

RESOLUTION NO. 2004- 339

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS OF THE PURCHASE AND SALE AGREEMENT FOR THE ACQUISITION OF A 40 ACRE REGIONAL POND SITE IN WEST AUGUSTINE AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE PURCHASE AND SALE AGREEMENT AND TAKE ALL ACTION NECESSARY IN ORDER TO CLOSE AND COMPLETE THE PURCHASE IN ACCORDANCE WITH SECTION 125.355, FLORIDA STATUTES.

WHEREAS, the owners of approximately 40 acres of property located west of Holmes Boulevard and south of Northwood Drive have presented the County an offer to sell the property as described in the executed Purchase and Sale Agreement, attached hereto as Exhibit "A", incorporated by reference and made a part hereof; and

WHEREAS, the property will be used to construct a regional stormwater pond in the West Augustine area to reduce flooding, improve drainage and handle the King Street Corridor improvement drainage; and

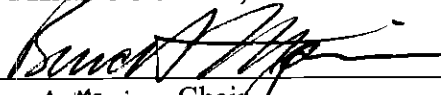
WHEREAS, acquisition of this site is in the best interest of St. Johns County and will provide relief to many drainage and retention issues in West Augustine.

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

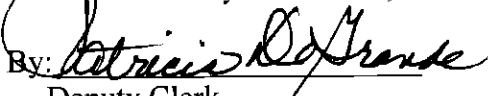
1. The above recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.
2. The Board of County Commissioners hereby approves the Purchase and Sale Agreement and authorizes the County Administrator to execute said Agreement and to take all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

PASSED AND ADOPTED this 17th day of November, 2004.

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

By: 
Bruce A. Maguire, Chair

ATTEST: Cheryl Strickland, Clerk

By: 
Deputy Clerk

RENDITION DATE 11-19-04



PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made and effective as of _____, 2004, by and between **ST. JOHNS COUNTY, FLORIDA, a Political Subdivision of the State of Florida**, whose address is 4020 Lewis Speedway, St. Augustine, FL 32084 (“Buyer”) and **Greg A. Wilson, Harriet A. Wilson and Gary L. Wilson**, whose address is 497 South Holmes Blvd., St. Augustine, FL 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 title to the approximately 40 acres of property west of Holmes Boulevard and south of Northwood Drive shown in Exhibit “A”, including an 80’ ingress/egress, utilities and drainage easement from Northwood Drive, attached hereto, incorporated by reference and made a part hereof, (hereinafter “Property”), for a regional retention pond; and

NOW THEREFORE, it is mutually agreed as follows:

1. Purchase Price and Deposit.

(a) The purchase price (“Purchase Price”) is **Two Million (\$2,000,000.00) 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 thirty (30) days of Commission Approval (hereinafter defined)	\$ 200,000.00
(ii) Cash to Close	Date of Closing	\$1,800,000.00
TOTAL PURCHASE PRICE		\$2,000,000.00

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

2. Title Evidence.

(a) Seller 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) Chiumento and Davenport, P.A., 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, on or before 160 days from the effective 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 2004 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.

Seller shall pay the cost of the owner's title policy issued pursuant to the Commitment, cost of documentary stamps on and 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 and certified to Seller. 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 and fifty (150) days (5 months) 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 to meet their intended use for any reason, 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. Other Conditions.

(a) Seller and Lakeview Dirt Company, Inc. shall be permitted to continue borrow pit operations, including excavation and removal of fill materials on the Property up to the date of Closing without credit or discount for the value of such material to Buyer. After Closing, should Buyer desire to sell any of the fill material excavated from the Property, Seller shall have right of first refusal to purchase such material from Buyer. The terms and conditions of such sale shall be mutually agreed to by Seller and Buyer.

(b) The Property is being sold "As Is". Seller shall not be required to modify the grading or sloping of the existing borrow pit prior to Closing.

(c) Buyer acknowledges that Seller will retain ownership of real property adjacent to the Property which Seller intends to use for future development (Exhibit A). Seller shall retain a non-exclusive easement over the Property for use as stormwater treatment and retention up to 4 acre-feet of storage. Seller's use of the Property for stormwater treatment and retention shall be at no charge to Seller.

12. 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 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 Seller's default or the termination of this Agreement pursuant to the specific provisions hereof, the 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. Assignability.

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

18. Time.

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

19. 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.

20. Notices.

Any notice hereunder must be in writing and delivered personally or by United States 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: Wilson's
 497 South Holmes Blvd.
 St. Augustine, FL 32086

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

Escrow Agent: Chiumento and Davenport, P.A.

4 B Old Kings Road North
Palm Coast, FL 32137

21. 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.

22. 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.

23. Commission Dues.

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

24. 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.

25. 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:

Francis L. Hagan
Witness Name FRANCIS HAGAN

Francis L. Hagan
Witness Name FRANCIS HAGAN

Ben Smallwood
BEN SMALLWOOD

Gary Wilson
GARY WILSON

Greg Wilson
GREG WILSON

Harriet Wilson
HARRIET WILSON

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

_____ Date: _____
Ben W. Adams, Jr.
County Administrator

Witness Name: _____

Witness Name _____

Attest: Cheryl Strickland, Clerk

By: _____
Deputy Clerk

Deposit received by Chiumento & Davenport, P.A., (Escrow Agent), which the Escrow agent agrees to return in accordance with the terms and conditions of the within Agreement.

ESCROW AGENT:

Chiumento & Davenport, P.A.

By: _____

Gary B. Davenport, Esq.

Date: _____

Exhibit "A"

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 9, 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. General sketch of "The Property" follows.



St. Johns County
Real Estate Division
(904) 823-2745
October 22, 2004

Exhibit "A" to Purchase and Sale Agreement

0 100 200 400 600 800 1,000 Feet

DISCLAIMER.
This map is for reference use only.
Data provided are derived from multiple
sources with varying levels of accuracy.

