

**RESOLUTION 97-22**

**A RESOLUTION OF THE COUNTY OF ST. JOHNS, STATE OF FLORIDA, APPROVING A THREE-PARTY AGREEMENT BETWEEN SJH PARTNERSHIP, LTD., BARNETT BANK, N.A. AND ST. JOHNS COUNTY, FLORIDA.**

**WHEREAS**, SJH Partnership, Ltd. ("SJH") plans to construct a private roadway known as Royal Pines Parkway; and B; and

**WHEREAS**, St. Johns County has approved construction plans for Royal Pines Parkway; and

**WHEREAS**, the St. Johns County Paving and Drainage Ordinance does not require bonding of private roadways solely serving commercial activities, however, the Paving and Drainage Ordinance does require bonding or three-party agreements to be entered into for roads intended to serve residential areas; and

**WHEREAS**, Royal Pines Parkway will provide an additional access road to the St. Johns County Convention Center; and

**WHEREAS**, Royal Pines Parkway will provide the main access for the residential property in the Northwest Quadrant of the Saint Johns Project; and

**WHEREAS**, the proposed three-party agreement between SJH, Barnett Bank, N.A. and St. Johns County, Florida will insure the County's ability to cause these roads to be completed in the event of failure of SJH to complete such road without obligating the County to exercise any rights it may have under such Agreements.

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

1. The following facts are determined in connection with this Resolution:

a. Royal Pines Parkway provides additional access to the County Convention Center.

2. The proposed three-party agreement will insure the County's ability to cause construction of the roadway to be completed should the developer fail to complete such construction without obligating the County to complete such construction.

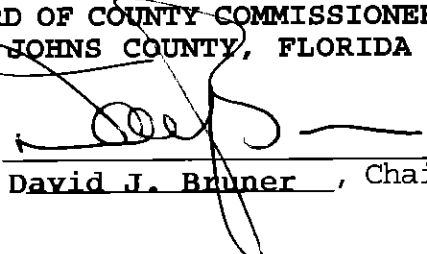
3. St. Johns County, Florida, hereby authorizes execution of the Royal Pines Parkway Improvement Agreement in the form attached as Exhibit A by David Brunner, as Chairperson of the Board of County Commissioners or Nick Meiszer, as County Administrator, on behalf of St. Johns County, Florida.

4. St. Johns County, Florida hereby approves the extension of the completion date for Royal Pines Parkway from 12 months to 18 months pursuant to Section 12.2.3, Ordinance 96-40.

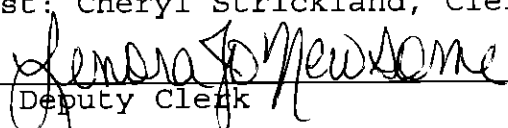
5. This Resolution shall become effective immediately upon adoption.

PASSED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA THIS 11 DAY OF FEBRUARY, 1997.

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

By:   
David J. Brunner, Chairman

Attest: Cheryl Strickland, Clerk

By:   
Deputy Clerk

Adopted Regular Meeting February 11, 1997

THIS DOCUMENT PREPARED  
BY AND RETURN TO:

SHARON R. PARKS, ESQ.  
PAPPAS METCALF & JENKS, P.A.  
200 WEST FORSYTH STREET  
SUITE 1400  
JACKSONVILLE, FL 32202-4327

**ROYAL PINES PARKWAY  
IMPROVEMENT AGREEMENT  
(ST. JOHNS COUNTY)**

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 1996, by and between **BARNETT BANK, N.A.**, a National Banking Association (the "Lender"), **SJH PARTNERSHIP, LTD**, a Florida Limited Partnership (the "Partnership") and **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida (the "County").

**RECITALS**

A. In connection with various agreements between the Partnership and various third parties, the Partnership has obligated itself to construct the Access Road (as hereinafter defined).

B. The Partnership has submitted to the County engineering plans and specifications prepared by Bessent, Hammack & Ruckman (the "Inspecting Engineer") dated October 22, 1996 (collectively, the "Plans") for the design and construction of a private road (the "Access Road") to be located in the northwest quadrant of the intersection of Interstate 95 and International Golf Parkway.

C. This Agreement shall not affect or impair the authority of the County to grant or withhold the issuance of a certificate of occupancy for any vertical improvements accessed by the Access Road in respect to the completion or non-completion of the Access Road pursuant to the applicable County ordinances.

D. The Partnership has agreed to complete the base and first course of asphalt on the Access Road to provide a means of ingress and egress for construction vehicles during vertical construction, and to complete construction of the Access Road to County standards upon completion of such vertical construction.

E. The Partnership and Lender entered into that certain Note and Mortgage Modification Agreement Evidencing Future Advance and Spreading Agreement dated July 24, 1996, recorded in Official Records Book 1185, page 2135, as amended by that certain Partial Release of Mortgage and Spreading Agreement recorded in Official Records Book 1198, page 899, and as partially released by Partial Releases recorded in Official Records Book 1198, page 981, Official Records Book 1201, page 79, and Official Records Book 1201, page

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82, which modified that certain Mortgage and Security Agreement dated July 6, 1994, recorded in Official Records Book 1062, page 1589, as modified by instruments recorded in Official Records Book 1110, page 25, and Official Records Book 1163, page 658, all of the public records of St. Johns County, Florida (collectively, the "Mortgage"), which provides, among other things, for a loan not to exceed Eleven Million Seven Hundred Fifty Thousand and No/100 Dollars (\$11,750,000.00) (the "Loan") of which One Million Five Hundred and No/100 Dollars (\$1,500,000.00) are to be applied to costs incurred by the Partnership in the construction of the Access Road (the "Project Funds"). The Loan is evidenced by a promissory note executed by the Partnership and is to be disbursed in accordance with the Construction Loan Agreement between the Partnership and the Lender (the "Construction Loan Agreement").

F. The Partnership shall enter into a contract with Prince Contracting Co., Inc. (the "Contractor") for the construction of, among other things, the Access Road (the "Construction Contract").

G. This Agreement is entered into to provide financial assurances to the County and to set out the obligation of the parties hereto related to the construction of the Access Road and the payment of the costs incurred in connection therewith.

**NOW, THEREFORE**, in consideration of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The above Recitals are hereby incorporated herein and made a part hereof.

2. The Partnership shall commence construction of the Access Road and shall complete construction of the Access Road in accordance with the Construction Contract.

3. The Partnership shall, from time to time, direct disbursements of the Project Funds to contractors or subcontractors as payment for the amount of work completed in construction of the Access Road by the respective contractor or subcontractor, in accordance with the terms of the Construction Contract. Disbursements shall be made no more frequently than once each calendar month. Each direction to disburse shall be in the form approved by the Lender and as a condition to such disbursement the Inspecting Engineer shall provide a certification to the Lender and the County certifying the percentage of completion of the Access Road in accordance with the Plans as approved by the County and certifying that the value thereof is consistent with the Contractor's draw request (the "Inspecting Engineer's Certification"). The Partnership shall cause a copy of each Inspecting Engineer's Certification to be delivered to the County coincident with delivery to the Lender.

4. At the direction of the Partnership, and upon receipt of the Inspecting Engineer's Certification, the Lender shall disburse Project Funds in amounts specified by the Partnership to the contractors or subcontractors, provided, however, that the Lender shall never be obligated to advance funds to pay the costs of the Access Road in excess of the Project Funds. In disbursing the Project Funds, the Lender shall rely upon the Inspecting Engineer's Certification and the direction of the Partnership. The Lender shall have no responsibility to inspect any construction or installation said to have been completed, nor to determine or assure that the Access Road improvements have actually been made or that they comply with the Plans or other requirements of the County.

5. If the Partnership fails to complete construction of the Access Road within eighteen (18) months of the date hereof or the Partnership defaults beyond any applicable cure period under any provisions of the Mortgage, the Construction Loan Agreement, the Construction Contract or any other Loan Document between Lender and Partnership associated with the Loan (the "Events of Default"), the Lender shall make no further disbursements notwithstanding the direction of the Partnership with respect to the Access Road.

6. If the Lender shall cease making disbursements as a result of an Event of Default, as provided for in paragraph 5 above, and if such Event of Default is not waived by the party entitled to declare such Event of Default, the County may, at its option, be entitled to disbursement of any remaining undistributed Project Funds notwithstanding any Event of Default upon the Lender's receipt of directions from the County to disburse together with an Inspecting Engineer's Certification in accordance with the provisions of paragraph 3 of this Agreement. Disbursements of Project Funds to the County shall be made on the same terms and conditions provided for in paragraphs 3 and 4 above, except that the Partnership shall not direct the payments. The rights of the Lender and the County pursuant to paragraphs 6 and 7 hereof, shall not bar other actions by the Lender under the Mortgage or the Construction Loan Agreement.

7. Any Project Funds disbursed by the Lender at the direction of the Partnership, as certified by the Inspecting Engineer, or at the sole direction of the County under the provisions of paragraph 6 above, shall constitute advances under the Mortgage and the Construction Loan Agreement between the Lender and the Partnership and shall be the debt of the Partnership to the Lender. Nothing contained in this Agreement shall modify or affect the terms and provisions of the Mortgage or the Construction Loan Agreement except as specifically provided herein.

8. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

9. This Agreement shall remain in full force and effect until the earlier of (i) substantial completion of the Access Road in accordance with County standards, or (ii) disbursement of all the Project Funds in accordance with the terms of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first above written.

**BARNETT BANK, N. A.**

\_\_\_\_\_  
(Print Name)

By: \_\_\_\_\_  
Scott R. Stevens  
Senior Vice President

\_\_\_\_\_  
(Print Name)

**SJH PARTNERSHIP, LTD.,**  
a Florida limited partnership

\_\_\_\_\_  
(Print Name)

By: **SJ MEMPHIS, LTD.,** a Florida  
limited partnership, its  
general partner

\_\_\_\_\_  
(Print Name)

By: **ST. JOHNS HARBOUR, INC.,**  
a Florida corporation, its  
general partner

By: \_\_\_\_\_  
(Print Name) \_\_\_\_\_  
Its: \_\_\_\_\_  
3797 New Getwell Road  
Memphis, TN 38118

**ST. JOHNS COUNTY, FLORIDA**

\_\_\_\_\_  
(Print Name)

By: Its Board of Commissioners

\_\_\_\_\_  
(Print Name)

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

ATTEST: Carl "Bud" Markel, Clerk

By: \_\_\_\_\_  
Deputy Clerk

STATE OF FLORIDA            )  
                                  )SS  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1996, by Scott R. Stevens, as Senior Vice President of **BARNETT BANK, N.A.**, a national banking association, on behalf of the bank.

\_\_\_\_\_  
(Print Name \_\_\_\_\_)  
NOTARY PUBLIC  
State of \_\_\_\_\_ at Large  
Commission # \_\_\_\_\_  
My Commission Expires:

Personally Known \_\_\_\_\_  
or Produced I.D. \_\_\_\_\_  
[check one of the above]

Type of Identification Produced  
\_\_\_\_\_

STATE OF TENNESSEE        )  
                                  )SS  
COUNTY OF SHELBY        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1996, by \_\_\_\_\_, the \_\_\_\_\_ of St. Johns Harbour, Inc., a Florida corporation, the general partner of SJ Memphis, Ltd., a Florida limited partnership, the general partner of **SJH PARTNERSHIP, LTD.**, a Florida limited partnership, on behalf of the partnership.

\_\_\_\_\_  
(Print Name \_\_\_\_\_)  
NOTARY PUBLIC  
State of Tennessee  
Commission # \_\_\_\_\_  
My Commission Expires:

Personally Known \_\_\_\_\_  
or Produced I.D. \_\_\_\_\_  
[check one of the above]

Type of Identification Produced  
\_\_\_\_\_