

GEORGIA, DAWSON COUNTY
CLERK'S OFFICE, SUPERIOR COURT

FILED FOR RECORD

at 3:57 P.M. No. 10-7-77
Recorded in Book 41 Page 615-672
This 7 day of Oct 19 77

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made and entered into ^{as of} this
15 day of October, 1977, by and among BIG CANOE CORPORATION,
a Georgia corporation (hereinafter referred to as "Grantor"),
as party of the first part, THE FIRST NATIONAL BANK OF
ATLANTA, a national banking association (hereinafter referred
to as "FNBA"), FNBB CANOE CORP., a Georgia corporation
(hereinafter referred to as "FNBBCC"), FNBC PROPERTIES INC.,
a Delaware corporation (hereinafter referred to as "FNBCP"),
and LITTLE BIG CANOE REALTY CORP., a Georgia corporation
(hereinafter referred to as "LBCRC") (FNBA, FNBBCC, FNBCP,
and LBCRC being hereinafter collectively referred to as the
"Grantees"), as parties of the second part.

W I T N E S S E T H :

WHEREAS, reference is hereby made to that property
lying and being in Pickens County and Dawson County, Georgia,
and being more particularly described in Exhibit A attached
hereto and by this reference made a part hereof (hereinafter
referred to as "Grantor's Property"); and

WHEREAS, Grantor's Property is composed of (a) Phase I, which is that portion of Grantor's Property marked by diagonal lines on that certain plat of survey of "big canoe" revised as of September 26, 1977 and prepared by Baldwin & Cranston Associates, Inc., and recorded in Plat Book H, page 199, Pickens County, Georgia, Records and in Plat Book 7, page 7, Dawson County, Georgia, Records, which plat is incorporated herein by this reference thereto as fully as if set forth herein, and (b) Phase II, which is that portion of Grantor's Property not included in Phase I; and

WHEREAS, contemporaneously with the execution and delivery of this Easement Agreement, Grantor has granted, bargained, sold, and conveyed to Grantees all those tracts or parcels of land in Pickens County and Dawson County, Georgia, and being more particularly described in Exhibit C attached hereto and by this reference made a part hereof (hereinafter sometimes referred to collectively as "Grantees' Property," and sometimes referred to by parcels as "Parcel I," "Parcel II," "Parcel III," and "Parcel IV"); and

WHEREAS, Grantor wishes to grant to Grantees certain non-exclusive perpetual easements, in accordance with and subject to the terms of this Easement Agreement, as appurtenances to all or portions of Grantees' Property.

NOW, THEREFORE, for and in consideration of the premises and of the sum of Ten and No/100 Dollars (\$10.00) cash in

hand paid by each party hereto to the others, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, and of other good and valuable consideration, Grantor has bargained, granted, sold, and conveyed and does hereby bargain, grant, sell, and convey unto Grantees and their respective successors and assigns the following:

- (i) A perpetual non-exclusive easement to share with Grantor and its successors and assigns in the use of all utilities, roads and other amenities now or hereafter located on Phase I or otherwise benefiting Phase I (the "Phase I U&A Easement"); and
- (ii) A perpetual non-exclusive easement (the "Access Easement") for ingress and egress (by any means permitted to Phase I owners generally, except such means shall also include equipment, subject to the limitations set forth herein) to and from either portion of Parcel I, via the "Cross Road" (as hereinafter defined) over and along that certain road (hereinafter together with any improvement or expansion, called "Construction Road") now located within the tract lying and being in Land Lots 17, 18, and 19 of the 2nd Section, 4th District, Pickens County, Georgia, and being more particularly described in Exhibit D attached hereto and by reference made a part hereof (the "Phase I Corridor") to and from Steve Tate Highway or any public highway substituted therefor; and

- (iii) A perpetual non-exclusive easement for the use of any completed golf course and related golfing facilities which are ever constructed and made ready for use in the approximate location of that portion of Phase II which lies to the south of Parcel I and on which a golf course has been roughed out (the "Golf Easement"); and
- (iv) Perpetual non-exclusive easements as described hereinafter in that portion of phase I Corridor (the "Curb Cut Area") which is shaded on that certain plat of survey of Parcel I prepared by Baldwin & Cranston Associates, Inc. and recorded in Plat Book H, page 206, Pickens County, Georgia Records, and in Plat Book 7, page 15, Dawson County, Georgia Records, which plat is incorporated herein by reference thereto as fully as if set forth herein. Grantees shall select a single location within the Curb Cut Area, meeting the requirements hereinafter stated, within which it shall have (1) an easement for construction, operation, maintenance, repair and use of a cross road (such road being hereinafter referred to as the "Cross Road," and such easement

being hereinafter referred to as the "Cross Road Easement"), and (2) an easement for underground utility lines, including, without limitation, gas, electricity, sanitary sewer, and water (such utilities being hereinafter referred to as the "Grantees' Property Utilities," and such easement being hereinafter referred to as the "Grantees' Property Utilities Easement"). The Cross Road Easement and the Grantees' Property Utilities Easement are sometimes collectively referred to as the "Curb Cut Easement." It is agreed that (a) Grantor will not grant or cause to be granted any easement to any person other than Grantee to use any portion of the Curb Cut Easement, provided, however, that Grantor reserves unto itself and its successors and assigns the right at any time and from time to time to grant or declare or otherwise create over all or any portions of the Phase I Corridor "Permanent Access Easements" as defined in, and in accordance with the terms and provisions of, that certain Declaration of Easement dated _____, 1973, and recorded in Deed Book 25, page 444, Records of Pickens County, Georgia, and in Deed Book 21, page 482, Records of Dawson County, Georgia, as said Declaration of Easement has been or may hereafter be supplemented, and (b) Grantor will not unreasonably interfere with the rights of Grantee to the Curb Cut Easement (and actions taken by Grantor pursuant to Paragraph

4(e) and 4(k) hereof shall not constitute unreasonable interference).

The Phase I U&A Easement, the Access Easement, the Golf Easement, and the Curb Cut Easement are hereinafter sometimes referred to collectively as the "Granted Easements."

TO HAVE AND TO HOLD the Granted Easements unto the Grantees and their respective successors and assigns in accordance with and subject to all of the terms and conditions of this Easement Agreement.

Grantor and Grantees hereby covenant and agree as follows:

1. With regard to the Phase I U&A Easement:

(a) That owners of property in Parcel III shall have the rights set forth in, and the Phase I U&A Easement shall be subject to, Items 1 and 2 set forth in said Exhibit B attached hereto, as said Items may be amended, augmented, or supplemented from time to time, together with any other rights, restrictions and regulations generally affecting residents or users of Phase I and its amenities as in existence from time to time; and

(b) That the Phase I U&A Easement shall benefit only Parcel III, but not Parcel I, Parcel II, or Parcel IV.

2. With regard to the Access Easement:

(a) The Access Easement shall be limited to the actual roadway, as now or hereafter constructed, and shall not include any adjacent right-of-way applicable thereto; and

(b) That, in the event Grantor ever attempts to dedicate the Construction Road for public use and the appropriate public entity is willing to accept such dedication, then all right, title, and interest of Grantees and their successors and assigns under this Easement Agreement shall be quitclaimed and released by quitclaim deed with no charge, penalty, or benefit to be due or payable to Grantees or their successors and assigns, and Grantees, for themselves and their successors and assigns agree so to quitclaim and release the Construction Road from the Access Easement; provided, however, that, prior to quitclaiming and releasing their rights, titles, and interests in, to, and under the Access Easement in conjunction with such dedication, Grantees, their successors and assigns, shall be entitled to require that said public entity to whom the Construction Road is to be dedicated shall provide assurances reasonably satisfactory to Grantee, their successors and assigns, that any such dedication shall in no event adversely affect the full use by Grantee, their successors and assigns, of the Curb Cut Easement (including both with respect to the Cross Road and the Grantees' Property Utilities); and

(c) That, if Grantor should ever elect to grade, pave, or otherwise improve the Construction Road (which

Grantor shall be entitled, but not obligated, to do, at its sole election), Grantees (i) shall not interfere with or permit or allow Grantees' invitees or licensees to interfere with any work undertaken by Grantor, its contractors, agents, or employees so to improve the Construction Road and (ii) , except as provided in Paragraph 4(j) hereinbelow, shall not, after completion of the grading, paving and improvement of the Construction Road, permit any person or party claiming by, through, or under Grantees to drive or transport or cause to be driven or transported over, along, or across the Construction Road any equipment or machinery in connection with the development or improvement of any of Grantees' Property, it being the intention of Grantor and Grantees that, both with respect to the Access Easement and the Curb Cut Easement, the integrity of the Construction Road after its improvement shall be maintained without threat of any injury thereto.

3. With regard to the Golf Easement:

(a) That, except as expressly provided herein, the Golf Easement shall be subject to all restrictions now or hereafter applicable to the use of any golf course and related golfing facilities now or hereafter completed as abovesaid.

(b) That the owners of property in Parcel I, Parcel II and Parcel IV shall be entitled to enjoy the golf course and related golfing facilities upon payment of standard user fees applicable thereto; provided, however, that in the event a membership system shall be instituted at the golf course, then one-half of the total capacity of the golf course shall be available to and for the benefit of Grantor, and the other one-half of such capacity shall be available for the benefit of property owners in Parcel I, Parcel II and Parcel IV, upon payment, at the option of each such owner, of reasonable non-member user fees or standard membership fees; and

(c) That the Golf Easement shall benefit only Parcel I, Parcel II, and Parcel IV, but not Parcel III; provided, however, that if the lot-owners in Phase I are ever entitled to use the golf course and related golfing facilities now or hereafter completed as above-said, then the Golf Easement shall also benefit owners of property in Parcel III in the same way as other owners of property in Phase I; and

(d) That nothing contained in this Easement Agreement shall obligate or be deemed to obligate Grantor to complete or cause to be completed either said golf course or related golfing facilities, or to

require Grantor to reserve any land in the area included in the Golf Easement for said golf course or related golfing facilities, or to otherwise limit Grantor's right to develop such land in any way it desires.

4. With regard to the Curb Cut Easement:

(a) That the Curb Cut Easement shall have a width of fifty (50) feet and that all paving, shoulders, and other appurtenances must be within said fifty-foot width; and

(b) That the westerly boundary line of the Curb Cut Easement shall not be closer than one hundred twenty (120) feet to the westerly boundary line of Parcel I in Land Lot 17 of the 2nd Section, 4th District, Pickens County, Georgia, and that the easterly boundary line of the Curb Cut Easement shall be not further than seven hundred eighty (780) feet from the said westerly boundary line of Parcel I; and

(c) That the Grantees' Property Utilities and all appurtenances thereunto shall be underground; and

(d) That, if grading, paving and improvement of the Construction Road is completed before the Cross Road is constructed, then, as to that portion of the Construction Road across which Cross Road runs:

- (i) in no event shall the Construction Road ever be totally closed or access thereover totally eliminated; and
 - (ii) Grantees may, at their expense, install utility lines under the Construction Road but shall, after such installation, restore the Construction Road to its condition prior to such installation; and
 - (iii) Grantees shall cause the installation of the Grantees' Property Utilities to be accomplished in such a way that ingress and egress across the Construction Road shall be interfered with for as short a period as reasonably possible; and
- (e) That, if construction of the Cross Road is completed before the Construction Road is completed, then, as to that portion of the Cross Road which cuts across the Construction Road:
- (i) Grantor shall be entitled to make said portion conform in design and construction specifications with the Construction Road; and
 - (ii) Grantor shall be entitled to close off access across said portion for so long a period as shall be necessary to complete said portion of the Construction Road, provided Grantor

first provides Grantees with alternate access comparable to the Cross Road for such period of time; and

(iii) Grantor may install any utility lines in the Construction Road which Grantor wishes, so long as neither the installation nor the operation thereof ties into or adversely affects Grantees' utility lines in the Cross Road; and Grantor shall, after such installation, restore the Cross Road to its condition prior to such installation.

(f) That none of the Grantees' Property Utilities shall tie into utilities located or to be located in the Construction Road or the Phase I Corridor.

(g) That the Grantees' Property Utilities Easement shall be under the Curb Cut Easement.

(h) That the curb cuts whereby the Cross Road shall cut into the Construction Road shall be directly opposite one another.

(i) That all utility lines installed under that portion of the Corss Road which cuts across the Construction Road and the Phase I Corridor shall be installed in accordance with at least minimum standards for the installation of utility lines in public rights-of-way in Pickens County, Georgia, so as not to prejudice

Grantor's ability to dedicate the Construction Road for public use; and

(j) Notwithstanding the terms of Paragraph 2(c) hereinabove, after completion of the improvement of the Construction Road, Grantees and Grantees' invitees, and licensees shall be entitled to drive or transport or cause to be driven or transported over and along the Cross Road (including the portion thereof that cuts across the Construction Road) any equipment or machinery to be used in connection with the development or improvement of any of Grantees' Property served by the Access Easement; provided, however, that Grantees shall be obligated to restore to its immediately previous condition all damage to the Construction Road resulting from such movement of equipment or machinery across the Construction Road, such restoration to be effected as soon as reasonably possible after such damage is sustained and that Grantees shall be obligated to clean up all debris and other litter left in the right-of-way of the Construction Road as a result of such movement as soon as reasonably possible after such debris or litter is deposited in such right-of-way.

(k) That Grantees shall maintain the Grantees' Property Utilities and the Cross Road (including

regulation of traffic patterns and flow on the Curb Cut Easement at the intersection of the Cross Road with the Construction Road which shall be the primary road) in first class condition and in such a way as to promote safety and to guard against dangerous conditions and interference with users of the Construction Road, and Grantor shall have a reciprocal obligation with respect to the Phase I Corridor, except that it shall have no obligation to pave, grade or improve the Construction Road.

5. With regard to all the Granted Easements:

(a) That all of the Granted Easements bind Grantor and its successors and assigns and inure to the benefit of Grantees and their respective successors and assigns, and that all of the terms and conditions of the Granted Easements are binding on Grantor and Grantees and their respective successors and assigns; and

(b) That each of the Granted Easements is assignable in whole or in part by Grantees and, upon any such assignment and the assumption by the assignee of the Grantees' obligations under this Easement Agreement with respect to the assigned Granted Easement, the Grantees shall be relieved of all further liability under or by reason of this Easement Agreement with respect thereto; and

(c) That no implied easements, restrictions, binders, or impositions are granted or conveyed or imposed or intended to be granted or conveyed or imposed by this Easement Agreement.

IN WITNESS WHEREOF, Grantor, acting by and through its duly authorized officers, has caused this Easement Agreement to be signed, sealed, and delivered on the day, month, and year first above written.

Signed, sealed, and delivered in the presence of:

Martha S. Brewer
Unofficial Witness

BIG CANOE CORPORATION

By: Bert Wallace
Title: Pres

Madison O. Brewer
Notary Public
My Commission Expires: Feb 26, 1979
[NOTARY SEAL]

Attest: C. Fielder Brown
Title: Vice President

[CORPORATE SEAL]

