

8/3

This deed is being re-recorded to pay additional documentary stamps on \$375,000 00 for a total consideration of \$1,423,000 00

Prepared by

Michael F Tomlinson, Esq  
K&L Gates LLP  
214 N Tryon Street  
Hearst Tower, 47<sup>th</sup> Floor  
Charlotte, North Carolina, 28202  
Tax Account # 2866224  
GED # 283603VL6

CFN 2010238891, OR BK 6293 PAGE 2192,  
Recorded 12/07/2010 at 02 54 PM, Scott Ellis, Clerk of  
Courts, Brevard County  
Doc D \$7336 00 # Pgs 8

Commonwealth CF# 2228003462

**SPECIAL WARRANTY DEED  
(WITH PROTECTIVE COVENANTS IN FAVOR OF GRANTEE)**

THIS SPECIAL WARRANTY DEED executed this 30<sup>th</sup> day of November, 2010, by MELBOURNE 95 NEW HAVEN, LLC, a North Carolina limited liability company whose address is 1111 Metropolitan Avenue, Suite 700, Charlotte, NC 28204 ("Grantor"), to MELBOURNE PALIO PARTNERS, LLC, a Florida limited liability company ("Grantee").

WITNESSETH, That the said Grantor, for and in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, all that certain land situate in Brevard County, Florida (the "Premises"), to-wit:

SEE LEGAL DESCRIPTION OF PREMISES ON EXHIBIT "A" ATTACHED HERETO.

SUBJECT TO all matters listed on Exhibit "B" attached hereto (the "Permitted Exceptions").

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

AND the Grantor hereby covenants with said Grantee that it is lawfully seized of the Premises in fee simple; that it has good right and lawful authority to sell and convey said

Return To: (3)

Fidelity National Title Co  
2400 Maitland Center Parkway STE-200  
Maitland, FL 32751

Attention Myrna H. Small

File No TLA 10-0001911 X

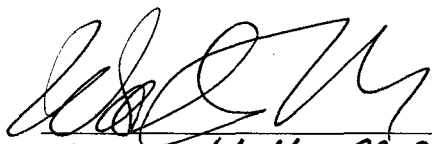
CH-3029432 v4

Premises; that it hereby fully warrants the title to said Premises and will defend the same against the lawful claims of all persons claiming by, through or under the said Grantor; and that said Premises is free of all encumbrances, except the Permitted Exceptions.

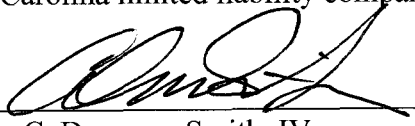
IN ADDITION TO the foregoing conveyance, Grantor hereby restricts, for the benefit of the Premises, the use of certain property owned by Grantor (the "Restricted Property"), which Restricted Property is more particularly described on Exhibit "C" attached hereto. The terms and conditions of such restriction are more particularly set forth on Exhibit "D" attached hereto.

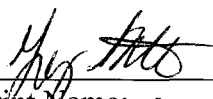
IN WITNESS WHEREOF, the said Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Witnesses:

  
 Print Name Walker McRath

MELBOURNE 95 NEW HAVEN, LLC, a  
 North Carolina limited liability company

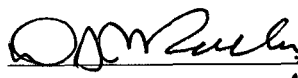
By:   
 Name: C. Donovan Smith, IV  
 Title: Manager

  
 Print Name: Cherry Roberts

STATE OF SOUTH CAROLINA    )  
   )  
 COUNTY OF CHARLESTON        )

On November 29, 2010, before me, the undersigned, a notary public in and for said State, personally appeared C. Donovan Smith, IV, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that, by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

My Commission Expires: 4/23/17

 Notary Public  
 in SC

**EXHIBIT A**

**LEGAL DESCRIPTION**

That certain tract or parcel of land designated as Tract G-1, containing 2.07 acres, more or less, as shown on that certain Plat titled "Coastal Commerce Center, Tract G, 1<sup>st</sup> Re-Plat" prepared by B.S.E. Consultants, Inc. recorded in Plat Book 58, Page 78, Public Records of Brevard County, Florida.

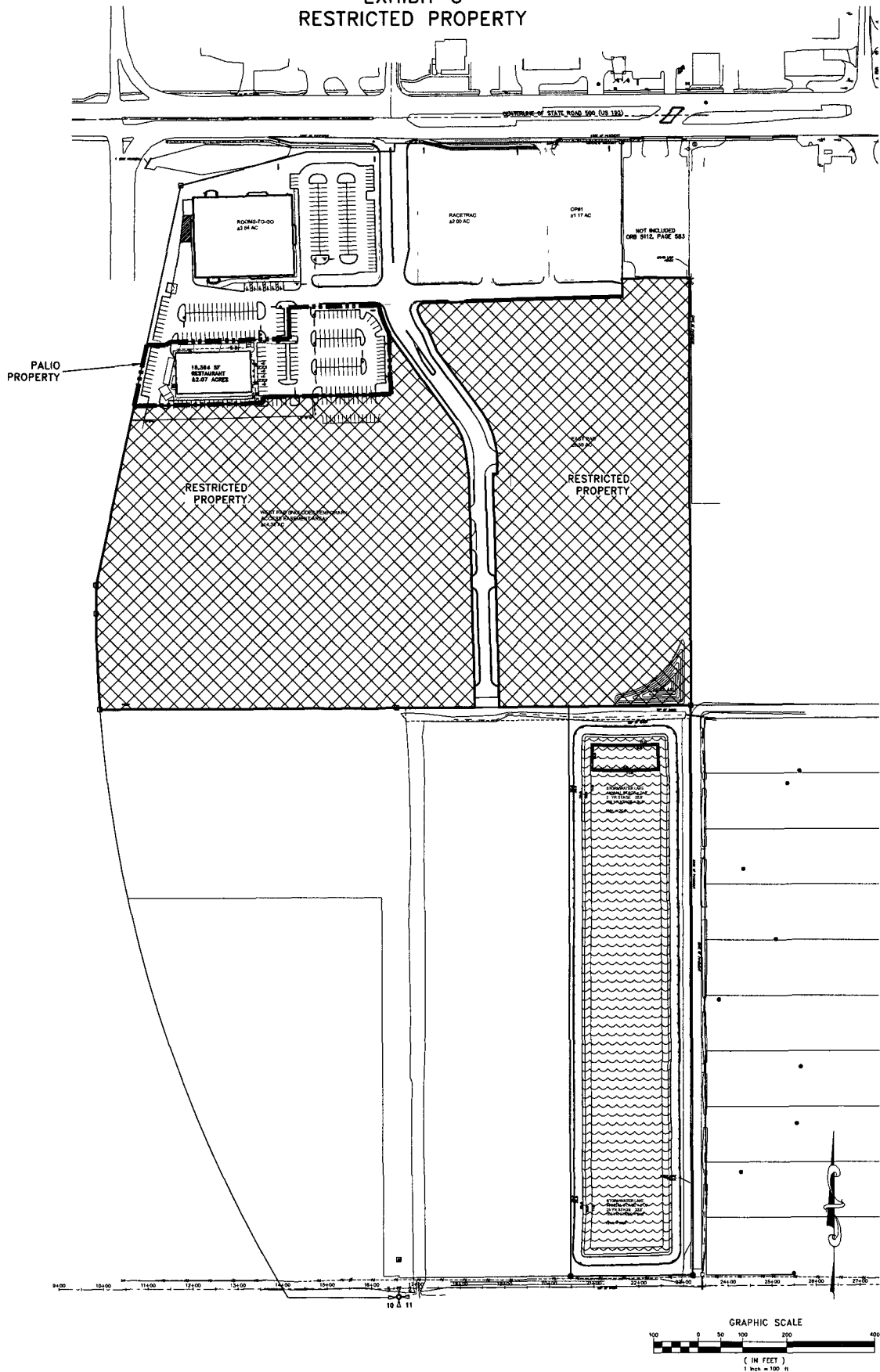
**EXHIBIT B****PERMITTED EXCEPTIONS**

1. Taxes and assessments for the year 2011 and subsequent years, which are not yet due and payable.
2. Sanitary Sewer Extension Agreement by and between City of Melbourne and Tompkins Land and Housing Incorporated, recorded November 13, 1987 in Official Records Book 2858, page 16.
3. Water and Sewer Agreement by and between City of Melbourne and Tompkins Land and Housing, Inc., recorded August 3, 1989 in Official Records Book 3010, page 1762.
4. Agreement by and between Tompkins Land & Housing, Inc., a Florida corporation and James E. Fulcher, A. T. Rossetter and Mona Rossetter, recorded August 27, 1990 in Official Records Book 3079, page 896, as affected by Termination Agreement as to Parcels A, B, and D recorded September 13, 2007 in Official Records Book 5811, page 4244.
5. Pre-Annexation Agreement by and between City of West Melbourne and American Bank of the South, a Florida banking corporation, William B. Ferrell, Trustee, and Albert H. Klair, Jr., recorded April 22, 1994 in Official Records Book 3386, page 1068, assigned by the American Bank of the South to Rest Area, L.L.C., a Florida limited liability company by Assignment recorded December 26, 1995 in Official Records Book 3530, page 4414.
6. Restrictions set out in Warranty Deed by and between Amoco Oil Company, a Maryland corporation and M & R United, Inc., a Florida corporation, recorded February 10, 2000 in Official Records Book 4119, page 3968.
7. Easement in favor of Florida Power & Light Company, recorded May 30, 2002 in Official Records Book 4604, page 1497.
8. Declaration of Covenants, Restrictions and Easements for Coastal Commerce Center by Grantor, recorded September 13, 2007 in Official Records Book 5811, page 4200.
9. Easement and Restrictive Use Agreement for Shopping Center by and between Grantor and Kettle Construction LLC, a Nevada limited liability company, recorded September 25, 2007 in Official Records Book 5814, page 1120, First Amendment recorded April 10, 2008 in Official Records Book 5856, page 8071, Second Amendment recorded October 14, 2008 in Official Records Book 5893, page 1299 and Third Amendment recorded November 25, 2009 in Official Records Book 6069, page 1164.

10. West Melbourne Potable Water Line Extension Agreement by and between Grantor and the City of West Melbourne, recorded January 11, 2008 in Official Records Book 5837, page 7500.
11. Pre-Annexation and Development Agreement by and between City of West Melbourne and Sooner Investment Group, Inc., an Oklahoma corporation, recorded January 17, 2008 in Official Records Book 5838, page 7509.
12. West Melbourne Sewer Line Extension Agreement by and between Grantor and City of West Melbourne, a Florida municipal corporation, recorded June 19, 2008 in Official Records Book 5871, page 6923.
13. Developer's Agreement by and between Board of County Commissioners of Brevard County, Florida and Grantor, Echo Trading Company, LLC, a Florida limited liability company, Floridana Incorporation, a Florida corporation, James E. Fulcher and Barbara Fulcher, and the City of West Melbourne, Florida, recorded September 5, 2008 in Official Records Book 5885, page 8093, as affected by First Amendment recorded April 22, 2009 in Official Records Book 5936, page 215.
14. Outparcels Easement and Restrictive Use Agreement for Shopping Center by Grantor recorded November 25, 2009 in Official Records Book 6069, page 1273 as amended by First Amendment to Outparcels Easement and Restrictive Use Agreement recorded \_\_\_, in Official Records Book 6293, page 211, Public Records of Brevard County, Florida.
15. Matters as set forth on the plat of Coastal Commerce Center, Tract G, 1<sup>st</sup> Re-Plat, according to the plat thereof, as recorded in Plat Book 58, page 78, and Consent and Subordination of Lender recorded in Official Records Book 6240, page 759, Public Records of Brevard County, Florida., as modified by Partial Release and Termination of Declaration of Storm Water Drainage Easement entered into by Grantor and recorded in Official Records Book 6293, page 216.
16. Matters set forth on the Plat titled Coastal Commerce Center, Being a Replat of a Portion of Lots 8 and 9, Section 2, et. al., City of West Melbourne, Brevard County, Florida prepared by B.S.E. Consultants, Inc. recorded in Plat Book 58, Page 54, Public Records of Brevard County, Florida, as modified by Partial Release and Termination of Declaration of Storm Water Drainage Easement entered into by Grantor and recorded in Official Records Book 6293, page 216.
17. Parking and Protected Drive Easement Between Grantor and Grantee, recorded \_\_\_, in Official Records Book \_\_\_, page \_\_\_, Public Records of Brevard County, Florida.
18. Ordinance No. 2007-11 of the City of West Melbourne recorded December 7, 2007 in Official Records Book 5830, page 3682.

19. Ordinance No. 2007-12 of the City of West Melbourne recorded December 28, 2007 in Official Records Book 5834, page 7752.
20. Restrictions set out in Special Warranty Deed (with Protective Covenants) executed by Grantor and recorded November 25, 2009 in Official Records Book 6069, page 1364.

# EXHIBIT C RESTRICTED PROPERTY



COASTAL COMMERCE CENTER

EXHIBIT C RESTRICTED PROPERTY  
C-1

DRAWING NO. 10908\_200\_397  
SHEET 1 of 1  
PROJECT NO. 10908



**B.S.E. CONSULTANTS, INC.**  
CONSULTING - ENGINEERING - LAND SURVEYING  
312 SOUTH HARBOR CITY BOULEVARD, SUITE 4  
MELBOURNE, FLORIDA 32901 PHONE: (321) 723-3674 FAX: (321) 723-1159  
CERTIFICATE OF PROFESSIONAL ENGINEER'S BUSINESS AUTHORIZATION 4605  
CERTIFICATE OF LAND SURVEYING BUSINESS AUTHORIZATION 1400460



REVISIONS  
DATE  
BY  
DATE  
10/22/10

**EXHIBIT D****RESTRICTION**

So long as a Chuck E. Cheese restaurant is open and operating from the Premises no portion of the Restricted Property may be used, sold or leased, nor shall anyone else within the Restricted Property use, or permit any tenant or occupant to use any portion of the Restricted Property to be used for: (i) a themed sitdown restaurant primarily serving pizza (but in no event to restrict non-themed pizza restaurants including, but not limited to, Pizza Hut and Little Caesar's); (ii) an indoor arcade or gameroom provided that the ancillary use (meaning no more than four (4) games) of video games or other games by another business on the Restricted Property shall not be prohibited, (iii) a business primarily providing indoor physical play activities for children including, but not limited to, Dave and Buster's, Gatti Land, Gatti Town, Pump It Up, Shakey's, John's Incredible Pizza, Incredible Pizza Company, Discovery Zone, Peter Piper, Pistol Pete's, Jepper's, Club Disney or similar concepts; or (iv) a business for the indoor use of kiddie rides or games (including but not limited to electronic, computer-controlled and pin-ball games) (collectively, the "Exclusive"). If Chuck E. Cheese shall cease to operate for a period of six (6) months or more (except in the event of force majeure, property damage events or remodeling events (such events not to exceed twelve (12) months in the aggregate)), then in such event, the Exclusive shall terminate and be null and void. "Primarily serving pizza" for purposes of this Exhibit D shall mean that the restaurant receives at least fifty percent (50%) of its gross revenues from the sale of pizza. Notwithstanding anything herein to the contrary, in no event shall the Exclusive be deemed to prevent the following uses on the Restricted Property: (a) a sit down restaurant primarily serving pizza if operated as part of a larger retailer (e.g. Costco and Target) so long as the sales from pizza do not exceed five percent (5%) of such retailers gross revenues, and (b) any outdoor sports facilities, including but not limited to, batting cages, go cart facilities and ball fields.