

RESOLUTION NO. 2002- 227

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS OF A PURCHASE AND SALE AGREEMENT FOR THE ACQUISITION OF PROPERTY FOR THE FUTURE EXPANSION OF THE COUNTY COMPLEX ON LEWIS SPEEDWAY.

WHEREAS, Florida East Coast Railway, L.L.C., has executed and presented to the County a Purchase and Sale Agreement, attached hereto as Exhibit "A", incorporated by reference and made a part hereof; and

WHEREAS, the purchase of the property would be for future expansion of the County Complex on Lewis Speedway; and

WHEREAS, the purchase price of \$550,000.00 will acquire ten acres to the south of the existing County Complex for future expansion and has been appraised by Robert D. Crenshaw, MAI at \$55,000.00 per acre; and

WHEREAS, it is in the best interest of the public to acquire the property to better serve the citizens.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

1. The above recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.
2. The Board of County Commissioners hereby approves the Purchase and Sale Agreement and Authorizes the County Administrator to execute said Agreement and take action to close and complete the purchase upon compliance with Florida Statute 125.355.
3. The Clerk of the Circuit Court is instructed to file the original Purchase and Sale Agreement in the Public Records of St. Johns County, Florida.

PASSED AND ADOPTED this 5th day of November, 2002.

**BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA**

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

RENDITION DATE 11-12-02

ATTEST: Cheryl Strickland, Clerk

By: Patricia A. Grande
Deputy Clerk

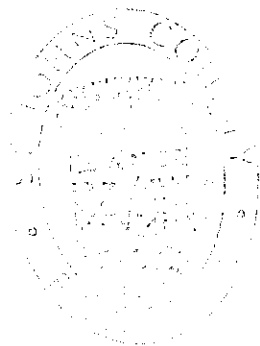


Exhibit A to Resolution

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 FLORIDA EAST COAST RAILWAY, L.L.C., whose address is P.O. Box 1048, St. Augustine, Florida 32085 ("Seller").

WITNESSETH:

WHEREAS, the County is desirous of purchasing 10 acres that is 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 title to the property shown in Exhibit "A", attached hereto, incorporated by reference and made a part hereof, (hereinafter "Property") for future expansion of the County complex; and

NOW THEREFORE, it is mutually agreed as follows:

1. Purchase Price and Deposit.

(a) The purchase price ("Purchase Price") is \$550,000.00 (10 acres x \$55,000.00), 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)	\$55,000.00
(ii) Cash to Close	Closing Day	\$495,000.00
TOTAL PURCHASE PRICE		\$550,000.00

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 32086, on or before December 31, 2002 ("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. 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 ("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.

7. 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.

8. Survey and Legal Description. Between this date and Closing, Buyer at its own expense 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.

9. 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 1 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.

10. DEFAULT:

- a. Default by Seller. If the SELLER fails to perform any of the covenants of this Contract, the down payment paid by BUYER, at the option of the BUYER, shall be returned to the BUYER on demand; or, the BUYER shall have only the right of specific performance.
- b. Default by PURCHASER. If BUYER fails to perform any of the covenants of this Contract, SELLER will be entitled to receive the deposit paid pursuant to this Contract as consideration for the execution of this Contract and as agreed liquidated damages.

11. 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.

12. 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.

13. 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.

14. 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.

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

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

17. 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.

18. Notices. Any notice hereunder must be in writing and delivered personally or by United State Mail, Registered or Certified, Return Receipt Requested; United State Express Mail; or Federal Express or equivalent courier service, and shall not 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: **Florida East Coast Railway, L.L.C.**
M.O. Bagley
P.O. Box 1048
St. Augustine, Florida 32085

Buyer: **St. Johns County, Florida**
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 32086

19. 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.

20. 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.

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

22. Board of County Commission Approval. This Agreement is subject to the adoption of a resolution by the St. Johns County Commissioners authorizing the County Administrator to execute this Agreement and approving the performance of this Agreement by Buyer. This Agreement is contingent upon the Board of County Commissioners approving an appropriate dedicated funding source for the purchase of this parcel.

23. 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.

SELLERS:

Florida East Coast Railway, L.L.C.

By: R.F. MacSwain Date: 8/30/02
Print Name: R.F. MacSwain
Title: Executive Vice President

Kathy Petroglou
Witness Name KATHY PETROGLOU

Paula B. Ake
Witness Name Paula B. Ake

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 30th day of Aug, 2002, by R.F. Mac Swain, Executive Vice President of FLORIDA EAST COAST RAILWAY, L.L.C., Grantor. Who is personally know to me ~~or has produced a driver's license~~ _____ as identification.

Theresa W. Rayno
Notary

Theresa W. Rayno
Notary Public, State of Florida
My Comm. expires Dec. 26, 2003
Comm. No. CC 886599

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

Witness Name: _____

Ben W. Adams, Jr.
County Administrator

Date: _____

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: _____

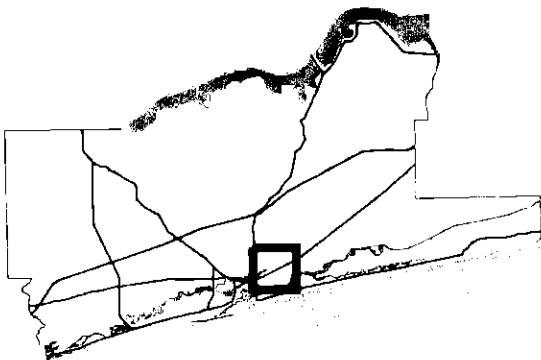
Date: _____

EXHIBIT "A"

Ten (10) acres more or less of SELLER owned land adjacent to BUYER owned land located in Section 36, and the Francis J. Fatio Grant Sections 55 and 56, Township 6, South, Range 29 East, St. Johns County, Florida hereinafter referred to as "The Property". The exact configuration and boundaries of "The Property" will be mutually agreed to by the SELLER and BUYER, and will be further defined by Boundary Survey to be provided as set forth in Paragraph 8, and by reference made a part hereof. In the event, the SELLER and BUYER cannot mutually agree upon the exact configuration and boundaries of "The Property" this contract will be deemed null and void, and SELLER and BUYER shall be relieved of and from any and all further obligation to one another.



**Subject Property
(general boundary depiction)**



1999 Aerial Photography



Map Prepared: Oct 04, 2002
*Depicts General Project Boundary



Land Acquisition
Approx. 10 Acres

St. Johns County
Public Works
Real Estate Division