

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

CHAPTER 7

CASE NO. 91-14561-BKC-PGH

In re	)	
	)	<b>MOTION TO APPROVE SETTLEMENT</b>
	)	<b>AGREEMENT AND MUTUAL</b>
SOUTHEAST BANKING	)	<b>RELEASE OF CLAIMS RELATING TO</b>
CORPORATION,	)	<b>SOUTHWEST</b>
	)	<b><u>QUADRANT PROPERTY</u></b>
Debtor.	)	
_____	)	

WILLIAM A. BRANDT, JR., as Trustee (the "Trustee") for the Chapter 7 estate of Southeast Banking Corporation (the "Debtor"), by and through his undersigned counsel and pursuant to Section 105 of the Bankruptcy Code, 11 U.S.C. §105, and Federal Rules of Bankruptcy Procedure 2002(a)(3) and 9019, hereby seeks entry of an Order (a) approving the terms of a Settlement Agreement with Southwest Quadrant Joint Venture ("SQJV"), James E. Efstathion ("Efstathion"), Kent H. Schmidt ("Schmidt"), SIGA Development and Investment, Inc. ("SIGA") and Rivertown, Inc. ("Rivertown") (collectively, the "SQJV Parties"), and (b) as a material part of that settlement, authorizing him to join in and consummate the Settlement Agreement as President of SWQ Holdings, Inc. ("SWQ") and Southeast Properties, Inc. ("SEPI"). A true and correct copy of the proposed Settlement Agreement and Mutual Release of Claims is attached hereto as Exhibit "A" (the "Settlement Agreement").

In support of the requested relief, the Trustee would respectfully show the Court as follows:

### **Preliminary Statement**

1. By way of this Motion, the Trustee seeks the necessary authority to enter into and implement a global settlement of all claims and litigation arising in connection with two tracts of land more fully described hereinafter as the "Southwest Quadrant," in which various ownership interests are held by SWQ and SEPI, each a wholly-owned subsidiary of the Debtor under the control of the Trustee, and SQJV, a separate entity controlled by Efsthion and Schmidt. The proposed settlement involves a resolution of separate lawsuits brought in the state and federal courts, including an action in which the Trustee joined on behalf of the estate.

2. As more fully described hereinafter, the proposed settlement contemplates, in part, (a) a dismissal of all pending litigation and appeals with prejudice; (b) the mutual release of all claims by, between and among the adverse parties in that litigation; and (c) the sale of the Southwest Quadrant property by the Trustee for net proceeds of not less than \$5 million. Because the first two elements of the proposed agreement involve the settlement and compromise of claims by and against the Chapter 7 estate in the Federal Action, as more fully described in the Settlement Agreement, the approval of this Court is required under Fed.R.Bankr.P. 9019. In addition, because the proceeds of the Southwest Quadrant property to be received by SWQ and SEPI (representing 70% of the net proceeds as provided in the Settlement Agreement) will inure to the benefit of the Chapter 7 estate, the Trustee also seeks approval pursuant to §105 of the Bankruptcy Code to

enter into and implement the proposed settlement and sale on behalf of those entities as well.<sup>1</sup>

### **Background**

3. The Debtor filed a voluntary petition for relief under Chapter 7 on September 20, 1991. The Trustee is the duly elected successor trustee for the Chapter 7 estate, having been elected by a vote of creditors pursuant to Sections 702 and 703 of the Bankruptcy Code, 11 U.S.C. § 702 and 703. That election was confirmed by Order of the Bankruptcy Court dated April 28, 1992.

4. Among the assets which became property of the bankruptcy estate pursuant to 11 U.S.C. § 541(a) are all of the outstanding capital stock in SWQ and SEPI. In order to ensure control over the property and affairs of these wholly-owned subsidiaries, the Trustee took the necessary corporate action to be installed as President of both SWQ and SEPI, and continues in those positions to date.

5. SWQ and SQJV each own an undivided one-half interest, as tenants in common, in a tract of land of approximately 174 acres, occupying the southwest quadrant of the intersection of Butler Boulevard and Southside Boulevard in Jacksonville, Florida. SEPI, an affiliate of SWQ, owns a contiguous 20-acre tract of

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<sup>1</sup> This additional relief under Section 105 is sought in an abundance of caution, and to address and render moot any of the recently-expressed concerns regarding the Trustee's management of the various non-debtor subsidiaries, specifically the SWQ and SEPI subsidiaries and the litigation resolved by the proposed settlement. In seeking this relief in conjunction with the releases to be granted and received on behalf of the Chapter 7 estate, the Trustee is not suggesting that the Court's jurisdiction extends to any of those subsidiaries, none of which has sought nor presently intends to seek protection under the Bankruptcy Code.

land which, together with the 174-acre tract, is referred to collectively herein and in the Settlement Agreement as the "Southwest Quadrant."

6. In 1993, SWQ brought an action against SQJV, Efstathion and Schmidt in the Circuit Court for Duval County, Florida, styled *SWQ Holdings, Inc. v. Southwest Quadrant Joint Venture, etc., et al.*, Case No. 93-03225-CA (the "State Action"), seeking a contribution of ad valorem property tax payments for prior tax years 1991 and 1992. SQJV, Efstathion and Schmidt responded by initially denying liability for those tax payments, and filed a counterclaim alleging a breach of an unexecuted joint venture agreement to develop the Southwest Quadrant property.<sup>2</sup>

7. In addition, SWQ and the Trustee, on behalf of the Chapter 7 estate, and also derivatively on behalf of the Federal Deposit Insurance Corporation as Receiver of Southeast Bank, N.A., brought an action against the SQJV Parties and nominal defendant Federal Deposit Insurance Corporation, which was removed to the United States District for the Middle District Court of Florida, Jacksonville Division, styled *William A. Brandt, Jr., etc., et al. v. Southwest Quadrant Joint Venture, etc., et al.*, Case No. 96-206-CIV-J-21B (the "Federal Action"). The Federal Action sought in excess of \$1 million for an alleged fraud in connection with the defendants' acquisition of the Southwest Quadrant property.

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<sup>2</sup> The counterclaim also raised causes of action seeking partition, contribution and a declaratory judgment on the joint venture issue, and sought damages of some \$5.6 million.

8. On April 28, 1997 the District Court in the Federal Action entered summary final judgment against SWQ and the Trustee. SWQ and Trustee have appealed that judgment to the Eleventh Circuit Court of Appeals (the "Appeal"), and the SQJV Parties have filed a motion in the District Court seeking an award of their attorneys' fees and costs incurred in the Federal Action.

9. As owners of their respective interests in the Southwest Quadrant, SWQ, SEPI and SQJV also have claims against the Jacksonville Transportation Authority (the "JTA Claims"), concerning access rights to the Southwest Quadrant property. The JTA has previously offered to settle these claims for an amount in excess of \$905,000, but the offer has not been accepted and the JTA Claims remain unresolved.

#### **The Settlement Agreement**

10. All of the parties to the Settlement Agreement desire to resolve all claims, disputes and controversies between and among them, including but not limited to all claims and causes of action asserted in the State Action, the Federal Action and Appeal and the JTA Claims, on the terms and conditions set forth in the Settlement Agreement. Those terms and conditions are summarized as follows:

A. All claims and counterclaims between and among the parties shall be dismissed with prejudice, specifically including the pending claim and counterclaim in the State Action<sup>3</sup>, and the Appeal and motion for fees and costs in the Federal Action,

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<sup>3</sup> The Settlement Agreement also provides for the state court to retain jurisdiction to enforce the terms of the Settlement Agreement.

with each party to be responsible for the payment of his or its own attorneys' fees and litigation costs;

B. All of the parties will enter into and grant the mutual release of claims provided in paragraph 5 of the Settlement Agreement, subject to the limited exclusion provided therein;

C. The Trustee, on behalf of SWQ and SEPI and without interference by the SQJV Parties, shall offer the Southwest Quadrant property for sale to a Disinterested Purchaser, as defined in the Settlement Agreement , in such a manner so as to receive aggregate net proceeds of not less than \$5 million, such proceeds to be divided 70% to SWQ and SEPI and 30% to SQJV or its designee;

D. To enable the Trustee to pursue that sale, SQJV shall convey its undivided one-half interest in the 174-acre parcel to SEPI, and simultaneously receive a first mortgage from SEPI securing the payment obligations described in the Settlement Agreement;

E. The Trustee shall also be empowered to resolve the JTA Claims by settlement or litigation, again without interference by the SQJV Parties, as provided in paragraph 10 of the Settlement Agreement; and

F. For the tax years 1991 through 1996, the ad valorem real estate taxes on the 174-acre tract shall be borne 50% by SWQ and 50% by SQJV, each of which shall be entitled to an accounting with respect to this provision; for the tax years

1997 through sale of the Southwest Quadrant, the ad valorem taxes on the Southwest Quadrant shall be borne 70% by or on behalf of SEPI and 30% by SQJV.

11. In addition to the foregoing terms and conditions the Settlement contains provisions relating to a variety of other matters, including but not limited to: condemnation of the Southwest Quadrant property; other revenue, income, proceeds or benefits from the 174-acre parcel; the calculation of net proceeds on the Southwest Quadrant property, with a deduction of additional expenses and interest against such proceeds; and remedies upon default under the Agreement or the mortgage to be granted to SQJV on the 174-acre parcel. The Court and parties in interest are urged to read the attached Settlement Agreement in its entirety, for a full and complete understanding of its terms and conditions.

#### **Relief Requested**

12. Federal Rule of Bankruptcy Procedure 9019(a) provides that upon hearing on notice the Court may approve a compromise and settlement of a controversy. Although largely focused on the controversy among non-debtor parties regarding their respective interests in the Southwest Quadrant property, the proposed Settlement Agreement involves the exchange of mutual releases by the Trustee on behalf of the estate, and is thus within the scope of Bankruptcy Rule 9019. The proposed settlement is in the best interest of the Chapter 7 estate, in that it provides for a complete resolution of all pending litigation and other claims, disputes and controversies between and among

the parties, and a sale of the Southwest Quadrant that will ultimately inure to the benefit of the estate and creditors.

**WHEREFORE**, William A. Brandt, Jr., as Chapter 7 Trustee for the estate of Southeast Banking Corporation, requests that the Court enter an Order (a) approving the terms of the annexed Settlement Agreement in their entirety, (b) as a material part of that settlement, authorizing him to join in and consummate the Settlement Agreement on behalf of SWQ and SEPI, and (c) granting such other and further relief as the Court deems just and proper.

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 910(A).

Dated this 2nd day of March, 1998.

Respectfully submitted,

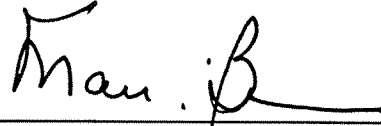
GREENBERG, TRAUIG, HOFFMAN,  
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1221 Brickell Avenue  
Miami, Florida 33131  
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By: Mark D. Bloom  
MARK D. BLOOM  
Florida Bar No. 303836



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion was served by U.S. Mail upon all parties on the service list filed with the Court, on this 2nd day of March, 1998.



MARK D. BLOOM

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SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("Agreement") is entered into this \_\_\_\_ day of December, 1997, by and among William A. Brandt, Jr., as Chapter 7 Trustee of Southeast Banking Corporation, as President of SWQ Holdings, Inc. ("SWQ") and as President of Southeast Properties, Inc. ("SEPI") (collectively referred to as "Brandt"), SWQ, SEPI, Southwest Quadrant Joint Venture ("SQJV"), James E. Efstathion ("Efstathion"), Kent H. Schmidt ("Schmidt"), SIGA Development and Investment, Inc. ("SIGA") and Rivertown, Inc. ("Rivertown"). (All of the foregoing persons and entities are referred to collectively as "the Parties" or individually as "Party").

RECITALS

1. SWQ and SQJV each owns an undivided one-half interest, as tenants in common, in an approximately 174-acre tract of land occupying the southwest quadrant of the intersection of Butler Boulevard and Southside Boulevard in Jacksonville ("the 174 Acres"), a legal description of which is attached as Exhibit "A." SEPI, an affiliate of SWQ, owns a contiguous 20-acre tract of land ("the 20 Acres"), a legal description of which is attached as Exhibit "B." In this Agreement the 174 Acres and the 20 Acres are referred to collectively as "the Southwest Quadrant."

2. SWQ has brought an action against SQJV, Efstathion and Schmidt in the Circuit Court for Duval County, Florida, styled S.W.Q. Holdings, Inc. v. Southwest Quadrant Joint Venture, etc., et al., Case No. 93-03225-CA ("the State Action"), and SQJV,

Efstathion and Schmidt have brought a counterclaim against SWQ in that action.

3. In addition, SWQ and Brandt, as Trustee of Southeast Banking Corporation and also derivatively on behalf of the Federal Deposit Insurance Corporation, as receiver of Southeast Bank, N.A., brought an action against SQJV, Efstathion, Schmidt, SIGA and Rivertown and nominal defendant Federal Deposit Insurance Corporation ("FDIC"), which was removed to the United States District Court for the Middle District of Florida, Jacksonville Division, styled William A. Brandt, Jr., etc., et al. v. Southwest Quadrant Joint Venture, etc., et al., Case No. 96-206-CIV-J-21B ("the Federal Action"). On April 28, 1997 the district court in the Federal Action entered summary final judgment against SWQ and Brandt ("the Judgment"). SWQ and Brandt have appealed the Judgment to the United States Court of Appeals for the Eleventh Circuit ("the Appeal"), where the appeal is presently pending. SQJV, Efstathion, Schmidt, SIGA and Rivertown have filed in the district court a motion for an award of their attorney fees and costs incurred in the Federal Action ("the Motion") on which the district court has not ruled.

4. SWQ, SEPI and SQJV, as owners of interests in the Southwest Quadrant, have claims against the Jacksonville Transportation Authority ("JTA") concerning access rights to the Southwest Quadrant ("the JTA Claims"). The JTA previously has offered, by letter from Cindy A. Laquidara dated February 5, 1997,

to settle the JTA Claims by payment of the sum of \$905,732.44 to SWQ and SQJV collectively. SWQ and SQJV have not accepted the JTA's settlement offer, and the JTA Claims remain unresolved.

5. The Parties wish to settle and compromise all claims, disputes and controversies between and among them, including but not limited to all claims and causes of action asserted in the State Action, the Federal Action, and the JTA Claims, on the terms and conditions set forth herein.

Settlement Agreement and Mutual Release of Claims

Accordingly, in consideration of the mutual promises and covenants set forth below, the parties stipulate and agree as follows:

1. "Disinterested Purchaser" as defined herein excludes for a period of two (2) years before and two (2) years after the date of the sale of the Southwest Quadrant: any affiliate; subsidiary; partner; joint venturer; relative (meaning individual related by affinity or consanguinity within the third degree as determined by the common law, or individual with any step or adoptive relationship within such third degree) of a Party or William A. Brandt, Jr., individually; corporation of which a Party or William A. Brandt, Jr., individually, is a director, officer, stockholder or person in control; or managing agent of a Party or William A. Brandt, Jr., individually.

2. SWQ shall dismiss its complaint in the State Action with prejudice and SWQ and Brandt also shall dismiss the Appeal in the Federal Action with prejudice.

3. SQJV, Efstathion and Schmidt shall dismiss their counterclaim in the State Action with prejudice, and SQJV, Efstathion, Schmidt, SIGA and Rivertown also shall withdraw the Motion in the Federal Action with prejudice.

4. The Parties agree that each party in the State Action and the Federal Action shall be responsible for payment of its or his own attorneys' fees and litigation costs.

5. All of the Parties, and their heirs, administrators, predecessors, successors, assigns and trustees, hereby fully discharge and release all of the other Parties, and each of them singularly, and all of such other Parties' predecessors, successors, subsidiaries, affiliated entities, affiliates, directors, officers, agents, employees, heirs, administrators, legal representatives, assigns and trustees, from any and all claims, causes of action, debts, accounts, reckonings, covenants, contracts, controversies, agreements, promises and demands, of any kind or nature whatsoever, in law or in equity, which any of the Parties has, or had, at any time from the beginning of time to the date of this Agreement, including but not limited to any claim or cause of action asserted, or which could have been asserted, in the State Action or the Federal Action; provided, however, that this mutual release of claims excludes any promise, covenant, obligation

or undertaking set forth elsewhere in this Agreement or the Mortgage referred to in paragraph 9 below.

6. Brandt shall cause the Southwest Quadrant to be offered for sale until such time as Brandt sells the Southwest Quadrant; provided, however, that the net proceeds of the sale, after deduction of all closing expenses and deduction of any attorneys' fees, costs and other expenses for which Brandt is entitled to reimbursement under paragraphs 10(a), 13, and 15 below, shall be no less than \$5,000,000, or such higher sum as may be determined under paragraph 10(a) below. Further, the sale must be an arms-length transaction with a bona fide, Disinterested Purchaser, and the Disinterested Purchaser shall not have any agreement, including but not limited to agreements to agree, concerning a sale or development of the Southwest Quadrant with any party to this Agreement. The net proceeds of the sale of the Southwest Quadrant shall be paid 70% to Brandt or his designee and 30% to SQJV or its designee.

7. During the time that Brandt is offering the Southwest Quadrant for sale, Brandt shall be free to deal with the Southwest Quadrant without interference from SQJV, Efstathion, Schmidt, SIGA or Rivertown. The intent of the Parties is to invest Brandt with the discretion and authority to maintain, market and sell the Southwest Quadrant as he sees fit in accordance with this Agreement so long as such 'discretion' or authority is not exercised recklessly. Accordingly, SQJV, Efstathion, Schmidt, SIGA and

Rivertown expressly agree not to interfere, except upon a breach of this Agreement by Brandt.

8. SQJV, Efstathion and Schmidt represent to Brandt that SQJV's interest in the 174 Acres has not been transferred to any other entity. SQJV, Efstathion and Schmidt further represent to Brandt that title to SQJV's interest in the 174 Acres is free and clear of any liens or encumbrances and is good and indefeasible title. In the event it is not, upon notice thereof by Brandt, SQJV shall promptly remove any lien(s) or encumbrance(s) from the title.

9. To facilitate Brandt's ability to pass fee simple title to the 174 Acres upon a sale under paragraph 6 above, SQJV shall convey to SEPI in a Quit Claim Deed, a copy of which is attached hereto as Exhibit "C," its undivided one-half interest in the 174 Acres; provided, however, that simultaneously with this conveyance SWQ shall deed its undivided one-half interest in the 174 Acres to SEPI and Brandt shall cause SEPI to deliver to SQJV a first mortgage on the Southwest Quadrant to secure Brandt's payment obligations under this Agreement ("the Mortgage"). The Mortgage shall be substantially in the form provided in Exhibit "D." The cost of recording the mortgage, including, but not limited to documentary stamps, shall be borne by the party(ies) who records it.

10. On behalf of SWQ, SEPI and SQJV, Brandt shall resolve the JTA Claims by settlement or, if necessary, through litigation.

(a) If the JTA Claims are resolved in whole or in part

by the JTA constructing roads or other improvements on the Southwest Quadrant, then the minimum net purchase price of \$5,000,000 set forth in paragraph 6 above shall be increased by the amount of the last cash offer made by the JTA as an alternative to constructing such roads or other improvements. However, the parties agree Brandt is entitled to reimbursement of his reasonable costs and attorneys' fees incurred in settlement or litigation of the JTA claims; these costs and attorneys' fees shall be deducted from the net proceeds of the sale of the Southwest Quadrant if the settlement with JTA involves the construction of roads or other improvements by the JTA.

(b) If the JTA Claims are resolved in whole or in part by the JTA's payment of money to Brandt, then the net proceeds of such payment, after deducting Brandt's reasonable costs and attorneys' fees incurred in settlement or litigation of the JTA Claims, shall be paid 70% to Brandt or his designee and 30% to SQJV or its designee.

(c) In no event shall the resolution of the JTA Claims operate to reduce the minimum net purchase price of \$5,000,000 set forth in paragraph 6 above. Brandt shall be free to deal with the JTA concerning the Southwest Quadrant without interference from SQJV, Efstathion, SIGA or Rivertown. The intent of the Parties is to invest Brandt with the discretion and authority to resolve the JTA Claims as he sees fit in accordance with this Agreement so long as such discretion is not exercised recklessly.



11. SWQ and SQJV shall each be responsible for 50% of the ad valorem real estate taxes on the 174 Acres for the tax years 1991 through 1996, and shall be entitled to an accounting to enforce the obligations of this paragraph.

12. For each of the tax years 1997 through the year in which Brandt sells the Southwest Quadrant, the ad valorem real estate taxes on the Southwest Quadrant shall be paid 70% by or on behalf of SEPI and 30% by SQJV.

13. In the event all or any portion of the Southwest Quadrant is subjected to condemnation (which term includes any damage or taking, or threatened damage or taking, by any governmental or other condemning authority authorized by the laws of the State of Florida or the United States of America to so damage or take, whether suit be brought or not, and any transfer by private sale in lieu thereof, either temporarily or permanently), Brandt shall resolve such condemnation by settlement, or if appropriate, through litigation. The parties agree that Brandt shall be entitled to reimbursement of his reasonable costs and attorneys' fees incurred in connection with such settlement or litigation. If such costs and attorneys' fees are paid in whole, or in part, to Brandt by the condemning authority the amount received therefor shall be credited against the amount of the said reimbursement due to Brandt. Any such costs or attorneys' fees that are not paid to Brandt by the condemning authority shall be deducted from any proceeds that are received from the condemnation. The net proceeds from any such

condemnation shall be paid 70% to Brandt or his designee and 30% to SQJV or its designee.

14. To the extent not covered by other provisions of this Agreement, any revenue, income, proceeds or other benefits that may be derived from the mortgaged property described in the Mortgage, or any part of such mortgaged property, shall be paid 70% to Brandt or his designee and 30% to SQJV or its designee, after deduction of the reasonable costs and attorneys' fees, if any, incurred by Brandt in connection with obtaining such revenue, income, proceeds or other benefits.

15. All of Brandt's expenses, including but not limited to reasonable attorneys' fees, to market, preserve, maintain, or sell the Southwest Quadrant, or to defend any suit or action or proceeding which might in any way and in the sole judgment of Brandt adversely affect the value of the Southwest Quadrant from the date of this Agreement through the date of sale of the Southwest Quadrant, shall be deducted from the net proceeds of the sale of the Southwest Quadrant and any such expenses advanced by Brandt shall bear interest at 8.5% annually on a per diem basis until Brandt is reimbursed for such expenses.

16. The Parties shall jointly apply to the Court for entry of an order approving this Agreement and for the Court to retain jurisdiction to determine all matters relating to compliance or breach of this Agreement. Further, the Parties agree that any

motions or applications for the Court to exercise its jurisdiction under this paragraph shall be expedited.

17. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

18. This Agreement embodies the entire contract between the Parties respecting the subject matters contained herein and replaces and supersedes any previous agreements and such matters which may heretofore have been made, all prior discussions, representations and negotiations pertaining to the subject matter of this Agreement being merged herein.

19. This Agreement constitutes the entire agreement between the Parties and no addition to, or modification of any term or provision of this Agreement shall be effective until and unless set forth in a written instrument signed by the Parties.

20. This Agreement as to William A. Brandt, Jr., as Chapter 7 Trustee for Southeast Banking Corporation, in the United States Bankruptcy Court for the Southern District of Florida, Case No. 91-14561-BKC-SMW, is subject to the notice provisions of the Federal Rules of Bankruptcy Procedure and approval by the United States Bankruptcy Court, Southern District of Florida.

21. All representations as set forth herein shall survive the transfer of property as described herein.

22. The parties shall be entitled to the following remedies:

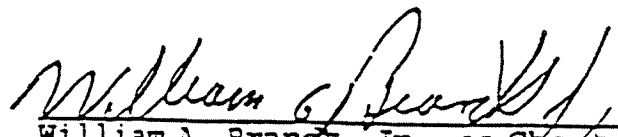
(a) In the event there is a default by SEPI under any of the "Events of Default" described in the Mortgage, SQJV shall have the right to foreclose the Mortgage and to sell the mortgaged property under the judgment or decree of a court of competent jurisdiction. SQJV shall also have the additional remedies set forth below in subparagraphs (b) and (c) of this paragraph.

(b) In the event there is a failure by any Party or Parties to comply with any of the terms of this Agreement, or any of the terms of the Mortgage, the non-breaching Party or Parties may bring any action available at law or in equity against the breaching Party or Parties.

(c) In the event an action is brought under subparagraphs (a) or (b) above, the prevailing Party or Parties shall be entitled to recover reasonable court costs and expenses, including attorneys' fees, from the non-prevailing Party or Parties.

23. The Parties agree to execute any additional documents or instruments that may be reasonably necessary to effectuate this Agreement.

Dated: 24 DECEMBER, 1997

  
William A. Brant, Jr., as Chapter 7  
Trustee for Southeast Banking  
Corporation (executed subject to  
approval of the United States  
Bankruptcy Court at Miami, Florida)

SWQ Holdings, Inc.

Dated: 24 DECEMBER, 1997

By: William G. Burdett  
Its: PRESIDENT

Southeast Properties, Inc.

Dated: 24 DECEMBER, 1997

By: William G. Burdett  
Its: PRESIDENT

Southwest Quadrant Joint Venture

Dated: \_\_\_\_\_, 1997

By: \_\_\_\_\_  
James H. Efstathion, Joint Venturer,  
50% interest

Dated: \_\_\_\_\_, 1997

By: \_\_\_\_\_  
Kent H. Schmidt, Joint Venturer,  
50% interest

Dated: \_\_\_\_\_, 1997

James H. Efstathion, Individually

Dated: \_\_\_\_\_, 1997

Kent H. Schmidt, Individually

SIGA Development and Investment, Inc.

Dated: \_\_\_\_\_, 1997

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Rivertown, Inc.

Dated: \_\_\_\_\_, 1997

By: \_\_\_\_\_  
Its: \_\_\_\_\_

SWQ Holdings, Inc.

Dated: \_\_\_\_\_, 1997

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Southeast Properties, Inc.

Dated: \_\_\_\_\_, 1997

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Southwest Quadrant Joint Venture

Dated: 1-14, 1998 <sup>JAE</sup>

By: James H. Efstathion  
James H. Efstathion, Joint Venturer,  
50% interest

Dated: 1/14/, 1998 <sup>KHS</sup>

By: Kent H. Schmidt  
Kent H. Schmidt, Joint Venturer,  
50% interest

Dated: 1-14, 1998 <sup>JAE</sup>

By: James H. Efstathion  
James H. Efstathion, Individually

Dated: 1/14/, 1998 <sup>KHS</sup>

By: Kent H. Schmidt  
Kent H. Schmidt, Individually

SIGA Development and Investment, Inc.

Dated: 1-14, 1998 <sup>JAE</sup>

By: James H. Efstathion  
Its: President

Rivertown, Inc.

Dated: 1/14/, 1998 <sup>KHS</sup>

By: Kent H. Schmidt  
Its: President

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Parcel One: An undivided one-half interest in the following described real property: all of Sections 13 and 14, Township 3 South, Range 27 East, Jacksonville, Duval County, Florida, lying South and West of (i) the southerly right of way line of J. Turner Butler Boulevard, and (ii) the westerly right of way line of Southside Boulevard, LESS AND EXCEPT those portions thereof heretofore conveyed by GL National, Inc. to the grantees designated below by deeds recorded in the public records of Duval County, Florida under the indicated recording references:

Grantee	O.R. Volume	Page
1. Fletcher Land Corporation	5785	2253
2. F & S Partnership	5801	1720
3. Health Quest Realty XXII	5844	890
4. The Episcopal Church in the Diocese of Florida, Inc.	5935	2148
5. Greenbriar Ltd.	5987	657
6(a). Southside Utilities, Inc.	6013	2067
6(b). Southside Utilities, Inc.	6013	2071
7. Fletcher Land Corporation	6078	1628

LESS AND EXCEPT:

Parcel Two: A portion of fractional Section 14, Township 3 South, Range 27 East, Jacksonville, Duval County, Florida, more particularly described as follows: For a point of beginning, commence at the intersection of the line dividing said Section 14 and Section 56, Township and Range aforementioned with the southerly right-of-way line of J. Turner Butler Boulevard and run easterly along said southerly right-of-way line a distance of 770 feet more or less to the intersection of said right-of-way line with the easterly boundary line of said Section 14; run thence southerly along said easterly boundary line a distance of 800 feet to a point; run thence westerly and parallel to the centerline of the aforementioned J. Turner Butler Boulevard a distance of 1160 feet more or less to a point on the westerly boundary line of said Section 14; run thence northerly along said westerly boundary line a distance of 630 feet more or less to an angle point in said section line; run thence northeasterly along said boundary line a distance of 350 feet more or less to the point of beginning.

A portion of fractional Section 14, Township 3 South, Range 27 East, Jacksonville, Duval County, Florida, more particularly described as follows: For a point of beginning, commence at the intersection of the line dividing said Section 14 and Section 56, Township and Range aforementioned with the southerly right-of-way line of J. Turner Butler Boulevard and run easterly along said southerly right-of-way line a distance of 770 feet more or less to the intersection of said right-of-way line with the easterly boundary line of said Section 14; run thence southerly along said easterly boundary line a distance of 800 feet to a point; run thence westerly and parallel to the centerline of the aforementioned J. Turner Butler Boulevard a distance of 1160 feet more or less to a point on the westerly boundary line of said Section 14; run thence northerly along said westerly boundary line a distance of 630 feet more or less to an angle point in said section line; run thence northeasterly along said boundary line a distance of 350 feet more or less to the point of beginning.

Real Estate Parcel No.: 147983-0030



LAUREN PARSONS LINGHAM  
1800 FIRST UNION NATIONAL BANK TOWER  
25 WATER STREET  
JACKSONVILLE, FLORIDA 32202

QUITCLAIM DEED

THIS QUITCLAIM DEED is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 199\_, by SOUTHWEST QUADRANT JOINT VENTURE, a Florida joint venture ("Grantor"), whose address is 3121 Venture Place, Jacksonville, Florida 32257, to SOUTHEAST PROPERTIES, INC., a Florida corporation ("Grantee"), whose address is 200 S. Biscayne Boulevard, Suite 900, Miami, Florida 33131.

WITNESSETH, that the said Grantor, for and in consideration of the sum of \$10.00 in hand paid by the Grantee and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the Grantee, its successors and assigns, forever, all the right, title interest, claim and demand which the Grantor has in and to the parcel of land, situate, lying and being in Duval County, Florida, more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or equity, to the only proper use, benefit and behoof of the said Grantee.

IN WITNESS WHEREOF the Grantor has caused these presents to be executed in its name by its proper officers thereunto duly authorized, the day and year first above written.

Signed, sealed and delivered in the presence of:

SOUTHWEST QUADRANT JOINT  
VENTURE

\_\_\_\_\_  
Name: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, by \_\_\_\_\_ of  
Southwest Quadrant Joint Venture, a Florida joint venture, on  
behalf of the joint venture. He/she is personally known to me  
or has produced \_\_\_\_\_ as identification.

Name: \_\_\_\_\_  
Notary Public, State and County  
Aforesaid  
Commission No. \_\_\_\_\_

My Commission Expires:

2270321

# EXHIBIT "A"

Parcel One: An undivided one-half interest in the following described real property: all of Sections 13 and 14, Township 3 South, Range 27 East, Jacksonville, Duval County, Florida, lying South and West of (i) the southerly right of way line of J. Turner Butler Boulevard, and (ii) the westerly right of way line of Southside Boulevard,  
 LESS AND  
 EXCEPT those portions thereof heretofore conveyed by GL National, Inc. to the grantees designated below by deeds recorded in the public records of Duval County, Florida under the indicated recording references:

Grantee	O.R. Volume	Page
1. Fletcher Land Corporation	5785	2253
2. F & S Partnership	5801	1720
3. Health Quest Realty XXII	5844	890
4. The Episcopal Church in the Diocese of Florida, Inc.	5935	2148
5. Greenbriar Ltd.	5987	657
6(a). Southside Utilities, Inc.	6013	2067
6(b). Southside Utilities, Inc.	6013	2071
7. Fletcher Land Corporation	6078	1628

LESS AND EXCEPT:

Parcel Two: A portion of fractional Section 14, Township 3 South, Range 27 East, Jacksonville, Duval County, Florida, more particularly described as follows: For a point of beginning, commence at the intersection of the line dividing said Section 14 and Section 56, Township and Range aforementioned with the southerly right-of-way line of J. Turner Butler Boulevard and run easterly along said southerly right-of-way line a distance of 770 feet more or less to the intersection of said right-of-way line with the easterly boundary line of said Section 14; run thence southerly along said easterly boundary line a distance of 800 feet to a point; run thence westerly and parallel to the centerline of the aforementioned J. Turner Butler Boulevard a distance of 1160 feet more or less to a point on the westerly boundary line of said Section 14; run thence northerly along said westerly boundary line a distance of 630 feet more or less to an angle point in said section line; run thence northeasterly along said boundary line a distance of 350 feet more or less to the point of beginning.

THIS INSTRUMENT PREPARED BY:  
PHILIP C. OWEN  
FISCETTE, OWEN, HELD & MCBURNET  
1301 RIVERPLACE BLVD., STE. 1916  
JACKSONVILLE, FLORIDA 32207

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT, is made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by SOUTHEAST PROPERTIES, INC., a Florida corporation, hereinafter referred to as "Mortgagor", whose address is 200 S. Biscayne Boulevard, Suite 900, Miami, Florida 33131, to SOUTHWEST QUADRANT JOINT VENTURE, a Florida joint venture, hereinafter referred to as "Mortgagee", whose address is 3121 Venture Place, Jacksonville, Florida 32257.

WITNESSETH:

WHEREAS, this Mortgage is made by Mortgagor pursuant to that certain Settlement Agreement and Mutual Release of Claims of even date herewith, executed by and between the Mortgagor and Mortgagee among others (hereinafter referred to as the "Settlement Agreement", which term includes any addition or modification thereof), a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, to secure Mortgagor's indebtedness to Mortgagee evidenced by the Settlement Agreement in the amount determined by the provisions of the Settlement Agreement;

---

NOTICE TO CLERK: This Mortgage and Security Agreement secures indebtedness in an amount to be determined by the provisions of the Settlement Agreement, but in no event less than \$1,500,000.00. Accordingly, documentary stamp tax and nonrecurring intangible tax are being paid hereon based upon \$1,500,000.00.

NOW, ~~THEREFORE~~ to secure the payment by Mortgagor of all sums due Mortgagee under the Settlement Agreement, and performance of Mortgagor's obligations hereunder, Mortgagor does hereby grant, convey and mortgage to Mortgagee, its successors and assigns, all of Mortgagor's interest in the following described real property, situate in the County of Duval, State of Florida, to-wit:

I. THE MORTGAGED PROPERTY

All of the land in the County of Duval, State of Florida, described in Exhibit "B" attached hereto and made a part hereof.

TO HAVE AND TO HOLD the same unto the Mortgagee, its successors and assigns, to its proper use and benefit forever, subject however to the terms and conditions herein.

PROVIDED ALWAYS, that if the Mortgagor shall pay to Mortgagee the amounts required by the Settlement Agreement at the times and in the manner stipulated therein, and shall faithfully perform all the covenants and agreements in this Mortgage, to be kept, performed or observed by Mortgagor, then this Mortgage shall cease and be void, but shall otherwise remain in full force and effect.

II. COVENANTS OF MORTGAGOR

1. Compliance with Payment Obligations. Mortgagor shall comply with all provisions hereof, and will promptly pay to Mortgagee the amounts required to be paid by Mortgagor under the Settlement Agreement.

2. Payment of Taxes. Mortgagor shall pay the ad valorem real estate taxes on the mortgaged property when due and payable before they become delinquent. Mortgagee by its acceptance hereof agrees

to reimburse Mortgagor for Mortgagee's share of these ad valorem taxes as set forth in Paragraphs 11 and 12 of the Settlement Agreement within twenty (20) days of receipt of a copy of the paid receipt from Mortgagor.

3. Mortgagee's Right to Pay and Perform. In the event that the Mortgagor fails to pay and/or discharge the ad valorem taxes due on the mortgaged property as herein provided, the Mortgagee is hereby authorized at its election to pay and/or discharge said taxes, without waiving any of its rights under this Mortgage. The full amount of each and every such payment made by Mortgagee shall be immediately due and payable by Mortgagor and shall bear interest from the date thereof until paid at the rate of 18% per annum (provided, however, that at no time shall any interest or charges in the nature of interest be taken, exacted, received or collected which would exceed the maximum rate permitted by law), and each and every such payment by Mortgagee shall be secured by the lien of this Mortgage.

4. Use Violations and Nuisances. Mortgagor will not use any of the mortgaged property or allow the same to be used for any unlawful purpose or in violation of any law, ordinance, regulation or restrictive covenant, covering or affecting the use thereof, or to suffer any act to be done or any condition to exist on the mortgaged property which may, in law, constitute a nuisance, public or private.

5. Extension of this Mortgage if it has not been Satisfied in Full prior to thirty days before the Expiration of the Legal

Term of this Mortgage. If this Mortgage has not been satisfied in full prior to thirty days before the expiration of the legal term of this Mortgage, which is twenty years from the date of this Mortgage, then the Mortgagor agrees to execute and deliver to Mortgagee an extension agreement extending the lien of this Mortgage dated the date thirty days before the expiration of twenty years from the date of this Mortgage, in accordance with the provisions of Section 95.281, Florida Statutes, if then in effect, and if not, of any Florida Statute then in effect, the sole purpose of which is to extend the time of the lien of an existing mortgage.

### III. EVENTS OF DEFAULT

6. Events of Default. Any one of the following shall constitute an event of default:

(a) Failure by Mortgagor to pay, as and when due and payable, any amounts due under the Settlement Agreement.

(b) Failure by Mortgagor to duly keep, perform and observe any other covenant, condition or agreement contained in this Mortgage for a period of ten (10) days after Mortgagee gives written notice specifying the failure.

(c) Any material untruth of any representation of Mortgagor contained in this Mortgage.

### IV. REMEDIES OF MORTGAGEE

7. Foreclosure and other Remedies. If any event of default by Mortgagor shall have occurred, Mortgagee shall have the right to foreclose this Mortgage and pursue such additional remedies in law or in equity as are provided for in the Settlement Agreement.

8. No Waiver. No delay or omission of Mortgagee to insist, at any time, upon strict performance of any covenant, provision or condition of this Mortgage or to exercise any right, power or remedy accruing to Mortgagee upon any event of default under this Mortgage shall be construed as a present waiver or relinquishment for the future of such covenant, provision, condition, right, power or remedy. In no event shall Mortgagee be deemed to have made a waiver hereunder unless the waiver is expressed in writing signed by the Mortgagee and stating specifically the covenant, provision, condition, right, power or remedy being waived.

#### V. MISCELLANEOUS

9. Successors and Assigns Bound. Whenever one of the parties hereto is named or referred to herein, the legal representatives, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee, shall bind and inure to the benefit of their respective legal representatives, successors and assigns.

10. Invalid or Unenforceable. In the event that any of the covenants, agreements, terms or provisions contained in this Mortgage shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein shall be in no way affected, prejudiced or disturbed thereby.



11. Obligation of Mortgagee. Mortgagee shall pay the cost of cancelling and satisfying this Mortgage of record, as is presently provided for in Chapter 701, Florida Statutes.

12. Captions. The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Mortgage.

13. Venue. Mortgagor and Mortgagee agree that any action concerning a dispute under this Mortgage and/or Settlement Agreement will be brought in the Fourth Judicial Circuit, in and for Duval County, Florida.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the day, and year first above written.

SOUTHEAST PROPERTIES, INC.

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_ President

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

(SEAL)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1997, by \_\_\_\_\_, \_\_\_\_\_ President of Southeast Properties, Inc., a Florida corporation, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_, NOTARY PUBLIC  
Commission Number: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

EXHIBIT "A"

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("Agreement") is entered into this \_\_\_\_ day of December, 1997, by and among William A. Brandt, Jr., as Chapter 7 Trustee of Southeast Banking Corporation, as President of SWQ Holdings, Inc. ("SWQ") and as President of Southeast Properties, Inc. ("SEPI") (collectively referred to as "Brandt"), SWQ, SEPI, Southwest Quadrant Joint Venture ("SQJV"), James H. Efstathion ("Efstathion"), Kent H. Schmidt ("Schmidt"), SIGA Development and Investment, Inc. ("SIGA") and Rivertown, Inc. ("Rivertown"). (All of the foregoing persons and entities are referred to collectively as "the Parties" or individually as "Party").

RECITALS

1. SWQ and SQJV each owns an undivided one-half interest, as tenants in common, in an approximately 174-acre tract of land occupying the southwest quadrant of the intersection of Butler Boulevard and Southside Boulevard in Jacksonville ("the 174 Acres"), a legal description of which is attached as Exhibit "A." SEPI, an affiliate of SWQ, owns a contiguous 20-acre tract of land ("the 20 Acres"), a legal description of which is attached as Exhibit "B." In this Agreement the 174 Acres and the 20 Acres are referred to collectively as "the Southwest Quadrant."

2. SWQ has brought an action against SQJV, Efstathion and Schmidt in the Circuit Court for Duval County, Florida, styled S.W.Q. Holdings, Inc. v. Southwest Quadrant Joint Venture, etc., et

al., Case No. 93-03225-CA ("the State Action"), and SQJV, Efsthion and Schmidt have brought a counterclaim against SWQ in that action.

3. In addition, SWQ and Brandt, as Trustee of Southeast Banking Corporation and also derivatively on behalf of the Federal Deposit Insurance Corporation, as receiver of Southeast Bank, N.A., brought an action against SQJV, Efsthion, Schmidt, SIGA and Rivertown and nominal defendant Federal Deposit Insurance Corporation ("FDIC"), which was removed to the United States District Court for the Middle District of Florida, Jacksonville Division, styled William A. Brandt, Jr., etc., et al. v. Southwest Quadrant Joint Venture, etc., et al., Case No. 96-206-CIV-J-21B ("the Federal Action"). On April 28, 1997 the district court in the Federal Action entered summary final judgment against SWQ and Brandt ("the Judgment"). SWQ and Brandt have appealed the Judgment to the United States Court of Appeals for the Eleventh Circuit ("the Appeal"), where the appeal is presently pending. SQJV, Efsthion, Schmidt, SIGA and Rivertown have filed in the district court a motion for an award of their attorney fees and costs incurred in the Federal Action ("the Motion") on which the district court has not ruled.

4. SWQ, SEPI and SQJV, as owners of interests in the Southwest Quadrant, have claims against the Jacksonville Transportation Authority ("JTA") concerning access rights to the Southwest Quadrant ("the JTA Claims"). The JTA previously has

offered, by letter from Cindy A. Laquidara dated February 5, 1997, to settle the JTA Claims by payment of the sum of \$905,732.44 to SWQ and SQJV collectively. SWQ and SQJV have not accepted the JTA's settlement offer, and the JTA Claims remain unresolved.

5. The Parties wish to settle and compromise all claims, disputes and controversies between and among them, including but not limited to all claims and causes of action asserted in the State Action, the Federal Action, and the JTA Claims, on the terms and conditions set forth herein.

Settlement Agreement and Mutual Release of Claims

Accordingly, in consideration of the mutual promises and covenants set forth below, the parties stipulate and agree as follows:

1. "Disinterested Purchaser" as defined herein excludes for a period of two (2) years before and two (2) years after the date of the sale of the Southwest Quadrant: any affiliate; subsidiary; partner; joint venturer; relative (meaning individual related by affinity or consanguinity within the third degree as determined by the common law, or individual with any step or adoptive relationship within such third degree) of a Party or William A. Brandt, Jr., individually; corporation of which a Party or William A. Brandt, Jr., individually, is a director, officer, stockholder or person in control; or managing agent of a Party or William A. Brandt, Jr., individually.

2. SWQ shall dismiss its complaint in the State Action with

prejudice and SWQ and Brandt also shall dismiss the Appeal in the Federal Action with prejudice.

3. SQJV, Efstathion and Schmidt shall dismiss their counterclaim in the State Action with prejudice, and SQJV, Efstathion, Schmidt, SIGA and Rivertown also shall withdraw the Motion in the Federal Action with prejudice.

4. The Parties agree that each party in the State Action and the Federal Action shall be responsible for payment of its or his own attorneys' fees and litigation costs.

5. All of the Parties, and their heirs, administrators, predecessors, successors, assigns and trustees, hereby fully discharge and release all of the other Parties, and each of them singularly, and all of such other Parties' predecessors, successors, subsidiaries, affiliated entities, affiliates, directors, officers, agents, employees, heirs, administrators, legal representatives, assigns and trustees, from any and all claims, causes of action, debts, accounts, reckonings, covenants, contracts, controversies, agreements, promises and demands, of any kind or nature whatsoever, in law or in equity, which any of the Parties has, or had, at any time from the beginning of time to the date of this Agreement, including but not limited to any claim or cause of action asserted, or which could have been asserted, in the State Action or the Federal Action; provided, however, that this mutual release of claims excludes any promise, covenant, obligation or undertaking set forth elsewhere in this Agreement or the

Mortgage referred to in paragraph 9 below.

6. Brandt shall cause the Southwest Quadrant to be offered for sale until such time as Brandt sells the Southwest Quadrant; provided, however, that the net proceeds of the sale, after deduction of all closing expenses and deduction of any attorneys' fees, costs and other expenses for which Brandt is entitled to reimbursement under paragraphs 10(a), 13, and 15 below, shall be no less than \$5,000,000, or such higher sum as may be determined under paragraph 10(a) below. Further, the sale must be an arms-length transaction with a bona fide, Disinterested Purchaser, and the Disinterested Purchaser shall not have any agreement, including but not limited to agreements to agree, concerning a sale or development of the Southwest Quadrant with any party to this Agreement. The net proceeds of the sale of the Southwest Quadrant shall be paid 70% to Brandt or his designee and 30% to SQJV or its designee.

7. During the time that Brandt is offering the Southwest Quadrant for sale, Brandt shall be free to deal with the Southwest Quadrant without interference from SQJV, Efstathion, Schmidt, SIGA or Rivertown. The intent of the Parties is to invest Brandt with the discretion and authority to maintain, market and sell the Southwest Quadrant as he sees fit in accordance with this Agreement so long as such discretion or authority is not exercised recklessly. Accordingly, SQJV, Efstathion, Schmidt, SIGA and Rivertown expressly agree not to interfere, except upon a breach of

this Agreement by Brandt.

8. SQJV, Efstathion and Schmidt represent to Brandt that SQJV's interest in the 174 Acres has not been transferred to any other entity. SQJV, Efstathion and Schmidt further represent to Brandt that title to SQJV's interest in the 174 Acres is free and clear of any liens or encumbrances and is good and indefeasible title. In the event it is not, upon notice thereof by Brandt, SQJV shall promptly remove any lien(s) or encumbrance(s) from the title.

9. To facilitate Brandt's ability to pass fee simple title to the 174 Acres upon a sale under paragraph 6 above, SQJV shall convey to SEPI in a Quit Claim Deed, a copy of which is attached hereto as Exhibit "C," its undivided one-half interest in the 174 Acres; provided, however, that simultaneously with this conveyance SWQ shall deed its undivided one-half interest in the 174 Acres to SEPI and Brandt shall cause SEPI to deliver to SQJV a first mortgage on the Southwest Quadrant to secure Brandt's payment obligations under this Agreement ("the Mortgage"). The Mortgage shall be substantially in the form provided in Exhibit "D." The cost of recording the mortgage, including, but not limited to documentary stamps, shall be borne by the party(ies) who records it.

10. On behalf of SWQ, SEPI and SQJV, Brandt shall resolve the JTA Claims by settlement or, if necessary, through litigation.

(a) If the JTA Claims are resolved in whole or in part by the JTA constructing roads or other improvements on the

Southwest Quadrant, then the minimum net purchase price of \$5,000,000 set forth in paragraph 6 above shall be increased by the amount of the last cash offer made by the JTA as an alternative to constructing such roads or other improvements. However, the parties agree Brandt is entitled to reimbursement of his reasonable costs and attorneys' fees incurred in settlement or litigation of the JTA claims; these costs and attorneys' fees shall be deducted from the net proceeds of the sale of the Southwest Quadrant if the settlement with JTA involves the construction of roads or other improvements by the JTA.

(b) If the JTA Claims are resolved in whole or in part by the JTA's payment of money to Brandt, then the net proceeds of such payment, after deducting Brandt's reasonable costs and attorneys' fees incurred in settlement or litigation of the JTA Claims, shall be paid 70% to Brandt or his designee and 30% to SQJV or its designee.

(c) In no event shall the resolution of the JTA Claims operate to reduce the minimum net purchase price of \$5,000,000 set forth in paragraph 6 above. Brandt shall be free to deal with the JTA concerning the Southwest Quadrant without interference from SQJV, Efstathion, SIGA or Rivertown. The intent of the Parties is to invest Brandt with the discretion and authority to resolve the JTA Claims as he sees fit in accordance with this Agreement so long as such discretion is not exercised recklessly.

11. SWQ and SQJV shall each be responsible for 50% of the ad



valorem real estate taxes on the 174 Acres for the tax years 1991 through 1996, and shall be entitled to an accounting to enforce the obligations of this paragraph.

12. For each of the tax years 1997 through the year in which Brandt sells the Southwest Quadrant, the ad valorem real estate taxes on the Southwest Quadrant shall be paid 70% by or on behalf of SEPI and 30% by SQJV.

13. In the event all or any portion of the Southwest Quadrant is subjected to condemnation (which term includes any damage or taking, or threatened damage or taking, by any governmental or other condemning authority authorized by the laws of the State of Florida or the United States of America to so damage or take, whether suit be brought or not, and any transfer by private sale in lieu thereof, either temporarily or permanently), Brandt shall resolve such condemnation by settlement, or if appropriate, through litigation. The parties agree that Brandt shall be entitled to reimbursement of his reasonable costs and attorneys' fees incurred in connection with such settlement or litigation. If such costs and attorneys' fees are paid in whole, or in part, to Brandt by the condemning authority the amount received therefor shall be credited against the amount of the said reimbursement due to Brandt. Any such costs or attorneys' fees that are not paid to Brandt by the condemning authority shall be deducted from any proceeds that are received from the condemnation. The net proceeds from any such condemnation shall be paid 70% to Brandt or his designee and 30% to

SQJV or its designee.

14. To the extent not covered by other provisions of this Agreement, any revenue, income, proceeds or other benefits that may be derived from the mortgaged property described in the Mortgage, or any part of such mortgaged property, shall be paid 70% to Brandt or his designee and 30% to SQJV or its designee, after deduction of the reasonable costs and attorneys' fees, if any, incurred by Brandt in connection with obtaining such revenue, income, proceeds or other benefits.

15. All of Brandt's expenses, including but not limited to reasonable attorneys' fees, to market, preserve, maintain, or sell the Southwest Quadrant, or to defend any suit or action or proceeding which might in any way and in the sole judgment of Brandt adversely affect the value of the Southwest Quadrant from the date of this Agreement through the date of sale of the Southwest Quadrant, shall be deducted from the net proceeds of the sale of the Southwest Quadrant and any such expenses advanced by Brandt shall bear interest at 8.5% annually on a per diem basis until Brandt is reimbursed for such expenses.

16. The Parties shall jointly apply to the Court for entry of an order approving this Agreement and for the Court to retain jurisdiction to determine all matters relating to compliance or breach of this Agreement. Further, the Parties agree that any motions or applications for the Court to exercise its jurisdiction under this paragraph shall be expedited.

17. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

18. This Agreement embodies the entire contract between the Parties respecting the subject matters contained herein and replaces and supersedes any previous agreements and such matters which may heretofore have been made, all prior discussions, representations and negotiations pertaining to the subject matter of this Agreement being merged herein.

19. This Agreement constitutes the entire agreement between the Parties and no addition to, or modification of any term or provision of this Agreement shall be effective until and unless set forth in a written instrument signed by the Parties.

20. This Agreement as to William A. Brandt, Jr., as Chapter 7 Trustee for Southeast Banking Corporation, in the United States Bankruptcy Court for the Southern District of Florida, Case No. 91-14561-BKC-SMW, is subject to the notice provisions of the Federal Rules of Bankruptcy Procedure and approval by the United States Bankruptcy Court, Southern District of Florida.

21. All representations as set forth herein shall survive the transfer of property as described herein.

22. The parties shall be entitled to the following remedies:

(a) In the event there is a default by SEPI under any of the "Events of Default" described in the Mortgage, SQJV shall

have the right to foreclose the Mortgage and to sell the mortgaged property under the judgment or decree of a court of competent jurisdiction. SQJV shall also have the additional remedies set forth below in subparagraphs (b) and (c) of this paragraph.

(b) In the event there is a failure by any Party or Parties to comply with any of the terms of this Agreement, or any of the terms of the Mortgage, the non-breaching Party or Parties may bring any action available at law or in equity against the breaching Party or Parties.

(c) In the event an action is brought under subparagraphs (a) or (b) above, the prevailing Party or Parties shall be entitled to recover reasonable court costs and expenses, including attorneys' fees, from the non-prevailing Party or Parties.

23. The Parties agree to execute any additional documents or instruments that may be reasonably necessary to effectuate this Agreement.

Dated: \_\_\_\_\_, 1997

\_\_\_\_\_  
William A. Brandt, Jr., as Chapter 7  
Trustee for Southeast Banking  
Corporation (executed subject to  
approval of the United States  
Bankruptcy Court at Miami, Florida)

SWQ Holdings, Inc.

Dated: \_\_\_\_\_, 1997

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Southeast Properties, Inc.

Dated: \_\_\_\_\_, 1997

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Southwest Quadrant Joint Venture

Dated: \_\_\_\_\_, 1997

By: \_\_\_\_\_  
James H. Efstathion, Joint Venturer,  
50% interest

Dated: \_\_\_\_\_, 1997

By: \_\_\_\_\_  
Kent H. Schmidt, Joint Venturer,  
50% interest

Dated: \_\_\_\_\_, 1997

James H. Efstathion, Individually

Dated: \_\_\_\_\_, 1997

Kent H. Schmidt, Individually

SIGA Development and Investment, Inc.

Dated: \_\_\_\_\_, 1997

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Rivertown, Inc.

Dated: \_\_\_\_\_, 1997

By: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT "B"

All of Sections 13 and 14, Township 3 South, Range 27 East, Jacksonville, Duval County, Florida, lying South and West of (i) the southerly right of way line of J. Turner Butler Boulevard, and (ii) the westerly right of way line of Southside Boulevard,

LESS AND

EXCEPT those portions thereof heretofore conveyed by GL National, Inc. to the grantees designated below by deeds recorded in the public records of Duval County, Florida under the indicated recording references:

	Grantee	O.R.	Page
		Volume	
1.	Fletcher Land Corporation	5785	2253
2.	F & S Partnership	5801	1720
3.	Health Quest Realty XXII	5844	890
4.	The Episcopal Church in the Diocese of Florida, Inc.	5935	2148
5.	Greenbriar Ltd.	5987	657
6(a).	Southside Utilities, Inc.	6013	2067
6(b).	Southside Utilities, Inc.	6013	2071
7.	Fletcher Land Corporation	6078	1628

2  
MBS/GWP  
BKK  
(WNF)  
LNA

6WP 1469

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

CHAPTER 7

CASE NO. 91-14561-BKC-PGH

In re )  
SOUTHEAST BANKING CORPORATION, )  
Debtor. )

**ORDER APPROVING SETTLEMENT  
AGREEMENT AND MUTUAL  
RELEASE OF CLAIMS RELATING  
TO SOUTHWEST QUADRANT  
PROPERTY, OVERRULING  
OBJECTION AND DENYING  
MOTION TO CONTINUE**

**THIS CAUSE** came before the Court in Fort Lauderdale on Monday, March 30, 1998 at 9:30 a.m. upon Trustee's Motion to Approve Settlement Agreement and Mutual Release of Claims Relating to Southwest Quadrant Property (the "Motion") filed by William A. Brandt, Jr., Trustee on March 2, 1998 ("Trustee Brandt"). Following Mr. Brandt's resignation effective April 1, 1998, Jeffrey H. Beck was appointed as Interim Trustee, and thereafter as Successor Trustee pursuant to 11 U.S.C. § 703(d).

The Court having read and considered the Motion, heard and considered the Ad Hoc Committee of Subordinated Debentureholders' objections, heard the testimony of Trustee Brandt and the argument of counsel, and otherwise been duly advised in the premises, finds and determines that the Settlement Agreement does not fall below the lowest point in the range of reasonableness. In making this determination, the Court has considered the probability of success in the litigation, with due consideration for the uncertainty in the law and fact, the duration of the litigation and any attendant expense, inconvenience and delay, other factors bearing on the wisdom of the compromise, the difficulties, if any, to be encountered in the manner of collection, and the paramount interest of the creditors, giving proper deference to their reasonable views and premises. In addition, the Court has not determined that the amount

#1469

41-23-98

of attorneys' fees expended in this litigation by the subsidiaries or in any other litigation for the subsidiaries is reasonable or proper.

Accordingly, it is

**ORDERED AND ADJUDGED** as follows:

1. That the Motion to Approve Settlement Agreement and Mutual Release of Claims Relating to Southwest Quadrant Property be and hereby is GRANTED, and the Settlement Agreement be and hereby is APPROVED, subject to paragraph 3 below;

2. That the Objection of the Ad Hoc Committee of Subordinated Debentureholders to Trustee's Motion To Approve Settlement Agreement and Mutual Release of Claims Relating to Southwest Quadrant Property be and hereby is OVERRULED except as set forth in paragraph 3 below and its Motion to Continue the hearing be and hereby is DENIED;

3. That notwithstanding its release of the estate of Southeast Banking Corporation from all claims of the adverse parties to the Settlement Agreement, the Mutual Release contained in the Settlement Agreement shall be deemed not to operate to release Trustee Brandt, neither in his personal capacity or his capacity as former Chapter 7 Trustee of the estate of Southeast Banking Corporation, from any claims that the estate or the non-debtor subsidiaries may have against him;

4. That the Trustee and his counsel be and hereby are AUTHORIZED to take such corporate action as may be deemed necessary to cause and direct SWQ Holdings, Inc. and Southeast Properties, Inc., as identified and described in the Settlement Agreement, to enter



into and implement the Settlement Agreement and to execute, deliver, receive and exchange such additional documents and instruments as may be necessary or appropriate thereto.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Southern District of Florida, this 23 day of April, 1998.

**PAUL HYMAN**

PAUL G. HYMAN, JR.  
UNITED STATES BANKRUPTCY JUDGE

Copies furnished to:

Mark D. Bloom, Esq.  
Jeffrey H. Beck, Trustee  
Robert A. Angueira, Esq.

*(Attorney Bloom is hereby directed to serve a conformed copy of this Order upon all persons shown on the attached Service List immediately upon receipt hereof, and to file a Certificate of Service with the Court confirming such service.)*

MIAMI3/BLOOMM/133371/2%wr031.DOC/4/20/98

1479

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

Sw. Quentel

In re ) CHAPTER 7  
)  
) CASE NO. 91-14561-BKC-PGH  
SOUTHEAST BANKING )  
CORPORATION, )  
)  
Debtor. )  
\_\_\_\_\_ )

**MOTION FOR REHEARING OF ORDER  
APPROVING SETTLEMENT AGREEMENT AND MUTUAL  
RELEASE OF CLAIMS**

Jeffrey H. Beck, as Successor Trustee of the Chapter 7 estate of Southeast Banking Corporation, by and through his undersigned counsel and pursuant to Fed.R.Bank.P. 9023, hereby moves for rehearing of that certain Order Approving Settlement Agreement and Mutual Release of Claims Relating to Southwest Quadrant Property, Overruling Objection and Denying Motion to Continue issued April 23, 1998 and entered on the docket of this Court on April 24, 1998 (the "SWQ Settlement Order"). In support of the requested relief, the Trustee would show as follows:

**General Factual Background**

1. This case was commenced on September 20, 1991, by the filing of a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. Jeffrey H. Beck serves as the duly qualified and appointed Successor Trustee of the estate, having been appointed to that position following the resignation of William A. Brandt, Jr. on April 1, 1998.

2. On March 30, 1998, the Court convened a hearing on a Motion to Approve Settlement Agreement and Mutual Release of Claims Relating to Southwest Quadrant Property filed by Trustee Brandt (the "Settlement Motion"). The Settlement Motion sought approval of a comprehensive Settlement Agreement resolving certain litigation, an appeal, and other business matters relating to two contiguous parcels of property located in Jacksonville, Florida and collectively known as the Southwest Quadrant Property. Among other things, the resulting SWQ Settlement Order approves a series of transfers and the granting of a mortgage in order to place the Southwest Quadrant Property under the exclusive control of the Trustee for sale, with the proceeds to be shared in accordance with the Settlement Agreement.

**Limited Relief Requested**

3. Since his appointment, Trustee Beck and his undersigned counsel have been in contact with counsel for the adverse parties to the settlement, and opened discussions relating to the mechanics of the Settlement Agreement. The Trustee does not seek to repudiate the settlement, but merely to revisit with the adverse parties whether the objectives sought by the settlement can be achieved in a manner that would enhance the benefit to all parties concerned.

4. In order for these discussions to continue, the Trustee has elected to file this precautionary Motion for Rehearing of the SWQ Settlement Order within the ten-day period provided in Fed.R.Bank.P. 9023(b). In the event an agreement is reached to revise the procedures and mechanics for implementation of the settlement, the Trustee

will file an appropriate notice or amended motion with the Court in advance of a final hearing on this Motion

**WHEREFORE**, the Trustee moves for entry of an Order granting rehearing of that certain Order Approving Settlement Agreement and Mutual Release of Claims Relating to Southwest Quadrant Property, Overruling Objection and Denying Motion to Continue, and for such other and further relief as may be appropriate in the circumstances.

**I HEREBY CERTIFY** that I am admitted to the Bar of the United States' District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 910(A).

Dated: May 4, 1998.

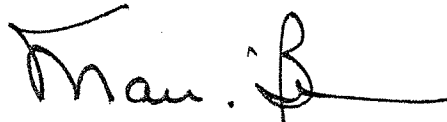
GREENBERG TRAUIG HOFFMAN  
LIPOFF ROSEN & QUENTEL, P.A.  
Attorneys for Jeffrey H. Beck, Trustee  
1221 Brickell Avenue  
Miami, FL 33131  
Telephone: (305) 579-0500  
Facsimile: (305) 579-0717

By: 

MARK D. BLOOM  
Florida Bar No. 303836

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Motion was served by U.S. Mail upon all parties on the service list attached to the original of the Motion filed with the Court, on this 4<sup>th</sup> day of May, 1998.



MARK D. BLOOM

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

CHAPTER 7

CASE NO. 91-14561-BKC-PGH

In re )  
SOUTHEAST BANKING CORPORATION, )  
Debtor. )  
 )  
 )  
 )  
 )  
 )

**AGREED ORDER GRANTING IN  
PART AND DENYING IN PART  
TRUSTEE'S MOTION FOR  
REHEARING OF ORDER  
APPROVING SETTLEMENT  
AGREEMENT AND MUTUAL  
RELEASE OF CLAIMS**

**THIS CAUSE** came before the Court in Fort Lauderdale on Monday, October 19, 1998 at 9:30 a.m. upon the Motion of Jeffrey H. Beck, Chapter 7 Trustee (the "Trustee") for the Estate of Southeast Banking Corporation, for Rehearing of Order Approving Settlement Agreement and Mutual Release of Claims dated April 23, 1998 (the "SWQ Settlement Order"). By way of the Motion, the Trustee sought reconsideration of the SWQ Settlement in an effort to revisit with the settling parties whether the objectives sought by the settlement could be achieved in a manner that would enhance the settlement to the benefit to all parties concerned. The Trustee has advised the Court that the parties to the settlement, Southwest Quadrant Joint Venture ("SWQJV"), James E. Efstathion, Ken H. Schmidt, SIGA Development and Investment, Inc., and Rivertown, Inc. (collectively, the "SQJV Parties") and the estate have agreed to resolution of this matter as provided herein. Accordingly, it is hereby

**ORDERED AND ADJUDGED** that:

1. The Trustee's Motion is hereby GRANTED in part and DENIED in part, as set forth herein;
2. Paragraph 9 of the Settlement Agreement and Mutual Release of Claims (the "Settlement Agreement") approved by the SWQ Settlement Order, which implements the mechanics of the Southwest Quadrant Property transfer, is hereby DELETED;

3. The Trustee is hereby AUTHORIZED to reimburse SWQJV seventy (70%) percent of any expenses incurred after December 24, 1997 related to the Southwest Quadrant Property, provided the Trustee gives prior approval in writing of any such expenditures;

4. The Trustee is further AUTHORIZED to reimburse SWQJV seventy (70%) of any legal fees and expenses SWQJV actually incurred relating to setting of the Jurisdictional Wetlands boundary for the Southwest Quadrant Property, in a total amount not to exceed \$30,000;

5. SWQJV shall receive no other credit or payment for any expenses except as provided in this Order;

6. The Court hereby reserves jurisdiction over any disputes which may arise in connection with the Settlement Agreement, as modified by this Order, and to ensure the proper distribution of the proceeds of the sale contemplated by the Settlement Agreement;

7. Any party that wishes to object to the relief granted by this Order must file an objection within ten (10) days from the entry hereof; and

8. The Settlement Agreement is hereby APPROVED in all other respects.

**DONE AND ORDERED** in Ft. Lauderdale, Southern District of Florida, this 14 day of November, 1998.

**PAUL HYMAN**

HONORABLE PAUL G. HYMAN, JR.  
UNITED STATES BANKRUPTCY JUDGE

Copies furnished to:  
Mark D. Bloom, Esq.

*(Attorney Bloom shall serve a conformed copy of this Order upon all parties set forth on the service list attached to the original of the Trustee's Motion and file a Certificate of Service of confirming same.)*