

RESOLUTION NO. 2000- 1

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS OF THE PURCHASE AND SALE AGREEMENT FOR THE ACQUISITION OF PROPERTY FOR THE CONSTRUCTION OF THE PROPOSED WATER STORAGE TANK AND WATER/SEWER BOOSTER STATIONS LOCATED NEAR THE INTERSECTION OF U.S. 1 AND RAY ROAD.

WHEREAS, Steven P. Binninger 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, agreeing to sell certain lots in Hilden Subdivision to the County for a proposed utility site; and

WHEREAS, St. Johns County Utility Department has inspected and approved the proposed site for the construction of a water storage tank and water/sewer booster stations which will provide water and sewer service to Walden Chase Development, Allen Nease High School and Marshall Creek Development; and

WHEREAS, it would be in the best interest of the public for the County to acquire said property for purposes mentioned above.

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

1. All the WHEREAS clauses above are hereby findings of facts.
2. The Board hereby approves the Purchase and Sale Agreement in substantially the form attached hereto and authorizes the County Administrator to execute said Agreement.
3. The Clerk is instructed to file the original Purchase and Sale Agreement and mail an executed copy of this Resolution and the Agreement to the Seller as defined in the Agreement.
4. The County Administrator is authorized to take action to close this Agreement and complete the purchase upon compliance with Florida Statute 125.355 and all the terms of the Agreement.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 11th day of January, 2000.

**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



PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and effective as of December 21, 1999, by and between **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, FL 32095 ("Buyer") and **STEVEN P. BINNINGER**, whose address is 114 Herons Nest Lane, St. Augustine, FL 32084 ("Seller").

WITNESSETH:

WHEREAS, the Buyer is desirous of purchasing a portion of the properties owned by the Seller and Seller is desirous of selling upon the terms and conditions hereinafter expressed and the parties wish to avoid condemnation and this Agreement is being entered into with the understanding that the Buyer has the authority and power of eminent domain and would exercise such power absent the execution of this Agreement; and

WHEREAS, it is in the public interest for the Buyer to acquire fee simple ownership of the property, described in Exhibit "A", attached hereto, incorporated by reference and made a part hereof, (hereinafter "Property") for the US 1 Water Storage Tank/Booster Station; and

NOW THEREFORE, it is mutually agreed as follows:

1. Purchase Price and Deposit.

(a) The purchase price ("Purchase Price") is \$40,000.00, 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) Cash to Close	Closing Day	<u>\$40,000.00.</u>
TOTAL PURCHASE PRICE		\$40,000.00

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 days 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 cannot reasonably be obtained or it 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.

3. 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 Southeast Title Company 93 Orange Street, St. Augustine, FL 32084, on or before February 15, 1999 ("Closing Date", TIME BEING OF THE ESSENCE.

4. Prorations. Any real property taxes shall be prorated on the basis of the 1999 taxes at the highest allowable discount.

5. 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.

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 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 FIRPTA affidavit;

(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, 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 appropriate or 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 and appraisals.

8. 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.

9. Condition of Property and Buyer's Right of Inspection. Buyer shall have the right for forty-five (45) 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 in its sole discretion 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. Seller agrees to clean up the property and have the automobile parts and debris removed from site and disposed of properly prior to closing.

10. 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.

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: Steven P. Binninger
114 Herons Nest Lane
St. Augustine, FL 32084

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

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.

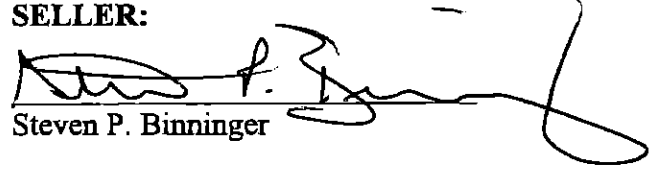
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of the date first above written.

BUYER:
ST. JOHNS COUNTY, FLORIDA

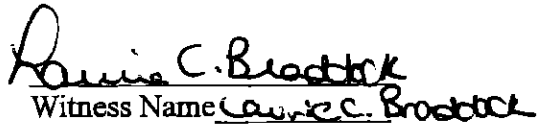
Witness Name _____

Ben W. Adams, Jr.
County Administrator

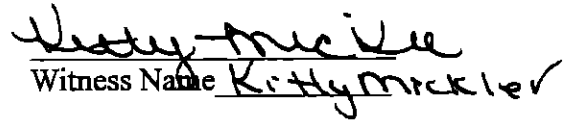
Witness Name _____

SELLER:


Steven P. Binninger



Witness Name Laurie C. Brodtk



Witness Name Kitty Mickler

Exhibit "A"

Lots 1 through 17 and Lot 19, Block 49, Hilden Subdivision, according to map or plat thereof recorded in Map Book 3, page 59, of the public records of St. Johns County, Florida.

