

Draft 5/4/93

RESOLUTION NO. 93- 96

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, MODIFYING EXHIBITS A, B, AND C AND ADDING EXHIBIT E TO APPENDIX B OF THE ST. JOHNS COUNTY UTILITY ORDINANCE, ORDINANCE NO. 93-14.

WHEREAS, Section 16(D) of the St. Johns County Utility Ordinance, Ordinance No. 93-14 (Utility Ordinance), authorizes the modification of Exhibits A and B in Appendix B to the Utility Ordinance and Section 18(D) authorizes the modification of Exhibit C in Appendix B to the Utility Ordinance by resolution of the Board of County Commissioners; and

WHEREAS, Exhibit A, Unit Connection Fee Promissory Note, has been modified to include a space for the applicant's name and address and a notary's acknowledgment; Exhibit B, Unit Connection Fee Mortgage, has been modified to provide for witnesses' names and addresses; and Exhibit C, Capacity Commitment Agreement, has been modified to correct typographical errors and omissions in Sections 4 and 5 of the agreement and to clarify that Developers as well as Contractors may enter into the agreements; and

WHEREAS, by Resolution No. 93-57, the Board of County Commissioners modified Section 16(D) of the Utility Ordinance to allow and provide a procedure for payment over time of water and sewer unit connection fees for certain existing improvements

which use 700 gallons or less of water and/or sewer per day; and further provided for use of a promissory note in substantially the same form as Exhibit A in Appendix B to the Utility Ordinance; and

WHEREAS, a promissory note in substantially the same form as Exhibit A in Appendix B to the Utility Ordinance has been prepared for use with the payments over time approved in Resolution No. 93-57 (Unit Connection Fee Two Year Promissory Note), a copy of which is attached hereto as Attachment 4.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida as follows:

Section 1. Exhibit A in Appendix B to the Utility Ordinance, Unit Connection Fee Promissory Note, is hereby modified; and the form attached to this resolution as Attachment 1 shall be substituted as Exhibit A in Appendix B to the Utility Ordinance.

Section 2. Exhibit B in Appendix B to the Utility Ordinance, Unit Connection Fee Mortgage, is hereby modified; and the form attached to this resolution as Attachment 2 shall be substituted as Exhibit B in Appendix B to the Utility Ordinance.

Section 3. Exhibit C in Appendix B to the Utility Ordinance, Capacity Commitment Agreement, is hereby modified; and the form attached to this resolution as Attachment 3 shall be substituted as Exhibit C in Appendix B to the Utility Ordinance.

Section 4. The form attached to this resolution as Attachment 4, Unit Connection Fee Two Year Promissory Note, shall be added as Exhibit E in Appendix B to the Utility Ordinance; and shall be used for the payment over time of water and sewer unit connection fees for certain existing improvements as authorized by Resolution No. 93-57.

Adopted this 8th day of June, 1993.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

By: Jean Robert  
Its Vice Chair

ATTEST: CARL "BUD" MARKEL, CLERK

By: Yvonne Carter  
Deputy Clerk

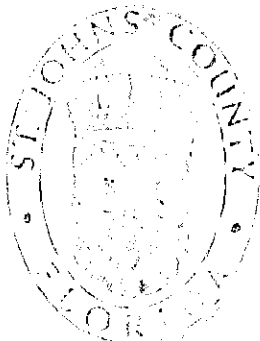


EXHIBIT A

UNIT CONNECTION FEE  
PROMISSORY NOTE

APPLICANT(S) NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\$ \_\_\_\_\_

St. Augustine, Florida

For value received and as payment for certain unit connection fees on the premises located at \_\_\_\_\_ the undersigned, jointly and severally, promise to pay to the order of St. Johns County, Florida, at the St. Johns County Utility Department Office, P. O. Drawer 3006, St. Augustine, Florida 32085, or elsewhere as the holder hereof may from time to time require, the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) together with interest on so much of said principal sum as remains from time to time outstanding and unpaid, at the rate of percent (% \_\_\_\_\_) per annum from the date below until paid; said principal and interest shall be paid in equal consecutive \_\_\_\_\_ installments of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) each, commencing one \_\_\_\_\_ from the date below and continuing on the same \_\_\_\_\_ each and every \_\_\_\_\_, thereafter until paid in full; said installments to be applied first to interest and balance to principal.

The makers hereof waive presentment for payment and demand. Time is of the essence hereof. It is expressly agreed that if this Note or any part of installment thereof be not paid within ten (10) days after the same becomes due and payable, anything herein to the contrary notwithstanding, the makers hereof understand that all unpaid sums shall immediately be due and payable at once, without notice or demand, together with all costs of collection including reasonable attorney's fees, whether suit be filed or not.

The makers hereof may prepay any part of the principal sum hereof in any amount at any time, but any such prepayment shall not relieve the makers hereof from making payment of the installment then due nor any subsequent installment provided hereby, unless at the time of such prepayment the makers hereof pay all sums hereon.

Any waiver of the right to exercise any option by the holder hereof shall not constitute a waiver of the right to exercise said option at any future time.

Promissory Note  
20 Year Mortgage  
Page Two (2)

All notices, demand, presentment, dishonor and requirements under any law of Florida are hereby expressly waived.

This Note is secured by the subject to the terms of a mortgage (or a letter of credit) of even date herewith.

SIGNED, SEALED AND DECLARED  
IN OUR PRESENCE:

Dated as of: \_\_\_\_\_, 19\_\_\_\_  
(Date of Connection)

\_\_\_\_\_  
WITNESS  
ADDRESS

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

\_\_\_\_\_  
WITNESS  
ADDRESS

\_\_\_\_\_  
WITNESS  
ADDRESS

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

\_\_\_\_\_  
WITNESS  
ADDRESS

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_ who has produced a \_\_\_\_\_ as identification.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Signature

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

My Commission Expires: \_\_\_\_\_

EXHIBIT B

UNIT CONNECTION  
SEE MORTGAGE

This Mortgage, dated as of the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 199\_\_\_\_ by and between \_\_\_\_\_, \_\_\_\_\_, with an address of \_\_\_\_\_, hereinafter called the Mortgagor, and St. Johns County, Florida, a political subdivision of the State of Florida, whose address is c/o Clerk, P. O. Drawer 300, St. Augustine, Florida 32085, hereinafter called the Mortgagee.

Witnesseth that for divers good and valuable consideration, and also in consideration of the Mortgagee's deferment of certain water and/or sewer unit connection fees owed by the Mortgagor to the Mortgagee as evidenced by the unit connection fee promissory note hereinafter described, the said Mortgagor does hereby grant, bargain, sell, alien, remise, release, convey, and confirm unto the said Mortgagee all that certain piece, parcel, or tract of land of which the said Mortgagor is now seized and possessed and in actual possession, situate in the county of St. Johns and state of Florida, described as follows:

Together with all structures and improvements now and hereafter on said land, and the fixtures attached thereto.

To Have And To Hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, right, title, interest, homestead, separate estate, possession, claim and demand whatsoever, as well in law as in equity, of the said Mortgagor in and to the same, and every part thereof, unto the said Mortgagee in fee simple.

And the Mortgagor hereby covenants with the Mortgagee that it is indefeasibly seized of said land in fee simple; that it has full power and lawful right to convey the same in fee simple as aforesaid; and that said Mortgagor will make such further assurances to prove the fee simple title to said land to said Mortgagee as may be reasonably required.

Provided always, and these presents are executed and delivered upon the following conditions, to wit:

The Mortgagor agrees to timely pay the Mortgagee, or order, the payments described in the Copy of the Unit Connection Fee Promissory Note attached hereto as Exhibit A in the manner and at the times described therein,

And shall duly, promptly, and fully perform, discharge, execute, effect, complete, and comply with and abide by each and every of the stipulations, agreements, conditions, and covenants of said promissory note and of this mortgage, then this mortgage and the estate hereby created shall cease and be null and void.

And the Mortgagor further covenants as follows:

1. That it will pay all and singular the costs, charges, and expenses, including reasonable lawyer's fees, and costs of abstracts of title, incurred or paid at any time by the Mortgagee because of the failure on the part of the Mortgagor promptly and fully to perform the agreements and covenants of said promissory note and this mortgage, and said costs, charges, and expenses shall be immediately due and payable and shall be secured by the lien of this mortgage.

2. That (a) in the event of any breach of this mortgage or any mortgage superior or junior hereto or default on the part of the Mortgagor under this or any other mortgage encumbering the property mortgaged hereby, or (b) in the event that any of said sums of money herein referred to be not promptly and fully paid without demand or notice, or (c) in the event that each and every of the stipulations, agreements, conditions, and covenants of said note and this mortgage, are not promptly and fully performed; then in either or any such event, the said aggregate sum mentioned in said note then remaining unpaid, with interest accrued to that time, and all moneys secured hereby, shall become due and payable forthwith, or thereafter, at the option of said Mortgagee, as fully and completely as if all of the said sums of money were originally stipulated to be paid on such day, anything in said note or in this mortgage to the contrary notwithstanding; and thereupon or thereafter, at the option of said Mortgagee, without notice or demand, suit at law or in equity may be prosecuted as if all moneys secured hereby had matured prior to its institution. The Mortgagee may foreclose this mortgage, as to the amount so declared due and payable, and the said premises shall be sold to satisfy and pay the same together with costs, expenses, and allowances.

3. That it will give immediate notice by mail to the Mortgagee of any conveyance, transfer, change of ownership of the premises, and/or the commencement of any proceedings to foreclose any other mortgage that encumbers the property mortgaged hereby.

4. That no waiver of any covenant herein or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the note secured hereby.

5. That if the Mortgagor defaults in any of the covenants or agreements contained herein, or in said note, then the Mortgagee may perform the same, and all expenditures (including reasonable attorney's fees) made by the Mortgagee in so doing shall draw interest at the rate set forth in the note secured hereby, and shall be repayable immediately and without demand by the Mortgagor to the Mortgagee, and, together with interest and costs accruing thereon, shall be secured by this mortgage.

6. That the mailing of a written notice or demand addressed to the owner of record of the mortgaged premises, or directed to the said owner at the last address actually furnished to the Mortgagee, or directed to said owner at said mortgaged premises, and mailed by the United States mails, shall be sufficient notice and demand in any case arising under this instrument and required by the provisions hereof or by law.

7. **DUE ON SALE CLAUSE.** Upon any sale, lease, transfer, encumbrance or conveyance of the Mortgaged Premises, or any other transaction which shall affect the Mortgaged Premises in whole or in part, whether as to fee simple title or any leasehold interest therein or otherwise, or upon any sale, lease, transfer, encumbrance or conveyance of the legal or beneficial ownership of Mortgagor, to any person, firm or corporation not previously approved in writing by Mortgagee, Mortgagee shall have the right to accelerate the maturity of the Note secured by this Mortgage as though it were due and payable on the day of such sale, lease, transfer, encumbrance or conveyance, and to demand payment in full of any indebtedness secured by this Mortgage the same as if an event of default had occurred hereunder, anything in the Note secured hereby to the contrary notwithstanding.

The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.



In witness whereof the Mortgagor has hereunto set his hand and seal as of the day and year first aforesaid.

WITNESS the hand and seal of said Mortgagor

Signed, Sealed and Delivered in the Presence of

\_\_\_\_\_ By: \_\_\_\_\_ (SEAL)  
WITNESS  
ADDRESS

\_\_\_\_\_  
WITNESS  
ADDRESS

For a corporation:

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ (date) by \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the coporation. \_\_\_\_\_ has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Signature

My Commission Expires: \_\_\_\_\_

For an individual acting in his own right

STATE \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Before me personally appeared \_\_\_\_\_ and \_\_\_\_\_ known to me to be the individual (s) described in and who executed the foregoing instrument, and acknowledged before me that they executed the same for the purpose therein expressed. They have produced a \_\_\_\_\_ as identification.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Signature

My Commission Expires \_\_\_\_\_

EXHIBIT C

Project: \_\_\_\_\_ Application Fee Paid: \_\_\_\_\_  
Owner: \_\_\_\_\_ Date Paid: \_\_\_\_\_  
File No: \_\_\_\_\_  
Plant Name: \_\_\_\_\_ Service: \_\_\_\_\_

ST. JOHNS COUNTY, FLORIDA

CAPACITY COMMITMENT AGREEMENT

This agreement, dated \_\_\_\_\_, 19\_\_\_\_, is entered into by the Board of County Commissioners of St. Johns County, Florida, (Board) and \_\_\_\_\_ (Contractor/Developer), to guarantee Contractor/Developer the availability of a specific number of Equivalent Residential Connections (ERCs) pursuant to Section 18 of Ordinance 93-14, the St. Johns County Utility Ordinance, as it may be amended from time to time (County Utility Ordinance), for the project known as \_\_\_\_\_ (Project), located on property legally described below:

IN CONSIDERATION OF THE COVENANTS AND AGREEMENTS HEREIN AND PAYMENT OF THE FEES DESCRIBED HEREIN, THE PARTIES AGREE AS FOLLOWS:

Section 1. This agreement is based on Contractor's/ Developer's Capacity Commitment Application (Application) dated \_\_\_\_\_, File No. \_\_\_\_\_, which is incorporated by reference and made a part hereof. In accordance with the Application, the Contractor/Developer is hereby guaranteed the availability of ERCs as described below for the Project (committed ERCs):

ERCs

Water \_\_\_\_\_

Sewer \_\_\_\_\_

[Add the following paragraph, if applicable.]

Section 2. Contractor/Developer specifically acknowledges by the execution of this agreement that the number of ERCs guaranteed by this agreement is less than the total ERCs approved by the Florida Department of Environmental Regulation and/or by St. Johns County for the Project. Contractor/Developer further acknowledges that the County has no obligation under this agreement to provide water and/or sewage treatment capacity above and beyond the number of ERCs designated above.

Section 3. Contractor/Developer agrees to pay \_\_\_\_\_ dollars (\$\_\_\_\_\_) for the water ERCs and \_\_\_\_\_ dollars (\$\_\_\_\_\_) for the sewer ERCs for a total of \_\_\_\_\_ dollars (\$\_\_\_\_\_)

to St. Johns County (County) at the time this agreement is executed, or shall make satisfactory arrangements for extended payments pursuant to Section 16 of the County Utility Ordinance, which payments represent the Unit Connection Fees, or portion thereof, assessed pursuant to Section 16 of the County Utility Ordinance. The payment covers only the committed ERCs described above and may represent only a portion of the total Unit Connection Fees due on the Project.

Section 4. Upon payment of the amount stated above, or satisfactory arrangements for extended payments, Contractor/Developer has the right to connect to the County water and/or sewer system. This provision shall not be interpreted to require Contractor/Developer to connect to the County water and/or sewer system within 12 months.

Section 5. However, if Contractor/Developer has not connected the committed ERCs in the Project prior to 12 months from the date of this Agreement; or, if connections have been made, but the physical development or vertical construction of the Project has not proceeded to such an extent that the committed ERCs can practicably be used, then, in either event, Contractor/Developer shall pay a monthly water and/or sewer reserved capacity fee at 60% of the fixed minimum monthly rate in effect at that time, per committed and unconnected or unused ERC.

Section 6. Pursuant to Section 18 of the County Utility Ordinance, this agreement may be terminated by the County and the ERCs canceled without reimbursement of Unit Connection Fees or any other payments required by this agreement and/or Sewer Reserved Capacity Fee set forth above. The procedures set forth in Section 18 of the County Utility Ordinance shall govern any action under this paragraph.

Section 7. Any notices or correspondence related to this agreement shall be addressed as follows:

For the County: Director of Utilities  
P.O. Box 1749  
St. Augustine, FL 32085

For the Contractor/  
Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Section 9. This agreement shall be executed in duplicate, and shall not be effective until it is approved by the Board.

Attest:

Board of County Commissioners  
of St. Johns County, Florida

\_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Its

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

Contractor/Developer

By: \_\_\_\_\_  
Its

\_\_\_\_\_  
WITNESS  
ADDRESS

(Corporate Seal)

\_\_\_\_\_  
WITNESS  
ADDRESS

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

EXHIBIT E

UNIT CONNECTION FEE  
TWO YEAR PROMMISSORY NOTE

APPLICANT(S) NAME: \_\_\_\_\_  
\_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

Service Provided: Water \_\_\_\_\_  
Sewer \_\_\_\_\_

\$ \_\_\_\_\_

St. Augustine, Florida

For value received and as payment for unit connection fees on the premises located at \_\_\_\_\_ (Premises), the undersigned, jointly and severally, promises to pay to the order of St. Johns County, Florida, (County) at the St. Johns County Utility Department office, P. O. Drawer 3006, St. Augustine, Florida 32085 or elsewhere as the County may from time to time require, the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_)

together with interest on so much of said principal sum as remains from time to time outstanding and unpaid, at the rate of five percent (5.0 %) per annum from the date below until paid; said principal and interest shall be paid in equal consecutive monthly installments of \_\_\_\_\_

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) each, commencing one month from the date below and continuing on the same day of each and every month, thereafter until paid in full; said installments to be applied first to interest and balance to principal.

By signing this Note, the undersigned certifies that the undersigned is the owner of the Premises, and has the authority to enter this Note.

The makers hereof waive presentment for payment and demand. Time is of the essence hereof. It is expressly agreed that if this Note or any part of installment thereof be not paid within ten (10) days after the same becomes due and payable, anything herein to the contrary notwithstanding, the makers hereof understand that all unpaid sums shall immediately be due and payable at once, without notice or demand, together with all costs of collection including a reasonable attorney's fee, whether suit be filed or not.

Unit Connection Fee  
Promissory Note  
Page Two (2)

**NOTICE:** In addition to the above, failure to pay this Note or the monthly installments on this Note within 10 days after the same becomes due and payable, may result in disconnection of water and/or sewer services until all sums due under this Note have been paid in full and disconnect/reconnect fees and service charges have been paid.

The makers hereof may prepay any part of the principal sum hereof in any amount at any time, but any such prepayment shall not relieve the makers hereof from making payment of the installment then due nor of any subsequent installment provided hereby, unless at the time of such prepayment the makers hereof pay all sums hereon.

Any waiver of the right to exercise any option by the holder hereof shall not constitute a waiver of the right to exercise said option at any future time.

All notices, demand, presentment, dishonor and requirements under any law of Florida are hereby expressly waived.

**DUE ON SALE CLAUSE:** Upon any sale, lease, transfer, encumbrance or conveyance of the Premises or any other transaction which shall affect the Premises in whole or in part whether as to fee simple title or any leasehold interest therein or otherwise, or upon any sale, lease, transfer, encumbrance or conveyance of the legal or beneficial ownership of the undersigned to any person, firm or corporation not previously approved in writing by the County, the County shall have the right to accelerate the maturity of the Note as though it were due and payable on the day of such sale, lease, transfer, encumbrance or conveyance, and to demand payment in full of any indebtedness the same as if an event of default had occurred hereunder, anything in the Note to the contrary notwithstanding.

Unit Connection Fee  
Promissory Note  
Page Three (3)

The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors, and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

SIGNED, SEALED AND DECLARED  
IN OUR PRESENCE:

Dated as of: \_\_\_\_\_, 19\_\_\_\_  
( Date of connection)

\_\_\_\_\_  
WITNESS  
ADDRESS

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

\_\_\_\_\_  
WITNESS  
ADDRESS

\_\_\_\_\_  
WITNESS  
ADDRESS

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

\_\_\_\_\_  
WITNESS  
ADDRESS

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_ who has produced a \_\_\_\_\_ as identification.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Signature

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

My Commission Expires: \_\_\_\_\_