

5 MIN. RETURN

**First Amendment to Declaration of Covenants,
Conditions and Restrictions for Southbank, Phase I**

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Southbank (the "First Amendment") is made this 31st day of July, 2008, by the Southbank Homeowners Association, Inc., a Florida Non Profit Corporation (the "Association").

WITNESSETH:

WHEREAS, that certain Declaration of Covenants, Conditions and Restrictions for Southbank was recorded on July 13, 1999, in Official Records Book 1806, Page 0235-0240, of the Public Records of Clay County, Florida (the "Declaration"); and

WHEREAS, Coursey Development Company (the "Developer") has assigned to the Association, as its successor, all rights and authority to amend the Declaration in accordance with section 30.

NOW, THEREFORE, in consideration of the premises and other good and valuable considerations paid, the Association hereby amends the Declaration in accordance with the provisions set forth hereafter.

1. DELETION OF PARAGRAPHS RELATING TO ARCHITECTURE CONTROL COMMITTEE. Paragraphs labeled 9, 10, 11, and 12 of the Declaration are deleted in its entirety. Responsibilities of Lot Owners in regards to the architecture control committee are set forth herein this First Amendment in paragraph 3, titled Architectural Control.
2. ADDITION OF HOMEOWNERS ASSOCIATION SECTION. A section is added after paragraph 32, at the end of the Declaration, as follows:
"Homeowners Association Establishment

The Southbank Homeowners Association, Inc., a Florida Non Profit Corporation (the "Association") has been established to service the needs of the owners of Said Plat. The Developer has assigned, as its successor, all rights to the Association. Every current and subsequent owner of a Lot ("Owners"), which is subject to this Declaration, shall be a member of the Association. The Association shall duly elect a Board of Directors (the "Board") of the Association as well as officers to govern and carry out the daily operational duties of the Association in accordance with the Bylaws of the Association.

Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to this Declaration. Ownership of such lot shall be the sole qualification for membership.

Section 1: Membership and Voting Rights. A member shall be all Owners of a Lot and shall be entitled to one vote for each Lot in which they hold an interest. 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.

Section 2: Covenants for Maintenance Assessments. The Association, for each Lot owner within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree 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. Any annual assessment and/or special assessment not paid within 30 days of the same becoming due shall accrue interest at the highest legal rate allowable, plus an administrative late fee of \$25 per month until paid in full. Further, the owner shall be liable for costs of collection, including but not limited to reasonable attorney's fees and other out-of-pocket costs. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

Section 3: Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property, including but not limited to the following:

- (a) For the improvement and maintenance of the Common Area;
- (b) For the maintenance, improvement and operation of the surface water or stormwater management systems including but not limited to work within retention areas, drainage structures and drainage easements, surface and subsurface drainage systems, lakes or ponds and all associated drainage structures serving or providing drainage of all Property. Subject to the rights of the Clay County, Florida, and other governmental authorities, the Association shall have the exclusive right to determine and control water quality and the growth and removal of plants, fungi, waterfowl and animals within the lake(s) or pond(s) and wetlands. This subsection is not intended to supersede any provisions contained in this Declaration or elsewhere that require lakefront lot owners to maintain the embankment adjacent to the lake or pond on their lots, except the Association shall be responsible for maintenance of any shoreline embankment separated by the lake or pond from the portion of the Owner's lot upon which the house is constructed;

- (c) To maintain in good condition and repair any entrance signs and any landscaping serving any entranceway to the Property described herein, and to maintain any Median areas or other landscaped areas which are within the rights of way as shown on the plat.
- (d) To do anything necessary and desirable, in the judgment of the Association, to keep the Property neat and attractive or to preserve or enhance the value thereof, or to eliminate fire, health or safety hazards, or which, in the judgment of the Association, may be a benefit to the Owners of the Property.

Section 4: Annual Assessment. The annual assessment at the filing of this instrument shall be one hundred and fifty dollars and no/100 (\$150.00) per year for each Lot. The annual assessment may be increased each year not more than twenty five percent (25%) above the annual assessment for the previous year without a vote of the membership. The maximum annual assessment may be increased above twenty five percent (25%) by a vote of two-thirds (2/3) of each of the members who are voting in person or by proxy, at a meeting duly called for this purpose, at which a quorum is present. The Association, in determining the common expenses, shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, replacement, and improvements to the property and common area, and such reserve fund shall be maintained out of regular assessments for common expenses.

Section 5: Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only to meet bona fide expenses of the Association not anticipated to be incurred on a regular or annual basis, or to cover improvements upon a Lot which the Owner thereof is responsible to make in accordance with this Declaration, but has failed to make, or 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 Property or Common Area, if any, including fixtures and personal property related to thereto, provide that any such assessment shall have the assent of two-thirds (2/3) of the votes of the member who are voting in person or by proxy at a meeting duly called for this purpose, at which a quorum is present.

Section 6: Notice and Quorum for Action Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of members or of proxies

entitled to cast fifteen percent (15%) of all votes of membership shall constitute a quorum.

Section 7: Uniform Rate. Both annual and special assessments must be fixed at a uniform rate for all Lots. The assessments are annual and shall initially be collected annually, but the Board may later change the manner of collection to a monthly or quarterly basis, i.e. 1/12th or 1/4th of the annual assessment on each Lot payable each month or each quarter, respectively, as determined by the Board.

Section 8: Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence at the recording of this instrument. The first annual assessment shall be due August 1, 2008. Annual assessments will be due May 1st every year. After the 2008 assessment, the Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9: Effect of Non-payment of Assessments; Remedies of the Association. Any annual assessment and/or special assessment not paid within thirty (30) days of the same becoming due shall accrue interest at the highest legal rate allowable, plus an administrative late fee of \$25 per month until paid in full. Further, the owner shall be liable for costs of collection, including but not limited to reasonable attorney's fees and other out-of-pocket costs. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Further, the Association may record a lien against the Owner's Lot for a delinquent assessment, late fees, interest, cost of collections and reasonable attorney fees. The Association may bring an action at law against the Owner personally obligated to pay it and/or foreclose the lien against the Lot, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing, waiving or otherwise impairing the Association's lien, or its priority. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Property or Common Area, or abandonment of the Owner's Lot.

Section 10: Subordination of the Lien to Mortgages. The lien of the assessments provided for herein upon any Lot shall be subordinate to the lien of any first mortgage upon that Lot unless notice of the assessment lien is filed in the public records of Clay County, Florida, prior to the recording of such mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. A foreclosure sale, or any other transfer by an Owner, shall not, however, extinguish the personal liability of the Owner whose interest for any assessment upon the Owner's Lot which became due prior to the date of such sale. Any such delinquent assessments, which were extinguished pursuant to the foregoing provision, may be reallocated and assessed against the remaining Lots as a common expense.

Section 11. Exempt Property. All property dedicated to, and accepted by, a local public authority or utility company, and all property designated as Common Area shall be exempt from the assessment created herein, except no land or improvements devoted to dwelling use shall be exempt from assessments."

3. ADDITION OF ARCHITECTURE CONTROL SECTION. A section is added at the end of the Declaration, after Homeowners Association section, as follows:

"Architectural Control

Section 1: Architectural Review Committee. The Board shall appoint as a standing committee an Architectural Review Committee (the "Committee") composed of three (3) or more persons. Members of the Committee shall serve at the pleasure of the Board. No member of the Committee shall be entitled to compensation for services performed, but the Board may employ independent professional advisors to the Committee. Committee members need not be Owners.

Section 2: Approval Rights. The Committee, its legal representatives, successors and assigns, shall have the exclusive right to approve the site plan, architectural plans, specifications and materials for all building, structures, grading, landscaping and other improvements hereafter to be constructed on any Lot, including but not limited to buildings, fences, walls, exterior paint color changes, patios, verandas, utility buildings and driveways, regardless of their size or purpose or attachment to any existing residential building. No building, structure, grading, landscaping, fence or other improvement may be erected, placed, performed or remain on any Lot, unless and until a set

of building plans as defined below, and such other information with respect thereto as the Committee may require, is submitted to and approved in writing by the Committee.

Notwithstanding any absolute or exclusive right or obligation of the Committee set forth in this Declaration, the Board shall have the absolute and exclusive right to review all decisions of the Committee. If the Board does not reverse or alter the Committee's decision within fifteen (15) days of receipt of the decision, the Committee's decision shall stand as final. Any written decision by the Board is final subject only to the appeal rights set forth hereafter.

Section 3. Procedures. The Committee shall exercise its right of review and approval in the following manner:

- (a) An Owner or other party who desires to place or construct a building, structure, fence, landscaping or other improvement on a Lot or do any grading thereon shall submit two (2) complete sets of building plans, as described below, to the Committee.
- (b) The building plans must include (i) specifications showing the nature, type, shape, height, size, floor plan and exterior color scheme of the proposed development, (ii) drawings describing the location and orientation of the proposed development on the Lot, its approximate square footage, and its front, side and rear elevations, (iii) a list of construction materials for the proposed development, (iv) plans for any grading and landscaping, (v) the proposed parking layout, (vi) plans for handling trash and garbage, and (vii) a construction schedule for the proposed development. The Committee may require the submission of any information that the Committee, in its sole discretion, deems necessary to the formation of an informed judgment of the proposed project.
- (c) The Committee shall have the absolute right to refuse to approve any building, fencing, grading or landscaping plans or proposed improvements on any ground or grounds (including purely aesthetic considerations) which the Committee shall, in its sole discretion, deem to be sufficient.
- (d) The Committee shall have ten (10) working days after the date on which all plans, specifications and other required information are submitted to approve or disapprove a proposed development, and failure by the Committee to send or personally deliver written notice of approval or disapproval within this time period shall be deemed an approval of the proposed development, subject to the additional fifteen (15) day review period by the Board set forth in Section 2 above.

- (e) In the event that a development is approved, construction shall start promptly upon the receipt of a written notice of approval and shall be prosecuted to completion with diligence and in strict conformity with the plans and specifications upon which approval is based.
- (f) In the event that the development is disapproved, the written notice of disapproval shall state, with reasonable detail, the reason(s) for disapproval. If, in the sole opinion of the Committee, any defects in the plans and specifications of the proposed project can be satisfactorily cured, the written notice of disapproval shall also contain the Committee's recommendations for remedying the same.
- (g) An Owner whose development has been disapproved shall have the right to appeal the decisions of the Committee to the Owners in the following manner: upon receipt of a notification of disapproval, the aggrieved Owner shall furnish to the other Owners a copy of all materials submitted to the Committee as required by the above procedure. If the Owner is able to secure the approval of Owners of 51% of the Lots for the proposed development, the Owner shall submit the evidence of such approval to the Committee, who shall then provide to the Owner the written notice of approval of the development as provided in this paragraph. All approvals secured from the Owners as provided in this paragraph shall be in writing, executed by the Owner giving his or her approval, whose signature shall be acknowledged before a Notary Public.
- (h) The Committee or the Developer shall be entitled by appropriate action to stop any construction of, or change, or alteration in, any building, structure, landscaping, or other improvement that is begun without first acquiring approval in accordance with the foregoing provisions, and shall be entitled to require that the premises be restored to its original condition at the expense of the Owner of the Lot and the person undertaking such construction, change or alteration, or either of them."

4. ADDITION OF MEMBER OBLIGATIONS, FINES, SUSPENSIONS, AND BOARD VACANCIES SECTION. A section is added at the end of the Declaration, after Architecture Control section, as follows:

"Member Obligations, Fines, Suspensions, and Board Vacancies

Section 1: Member's Obligations. Each Member and the Member's tenants, guests, and invitees, are governed by, and must comply with, this Declaration, the governing documents of the community, and the rules of the Association. Actions at law or in equity, or both, to

redress alleged failure or refusal to comply with these provisions may be brought by the Association or by any Member against:

- (a) The Association;
- (b) A member;
- (c) Any director or officer of an association who willfully or knowingly fails to comply with these provisions; and
- (d) Any tenants, guests, or invitees occupying a Lot or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. A Member prevailing in an action between the Association and the Member under this section, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the Member for his or her share of assessments levied by the Association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

Section 2: Fines, Use Rights Suspensions. The Board may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, use of common areas and facilities and may levy reasonable fines, not to exceed \$100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000 in the aggregate.

- (a) A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.
- (b) The requirements of this subsection do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due.
- (c) Suspension of common-area-use rights shall not impair the right of an Owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

Section 3: Suspension of Voting Rights. The Board may suspend the voting rights of a member for the nonpayment of regular annual assessments that are delinquent in excess of 90 days.

Section 4: Board Vacancies. If the Association fails to fill vacancies on the Board sufficient to constitute a quorum in accordance with the bylaws, any member may apply to the circuit court that has jurisdiction over the community served by the association for the appointment of a receiver to manage the affairs of the Association. At least 30 days before applying to the circuit court, the member shall mail to the association, by certified or registered mail, and post, in a conspicuous place on the property of the community served by the association, a notice describing the intended action, giving the association 30 days to fill the vacancies. If during such time the association fails to fill a sufficient number of vacancies so that a quorum can be assembled, the member may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs, attorney's fees, and all other expenses of the receivership. The receiver has all the powers and duties of a duly constituted board of directors and shall serve until the association fills a sufficient number of vacancies on the board so that a quorum can be assembled.”

5. **ORIGINAL DECLARATION.** Except as specifically amended herein, all other terms and provisions of the original Declaration shall remain applicable, unchanged and in full force and effect.

[Signature Page to Follow]

IN WITNESS WHEREOF, this First Amendment to Declaration has been executed on the day and year first above written.

Signed, sealed and delivered
In the presence of:

Kristy J. Caldwell
Signature

Print Name: Kristy J. Caldwell

Southbank Homeowners Association, Inc.,
a Florida Non Profit Corporation

By: Jeffery W. Crews
Jeffery W. Crews
President

Jaime Schein
Signature

Print Name: Jaime Schein

By: Joseph Noplis
Joseph Noplis
Secretary



STATE OF FLORIDA

COUNTY OF Clay

The foregoing instrument was acknowledged before me this 19 day of July, 2008, by Jeffery W. Crews, as President, and Joseph Noplis, Secretary, of the Southbank Homeowners Association, Inc., a Florida Non Profit Corporation. They

- Are personally known to me or
- Have produced _____ as identification.

IMPRINT NOTARY RUBBER
STAMP SEAL BELOW

Laurie Little
Signature of Person Taking Acknowledgment
Notary Public

