

RESOLUTION NO. 95-89

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE PURCHASE OF A WATER AND SEWER SYSTEM FROM EAGLE CREEK ASSOCIATES, INC., AND APPROVING SPECIAL UNIT CONNECTION FEES, TAPPING FEES AND OTHER CHARGES FOR EAGLE CREEK OF ST. AUGUSTINE, A SUBDIVISION.

WHEREAS, Eagle Creek Associates, Inc., has offered to sell to St. Johns County a water and sewer utility system located in and intended to serve Eagle Creek of St. Augustine, a subdivision;

WHEREAS, a public hearing has been held by the Board of County Commissioners as required by Florida Statute 125.3401; and

WHEREAS, the Board of County Commissioners finds that: (a) the purchase of the utility is in the public interest in accordance with Florida Statute 125.3401; and (b) the fees and charges approved by this Resolution are reasonable in consideration of the factors set forth in St. Johns County Ordinance No. 95-07.

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

Section 1: The Agreement to Transfer Utility System between St. Johns County and Eagle Creek Associates, Inc., as previously signed on behalf of St. Johns County by the County Administrator, is hereby approved by the Board of County Commissioners.

Section 2: The unit connection fees, tapping fees, and charges as set forth in the Agreement to Transfer Utility System, a copy of which is attached hereto, are hereby approved in accordance with St. Johns County Ordinance No. 95-07.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 9th day of May, 1995.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: Barbara Wood
Its Chair

ATTEST: CARL "BUD" MARKEL, CLERK

By: Ima Paetti
Deputy Clerk

AGREEMENT TO TRANSFER UTILITY SYSTEM

THIS AGREEMENT, executed this 28th day of March, 1995, by and between EAGLE CREEK ASSOCIATES, INC., a Florida corporation ("Eagle Creek") and ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County").

PRELIMINARY STATEMENT

A. Eagle Creek owns a water and sewer system (the "Utility System"), located within and intended to serve Eagle Creek of St. Augustine, a subdivision containing two hundred and ~~sixty-four~~ ^{sixty-four} ~~subdivisions~~ ^{residential} lots and one (1) commercial lot (the "Subdivision").

B. The County desires to acquire the Utility System and Eagle Creek has agreed to transfer the Utility System on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

1. Transfer of System. Eagle Creek shall transfer and convey to the County, free and clear of all liens and encumbrances, the Utility System, including but not limited to the wells, water plant, sewer plant, pump stations, lines and pipes, Tract E-1 as shown on the plat of the Subdivision, and all necessary or appurtenant equipment, machinery and fixtures in connection therewith. In addition, Eagle Creek shall assign to the County all applicable permits, licenses and certificates issued by any

governmental agency in connection with the Utility System.

2. **"As Is" Condition.** Eagle Creek shall transfer the Utility System in its "as is" and "where is" condition without any warranty or representation of any kind as to the nature, condition or quality of the constructed or installed equipment, pipes, motors and other improvements. Eagle Creek hereby expressly disclaims any and all warranties, express or implied, relating in any way to the nature, quality or condition of the Utility System, including without limitation, any warranty of suitability or usefulness provided for under Florida statutory or common law, including without limitation, the Florida Uniform Commercial Code.

2.1 Notwithstanding anything contained in paragraph 2 above, Eagle Creek hereby represents and warrants and shall represent and warrant at closing as follows:

- a. Eagle Creek is duly incorporated, authorized to do business and in good standing under the laws of the State of Florida.
- b. The execution and performance of this agreement has been duly authorized by Eagle Creek's Board of Directors and its stockholders.
- c. From and after the date of the execution of this agreement, Eagle Creek will not, without the prior written consent of the County, dispose of or encumber any part of the Utility System.

- d. Eagle Creek will permit full examination by the County's authorized representatives of all physical systems, assets, real estate, rights-of-way, permits, certificates, licenses, surveys and easements associated with the Utility System.
- e. Eagle Creek will do nothing to cause or allow any depletion of the Utility System, nor any material change in the condition of the assets thereof, from and after the date of the execution of this agreement.
- f. Eagle Creek is in sole and exclusive possession of the Utility System and Eagle Creek is delivering sole and exclusive possession of the Utility System to the County.
- g. Eagle Creek has good and marketable title to the Utility System, including but not limited to Tract E-1.
- h. There are no liens, claims or encumbrances of whatever type or nature upon or against the Utility System, including but not limited to mortgages, mechanics' liens, financing statements or security instruments filed unde the Uniform Commercial Code either in St. Johns County or with the Secretary of State.
- i. To the best of Eagle Creek's knowledge, Eagle Creek has not been notified of the existence of any

violation of any governmental rules, regulations, permits, conditions or other governmental requirements of any type or nature applicable to the ownership, maintenance, construction or operation of the Utility System, nor of any conditions which by reason of the passing of time or the giving of notice would constitute such a violation.

- j. To the best of Eagle Creek's knowledge, there do not exist (i) any contracts to provide service to any customers or customer deposits; (ii) any maintenance contracts for the Utility System; and (iii) any other contract which could impose any obligation or encumbrance upon or in connection with the Utility System or the County.
- k. Eagle Creek shall perform all of the conditions to closing which should be performed by Eagle Creek prior to closing as provided herein.
- l. Eagle Creek does hereby agree to indemnify and hold harmless the County at all times in respect to any claims, actions, demands, fines, liabilities, penalties and damages, including reasonable attorneys' fees, resulting to the County from any materially inaccurate representation or breach of this agreement by Eagle Creek.

3. Agreement of Service. The County covenants and agrees that, subject to payment by Eagle Creek or its assigns of the fees described herein, the County shall furnish utility services to all lots within the Subdivision. The County further agrees that within ninety (90) days of the Effective Date, the County shall have the ability to furnish water and wastewater services to up to thirty (30) lots selected by Eagle Creek within the portion of the Subdivision shown in the attached map marked Exhibit "1", subject to payment of the fees described herein. The County agrees that utility services for the remaining lots shall be available on an as needed basis.

4. Connection Fees. The unit connection fees to be charged by the County for lots within the Subdivision shall be Four Hundred Dollars and No/100's (\$400.00) per lot. Provided, however, in respect to the one commercial lot, the unit connection fee for said lot will be \$400.00 plus the amount of the then applicable unit connection fee in excess of \$6,000.00. At closing, Eagle Creek shall pay to the County the sum of Forty Thousand Dollars and No/100's (\$40,000.00) representing payment of the unit connection fees due for one hundred (100) lots within the Subdivision. Unit connection fees for the remaining lots shall be paid prior to the furnishing of utility services to a lot.

4.1 Eagle Creek shall sign, at closing, a commitment agreement providing for reservation fees to be paid to the County for thirty (30) of the one hundred (100) lots for which Eagle Creek

has paid the Four Hundred Dollars and No/100's (\$400.00) per lot unit connection fee. As to the remaining seventy (70) lots for which Eagle Creek has paid on closing the Four Hundred Dollars and No/100's (\$400.00) per lot unit connection fee, Eagle Creek shall not be required to pay reservation fees. As to all other lots, reservation fees shall be paid to the County according to applicable County ordinances.

5. Tapping Fees. The tapping fees to be charged by the County for lots within the Subdivision shall be Two Hundred Dollars and No/100's (\$200.00) per lot, to be paid prior to the furnishing of utility services to a lot. Provided, tapping fees may be increased, from time to time, by a percentage equal to the percentage increase in tapping fees authorized to be charged by the County under Ordinance 93-14, the County's Utility Ordinance, as amended from time to time (the "Utility Ordinance").

6. User Fees. User fees, rates and deposits for water and sewer services to be charged by the County for lots within the Subdivision shall be those authorized to be charged by the County under the Utility Ordinance.

7. Closing. The closing of this transaction shall take place at the offices of the County Administrator, 4010 Lewis Speedway, St. Augustine, Florida 32095, within ten (10) days of the Effective Date.

A. At closing, Eagle Creek shall deliver to the County:

i. A Bill of Sale for the water plant, sewer plant, pump stations, lines and pipes and any other equipment or fixtures which are a part of the Utility System and containing general warranties of title;

ii. A Warranty Deed to Tract E-1 as shown on the plat of the Subdivision;

iii. A Certificate of Good Standing issued by the Secretary of State of the State of Florida;

iv. Incumbency Certificate and Corporate Resolution authorizing the transaction and execution of the closing documents;

v. Cash or certified funds in the amount of Forty Thousand Dollars and No/100's (\$40,000.00);

vi. A current survey of Tract E-1 together with a legal description prepared by a surveyor;

vii. An assignment of all applicable permits, licenses and certificates, if any, issued by any governmental agency in connection with the Utility System. Also, an assignment of any manufacturers' warranties, if any, for any part of the Utility System;

viii. A mechanics' lien affidavit and "gap" affidavit sufficient to allow the title insurance company to delete all standard exceptions from the title insurance policy to be provided by the County, except for matters appearing on the survey which are acceptable to the County; and

ix. A commitment agreement shall be signed at closing for thirty (30) of the lots mentioned in paragraph 4 providing for reservation fees to be paid by Eagle Creek on each of said thirty (30) lots beginning twelve (12) months from the date of closing. The terms of the reservation agreement and the amount of the reservation fee shall be set by the County.

B. At closing, the County shall deliver to Eagle Creek a receipt showing payment of the unit connection fees for one hundred (100) lots within the Subdivision.

C. County shall obtain a title insurance commitment on Tract E-1 in an amount to be determined by the County, showing good and marketable title in Eagle Creek, free and clear of all liens and encumbrances of every kind and nature.

D. The County may in its discretion obtain a current "as built" survey of the Utility System. If the as-built survey obtained by the County shows that any lines do not lie within a

dedicated right-of-way, Eagle Creek shall convey easements created by express grant to the County. Copies of the recorded plat and easements, if any, shall be delivered to the County by Eagle Creek prior to the closing or at closing. The cost of relocating any lines shall be paid by the County.

E. The County shall pay for the "as built" survey, if any, and the title commitment.

F. Ad valorem real property and personal property taxes shall be prorated as of the date of closing and Eagle Creek shall be responsible for the payment thereof to the date of closing.

G. Eagle Creek shall pay for documentary stamp tax on the Warranty Deed conveying Tract E-1 to the County.

H. Prior to closing, Eagle Creek shall record a plat of the Subdivision containing right-of-ways dedicated to the County.

8. Contingencies. This agreement is contingent on Eagle Creek purchasing the Subdivision and acquiring the Utility System from FNB Properties, Inc. This agreement is also contingent on its approval by the Board of County Commissioners of St. Johns County, Florida and also on FNB Properties, Inc., agreeing to relinquish to the County its franchise certificates to provide water and sewer service to the Subdivision. The final decision on the part of the County to acquire the Utility System shall be made by the Board of County Commissioners, in its absolute discretion, and upon holding a public hearing in compliance with Florida Statute 125.3401. The County will not be under any obligation to purchase the Utility System unless this agreement is approved by the Board of County

Commissioners at said public hearing. The public hearing will be scheduled to be heard before the Board of County Commissioners within sixty (60) days of the date of signing this agreement by both the County Administrator and Eagle Creek. Within ten (10) days from the date of the signing of this agreement by both the County Administrator and Eagle Creek, Eagle Creek shall furnish to the County a request and consent from FNB Properties, Inc., joined by Eagle Creek, requesting the termination of the existing franchise certificates. This request may be conditioned upon the closing of the transaction as described in paragraph 7 herein. The request should include a waiver of all notices of hearings on the request. The County will present the request to the St. Johns County Water and Sewer Authority and ask for an order conditionally terminating the franchise certificates, with the termination to become effective upon the closing of the transaction. The order of the St. Johns County Water and Sewer Authority will need to be confirmed by the Board of County Commissioners in its regulatory capacity under St. Johns County Ordinance No. 89-63, and amendments thereto.

9. **Notices.** Any notice to be given to any party in connection with this agreement shall be in writing and given by hand delivery, express mail or certified mail, return receipt requested. Such notice shall be deemed received when actually received if delivered other than by U.S. Mail or when deposited in the U.S. Mail, certified, properly addressed with postage prepaid. Such notices shall be addressed as follows:

TO COUNTY: St. Johns County, Florida
Post Office Drawer 349
St. Augustine, Florida 32085-0349
Attention: Mr. Nicholas M. Meiszer

TO EAGLE CREEK: Eagle Creek Associates, Inc.
c/o John D. Bailey, Jr.
Upchurch, Bailey and Upchurch, P.A.
Post Office Drawer 3007
St. Augustine, Florida 32085-3007

Any party hereto may, at any time by giving five (5) days written notice to the other parties, designate any other address in substitution of the foregoing address to which such notice shall be given.

10. Entire Agreement. It is expressly agreed by and among the parties hereto that there are no verbal or written representations, warranties, understandings, conditions, agreements or promises pertaining to the subject matter of this agreement not incorporated in writing herein and it is likewise agreed that neither this agreement nor any of the terms, provisions, representations or warranties or covenants herein contained, can be modified, changed, amended, terminated, superseded, or extended except by appropriate written instrument duly executed by the parties hereto. This agreement supersedes all previous agreements between the parties whether written or verbal. All exhibits hereto are deemed to be a part of this agreement and are incorporated herein. This agreement is binding upon and shall benefit the parties, their successors, representatives, heirs and assigns.

11. Assignment. Eagle Creek shall not be entitled to assign its rights hereunder without the consent of the County.

12. Governing Law. This agreement and the rights and obligations of the parties hereto shall be governed by and interpreted and determined in accordance with the laws of the State of Florida.

13. Counterparts. This agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

14. Captions. The captions or headings in this agreement are for convenience only and in no way define, limit or describe the scope or intent in any way of the provisions of this agreement.

15. Severability. If any party chooses to waive any covenant, paragraph or provision of this agreement, or if any covenant, paragraph or provision of this agreement is construed by a court of competent jurisdiction to be invalid, it shall not affect the applicability, validity or enforceability of the remaining covenants, paragraphs or provisions.

16. Effective Date. This agreement shall be effective when executed by both parties and approved by the Board of County Commissioners of St. Johns County, Florida.


17. Time is of the Essence. Time is of the essence in all things pertaining to the performance of this agreement.


18. Terms to Survive Closing. Notwithstanding any legal presumptions to the contrary, the terms, conditions and representations contained in this agreement shall survive the closing.

IN WITNESS WHEREOF, the parties have executed this agreement on the date and year first above written.

Signed, sealed and delivered
in the presence of:

BOARD OF COUNTY COMMISSIONERS,
ST. JOHNS COUNTY, FLORIDA

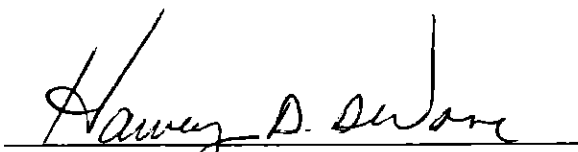


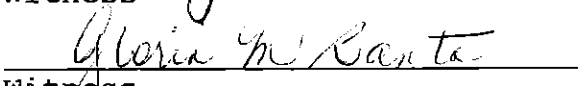
Witness


Witness

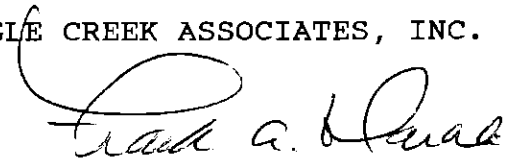
By: 

NICHOLAS M. MEISZER
County Administrator



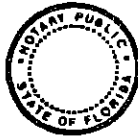
Witness


Witness

EAGLE CREEK ASSOCIATES, INC.

By: _____
FRANK A. DARABI
Its President

STATE OF FLORIDA
COUNTY OF ST. JOHNS

THE FOREGOING instrument was acknowledged before me this 28
day of March, 1995, by Nicholas M. Meiszer, County
Administrator for St. Johns County, Florida, on behalf of the
County, who is personally known to me.

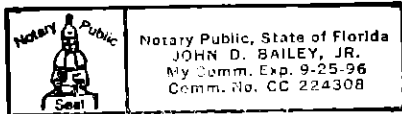


Notary Public, State of Florida
NORMA G. PIRKLE
My Comm. Exp. Jan. 16, 1997
Comm. No. CC 249862

Norma G. Pirkle
Notary Public
NORMA G. PIRKLE
(Name of notary, typed/printed)
My commission number: 249862
My commission expires: 1-16-97

STATE OF FLORIDA
COUNTY OF St. Johns

THE FOREGOING instrument was acknowledged before me this 13
day of MARCH, 1995, by Frank A. Darabi, President of
Eagle Creek Associates, Inc., a Florida corporation, on behalf of
the corporation, who is personally known to me.



Notary Public, State of Florida
JOHN D. BAILEY, JR.
My Comm. Exp. 9-25-96
Comm. No. CC 224308

John D. Bailey Jr.
Notary Public

(Name of notary, typed/printed)
My commission number: _____
My commission expires: _____

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CURRENT R/W LINE

SOUTHERLY LINE SECTION 50

POINT OF REFERENCE

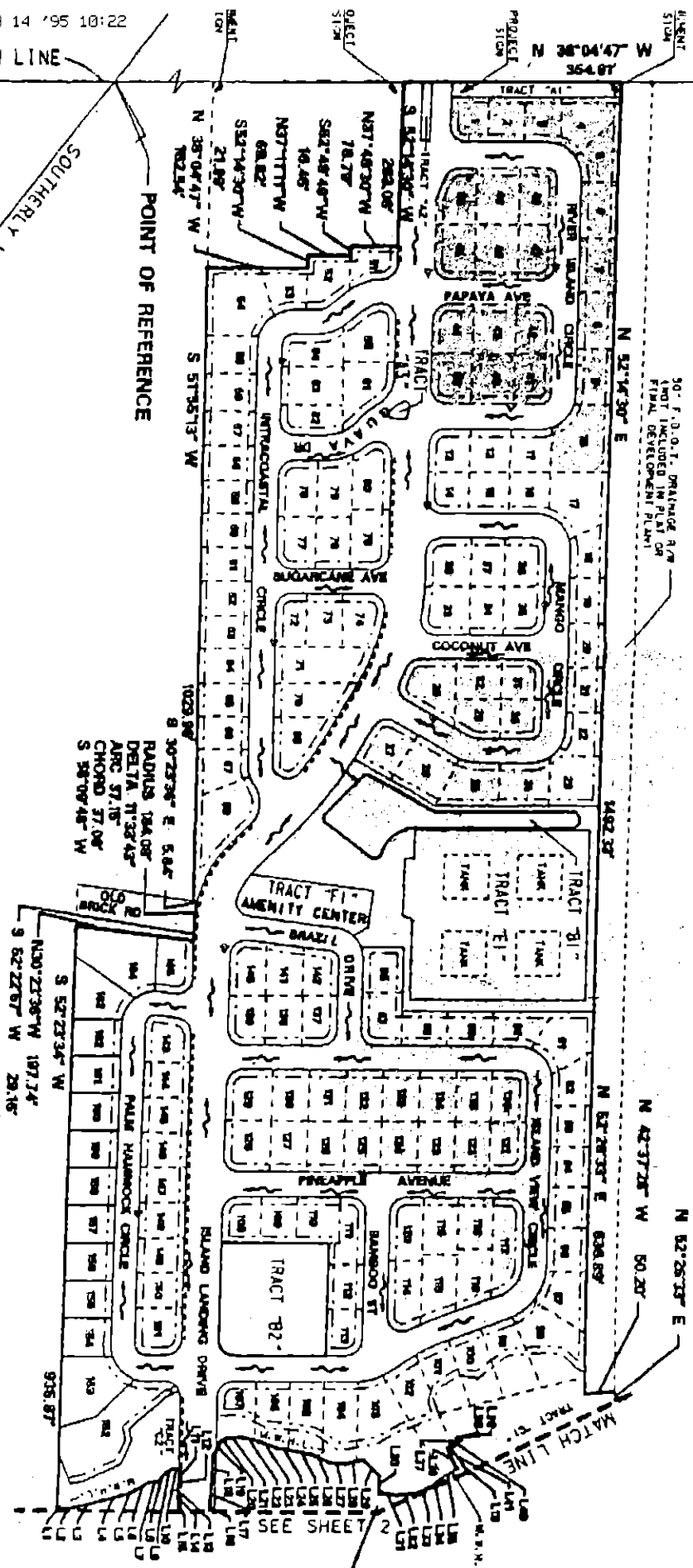


EXHIBIT "1"

STATE OF FLORIDA
RETAINED OWNERSHIP TO
MEAN HIGH WATER LINE
(M.H.W.L.)

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 _____

Barbara Dresslar _____ who on oath says that she is

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 _____

Proposed Purchase of Eagle Creek Assoc. Water & Sewer Utility _____

in the _____ Court, was published in said newspaper in the

issues of Apr. 17, 1995

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, Florida, for a period of one year next 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 17th day of Apr., 1995,

by Barbara Dresslar _____ who is personally

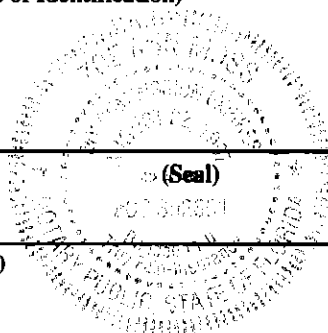
known to me or who has produced personally known as
(Type of Identification)

identification.

Zoe Ann Moss
(Signature of Notary Public)

Zoe Ann Moss

(Print, Type or Stamp Commissioned Name of Notary Public)



NOTICE OF PUBLIC HEARING ON PROPOSED PURCHASE OF WATER AND SEWER UTILITY BY ST. JOHNS COUNTY PLEASE TAKE NOTICE

that a public hearing will be held by the Board of County Commissioners of St. Johns County, Florida, to consider whether to approve an Agreement to Transfer Utility System for the purchase of a water and sewer utility from Eagle Creek Associates, Inc. The said utility is located within and intended to serve Eagle Creek of St. Augustine, a subdivision containing 264 residential lots and 1 commercial lot. The public hearing will be held before the Board of County Commissioners of St. Johns County, Florida, on Tuesday, May 9, 1995, at 1:30 p.m., at the County Auditorium, in the St. Johns County Administration Building, 4020 Lewis Speedway, (County Road 16A) and U.S. Highway #1 North, St. Augustine, Florida. This hearing will be held in accordance with the requirements of Section 125.3401 and other applicable provisions of the Florida Statutes.

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 this proceeding should contact, ADA Coordinator, at (904) 823-2501 or at the County Administration Building, 4020 Lewis Speedway, St. Augustine, Florida 32095. For hearing impaired individuals: Telecommunications Device for the Deaf (TDD): 823-2501 or Florida Relay Service: 1-800-955-8770, no later than 5 days prior to the date of this meeting.

If any person decides to appeal any decision made by the Board of County Commissioners with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and for such purpose, he may need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence upon which the appeal is to be based.

Nicholas M. Melzer
County Administrator
Board of County Commissioners of St. Johns County
Carl "Doc" McNeil,
Clerk
By Yvonne Carter,
Deputy Clerk
L307 April 17, 1995