

RESOLUTION NO. 95 155

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING AN ESCROW AGREEMENT NECESSARY FOR THE ACQUISITION AND CONSTRUCTION OF THE MICKLER PARKING LOT PROJECT AND ROAD REALIGNMENT.

WHEREAS, Neighborhood Realty, Inc., a Florida Corporation, has offered to sell an acre to St. Johns County for \$25,000.00 that is necessary for construction of the Mickler parking lot project, more fully shown and described on the attached Exhibit A, incorporated by reference and made a part hereof; and

WHEREAS, Neighborhood Realty, Inc. also desires to donate to St. Johns County an additional parcel to the north of Mickler Road for the curve and realignment at the intersection of Mickler and SR 203 as also shown on the attached Exhibit A and;

WHEREAS, both parties agree to enter into an Escrow Agreement that will describe the property and time and conditions of conveyance, define the scope of the project and times of commencement and completion.

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

Section 1. The Board authorizes the County Administrator to execute the Escrow Agreement in substantially the form attached hereto as Exhibit B, incorporated by reference and made a part hereof.

Section 2. The Clerk is authorized to record the Warranty Deed upon execution in the official records of St. Johns County, Florida and file the Agreement and Title Insurance.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, this 12 day of September, 1995.

BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA

By: Barbara Ward
Its Chairman

ATTEST: Carl "Bud" Markel, Clerk

BY: Patricia A. Grande
Deputy Clerk

ESCROW AGREEMENT

THIS ESCROW AGREEMENT entered into this ___ day of September, 1995, by and among **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is P.O. Drawer 349, St. Augustine, Florida 32085-0349, ("County"), and **PAULA S. MCGARVEY**, a married woman, her successors and assigns, whose address is 2453 S. Third Street, Jacksonville, Florida 32250, ("McGarvey") and **NORTH FLORIDA TITLE COMPANY**, whose address is 93-A Orange Street, St. Augustine, Florida 32084, ("Escrow Agent").

WITNESSETH:

For and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

WHEREAS, McGarvey hereby agrees to sell to the County and the County hereby agrees to purchase from McGarvey, upon the terms and conditions hereinafter set forth, that certain real property located in Section 14, Township 4 South, Range 29 East, St Johns County, Florida, more particularly described on the attached Exhibit A, incorporated by reference and made a part hereof (such real property consists of two (2) parcels, the "Parking Parcel" and the "Road Realignment Parcel" as shown in Exhibit A; the Parking Parcel and Road Realignment Parcel shall be collectively referred to herein as the "Property");

WHEREAS, the County has plans to construct a parking area for the recreational benefit of the citizens who access the beach from Mickler's Cut on the Parking Parcel, and the County has plans to construct a new section of roadway which will reroute Ponte Vedra Boulevard into Mickler's Road across the Road Realignment Parcel (the above two (2) construction projects shall be referred to collectively herein as the "Construction Projects"); and

WHEREAS, McGarvey has agreed to sell the Parking Parcel for \$25,000.00 and, simultaneous with such sale, donate the Road Realignment Parcel and the County has agreed to the same; and

WHEREAS, Escrow Agent is agreeable to act as escrow agent under this Agreement and to disburse the funds in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, the parties agree:

1. Establishment of Escrow Account.

1.1 An escrow account shall be established under this Agreement by St. Johns County's deposit of \$25,000.00 with Escrow Agent who shall, hold, invest, and distribute the \$25,000.00 and closing costs as hereinafter set forth. The County shall deposit its \$25,000.00 with the Escrow Agent at or prior to McGarvey's delivery of the Special Warranty Deed to Escrow Agent as contemplated in Section 1.2 below. The Escrow Agent shall invest the County's \$25,000.00 in an interest bearing account, of the type and at a financial institution selected by McGarvey.

1.2 McGarvey shall deliver to the Escrow Agent an executed Special Warranty Deed conveying the Property to the County.

1.3 The County and McGarvey agree that the funds in the escrow account shall be disbursed to McGarvey and the deed to the Property released from escrow and recorded

Exhibit A.

conveying the Property to the County only after the fulfillment of all of the following conditions (collectively, the "Escrow Conditions") within the time periods specified in Section 2.2 below:

- a. The County's and McGarvey's mutual agreement as to the plans and specifications pertaining to the Construction Projects;
- b. The issuance of all required environmental permits and other approvals and consents for the plans and specification for the Construction Projects;
- c. The bid has been awarded for the construction contract(s) for both Construction Projects (meaning the parking area on the Parking Parcel and the new section of roadway on the Road Realignment Parcel as specified in the second recital paragraph on page 1) and said construction contract(s) has been duly executed and delivered by both the contractor and the County (it is agreed that said construction contract(s) shall require the construction of both Construction Projects in accordance with the plans and specifications approved by both parties as contemplated in subsection 1.3(a) above and shall require commencement dates of within thirty (30) days of the filing of the Notice of Commencement and completion dates of no later than thirteen (13) months from the filing of the Notice of Commencement);
- d. A Notice of Commencement has been filed and recorded in the public records of St. Johns, Florida with respect to the Construction Projects; and
- e. All funds necessary to complete the construction of the Construction Projects have been allocated and approved in the County budget.

1.4 All interest earned on the Escrow Account shall belong to County, except that if this Agreement fails because of County default or failure of the Escrow Conditions, then \$500 shall be paid to McGarvey.

2. Disbursements.

2.1 The Escrow Agent shall disburse all of the funds in the escrow account to McGarvey and date and record the Warranty Deed for the Property upon receipt of written confirmation from both the County and McGarvey that all of the Escrow Conditions have been met.

2.2 If the Escrow Conditions specified in subsections 1.3(a) and (b) above are not satisfied within nine (9) months from the date of this Escrow Agreement or if all of the other Escrow Conditions are not satisfied within twelve (12) months of the date of this Agreement, then this Escrow Agreement shall terminate, in which event the sum of \$25,000.00 from the escrow account and all interest (except the \$500 as specified in Section 1.4) shall be returned to the County, the Special Warranty Deed shall be returned to McGarvey, this Agreement shall terminate and neither party shall have any further responsibility hereunder. It is agreed that this Agreement terminates because of a default or breach by the County or because the Escrow Conditions are not met, McGarvey shall have no obligation to sell any of the Property to the County and McGarvey shall be relieved on all obligations, including those imposed upon her predecessor, relating to permitting the Property or permitting the one (1) acre of property already owned by the County adjoining the Parking Parcel.

3. Escrow Agent's Responsibility.

3.1 Upon disbursement of all of the fund in accordance with Section 2 of this Agreement, Escrow Agent shall have no further responsibility with respect to this Agreement.

3.2 The County and McGarvey understand and agree that the duties of Escrow Agent are purely ministerial in nature and Escrow Agent cannot be held responsible for the performance of the County or McGarvey under this or any other Agreement. Escrow Agent shall be responsible for its own negligence or intentional wrongdoing.

3.3 Escrow Agent shall be entitled to payment for its services as escrow agent in this Agreement and shall charge a service fee which will be paid by County.

4. Miscellaneous.

4.1 **DEFAULT BY COUNTY:** If the County fails to perform the covenants of this Agreement, McGarvey may, at her election, terminate this Agreement, the effect of which shall be as specified in Section 2.2 above.

4.2 **DEFAULT BY MCGARVEY:** If McGarvey fails to perform any of the covenants of this Agreement, the County, at its option, shall have the right to terminate this Agreement, the effect of which shall be as specified in Section 2.2 above.

4.3 **ASSIGNABILITY:** This Agreement shall be binding on successors and assigns of McGarvey and the rights under this Agreement shall not be assigned by the County.

4.4 **EVIDENCE OF TITLE AND DEFECTS:** County agrees, at its sole option and expense, to make reasonable diligent effort to obtain within 30 days from the effective date, a title guarantee or commitment showing McGarvey's title to be good, marketable and/or insurable. In the event title shall not be found good, marketable and/or insurable or has any encumbrance or diminution of title which the County in its sole judgement considers objectionable, McGarvey agrees to use reasonable diligence to make the said title good, marketable and/or insurable and resolve such objections and shall have 30 days from the date of notice of County's objections to do so, but if after reasonable diligence on its part, said title shall not be made good, marketable and/or insurable or said County's objections have not been resolved, the County and Seller shall be released from all obligations hereunder to each other and the Agreement shall terminate the effect of which shall be as specified in Section 2.2 above, or County may elect to close and accept conveyance of the Property subject to said title defects or objections, without adjustment to the purchase price. Reasonable diligence to cure title problems shall not be construed to require McGarvey to initiate litigation or expend in excess of \$500.00 to effect such cure.

4.5 **INSPECTION PERIOD:** Realty agrees that the County shall have until sixty (60) days after the execution hereof to perform soil and environmental tests on the Property. Should the County determine within such time that the Property is not satisfactory, then at the County's election, it may terminate this Agreement, the effect of which shall be as set forth in Section 2.2 above. McGarvey hereby grants to the County and the County's agents the right to enter the Property and to drill bore holes and perform similar tests to determine that the Property is free of contamination; McGarvey shall have no liability for any injuries sustained by any of the County's agents while performing the foregoing activities.

4.6 ATTORNEY FEES AND CLOSING COSTS: Each party shall pay its own attorney's fees in connection with the negotiation, preparation, execution and closing of this Agreement or in connection with any litigation hereunder. County will pay all other closing costs associated with title insurance and recording the deed. Property taxes will be prorated from the date of this Agreement.

4.7 REAL ESTATE BROKER'S COMMISSION: County and Realty warrant and represent to each other that there is no real estate agent or broker involved in the negotiation of the transaction contemplated herein and no fees are due as a result of the Property conveyance.

4.8 NOTICES: Any notice to be given or to be served upon any party hereunder, in connection with this Agreement, must be in writing and must be given by certified or registered mail and shall be deemed to have been given and received when a certified or registered letter containing such notice, properly addressed, with postage prepaid, is deposited in the U.S. Mail. Such notices shall be addressed to the parties herein at the following addresses:

- TO COUNTY: Nicholas M. Meiszer
County Administrator
4020 Lewis Speedway
St. Augustine, FL 32095
- TO MCGARVEY: Paula S. McGarvey
c/o James N. McGarvey, Jr.
2453 South Third Street
Jacksonville Beach, FL 32250
- WITH COPY TO: Richard G. Hathaway, P.A.
7077 Bonneval Rd., Ste. 200
Jacksonville, FL 32216
- ESCROW AGENT: North Florida Title Company
93-A Orange Street
St. Augustine, FL 32084
Attn: Lou Ann Hickey

4.9 OTHER AGREEMENTS: This Agreement encompasses the entire Agreement of the parties and supersedes all prior agreements, including any prior agreements relating to permitting obligations for this Property or the 1 acre parcel already owned by the County adjacent to the Paring Parcel. This Agreement shall not be modified except by an instrument in writing signed by all parties.

4.10 CONSTRUCTION: This contract shall be governed by and construed in accordance with the laws of the State of Florida.

4.11 AGENCY: County agrees to appoint Neighborhood Realty, Inc. as its agent to obtain the environmental permits relative to the Construction Projects. Neighborhood Realty, Inc. agrees to perform such services without charging County for its efforts but with the understanding that County will pay all direct costs relating to such environmental permits including the reimbursement to Neighborhood Realty, Inc. of any out-of-pocket expenses incurred by it, subject to County's prior written approval. Reimbursement shall be made within thirty (30) days of submission to the County of a statement of expenses with reasonable

substantiating evidence. The County agrees to cooperate with Neighborhood Realty in obtaining the environmental permits. It is agreed and understood that Neighborhood Realty, Inc. does not covenant, represent or warrant that it will be able to obtain the environmental permits. The sole obligation of Neighborhood Realty, Inc. is to exert a good faith effort to obtain such environmental permits. All obligations, conditions and requirements of the environmental permits, when issued, shall be the sole responsibility of County. County shall indemnify Neighborhood Realty, Inc. and hold it harmless from any damages, costs or expenses incurred in performing in its agency hereunder, excepting only gross negligence or intentional wrongdoing.

4.12 NON-SEVERABLE: This Agreement is non-severable as between the Parking Parcel and the Road Realignment Parcel. The Escrow Conditions with respect to both parcels must be satisfied before either party is obligated hereunder with respect to either Parcel. Failure of any Escrow Conditions with respect to either Parcel shall operate to terminate this Escrow Agreement, with the effect as specified in Section 2.2 above.

IN WITNESS WHEREOF, this Agreement has been executed this _____ day of _____, 1995.

WITNESSES:

PAULA S. MCGARVEY

Print Name: _____

Paula S. McGarvey

Print Name: _____

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY

Print Name: _____

Its County Administrator

Print Name: _____

NORTH FLORIDA TITLE COMPANY

Print Name: _____

Its: _____

Print Name: _____

JOINDER

The undersign hereby joins in this Agreement for the limited purposes of accepting the agency appointment as specified in Section 4.11 above.

NEIGHBORHOOD REALTY, INC.

Print Name: _____

By: _____
Its: _____

Print Name: _____

EXHIBIT "A"

PARKING PARCEL

A portion of Government Lot 1, Section 14, Township 4 South, Range 29 East, St. Johns County, Florida, said portion of Government Lot 1, said Section 72 being more particularly described as follows: For a Point of Reference COMMENCE at the intersection of the Southerly right of way line of Mickler Road (a 100 foot right of way) with the Westerly right of way line of County Road No. 203 (formerly State Road No. 203 and/or Highway A-1-A, a 66 foot right of way as presently established); run thence South $12^{\circ}49'16''$ East along the Westerly right of way line of aforesaid County Road No. 203, a distance of 141.49 feet to the Southerly line of lands described and recorded in Official Records Book 809, Pages 1643 through 1645 of the Public Records of said County and the POINT OF BEGINNING. From the POINT OF BEGINNING thus described run thence along the Westerly right of way line aforesaid County Road No. 203 South $12^{\circ}49'16''$ East, a distance of 227.87 feet; run thence South $77^{\circ}10'44''$ West, a distance of 87.89 feet to a point; run thence North $63^{\circ}53'20''$ West, a distance of 266.60 feet to a point; run thence North $21^{\circ}08'37''$ West, 16.99 feet to the North line of lands described and recorded in Official Records Book 809, Pages 1643 through 1645; run thence North $68^{\circ}51'36''$ East along last said line, a distance of 300.90 feet to a point on the Westerly right of way line of County Road No. 203 and the POINT OF BEGINNING.

The lands thus described contain 43,560 square feet, or 1.000 acres, more or less in area.

EXHIBIT "A"

ROAD REALIGNMENT PARCEL

A PART OF SECTION 14, TOWNSHIP 4 SOUTH, RANGE 29 EAST, ST. JOHNS COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE, COMMENCE AT THE NORTHWESTERLY CORNER OF LOT 1-N AS SHOWN ON THE PLAT OF OCEAN FRONT DUNES AT PONTE VEDRA BEACH, AS RECORDED IN MAP BOOK 13, PAGES 69 AND 70 OF THE PUBLIC RECORDS OF SAID COUNTY, SAID POINT ALSO BEING IN THE EASTERLY RIGHT-OF-WAY LINE OF COUNTY ROAD NO. 203 (A 66 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED); THENCE SOUTH 70°50'30" WEST ALONG THE SOUTHWESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID LOT 1-N, A DISTANCE OF 66.94 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF SAID COUNTY ROAD NO. 203; THENCE SOUTH 13°05'00" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 1810.76 FEET TO THE POINT OF BEGINNING; SAID POINT BEING THE SOUTHEAST CORNER OF LOT 1 AS SHOWN ON THE PROPOSED PLAT OF MARSH DUNES AT PONTE VEDRA BEACH; THENCE CONTINUE SOUTH 13°05'00" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE TO ITS INTERSECTION WITH THE NORTHERLY RIGHT-OF-WAY LINE OF MICKLER ROAD, (A 100 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED) A DISTANCE OF 300.49 FEET; THENCE SOUTH 68°35'41" WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 300.00 FEET; THENCE NORTH 02°38'36" EAST A DISTANCE OF 357.29 FEET TO THE SOUTHWEST CORNER OF AFORESAID LOT 1; THENCE NORTH 76°55'00" EAST ALONG THE SOUTH LINE OF SAID LOT 1 A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.81 ACRES MORE OR LESS.