

FOOD AND BEVERAGE SERVICE AGREEMENT

This Agreement made and entered into this 14th day of May, 1987, by and between Southeast Holding Company, Ltd., a South Carolina corporation ("Company"), and Big Canoe Property Owners Association, a Georgia nonprofit corporation ("Association").

WITNESSETH:

WHEREAS, the Company and the Association have entered into a Settlement Agreement dated March 31, 1987 ("Settlement Agreement"), concerning certain disputes relating to Big Canoe; and

WHEREAS, a condition of the Settlement Agreement is that a recordable agreement be executed providing the terms under which certain food and beverage operations are to be conducted upon the Common Properties (as defined in that certain Declaration of Covenants and Restrictions of the Big Canoe Property Owners Association and Big Canoe Corporation dated October 9, 1972, as amended (the "Declaration"));

NOW, THEREFORE, in consideration of the premises, the mutual covenants and conditions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

Section 1. Defined Terms. Words used in this Agreement which are signified by initial capitalization shall have the defined meanings specified in the Declaration.

GEORGIA, DAWSON COUNTY
CLERK'S OFFICE, SUPERIOR COURT
FILED FOR RECORD

of 1:00 P.M. 5-15-87
Recorded in Book 99 Page 331-346
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Section 2. Company's Exclusive Right of First Refusal Regarding Food and Beverage Services. The Company shall have an exclusive right of first refusal to provide all food and beverage services now or hereafter provided on any of the Common Properties including without limitation, the Golf Club House and the Swim Club Snack Shop, subject to the following terms and provisions:

(a) If the Association shall determine that it desires to have any food or beverage operations conducted on any of the Common Properties, from time to time, the Association shall give written notice thereof to the Company, and the Association and the Company shall negotiate exclusively in good faith for not less than sixty (60) days to attempt to reach agreement on the terms and conditions under which the Company will provide said food and beverage services. In the event that the Company and the Association shall fail to reach agreement within said sixty (60) days, the Association shall be free to provide said food and beverage services itself or to negotiate with any other person or entity for the provision of said services. In the event that the Association reaches agreement with some other person or entity with respect to the terms and conditions upon which said person or entity will provide such services, the Association shall deliver to the Company a copy of a written offer by said other person or entity to the Association setting forth all of the terms and conditions of said proposal. The Company shall then have a period of thirty (30) days within which to agree in writing to provide

said services to the Association on the same terms and conditions as offered by said other person or entity. If the Company so agrees, the Company and the Association shall within thirty (30) days enter into a written agreement for the provision of said services on said terms and conditions. If the Company shall fail to deliver to the Association within said thirty (30) days a written offer to provide said services on said terms and conditions, then the Association shall be free to enter into a contract with said other person or entity for the provision of said services on the same material terms and conditions or on terms and conditions not more favorable to said other person or entity than those offered to the Company provided that said contract is entered into within thirty (30) days after the earlier to occur of (a) receipt by the Association of written notice from the Company that the Company declines to provide said services on said terms and conditions or (b) the expiration of said thirty (30) days. If the Association shall fail to enter into a contract with said other person or entity for the provision of said services on said terms and conditions or on terms and conditions not more favorable to said other person or entity than those offered to the Company within said thirty (30) days, then, in such event, the Association shall not enter into any contract with any person or entity for the provision of said services without again offering to the Company the right of first refusal in accordance with this section.

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(b) If the Association enters into a contract for the provision of said services with said other person or entity in accordance with this section, and, if, at any time thereafter, the Association shall desire to modify or amend any of the terms or conditions upon which said other person or entity is offering said services to make said terms or conditions more advantageous to said other person or entity, the Association shall give written notice of said proposed modification or amendment to the Company and the Company shall have a period of thirty (30) days after receipt of said written proposal within which to give written notice to the Association that the Company desires to take over said contract as modified or amended by said proposal. If the Company shall fail to deliver to the Association said written notice within said thirty (30) days, then the Association shall be free to modify or amend said contract with said other person or entity to incorporate said modifications or amendments, provided that said modification or amendment is entered into and implemented within thirty (30) days after the earlier to occur of (a) receipt by the Association of written notice from the Company that the Company does not desire to take over said contract, or (b) the expiration of said thirty (30) day period. If the Company shall give written notice to the Association within said thirty (30) days that the Company desires to assume said contract, as modified or amended, then the Association shall, within thirty (30) days after receipt of said written notice from the Company,

terminate its contract with said other person or entity and enter into a contract with the Company to provide said services on the same terms and conditions as the contract with said other person or entity, subject to the modifications or amendments set forth in said proposal. The Company shall have no obligation to provide or subsidize any food or beverage services on any of the properties now or hereafter owned by the Association or anywhere else at Big Canoe, except to the extent that the Company may, in its sole discretion, enter into a written agreement with the Association for the provision of said services.

Section 3. Associations' Exclusive Right of First Refusal Regarding Food and Beverage Services. The Association shall have an exclusive right of first refusal to purchase any and all Food and Beverage Operations and Facilities now or hereafter provided by the Company on any of the Common Properties, subject to the following terms and conditions:

(a) If the Company shall determine that it desires to sell or otherwise transfer any Food and Beverage Operations and Facilities located on any of the Common Properties from time to time, the Company shall give written notice thereof to the Association, and the Company and the Association shall negotiate exclusively in good faith for not less than sixty (60) days to attempt to reach agreement on the terms and conditions under which the Association will purchase said Food and Beverage Operations and Facilities. In the event

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that the Company and the Association shall fail to reach agreement within said sixty (60) days, the Company shall be free to negotiate with any other person or entity for the sale or other transfer of said Food and Beverage Operations and Facilities. In the event that the Company reaches agreement with some other person or entity with respect to the terms and conditions upon which said person or entity will purchase or otherwise acquire such Food and Beverage Operations and Facilities, the Company shall deliver to the Association a copy of a written offer by said other person or entity to the Company setting forth all of the terms and conditions of said proposal. The Association shall then have a period of thirty (30) days within which to agree in writing to purchase or otherwise acquire said Food and Beverage Operations and Facilities on the same terms and conditions as offered by said other person or entity. If the Association so agrees, the Association and the Company shall promptly enter into a written agreement for the purchase or other acquisition of said Food and Beverage Operations and Facilities on the same material terms and conditions or on terms and conditions not more favorable than those offered to the Association. If the Association shall fail to deliver to the Company within said thirty (30) days a written offer to purchase or otherwise acquire said Food and Beverage Operations and Facilities on said terms and conditions, then

the Company shall be free to enter into a contract with said other person or entity for the purchase or other acquisition of said Food and Beverage Operations and Facilities on the same material terms and conditions or on terms and conditions not more favorable to said other person or entity than those offered to the Association, provided that said contract is entered into within thirty (30) days after the earlier to occur of (a) receipt by the Company of written notice from the Association that the Association declines to purchase or otherwise acquire said Food and Beverage Operations and Facilities on said terms and conditions or (b) the expiration of said thirty (30) days. If the Company shall fail to enter into a contract with said other person or entity for the purchase or other acquisition of said Food and Beverage Operations and Facilities on said terms and conditions or on terms and conditions not more favorable to said other person or entity than those offered to the Association within said thirty (30) days, then, in such event, the Company shall not enter into any contract with any person or entity for the purchase or other acquisition of said Food and Beverage Operations and Facilities without again offering to the Association the right of first refusal in accordance with this Section.

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(b) If the Company enters into a contract for the sale or other acquisition of said Food and Beverage Operations and Facilities with said other person or entity in accordance with this Section, and, if, at any time thereafter, the Company shall desire to modify or amend said contract to make the terms or conditions thereof more advantageous to said other person or entity, then, in such event, the Company shall give written notice of said proposed modification or amendment to the Association and the Association shall have a period of thirty (30) days after receipt of said written proposal within which to give written notice to the Company that the Association desires to take over said contract as modified or amended by said proposal. If the Association shall fail to deliver to the Company said written notice within said thirty (30) days then the Company shall be free to modify or amend said contract with said other person or entity to incorporate said modifications or amendments, provided that said modification or amendment "is entered into and implemented within thirty (30) days after the earlier to occur of (a) receipt by the Company of written notice from the Association that the Association does not desire to take over said contract, or (b) the expiration of said thirty (30) day period. If the Association shall give written notice to the Company within said thirty (30) days that the Association desires to assume said contract, as modified or amended, then

the Company shall within thirty (30) days after receipt of said written notice from the Association, terminate its contract with said other person or entity and enter into a contract with the Association to provide said services on the same terms and conditions as the contract with said other person or entity, subject to the modifications or amendments set forth in said proposal. The Association shall have no obligation to provide or subsidize any food or beverage services on any of the properties now or hereafter owned by the Association or anywhere else at Big Canoe, except to the extent that the Association may upon the approval by a majority of the Non-Developer Directors of the Association, in its sole discretion, enter into a written agreement with the Company for the provision of said services.

(c) "Food and Beverage Operations and Facilities", as used in this Section 3, shall mean all the Company's right, title and interest in and to the following property used by the Company exclusively in the providing of food and beverage services at the particular location on the Common Properties:

(a) all tangible personal property, such as furniture, fixtures, equipment, supplies and inventories; and (b) all intangible property, such as trade names, trademarks, service names, service marks, employment agreements, and rights to employees, vendors and suppliers. Notwithstanding the foregoing, it is expressly understood and agreed that the

foregoing right of first refusal contained in this Section 3 shall not apply to any operating leases that are not substantially equivalent to a sale of the operations and facilities. No lease extending for fifteen years or less (including options to renew) shall be deemed to be substantially equivalent to a sale, if such lease provides that it shall terminate on or before the second anniversary of the date on which the Company is no longer a Type "D" Member of the Association.

Section 4. Operating Agreement Regarding Food and Beverage Service. The provision by the Company, its permitted successors, assigns, lessees and licensees, of food and beverage services on any of the Common Properties pursuant to this Agreement shall be limited by and subject to the following terms and conditions, except to the extent any such terms and conditions may be waived from time to time by a majority of the Non-Developer Directors of the Association (as defined in the Bylaws of the Association):

(a) The Company's right to operate the food and beverage services shall terminate if (i) the Company fails for any period of thirty (30) consecutive days to provide such services, except if such failure occurs during the period from December through February or if such failure is caused by force majeure; (ii) the Company is no longer a Type "D" Member of the Association, subject to Section 4(d) hereof concerning the termination date of unaffiliated operating

leases; or (iii) the Company gives thirty (30) days prior written notice to the Association;

(b) The food and beverage services shall not be open to the general public and shall be subject to the reasonable rules and regulations of the Association not in conflict with the Declaration;

(c) The Company shall not make any material change in the nature or scope of the food and beverage operations nor take any action that will expand such food and beverage operations or unreasonably interfere with the use by the Association of those portions of the property in which such food and beverage operations are conducted which are not devoted to the food and beverage operations;

(d) The Company can, without the prior written consent of the Association, transfer, assign or sublet its rights under this Section 4 to an affiliate, a successor developer or to an unaffiliated third party only if such party assumes the obligations and take subject to the terms and conditions of the operating agreement specified in this Section 4; provided, if the transfer, assignment or subletting is to any unaffiliated third party, it must be pursuant to an operating lease extending for fifteen (15) years or less (including options to renew) and the third party's rights must terminate on or before the second anniversary of the date on which there is no longer a Type "D" Member of the Association. Any

other transfer, assignment or subletting must be consented to in writing by a majority of the Non-Developer Directors of the Association, which consent shall not be unreasonably withheld, conditioned or delayed, and if consented to by the Association the Association will be entitled to receive any profit realized by the Company with respect to the lease of the food and beverage operations pursuant to the transfer, assignment or subletting, after the Company first recovers all operating deficits from such operations subsequent to January 1, 1987, plus interest thereon at the base rate of Citibank, N.A., as it may change, from time to time;

(e) The Company shall lease from the Association those portions of the real property and improvements thereon and personal property then being used for the provision of food and beverage operations on the particular common property at an annual fee of Ten Dollars (\$10.00) per year, payable in advance. Such lease shall be for a period of one year and shall be automatically renewed each year thereafter unless terminated by the Company or otherwise terminated as herein provided. The Company shall repair and maintain the furniture, fixtures, equipment and other tangible personal property of the Association used for providing such food and beverage operations, except to the extent damage is caused by the negligence or willful misconduct of the Association, its agents, independent contractors, employees or officers, in

which event the Association shall cause such repairs to be made. The Company shall only be responsible to repair or maintain improvements and personal property of the Association not being used in providing food and beverage operations to the extent damage is caused by the negligence or willful misconduct of the Company, its agents, independent contractors, employees or officers. Other than the foregoing, the Association shall be responsible for maintaining the building and improvements in a state of good repair.

(f) If any furniture, fixtures, equipment or other tangible personal property of the Association being used by the Company to provide the food and beverage service cannot be repaired or would be more expensive to repair than to replace (assuming equivalent quality), the Company, at its expense, shall replace such property and the replacement property shall be the Company's property unless such replacement is as a result of damage caused by the Company's or its agents, independent contractors, employees or officers negligence or willfulness conduct, in which case such property shall be the property of the Association.

(g) The Company and the Association shall each pay their prorata portion of insurance, utilities and taxes on the property in which food and beverage operations are conducted on a fair and reasonable basis, taking into account

square footage of each and risk associated with each others activities. The Association may provide for separate utility metering.

Section 5. Miscellaneous

(a) Time is of the essence of this Agreement.

(b) This Agreement shall inure and be binding upon the parties hereto and the permitted assigns and successors of the Company as contemplated herein and in the Declaration so that there is only one Company at Big Canoe.

(c) Notices hereunder shall be given by certified mail, return receipt requested, postage prepaid, or in person to the following addresses and shall be deemed given when personally delivered or three (3) business days after proper mailing:

Southeast Holding Company, Ltd.
Attn: Howard A. Davis
Big Canoe Company
Big Canoe, Georgia 30143

With a copy to:

Robert G. Holt, P.C.
Holt, Ney, Zatcoff & Wasserman
100 Galleria Parkway
Atlanta, Georgia 30339

Big Canoe Property Owners
Association, Inc.
c/o The President
Big Canoe, Georgia 30145

With a copy to:

Stephen R. Leeds
Rogers & Hardin
Thirty-Second Floor
101 Marietta Tower
Atlanta, Georgia 30335

or at such other addresses specified by notice in accordance with this Section 5(c).

- (d) This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.
- (e) This Agreement can only be amended in a writing signed by both parties to this Agreement.
- (f) This Agreement is the entire agreement of the parties with respect to the subject matter hereof.
- (g) Any action required or permitted to be taken hereunder by the POA shall be taken and be deemed approved upon the affirmative vote of a majority of the Non-Developer Directors of the POA as defined in the Bylaws of the POA.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers this 14th day of May, 1987.

SOUTHEAST HOLDING
COMPANY, LTD.

By: [Signature]
Howard A. Davis, V.P.

ATTEST:

[CORPORATE SEAL]

By: [Signature]
Secretary
J. Michael McShane,
Secretary

Signed, sealed and delivered
in the presence of:

Barbara H. Johnson
Unofficial Witness

Shaw C. Harrison
Notary Public

[NOTARIAL SEAL]

Notary Public, Georgia, State at Large
My Commission Expires April 2, 1990

BIG CANOE PROPERTY OWNERS,
ASSOCIATION, INC.

Signed, sealed and delivered
in the presence of:

Barbara H. Johnson
Unofficial Witness

Shawn P. McCoskey
Notary Public

[NOTARIAL SEAL]

Notary Public, Georgia, State at Large
My Commission Expires April 2, 1990

By: ~~W. A. Davis~~
Howard A. Davis, President

ATTEST:

[CORPORATE SEAL]

By: Bill C. Wainwright
Secretary - Treasurer
Bill C. Wainwright,
Secretary