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 Prepared by:  
 Charles L. Hoffman, Jr.  
 Shell, Fleming, Davis & Menge  
 P. O. Box 1831  
 Pensacola, FL 32598-1831  
 SFD&M File No: \_\_\_\_\_

### RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT ("Covenant") is hereby made this 15th day of February, 1994, by the undersigned, **SAN CARLOS DEVELOPMENT, INC.** ("Owner"), Owner of a certain tract of real property in Pensacola Beach, Florida, which includes the property more specifically described in Attachment "A", attached hereto and by this reference made a part hereof (the property described in Attachment "A" is hereinafter referred to as the "Property"). Whenever the term "Owner" is used herein, such term shall include the heirs, assigns, representatives, successors and successors-in-title of Owner.

### PREMISES

WHEREAS, the Owner has reached a settlement with the United States Environmental Protection Agency ("EPA"), Region IV, and are entering to a Consent Order No: 404-93-44 (hereinafter together with Exhibits thereto referred to as "Consent Order") in connection with an enforcement action related to owner's ten (10) acre site at Pensacola Beach, Florida Development, described in said Consent Order as the Discharge Area, which requires that certain restrictions be placed upon the Property; and

WHEREAS, Owner is benefitted by the above-referenced settlement;

NOW, THEREFORE, in consideration of the premises and the benefits obtained by Owner from settlement of EPA's enforcement action, and for consideration, the receipt and adequacy of which are hereby acknowledged, Owner does hereby covenant and agree to restrict, and does by this instrument, intend to restrict, the future use of the Property as set forth below and by establishment of this Covenant running with the Property:

#### I.

Owner hereby covenants that neither it nor its successors, assigns, agents, employees or servants, or any of them, shall, except as consistent with the Consent order, or as specifically provided herein, in any way alter the vegetation, soils, or hydrology of the Property by action or actions taken within or without the boundaries of the Property, except as specifically provided below. The intent of Owner in placing these restrictions upon the use of the Property is that the Property shall remain a wetlands in perpetuity, for the purposes of conservation and protection of public health and the environment, and shall not be altered from that state by human intervention.

#### II.

The actions prohibited by this Covenant shall include but shall not be limited to the following: removal of beavers or beaver dams or otherwise interfering with beavers; clearing, foresting, cutting or mowing; earthmoving, grading, cultivation, discing, burning, or filling; placement of refuse, wastes, sewage, other debris or any hazardous substances on the Property; draining, ditching, diking, dredging, channelizing, pumping, impounding and related activities; diverting or affecting the natural flow of surface or underground waters into, within, or out of the Property; grazing of domesticated animals; or raising of any structure on the Property, whether temporary or permanent. Notwithstanding the above, the following actions are permitted on the Property: none

of the actions described in this paragraph is prohibited where such action is reasonably necessary to implement the requirements of the Consent Order including the Restoration Plan or Monitoring Plan; minimal structures for the observation of wildlife and wetlands ecology may be constructed with the prior approval of the United States Army Corps of Engineers and EPA.

III.

Owner, its successors and assigns, shall retain all other customary rights of ownership, including but not limited to the exclusive possession of the Property, the right to use the Property in any manner not prohibited by this Covenant and which would not defeat or diminish the purposes of this Covenant, and the right to transfer or assign interest in the Property, subject to the conditions of this Covenant. The restrictions and covenants contained in this Covenant constitute a perpetual servitude upon and run with the Property.

IV.

In consideration of settlement of EPA's enforcement action regarding the property described in said Consent Order, EPA is hereby specifically granted authority to enforce the provisions of this Covenant. Appropriate remedy for violation of this Covenant is contemplated by Owner hereto to include but not necessarily to be limited to injunctive relief to restrain such violation and restoration of the Property to wetlands conditions. This authority to enforce granted to EPA shall not preclude or diminish the rights of any other parties at law or equity to enforce the provisions of this Covenant.

V.

In the event this Covenant is terminated by operation of law, Owner, its successors and assigns, shall renew this Covenant or, if necessary, execute and record an appropriate, effective and enforceable substitute instrument, and shall provide a copy thereof to EPA at the Regional Offices of EPA Region IV.

IN WITNESS WHEREOF, Owner, by its duly designated representative, has hereto set its hand and seal.

WITNESSES

OWNER:

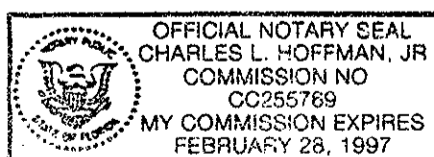
Dianne E. Evans  
DIANNE E. EVANS  
CHM  
Charles L. Hoffman, Jr.

SAN CARLOS DEVELOPMENT, INC.

By: [Signature]  
ALLEN R. LEVIN, PRESIDENT

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

This document was acknowledged before me this 15th day of February, 1994, by ALLEN R. LEVIN, President of SAN CARLOS DEVELOPMENT, INC., on behalf of said corporation, who is personally known to me or who produced identification and who did not take an oath.



[Signature]  
TYPED NAME: Charles L. Hoffman, Jr.  
NOTARY PUBLIC  
MY COMMISSION NO: \_\_\_\_\_  
MY COMMISSION EXPIRES: 2/28/97

ATTACHMENT "A"

The Conservation Areas as depicted on the Plat of:

DELUNA POINT, a Planned Unit Development of a portion of land in Township 3 South, Range 29 West, Escambia County, Florida, Santa Rosa Island, as per plat of said Planned Unit Development recorded in Plat Book 15 at Page 19 of the public records of Escambia County, Florida.

This Restrictive Covenant only encumbers the Conservation Areas as depicted on the above plat and does not encumber any other property located within said plat.

106136

FILED & RECORDED IN  
PUBLIC RECORDS OF  
ESCAMBIA CO FL ON

FEB 15 2 12 PM '94

IN BOOK & PAGE NOTED  
ABOVE-RECORDED & FILED  
JOE A FLOWERS  
COMPTROLLER  
ESCAMBIA COUNTY