

**ORIGINAL**

**RESTRICTIVE COVENANT  
FOR SOUTHERN BOULEVARD RIGHT-OF-WAY**

R' 89 532D

AMENDED BY

R-90-615

This Restrictive Covenant for Southern Boulevard Right-of-Way is made this 4 day of APR, 1989, between Porter

Investments Ltd., a Florida Limited Partnership, 418 Palm Street, West Palm Beach, Florida 33401, hereinafter referred to as "Owner", and Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "County".

WHEREAS, the County has made a determination of necessity and public purpose for the reservation of two hundred twenty feet (220') of ultimate right-of-way, as additionally recognized and adopted in the "Comprehensive Land Plan" of Palm Beach County; and

WHEREAS, Owner recognizes the necessity and public purpose for the aforesaid 220' ultimate right-of-way; and

WHEREAS, both parties recognize that it is essential that this 220' of ultimate right-of-way be adequately protected; and

WHEREAS, Owner is the fee simple owner of certain real property situated within the 220' ultimate right-of-way in Palm Beach County, Florida, said property being two (2) parcels, which are designated as Parcel A in Exhibit A and as Parcel B in Exhibit B, both exhibits attached hereto and made a part hereof; and

WHEREAS, Owner desires to obtain a special exception to amend a site plan for a planned industrial development on land adjacent to Parcel B, which will increase square footage and, therefore, impact existing roadways; and

WHEREAS, Owner has made, or will make, certain applications for the granting of a building permit on land adjacent to Parcel B; and

WHEREAS, Owner agrees to dedicate, without promise or consideration by Palm Beach County, forty nine feet (49') of property adjacent to State Road 80 which is described as Parcel A in Exhibit A; and

WHEREAS, both parties agree that, as a necessary and logical nexus, and in accordance with Owner's request for approval and permitting, the Owner's recognition of Owner's limited use and limited time of use of the area contained within this ultimate right-of-way.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations and the covenants hereinafter contained, the parties do covenant and agree as follows:

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1. The parties acknowledge and agree that the Palm Beach County Comprehensive Plan and Chapter 163, F.S., require Owner and County to protect the foregoing right-of-way for future expansion of State Road 80 (Southern Boulevard), and pursuant thereto, Owner agrees that Parcel A shall be dedicated to the County by a separate right-of-way deed, in a form and in a time frame acceptable to County.

2. An additional one hundred feet (100') of property, described as Parcel B, shall be subject to acquisition by the County and/or any other condemning authority in the future.

3. At such time as the County, the Florida Department of Transportation, and/or any other condemning authority, condemns and/or otherwise acquires Parcel B, Owner agrees that Owner shall only be paid "fair market value" for Owner's "land value," and for the value of the improvements (if such improvements exist at the time of the taking, and are not merely proposed, and not as the improvements would otherwise increase the value of the vacant land). This value determination shall be made solely on a "comparable land value (market comparison) approach." The valuation of the improvements shall be done on an accounting basis, utilizing present cost expenditures, with appropriate depreciation. The parties further agree that severance damages will not be paid or received. Accordingly, Owner does waive any and all severance damages which would result from the improved use, as well as the improvements.

4. Compensation shall not be paid for any business damages whatsoever, either directly or indirectly (allegedly) emanating out of the aforesaid right-of-way taking. Owner shall additionally be prohibited from claiming any resulting damage to his remaining land/business. Owner does hereby agree that no argument for consequential damages shall be made nor shall Owner attempt to claim inflated land values as a result of the road improvement, nor shall Owner make any claim or argument of a loss of fair-market value of his property as the result of "threat of condemnation." Owner additionally waives any and all compensation for any and all other damages, costs, fees, engineering fees, appraisal fees, architect's fees, surveyor's fees, attorney's fees and any and all other further fees and costs in connection with the aforesaid mentioned condemnation of Parcel B, and/or for any damages caused by an initial and/or resulting non-conformity of Owner's property.

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5. There shall be no compensation paid for any foliage and/or the replacement of any/all utilities, and for any and all costs and fees associated therewith.

6. In addition, Owner shall pay for the cost of removal of any and all said structures, which may be included within the area of eminent domain acquisition. Owner shall have the option of forthwith causing the removal of the aforementioned structures, and the relocation of the above-referenced utilities, or, if this demolition and relocation is not timely done by the Owner, and at the Owner's expense, then the Owner will reimburse the County for such structure demolition, removal, and utility relocation.

7. Other than those damages previously stated, the Owner shall not receive any other damages whatsoever, resulting from such condemnation/eminent domain acquisition, including, but not limited to, damages for the alteration of, removal of, and/or demolition of non-conforming structures, parking lots, landscaping, etc. Upon notification by the County that alteration is not an acceptable alternative, Owner shall have the option of immediately removing the aforesaid non-conformities or demolishing them. If said removal/demolition is not immediately and timely done, then Owner shall pay all of the County's costs and fees, whatsoever, in connection therewith.

8. As a result of the eminent domain acquisition, should it be necessary for an existing structure to be cut and refaced, the County does agree to pay reasonable costs of refacing this structure. However, the costs/fees for cutting and removal thereof shall be borne by Owner. Payment of these monies shall be based upon the opportunity for the County to review the cost estimates which will be submitted by the Owner prior to the cutting and refacing. The County will then have the option of having its own contractor perform the work or paying the Owner the money to have it so accomplished. This provision, however, does not authorize the payment of any unnecessary costs associated therewith, nor does it authorize any payment of Owner's attorney's fees.

9. Both parties recognize and agree that Owner's property may not be able to be designed to accommodate the requirements of parking, landscaping, setbacks, in any and all other requirements of/by the County, in the "after-taking" situation. Moreover, notwithstanding this

recognition, the aforesaid damages shall be the maximum damages payable to the Owner.

It is understood and agreed between the parties that the proposed development shall not be reviewed for purposes of granting permits, with any consideration whatsoever of the aforesaid "after-taking" situation. The County, in its recognition of Owner's inability to develop Parcel B for a use in the after-taking situation, will be reviewing the applicability of the proposed development, giving consideration only to present conditions, facts, circumstances, setbacks, parking requirements, landscaping requirements, etc., as they presently exist, and as the property in relation to the County road system is presently situated, without an imposition of the after-taking unusability of the property.

10. Should Owner refuse to, neglect to, and/or otherwise fail to follow all of the covenants as heretofore set forth, and otherwise referenced herein, then Owner shall pay all of the costs, fees, and any and all other expenses associated with the enforcement of these provisions.

11. This restrictive covenant shall run with the property described in Exhibits A and B, and shall be binding on Owners, executors, heirs, successors, partners, assigns, and any and all other parties whose interests can be traced to that of Owner.

12. The provisions for this restrictive covenant shall be construed in accordance with the laws of the State of Florida. Should any part hereof be determined by a Court of competent jurisdiction to be an invalid, or an otherwise illegal provision, then the remainder of the provisions herein shall continue to be in full force and effect, and otherwise fully binding on all parties.

13. This restrictive covenant shall be recorded in the public records of Palm Beach County, Florida, by the County, at the expense of the Owner, no later than thirty (30) days after execution by all necessary parties.

IN WITNESS WHEREOF the parties have executed this restrictive covenant for Parcels A and B the year and day written above.

OWNER

Porter Investments, Ltd.,  
a Florida Limited Partnership

By: William B. Porter  
William B. Porter  
General Partner

ATTEST:

JOHN B. DUNKLE, Clerk

By: Jina M. Blair  
Deputy Clerk

COUNTY

PALM BEACH COUNTY, by its  
Board of County Commissioners

By: Carol Elmquist  
Chair APR 4 1989

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: Juan Subit  
County Attorney

STATE OF FLORIDA )  
                                  )  
COUNTY OF PALM BEACH )

On this 4th day of February, 1989, personally appeared before me William B. Porter, General Partner of Porter Investments, Ltd., a Florida Limited Partnership, and acknowledged that he/she executed the foregoing document for the purposes therein expressed.

WITNESS my hand and seal the day and year last above written.

(SEAL)

[Signature]  
Notary

NOTARY PUBLIC, STATE OF FLORIDA  
COMMISSION EXPIRES AUG 23, 1992

My commission expires \_\_\_\_\_

STATE OF FLORIDA )  
                                  )  
COUNTY OF PALM BEACH )

On this 4th day of April, 1989, personally appeared before me Carol Elmquist, Chairperson, Palm Beach County Board of County Commissioners and acknowledged that he/she executed the foregoing document for the purposes therein expressed.

WITNESS my hand and seal the day and year last above written.

# EXHIBIT A

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## DESCRIPTION OF PARCEL A

A CERTAIN PARCEL OF LAND IN SECTION 33, TOWNSHIP 43 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE WEST LINE OF TRACT 38, BLOCK 6, THE PALM BEACH FARMS COMPANY, PLAT NO. 3, AS SAME IS RECORDED IN PLAT BOOK 2, PAGE 46, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, WITH THE NORTHERLY RIGHT-OF-WAY LINE OF STATE ROAD NO. 80 AS SAID RIGHT-OF-WAY IS RECORDED IN ROAD PLAT BOOK 2 AT PAGES 11 THROUGH 18 OF SAID PUBLIC RECORDS, AND FROM SAID POINT OF BEGINNING RUN NORTHERLY, ALONG THE SAID WEST LINE OF TRACT 38, A DISTANCE OF 49.05 FEET; THENCE EASTERLY, ALONG A LINE PARALLEL WITH THE SAID NORTHERLY RIGHT-OF-WAY LINE OF STATE ROAD NO. 80, A DISTANCE OF 162.66 FEET, MORE OR LESS, TO A POINT IN THE EAST LINE OF THE WEST 162.50 FEET OF SAID TRACT 38; THENCE SOUTHERLY, RUNNING ALONG THE SAID EAST LINE OF THE WEST 162.50 FEET, A DISTANCE OF 49.05 FEET, MORE OR LESS, TO A POINT IN THE AFORESAID NORTHERLY RIGHT-OF-WAY LINE OF STATE ROAD NO. 80; THENCE WESTERLY, RUNNING ALONG THE SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 162.66 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

CONTAINING 0.18 ACRES, MORE OR LESS.

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# EXHIBIT B

## DESCRIPTION OF PARCEL B

A CERTAIN PARCEL OF LAND IN SECTION 33, TOWNSHIP 43 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE WEST LINE OF TRACT 38, BLOCK 6, THE PALM BEACH FARMS COMPANY, PLAT NO.3, AS SAME IS RECORDED IN PLAT BOOK 2, PAGE 46, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, WITH THE NORTHERLY RIGHT-OF-WAY LINE OF STATE ROAD NO. 80 AS SAID RIGHT-OF-WAY IS RECORDED IN ROAD PLAT BOOK 2 AT PAGES 17 THROUGH 18 OF SAID PUBLIC RECORDS; THENCE RUN NORTHERLY, ALONG THE SAID WEST LINE OF TRACT 38, A DISTANCE OF 49.05 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL: THENCE, FROM SAID POINT OF BEGINNING, CONTINUE NORTHERLY ALONG THE WEST LINE OF SAID TRACT 38 A DISTANCE OF 100.10 FEET; THENCE EASTERLY ALONG A LINE 149.0 FEET NORTH OF THE NORTHERLY RIGHT-OF-WAY LINE OF STATE ROAD NO. 80, A DISTANCE OF 162.66 FEET; THENCE SOUTHERLY ALONG THE EAST LINE OF THE WEST 162.50 FEET OF SAID TRACT 38, A DISTANCE OF 100.10 FEET; THENCE WESTERLY ALONG A LINE 49.0 FEET NORTH OF THE NORTHERLY RIGHT-OF-WAY LINE OF SAID STATE ROAD NO. 80, A DISTANCE OF 162.66 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

CONTAINING 0.37 ACRES, MORE OR LESS.

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February 1, 1989

RECEIVED

FEB 08 1989

Mr. Dennis Potiris  
134 Greyson Drive  
West Palm Beach, Florida 33405

LAND DEVELOPMENT  
PALM BEACH COUNTY

Re: Zoning Petition No. 88-31(A), Porter Investment, Ltd.,  
Rezoning and Special Exception

Dear Sir:

At the Public Hearing on January 27, 1989 the Board of County Commissioners of Palm Beach County, Florida, officially approved your petition as advertised, subject to the attached list of tentative conditions. Please notify David Rafaidus, Senior Planner, immediately if you believe there are any errors.

You are scheduled for the February 22, 1989 Site Plan Review Committee Meeting commencing at 9:00 A.M. in the Conference Room at 3400 Belvedere Road. You or your representative should be present at this meeting to answer any questions the Committee might have. In order for your plan to be considered by the Site Plan Review Committee, you must submit a revised master/site plan upon which an exact copy of the Board approved conditions is shown. If the attached list of tentative conditions includes the requirement for variance relief from the Board of Adjustment, you must obtain such approval prior to submitting the plan to the Site Plan Review Committee. The deadline for submittal is 12:00 noon February 13, 1989.

Sincerely,

David Martin Rafaidus  
Senior Planner

DMR:lag  
Attachment

- CC: Petition File
- L. Carter - Building/Zoning
- S. Lubitz - County Attorney's Office
- R. Wheelihan - Lake Worth Drainage District
- S. Hardy-Miller - Land Development
- J. Choban - Land Development
- E. Miller - Site Planning
- S. Gonzales - Zoning
- J. MacGillis - Site Planning
- Minutes Department

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Approval of the petition is subject to the following conditions:

1. ~~The developer shall comply with all previous conditions of approval unless expressly modified herein.~~
2. ~~Conditions 1.a., 1.b., 1.c., and 1.d. of Petition 88-31 (Approved on March 24, 1988) which currently states:~~

~~"1. Prior to Site Plan certification, the site plan shall be amended to indicate the following:~~

- ~~a. One of three required alternative perimeter landscape strips along the western property line,~~
- ~~b. The location of reserved vegetation on site and specifications noting how these will be preserved,~~
- ~~c. Relocate one (1) loading berth to northern structure,~~
- ~~d. Tabular breakdown of the office spaces, warehouse space, and display space."~~

~~is hereby deleted.~~

3. Condition No. 2 of Zoning Petition No. 88-31 (Approved on March 24, 1988) which currently states:

~~"2. A Unity of Title shall be executed covering the entire site. Two (2) copies of the properly executed Unity of Title documents shall be submitted to the Zoning Division simultaneously with Site Plan Review Committee application."~~

~~Is hereby deleted.~~

4. The petitioner shall comply with all Zoning Code requirements in effect at the time when the right-of-way reservation for Southern Boulevard is conveyed. If necessary the petitioner shall be required to reduce building area to meet minimum parking requirements, landscaping, setbacks, etc.

Condition No. 10 of Petition No. 88-31 which presently states:

~~"10. Within 90 days of approval of this project, the property owner shall convey to Palm Beach County by road right-of-way warranty deed for Southern Boulevard, 220 feet north of the existing north right-of-way line of the West Palm Beach Canal free of all encumbrances and encroachments. Petitioner shall provide Palm Beach County with sufficient documentation acceptable to the Land Acquisition Division to ensure that the property is free of all encumbrances and encroachments. Right-of-way conveyances shall also include "Safe Sight Corners" where appropriate at intersections as determined by the County Engineer."~~

is hereby amended to read:

"Within 90 days of approval of this project, the property owner shall convey to Palm Beach County by road right-of-way warranty deed for Southern Boulevard, 120 feet north of the north right-of-way line of the

~~canal~~ free of all encumbrances and encroachments. Property owner shall provide Palm Beach County with sufficient documentation acceptable to the Right-of-Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments. Right-of-way conveyances shall also include "Safe Sight Corners" where appropriate at intersections as determined by the County Engineer. In addition, the property owner agrees to reserve an additional 100 feet of right-of-way (total 220 feet). Terms of this future agreement shall be executed by the property owner and Palm Beach County prior to site plan certification in the form of an agreement entitled "Restrictive Covenants for Southern Boulevard Right-of-Way". Said agreement shall be subject to approval by the County Attorney's Office."

6. Condition No. 11 of Petition No. 88-31 which presently states:

"11. The property owner shall pay a Fair Share Fee in the amount and manner required by the "Fair Share Contribution for Road Improvements Ordinance" as it presently exists or as it may from time to time be amended. The Fair Share Fee for this project presently is \$2,384.00 (89 trips X \$26.79 per trip)."

is hereby amended to read:

"The Developer shall pay a Fair Share Fee in the amount and manner required by the "Fair Share Contribution for Road Improvements Ordinance" as it presently exists or as it may from time to time be amended. The Fair Share Fee for this project presently is \$5,519.00 (206 trips X \$26.79 per trip)."

7. In addition the Developer shall contribute the amount of \$689.00 as established in Article V Section 3 (Insignificant Project Standard) of the Traffic Performance Standards Code. These total funds of \$6,200.00 shall be paid prior to the issuance of the first Building Permit.
8. If the "Fair Share Contribution for Road Improvements Ordinance" is amended to increase the Fair Share Fee, this additional amount of \$689.00 shall be credited toward the increased Fair Share Fee.
9. The petitioner shall submit a tree survey, clearly locating and detailing specific trees to be preserved and/or relocated, to the Zoning Division prior to the issuance of a building permit.
10. The owner, occupant or tenant of the facility shall participate in an oil recycling program which insures proper re-use or disposal of waste oil.
11. Prior to site plan certification, the petitioner shall revise the "Restrictive Covenant for Southern Boulevard Right-of-Way" to stipulate that the County shall bear no financial responsibility for the removal of nonconforming structures.
12. Failure to comply with the conditions herein may result in the denial or revocation of a building permit; the issuance of a stop work order; the denial of a Certificate of Occupancy on any building or structure; or the denial or revocation of any permit or approval for any developer-owner, commercial-owner, lessee, or user of the subject property. Appeals from such action