

**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 TO MITIGATE WETLAND IMPACTS AS A RESULT OF THE CONSTRUCTION OF CAPITAL IMPROVEMENT TRANSPORTATION PROJECTS.**

**RECITALS**

**WHEREAS**, the owners of certain property have agreed to the terms described in the Purchase and Sale Agreement, attached hereto as Exhibit "A", incorporated by reference and made a part hereof, agreeing to sell the property described therein; and

**WHEREAS**, the approximate 49 acre parcel of land contains an approximate 6 acre flatwoods island located in the San Sebastian River; and

**WHEREAS**, the parcel is located in the St. Johns River Water Management District Mitigation Basin 9, Pellicer Creek and Matanzas River Basin and could be used to mitigate projects with salt marsh impacts throughout the southern portion of the County; and

**WHEREAS**, based on the projected CIP list of transportation projects the County will need to have a reserve of land for salt marsh mitigation use within Mitigation Basin 9; and

**WHEREAS**, the purchase price of \$350,000.00 should be substantiated by an appraisal ordered and received during the due diligence timeframe in the Purchase and Sale Agreement.

**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 into the body of this Resolution and such Recitals are adopted as findings of fact.

**Section 2.** The County Administrator is to take action to close this agreement and complete the purchase upon compliance with all terms of this agreement with monies for such purchase coming from appropriate budgeted source.

**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 Sellers as defined in the Agreement.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 16 day of December, 2003.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

By:   
Karen R. Stern, Chair

ATTEST, Cheryl Strickland, Clerk

By:   
Deputy Clerk



**PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT** ("Agreement") is made and effective as of \_\_\_\_\_, 2003, by and between **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32095 ("Buyer") and **MARY LOU BRUSAW LIVING TRUST**, whose address is 1140 Hibiscus St., St. Augustine, Florida 32095 and **EMMETT W. PACETTI**, whose address is 800 Mickler Blvd., St. Augustine, Florida 32080 ("Sellers").

**WITNESSETH:**

**WHEREAS**, the County is desirous of purchasing approximately 49 acres (to be determined by survey) owned by the Sellers and Sellers are 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 the property as shown 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 \$350,000.00 (Three hundred and fifty thousand dollars) 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 twenty-five (25) days of Commission Approval (hereinafter defined)	\$35,000.00
(ii) Cash to Close	Closing Day	\$315,000.00
<b>TOTAL PURCHASE PRICE</b>		<u>\$350,000.00</u>

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

2. Title Evidence.

(a) Sellers agree, 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 Sellers in writing ("Title Notice") within 10 days after Buyer's receipt of the Commitment or a denial thereof, if 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 or denial and such is timely noted in a Title Notice, Sellers, at Sellers' sole option and expense, shall have 60 days from the date it receives the Title Notice within which to cure such defect or denial (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 or denial, then in such event, Buyer's remedies shall be limited solely to either (x) accepting such title to the Property as Sellers 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) **Anastasia Title Service Inc.**, 2730 U.S. 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, Anastasia Title Service Inc., 2730 U.S. 1 South, St. Augustine, Florida 32086, on or before April 30, 2004 ("Closing Date"), TIME BEING OF THE ESSENCE.

5. Prorations. Any real property taxes shall be prorated on the basis of the 2003 taxes at the highest allowable discount.

6. Seller's Representations. Sellers represent to Buyer that they owns fee simple title to the Property and have 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, Sellers 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 Sellers, in accordance with Section 1. Buyer shall execute and deliver to Sellers such consents and authorizations as Sellers 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, Sellers and Buyer shall mutually execute and deliver to each other a

closing statement in customary form.

(d) At the Closing, Sellers 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 Sellers will pay the cost of the owner's title policy issued pursuant to the Commitment and any real estate commission involved. The Sellers will pay for recording the deed and documentary stamps. Each party shall bear the expense of its own legal counsel.

9. Survey and Legal Description. Between this date and Closing, Buyer may 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 one hundred twenty (120) 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, Environmental Mitigation Assessment Analysis, Wetland Rapid Assessment Procedures 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. 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 Sellers defaults by performance of any of Sellers' obligations in this Agreement or breaches any warranty or representation. Buyer may receive an immediate refund of the Deposit, and at its option may either terminate its obligations under this Agreement and sue for damages, costs and attorneys fees or sue for specific performance, as well as for damages related to the delay caused by Seller's breach. Seller acknowledges that time is of the essence, and agrees that any of Buyer's costs and attorneys fees associated with the delay of the transfer of property may be taxed to Seller. (b) Default by Buyer. If Buyer defaults in performance of any of Buyer's obligations in this Agreement for any reason, other than the Sellers' default or the termination of this Agreement pursuant to the specific provisions hereof, the Sellers will be entitled to receive the Deposit as Sellers' sole and exclusive remedy for any such default, Sellers 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 Sellers 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 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.

Sellers:

**Mary Lou Brusaw Living Trust**  
1140 Hibiscus St.  
St. Augustine, Florida 32095

**Emmett W. Pacetti**  
800 Mickler Blvd.  
St. Augustine, Florida 32080

Buyer: **St. Johns County**  
Ben W. Adams, Jr., County Administrator  
4020 Lewis Speedway  
St. Augustine, Florida 32084

Escrow Agent: **Anastasia Title Service Inc.**  
2730 U.S. 1 South  
St. Augustine, Florida 32086

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. Sellers agree to pay any 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 St. Johns County Commissioners authorizing the County Administrator to execute this Agreement and approving the performance of this Agreement.

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.

25. Funding Source: This Agreement is contingent upon the Board of County Commissioners approving a funding source within 120 days of the date of this agreement.

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

**SELLER:**  
**Mary Lou Brusaw Living Trust**

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
**Mary Lou Brusaw**

**Emmett W. Pacetti**

\_\_\_\_\_

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



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

**Emmett W. Pacetti**  
**BUYER:**  
**ST. JOHNS COUNTY, FLORIDA**

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

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

**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**

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

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

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



## Exhibit A: Location of Spengler Island Property

Prepared By  
**St. Johns County  
Real Estate Division**

0 225 450 900  
Feet

Disclaimer: This map is provided to the St. Johns County Real Estate Division and is for informational purposes only. The Real Estate Division assumes no responsibility for the accuracy or completeness of data which forms this map. Data are from multiple sources with varying degrees of accuracy. This map should not be used for final site-specific land use decisions.





## Exhibit B: Location of Spengler Island Property

Prepared by  
**St. Johns County**  
Real Estate Division

0 700 1,400 2,800 Feet

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