

RESOLUTION NO 2000-116

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, DIRECTING AND AUTHORIZING THE EXECUTION OF A MODIFICATION TO THE SAINT JOHNS WATER AND WASTEWATER UTILITY SERVICE AGREEMENT, DATED JANUARY 24, 1995, AND IN ASSOCIATION THEREWITH THE TRANSFER AND SALE OF CERTAIN PROPERTY AND USE RIGHTS INCIDENT TO DISPOSING OF WASTEWATER EFFLUENT AND DISTRIBUTION OF IRRIGATION WATER IN ST. JOHNS COUNTY, FLORIDA; PROVIDING FOR FINDING OF A PUBLIC PURPOSE AND NECESSITY; PROVIDING THAT SUCH TRANSFER AND SALE IS IN THE PUBLIC INTEREST AND, TO THE EXTENT APPLICABLE, IN CONFORMANCE WITH SECTIONS 125.3401 AND 125.35, FLORIDA STATUTES; PROVIDING DIRECTION AND AUTHORITY TO PERFORM UNDER SUCH MODIFICATION AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA:

**SECTION 1. AUTHORITY.** Pursuant to Chapter 125, Florida Statutes, the Board of County Commissioners (the "Board") of St. Johns County, Florida (the "County") has all the powers of local self-government to perform County functions and render services for County purposes in a manner not inconsistent with general law or with a special law approved by the vote of the electors. Such power includes the authority to provide water and wastewater utility services and to provide wastewater treatment and effluent disposal within the County.

**SECTION 2. FINDINGS.** It is hereby ascertained, determined and declared:

(A) On January 24, 1995 the County entered into the Saint Johns Water and Wastewater Utility Service Agreement which provided for the acquisition by the County and transition to the County of certain water and wastewater utility infrastructure and services within the Saint Johns DRI (the "Agreement"). The area addressed in the Agreement generally encompassed approximately 1,947 acres located in the vicinity of Interstate 95 and International Golf Parkway (more commonly referred to as the "World Golf" project), and is referred to therein as the "Interchange Parcel." Said Agreement being reviewed, considered and adopted as provided by law.

(B) A portion of the obligations under the Agreement involved the development of infrastructure needed by the County to dispose of treated wastewater effluent. The Agreement provided that the effluent be considered as one of the residual by-products of the County's wastewater treatment process and required delivery to the Interchange Parcel, in certain circumstances, without charge for golf course irrigation purposes.

(C) Development at the Interchange Parcel has occurred as contemplated and the parties have performed under the Agreement. The required effluent distribution main, on-site holding pond, and on-site distribution facilities have been constructed and remain operational as contemplated by the Agreement. However, as expected, the County's wastewater facilities are not yet generating

an annual average of 500,000 gallons per day of effluent. Because the activity of distributing the effluent along with supplemental irrigation water has been required in order affect the disposal of effluent from the County's wastewater treatment facilities, the County has embarked upon delivery of effluent and irrigation water to various property owners within the Interchange Parcel.

(D) The County currently owns and operates a master irrigation pumping station that distributes effluent supplemented with storm water and well water within the Interchange Parcel. Supplementing the effluent with storm water and well water has proven to be difficult and awkward for the County Utilities Department and relatively expensive for the property owner associations and other irrigation customers within the Interchange Parcel. The County and affected landowners have had numerous discussions focusing on how to amicably and equitably improve the process and reduce costs. Such discussions have addressed how to price the effluent, how to address the fact that only a fraction of the irrigation water delivered to users within the Interchange Parcel is in fact effluent, and whether or not it is appropriate for the County to attempt to recover certain costs associated with the disposal of effluent predominately from irrigation water users rather than the broader base of wastewater customers in the County's utility system.

(E) It is in the best interest of the County to preserve a reliable long term effluent disposal resource.

(F) It is in the best interest of the County and all the parties using or receiving irrigation water within the Interchange Parcel to modify the Agreement to simplify the delivery of effluent to the on-site holding pond and allow the respective landowner associations to thereafter assume responsibility for on-site delivery of irrigation water to their members.

(G) Based upon the foregoing, the Board expressly finds that the proposed Modification to the Saint Johns Water and Wastewater Utility Service Agreement, attached hereto as Exhibit B, securing a long term disposal alternative and providing for "bulk" delivery of effluent, constitutes a public purpose and is in the best interests of the health, safety and welfare of the County and its inhabitants, both within and outside of the Interchange Parcel. The Modification to the Saint Johns Water and Wastewater Utility Service Agreement is determined to be consistent with the original Agreement and determined to equitably distribute the costs and responsibilities of disposing, providing, distributing and using effluent generated by the County's wastewater treatment facilities within the Interchange Parcel for appropriate land application (irrigation) uses. Further, the Board expressly finds that the transfer of certain property and use rights incident to disposing of wastewater effluent and distribution of irrigation water within the Interchange Parcel as provided for in the proposed Modification is necessary for the fulfillment of the aforementioned public purpose.

**SECTION 3. PUBLIC INTEREST DETERMINATION.** In consideration of the statements made, referred to, prepared or filed by the St. Johns County Utilities Department at the meeting of the Board on August 15, 2000, and this public hearing set to consider, to the extent applicable, the Modification to the Saint Johns Water and Wastewater Utility Service Agreement, dated January 24, 1995, and in association therewith the transfer of certain property and use rights incident to disposing of wastewater effluent and distribution of irrigation water within the Interchange Parcel, from the County to the Saint Johns Northwest Commercial Property Owners Association, Inc. in conformance with Section 125.3401, Florida Statutes, the Board hereby considers the following:

(A) The most recently available income and expense statement of the County's Utility System;

(B) The most recently available balance sheet for the County's Utility System listing the assets and liabilities which reflects that, because of the public as opposed to investor owned nature of the County's Utility System, the County does not account for or track contributions-in-aid-of-construction;

(C) A statement of the existing customer base of the County Utility System within the Interchange Parcel.

(D) The physical condition of the property and use rights being transferred by the County incident to the Modification Agreement.

(E) The reasonableness of the terms of the Modification to Saint Johns Water and Wastewater Utilities Service Agreement;

(F) The impacts, both positive and negative, of the contemplated Modification Agreement on affected landowners who will receive the County's effluent and the irrigation water to be provided by and through the Saint Johns Northwest Commercial Property Owners Association, Inc. within the Interchange Parcel.

(G) The additional investment required by the Interchange Developer or the Saint Johns Northwest Commercial Property Owners Association, Inc. and the ability and willingness of each such entity to make that investment;

(H) The terms and conditions on which the Interchange Developer and/or the Saint Johns Northwest Commercial Property Owners Association, Inc. will provide capital investment and financing or a combination thereof for contemplated capital replacements, additions, expansions, and repairs;

(I) The alternatives to the contemplated irrigation water service transition and the potential impact on the affected landowners, and the entire customer base of the County's wastewater utility system, if the Modification to the Saint Johns Water and Wastewater Utility Agreement is not executed as proposed;

(J) The ability of the Saint Johns Northwest Commercial Property Owners Association, Inc. to provide and maintain high quality and cost effective irrigation utility service as provided in the proposed Modification Agreement;

(K) A statement prepared by the St. Johns County Utilities Department showing: 1) the adoption of the proposed Modification to the Saint Johns Water and Wastewater Utility Service Agreement and the transfer and sale of certain property and use rights incident to disposing of wastewater effluent and the distribution of irrigation water by the landowners associations as provided for in said proposed Modification Agreement is in the public interest, including reference to the expectation that the landowners associations will contract for all operations activities required in lieu of a summary of the landowners experience in utility operation; and 2) an explanation of the financial ability of the landowners associations' ability to provide, now and in the future, high quality and cost effective irrigation water services; and

(L) Proof of Publication of a notice of this public hearing required by Section 125.3401, Florida Statutes, same being attached hereto as Composite Exhibit A.

**SECTION 4. AUTHORIZATION TO TRANSFER AND SELL CERTAIN PROPERTY AND USE RIGHTS INCIDENT TO THE DISPOSAL OF EFFLUENT AND DISTRIBUTION OF IRRIGATION WATER WITHIN THE INTERCHANGE PARCEL.**

(A) In conformance with Section 125.35, Florida Statutes, notice that the County desires to consider the proposed Modification Agreement, or one of a similar nature, and requesting bids from interested parties was published once a week for 2 weeks in a newspaper of general circulation within the County on July 26, 2000, and August 2, 2000. Proof of Publication thereof being

attached hereto as Composite Exhibit A.

(B) For the purposes of compliance with Section 125.35, Florida Statutes, the Board hereby determines that the willingness of Saint Johns Northwest Commercial Property Owners Association, Inc., and the other affected landowners associations within the Interchange Parcel, to enter into the proposed Modification Agreement shall be deemed "the highest and best bidder for the particular purpose use the Board deems to be highest and best." Accordingly, the Board hereby authorizes the transfer and sale of the property and use rights, as same are more particularly described in the proposed Modification Agreement, which are incident to the disposal of effluent and distribution of irrigation water within the Interchange Parcel.

**SECTION 5. AUTHORITY TO EXECUTE MODIFICATION TO UTILITY SERVICE AGREEMENT.**

The Modification to the Saint Johns Water and Wastewater Utility Service Agreement (the "Modification Agreement") which sets forth the Modification of terms relating to effluent disposal and delivery of irrigation water and the obligations of the affected landowners associations, the Interchange Developer and the County and is attached as Exhibit "B" to this Resolution. After execution by the affected landowners associations and the Interchange Developer (by its lawful successor), the Board hereby authorizes and directs its Chairman to execute the Modification Agreement on behalf of the Board in substantially the form attached hereto as



Exhibit "B" and to cause delivery of certified copies of same to each of the affected landowners associations and the Interchange Developer. The Board authorizes and directs its Chairman, the County Administrator, officers, attorneys and other agents or employees of the County to execute and deliver any and all papers and instruments and to do and cause to be done all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution or the Modification Agreement.

**SECTION 6. APPLICABILITY AND EFFECTIVE DATE.**

This Resolution shall be liberally construed to effect the purposes hereof and shall take effect immediately upon its adoption.

**PASSED AND DULY ADOPTED** at a regular meeting of the Board of County Commissioners of St. Johns County, Florida, on the 15<sup>th</sup> day of August, 2000.

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

(SEAL)

By: James E. Bryant  
Chairman

ATTEST:

CHERYL STRICKLAND, Clerk of the  
Circuit Court and Ex-Officio Clerk  
of the Board of County Commissioners  
of St. Johns County, Florida

By: Patricia De Grande  
Deputy Clerk

EXHIBIT A  
PROOF OF PUBLICATION

THE ST. AUGUSTINE RECORD

PUBLISHED EVERY AFTERNOON MONDAY THROUGH FRIDAY, SATURDAY AND SUNDAY MORNING  
ST. AUGUSTINE AND ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA,  
COUNTY OF ST. JOHNS

Before the undersigned authority personally appeared **Linda Y. Murray**  
who on oath says that she is an Accounting Clerk of the St. Augustine Record,  
a daily newspaper published at St. Augustine in St. Johns County, Florida:  
that the attached copy of advertisement, being a

**NOTICE OF PUBLIC HEARING**

in the matter of **BIDS**

**PURCHASE SALE & PRIVITIZATION OF WATER & WASTE WATER UTILITIES**

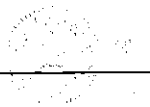
in the Court, was published in said newspaper in the issues of  
**AUGUST 5 & 12, 2000**

Affiant further says that the St. Augustine Record is a newspaper published  
at St. Augustine, in said St. Johns County, Florida, and that the said newspaper  
heretofore been continuously published in said St. Johns County, Florida, each  
day and has been entered as second class mail matter at the post office in the  
City of St. Augustine, in said St. Johns County, for a period of one year preceding  
the first publication of the copy of advertisement; and affiant further says that  
she has neither paid nor promised any person, firm or corporation any discount,  
rebate, commission or refund for the purpose of securing the advertisement for  
publication in the said newspaper.

Sworn to and subscribed before me this **14TH** day of **AUGUST** 2000,

by *Linda Y. Murray* who is personally known to me  
or who has produced **PERSONALLY KNOWN** as identification.

*Zoe Ann Moss*  
(Signature of Notary Public)

 (Seal)

Zoe Ann Moss

*Exhibit A*

COPY OF ADVERTI

NOTICE OF PUBLIC HEARING TO CONSIDER THE PURCHASE, SALE AND PRIVATIZATION OF WATER AND WASTEWATER UTILITIES  
Notice is hereby given that the Board of County Commissioners of St. Johns County has called for bids for and will conduct a public hearing to consider the transfer and sale of certain utility related property and use rights, to-wit:  
All effluent holding and irrigation water distribution facilities located within the Interchange Parcel (downstream of an "Effluent Delivery Point" to be designated by the County), now possessed by the County, or otherwise available for use by the County pursuant to the Saint Johns Water and Wastewater Utility Service Agreement dated June 24, 1995, or any modification thereof, including a non exclusive right to use all easements, licenses or other use rights otherwise available to the County specifically for effluent holding or irrigation water distribution purposes within the Interchange Parcel.  
The term "Interchange Parcel" means approximately the 1,947 acres of land located in the vicinity of Interstate 95 and International Golf Parkway, said land more particularly described in Appendix A to the aforementioned Saint Johns Water and Wastewater Utility Service Agreement dated June 24, 1995.  
The hearing will be held at 1:30 p.m. on August 15, 2000, in the County Auditorium at County Administration Complex, 4020 Lewis Speedway (County Road 16-A) and U.S. 1 North, St. Augustine, FL for the purpose of receiving public comments and taking action on the proposed purchase, sale, privatization and disposal by assignment of such water and wastewater utilities and in determining whether such actions are in the public interest. In making such determination, the Board of County Commissioners will consider, among other matters, the factors described in Section 125.3401, Florida Statutes. All affected property owners have a right to appear at the hearing and to file written comments with the Board of County Commissioners.  
If you have any questions, please contact William G. Young at (904) 471-2161.  
If a person decides to appeal any decision made with respect to any matter considered at the meeting/hearing, he/she will need a record of the proceedings, and for such purpose he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.  
NOTICE TO PERSONS NEEDING SPECIAL ACCOMMODATIONS AND TO ALL HEARING IMPAIRED PERSONS: In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in the proceedings should contact ADA Coordinator, at (904) 823-2501 at the County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32095. For hearing impaired individuals: Telecommunication Device for the Deaf (TDD): Florida Relay Service: 1-800-955-8770, no later than 5 days prior to the date of the meeting/hearing.  
BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA  
CHERYL STRICKLAND, ITS CLERK  
By: Patricia DeGrande, Deputy Clerk  
L2269, Aug 5, 12, 2000

# THE ST. AUGUSTINE RECORD

PUBLISHED EVERY AFTERNOON MONDAY THROUGH FRIDAY, SATURDAY AND SUNDAY MORNING  
ST. AUGUSTINE AND ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA,  
COUNTY OF ST. JOHNS

Before the undersigned authority personally appeared **Linda Y. Murray**  
who on oath says that she is an Accounting Clerk of the St. Augustine Record,  
a daily newspaper published at St. Augustine in St. Johns County, Florida:  
that the attached copy of advertisement, being a

## NOTICE TO BIDDERS

in the matter of **BID# 00-72**

## TRANSITION OF IRRIGATION SERVICES

in the Court, was published in said newspaper in the issues of  
**JULY 26 & AUGUST 2, 2000**

Affiant further says that the St. Augustine Record is a newspaper published at St. Augustine, in said St. Johns County, Florida, and that the said newspaper heretofore been continuously published in said St. Johns County, Florida, each day and has been entered as second class mail matter at the post office in the City of St. Augustine, in said St. Johns County, for a period of one year preceding the first publication of the copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing the advertisement for publication in the said newspaper.

Sworn to and subscribed before me this **4TH** day of **AUGUST** 2000,

by *Linda Y. Murray* who is personally known to me  
or who has produced **PERSONALLY KNOWN** as identification.

*Zoe Ann Moss*  
(Signature of Notary Public)



**Zoe Ann Moss**  
MY COMMISSION # CG641914 EXPIRES  
August 22, 2004

Zoe Ann Moss

Exhibit A1

COPY O

NOTICE TO BIDDERS  
BID NO. 00-72

Notice is hereby given that sealed bids will be received until 2:00 P.M. on August 8, 2000, by Joe Burch, Purchasing Manager, St. Johns County Purchasing Department, 2740 Industry Center Road, St. Augustine, Florida 32084 for the Proposed Transition of Irrigation Services at Saint Johns DRI Interchange Parcel. Bids will be opened promptly after the 2:00 P.M. deadline.

Notice is hereby given that the County Commission is calling for bids for and will conduct a public hearing to consider the transfer and sale of certain utility related property and use rights, to-wit:

All effluent holding and irrigation water distribution facilities located within the Interchange Parcel (downstream of an "Effluent Delivery Point" to be designated by the County), now possessed by the County, or otherwise available for use by the County pursuant to the Saint Johns Water and Wastewater Utility Service Agreement dated June 24, 1995, or any Modification thereof, including a non exclusive right to use all easements, licenses or other use rights otherwise available to the County, specifically for effluent holding or irrigation water distribution purposes within the Interchange Parcel. The term "Interchange Parcel" means approximately the 1,947 acres of land located in the vicinity of Interstate 95 and International Golf Parkway, said land more particularly described in Appendix A to the aforementioned Saint Johns Water and Wastewater Utility Service Agreement dated June 24, 1995.

The County is looking to revise its approach to the delivery of irrigation water to lands generally located within the Saint Johns DRI. The area addressed is subject to that certain Saint Johns Water and Wastewater Service Agreement adopted by the County on January 24, 1995 (the "Agreement") and is located in the vicinity of Interstate 95 and International Golf Parkway (said area commonly referred to as the "World Golf" project).

Responsible bidders must be able to demonstrate a willingness to accept responsibility and maintenance of the effluent holding and irrigation water distribution facilities and an ability to receive effluent from the County and effectively provide irrigation water distribution within the Interchange Parcel.

For reference copies of the Agreement and a proposed Modification involving one or more of the landowner's associations can be obtained from www.demandstar.com or from the St. Johns County Purchasing Department at 2740 Industry Center Road, St. Augustine, Florida 32084. A responsive bidder must provide a written outline of its bid proposal to St. Johns County Purchasing Department, 2740 Industry Center Road, St. Augustine, Florida 32084 on or before August 8, 2000 at 2:00 p.m. The outlines received by the County will be evaluated using the matrix attached and a single bidder will be invited to negotiate a complete agreement.

The County reserves the right to reject all responses. This Notice is provided in order to comply with Section 125.35, Florida Statutes. Questions or further inquiries may be directed to Joe Burch, Purchasing Manager at (904) 823-2548.

Additionally, Package request forms are available by calling the Demand Star.com, Inc. System at 407-975-0077 and requesting Document #00723. Many

packages can be downloaded from the internet. Check the agency's site for download availability and any applicable fees. Vendors registered with Demand Star.com can download most packages at no cost from their web site, www.demandstar.com.  
BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA  
CHERYL STRICKLAND, CLERK  
By: Patricia DeGrande, Deputy Clerk  
August 2, 2000

EXHIBIT B  
MODIFICATION AGREEMENT

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MODIFICATION TO  
SAINT JOHNS WATER AND WASTEWATER UTILITY  
SERVICE AGREEMENT

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By and Among

SAINT JOHNS NORTHWEST COMMERCIAL PROPERTY OWNERS ASSOCIATION,  
INC.; SAINT JOHNS NORTHWEST RESIDENTIAL PROPERTY OWNERS  
ASSOCIATION, INC.; SAINT JOHNS SOUTHEAST MASTER ASSOCIATION,  
INC.; SAINT JOHNS NORTHEAST MASTER ASSOCIATION, INC.

IT LAND ASSOCIATES, LLC

and

ST. JOHNS COUNTY, FLORIDA

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Adopted August 15, 2000

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Exhibit A - Map Showing Effluent Delivery Point

Exhibit B - Form of Bill of Sale

MODIFICATION TO  
SAINT JOHNS WATER AND WASTEWATER UTILITY  
SERVICE AGREEMENT

THIS MODIFICATION AGREEMENT, is made and entered into as of this 15th day of August, 2000, by and among IT Land Associates, LLC, a Florida limited liability company (the "Interchange Developer"); Saint Johns Northwest Commercial Property Owners Association, Inc. (the "Northwest Commercial Association"), Saint Johns Northwest Residential Property Owners Association, Inc. (the "Northwest Residential Association"); Saint Johns Southeast Master Association, Inc. (the "Southeast Master Association"); Saint Johns Northeast Master Association, Inc. (the "Northeast Master Association") and St. Johns County, Florida, a political subdivision of the State of Florida (the "County") to amend and supplement the Saint Johns Water and Wastewater Utility Service Agreement originally entered into by and among Northwest Utilities I, Inc., SJH Partnership, Ltd. and St. Johns County on January 24, 1995 (the "Agreement").

W I T N E S S E T H:

**WHEREAS**, all capital facilities necessary to supply up to an annual average of 500,000 gallons of effluent per day by the County to the Interchange Parcel have been installed and constructed pursuant to the Agreement;

**WHEREAS**, the County's wastewater treatment facilities have not been able to produce effluent in the quantities contemplated in the



Agreement;

**WHEREAS**, the parties to this Modification Agreement desire to modify the effluent distribution responsibilities, shift responsibility for operation and maintenance of certain effluent distribution facilities, and revise certain rates and charges for effluent delivered by the County to the Interchange Parcel.

**WHEREAS**, SJH Partnership, Ltd. has converted from a Florida limited partnership to a Florida limited liability company pursuant to Section 608.439 of the Florida Statutes and has changed its name to IT Land Associates, LLC.

**NOW THEREFORE**, in consideration of the mutual promises, covenants, representations and agreements contained herein, together with \$10 and other good and valuable consideration exchanged between the parties, the parties to this Modification of the Saint Johns Water and Wastewater Utility Service Agreement do join into, undertake, promise and agree for themselves, their permitted successors and assigns as follows:

## **ARTICLE I**

### **DEFINITIONS AND CONSTRUCTION**

**SECTION 1.01. DEFINITIONS.** As used in this Modification Agreement the capitalized terms shall have the same meanings as defined in the Agreement; and the following terms shall have the meanings as defined herein unless the context requires otherwise:

"Agreement" means the Saint Johns Water and Wastewater Utility

Service Agreement between Northwest Utilities I, Inc., SJH Partnership, Ltd. and St. Johns County dated January 24, 1995, including any amendments and supplements hereto executed and delivered in accordance with the terms hereof or the Agreement.

"Northwest Commercial Association" means Saint Johns Northwest Commercial Property Owners Association, Inc., and on behalf of its members, and successor in function.

"Northwest Residential Association" means Saint Johns Northwest Residential Property Owners Association, Inc., and on behalf of its members, and successor in function.

"Southeast Master Association" means Saint Johns Southeast Master Association, Inc., and on behalf of its members, and successor in function.

"Northeast Master Association" means Saint Johns Northeast Master Association, Inc., and on behalf of its members, and successor in function.

"Effluent Delivery Point" means that point in the effluent force main described in Section 3.02 (A) of the Agreement, to be more particularly identified on the map attached hereto as Exhibit A to this Modification Agreement located near the holding pond described in Section 3.02 (B) of the Agreement, at which the effluent or reuse water metering device described in Section 3.01(C) below shall be located.

**SECTION 1.02. CONSTRUCTION AND INTERPRETATION.**

(A) Words that indicate a singular number shall include the plural in each case and vice versa, and words that import a person shall include firms and corporations.

(B) The terms "herein", "hereunder", "hereby", "hereof", and any similar terms, shall refer to this Modification Agreement; the term "heretofore" shall mean before the date of execution of this Modification Agreement; and the term "hereafter" shall mean on or after the initial date of execution of this Modification Agreement.

(C) Words that reference only one gender shall include all genders.

(D) This Modification Agreement does not and shall not be construed to relieve the Interchange Developer, the Northwest Commercial Association, the Northwest Residential Association, the Southeast Master Association, the Northeast Master Association, or any other person or entity from any obligation to address any permit, condition, term, approval, requirement, or restriction and shall not relieve any party to this Modification Agreement or any other person or entity of the obligation to comply with any law, ordinance, rule, or regulation governing said permitting requirements, conditions, terms, approvals, requirements, or restrictions.

(E) This Modification Agreement is not and shall not be

construed as a Development Agreement pursuant to the Florida Local Government Development Agreement Act Sections 163.3220-163.3243, Florida Statutes, or its successor in function.

(F) This Modification Agreement shall be construed as consistent with the St. Johns County Utility Ordinance.

(G) This Modification Agreement shall not be construed as the purchase or sale of a utility system or a wastewater facility privatization contract for a wastewater facility as provided in Section 125.3401, Florida Statutes; but rather a means to facilitate a more efficient and economically feasible method of disposing of effluent from County wastewater treatment facilities.

(H) This Modification Agreement shall not be construed as a restriction on the County's power to legislate under its police power or the contracting or bartering away of its police power.

(I) This Modification Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Modification Agreement shall be construed as the sole product of any of the parties hereto.

**SECTION 1.03. INCORPORATION.** The findings, recitals and acknowledgments contained herein are true, correct, and are incorporated in this Modification Agreement.

**SECTION 1.04. SECTION HEADINGS.** Any headings preceding the texts of the several Articles, Sections or Appendices in this

Modification Agreement and any table of contents or marginal notes appended to copies hereof, shall be solely for the convenience of reference and shall neither constitute a part of this Modification Agreement nor affect its meaning, construction or effect.

## ARTICLE II

### REPRESENTATIONS

#### SECTION 2.01. REPRESENTATIONS OF THE INTERCHANGE DEVELOPER.

The Interchange Developer, IT Land Associates, LLC, a Florida limited liability company (f/k/a SJH Partnership, Ltd., a Florida limited partnership), makes the following representations:

(A) All representations made in Section 2.01 of the Agreement remain true and correct and are hereby reaffirmed and provided by reference as if same pertained to this Modification Agreement as of the effective date hereof except that Northwest Utilities, Inc. was dissolved subsequent to the transition of service to the County.

(B) The notice of intent to terminate the NWU franchise referred to in Section 3.12 (B) of the Agreement has been given and is effective. Pursuant to Section 4.08 of the Agreement, this Modification Agreement need only be executed by the Interchange Developer and the County to be effective.

**SECTION 2.02. REPRESENTATIONS OF THE COUNTY.** The County makes the following representations:

(A) All representations made in Section 2.02 of the Agreement

remain true and correct and are hereby reaffirmed and provided by reference as if same pertained to this Modification Agreement as of the effective date hereof.

(B) The notice of intent to terminate the NWU franchise referred to in Section 3.12 (B) of the Agreement has been given and is effective. Pursuant to Section 4.08 of the Agreement, this Modification Agreement need only be executed by the Interchange Developer and the County to be effective.

**SECTION 2.03. REPRESENTATIONS OF THE NORTHWEST COMMERCIAL ASSOCIATION.** The Northwest Commercial Association makes the following representations:

(A) The Northwest Commercial Association is a corporation not for profit duly organized, validly existing and in good standing in the State of Florida, authorized to do business in the State, and has all requisite corporate power and authority to enter into and fully perform as provided in this Modification Agreement.

(B) All necessary action on the part of the Northwest Commercial Association relating to the authorization of the Northwest Commercial Associations's execution and delivery of this Modification Agreement and the Northwest Commercial Association's performance of its duties and obligations contained herein have been duly taken, and assuming the due authorization, execution and delivery by the other parties to this Modification Agreement will be valid and enforceable against the Northwest Commercial

Association, in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with the general principles of equity.

(C) There is no action, suit, investigation, or proceeding pending or, to the Northwest Commercial Association's knowledge and belief, threatened against or affecting the Northwest Commercial Association, at law or in equity or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality, wherein any decision, ruling or finding would adversely affect the transactions contemplated hereby or which in any way would adversely affect the validity of this Modification Agreement or any other agreement or instrument to which the Northwest Commercial Association is a party which is used or contemplated for use in the consummation of the transactions contemplated hereby.

(D) To the best of the Northwest Commercial Association's knowledge and belief and after due inquiry, neither the execution and delivery of this Modification Agreement nor the consummation of the transactions contemplated, nor compliance with the terms and provisions of such instruments will violate the provisions of any applicable law or any applicable order or regulation of any governmental authority having jurisdiction over the Northwest

Commercial Association and will not conflict with or result in a material breach of any terms, conditions or provisions of any agreement or instrument to which the Northwest Commercial Association is now a party, or constitute a default thereunder.

**SECTION 2.04. REPRESENTATIONS OF THE NORTHWEST RESIDENTIAL ASSOCIATION.** The Northwest Residential Association makes the following representations:

(A) The Northwest Residential Association is a corporation not for profit duly organized, validly existing and in good standing in the State of Florida, authorized to do business in the State, and has all requisite corporate power and authority to enter into and fully perform as provided in this Modification Agreement.

(B) All necessary action on the part of the Northwest Residential Association relating to the authorization of the Northwest Residential Associations's execution and delivery of this Modification Agreement and the Northwest Residential Association's performance of its duties and obligations contained herein have been duly taken, and assuming the due authorization, execution and delivery by the other parties to this Modification Agreement will be valid and enforceable against the Northwest Residential Association, in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of



judicial discretion in accordance with the general principles of equity.

(C) There is no action, suit, investigation, or proceeding pending or, to the Northwest Residential Association's knowledge and belief, threatened against or affecting the Northwest Residential Association, at law or in equity or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality, wherein any decision, ruling or finding would adversely affect the transactions contemplated hereby or which in any way would adversely affect the validity of this Modification Agreement or any other agreement or instrument to which the Northwest Residential Association is a party which is used or contemplated for use in the consummation of the transactions contemplated hereby.

(D) To the best of the Northwest Residential Association's knowledge and belief and after due inquiry, neither the execution and delivery of this Modification Agreement nor the consummation of the transactions contemplated, nor compliance with the terms and provisions of such instruments will violate the provisions of any applicable law or any applicable order or regulation of any governmental authority having jurisdiction over the Northwest Residential Association and will not conflict with or result in a material breach of any terms, conditions or provisions of any agreement or instrument to which the Northwest Residential Association is now a party, or constitute a default thereunder.

**SECTION 2.05. REPRESENTATIONS OF THE SOUTHEAST MASTER ASSOCIATION.** The Southeast Master Association makes the following representations:

(A) The Southeast Master Association is a corporation not for profit duly organized, validly existing and in good standing in the State of Florida, authorized to do business in the State, and has all requisite corporate power and authority to enter into and fully perform as provided in this Modification Agreement.

(B) All necessary action on the part of the Southeast Master Association relating to the authorization of the Southeast Master Association's execution and delivery of this Modification Agreement and the Southeast Master Association's performance of its duties and obligations contained herein have been duly taken, and assuming the due authorization, execution and delivery by the other parties to this Modification Agreement will be valid and enforceable against the Southeast Master Association, in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with the general principles of equity.

(C) There is no action, suit, investigation, or proceeding pending or, to the Southeast Master Association's knowledge and belief, threatened against or affecting the Southeast Master

Association, at law or in equity or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality, wherein any decision, ruling or finding would adversely affect the transactions contemplated hereby or which in any way would adversely affect the validity of this Modification Agreement or any other agreement or instrument to which the Southeast Master Association is a party which is used or contemplated for use in the consummation of the transactions contemplated hereby.

(D) To the best of the Southeast Master Association's knowledge and belief and after due inquiry, neither the execution and delivery of this Modification Agreement nor the consummation of the transactions contemplated, nor compliance with the terms and provisions of such instruments will violate the provisions of any applicable law or any applicable order or regulation of any governmental authority having jurisdiction over the Southeast Master Association and will not conflict with or result in a material breach of any terms, conditions or provisions of any agreement or instrument to which the Southeast Master Association is now a party, or constitute a default thereunder.

**SECTION 2.06. REPRESENTATIONS OF THE NORTHEAST MASTER ASSOCIATION.** The Northeast Master Association makes the following representations:

(A) The Northeast Master Association is a corporation not for

profit duly organized, validly existing and in good standing in the State of Florida, authorized to do business in the State, and has all requisite corporate power and authority to enter into and fully perform as provided in this Modification Agreement.

(B) All necessary action on the part of the Northeast Master Association relating to the authorization of the Northeast Master Associations's execution and delivery of this Modification Agreement and the Northeast Master Association's performance of its duties and obligations contained herein have been duly taken, and assuming the due authorization, execution and delivery by the other parties to this Modification Agreement will be valid and enforceable against the Northeast Master Association, in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with the general principles of equity.

(C) There is no action, suit, investigation, or proceeding pending or, to the Northeast Master Association's knowledge and belief, threatened against or affecting the Northeast Master Association, at law or in equity or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality, wherein any decision, ruling or finding would adversely affect the transactions contemplated hereby or which in any way would adversely affect the validity of this

Modification Agreement or any other agreement or instrument to which the Northeast Master Association is a party which is used or contemplated for use in the consummation of the transactions contemplated hereby.

(D) To the best of the Northeast Master Association's knowledge and belief and after due inquiry, neither the execution and delivery of this Modification Agreement nor the consummation of the transactions contemplated, nor compliance with the terms and provisions of such instruments will violate the provisions of any applicable law or any applicable order or regulation of any governmental authority having jurisdiction over the Northeast Master Association and will not conflict with or result in a material breach of any terms, conditions or provisions of any agreement or instrument to which the Northeast Master Association is now a party, or constitute a default thereunder.

### **ARTICLE III**

#### **AGREEMENT AND MODIFICATION**

##### **SECTION 3.01. EFFLUENT DELIVERY MODIFICATIONS.**

(A) Each party to this Modification Agreement understands and agrees that the effluent provided by the County under the Agreement and this Modification Agreement is one of the residual byproducts of the County's wastewater treatment process and that the County entered into the Agreement and is entering into this Modification Agreement in order to secure and retain a reliable and economically

feasible means of disposing of such effluent. The owner of the golf course located within the Interchange Parcel granted an easement for effluent disposal to the County pursuant to the terms of the Agreement in consideration of the County's agreement to provide such effluent to the golf course for irrigation without charge. The Northwest Commercial Association, Northwest Residential Association, Southeast Master Association, and Northeast Master Association, have agreed to enter into this Modification Agreement and agree to bear a pro rata portion of the cost of effluent and stormwater irrigation delivery as outlined below to secure a reliable and economically feasible source of irrigation water. Accordingly, the Northwest Commercial Association, Northwest Residential Association, Southeast Master Association, and Northeast Master Association specifically agree and acknowledge that neither the operator nor the owner of the golf course located within the Interchange Parcel will be charged for any withdrawal or use of irrigation water from the effluent holding pond. The Northwest Commercial Association, the Northwest Residential Association, the Southeast Master Association and the Northeast Master Association's hereby agree to provide irrigation water services solely to members who own and control such associations. Accordingly, all parties to this Agreement acknowledge and agree that the activities of the Northwest Commercial Association, Northwest Residential Association, Southeast Master Association and Northeast Master Association

contemplated by the terms of this Modification Agreement shall not cause any one of such associations to be considered utilities or subject such associations to utility rate regulation.

(B) The Northwest Commercial Association desires to and shall accept conveyance, responsibility for, and operation of all effluent pumping, and distribution activities and facilities located downstream of the Effluent Delivery Point up to and including the meters to be placed at the point of delivery to the Northwest Residential Association, the Southeast Master Association and the Northeast Master Association within the Interchange Parcel. The County shall, within thirty (30) days after the date of execution of this Modification Agreement, execute and deliver to the Northwest Commercial Association, an instrument in the form attached as Exhibit B, conveying possession and use to the Northwest Commercial Association of all such facilities. Said instrument shall include all retail effluent metering devices in place at the effective date hereof. Representatives of the county and the Northwest Commercial Association shall make a field inspection prior to such conveyance and it shall be the responsibility of the County to convey such facilities in good working order. The Effluent Delivery Point shall be located within the Interchange Parcel at the location shown on the map attached as Exhibit A to this Modification Agreement. By accepting such responsibility, the Northwest Commercial Association shall also accept all responsibility of the County for maintenance of the

holding pond, including all environmental or regulatory permitting associated therewith. Provided, however, nothing in this Subsection 3.01(B) is intended to or shall relieve Scratch Golf Company or other private party from responsibility for maintenance under any applicable contract or permit. Further, nothing in this Subsection 3.01(B) is intended to or shall relieve the County from any ground water monitoring obligation it may have pursuant to its wastewater treatment plant permit.

(C) Within thirty (30) days after the date of execution of this Modification Agreement, the County shall install a master meter at the Effluent Delivery Point. The expense of the master meter shall be charged to and paid by the Northwest Commercial Association within thirty (30) days after an invoice is submitted by the County.

(D) Upon the acceptance of operation and maintenance of the herein described effluent facilities for the Interchange Parcel as described and provided for in Subsection (B) of this Section, the Northwest Commercial Association and the Interchange developer shall cooperate with the County to seek modification of the County's existing Consumptive Use Permit or to seek a separate new consumptive use permit from the St. Johns River Water Management District for the water to be pumped and distributed by the Northwest Commercial Association from the effluent holding pond through the effluent distribution system located downstream of the



Effluent Delivery Point.

(E) Upon the acceptance of operation and maintenance of the herein described effluent facilities for the Interchange Parcel, the Northwest Commercial Association, Northwest Residential Association, Southeast Master Association, and Northeast Master Association agree to bear the cost of operation and maintenance of the effluent facilities for the Interchange Parcel as described above pro rata based upon metered usage and further agree that the Northwest Commercial Association shall pay to the County for effluent delivered by the County at the Effluent Delivery Point the initial rate of \$.16 per 1,000 gallons of effluent for each increment of 1,000 gallons per day on an average daily basis for each calendar month. The Northwest Residential Association, Southeast Master Association, and Northeast Master Association shall reimburse the Northwest Commercial Association for their pro rata share of such charges based upon metered usage. However, the obligation for the Northwest Commercial Association to timely pay the County is not contingent upon any reimbursement or payment by the Northwest Residential Association, Southeast Master Association, Northeast Master Association or any other person or party. Billing by the County will be periodic, but not less often than quarterly. Billing will be based upon the metering device installed at the Effluent Delivery Point or at such other place mutually agreeable to the Northwest Commercial Association and the County. Subsequent re-billing by the Northwest Commercial

Association to the Northwest Residential Association, Southeast Master Association, and Northeast Master Association will be based upon the metering devices in place at the points of delivery to each such association or any other method or means agreed upon among said associations. Each association shall be solely responsible for maintenance of irrigation lines and facilities downstream of its respective metering device. The Northwest Commercial Association shall bill the other associations within the Interchange Parcel only their pro rata share of the charges paid by the Northwest Commercial Association to the County and only their pro rata share of the actual and verifiable cost of maintaining the effluent facilities described above, all based upon metered usage. In consideration of the agreement of the Northwest Commercial Association, Northwest Residential Association, Southeast Master Association, and Northeast Master Association to accept the maintenance of the effluent facilities described herein and, notwithstanding any provision herein or in the Agreement to the contrary, to provide irrigation water to the golf course without charge and their further agreement to use effluent provided by the County to meet their reasonable irrigation needs as provided herein, the County shall thereafter impose no other charge or cost on such associations for the delivery of effluent to the Effluent Delivery Point except as provided in the St. Johns County Utility Ordinance or in this subsection without first providing written notice to such associations and a reasonable opportunity to respond

and comment; provided however that on each October 1<sup>st</sup> and at annual intervals thereafter the aforesaid per gallon charge may be automatically "indexed" to inflation by applying to said rate existing as of the immediately preceding September 30<sup>th</sup> an additive increment in a percentage amount equal to the percentage increase of the Consumer Price Index according to the U.S. Bureau of Labor Statistics during the preceding fiscal year or such other uniform indexing method provided for in the St. Johns County Utility Ordinance.

(F) In no event shall this Modification Agreement be construed to restrain or affect the County's authority to develop, supply or otherwise provide a charge for reuse or irrigation water outside of the Interchange Parcel.

(G) All parties to this Modification Agreement agree that the charges and revenue due or collected for reuse water delivered prior to the conveyance of the effluent facilities to the Northwest Commercial Association as provided herein shall inure to the benefit of the County without any claim for refund or recalculation whatsoever.

(H) Upon the acceptance of operation and maintenance of the herein described effluent facilities for the Interchange Parcel provided for herein, the Developer and all other parties to the Agreement, by execution hereof, irrevocably and forever release the County from any obligation or responsibility to construct or install, or reimburse any other person or party for the cost or

expense of any nature whatsoever related to constructing or installing, effluent or irrigation water utility facilities or effluent or irrigation water infrastructure on or serving the Interchange Parcel, the Towers of Love Parcel, or the Wilson Parcel. This release shall be effective as of the date of execution and delivery of the instrument attached hereto as Exhibit B. Except for provisions hereof relating specifically to effluent or irrigation water facilities and effluent or irrigation water infrastructure, nothing in this Subsection 3.01(H) shall be deemed to relieve the County from its obligations for reimbursement pursuant to Section 3.09 of the Agreement relating to "On Site Improvements" as defined in Section 1.01 of the Agreement except for effluent or irrigation water facilities or effluent or irrigation water infrastructure.

**SECTION 3.02. COST RECOVERY LIMITATIONS.** Notwithstanding any provision of Section 3.01 hereof, the County shall not seek any additional direct reimbursement or cost recovery through charges for effluent or reuse water provided for herein for any prior investment made by the County in reuse lines, effluent disposal facilities or irrigation improvements to serve the Interchange Parcel.

**SECTION 3.03. JOINDER AND INDEMNIFICATION.**

(A) The Northwest Commercial Association, Northwest Residential Association, Southeast Master Association, and

Northeast Master Association join into this Modification Agreement for the purpose of documenting and effecting the provision of effluent for irrigation purposes within the Interchange Parcel and agree to be bound by the terms and provisions hereof.

(B) For the additional consideration of Ten Dollars (\$10) and other good and valuable consideration received from the County, the Northwest Commercial Association, Northwest Residential Association, Southeast Master Association and Northeast Master Association agree to hold harmless, defend and indemnify the County, its employees, agents and officials from any loss damage or claim, including by way of example and not limitation, attorneys fees, costs of litigation or appeal, and any judgment, order, refund or award, arising or resulting from this Modification Agreement, exclusive of failure of performance by the County.

#### ARTICLE IV

##### GENERAL PROVISIONS

**SECTION 4.01. POST EXECUTION RELATIONSHIP.** From time to time after execution of this Modification Agreement, each party hereto, their permitted successors and assigns, shall, upon the request of the other, execute, acknowledge and deliver, or shall cause to be executed, acknowledged and delivered, all such further acts, assignments, transfers or other documentation for (A) confirming or correcting the possession or use rights contemplated hereunder in the name of the Northwest Commercial Association or its successor

in function or (B) otherwise fulfilling the obligations and intent of the parties under this Modification Agreement.

**SECTION 4.02. FORCE MAJEURE.** If the performance by any party hereto of its respective obligations under this Modification Agreement is delayed or prevented in whole or in part by acts of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, or strikes, or any law, rule, regulation, order or other action adopted or taken by any federal, state or other local government authority, or any other cause not reasonably within such party's control, whether or not specifically mentioned herein, such party's obligation to perform shall be suspended to the extent such performance or obligation is so delayed or prevented by such occurrence, without liability of any kind, on a day to day basis. To the extent reasonably practicable, any party believing that its performance hereunder will be materially delayed by such an unexpected or uncontrollable event shall notify the other parties hereto of such an event within 2 days after learning of its occurrence. Nothing contained herein shall be construed as requiring either party hereto to accede to any demands of, or to settle any litigation or other disputes with, labor or labor unions, suppliers or any other persons that such party considers unreasonable.

**SECTION 4.03. TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement. Time periods specified in this Modification

Agreement shall expire at midnight on the date stated unless the parties agree in writing to a different date or time. Any time period provided for herein which ends on Saturday, Sunday or a legal holiday shall extend to 5:00 p.m. on the next business day.

**SECTION 4.04. APPLICABLE LAW; JURISDICTION AND VENUE.**

(A) This Modification Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

(B) The parties to this Modification Agreement expressly consent to the jurisdiction of and agree to suit in any court of general jurisdiction in the State of Florida, whether state, local or federal, and further agree that venue shall lie in St. Johns County, Florida.

**SECTION 4.05. FAILURE OF PERFORMANCE.**

(A) A breach of this Modification Agreement shall mean a material failure to comply with any of the provisions of this Modification Agreement. If any party breaches any obligation herein, then, upon receipt of written notice by the non-breaching party, the breaching party shall proceed diligently and in good faith to take all reasonable actions to cure such breach and shall continue to take all such actions until such breach is cured.

(B) If any party breaches this Modification Agreement, a non-breaching party shall only proceed in equity to enforce its rights under this Agreement, including specifically the right of specific performance and mandamus.

**SECTION 4.06. NOTICE.**

(A) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

**To the County:**

St. Johns County Administration  
4020 Lewis Speedway  
Second Floor  
St. Augustine, FL 32085  
Attention: County Administrator

with a copy to:

St. Johns County Utilities Department  
2175 Mizell Road  
St. Augustine, FL 32084  
Attention: Construction Manager of Utilities

**To the Interchange Developer:**

IT Land Associates, LLC  
101 East Town Place, Suite 200  
St. Augustine, Florida 32092  
Attention: James E. Davidson, Jr.

with copies to:

Pappas Metcalf Jenks Miller & Reinsch, P.A.  
200 West Forsyth Street  
Suite 1400  
Jacksonville, FL 32202-4327  
Attention: John G. Metcalf

The Hillman Company  
1900 Grant Building  
Pittsburgh, PA 15219  
Attention: H. Vaughn Blaxter, III



SJ Land Associates, LLC  
824 Market Street, Suite 900  
Wilmington, DE 19801  
Attention: Andrew H. McQuarrie

**To the Associations:**

Saint Johns Northwest Commercial Property  
Owners Association, Inc.  
101 East Town Place, Suite 200  
St. Augustine, FL 32092  
Attention: President

Saint Johns Northwest Residential Property  
Owners Association, Inc.  
101 East Town Place, Suite 200  
St. Augustine, FL 32092  
Attention: President

Saint Johns Southeast Master Association, Inc.  
101 East Town Place, Suite 200  
St. Augustine, FL 32092  
Attention: President

Saint Johns Northeast Master Association, Inc.  
101 East Town Place, Suite 200  
St. Augustine, FL 32092  
Attention: President

(B) Any written notice given to one person in subsection (A) of this Section shall also be copied and provided to all other persons identified in subsection (A).

(C) The parties may, by notice in writing given to the others, designate any future or different addresses to which the subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or by facsimile transmission or 5 days after the date mailed.

**SECTION 4.07. ASSIGNMENT.**

(A) The authority to assign this Modification Agreement or any of the rights, duties or obligations hereunder to a third party shall be governed by Section 4.07 of the Agreement. Provided however, each property owners association shall be free to assign all of its rights, duties and obligations under this Modification Agreement to its successor in function upon notification to the County as provided hereunder.

(B) This Modification Agreement is solely for the benefit of the County, the Northwest Commercial Association, the Northwest Residential Association, the Southeast Master Association, and the Northeast Master Association and the Interchange Developer, and no claim or cause of action shall accrue to or for the benefit of any member of said associations or other third party by reason hereof.

**SECTION 4.08. AMENDMENTS AND WAIVERS.** No amendment, supplement, modification or waiver of this Modification Agreement relating to the delivery and distribution of effluent as expressly addressed in Article III hereof shall be binding unless consistent with the Agreement and executed in writing by the County and the associations. No waiver of any of the provisions of this Modification Agreement shall be deemed or shall constitute a waiver of any other provision of this Modification Agreement, whether or not similar, unless otherwise expressly provided. Except as otherwise provided herein, the original parties to the Agreement

may otherwise amend or modify the Agreement pursuant to its terms, without the necessity of joinder by any other party or person.

**SECTION 4.09. SEVERABILITY.** In the event any provision of this Modification Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 4.10. EFFECT ON AGREEMENT.** The Agreement shall remain in full force and effect as written except as expressly modified or supplemented by this Modification Agreement. The Agreement together with this Modification Agreement constitutes the entire agreement between the parties pertaining to the subject matter thereof, and supercedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth in the Agreement as modified by this Modification Agreement. Upon execution by all parties, the County shall provide the Northwest Commercial Association, the Northwest Residential Association, the Southeast Master Association, the Northeast Master Association and the Interchange Developer each a complete certified copy of this Modification Agreement together with copies of all exhibits thereto.

IN WITNESS WHEREOF, the County has caused this Modification to Saint Johns Water and Wastewater Utility Service Agreement to be duly executed and entered into on the date first above written.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

(SEAL)

By: *Jamie E Bryant*  
Chairman

ATTEST:

Cheryl Strickland, Clerk of the  
Circuit Court and Ex-Officio Clerk  
of the Board of County Commissioners  
of St. Johns County, Florida

*Patricia DeBlonde*  
Deputy Clerk



IN WITNESS WHEREOF, the Saint Johns Northwest Commercial Property Owners Association, Inc. has caused this Modification to Saint Johns Water and Wastewater Utility Service Agreement to be duly executed and entered into on the date first above written.

SAINT JOHNS NORTHWEST COMMERCIAL  
PROPERTY OWNERS ASSOCIATION,  
INC.,  
a Florida corporation


(SEAL)

By: [Signature]  
President  
James E. Davidson

WITNESSES:

[Signature]  
[Signature]

The foregoing instrument was acknowledged before me this 15  
day of August, 2000, by James E. Davidson,  
the President of SAINT JOHNS NORTHWEST COMMERCIAL  
PROPERTY OWNERS ASSOCIATION, INC..

 Paula L Delaney  
My Commission CC888728  
Expires December 1 2003

[Signature]  
(Print Name Paula L Delaney)  
NOTARY PUBLIC  
State of Florida at Large  
Commission# \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Personally Known   
Or Produced I.D. \_\_\_\_\_  
[check one of the above]  
Type of Identification Produced \_\_\_\_\_

IN WITNESS WHEREOF, the Saint Johns Northwest Residential Property Owners Association, Inc. has caused this Modification to Saint Johns Water and Wastewater Utility Service Agreement to be duly executed and entered into on the date first above written.

SAINT JOHNS NORTHWEST  
RESIDENTIAL PROPERTY OWNERS  
ASSOCIATION, INC., a Florida  
corporation

(SEAL)


By: [Signature]  
President  
James E. Davidson Jr.

WITNESSES:

[Signature]  
[Signature]

The foregoing instrument was acknowledged before me this 15 day of August, 2000, by James E. Davidson Jr., the President of SAINT JOHNS NORTHWEST RESIDENTIAL PROPERTY OWNERS ASSOCIATION, INC..

[Signature]  
(Print Name \_\_\_\_\_)  
NOTARY PUBLIC  
State of Florida at Large  
Commission# \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Personally Known   
Or Produced I.D. \_\_\_\_\_  
[check one of the above]  
Type of Identification Produced \_\_\_\_\_

 Paula L. Delaney  
My Commission CC888728  
Expires December 1 2003

IN WITNESS WHEREOF, the Saint Johns Southeast Master Association, Inc. has caused this Modification to Saint Johns Water and Wastewater Utility Service Agreement to be duly executed and entered into on the date first above written.

SAINT JOHNS SOUTHEAST MASTER ASSOCIATION, INC., a Florida corporation

(SEAL)

By: [Signature]  
Printed Name: James E. Davidson, Jr.  
Title: President

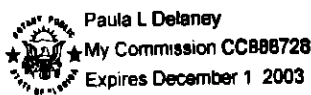
WITNESSES:

[Signature]  
[Signature]

The foregoing instrument was acknowledged before me this 15 day of August, 2000, by James E. Davidson, the President of SAINT JOHNS SOUTHEAST MASTER ASSOCIATION, INC..

[Signature]  
(Print Name \_\_\_\_\_)

NOTARY PUBLIC  
State of Florida at Large  
Commission# \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Personally Known   
Or Produced I.D. \_\_\_\_\_  
[check one of the above]  
Type of Identification Produced \_\_\_\_\_



IN WITNESS WHEREOF, the Saint Johns Northeast Master Association, Inc. has caused this Modification to Saint Johns Water and Wastewater Utility Service Agreement to be duly executed and entered into on the date first above written.

SAINT JOHNS NORTHEAST MASTER ASSOCIATION, INC., a Florida corporation

(SEAL)

By: [Signature]  
Printed Name: James E. Davidson  
Title: President


WITNESSES:

[Signature]  
[Signature]

The foregoing instrument was acknowledged before me this 15 day of August, 2000, by James E. Davidson, the President of SAINT JOHNS NORTHEAST MASTER ASSOCIATION, INC..

[Signature]  
(Print Name \_\_\_\_\_)

NOTARY PUBLIC  
State of Florida at Large  
Commission# \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Personally Known   
Or Produced I.D. \_\_\_\_\_  
[check one of the above]  
Type of Identification Produced \_\_\_\_\_

 Paula L. Delaney  
My Commission CC888724  
Expires December 1 2003



IN WITNESS WHEREOF, the IT Land Associates, LLC has caused this Modification to Saint Johns Water and Wastewater Utility Service Agreement to be duly executed and entered into on the date first above written.

IT LAND ASSOCIATES, LLC,  
a Florida limited liability  
company

By: SJ LAND ASSOCIATES, LLC,  
a Delaware limited liability  
company, its Sole Member

Signed, sealed and delivered  
in the presence of:

John S. Metcalf  
Name: John S. Metcalf

Paula L. Delaney  
Name: Paula L. Delaney

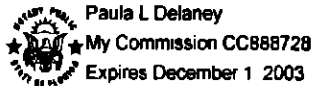
By: SJ LAND COMPANY, a  
Delaware corporation, its  
Managing Member

James E. Davidson  
By: \_\_\_\_\_  
Print: James E Davidson  
Its: EVP Development & Administration

The foregoing instrument was acknowledged before me this 15  
day of August, 2000, by James E. Davidson,  
the EVP Development & Administration SJ LAND COMPANY, a Delaware  
corporation, the managing member of SJ Land Associates, LLC, the  
sole member of IT Land Associates, LLC, a Delaware limited  
liability company, for the corporation.

Paula L. Delaney  
(Print Name \_\_\_\_\_)

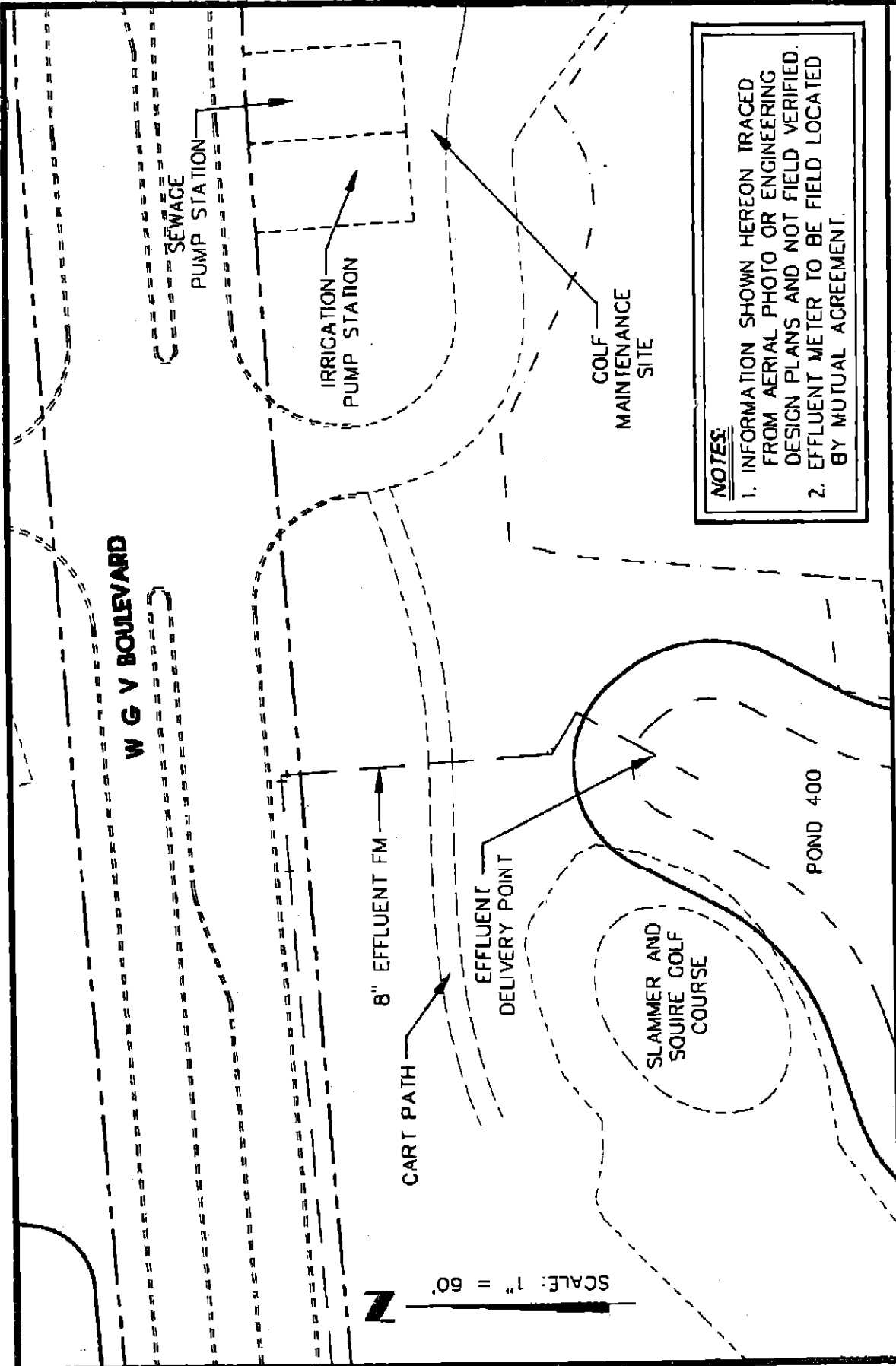
NOTARY PUBLIC  
State of Florida at Large



Commission# \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Personally Known   
Or Produced I.D. \_\_\_\_\_  
[check one of the above]  
Type of Identification Produced \_\_\_\_\_

EXHIBIT "A"

MAP SHOWING EFFLUENT DELIVERY POINT



**NOTES:**

1. INFORMATION SHOWN HEREON TRACED FROM AERIAL PHOTO OR ENGINEERING DESIGN PLANS AND NOT FIELD VERIFIED.
2. EFFLUENT METER TO BE FIELD LOCATED BY MUTUAL AGREEMENT.

PROJECT NO.:	E 97-72
DATE:	REVISED AUG 14, 2000
SCALE:	N.T.S.
DRAWING NO.:	1

**EXHIBIT "A"**  
**EFFLUENT DELIVERY POINT**  
 SAINT JOHN'S  
 NORTHWEST QUADRANT  
 FOR DAVIDSON DEVELOPMENT

**England-Thoms & Miller, Inc.**  
 Consulting & Design Engineers  
 3131 St. Johns Bluff Road South  
 Jacksonville, Florida 32246  
 Phone Number (904) 847-8590

EXHIBIT "B"

FORM OF BILL OF SALE

**EFFLUENT FACILITIES  
BILL OF SALE**

THIS BILL OF SALE, made this \_\_\_\_\_ day of July, 2000, by St. Johns County, Florida, party of the first part, and Saint Johns Northwest Commercial Property Owners Association, Inc., a Florida corporation, party of the second part,

WITNESSETH that the said party of the first part, for and inconsideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration, to it in hand paid by the party of the second part, receipt whereof is hereby acknowledged, has granted, bargained and sold to the party of the second part, its successors and assigns forever, the following described effluent holding and irrigation water distribution facilities or use rights described herein and located on the lands lying and being in St. Johns County, Florida, to-wit:

All effluent holding and irrigation water distribution facilities located within the Interchange Parcel (downstream of "Effluent Delivery Point"), now possessed by the County, or otherwise available for use by the County pursuant to the Saint Johns Water and Wastewater Utility Service Agreement dated June 24, 1995, or any Modification thereof, including a non exclusive right to use all easements, licenses or other use rights otherwise available to the County specifically for effluent holding or irrigation water distribution purposes within the Interchange Parcel.

For the purposes of this instrument, the term "Interchange Parcel" means approximately the 1,947 acres of land located in the

vicinity of Interstate 95 and International Golf Parkway, said land more particularly described in Appendix A to the aforementioned Saint Johns Water and Wastewater Utility Service Agreement dated June 24, 1995.

This instrument is given pursuant to that certain Modification to Saint Johns Water and Wastewater Utility Service Agreement adopted \_\_\_\_\_, 2000.

This instrument shall convey only the interest of the party of the first part in the property covered hereby, and shall not be deemed to warrant the title or to represent any state of facts concerning the same.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair or Vice Chair of said board, the day and year first above written.

BOARD OF COUNTY COMMISSIONERS  
SAINT JOHNS COUNTY, FLORIDA

(SEAL)

BY: \_\_\_\_\_

ATTEST:

Cheryl Strickland, Clerk of the  
Circuit Court and Ex-Officio Clerk  
of the Board of County Commissioners  
of St. Johns County, Florida

\_\_\_\_\_  
Deputy Clerk