

Book 8069 Pg 1649

RWR
Prepared By and Return To:
DOUGLAS A. WARD
Rogers, Towers, Bailey, Jones & Gay
Attorneys at Law
1301 Riverplace Boulevard, Suite 1500
Jacksonville, Florida 32207

Bk: 8069
Pg: 1649 - 1677
Doc# 95067826
Filed & Recorded
04/11/95
12:07:10 P.M.
HENRY W. COOK
CLERK CIRCUIT COURT
DUVAL COUNTY, FL
REC. \$ 132.00

**DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS**

29
132.00
WHEREAS, San Pablo/Beach Associates, Ltd., a Florida limited partnership ("SPBA") is the fee simple owner of the property described on **Exhibit A** attached hereto ("Outparcel" or "Outparcel D") as well as the adjacent shopping center parcel more particularly described on **Exhibit B** attached hereto ("Shopping Center Parcel") and the other outparcels adjacent thereto ("Other Outparcels") as more particularly described on **Exhibit C** attached hereto..

WHEREAS, SPBA has leased Outparcel D and the Shopping Center Parcel, along with the Other Outparcels to San Pablo/Beach Development, Ltd., a Florida limited partnership ("Developer") pursuant to that certain Ground Lease dated January 16, 1992, a Memorandum of Lease being recorded in Official Records Volume 7264, Page 1457, public records of Duval County, Florida (collectively "Ground Lease").

WHEREAS, Developer has constructed a retail shopping center on the Shopping Center Parcel and is desirous of selling and/or

29

developing Outparcel D as an integral part of the Shopping Center Parcel; and

WHEREAS, Developer wishes to record this Declaration of Restrictions and Grant of Easements in order to insure that the development of Outparcel D will occur in a manner which is designed to minimize the adverse impacts upon and be consistent and compatible with the improvements located on the Shopping Center Parcel and to provide mutual easements for access, utilities, and drainage.

NOW, THEREFORE, in consideration of the provisions hereinafter contained and to provide for the integral, consistent and compatible development of the Shopping Center Parcel and Outparcel D, the parties hereto approve the following restrictions and grant the following rights and easements:

1. PRELIMINARY.

1.1 Definitions.

(a) "Common Area" shall mean all those areas on the Shopping Center Parcel or Outparcel which are not from time to time actually covered by a building or other commercial structure, or which cannot under the terms of this Declaration be used for the construction of a building. Canopies which extend over a Common Area, together with any columns or posts supporting same, shall be deemed to be a part of the building to which they are attached and not a part of the Common Area.

(b) "Owner" shall mean the fee simple title holder of Outparcel D.

(c) "Parcel" shall mean individually Outparcel D, Shopping Center Parcel, and the Other Outparcels.

(d) "Restrictions" shall mean the easements, covenants, restrictions, liens and encumbrances contained in this Declaration.

(e) "Service Facilities" shall mean ramps, loading docks, service entrances, trash storage areas, bottle storage areas and other similar service facilities.

(f) "Shopping Center" shall mean, collectively, the Outparcel and the Shopping Center Parcel.

2. **OUTPARCEL BUILDING AND COMMON AREA DEVELOPMENT.**

2.1 **Type, Design and Size of Building.**

(a) The building erected on Outparcel D, now and in the future, shall be of first class quality construction and architecturally designed so that its design and exterior elevations (including, without limitation, signs and color schemes) will be architecturally and aesthetically compatible and harmonious with all other buildings on the Shopping Center Parcel. No building, sign, fence, utility or other improvement may be constructed upon, over or under Outparcel D, nor shall (i) the exterior of any existing building, sign, fence or other improvement on Outparcel D be changed in any way (including, without limitation, color schemes), or (ii) the location of any utility or other improvement be moved, without the prior written approval of the Developer.

Before commencement of construction on any building, sign, fence, utility or other improvement on Outparcel D or any modification thereto which requires the Developer's approval, information shall be sent to the Developer, which information shall be sufficient in the Developer's opinion, to enable the Developer to make a reasonable determination as to the architectural and aesthetic compatibility of said building, sign, fence, utility, or other improvement, or any modification, with all other buildings on the Shopping Center Parcel. Such information shall include, but not be limited to: (i) a detailed site plan showing the location of all proposed and existing structures on the Outparcel D, including building setbacks, open space, driveways, walkways, location of utility lines and parking spaces, including the number thereof; (ii) a foundation plan; (iii) a floor plan; (iv) exterior elevations of the proposed structures and any alterations to existing structures; (v) specifications and materials, color scheme, lighting scheme and other details affecting the exterior appearance of the proposed structure and any alterations to existing structures; and (vi) plans for landscaping and grading. The Developer shall approve or disapprove the proposal within thirty (30) days after receipt of the proposal and, if the Developer disapproves the proposal, it shall provide a written explanation of its reasons for such disapproval. If the Developer either fails to approve the proposal, or disapproves the proposal and fails to provide such explanation within said thirty (30) day

period, the Developer shall be deemed to have approved the same. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

(b) The building constructed upon Outparcel D shall be constructed in such a manner as not to adversely affect the fire rating of any building built upon the Shopping Center or any of the Other Outparcels.

(c) The Owner of Outparcel D shall maintain or cause to be maintained the exterior of the building or other improvement located on such Outparcel in a quality and condition comparable to that of first class shopping centers of comparable size located in the same geographic area as the Shopping Center. All Service Facilities shall be attractively screened from view.

(d) All improvements constructed upon and the business conducted on Outparcel D shall at all times be in compliance with the terms and provisions hereof and of the PUD Zoning Ordinance in effect from time to time with respect to the Shopping Center Parcel and Outparcel D. Owner of Outparcel D agrees not to apply for any amendment to said PUD Ordinance without the prior written approval of Owner and Developer.

2.2 **Construction Requirements.** All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign, fence, utility, or any other improvement located upon Outparcel D shall be completed as expedi-

tiously as possible and in such a manner as not to interfere, obstruct or delay (i) vehicular or pedestrian travel to and from or across any part of the Shopping Center, or to or from any public right-of-way, (ii) customer vehicular parking on any part of the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center including, without limitation, access to the Service Facilities. The party contracting for the performance of such work shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, signs, fences, utilities, or other improvements which may be damaged or destroyed in the performance of such work.

2.3 Casualty and Condemnation. In the event all or any portion of any building constructed upon Outparcel D is (i) damaged or destroyed by fire or other casualty, or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the owner of such building shall promptly either (i) restore or cause to be restored the remaining portion of such building or, (ii) remove or cause to be removed the damaged portion of such building together with all rubble and debris related thereto. If buildings are not reconstructed following a casualty or condemnation, Outparcel D shall be (i) cleared and the Outparcel graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage or the rights of ingress and egress with respect to the

Shopping Center, or any portion thereof, and (ii) kept weed free and clean at the Outparcel Owner's sole cost and expense until such time as a building is reconstructed thereon.

2.4 Maintenance Standards. The Owner of Outparcel D shall maintain the Outparcel, including the Common Area located thereon, in a good and clean condition and repair, which maintenance shall include, without limitation, the following:

(a) Maintaining, repairing, restriping and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;

(b) Maintaining and repairing all walkways and pavement areas;

(c) Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent necessary to keep the area in a clean and orderly condition;

(d) Maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines;

(e) Maintaining, repairing and replacing, when necessary, all artificial lighting facilities;

(f) Maintaining all landscaped areas (including, without limitation, those on the perimeter of the Outparcel), all automatic sprinkler systems and water lines and replacing shrubs and other landscaping as necessary;

(g) Maintaining, repairing and replacing, when necessary, all Common Area fences and walls located on the Outparcel;

(h) Maintaining, repairing and replacing, when necessary, all storm drains, sewers and other utility lines and facilities not dedicated to the public or conveyed to any public or private utility which are located on the Outparcel.

(i) Maintaining, repairing and replacing, when necessary, all signs located on the Outparcel;

(j) Maintaining all buildings and other improvements located on the Outparcel in good condition and repair;

(k) Prior to construction of improvements thereon, the Outparcel shall be kept weed free and clean.

In the event the Owner of Outparcel D fails to maintain the Outparcel in the manner required by this Declaration (for purposes of this paragraph a "Defaulting Owner"), the Developer may, upon twenty (20) days prior written notice to the Defaulting Owner specifying the nature of such default (except in the event of an emergency, in which case no notice shall be required), proceed to enter upon the Outparcel of the Defaulting Owner and cure such default. Any cost expended in curing such default shall be immediately due and payable from the Defaulting Owner and shall bear interest from the date of the notice of default at a rate equal to the lesser of eighteen percent (18%) per annum or the maximum interest rate allowed by applicable law. A Defaulting

Owner hereby grants to the Developer the right, privilege and easement to enter the Outparcel in order to effect such cure.

2.5 Landscaping. The building constructed on the Outparcel must be landscaped in accordance with the approved landscaping plan referenced in Paragraph 2.1(a) above. In the event any Owner fails to install the landscaping required by the approved landscaping plan, the Developer may, upon twenty (20) days prior written notice, install the required landscaping, and any cost incurred by the Developer for such installation shall be immediately due and payable from the Owner of the Outparcel, together with interest thereon at a rate equal to the lesser of eighteen percent (18%) per annum or the maximum rate of interest allowed by applicable law. Without the prior written consent of the Developer, the Owner of the Outparcel shall not remove any trees from the Outparcel.

2.6 Indemnification. The Owner of the Outparcel hereby agrees to indemnify, defend and save harmless Developer and SPBA from and against any and all liability, claims, damages, expenses (including, but not limited to, reasonable attorney's fees, including attorney's fees incurred with respect to any litigation and any appeal or in any case or proceeding under, arising out of, or related to the U.S. Bankruptcy Code or any other bankruptcy or insolvency law), judgments, proceedings and causes of action for injury to or death of any person or damage to or destruction of any property occurring on the Outparcel unless caused by the negligent or willful act or omission of the indemnified person, its tenants,

subtenants, agents, contractors or employees. The Owner shall maintain or cause to be maintained comprehensive general liability insurance with broad form endorsement insuring all persons who now or hereafter own the Shopping Center, or any portion thereof, or any leasehold estate or other interest therein, as their respective interests may appear, against claims on account of loss of life, bodily injury or property damage that may arise from or be occasioned by the condition, use or occupancy of the Outparcel. Such insurance shall (i) be carried by a reputable insurance company or companies qualified to do business in the State of Florida and (ii) have limits for loss of life or bodily injury in the amounts of not less than Five Million Dollars (\$5,000,000.00) for each person, Five Million Dollars (\$5,000,000.00) for each occurrence and Fifty Thousand Dollars (\$50,000.00) for property damage for each occurrence. Such insurance may be provided under a blanket policy, provided such policy otherwise complies with the requirements of this Declaration.

3. **EASEMENTS.**

3.1 **Ingress and Egress Across Outparcel.** The Owner of Outparcel D, as grantor, hereby grants to Developer and Owner and their respective successors, assigns, tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of the Shopping Center Parcel and the Other Outparcels, a perpetual and non-

exclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across the paved portion of the Common Areas located on Outparcel D, except for those areas devoted to Service Facilities or driveup or drive through customer service facilities.

3.2 **Ingress and Egress Across Shopping Center.** Developer hereby grants to the Owner of Outparcel D, and its successors, assigns, tenants, contractors, employees, agents, customers, licensees and invitees and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants a perpetual and nonexclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across the paved portion of the Common Areas located on the Shopping Center Parcel except for those areas devoted to Service Facilities or driveup or drive through customer service facilities. Developer shall have the right to designate any of the entrances and exits to the Shopping Center Parcel from a public right-of-way, or any driveways within the Shopping Center Parcel as one-way, or to impose such rules, regulations and restrictions upon the internal road system within the Shopping Center Parcel as the Developer deems appropriate.

3.3 **Utility and Drainage Lines and Facilities.**

(a) The Owner of OutParcel D, as grantor, hereby grants to the Developer and the Owner, as grantees, for the benefit of the Shopping Center Parcel and the Other Outparcels, a perpetual and

non-exclusive easement to connect into and use all water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephone lines, electrical conduits or systems, gas mains and other public or private utilities located upon Outparcel D. The Owner of the Outparcel D, as grantor, hereby grants to the Developer and Owner and their successors and assigns, as grantees, a perpetual and non-exclusive easement to enter upon the Outparcel for the purpose of installing, using, maintaining, repairing and replacing those utilities and systems situated on such Outparcel which are servicing or will service the remainder of the Shopping Center Parcel, the Other Outparcels or any portion thereof. The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the Common Area or with the normal operation of any business in the Shopping Center. The grantee using such easement shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities and the cost to repair any damage to the Common Area resulting from such use.

(b) At all times and from time to time the Owner of Outparcel D or the Developer shall have the right to relocate on its respective Parcel any utility line or facility installed pursuant to the foregoing grant of easement which is then located on the land of such Owner of Outparcel D or Developer, provided that any such relocation (i) shall be performed only after sixty (60) days written notice of the Owner, of Outparcel D's or

Developer's intention to undertake the relocation shall have been given to the other owner of each property served by the utility line or facility, (ii) shall not interfere with or diminish utility service to the Parcels served by the utility line or facility, (iii) shall not reduce or impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to any other Owner or occupant of any Parcel served by the utility line or facility, and (v) shall provide for the original and relocated area to be restored to the original specifications. The party performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the owners of all property served by such utility lines and facilities within thirty (30) days after the date of completion of such relocation.

(c) Owner of Outparcel D and the Developer agree to grant such additional easements as are reasonably required by any public or private utilities for the purpose of providing the utility lines and facilities described herein, provided such easements are located in the Common Areas, are not otherwise inconsistent with the provisions of this Declaration, and will not unreasonably interfere with the development of any of the Parcels.

(d) The Owner of Outparcel D shall have the right to connect into and utilize all water drainage systems, water mains, sewer systems, telephone lines, electrical lines, and other utility lines and systems which have been constructed upon the Shopping Center Parcel for use by such Outparcel D. The Developer shall be

responsible only for maintaining and repairing the drainage lines and drainage facilities located outside of the Outparcel D. All other utility lines shall be maintained by the appropriate utility provider.

4. Maintenance and Cost Reimbursement.

(a) Developer shall maintain the paved areas necessary for the ingress and egress easements granted under paragraph 3.2 hereof and shall additionally maintain the drainage facilities located on the Shopping Center Parcel to which the Owner of Outparcel D shall have use rights as set forth in paragraph 3.3(d) hereof.

(b) Owner of Outparcel D shall be liable for 3.33% of the costs of any and all maintenance performed by Developer under subparagraph (a) above and shall promptly reimburse Developer for such amount within 10 days after receiving a bill therefor. However, the cost of any repair resulting from the negligent or improper use of a system or line shall be borne entirely by that party responsible for such negligent or improper use. Amounts payable under this paragraph shall become due within ten (10) days after written demand therefor. Unpaid amounts due from Owner of Outparcel D to Developer shall bear interest from the due date at a rate equal to the lesser of eighteen (18%) percent per annum or the maximum rate of interest permitted by law and Developer shall be entitled to record a Claim of Lien against Outparcel D which

lien may be foreclosed pursuant to provisions and procedures of Florida law.

5. **RESTRICTIONS ON USE.**

5.1 **Outparcel Restrictions.** Without the Developer's prior written consent, no part of the Outparcel shall be used (i) for any use which would be illegal or immoral, or not in compliance with the applicable PUD Ordinance, or (ii) as a grocery supermarket, bakery, delicatessen, fish market, on-premises photofinishing facility, or (iii) to engage in the sale of drugs or other products which are required by law to be dispensed by a registered pharmacist, or the sale at retail of items of food for consumption off the premises.

5.2 **Shopping Center Parcel and Other Outparcel Restrictions.** For so long as the Owner of Outparcel D is using said outparcel as a commercial banking office, no portion of the Shopping Center Parcel shall be used as a commercial bank office; provided, however, that this restriction shall expire on (a) the tenth anniversary of the recording of this Agreement, or (b) in the event Outparcel D ceases to be used as a commercial banking office prior to said ten (10) year anniversary, upon the date of cessation of such use. This restriction shall not prohibit automatic teller machines to be operated on the Shopping Center Parcel. The lien shall be effective against third parties only after a notice thereof has been recorded in the public records of Duval County. The lien shall not have priority over third parties without notice

of the lien if such third party properly records its interest prior to the recording of notice of the lien.

6. **RIGHT OF FIRST REFUSAL.** The Owner of Outparcel D shall furnish Developer with a copy of any contract ("Contract") it enters into for the sale of Outparcel D and hereby grants to Developer the right, to be exercised in writing within fifteen (15) days from receipt by Developer of said Contract, to purchase said Outparcel on the same terms and conditions as set forth in the Contract. Said Contract shall specifically provide that the Contract shall not be binding on the Owner of Outparcel D unless and until Developer fails to exercise this option within said fifteen (15) day period.

7. **GENERAL PROVISIONS.**

7.1 **Covenants Run with the Land.** Each Restriction on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof, and shall run with title to the land.

7.2 **Successors and Assigns.** This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owner of Outparcel D and the Developer, their respective heirs, personal representatives, successors and assigns; provided, however, that if the Owner of Outparcel D sells all or any portion of its interest in the Outparcel, or if the Developer sells the Shopping Center Parcel, such party shall thereupon be released and discharged from any and all obligations in connection

with the property sold by it arising under this Declaration after the conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the conveyance of title. The new owner of any such Parcel or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or portion thereof after the date of conveyance of title.

7.3 **Duration.** Except as otherwise provided herein, the term of this Declaration shall be for sixty-five (65) years from the date hereof, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each unless prior to the expiration of the original sixty-five (65) year term or any ten (10) year renewal term, the Developer records a notice of termination in the Public Records of Duval County. The easements created hereunder shall continue so long as and to the extent reasonably necessary or desirable for the continued use and enjoyment of any affected parcel.

7.4 **Injunctive Relief.** In the event of any violation or threatened violation by any person of any of the terms, restrictions or covenants contained in this Declaration, the Developer or any or all of the Owners shall have, in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of

injunction shall be in addition to all other remedies set forth in this Declaration or as provided by law.

7.5 **Modification and Termination.** These Restrictions may be modified or terminated with respect to the Outparcel by written agreement signed by the Developer, Owner, and the Owner of the Outparcel, without the consent or joinder of any other Outparcel Owner. All amendments to this Declaration must be evidenced by an instrument duly executed and acknowledged by the Persons required to approve the amendment as set forth above and recorded in the public records of Duval County. No modification or termination of this Declaration shall affect the rights of the holder of any lien upon a Parcel unless the lienholder consents in writing to the modification or termination.

7.6 **Requests for Approval.** Except where otherwise specifically stated to the contrary, all consents and approvals required hereunder (i) shall not be unreasonably withheld or delayed and (ii) shall, in any event, be given within thirty (30) days after receipt of written notice specifying the section pursuant to which such consent or approval is requested and including copies of all documents reasonably required to grant such consent or approval.

7.7 **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to or for the general public or for any public purpose whatsoever, it being the intention of the parties that this

Declaration shall be strictly limited to and for the purposes herein expressed.

7.8 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which any owner may have hereunder by reason of a breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

7.9 Default. No person shall be deemed to be in default of this Declaration except upon the expiration of thirty (30) days written notice in the event of a non-monetary default, and ten (10) days written notice, in the event of a monetary default, from any owner specifying the particulars in which such person has failed to perform the obligations of this Declaration and unless that person, prior to the expiration of said thirty (30) days or ten (10) days written notice, has cured the default specified in said notice. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such person has promptly commenced to cure the default and proceeds with such cure in good faith and without delay.

7.10 Notices.

(a) All notices given pursuant to this Declaration shall be in writing and shall be given either by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the person and address shown designated below or, in the absence of such designation, to the person and address shown on the then-current real property tax rolls of Duval County.

Developer: San Pablo/Beach Development, Ltd.
3715 Northside Parkway
300 Northcreek #105
Atlanta, Georgia 30327
Attention: William A. McClain, III

Owner:

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other parties. All notices given pursuant to this Declaration shall be deemed given upon receipt.

(b) For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this Section, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of

(a) the date of the attempted delivery or refusal to accept delivery, (b) the date of the postmark on the return receipt, or (c) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

7.11 **Waiver**. The failure of a person to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have and shall not be deemed a waiver of any subsequent breach or default in any of the Restrictions contained herein by the same or any other person.

7.12 **Attorney's Fees**. In the event of any litigation or other action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

7.13 **Severability**. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

7.14 **Not a Partnership.** The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Owners.

7.15 **Third Party Beneficiary Rights.** This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

7.16 **Captions and Headings.** The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

7.17 **Entire Agreement.** This Declaration contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

7.18 **Construction.** In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of a singular shall include the plural, and the use of the plural shall include the singular.

7.19 **Joint and Several Obligations.** In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

7.20 Recordation. This Declaration shall be recorded in the Duval County, Florida.

7.21 Florida Law Applicable. The Declaration shall be subject to and shall be enforced and construed under the laws of the State of Florida.

IN WITNESS WHEREOF, the Developer and SPBA have executed this Declaration, under seal, as of the day and year first above written.

SAN PABLO/BEACH DEVELOPMENT, LTD., a Florida limited partnership

Witnesses:

W.A. McClain, IV
Print Name: W.A. MCCLAIN, IV

Carlos Aseñso
Print Name: CARLOS ASENSIO

By: SPB Commercial, Inc.,
a Florida corporation
Its General Partner

By: *W.A. McClain, III*
William A. McClain, III
Its President

Address:
3715 Northside Parkway
300 Northcreek #105
Atlanta, Georgia 30327

Witnesses:

Jeanne M. Miner
Print Name: JEANNE M. MINER
Becky Mariotti
Print Name: BECKY MARIOTTI

By: GH Partnership Holdings
SPBD, Inc.,
a Florida corporation
Its General Partner

By: *David W. Carroll*
David W. Carroll
Its President

Address:
3627 University Boulevard S., Ste 105
Jacksonville, Florida 32216

SAN PABLO/BEACH ASSOCIATES, LTD., a Florida limited partnership

Witnesses:

Jeanne M. Miner
Print Name: JEANNE M. MINER
Becky Mariotti
Print Name: BECKY MARIOTTI

By: GH Partnership Holdings
SPBA, Inc.,
a Florida corporation
Its General Partner

By: *David W. Carroll*
David W. Carroll
Its President

Address:
3627 University Boulevard S., Ste 105
Jacksonville, Florida 32216

Book 8069 Pg 1673

STATE OF GEORGIA)
)
COUNTY OF Fulton)

The foregoing instrument was acknowledged before me this 5th day of April, 1995, by William A. McClain, III, as President of SPB Commercial, Inc., a Florida corporation as general partner of San Pablo/Beach Development, Ltd., a Florida limited partnership. He is personally known to me (or produced _____ as identification).

Marcia Hockenbery
Notary Public
Print Name: Marcia Hockenbery
My commission expires: _____
Notary Public, Fulton County, Georgia
My Commission Expires May 23, 1998

STATE OF FLORIDA)
)
COUNTY OF DUVAL)

The foregoing instrument was acknowledged before me this 6th day of April, 1993, by David W. Carroll, as President of GH Partnership Holdings SPBD, Inc., a Florida corporation as general partner of San Pablo/Beach Development, Ltd., a Florida limited partnership. He is personally known to me (or produced _____ as identification).

Becky Mariotti
Notary Public
Print Name: _____
My commission expires: _____



BECKY MARIOTTI
MY COMMISSION # CC 127525 EXPIRES
August 10, 1995

EXHIBIT A

A parcel of Section 31, Township 2 South, Range 29 East, CITY OF JACKSONVILLE, Duval County, Florida, being more particularly described as follows:

For a point of reference commence at the intersection of the South right-of-way line of Beach Boulevard (U.S. Highway 90, State Road No. 212) a 200 foot right-of-way as now established with the East right-of-way line of San Pablo Road South (County Road No. 291) an 80 foot right-of-way as now established, thence North 89 degrees 02 minutes 00 seconds East, along the South right-of-way line of aforesaid Beach Boulevard, a distance of 150.00 feet to the Point of Beginning; thence continue North 89 degrees 02 minutes 00 seconds East, along said South right-of-way line, a distance of 181.50 feet; thence South 01 degree 18 minutes 00 seconds East, a distance of 200.00 feet; thence South 89 degrees 02 minutes 00 seconds West, parallel with the South right-of-way line of aforesaid Beach Boulevard, a distance of 181.50 feet; thence North 01 degree 18 minutes 00 seconds West a distance of 20.00 feet; thence North 89 degrees 02 minutes 00 seconds East a distance of 30.00 feet; thence North 01 degree 18 minutes 00 seconds West a distance of 30.00 feet; thence South 89 degrees 02 minutes 00 seconds West a distance of 30.00 feet; thence North 01 degree 18 minutes 00 seconds West a distance of 150.00 feet to the point of beginning.

PARCEL A

EXHIBIT B

OVERALL PARCEL

A PART OF GOVERNMENT LOTS 6 AND 7, SECTION 31, TOWNSHIP 2 SOUTH, RANGE 29 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF BEGINNING COMMENCE AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF BEACH BOULEVARD (U.S. HIGHWAY 90, STATE ROAD NO. 212) A 200 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED WITH THE WEST RIGHT-OF-WAY LINE OF EUNICE ROAD (COUNTY ROAD NO. 2806) A 80 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED; THENCE S. 89°02'00" W., ALONG SAID SOUTH RIGHT-OF-WAY LINE OF BEACH BOULEVARD, A DISTANCE OF 945.48 FEET; THENCE S. 01°18'00" E., A DISTANCE OF 150.00 FEET; THENCE N. 89°02'00" E., A DISTANCE OF 30.00 FEET; THENCE S. 01°18'00" E., A DISTANCE OF 20.00 FEET; THENCE S. 89°02'00" W., A DISTANCE OF 150.00 FEET TO AN INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF SAN PABLO ROAD SOUTH (COUNTY ROAD NO. 291), AN 80 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED; THENCE S. 01°18'00" E., ALONG THE EAST RIGHT-OF-WAY LINE OF SAID SAN PABLO ROAD SOUTH, A DISTANCE OF 800.00 FEET; THENCE N. 89°02'00" E., A DISTANCE OF 1096.02 FEET TO AN INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF THE AFORESAID EUNICE ROAD; THENCE N. 01°18'30" W., ALONG THE WEST RIGHT-OF-WAY LINE OF SAID EUNICE ROAD, A DISTANCE OF 1000.00 FEET TO THE POINT OF BEGINNING.

less and except from Parcel A hereof the following described Parcels A, B, C, D and E:

OUTPARCEL "A":

A PART OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 29 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF BEACH BOULEVARD (U.S. HIGHWAY 90, STATE ROAD NO. 212) A 200 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED WITH THE WEST RIGHT-OF-WAY LINE OF EUNICE ROAD (COUNTY ROAD NO. 2606) A 60 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED; THENCE S. 89°02'00" W., ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID BEACH BOULEVARD, A DISTANCE OF 280.17 FEET TO THE POINT OF BEGINNING; THENCE S. 00°58'00" E., A DISTANCE OF 170.00 FEET; THENCE S. 89°02'00" W., PARALLEL WITH THE SOUTH RIGHT-OF-WAY LINE OF SAID BEACH BOULEVARD, A DISTANCE OF 293.00 FEET; THENCE N. 00°58'00" W., A DISTANCE OF 170.00 FEET TO A POINT OF INTERSECTION WITH THE AFORESAID SOUTH RIGHT-OF-WAY LINE OF BEACH BOULEVARD; THENCE N. 89°02'00" E., A DISTANCE OF 293.00 FEET TO THE POINT OF BEGINNING.

OUTPARCEL "B":

A PART OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 29 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF BEACH BOULEVARD (U.S. HIGHWAY 90, STATE ROAD NO. 212) A 200 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED WITH THE EAST RIGHT-OF-WAY LINE OF SAN PABLO ROAD SOUTH (COUNTY ROAD NO. 291) AN 80 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED; THENCE S. 01°18'00" E., A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING; THENCE N. 89°02'00" E., A DISTANCE OF 180.00 FEET; THENCE S. 01°18'00" E., A DISTANCE OF 200.00 FEET; THENCE S. 89°02'00" W., A DISTANCE OF 180.00 FEET TO AN INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF AFORESAID SAN PABLO ROAD SOUTH; THENCE N. 01°18'00" W., ALONG THE EAST RIGHT-OF-WAY LINE OF SAID SAN PABLO ROAD SOUTH, A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING.

OUTPARCEL "C":

A PART OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 29 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF BEGINNING COMMENCE AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF BEACH BOULEVARD (U.S. HIGHWAY 90, STATE ROAD NO. 212) A 200 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED WITH THE WEST RIGHT-OF-WAY LINE OF EUNICE ROAD (COUNTY ROAD NO. 2806) A 80 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED; THENCE S. 01°18'30" E., ALONG THE WEST RIGHT-OF-WAY LINE OF SAID EUNICE ROAD, A DISTANCE OF 200.00 FEET; THENCE S. 89°02'00" W., A DISTANCE OF 95.00 FEET TO A POINT ON A CURVE, CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 55.00 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, A CHORD BEARING OF N. 48°07'42" W., AN ARC DISTANCE OF 48.23 FEET AND A CHORD DISTANCE OF 46.70 FEET TO A POINT OF REVERSE CURVATURE; THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 50.00 FEET, A CHORD BEARING OF N. 38°08'30" W., AN ARC DISTANCE OF 61.33 FEET AND A CHORD DISTANCE OF 57.56 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE N. 00°58'00" W., A DISTANCE OF 120.00 FEET TO AN INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF AFORESAID BEACH BOULEVARD; THENCE N. 89°02'00" E., A DISTANCE OF 160.17 FEET TO THE POINT OF BEGINNING.

OUTPARCEL "D":



A PART OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 29 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF BEACH BOULEVARD (U.S. HIGHWAY 90, STATE ROAD NO. 212) A 200 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED WITH THE EAST RIGHT-OF-WAY LINE OF SAN PABLO ROAD SOUTH (COUNTY ROAD NO. 291) AN 80 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED; THENCE N. 89°02'00" E., ALONG THE SOUTH RIGHT-OF-WAY LINE OF AFORESAID BEACH BOULEVARD, A DISTANCE OF 150.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N. 89°02'00" E., ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 181.50 FEET; THENCE S. 01°18'00" E., A DISTANCE OF 200.00 FEET; THENCE S. 89°02'00" W., PARALLEL WITH THE SOUTH RIGHT-OF-WAY LINE OF AFORESAID BEACH BOULEVARD, A DISTANCE OF 181.50 FEET; THENCE N. 01°18'00" W., A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING.

Book 8069 Pg 1676

EXHIBIT C

OUTPARCEL 'A':

A PART OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 29 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF BEACH BOULEVARD (U.S. HIGHWAY 90, STATE ROAD NO. 212) A 200 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED WITH THE WEST RIGHT-OF-WAY LINE OF EUNICE ROAD (COUNTY ROAD NO. 2808) A 60 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED; THENCE S. 89°02'00" W., ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID BEACH BOULEVARD, A DISTANCE OF 280.17 FEET TO THE POINT OF BEGINNING; THENCE S. 00°58'00" E., A DISTANCE OF 170.00 FEET; THENCE S. 89°02'00" W., PARALLEL WITH THE SOUTH RIGHT-OF-WAY LINE OF SAID BEACH BOULEVARD, A DISTANCE OF 293.00 FEET; THENCE N. 00°58'00" W. A DISTANCE OF 170.00 FEET TO A POINT OF INTERSECTION WITH THE AFORESAID SOUTH-RIGHT-OF-WAY LINE OF BEACH BOULEVARD; THENCE N. 89°02'00" E. A DISTANCE OF 293.00 FEET TO THE POINT OF BEGINNING.

OUTPARCEL 'B':

A PART OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 29 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF BEACH BOULEVARD (U.S. HIGHWAY 90, STATE ROAD NO. 212) A 200 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED WITH THE EAST RIGHT-OF-WAY LINE OF SAN PABLO ROAD SOUTH (COUNTY ROAD NO. 291) AN 80 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED; THENCE S. 01°18'00" E. A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING; THENCE N. 89°02'00" E. A DISTANCE OF 180.00 FEET; THENCE S. 01°18'00" E. A DISTANCE OF 200.00 FEET; THENCE S. 89°02'00" W. A DISTANCE OF 180.00 FEET TO AN INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF AFORESAID SAN PABLO ROAD SOUTH; THENCE N. 01°18'00" W., ALONG THE EAST RIGHT-OF-WAY LINE OF SAID SAN PABLO ROAD SOUTH, A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING.

OUTPARCEL 'C':

A PART OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 29 EAST, CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF BEGINNING COMMENCE AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF BEACH BOULEVARD (U.S. HIGHWAY 90, STATE ROAD NO. 212) A 200 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED WITH THE WEST RIGHT-OF-WAY LINE OF EUNICE ROAD (COUNTY ROAD NO. 2808) A 60 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED; THENCE S. 01°18'30" E., ALONG THE WEST RIGHT-OF-WAY LINE OF SAID EUNICE ROAD, A DISTANCE OF 200.00 FEET; THENCE S. 89°02'00" W. A DISTANCE OF 95.00 FEET TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 55.00 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, A CHORD BEARING OF N. 46°07'42" W., AN ARC DISTANCE OF 48.23 FEET AND A CHORD DISTANCE OF 46.70 FEET TO A POINT OF REVERSE CURVATURE; THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 50.00 FEET, A CHORD BEARING OF N. 36°06'30" W., AN ARC DISTANCE OF 61.33 FEET AND A CHORD DISTANCE OF 57.56 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE N. 00°58'00" W. A DISTANCE OF 120.00 FEET TO AN INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF AFORESAID BEACH BOULEVARD; THENCE N. 89°02'00" E. A DISTANCE OF 160.17 FEET TO THE POINT OF BEGINNING.