

RESOLUTION NO. 90-10

ST. JOHNS COUNTY WATER AND SEWER
CAPACITY AGREEMENT AND TEMPORARY WATER
AND SEWER PERMIT (CONNECTION COMMITMENT)
PERTAINING TO THE FUTURE COUNTY WATER
AND SEWER SYSTEM TO BE LOCATED NEAR
THE INTERSECTION OF I-95 AND SR-16
AND THE SR 16 CORRIDOR AREA

This Agreement and Temporary Permit number 90-01 entered into on January 19, 1990, between St. Johns County, Florida, hereinafter referred to as County and St. Augustine Outlet Mall, Ltd. by Sembler Equities, Inc., its sole general partner, a Florida corporation, hereinafter called Owner;

The words "Expiration Date" as used herein shall mean twelve months from the Start Up Date. The Start Up Date shall be that date which is the sooner of (i) the date of initial operation of the new sewer treatment plant off of SR 16 or (ii) the date of the initial operation of the new water transmission lines near the intersection of I-95 and SR 16.

The legal description of the Project to which this Agreement and Temporary Permit applies is described in the attached Exhibit "B".

WITNESSETH:

Whereas, the rapid increase in density (growth) in the area near the intersection of SR-16 and I-95 and along the SR-16 corridor has made it environmentally desirable for the County to construct a sewer treatment plant, water transmission and distribution lines, and sewer collection and transmission lines for such areas (the "System") and to plan for additional future water and sewer projects and improvements; and

Whereas, the County is creating an assessment program to pay for the fire protection part of the water distribution system; and

Whereas, the County is creating an assessment program to pay for the collection system part of the sewage system for the owners

of developments around the intersection who will be benefiting by this collection system and (i) who are currently operating under DER/HRS onsite sewage disposal system permits and (ii) any other Owners of property not yet developed who enter into this Agreement prior to March 1, 1990, The County will require payment of unit connection fees for, and/or construction of, sewage collection systems from or by others who connect to the sewage collection system around the interchange who have not been assessed; and

Whereas, the County has been advised by its engineers and financial consultants that unit connection fees for the non fire protection portion of the water distribution system, the water treatment plant capacity, and the sewer plant capacity and sewage transmission system (including lands therefor) for such new water and sewer facilities may be paid by the initial users who enter into this Agreement And Temporary Permit prior to the Start Up Date through user charges and/or rates over a period of years with other or subsequent users paying unit connection fees for said improvements in full at time of connection or, at the County's option, through user charges, rates, assessments and/or lump sum payments; and

Whereas, the Owner desires to induce the County to issue County water and sewer revenue bonds (the "Bonds") to enable the County to finance and construct the System and to purchase the lands necessary for the operation thereof with the Bonds being paid for by a combination of user charges and/or rates, assessments, and unit connection fees; and

Whereas, it is possible that the Bonds may be issued on a parity with the water and sewer revenue bonds of the County previously issued pursuant to County resolution 89-84 as amended and supplemented.

NOW, THEREFORE, in consideration of the above and foregoing and the covenants and agreements contained herein, the County and the Owner acknowledge, agree and contract as follows:

1. The parties each recognize that the County establishes its sewer unit connection fees and sewer user charges and/or rates

based upon a correlation between water received by a user and sewage discharged by that same user. Accordingly the parties agree that for the purpose of this Agreement And Temporary Permit the uses and structures described in the attached Exhibit A shall be deemed to use the gallons of water per day attributed thereon to them. Structures, establishments and uses not shown in Exhibit A shall be assigned flow rates based on projected or actual water flow information supplied by the Owner and approved by the Director of Utilities.

2. The Owner has this day agreed to pay the County monthly payments equal to the monthly water service charges and rates and the monthly sewage service charges and rates that the County shall hereafter establish for the System times the number of gallons per month of projected water flow to existing and future anticipated establishments and structures within the Owner's Project based upon exhibit A, which the parties hereto agree is 23,332 gallons per day (699,690 gallons per month based on 30 days per month), or times the actual monthly flow, whichever is greater, for a period of 12 consecutive months; said payments to commence on the Start Up Date, whether the Owner is actually utilizing the System or not at that time. After the Owner's Project is connected to the County system and the Owner has paid the first twelve months payments as required above, and the payments required by paragraph #9 if applicable, then the ordinance(s)/resolution(s) regulating this area shall apply.

3. In the event that the County, for any reason whatsoever, shall fail to close the issuance and sale of the Bonds on or before June 1, 1990, then, and in that event only, this Agreement and Temporary Permit shall automatically terminate and be of no further force or effect.

4. In the event that the sale of the Bonds is closed on or before June 1, 1990, then and only then, upon the construction and commencement of operation of the above described County water and sewer facilities, the Owner shall be entitled to connect structures within the Owner's Project to the new water distribution lines and

the new sewer collection/transmission lines for the purpose of receiving up to 23,332 gallons of water per day and delivering the correlated amount of sewage to the County's new sewer facilities from Project structures.

5. Notwithstanding paragraph #4 above, the Owner may not connect to the County's new water and sewer facilities unless and/or until:

- a) The plans, specifications and materials for each of the Owner's water and sewage improvements were approved by the County's Director Of Utilities prior to the Owners obtaining a Florida D.E.R. permit for said improvements; and
- b) The Owner has obtained a Florida D.E.R. permit, a County building permit and all other governmental permits necessary for the construction and use of his water and sewer improvements.

6. Upon connection to the County's new water and sewer facility the Owner will abide by all County requirements pertaining to users of such facilities, including monthly payments based upon minimum monthly water and sewer service charges and rates, and the payment of tap fees and deposits.

7. The Owner's entitlement under paragraph #4 above to connect structures within the Project to the System shall terminate and be of no force and effect on the above described Expiration Date unless a written extension has been granted by the County Administrator or his designee. Upon such termination the Owner shall have no further rights under this Agreement And Temporary Permit. It is expressly intended that upon such termination the Owner will have no rights to connect to the County's water and sewer facilities by reason of this Agreement And Temporary Permit or by reason of payments based upon monthly service charges and rates.

8. Provided that the Owner is in compliance with the County's ordinances, rules and regulations pertaining to the Owner's Project and is current in all payments owed to the County by reason of the Project and this Agreement And Temporary Permit, and provided further that the Owner shows good cause for its failure or inability to connect sufficient structures and uses to the County's new water

and sewer facilities to enable the Owner to receive full benefit for the monthly payments paid to the County by Owner pursuant to paragraph #2 above, the County may, if the County's Bond covenants so permit, extend the Owner's paragraph #4 (see also paragraph # 7) connection entitlement for an additional 6 months. The Owner's inability to adequately finance his Project shall not constitute good cause.

9. During any extension of entitlement time pursuant to paragraph #8 above, the Owner shall continue to pay to the County monthly payments equal to the County's current monthly water and sewer service charges and rates times the monthly gallonage set forth in paragraph #2 above.

10. The Owner's failure to pay County the monthly payments described in this Agreement And Temporary Permit within 45 days from the date due shall constitute cause for the County to terminate this Agreement And Temporary Permit and seek damages.

11. The water and sewer connection entitlements described in this Agreement And Temporary Permit shall apply only to water and sewer sources from within the Project defined above, unless the County consents in writing to the transfer of such entitlements to a different Project.

12. Provided that the Owner is current in Owner payment of all payments, fees and charges due to County, including all monthly payments based upon monthly service charges and rates, the Owner's rights and duties under this Agreement And Temporary Permit and any unused water and sewer connection entitlements hereunder may, with the County's prior written consent, be transferred by the Owner to other persons, entities and/or Projects. The consent of the County shall not be unreasonably withheld.

13. Other than the limited and temporary right of Owner to connect to the County's new water and sewer facilities (assuming paragraph 3 above is not applicable) it is expressly agreed that the Owner shall have no right, title, or interest in or to (i) the proceeds of the Bonds, (ii) the new water and sewer facility

improvements or the revenues generated to the County thereby, or (iii) any other property or monies of the County.

14. Nothing herein shall be deemed to prohibit the County from raising service charges and rates, levying assessments and/or charging unit connection fees when required by law or when appropriate to maintain and operate the System or comply with Bond covenants.

ATTEST:

Paul B. "M. Lal

Deputy Clerk

Signed, sealed and delivered in the presence of:

Paul Jabari

Laura K. Harris

As to Owner

St. Johns County By Its Board
Of County Commissioners

By: Craig Maguire
Its Chairman

ST. AUGUSTINE OUTLET GROUP, LTD.

By: Sembler Equities, INC.
SOLE GENERAL PARTNER

Owner

By: Craig Sher
Its President



1/19/90

EXHIBIT A

WATER FLOWS

TYPE OF ESTABLISHMENT	GALLONS PER DAY (GPD)
COMMERCIAL:	
Barber and beauty shops (per chair)	100
Bowling alleys (Toilet wastes only per lane)	100
Country Clubs	
(a) per resident member	100
(b) per non-resident member	25
Dentist offices	
(a) per wet chair	200
(b) per non-wet chair	50
Doctors offices (per doctor)	250
Food service operations	
(a) Ordinary restaurant (per seat)	50
(b) 24 hour restaurant (per seat)	75
(c) Single service articles only (per seat)	25
(d) Bar and cosktail lounge (per seat)	30
(e) Drive-in restaurant (per car space)	50
(f) Carry out only	
(1) per 100 square feet of floor space	50
(2) add per employee	20
Hotels and motels (per room)	150
Office building (per employee)	20
Resort camps, cottages (per person)	75
Service stations(per water closet and per urinal)	250
Shopping centers without food or laundry (per square foot of floor space)	0.1
Stadiums, race tracks, ball parks (per seat)	5
Stores (without food service)	
(a) Private toilets, for employees only (per employee)	20
(b) Public toilets (per water closet and per urinal)	250
Theatres	
(a) Indoor, auditoriums (per seat)	5
(b) Outdoor, drive-in (per space)	10
Trailer/Mobile Home Park (per trailer space)	200
Travel/Trailer/Recreational Vehicle Park	
(a) Travel trailer (overnight), w/o water and sewer hookup (per trailer space)	75
(b) Travel trailer (overnight) with water and sewer hookup (per trailer space)	100

TYPE OF ESTABLISHMENT	GALLONS PER DAY
INDUSTRIAL:	
Factories, exclusive of industrial wastes (gallons per person per shift)	
(a) No showers provided	20
(b) Showers provided	35
Work or Construction Camps:	
Semi-permanent (Per worker)	50
INSTITUTIONAL:	
Airports	
(a) per passenger	5
(b) add per employee	20
Churches (per seat)	3
Hospitals (per bed) (does not include kitchen wastewater flow)	200
Nursing, rest homes (per person) (does not include kitchen waste water flow)	100
Parks, public picnic	
(a) with toilets only (per person)	5
(b) with bathhouse, showers & toilets (per person)	10
Public institutions other than schools and hospitals (per person, does not include kitchen waste water flow)	100
Schools (per student)	
(a) Day-type	15
(b) Add for showers	5
(c) Add for cafeteria	5
(d) Add for day school workers	15
(e) Boarding type	75
Swimming and bathing facilities, public (per person)	10
RESIDENTIAL:	
Residences	
(a) Single family (per bedroom)	150
(b) Apartment (per bedroom)	150
(c) Mobile Home	300
(d) Other (per occupant)	75
Laundromats (per machine)	400