

AMENDED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF SOUTHBAY, A RESIDENTIAL SUBDIVISION

STATE OF FLORIDA
COUNTY OF ESCAMBIA

Southbay Homeowners' Association of Escambia County, Inc.
P. O. Box 36412
Pensacola, FL 32516

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RESTRICTIONS OF SOUTHBAY, A RESIDENTIAL SUBDIVISION

STATE OF FLORIDA
COUNTY OF ESCAMBIA

THIS DECLARATION, made this 18th day of May, 1994, by the legal and equitable owners (hereinafter referred to "Declarants") of the real property in Escambia County, Florida known as Southbay as more fully described hereafter.

W I T N E S S E T H

WHEREAS Article IV, Section 3 of the current Declaration of Covenants, Conditions and Restrictions of Southbay Subdivision as executed by Escambia Construction Company, Inc. and recorded in O.R. Box 3435 at Page 859 of the public records of Escambia County, Florida provides for the amendment of the Declarations by not less than two-thirds of the lot owners; and

WHEREAS the Declarants are the present owners of at least two-thirds of the lots in the subdivision and the real property more fully described herein; and

WHEREAS the Declarants desire to amend the current Declaration of Covenants, Conditions and Restrictions to better provide for the preservation of the values and amenities in the subdivision and for the maintenance of the entrance ways, landscaping, lighting, signage and other common facilities and, to this end, desire to subject the real property described herein together with such additions as may hereafter be made thereto, to the amended covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of the property and each owner thereof; and

WHEREAS the Declarants have deemed it desirable for the efficient preservation of the values and amenities in this subdivision to create an agency which should be delegated and assigned the powers of maintaining the said entrance way, landscaping, lighting, signage and other common facilities; administering and enforcing the covenants and restrictions; collecting and disbursing the investments and charges hereinafter created; and

WHEREAS the Declarants have caused to be incorporated under the laws of the State of Florida a corporation not for profit known as the "Southbay Homeowners' Association, Inc." hereinafter referred to as the "Association" for the purpose of exercising the functions aforesaid; now, therefore, except for that portion described in Article I, Section 4 below, Declarants declare that all of the properties described herein shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or for any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1. Association. "Association" shall mean and refer to Southbay Homeowners' Association, Inc., a Florida not-for-profit corporation, its successors and assigns.

Section 2. Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee-simple title to any Lot in Southbay, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. Properties. "Properties" shall mean and refer to that certain real property described in Exhibit "A" attached hereto and platted as Southbay, except for the portions referred to as Parcel "D" and Lot 1, Block A as referred to on the Southbay Plat as recorded.

Section 4. Lot. "Lot" shall mean and refer to each of the platted lots shown upon any recorded subdivision map of Southbay with the exception of the Common Area, those lands dedicated to a governmental entity or authority and those parcel referred to as Parcel "C" and Lot 1, Block A as referred to on the Southbay Plat as recorded.

Section 5. Common Area. "Common Area" shall mean and refer to all real property (including the improvements) now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is designated as Parcel "A", Parcel "B" and Parcel "C" as shown in Exhibit "A" hereto.

Section 6. Exception. The above notwithstanding, these Restrictions do not apply to that portion of the platted properties referred to as Parcel "C" and Parcel "D" on the plat of Southbay.

ARTICLE II GENERAL PROVISIONS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, governmental body or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of the members agreeing to such dedication or transfer has been recorded and unless written notice to the proposed action is sent to every member not less than thirty (30) days and not more than sixty (60) days in advance; provided however that for a period of two (2) years from the date of recording this Declaration, Declarants may without action of the Association grant such subsurface utility easements, licenses or the like, across, to or under all or any portion of the Common Area which Declarants, in its sole discretion, deems appropriate or necessary for the benefit of any or all Owners.

Section 2. Grant/ Reservation of Easements.

A. Declarants do hereby grant a non-exclusive perpetual easement and right of ingress and egress across, under and to the Common Area unto each and all law enforcement, fire fighting and postal or delivery organizations, and to any other persons, organizations or entities who, in the normal course of their operation, respond to public or private emergencies or who provide public or private utility services.

B. Declarant, for itself, its successors and assigns, does hereby reserve a non-exclusive perpetual easement and right of ingress and egress across, under and to the Common Area for purposes of construction thereon of subdivision improvements, sale of lots and such other purposes and uses as Declarants deem appropriate or necessary in connection with the sale and development of lots within Southbay.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. Voting. The Association shall have two classes of voting membership:

CLASS A: Class A members shall be the Owners with the exception of the Declarants. Each Class A member shall be entitled to one vote for each lot owned.

When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

CLASS B: The Class B member(s) shall be the Declarants and the Declarants shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) On January 1, 1999.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each lot in which it holds the interest required on membership under Section 1.

The Declarants shall not exercise its voting rights granted to it under this Article in an unreasonable manner, nor in such a way as to cause undue hardship upon any Owner.

It is expressly understood that operation and maintenance of the subdivision street lights are the responsibility of the Association.

At such time that the Association is created, the Association undertakes the duty to provide liability insurance, at its expense, for the common areas of the subdivision including Parcel "A" and Parcel "B" as reflected in the recorded plat.

Annexation of additional properties and dedication of common areas requires HUD/VA prior approval as long as there is a Class B membership.

ARTICLE IV ARCHITECTURAL CONTROL

Section 1. Single-Family Residences. Except as provided below, no lot in Southbay shall be used except for single-family residential purposes. Except as specifically provided herein, no lot shall be used for commercial, trade, public amusement, public entertainment or business purposes of any kind or character. No building shall be erected, altered, placed or permitted to remain on any lot other than one, detached, single-family dwelling, not to exceed two stories in height and a private garage. Owners of Lots numbered 40 through 79 as identified on the recorded Plat of the subdivision must erect a private garage for at least one but not more than three vehicles. All other lot owners must erect a private garage for at least two but not more than three vehicles. As long as the Declarants continue to own a lot, Declarants may use any lot for a model home and/or sales office and such improvements located by the Declarants on such lots need not comply with any of the restrictions relating to residential structures as long as it is used as a sales office.

Section 2. Minimum Footage. With regard to Block A, Lots numbered 40 through 79 as identified on the recorded plat of Southbay subdivision, no one-story residential structure shall be erected or placed on any such lot with a floor area of less than 1,200 square feet, exclusive of open porches, carports and garages, and no residential structure with more than one story shall be erected or placed on any such lot with a ground floor area (first habitable floor) of less than 450 square feet and a total floor area of less than 1,200 square feet, exclusive of open porches, carports and garages.

With regard to all other lots in Southbay, no one-story residential structure shall be placed on any lot with a floor area of less than 1,500 square feet, exclusive of open porches, carports and garages and no residential structure with more than one story shall be erected or placed on any lot with a ground floor area (first habitable floor) of less than 600 square feet and a total floor area of less than 1,500 square feet, exclusive of open porches, carports and garages.

Section 3. Architectural Control Board. No residential structure, fence, wall, mailbox, driveway or other structure or improvement of any nature whatsoever shall be commenced, placed, or altered on any Lot until the design, location, plans, specifications and plot plan showing the location of such structure or improvement have been improved in writing as to the quality of workmanship and materials, harmony of exterior design with the requirements of these restrictions, and with existing structures and location with respect to typography and finished grade by the Declarants, its successors or assigns or a majority vote of the Architectural Control Board comprised of three owners which may be appointed by Declarants at its sole discretion. Should Declarants appoint such an Architectural Control Board and any owner either die, resign or otherwise become unable to serve as a member of the Architectural Control Board, for any reason whatsoever, the remaining members shall appoint a successor member to the Board. As long as there is a Class B membership, neither the Architectural Control Board nor the Architectural Review Representative shall receive any compensation for services rendered and performed pursuant to this covenant other than from the Developer. If said design, location, plans, specifications and plot plan are not approved or disapproved within thirty (30) days after they have been submitted in writing, or in any event, if no action to enjoin the construction has been commenced prior to its completion, approval will not be required and the related covenants shall be deemed to have been complied with fully. At such time as there is no longer a Class B membership, the Association shall have the power through a duly recorded written instrument to change the Architectural Control Board or the Architectural Review Representative or withdraw from or restore to it or them any powers or duties.

The powers and duties set forth in this paragraph and delegated to Declarants of the Architectural Control Board shall cease on or after January 1, 2006. Thereafter, the approval described in this covenant shall not be required unless prior to that date a written instrument shall be executed by the record owners of a majority of said lots and duly recorded appointing a representative or representatives who shall thereafter exercise the same powers previously exercised by Declarants or the Architectural Control Board.

Section 4. Setback Lines. No residential structure shall be erected on any building lot in the subdivision which does not conform to the setback lines, if any, drawn on the recorded plat of Southbay and the following setback lines:

- (a) In no event shall any building be located nearer than eighteen (18) feet to any side street line;
- (b) The minimum non-street side yard shall be ten percent (10%) of the lot width at the front of the building setback line or a minimum of ten (10) feet; and
- (c) The minimum rear setback line shall be twenty-five (25) feet; and
- (d) The minimum front setback line shall be twenty-five (25) feet.

Except for the side yard setback, the foregoing setback limitations may be changed by up to five (5) feet by a written waiver executed by the Declarants or the Architectural Control Board.

Section 5. Fences. No fences or walls shall be constructed and no hedge shall be planted until its design, construction and location are approved by the Architectural Control Board or Architectural Review Representative.

No fence or wall may be constructed and no hedge planted nearer to the front lot line than the rear of the residential structure, nor, if a corner lot, nearer to the side street than the side-street building setback line provided for above. This restriction does not apply to any growing fence or hedge which does not exceed three (3) feet in height.

On Block F, Lots 1, 3 and 4, 6 through 17, Block A, Lots 28 through 37, 39 and 42 through 59, no fences or walls shall be constructed and no hedge shall be planted on the rear lot lines that exceed four (4) feet in height. Fences shall be of a decorative nature such as a picket fence, brick or stucco fence or growing hedge, kept trimmed to a maximum of four (4) feet in height, or a decorative wood rail fence.

Section 6. Developer-Owned Lots. In order to allow the connection of the roads in the property with any adjacent property that Developer may hereafter purchase for Development (and as an appurtenance thereto), Developer may at any time, construct a road upon any of the lots owned by Developer without consent of any property owner or the Architectural Control Board, its successors or assigns.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. General Covenants to Pay Assessments. In order to fulfill the terms, provisions, covenants and conditions contained in this Declaration, as well as to maintain, operate and preserve the Common Area for the recreation, use, safety, welfare and benefit of the Owners, the Declarants, for each Lot owned within the properties, hereby covenants, and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association all assessments as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees incurred by the Association which are incident to the collection of the assessment or enforcement of the lien, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made from the time the assessment is due. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who is the owner of such property at the time such assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All properties dedicated to and accepted by a local government entity or authority, and the Common Area, shall be exempt from the assessments created herein. However, no land or improvements devoted to single or family occupancy shall be exempt from said assessments.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to provide for the construction, care and maintenance of the Common Area, including but not limited to the private roads, curbs, subdivision entrance way, street lights, etc. and for payment of ad valorem real property taxes that may be assessed against the Common Area. The Association shall fund in a reserve account such sums as it determines in good faith are necessary and adequate to make periodic repairs and improvements to the private roads in the subdivision or other portions of the Common Area.

Section 3. Amount of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the amount of the maximum annual assessment for each Lot shall be Seventy-five Dollars (\$75.00) per year. From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership. From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum. As long as there is Class B membership in the Association, the Declarant shall be exempt from payment of assessments.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment per Lot applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area maintained by the Association, including but not limited to the private roads, curbs, subdivision entrance way, etc., provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of each class of Owners who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of the amount due and the due date of any special assessment shall be mailed postage prepaid to every Owner subject thereto.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent by United States Mail, postage prepaid, to all Owners, as of thirty (30) days prior to the date of mailing each notice, not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-third (1/3) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on an installment basis as determined by the Board of Directors of the Association.

Section 7. Date of Commencement of Annual Assessments and Due Dates. The annual assessment provided for herein shall be assessed on a calendar year basis and shall be due and payable on such date as set forth by resolution of the Board of Directors of the Association and shall commence as to all lots on the first day of the month following the conveyance to the Lot Owner. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association stating what assessments on a specified Lot are outstanding and the due date for such assessment. A properly executed and sealed certificate of the Association as to the status of any assessment on a Lot is binding on the Association as of the date of its issuance.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any annual or special assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowed by law. The Association may bring an action at law against the Owner personally obligated to pay the same and/ or foreclose the lien against the property. No Owner may waive or otherwise escape personal liability for the assessments provided for herein by non-use of a Common Area or abandonment of the Owner's Lot.

Section 9. Subordination of Lien to Mortgages. The lien of the easements provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding or conveyance in lieu thereof, shall extinguish the lien of such assessments as to payments which come due prior to such foreclosure. No other sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or for the lien thereof.

**ARTICLE VI
ADDITIONAL RESTRICTIONS**

Section 1. Odd Lots. If one Lot and all or a portion of an adjacent Lot within the Subdivision are utilized for one single family residential purpose, the set backs required herein shall be measured from the boundary lines of the entire building plat being then and there utilized and devoted to the single family residence. Two fractional parts of adjacent Lots may be utilized as a single family residential building plot, provided that no plot shall contain fewer square feet than the smallest platted Lot within the Subdivision, nor have a width, at the building set back line, of less than forty (40) feet.

Section 2. Noxious Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done on it that may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats or other household pets may be kept; provided, however, that they are not kept, bred or maintained for any commercial purposes, and that they are not kept in such numbers as to be an annoyance or nuisance to other owners in the Subdivision and that they are not permitted to run at large.

Section 4. Signs. No sign of any kind shall be displayed to the public view on any Lot except one sign of reasonable size (not to exceed five square feet) advertising the property for sale or rent or used by a builder to advertise the property during the construction and sales period. This provision shall not apply to the Declarants who may utilize a structure as a model home or sales office.

Section 5. Utility Easement Reservation. Easements for installation and maintenance of utilities are reserved where necessary for such installation and maintenance.

Section 6. Satellite Dishes. No satellite dish may be maintained on any lot except with advanced written permission of the Declarants or the Architectural Control Board or the Architectural Review Representative. In any such case, such satellite dish or antenna shall not be placed on any lot nearer to the front lot line than the rear of the residential structure or, if a corner lot, nearer to the side street than the setback line as shown on the recorded plat of the subdivision.

Section 7. Vehicular Storage. Every residential structure constructed shall contain, at a minimum, a single-car garage (Lots 40 through 79) or a double garage (all other lots). In addition, each residential structure shall contain adequate storage for the parking and/or storing of automobiles, boats, trailers, campers, motorcycles, motorbikes and all other like vehicles and equipment. No trailer, mobile home, camper, motor home, motorbike, motorcycle, motorscooter, boat, boat trailer, house trailer, tractor or commercial vehicle of any kind or any other vehicle, machine, equipment or apparatus other than operating passenger vehicles shall be parked in any driveway or on any lot in the subdivision except in a garage or other appropriate storage area approved in advance by the Declarants or the Architectural Control Board. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

Section 8. Environmental Regulation. All Federal laws, laws of the State of Florida, laws and ordinances of Escambia County and any related rules and regulations of their respective administrative agencies now and hereafter in effect with regard to sewage disposal, water supply, sanitation and land use are incorporated herein and made a part hereof.

Section 9. Pollutants. In the interest of public health and sanitation and in order that the property described above and all other land in the same locality may be benefitted by a decrease in hazards of pollution and for protection of water supplies, recreation, wildlife and other public uses of storm drainage facilities, no owner or occupant of any Lot in the Subdivision shall use such Lot for any purpose that would result, directly or indirectly, in the draining or dumping into any drainage system, any refuse, sewage or other material which might tend to pollute said waters.

Section 10. Maintenance. All structures, improvements, yards, drives and landscaping must be diligently and properly maintained so as to secure the aesthetics of a good, clean residential neighborhood. No weeds, underbrush or other unsightly growths shall be permitted to grow or remain on any lot or part of a lot and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere on a lot. Such maintenance shall include fallen trees, limbs or other waste. Each owner shall maintain and keep clean the unpaved portion of the county's right-of-way abutting the owner's lot.

Section 11. Clotheslines and Trash Cans. No clothes lines visible from the street or from adjacent subdivision property, or other items detrimental to the appearance of subdivision property shall be permitted on any lot or building site. Trash and garbage cans must be shielded from view from the street or adjacent property except during the hours of normal garbage collection.

Section 12. On-Street Parking. On-street overnight vehicle parking is strictly prohibited.

Section 13. Drainage Green Belt Areas. The natural flow of storm water along and over those areas denoted as drainage green areas on the recorded plat shall not be impeded in any way.

Section 14. Construction Completion. Any building or residence constructed on any lot must be completed within one (1) year from the date of commencement of construction.

Section 15. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date that this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by the Declarants during the first year if such amendment is necessary to obtain FHA or VA approval. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than the Owners of ninety percent (90%) of the Lots and, thereafter, may be terminated or amended by an instrument signed by not less than the Owners of seventy-five percent (75%) of the Lots. Any termination or amendment must be recorded to be effective. As long as there is a Class B membership, amendment of this Declaration shall require prior HUD/VA approval.

Section 16. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 17. Enforcement. The Association or any Owner shall have the right to enforce, by a proceeding at law or equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any such action or suit shall be entitled to recover damages caused by any violation including, but not limited to, court costs and reasonable attorney's fees.

Section 18. Non-Forfeiture. In no event and under no circumstances shall a violation of any covenant or restriction herein cause or result in a forfeiture or reverter of title.

Section 19. Drilling. No exploration or drilling for oil, gas, or other minerals and no oil refineries of any kind shall be permitted or allowed on any lot in the subdivision.

Section 20. Maintenance of Retention Area. It is understood that the Association will maintain the retention areas free of all debris and insure proper drainage. It is further understood that Association will obtain the necessary and proper liability insurance for the common areas, including the retention pond areas and maintain such insurance until such areas may be sold or title transferred to a subsequent owner. It is further understood that Declarants will maintain Parcel "D" until said Parcel "D" is sold and title transferred to subsequent owners.