

**UNOFFICIAL
AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
THE BOARDWALK AT CAPE SAN BLAS**

To conserve the natural beauty of the Boardwalk at Cape San Blas Community and to enhance and protect the value, desirability and attractiveness of such property, the following protective covenants and restrictions are hereby set forth by The Boardwalk at Cape San Blas Homeowners Association, Inc., a Florida not-for-profit corporation (the "Association"). This document constitutes a revitalized revision, restatement, and codification of the prior restrictive covenants as recorded in Book 104, Page 843; Book 108, Page 248; Book 154, Page 303; Book 154, Page 305; and Book 154, Page 415, of the records of Gulf County, Florida, revised only as allowed pursuant to Section 720.405, *Florida Statutes*.

NOW, THEREFORE, the Association hereby declares that all of the Property, as described below, 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 property and be binding on all parties having any right, title or interest in the property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1
DEFINITIONS

Section 1. "Association"

shall mean and refer to The Boardwalk at Cape San Blas Homeowners Association, Inc., a Florida corporation not for profit, its successors and assigns.

Section 2. "Owner"

shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property"

shall mean and refer to that certain real property more particularly described as follows:

See **Exhibit A** attached hereto and made a part hereof, in addition to Lots 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, Block 3, Surfside Estates Unit 1, as per the plat thereof recorded in the public records of Gulf County, Florida, at Plat Book 2, page 18. _

Section 4. "Common Area"

shall mean all of the Property to be owned by the Association for the common use and enjoyment of the Owner of lots. The Common Area is legally described on Exhibit B attached hereto and

made a part hereof. The Common Area includes the private streets, recreation area and all other areas as described on Exhibit B.

Section 5. “Lot”

shall mean and refer to the residential dwelling unit constructed upon any Lot.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

Section 1. Legal Description

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Gulf County, Florida, and is more particularly described in Exhibits A and A.1 attached hereto and made a part hereof; all of which real property shall be hereinafter referred to as the “Property.”

Section 2. Merger or Consolidation

Upon a merger or consolidation of another association with the Association, its Property, rights and obligations may, as provided in its Articles of Incorporation, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the property, rights and obligations of another association may be operation of law be added to the Property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the existing Property together with the covenants and restrictions established by any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration with the Property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership

Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall be a member of the Association. Notwithstanding anything else to the contrary set forth in this Section 1, any such person or entity who holds such interest merely as a security for the performance of any obligation shall not be a member of said Association.

Section 2. Voting Rights

Members shall be entitled to **one (1) vote for each Lot** in which they hold the interest required for membership by Section 1. *When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for such Lots shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.*

ARTICLE IV
COMMON AREA

Section 1. Obligation of the Association

The Association, subject to the rights of the Owner set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon, including furnishings and equipment related thereto, and shall keep the same in good, clean, attractive and sanitary condition, order and repair.

Section 2. Members' Easement of Enjoyment

Subject to the provisions herein, 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, and every member shall have a right of enjoyment in the Common Area.

Section 3. Extent of Members' Easement

The members' easements of enjoyment created thereby shall be subject to the following:

- A. The right of the Association to establish reasonable rules and to charge reasonable admission and other fees for the use of the Common Area;
- B. The right of the Association to suspend the right of an Owner to use the facilities for any period during which any assessment against his Lot remains unpaid for more than thirty (30) days after notice;
- C. The right of the Association to suspend the right of a member to use the said facilities for a period not to exceed sixty (60) days for any other infractions of this Declaration;
- D. The right of the Association to mortgage any or all of the facilities constructed on the Common Area for the purposes of improvements or repair to Association land or facilities pursuant to approval of the Class B member and of two-thirds ($\frac{2}{3}$) of the vote of the Owners who are voting in person or by proxy at a regular meeting of the Association or the meeting duly called for this purpose;
- E. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority 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 ($\frac{2}{3}$) of the Owners, agreeing to such dedication or transfer, has been recorded.

Section 4. Damage or Destruction of Common Area by Owner

In the event any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner does hereby authorize the Association to repair said damaged area and the Association shall repair said damaged area in a good workmanlike manner in conformity with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. The amount necessary for such repairs shall become a special assessment upon the Lot of said Owner.

Section 5. Public Easement

Fire, police, health and sanitation, park maintenance and other public service and personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across roadways, as shown on the attached **Exhibit B**.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments

The Owner of any Lot by acceptance of a deed transfer, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: 1) Annual assessments or charges; and 2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on and continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Annual assessments may include reasonable reserves as the Association may deem necessary, for the future repair, maintenance or improvement of the Common Area.

Section 2. Purpose of Assessments

The assessments levied by the Association shall be used exclusively for the maintenance of the Common Area, for capital improvements and to promote the health, safety and welfare of the members of the Association and their families residing with them, their guests and tenants.

Section 3. Basis for Assessment

Each Unit which is certified for occupancy shall be assessed at a uniform rate and shall be subject to one-fortieth (1/40) of the entire assessment.

Section 4. Date of Commencement of Annual Assessments: Due Dates

The annual assessments provided for herein shall commence as to all Units on the first day of the month. Each Unit Owner shall be obligated to pay assessments for his Unit commencing on the day he acquires title for same and said assessment shall be collected from said Unit Owner on a periodic basis no more frequently than monthly. The Board of Directors shall thereafter fix the amount of the annual assessments against each Unit at least thirty (30) days in advance of each assessment. Written notice of annual assessment shall be sent to every Owner. The due dates may be altered 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 setting forth whether the assessment due on a specified Lot has been paid.

Section 5. Effect of Nonpayment of Assessments: Remedies of the Association

Should any assessment not be paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and the cost of collection thereof as hereinafter provided, become a continuing lien on the property of the delinquent Owner which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives,

successors and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date when due at the rate of twelve (12%) percent per annum and the Association may bring an action at law against the Owner personally obligated to pay the same and may record a claim of lien against the property on which the assessment is unpaid, or may pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such assessment attorneys' fees and costs of collection and in the event a judgement is obtained, such judgment shall include interest on the assessment as provided and a reasonable attorney's fee to be fixed by the court together with the cost of action, and the Association shall be entitled to such attorneys' fees in connection with any appeal of any such action.

The Board of Directors of the Association shall, from time to time, be permitted to fix late fees in reasonable amounts to cover the requisite bookkeeping, administration and collection required with regard to payments not paid within fifteen (15) days from the due date thereof.

It shall be the legal duty and responsibility of the Association to enforce payment of the assessments hereunder.

Section 6. Subordination of the Lien to Mortgages

The lien of the assessments provided for in this Article V shall be subordinate to the lien of any mortgage recorded prior to the recordation of the claim of lien, which mortgage encumbers any lot to any institutional lender and which is now or hereafter placed upon any property subject to assessments; provided, further, that any mortgagee when in possession or any receiver, and in the event of a foreclosure, any mortgagee who acquires title at a foreclosure sale, or any mortgagee acquiring a deed in lieu of foreclosure shall not be responsible for the payment of any assessment charges whether they have accrued prior to the date upon which possession and/or title is so obtained or whether such assessments are imposed thereafter except during such time that the residential Unit is leased to a third party. Any third party purchaser at a foreclosure sale or from the mortgagee in title subject to the liability and lien of any assessment becoming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid assessment which cannot be collected as a lien against any lot by reason of the provision of this Section 6 shall be deemed to be an assessment divided equally among, payable by, and a lien against all lots subject to assessment by the assessing association, including the lots to which the foreclosure, or conveyance in lieu of foreclosure, took place.

ARTICLE VI **ARCHITECTURAL AND LANDSCAPING CONTROL**

Section 1. The Architectural Review Board

The Architectural Review Board consisting of three (3) or more persons shall be appointed by the Board of Directors.

Section 2. Purpose

The Architectural Review Board shall regulate the external design, appearance, use, location, landscaping and maintenance of the Property and of improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship amongst structures and the natural vegetation and topography.

Section 3. Conditions

No improvements, alterations, repairs, change of paint colors, excavations, change in grade or other work, change in landscaping or any other change which in any way alters the exterior of any Lot or Common Area or the improvements located thereon from its natural or improved state existing on the date such Property was first conveyed in fee by the Developer to an Owner shall be made or done without the prior approval of the Architectural Review Board. No building, fence, wall, residence or other structure shall be commenced, erected, maintained or improved, altered made or done without the prior written approval of the Architectural Review Board.

Section 4. Procedure

In the event the Board fails to approve, modify or disapprove in writing an application within thirty (30) days after plans and specifications in writing have been submitted to it, in accordance with the procedures adopted by the Board from time to time, approval will be deemed granted. The applicant may appeal an adverse Architectural Review Board decision to the Board of Directors who may reverse or modify such decision by a two-thirds ($\frac{2}{3}$) vote of the Directors.

ARTICLE VII **USE RESTRICTIONS**

In addition to all other covenants contained herein, the use of the Property and each Lot thereon is subject to the following:

Section 1.

No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single-family dwelling not to exceed one and one half ($1\frac{1}{2}$) stories in height. A one and one-half story, single-family dwelling shall be defined as a dwelling where the top floor has no more than seventy-five (75%) of the square footage of the main floor.

Section 2.

No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such nonresidential purposes. Further, the Common Area may be used for nonresidential purposes such as the operation of a lounge, restaurant or other food service establishment, vending machines and other uses attendant to the use of the Common Area as a recreation facility, all of which shall be primarily for the benefit of the Owners.

Section 3.

No noxious or offensive activity shall be carried on within any Unit or any Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 4.

No structure of any temporary character, tent, mobile home or recreational vehicles shall be permitted on any Lot at any time as a residence, either temporarily or permanently.

Section 5.

No sign or billboard of any kind shall be displayed to the public view on any portion of the Common Area, or on any Lot or any Unit, except signs used by Developer or its Agents to advertise the property or rent during the construction and sales periods.

Section 6.

No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit. Unit Owners shall be permitted to own and keep dogs, cats and other pets, including birds such as canaries or parakeets and fish, such as goldfish or tropical varieties, which may be kept by a Unit Owner in the Owner's respective Unit provided that no such dogs, cats, birds and/or fish shall be raised for commercial purposes, and provided that they do not become a nuisance or annoyance to any neighbor. All dogs shall be kept on a leash by the respective Owners when out of the Owners' Units. Owners shall only walk their dogs and/or cats in or on their respective Units or areas set aside and designated for such purpose by the Board of Directors.

Section 7.

No trucks or commercial vehicles (except during the period of approved construction), campers, mobile homes, motor home, boats, house trailers, boat trailers, or trailers of every other description shall be permitted to be parked or to be stored at any place on the Common Area. The parking of any vehicle shall be only in those spaces specifically provided for on each Lot.

Section 8.

All facilities for the storage or disposal of garbage and trash shall be kept in a clean and sanitary condition.

Section 9.

No clothing, laundry or wash shall be aired or dried within any portion of the Unit or on a Lot which is exposed to view from any other Unit or from any other part of the Common Area.

Section 10.

Aluminum foil may not be placed on windows or glass doors of Units.

Section 11. Fuel Storage Tanks

No fuel or gas storage tanks shall be permitted above ground on any Lot. All such tanks must be installed completely underground.

Section 12. Antennas

Unless prior written approval has been obtained from the Board and the Developer, no exterior radio, television or any other electronic antenna or aerial may be erected or maintained anywhere upon any of the Property, except for such master antenna or antennas as may be installed by Developer in connection with the initial development of the Property.

Section 13. Leasing

Any Unit may be leased by the Owner thereof provided that such lease shall be subject to the provisions of this Declaration, the Articles of Incorporation and the By-Laws, and a copy of the lease is furnished to the Directors of the Association. Further, the Owners shall be responsible for any damage created by the tenant arising out of the actions of the tenant, its agents or guests, or arising out of a nuisance or a violation of this Declaration, the Articles of Incorporation and By-Laws at any time.

Section 14. Exterior Maintenance

- A. Each Owner shall maintain the structures and grounds on said Owner's Lot, at all times in a neat and attractive manner. Upon the Owner's failure to do so the Association may at its option, after giving the Owner ten (10) days' written notice sent to his last known address, or the address of the subject premises have the grass, weeds, shrubs and vegetation cut when and as often as the same is necessary in the Association's judgement, and have dead trees, shrubs and plants removed from such Lot, and replaced, and may have any portion of the Lot resodded or landscaped, and all expenses of the Association under this sentence shall be a lien and charge against the Lot on which the work was done and the personal obligation of the then Owner of such Lot. Furthermore, if the Association has not elected to provide the exterior maintenance hereinafter referred to, then upon the Owner's failure to maintain the exterior of any structure in good repair and appearance, the Association may, at its option, after giving the Owner thirty (30) days written notice sent to his last known address, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot and shall constitute an assessment against the Lot on which the work was performed, collectible in a lump sum and secured by the lien against the Lot as herein provided.
- B. The Association, through action of its Board of Directors taken by not less than two-thirds ($\frac{2}{3}$) favorable vote of such Board, may provide exterior maintenance upon each Lot, in addition to that maintenance to be provided by the Association for Common Area. Said maintenance shall include, but not be limited to, the following: paint, repair, replace and care for roofs, gutters, down spouts and exterior building surfaces and maintain those portions of the Lots over which easements are created for the installation and maintenance of utilities as provided for herein. The cost of the exterior maintenance so approved by the Association under this subparagraph B shall be assessed against the Lot upon which such maintenance is done and shall constitute an annual maintenance or charge. The Board of Directors of the Association shall estimate the cost of any such exterior maintenance for each year and shall fix the assessment for each year, but said Board shall thereafter, make such adjustment with the Owner as is necessary to reflect the actual cost of such exterior maintenance.

For the purpose solely of performing the exterior maintenance authorized by this Declaration, the Association, through its duly authorized agents or employees, or independent contractors, shall have the right after reasonable notice to the Owner, to enter upon any Lot at reasonable hours to repair or maintain property.

Section 15. Easements

The Developer hereby reserves for itself, its successor and assigns the right to grant easements for installation and maintenance of utilities, over any portion of the Property, provided that any such easement granted over a Lot previously conveyed shall not affect any permanent structure constructed on said Lot nor unreasonably interfere with the use of said Lot. The area of each Lot covered by an easement and all improvements in the area shall be maintained continuously by the Owner of the Lot or by the Association, if it so decides pursuant to the terms of this Declaration, except for the installations for which a public authority or utility company is responsible. Public utility companies and other utility companies and the Developer, and their successors and assigns, shall have a perpetual easement for the installation and maintenance, all underground, of water lines, sanitary sewers, storm drains, gas lines, electric and telephone lines, cable and conduits under and through said utility easements, and under and through that portion of the Lot beyond the residential dwelling structure, as such structure may from time to time be located. Any damage caused to pavement, driveways, drainage structures, sidewalks, other structures or landscaping of the installation and maintenance of such utilities shall be promptly restored and repaired by the utility whose installation or maintenance caused the damage. All utilities within the subdivision, whether in street right-of-ways or utility easements, shall be installed and maintained underground.

Each Unit, Lot and Common Area shall be subject to existing easements for public utilities purposes and the utilities and applicable governmental agencies having jurisdiction thereover and their employees and agents shall have the right of access to any Unit, Lot or the Common Area in furtherance of such easements.

Easements shall be kept free from any structure, landscaping or other material which may damage or interfere with the installation and maintenance of such utilities.

Section 16. Damage to Buildings

In the event a dwelling Unit is damaged, through act of God or other casualty, unless the insurance proceeds received in respect thereto are required by an institutional mortgagee in reduction of its mortgage, that Lot Owner shall promptly cause his dwelling Unit to be repaired and rebuilt substantially in accordance with the architectural plans and specification. It shall be the duty of the Association to enforce such repair or rebuilding of the dwelling Unit to comply with this responsibility. To accomplish the requirements of this Section, each Owner shall insure his dwelling Unit at the highest insurable value.

ARTICLE VIII
TERM AND AMENDMENTS**Section 1. Term**

The covenants and restrictions contained in this Declaration shall run with and bind the land for a period of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless cancelled by a vote of ninety (90%) percent of the Owners of record. This Declaration may be only terminated prior to the expiration of the twenty (20) years, or the expiration of any ten (10) year extension period by the consent of all Owners of record in the development. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than two-thirds ($\frac{2}{3}$) of the then

Owners of record in the development. All amendments shall be recorded in the Public Records of Gulf County, Florida. No amendment shall change a Unit Owner's percentage of the sharing of the common expenses or common surplus, nor the voting rights appurtenant to any Unit, unless the record Owner(s) thereof and all record owners of mortgages or other voluntarily placed liens thereon shall join in the execution of the amendment. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or institutional lenders without the consent of the Developer and lenders in each instance.

ARTICLE IX **GENERAL PROVISIONS**

Section 1. Severability

Invalidation of any one of the provisions contained in this Declaration by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

Section 2. Enforcement

The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all provisions of this Declaration, the Articles of Incorporation and By-Laws. Additionally, the Association is granted an easement over the Property of each Unit Owner for the purpose of enforcing the provisions of same, and may go upon the Property of the said Unit Owner to remove or repair any existing cause of a violation of these provisions. In the event the Association, after notice to the Unit Owners and failure to cure by the Unit Owner, does in fact exercise its rights to cure said defect, then that event, all costs, including but not limited to court costs and reasonable attorneys' fees incident to said action by the Association, shall become the personal obligation of the Unit Owner and be imposed as a lien against the Unit in the same fashion as if said sums represented monies due for unpaid assessments.

Section 3. Insurance

A. The Association through its Board of Directors shall purchase an insurance policy or policies insuring the buildings and other improvements erected upon the Common Area, including all fixtures and personal property thereon against loss or damage by fire and hazards covered by windstorm and extended coverage endorsement; such policy shall be in an amount which shall be equal to the maximum insurable replacement value as determined annually by the insurance carrier, or by the Directors of the Association in the event the carrier fails or refuses to make such determination. The policies shall be purchased in the name of the Association for the benefit of the Association, the Unit Owners and their mortgagees as their interests may appear and provisions shall be made for the issuance of mortgagee endorsements to the mortgagees of respective Units. Further, the Association through its Board of Directors shall purchase an insurance policy covering public liability as to the Common Area in such amounts as shall be determined by the Board of Directors, in its sole discretion, from time to time.

In the event of loss under the policy or policies provided in this subparagraph A, the Association shall use the net insurance proceeds to repair and replace damage to the real or personal property covered by said policy or policies with any excess to be retained by the Association and used in a connection with the payment of common expenses. If the insurance proceeds are insufficient to

cover the loss, the Association shall levy an assessment against all Owners in accordance with this Declaration to cover any deficiency. Any reconstruction, repair or replacement shall be in accordance with the plans and specifications as finally amended, on file with the building department of the governmental agency having jurisdiction thereover.

B. The Association, upon the majority vote of the Directors, may provide and keep insurance for the protection of its Directors and Architectural Review Board.

C. Each Unit Owner shall keep and maintain at all times insurance insuring the buildings and improvements erected on the Owner's Lot against loss or damage by fire and hazards covered by windstorm and extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value of the improvements. Further, each Owner agrees to keep in effect policies of insurance for public liability insuring the Owner against all claims and demands made by any person or persons for injury received in connection with the use, operation and maintenance of the improvements on the Owner's Lot.

Section 4. Effective Date

This Declaration shall become effective upon its recordation in the Public Records of Gulf County, Florida.

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