

Escrow Agent: **Independent Title of St. Augustine**  
2676 US 1 South  
St. Augustine, Florida 32084

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties and there are no agreements, representations or warranties, oral or written which have not been incorporated herein.

21. Applicability. This Agreement shall be binding upon and shall inure to the benefits of the parties hereto and their respective successors and, to the extent that assignment is permitted hereunder, their assigns.

22. Commission Dues. Buyer and Seller agree that there are no real estate commissions that may be owed as a result of this transaction.

23. Board of County Commission Approval. This Agreement is subject to the adoption of a Resolution by the Board of County Commissioners, of St. Johns County authorizing the County Administrator to execute this Agreement and approving the performance of this Agreement by Buyer.

24. Effective Date: The effective date of this Agreement shall be the first date upon which this Agreement or its valid counterparties are properly executed by all named parties.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement or its counterparties.

**SELLER:**

\_\_\_\_\_  
Witness Name \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_  
**SAMY F. BISHAI**

\_\_\_\_\_  
Witness Name \_\_\_\_\_

**STATE OF FLORIDA  
COUNTY OF ST. JOHNS**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by **SAMY F. BISHAI**, Grantor. He is personally know to me or has produced a driver's license \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary

**BUYER:  
ST. JOHNS COUNTY, FLORIDA**

\_\_\_\_\_  
Witness Name: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_  
**Ben W. Adams, Jr.**  
**County Administrator**

\_\_\_\_\_  
Witness Name \_\_\_\_\_

**STATE OF FLORIDA  
COUNTY OF ST. JOHNS**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2002 by **BEN W. ADAMS, JR.**, County Administrator for St. Johns County, Florida, who is personally known to me.

\_\_\_\_\_  
Notary

**Deputy Clerk to Attest:**

\_\_\_\_\_

Deposit received by \_\_\_\_\_, (Escrow Agent), which the Escrow agent agrees to return in accordance with the terms and conditions of the within Agreement.

**ESCROW AGENT**

By: **Independent Title of St. Augustine**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

EXHIBIT "A"

A part of Block "A", WINDSWEPT ACRES, Unit No. 2, as recorded in Map Book 8, page 98 of the Public Records of St. Johns County, Florida, and more fully described as follows: Commence at the Southwest corner of said Block "A" for the Point of Beginning; thence N 74° 56' E 254.0 feet along the North right of way line of Mickler's Road to a point on the West right of way line of State Road A1A; thence N 24° 10' W 240.3 feet along the West right of way line of State Road A1A; thence N 22° 57' W 224.7 feet along the West right of way line of State Road A1A; thence S 76° 31' 30" W 165.25 feet to a point on the E right of way line of First Street; thence S 15° 04' E 465.0 feet along the East right of way line of First Street to the Point of Beginning.