

RESOLUTION NO. 2007- 268

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A PURCHASE AND SALE AGREEMENT FOR PROPERTY OWNED BY NORTH BEACH INVESTMENT, INC., TO BE USED AS A PUBLIC BOAT RAMP AND PARK.

RECITALS

WHEREAS, the owner, North Beach Investment, Inc., has executed a Purchase and Sale Agreement for property to be used as a public boat ramp and park, attached hereto as Exhibit "A", incorporated by reference and made a part hereof; and

WHEREAS, purchasing the property for the public boat ramp and park will be an asset to the County insuring the property and the improvements will be County owned and used for the public in perpetuity; and

WHEREAS, St. Johns County entered into a Lease Agreement with North Beach Investments, Inc., May 16, 2006 with Board approval in Resolution No. 2006-155; and

WHEREAS, upon closing on the property, subject Lease Agreement will be terminated; and

WHEREAS, the purchase price for the property is \$2,700,000.00 which represents 7% over the average of the two appraisals performed by Crenshaw Williams Appraisal Company, MAI \$2,700,000.00 and Lampe, Roy & Associates, Inc., MAI \$2,311,000.00; and

WHEREAS, per Florida Statutes 125.355-b if the purchase exceeds the average of the two appraisals, the governing body is required to approve the purchase by an extraordinary vote; and

WHEREAS, it is in the best interest of the County to acquire this property for public use.

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.

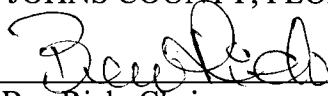
Section 2. The Board of County Commissioners hereby approves the terms of the Purchase and Sale Agreement and authorizes the County Administrator to execute the Purchase and Sale Agreement taking all steps necessary to move forward to close this transaction.

Section 3. The Clerk is instructed to file the original Purchase and Sale Agreement in the Clerks Office.


PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 18th day of September, 2007.



BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: 
Ben Rich, Chairman

ATTEST: Cheryl Strickland, Clerk

By: 
Deputy Clerk

RENDITION DATE 9/21/07

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and effective as of _____, 2007, 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 **NORTH BEACH INVESTMENT, INC., a Florida corporation** whose address is 4125 Coastal Highway, St. Augustine, Florida 32084 ("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 ownership of property for a public boat ramp and park. The property is described 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 **\$2,700,000.00** for the compensation for the property needed for a public boat ramp and park. The Purchase Price shall be paid as follows:
- (b) A deposit will be held by the Escrow agent in the amount of 10% of the final purchase price and will be due within thirty (30) days after Commission approval.
- (c) 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;

(iii) deed reversion clause added: If the property is not used for a boat ramp and/or public park the property will revert back to the Seller; 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) **Action Title Services**, 3670 US 1 South, St. Augustine, Florida 32145, 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, Action Title Services, 3670 US 1 South, St. Augustine, Florida 32145, closing will not take place before 181 days from the date of this Agreement and no later than 200 days from the date of this Agreement (“Closing Date”).

5. Prorations. Any real property taxes due for 2007 will be paid by the County per the existing Lease Agreement the County has with North Beach Investment, Inc.

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. The deed will have a reverter clause added stating if the property is not used for a boat ramp and/or public park the property will revert back to the Grantor or their successor and/or assigns;

(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. Buyer shall pay the cost of the owner's title policy issued pursuant to the Commitment, and Seller will pay the cost of recording the deed, documentary stamps on the deed and 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. 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 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, 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.

11. Termination of Contract. If Buyer for any reason determines that the Property is unsuitable for the Buyer's intended use, or that there are other circumstances that negatively affect the Buyer's intended use, then 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 is timely given, the Deposit shall be returned to Buyer, and upon such return, this Agreement shall terminate.

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 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.

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 States Express Mail; or Federal Express or equivalent courier service, and shall 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: **North Beach Investment, Inc.**
 4125 Coastal Highway
 St. Augustine, Florida 32084

Buyer: **St. Johns County**
 Michael D. Wanchick, County Administrator
 4020 Lewis Speedway
 St. Augustine, Florida 32095

Escrow Agent: **Action Title Services**
 3670 US 1 South
 St. Augustine, Florida 32084

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 Buyer will not be charged with any real estate commissions as a result of this transaction, but that Seller has the right to pay such commissions as Seller deems appropriate.

24. Use of the Premises. Buyer may use the Premises for the purpose of operating a boat launch ramp and docks with associated parking, fishing, and picnic areas (“Buyer’s Intended Use”) provided such is made available for public use without charge or fee and such is not in violation of any applicable law, ordinance, or regulation of any governmental body having jurisdiction thereof. Buyer shall not use or suffer to be used the Premises or any portion thereof for any commercial venture (whether owned and/or operated by buyer or a third party) or any purpose or purposes other than those specified above without the Seller or their successor and/or assigns, prior written consent, which consent may be granted or withheld in Seller’s sole discretion. Buyer shall regularly police the Premises to inhibit and/or suppress conduct by the public that is or may be a nuisance to neighboring property or in violation of any federal, state, or local law or ordinance, such as over flow parking on neighboring properties or along the rights-of-way of adjacent streets, the dumping of litter or trash on the Premises and neighboring properties, late night partying, excessive noise and/or loitering on the Premises.

25. Required Improvements. Buyer shall construct and maintain a six foot tall vinyl privacy fence along the south and east side of the leased portion of Block 47 in North Beach Subdivision, Map Book 3, page 28 at approximately the existing tree line. Buyer shall also construct and maintain a six foot tall vinyl privacy fence along the south side of the East 125 feet of the North ½ of Block 47 of North Beach, Map Book 3, page 28. These fences shall be constructed at the same time buyer constructs the Intended Improvements.

26. Access to Premises. Public access to the Premises shall be by way of Euclid Avenue only. No vehicular access shall be permitted from Myrtle or 10th Street.

27. Approval of Site Plan. Prior to the construction, alteration, or reconstruction of the Required Improvements or the Intended Improvements on the Premises or the removal of trees having a circumference in excess of six inches measured two feet above the surface of the ground, the Buyer must submit to the Seller for approval a site plan depicting vehicular access to the Premises, anticipated tree removal, and all boat ramps, docks, restroom facilities, buildings, parking areas, picnic areas, driveways, walks, landscaping, drainage systems, signage and other improvements currently existing or to be constructed on the Premises. The Seller approval of such site plan shall not be unreasonably withheld or delayed.

28. 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.

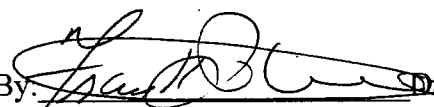
29. Effective Date: The effective date of this Agreement shall be the first date upon which this Agreement or its valid counterparties are properly executed by all named parties.


30. 1031 Exchange: If Seller wishes to enter into a like-kind exchange (either simultaneous with Closing or deferred) with respect to the Property under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including the execution of documents; provided

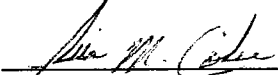
- (a) The cooperating party shall incur no liability or expense related to the Exchange and
- (b) The Closing shall not be contingent upon, nor extended or delayed by, such exchange.

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

SELLER:
North Beach Investment, Inc.

By:  Date: 8/31/07
FRANK USINA


Witness Name Deborah L. Vaughn


Witness Name Lisa M. Cole

BUYER:
St. Johns County, Florida

By: _____ Date: _____
Michael D. Wanchick
County Administrator

Witness Name _____

Witness Name _____

EXHIBIT "A"

All of Block 47, except the East 125 feet of the North ½ of Block 47, North Beach, according to map or plat thereof recorded in Map Book 3, page 28, of the public records of St. Johns County, Florida, together with that portion of vacated Bay Street lying to the west of said Block 47.