

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, STATE OF FLORIDA,
APPROVING A FINAL DEVELOPMENT PLAN
FOR
CUNNINGHAM CREEK PLANTATION
LOCATED WITHIN THE PARCEL OF LAND ZONED PUD
PURSUANT TO ORDINANCE 94-57**

WHEREAS, the Final Development Plan for Cunningham Creek Plantation has been fully considered after public hearing pursuant to Section 8-3-2 of the St. Johns Zoning Ordinance; and

WHEREAS, the request is consistent with the requirements of Section 8-3-2 of the Zoning Ordinance and with the requirements of PUD Ordinance 94-57; which will become effective upon submission of evidence that all owners within the PUD have signed the Agreement to Proceed as defined in the Ordinance on or before March 22, 1995;

WHEREAS, it is found that:

- A. The request received favorable review and recommendation by the Planning and Zoning Agency at its meeting on 3-2-95; and
- B. The request is both consistent with the Comprehensive Plan and compatible with development patterns in the surrounding area; and
- C. The request is consistent with the requirements of Section 8-3-2 of the Zoning Ordinance.

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

SECTION 1: Pursuant to a request for approval made by Southern Property Corporation of Jacksonville in accordance with Section 8-3 of the St. Johns County Zoning Ordinance and subsequent review and approval by the St. Johns County Planning and Zoning Agency, the Final Development Plan attached as Exhibit A to this Resolution is hereby approved (subject to the effectiveness of the PUD Ordinance) in reliance upon, and in accordance with, the representations and statements made in the written submission statement attached as Exhibit B to this Resolution, the sections of the Covenants and Restrictions that will restrict use of the Property as set forth in Exhibit C and listed on

Exhibit D, all of which are incorporated into and made a part of this Final Development Plan, and all of which shall be complied with and based on the above referenced findings which are hereby incorporated by reference.

SECTION 2: All building code, zoning ordinance and other land use and development regulations of St. Johns County as may be amended from time to time (the "Land Development Regulations"), shall be applicable to this development, except those permitting variances and special exceptions and except to the extent that they conflict with specific provisions of the approved development plan or PUD Ordinance. Modifications to approved development plans by variance or special exception shall be prohibited. All such modifications shall follow the PUD amendment procedures provided for in the St. Johns County Zoning Ordinance.

Nothing in this section shall, however, be deemed to: (a) supersede any applicable "grandfathering" or "vested rights" provisions contained in the Florida Statutes including Section 163.3167(8) of the Florida Statutes or that may be provided in any such future building code, zoning ordinance or other land use and development regulations unless the Board of County Commissioners demonstrates that compliance with the Land Development Regulations is essential to the public health, safety, or welfare; (b) supersede any concurrency exceptions or concurrence determination made by the Concurrency Review Committee or the Board as such may be limited at the time of issuance; or (c) constitute a waiver of the applicant's right to contest application of any such building code, zoning ordinance, other land use and development regulations as applied to this development under the Florida or United States Constitutions.

SECTION 3: The developer may not commence land clearing, site preparation or construction of any improvements shown on the Final Development Plan attached as Exhibit A until:

a. Submission to the Engineering Department of satisfactory evidence that all required state and federal permits have been obtained, including, but not limited to United States Army Corps of Engineers Dredge Fill Permit, St. Johns River Water Management District Wetland Resource Permit, and St. Johns River Water Management District Management and Storage of Surface Waters Permit;

b. Issuance of a land clearing permit pursuant to St. Johns County Ordinance No. 90-11;

c. Review and approval of signed and sealed construction plans by the St. Johns County Engineering Department in compliance with Ordinance 86-4;

d. Compliance with all other applicable land use and development regulations of St. Johns County; and

e. Recordation in the PUD records of St. Johns County of a document executed by the chairman or other authorized agent of the Board of County Commissioners confirming that the condition to the effectiveness of the PUD Ordinance was met on or before March 22, 1995.

SECTION 4: No lots shall be conveyed within the subdivision depicted on the Final Development Plan attached as Exhibit A until a final plat has been approved by the Board of County Commissioners of St. Johns County and recorded in the Public Records of St. Johns County, and the Declaration of Covenants and Restrictions for Cunningham Creek Plantation is recorded in the Public Records of St. Johns County, Florida.

Nothing in this section shall, however, be deemed to prohibit conveyance of portions or all of the property encompassed by this Final Development Plan by metes and bounds legal description to entities bound by the Agreement to Proceed provided such entities must cause a plat to be recorded prior to conveyance of lots.

SECTION 5: All attachments included herein are incorporated herein and made a part of Resolution 95-47.

SECTION 6: This approval of the Final Development Plan shall become effective only when the applicant records the document referenced in subsection 3e above confirming that the PUD Ordinance is effective.

PASSED AND ADOPTED on March 14, 1995 to become effective upon submission of evidence that the PUD rezoning approved under Ordinance 94-57 has become effective in accordance with Section 7 of said Ordinance 94-57.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

By: Barbara Ward
Its Chairperson

Attest: Carl "Bud" Markel, Clerk

By: Ima Paetti
Deputy Clerk

Adopted Regular Meeting March 14, 1995

Effective: March 14, 1995

FINAL DEVELOPMENT PLAN
CUNNINGHAM CREEK PLANTATION
(PUD ORD. 94-57)

P.U.D. OFF. REC.
BOOK H PAGE 230

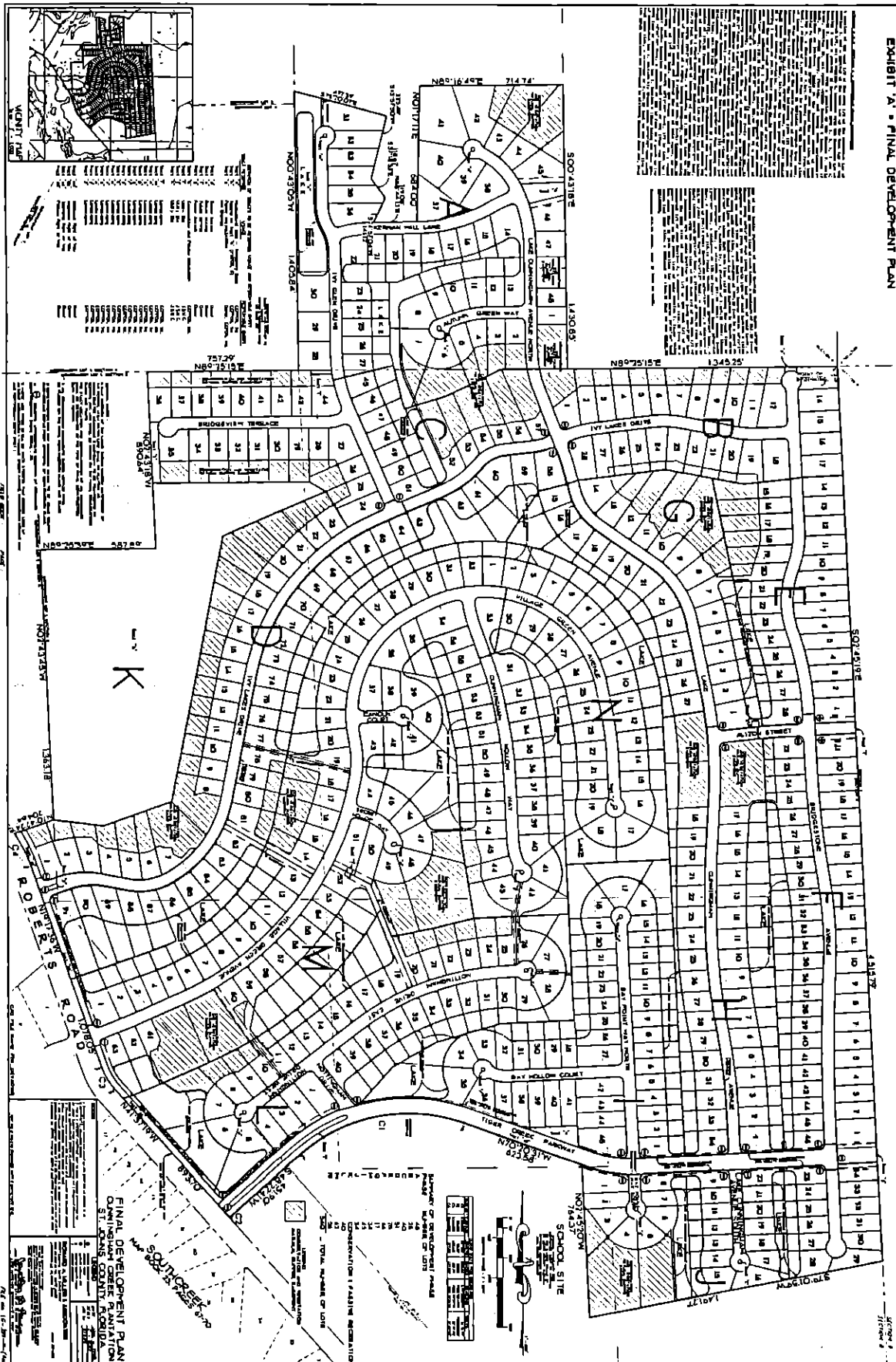
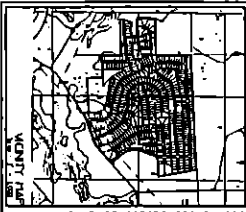


EXHIBIT 'A' - FINAL DEVELOPMENT PLAN

K



SYMBOL	DESCRIPTION
[Symbol]	ROADS
[Symbol]	PARKING
[Symbol]	UTILITIES
[Symbol]	LANDSCAPING

SYMBOL	DESCRIPTION
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SCHOOL SITE
764.37'

SCALE 1" = 100'

P.U.D. OFF. REC.
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EXHIBIT B
FINAL DEVELOPMENT PLAN FOR
CUNNINGHAM CREEK PLANTATION
WITHIN THE CUNNINGHAM CREEK PLANTATION PUD

SUBMITTED
NOVEMBER 16, 1994
RESUBMITTED JANUARY 20, 1995
RESUBMITTED FEBRUARY 15, 1995

SECTION I.
INTRODUCTION

P.U.D. OFF. REC.
BOOK H PAGE 232

Southern Property Corporation of Jacksonville hereby submits, for approval by the St. Johns County Planning and Zoning Agency and the St. Johns County Board of County Commissioners, a final development plan (the "Final Development Plan") for a single family subdivision to be known as Cunningham Creek Plantation (the "Property" or "Subdivision"). The Final Development Plan consists of a 1-page map identified as Exhibit A to the Resolution (the "Map"), this text identified as Exhibit B to the Resolution (the "Text"), copies of the applicable sections of the covenants and restrictions identified as Exhibit C to the Resolution and a list of those sections of the covenants specifically incorporated into the Final Development Plan, which list is identified as Exhibit D to the Resolution. The Property is all of the land zoned Planned Unit Development (PUD) pursuant to Ordinance 94-57. Development pods A-J and L-N as shown on approved PUD master plan (the "Development Pods") may be developed with a total of 540 single family lots under the PUD. This Final Development Plan depicts a total of 540 single family lots on the Development Pods.

Prior to commencement of land clearing, site preparation, or construction of any improvements depicted on the Map, the developer shall submit to the Engineering Department satisfactory evidence that all required state and federal permits have been obtained, including, but not limited to:

- (a) United States Army Corps of Engineers Dredge Fill Permit ("ACOE Permit");
- (b) St. Johns River Water Management District Management and Storage of Surface Waters Permit ("MSSW Permit");

Prior to commencement of land clearing, site preparation, or construction of any improvements depicted on the Map, the developer shall also:

- (a) Obtain a land clearing permit pursuant to St. Johns County Ordinance No. 90-11;
- (b) Obtain approval of signed and sealed construction plans by the St. Johns County Engineering Department in compliance with Ordinance 86-4; and
- (c) Comply with all other applicable land use and development regulations of St. Johns County.

When the foregoing conditions to construction have been met, the developer may proceed with construction of horizontal improvements prior to approval and recording of a final plat.

Except as provided in Section II below, no lot within the Subdivision shall be conveyed until a final plat has been approved by the Board of County Commissioners of St. Johns County, Florida and recorded in the Public Records of St. Johns County, and the Declaration of Covenants and Restrictions for Cunningham Creek Plantation have been recorded in the Public Records of St. Johns County.

Nothing contained in the covenants shall be interpreted to limit or restrict in any way the regulatory powers of St. Johns County (including its powers to review and approve plats and replats under Section 177.071 of the Florida Statutes). Those sections of the covenants which are specifically referenced herein and listed on Exhibit D are incorporated by reference in the Final Development Plan, shall be made a part of the Final Development Plan and shall not be amended without approval of the Board of County Commissioners of St. Johns County. A list of the sections of the covenants made a part of the Final Development Plan is provided with this submission and is identified as Exhibit D to the Resolution. The developer reserves the right to alter, amend, or allow to be amended all other sections of the covenants.

SECTION II.

SPECIAL PROVISIONS

A. Conveyance to Builders. Notwithstanding anything to the contrary in this Text, parcels may be conveyed to developers or builders bound by the Agreement to Proceed attached as Exhibit C to PUD Ordinance 94-57 by metes and bounds legal description prior to recordation of a plat provided, however, such developers or builders must cause a plat to be recorded prior to conveying lots.

B. Lake and Drainage Easements. The lake and drainage easements depicted on the Map include all lands anticipated to be within the lakes to be constructed in accordance with the MSSW Permit up to the proposed top of bank of such lakes. The developer plans to construct lake banks with a slope of approximately 4 feet horizontal to 1 foot vertical. As a result, there will be several feet between the top of bank and the normal high water line of the lake. The final recorded plats will show an unobstructed lake and drainage easement at least to the normal high water line of the lakes as permitted under the MSSW Permit. Builders or homeowners may be allowed to construct or place accessory structures such as decks and gazebos landward of the normal high water line of the lakes as permitted under the MSSW Permit and landward of the

unobstructed lake and drainage easement as shown a plat provided the following conditions are met:

1. The builder or homeowner has provided an engineer's certification that the proposed construction is landward of the normal high water line of the lakes as permitted by the MSSW Permit, landward of the unobstructed lake and drainage easement as shown on the plat, and that the proposed construction does not violate the terms of the ACOE Permit or MSSW Permit.

2. The builder or homeowner constructs a bulkhead at the normal high water line or landward of the normal high water line and fills behind the bulkhead in accordance with a bulkhead plan reviewed and approved by the new construction committee responsible for the review of plans for initial construction under the Declaration of Covenants, Conditions, Restrictions and Easement for Cunningham Creek Plantation (the "New Construction Committee").

3. The plans for the accessory structure have been reviewed and approved by the New Construction Committee.

Notwithstanding anything to the contrary in this Text, homeowners shall not be allowed to construct pools or any portion of a dwelling waterward of the top of bank of any lake nor to construct any improvements within the unobstructed lake and drainage easement shown on a recorded plat.

C. Project Signage. Entrance or identification signage with lighting and landscaping may be constructed at any of the locations identified for signage on the Map. The signs and associated lighting and landscaping shall be maintained by the Cunningham Creek Plantation Property Owners' Association, Inc. (the "Association"). At the locations indicated on the Map, signs may be constructed within tracts to be maintained by the Association or on lots within specifically created easements in favor of the Association. Landscaping associated with such signs may extend into the road right-of-way provided the Association assumes responsibility for landscape maintenance within the road right-of-way. All signage and associated landscaping shall be located at least ten feet from the back of the curb to insure proper sight distances. Signage shall be no more than six feet in height or 25 feet in length. Along Roberts Road, project signage may be attached to or incorporated into a fence or wall that may run the length of the Property.

D. Construction and Sales Offices. Each developer or builder shall be allowed to locate a temporary construction trailer on any lot owned by such builder or developer during the construction period which shall be up to sixty months from the date of approval of this Final Development Plan. Model homes may also be used as temporary sales offices. Parking for the temporary

sales offices shall be within the driveways only. In addition, temporary sales offices may be located within trailers on tracts "a" and "g" as shown on the Map during the construction period. At the end of the construction period or within 60 months of recording this Final Development Plan, whichever occurs first, tract "a" shall be appropriately improved, landscaped and deeded to the Association for use as a recreation area for children. At the end of the construction period, tract "g" shall be owned and maintained by the developer for possible future access through the subdivision roadways by adjacent properties.

E. Platting. The Subdivision may be developed and platted in phases or subphases. Lot numbering, phase lines, and the exact location and configuration of easements and other similar matters shall be determined in connection with final construction plan approval and final plat approval.

F. Construction of Infrastructure and Other Horizontal Improvements. Construction of infrastructure and other horizontal improvements may commence prior to approval and recording of the final plat so long as the St. Johns County Engineering Department has approved signed and sealed construction plans in compliance with Ordinance 86-4, a land clearing permit has been obtained pursuant to St. Johns County Ordinance 90-11, and satisfactory evidence has been provided to the Engineering Department that all required state and federal permits have been obtained, including, but not limited to, the ACOE Permit and MSSW Permit. Construction plans may be approved for portions of the project depicted on this Final Development Plan and various portions of the infrastructure may be constructed by different entities.

G. Above Ground Utilities. All utilities within the subdivision will be installed underground except that overhead electrical lines may be installed along Tiger Creek Parkway and temporary power may be provided to lift stations via overhead lines crossing portions of the project not yet subject to a recorded final plat and not yet available for sale to the public.

H. Cul-de-Sacs. As depicted on the Map, Village Green Avenue, Cunningham Hollow Way, and Nottingham Drive East exceed 1,200 feet without intersection.

SECTION III.

REQUIREMENTS OF SECTION 8-4 OF ZONING ORDINANCE

The requirements of Section 8-4-1 through 8-4-8 of the St. Johns County Zoning Ordinance are addressed below:

8-4-1 Density of Development

The total ground area occupied by residential buildings and structures in the Subdivision shall not exceed 35 percent of the total ground area committed to residential use.

8-4-2 Open Space

Tract "h" on the Map contains approximately 17.67 acres and is identical to Parcel K on the Master Plan. This area will not be disturbed by development activities except for mitigation construction projects authorized and required by the St. Johns River Water Management District (the "District"). The exact boundaries of this area will be established by survey and shall be depicted on the signed and sealed construction plans. If allowed by the District, project residents will have access to this tract for walking, bird watching, and other similar activities via the access easement identified as tract "b".

Tract "a" will be used for a temporary sales office during the construction period. At the end of the construction period or within 60 months of recording this Final Development Plan, whichever occurs first, it shall be used for a children's recreation area.

Tracts "l" through "z" are for landscaping.

Tracts "i" through "k" are utility sites.

Tracts "aa," "bb," and "cc" constitute a 30 foot strip adjacent to the existing right-of-way of Roberts Road reserved for the future widening of Roberts Road.

Tract "dd" is Tiger Creek Parkway.

Tracts "d," "e," "f," and "g" are future right-of-way areas for possible connection to adjacent lands. In addition, tract "g" may be used for a temporary sales office during the construction period.

Tract "c" will be used for drainage, utilities, and future right-of-way for possible connection to adjacent lands. The portion of tract "c" containing the lake and drainage outfall shall be conveyed to the Association or shall be subject to a platted drainage easement in favor of the Association. The balance of tract "c" shall be retained by Bestar Funding Corporation for future right-of-way.

Tracts "d," "e," "f," "g," "aa," "bb," and "cc" shall be retained by Bestar Funding Corporation.

Tract "dd," Tiger Creek Parkway, shall be dedicated to St. Johns County.

Tracts "i," "j" and "k" will be conveyed to Jacksonville Suburban Utilities Company.

Tract "a," tract "b," the lake portion of tract "c," tract "h," and tracts "l" through "z" shall be conveyed to and maintained by the Association. The Association will also maintain all entry signs, landscaping easements, and the lake and drainage easements. The Association will be the entity responsible for maintenance of the management and storage of surface waters system in accordance with the rules and regulations of the District.

8-4-3 Waiver of Yard, Dwelling Unit, Frontage Criteria, and Use Restriction.

All development which is to occur within the Subdivision will comply with the spirit and intent of the Zoning Ordinance. There will be no more than 540 residences in the Subdivision. A residence may be located wholly within a single platted lot or upon a portion of a platted lot or combination of platted lots. Nevertheless, every parcel upon which a residence is constructed will have a total area equal to or greater than 17,000 square feet. There shall be a minimum 30 foot front setback line, a minimum 5 foot side setback line and a minimum 10 foot rear setback line for each building parcel. These setbacks shall be measured from the exterior wall of the dwelling to the applicable parcel boundary. A minimum 10 feet of separation between dwellings, measured eaves to eaves, shall be maintained. In addition, there shall be a side setback of three feet and a rear setback of five feet for accessory structures such as gazebos and storage buildings. The minimum lot width at the building setback line shall be 80 feet.

The rear setback applicable to the dwelling shall be measured from the top of bank of any lake located on the lot, any conservation or drainage easement located at the rear of the lot or the rear lot boundary, whichever is the most restrictive, to the exterior wall of the dwelling. The rear setback for accessory structures shall be measured from the lot boundary or any conservation easement, whichever is more restrictive, to the accessory structure, but there shall be no minimum setback from the top of bank of any lake or any drainage easement, it being the intent of this Final Development Plan that accessory structures may be located adjacent to drainage easements in accordance with Section II B above.

With regard to corner lots, the front setback shall apply to the portion of the dwelling containing the front entrance and shall be a minimum of 35 feet, there shall be a minimum of 20 feet side setback between the side exterior wall of the dwelling and the roadway, a minimum 10 foot rear setback applicable to the portion of the dwelling opposite the front entrance and a minimum 5 foot side setback applicable to the other side of the dwelling. Corner

lots shall have access from one road only. Those lots that lie adjacent to the future access tracts "d," "e," "f," and "g" shall not be treated as corner lots, but shall be subject to a platted building restriction line consistent with the building restriction line shown on the Final Development Plan map.

The maximum height of structures within the Subdivision shall be 35 feet.

8-4-4 Project Size

The property encompassed by this Final Development Plan contains approximately 413.48 acres.

8-4-5 Support Legal Documents for Open Space

The covenants shall assure adequate management and maintenance of all common areas encompassed by this Final Development Plan.

a. The covenants shall provide for conveyance of title to the Common Property to, and ownership by, the Association, which shall be a duly constituted and legally responsible community association by inclusion of the provisions in Article IV, Section 5 and Section 6.

b. The covenants shall appropriately limit use of the Common Property by inclusion of the provisions in Article IV, Section 1 and Section 4.

c. The covenants shall assign responsibility for the management and maintenance of the Common Property to the Association by inclusion of the provisions in Article IV, Section 4.

d. The covenants shall place responsibility for enforcement of the covenants contained therein upon the Association by inclusion of the provisions in Article V, Section 1 and Article X, Section 6.

e. The covenants shall permit the subjection of each lot to assessment for its proportionate share of maintenance costs by inclusion of the provisions in Article VI, Section 1 and Section 2.

8-4-6 Access

As graphically depicted on the Map, each lot is provided vehicular access within the Property via roads to be dedicated to St. Johns County. Final plats will show a "non-access, landscaping and utility easement" to be granted to the Association which will, among other things, prevent direct access to Roberts Road from adjacent lots and prevent direct access to Tiger Creek Parkway from

adjacent lots. These "non-access, landscaping and utility easements" are depicted on the Map.

8-4-7 Privacy

Each dwelling will be provided visual and acoustical privacy by virtue of lot sizes and architectural control of the Subdivision by the New Construction Committee.

8-4-8 Community Facilities

a. None of the water, sewer, electrical, or telephone utility facilities serving the Property are proposed for dedication to St. Johns County; therefore, the provisions of subparagraph "a" are inapplicable.

b. All requirements for off-street parking and loading set forth in Article 9 of the St. Johns County Zoning Ordinance are addressed specifically below:

9-1-1 Drainage

A preliminary drainage plan for the Property so as to prevent damage to abutting parcels and public streets and alleys is graphically depicted on the Map. Detailed drainage plans demonstrating compliance with all requirements of Ordinance 86-4 and the St. Johns County Comprehensive Plan shall be included within the signed and sealed construction plans. The construction plans must be reviewed and approved by the St. Johns County Engineering Department prior to commencement of land clearing, site preparation or construction. All necessary easements for drainage shall comply with the requirements of Ordinance 86-4 and shall be depicted on the Final Plat.

9-1-2 Separation from Walkway and Street

No combined off-street parking or loading facilities will be constructed on the Property.

9-1-3 Entrances and Exits

The location and design of the entrances and/or exits to all streets will be in accordance with County specifications.

9-1-4 Interior Drives

As shown on the Map, there will be no interior drives on the Property.

9-1-5 Marking of Parking Spaces

As shown on the Map, there will be no street parking spaces other than private driveways and garages.

9-1-6 Lighting

Lighting within the Property will meet or exceed minimum lumens of 100 watt high pressure sodium fixture lights affixed 16 feet above the roadway and 600 feet on center.

9-1-7 Screening

Section 9-1-7 does not apply because there will be no parking spaces for ten or more vehicles in any one location on the Property.

9-2 Location

The required off-street parking facilities will be located upon the same parcel of land they are intended to serve.

9-3-1 Off-Street Parking; Numbers Required

The Property will be used for single family residential lots. Therefore, in accordance with Subsection a of 9-3-1, at least one off-street parking space will be provided per dwelling. Also, each unit will have a garage.

9-4-1 Off-Street Loading Requirements

This section does not apply to residential developments.

c. The Map illustrates the anticipated traffic flow pattern. Sufficient space has been allowed to permit access for fire fighting equipment, furniture moving vans, fuel trucks, refuse collection, deliveries and debris removal. Locations of the fire hydrants serving the Property shall be depicted on the signed and sealed construction plans. The fire hydrants to be installed pursuant to this Final Development Plan shall meet county standards and must be approved by the county fire coordinator prior to issuance of certificates of occupancy for any structure to be served by such hydrants.

d. All utilities serving the Property including telephone, power, cable television, and sewer and water lines will be installed underground except as noted in Section II G above. The signed and sealed construction plans shall show the location and design of the storm sewer facilities serving the Property and the grading and topography of the site. The storm sewer facilities shall comply with all applicable requirements of law including, but not limited to the requirements of Ordinance 86-4 and shall facilitate the proper drainage of storm waters and prevent erosion and the formation of dust.

e. Specifications for all streets and roadways depicted on the Map shall conform to the rules and regulations adopted by the St. Johns County Board of County Commissioners in Ordinance Number 86-4, and in the St. Johns County Subdivision Regulations, as amended except for the length of the cul-de-sacs identified in Section II H above.

DEVELOPER

By: _____

EXHIBIT C

COVENANTS AND RESTRICTIONS REFERENCED IN TEXT

ARTICLE IV

COMMON AREA RIGHTS, OBLIGATIONS AND MAINTENANCE

Section 1. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which will be appurtenant to and shall pass with title to every Lot, subject to the provisions of the Association Articles of Incorporation, Bylaws, Rules and Regulations and the following provisions:

(a) The right of the Association to charge assessments and other fees for the maintenance and security of the Common Areas and the facilities and services provided owners as described herein.

(b) The right of the Association to adopt rules and regulations governing the manner and extent of use of the Common Areas and the personal conduct of the Members of the Association and their guests thereon.

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas, to any public agency, authority or utility (public or private) for such purposes and subject to such conditions as may be agreed upon by the Board of the Association.

(d) The right of the Association to mortgage any or all of the facilities constructed on its property for the purpose of improvements or repair to such property or facilities at a regular meeting of the Association or at a special meeting called for this purpose.

(e) The right of Developers or the Association to grant and reserve easements and rights-of-way through, under, over and across the Common Areas, including the right to grant easements for ingress and egress to members of the general public.

(f) The right of Bestar or the Association to acquire, extend, terminate or abandon easements.

Section 4. The Association shall, at all times, maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Common Areas, personal property, fixtures and improvements and other structures (except utilities owned and

maintained by public or private utility companies providing water, sewer, electrical, fire protection, cable television, telephone, or similar utilities to the Property, or any portion thereof) placed or constructed thereon by or on behalf of the Association. Except with respect to the banks of lakes as set forth in Section 22, Article VIII hereof, the Association shall maintain all lakes, drainage areas, drainage easements, and control structures, and shall preserve and protect all designated conservation areas and littoral zones located within, adjacent, or in near proximity to the Property, in accordance with all permit requirements and conditions contained in applicable dredge fill, consumptive use, surface water permits, or any other applicable permits issued by the United States Army Corps of Engineers, Florida Department of Environmental Regulation, St. Johns River Water Management District, and St. Johns County, Florida and all statutes, rules, regulations and requirements pertaining to surface water management, drainage and water quality promulgated by the St. Johns River Water Management District, the Florida Department of Environmental Regulation, and all other local, state and federal authorities having jurisdiction. The Association shall maintain those portions of the Property designated by applicable permit as conservation tracts, stormwater management tracts or similar designations, in accordance with all permit requirements, rules, and regulations promulgated by all local, state and federal authorities having jurisdiction. The Association shall be responsible for the maintenance, operation and repair of the Surface Water or Stormwater Management System. Maintenance of the Surface Water or Stormwater Management System shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance of other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be as permitted, or if modified, as approved by the St. Johns River Water Management District. All maintenance obligations of the Association shall be performed as ordered by the Board of Directors of the Association, and all or any portion of the cost of such maintenance incurred by the Association pursuant to this Section, shall be a common expense of the Association to be collected and paid in the manner prescribed by this Declaration.

Section 5. Each Developer hereby grants to the Association, and its successors, assigns, agents, and contractors, an easement in, on, over and upon those portions of the Property as may be reasonably necessary for the purpose of maintaining the Common Area, including the Surface Water or Storm Water Management System, or other portions of Property to be maintained by Association, in accordance with the requirements of this Declaration. The easement granted hereby shall not be exercised by any party in a manner which unreasonably interferes with the use, occupancy, or enjoyment of any improved portion of the Property.

Further, in the event that any portion of the Property shall be damaged or altered in any way as the result of the exercise of the easement rights granted hereby, such portions of the Property shall be immediately restored to the condition that existed immediately prior to such damage or alteration.

Section 6. Prior to elimination of the Class B Membership with respect to any Developer, Bestar and such Developer hereby covenant that they will convey their rights in the Common Areas located in such Developer's portion of the Property to the Association subject to easements and restrictions of record and free and clear of all liens and financial encumbrances other than taxes for the year of conveyance, and the Association shall accept such conveyance. Each Owner's obligation to pay assessments, as provided herein, shall commence upon his acquisition of his Lot, notwithstanding that the part of the Common Areas consisting of personal property or fixtures have not then been conveyed to the Association.

ARTICLE V

ASSOCIATION

Section 1. The duties and powers of the Association shall be those provided for by law or set forth in this Declaration, the Association's Articles of Incorporation and Bylaws, together with those duties and powers which may be reasonably implied to effect the purposes of the Association and shall include enforcement of these covenants. Without limiting the generality of the foregoing, the Association may take such measures and perform such services which, in the judgement of the Board of Directors are necessary or desirable to enforce the covenants, conditions, restrictions and limitations set forth in this Declaration; operate, maintain and administer all Common Areas within the Property; administer and enforce the easements provided for in this Declaration; and collect and disburse the assessments created in this Declaration.

ARTICLE VI

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. All assessments and fines (referred to collectively in this Article as "charges"), together with interest and cost of collection when delinquent, shall be a charge on the land and shall be a continuing lien upon the Lot against which the charges are made, and shall also be the personal obligation of the person or entity who is the Owner of such Lot at the time when the charges were levied, and of each subsequent Owner. The lien shall attach to the Lot upon recording of a claim of lien in the public records of St. Johns County, Florida, which lien shall include all

the formalities of a deed and be signed by a duly authorized officer or agent of the Association. The claim of lien may provide that it secures not only current outstanding assessments as of the date of filing the claim of lien, but may also include future unpaid assessments, interest, late charges, and other costs related thereto. Each Owner of a Lot, by acceptance of a deed or other transfer document therefor, whether or not it shall be so expressed in such deed or transfer document, is deemed to covenant and agree to pay the Association the charges established or described in this Declaration and in the Association Articles of Incorporation and Bylaws. No diminution or abatement or any charges shall be allowed by reason of any alleged failure of the Association to perform such function required of it, or any alleged negligent or wrongful acts of the Association, or its officers, agents and employees, or the nonuse by the Owner of any or all of the Common Areas, the obligation to pay such charges being a separate and independent covenant by each Owner.

Section 2. Each Lot within the Property is subject to an Annual General Assessment by the Association for the improvement, maintenance and operation of the Property, including the management and administration of the Association and the furnishing of services as set forth in this Declaration. Such General Assessments must be allocated equally on a per Lot basis. As further described in this Article, the Board of Directors of the Association by a majority vote shall set the Annual General Assessments at a level sufficient to meet the Association's obligations. The Association Board of Directors shall have the right, power and authority, during any fiscal year, to increase the Annual General Assessment for the purpose of meeting its expenses and operating costs on a current basis or for the purpose of recovering excess expenses or costs from previous years. The Association Board of Directors shall set the date or dates that the Assessments shall become due, and may provide for collection of Assessments annually or in monthly, quarterly or semi-annual installments; provided, however, that upon a default in the payment of any one or more installments, the entire balance of the yearly Assessment may be accelerated at the option of the Association Board of Directors and be declared due and payable in full.

ARTICLE X

GENERAL PROVISIONS

Section 6. In addition to the enforcement provisions previously set forth in this Declaration, the provisions of this Declaration may be enforced by any owner, Bestar or the Association by a proceeding at law or in equity against any person or entity violating or attempting to violate the same, either to restrain violation or to recover damages, or both, and against his or its property to enforce any lien created by this Declaration. Failure

to so enforce any of these protective covenants and restrictions shall in no event be deemed a waiver of the right to do so at any time thereafter. Furthermore, the St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water Management System.

P.U.D. OFF. REC.
BOOK H PAGE 247

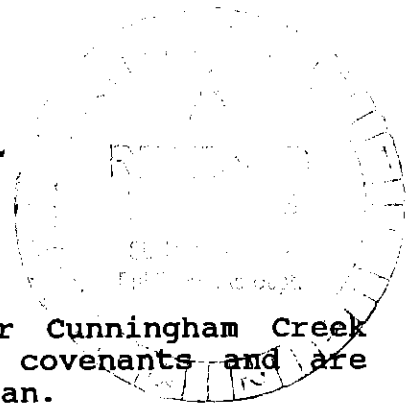


EXHIBIT D

The following sections of the covenants for Cunningham Creek Plantation must be included within recorded covenants and are hereby made a part of the Final Development Plan.

Article IV, Section 1, Section 4, Section 5 and Section 6
Article V, Section 1
Article VI, Section 1 and Section 2
Article X, Section 6

St. Johns County Board of County Commissioners

P.O. DRAWER 349
SAINT AUGUSTINE, FLORIDA
32085-0349



PHONE: (904) 823-2400
FAX: (904) 823-2507
SUNCOM: 865-2400

March 21, 1995

P. U. D. OFF. REC.
BOOK # PAGE 248

Carl "Bud" Markel,
Clerk of Court
St. Johns County
P.O. Box 300
St. Augustine, FL 32085-0300

RE: Cunningham Creek Plantation Final Development Plan

Dear Mr. Markel:

Based on review by the County Attorney's office, this will confirm that the condition to the effectiveness of the PUD zoning for Cunningham Creek Plantation contained in Section 7 of PUD Ordinance 94-57 was timely met. The County Attorney's office received the required executed Agreement to Proceed together with supporting title evidence on or before March 22, 1995.

Board of County Commissioners,
St. Johns County, Florida

By: Barbara Ward
As Chairman

Attachments 1 through 4

ST. JOHNS COUNTY, FLORIDA

Board of County Commissioners



OFFICE OF THE
COUNTY ATTORNEY

P.O. BOX 1533
SAINT AUGUSTINE, FLORIDA
32085-1533

PHONE: (904) 823-2458
FAX: (904) 823-2507

MEMORANDUM

TO: Barbara Ward, Chair
FROM: *Daniel J. Bosanko*
Daniel J. Bosanko
Assistant County Attorney

DATE: March 20, 1995

RE: Section 7 of St. Johns County, Florida Ordinance 94-57

P. U. D. OFF. REC.
BOOK H PAGE 249

In accordance with the provisions of the above referenced Section 7 of St. Johns County Ordinance 94-57, I herewith confirm that the condition to the effectiveness of the PUD zoning for Cunningham Creek Plantation contained in Section 7 of PUD Ordinance 94-57 was timely met.

The County Attorney's office received the required executed Agreement to Proceed together with supporting title evidence on or before March 22, 1995. Therefore, the contingent rezoning provided for in said ordinance is now effective.

DJB/sh

Attachment 1

PAPPAS METCALF & JENKS

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

200 WEST FORSYTH STREET - SUITE 1400
JACKSONVILLE, FLORIDA 32202-4327

THOMAS M. JENKS
ROBERT A. LEAPLEY, JR.
JOHN G. METCALF
FRANK E. MILLER
M. LYNN PAPPAS
SHARON R. PARKS
MARK A. REINSCH

TELEPHONE
(904) 353-1980
TELECOPY
(904) 353-5217

March 16, 1995

*approved as to terms
H. J. ...
on 3/17/95
3/20/95*

P.U.D. OFF. REC.
BOOK H PAGE 250

Board of County Commissioners
St. Johns County, Florida
c/o Chairman Barbara Ward
Post Office Box 349
St. Augustine, Florida 32085

**Re: Title Opinion/Cunningham Creek Plantation/PUD Ordinance
94-57**

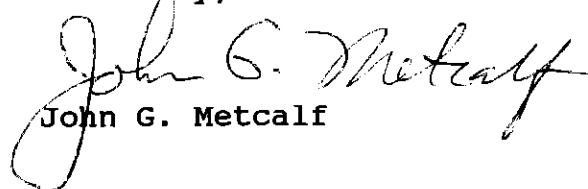
Dear Chairman Ward:

We are providing you this Opinion of Title to the property described on the attached Exhibit A (the "Property") in connection with satisfaction of the conditions stated in Section 7 of PUD Ordinance 94-57. Based on a search of the current public records of St. Johns County, Florida, prepared by Commonwealth Land Title Insurance Company, we find that the following constitute all of the record owners of land within the boundaries of the Property:

1. Jefferson Smurfit Corporation (U.S.), successor by name change to Container Corporation of America, a Delaware corporation;
2. Bestar Funding Corporation, a Florida corporation; and
3. Walter Frost Weaver, III and Rosemary Manson Weaver, his wife.

Furthermore, we find that the Property constitutes all of the land to be zoned PUD pursuant to Ordinance 94-57.

Sincerely,


John G. Metcalf

JGM;kbm
Enclosure

5542

Attachment 2

EXHIBIT A

P. U. D. OFF. REC.

BOOK H PAGE 251AUGUST REZONING REVISED - ROBERTS ROAD

A portion of the East 1/2 of the West 1/2 of the Southeast 1/4 of Section 5, and a portion of the West 1/2 of the West 1/2 of the Southeast 1/4 of Section 5, together with the Northeast 1/4 of Section 8 and a portion of Government Lots 1, 3, 4, 5 and 6, Section 8, also together with a portion of the Francis P. Fatio Grant, Section 39, all lying within Township 5 South, Range 27 East, St. Johns County, Florida, and being more particularly described as follows: BEGIN at the Northeast corner of said Section 8; thence South 02°45'19" East along the East line of said Section 8, a distance of 4,515.79 feet; thence South 79°01'59" West, a distance of 1,491.27 feet; thence North 02°45'20" West, 764.37 feet; thence North 70°20'31" West, 623.58 feet to the point of curvature of a curve leading Westerly, curve being concave Southerly and having a radius of 820.00 feet; thence Westerly along and around the arc of said curve, an arc distance of 877.02 feet, said arc being subtended by a chord bearing and distance of South 79°01'05" West, 835.81 feet to the point of tangency of said curve; thence South 48°22'41" West, 451.90 feet to a point of curvature of a curve leading Southerly, said curve being concave Northeasterly, having a radius of 25.00 feet; thence Southerly along and around the arc of said curve, an arc distance of 39.27 feet to a point situated in the Northeasterly right of way line of Roberts Road (a variable width right of way), said arc being subtended by a chord bearing and distance of South 03°22'41" West, 35.36 feet; run thence along the Northeasterly right of way line of said Roberts Road, run the following four (4) courses and distances: Course No. 1; thence North 41°37'19" West along last said line, 893.70 feet to a point of curvature of a curve leading Northerly, said curve being concave Northeasterly and having a radius of 330.00 feet; Course No. 2; thence along and around the arc of said curve, an arc distance of 128.60 feet, said arc being subtended by a chord bearing and distance of North 30°27'27" West, 127.79 feet to the point of tangency of said curve; Course No. 3; thence North 19°17'36" West, a distance of 1,078.05 feet to the point of curvature of a curve leading Northerly, said curve being concave Westerly and having a radius of 860.00 feet; Course No. 4; thence Northerly along and around the arc of said curve, an arc distance of 177.51 feet, said arc being subtended by a chord bearing and distance of North 25°12'26" West, 177.20 feet to a point; thence departing from said right of way line; run thence North 70°42'24" East, a distance of 204.64 feet to a point; thence North 02°43'45" West, a distance of 1,363.18 feet to the South line of the lands described and recorded in Official Records Book 204, Page 143 of the Public Records of said County; thence North 89°25'39" East along the South line of said lands, a distance of 587.89 feet; thence North 02°43'18" West along the East line of said lands, a distance of 890.64 feet to the North line of said Section 8 (also being the South line of said Section 5); thence North 89°25'15" East along last said line, a distance of 757.29 feet to a point on the West line of the Southeast 1/4 of said Section 5; thence North 00°43'05" West along last said line, a distance of, 1,405.84 feet; thence South 75°20'07" East, a distance of 477.39 feet; thence

P. U. D. OFF. REC.BOOK H PAGE 252

South 13°57'50" West, a distance of 325.49 feet; thence South 37°18'52" East, a distance of 118.62 feet; thence South 24°57'04" West, a distance of 141.12 feet; thence North 88°44'13" East, a distance of 219.08 feet; thence North 01°17'11" East, a distance of 684.00 feet; thence North 89°16'49" East, a distance of 714.74 feet to an intersection with the East line of the East 1/2 of the West 1/2 of the Southeast 1/4 of said Section 5; thence South 00°43'19" East along the East line of said East 1/2 of the West 1/2 of the Southeast 1/4 of said Section 5, a distance of 1430.81 feet to a point situated on the South line of said Section 5, (also being the North line of said Section 8); thence North 89°25'20" East along last said line, a distance of 1345.25 feet to the POINT OF BEGINNING.

Containing 413.48 acres, more or less in area.

AGREEMENT TO PROCEED

The undersigned owners of property within the Cunningham Creek Plantation Planned Unit Development hereby agree to proceed with the proposed development in accordance with the adopted PUD ordinance and such conditions and safeguards as may be set by the Board of County Commissioners in such ordinance as required by Section 8-2-1d(1) of the St. Johns County Zoning Ordinance. The undersigned further agree to proceed in accordance with the intended plan of development incorporated in the Application for Planned Unit Development for Cunningham Creek Plantation to which this exhibit is attached as required by Section 8-2-1d(2) and to bind their successors in title to any commitments made in the Application as required by Section 8-2-1d(3) of the Zoning Ordinance.

BESTAR FUNDING CORPORATION, a Florida corporation

By: *L. Randall Towers*
L. Randall Towers, President

JEFFERSON SMURFIT CORPORATION (U.S.), successor by name change to

CONTAINER CORPORATION OF AMERICA, a Delaware corporation

By: *John E. Davis*
Name: John E. Davis
Its: Woodlands Vice President

Walter Frost Weaver, III (SEAL)

Rosemary Manson Weaver (SEAL)

AGREEMENT TO PROCEED

The undersigned owners of property within the Cunningham Creek Plantation Planned Unit Development hereby agree to proceed with the proposed development in accordance with the adopted PUD ordinance and such conditions and safeguards as may be set by the Board of County Commissioners in such ordinance as required by Section 8-2-1d(1) of the St. Johns County Zoning Ordinance. The undersigned further agree to proceed in accordance with the intended plan of development incorporated in the Application for Planned Unit Development for Cunningham Creek Plantation to which this exhibit is attached as required by Section 8-2-1d(2) and to bind their successors in title to any commitments made in the Application as required by Section 8-2-1d(3) of the Zoning Ordinance.

BESTAR FUNDING CORPORATION, a Florida corporation

By: *L. Randall Towers*
L. Randall Towers, President

JEFFERSON SMURFIT CORPORATION (U.S.), successor by name change to

CONTAINER CORPORATION OF AMERICA, a Delaware corporation

By: _____
Name: _____
Its: _____

Walter Frost Weaver III (SEAL)
Walter Frost Weaver, III

Rosemary Manson Weaver (SEAL)
Rosemary Manson Weaver

FILED AND RECORDED
95 MAR 21 PM 2:55
Bill "Bill" M...
CLERK OF CIRCUIT COURT