

Estate Fish Bay Owners' Association Covenants

Amended and Restated Declaration of Rights, Restrictions and Covenants Running with the Land

WHEREAS , COCOLOBA DEVELOPMENT ASSOCIATES (CDA), a general partnership, was the owner of certain lands located in # 8 Reef Bay Quarter on St. John, US Virgin Islands, said lands being commonly known as Fish Bay Estate, did cause to be filed a Subdivision plat thereby establishing a residential community known as "Cocoloba Village" and did cause to be established and recorded against all parcels located in Cocoloba Village a uniform Declaration of Rights, Restrictions and Covenants Running with the Land which document was accepted for recording by the Office of the Recorder of Deeds for the District of St. Thomas and St. John dated September 7, 1973, recorded September 7, 1973, in Book 14-W, Page 305, Document No. 4091, and at Auxiliary 28, Page 267; amended by Amendment dated July 8, 1974, recorded July 10, 1974, in Book 15-T, Page 109, Document No. 2747 and at Auxiliary 28, Page 267.

WHEREAS, CDA did form a nonprofit corporation named ESTATE FISH BAY OWNERS' ASSOCIATION, LTD. (EFBOA), pursuant to the provisions of the Virgin Islands Code Title 13, Chapter 3 on December 1, 1983 thereby transferring various authorities, rights, duties and obligations to the EFBOA

NOW, THEREFORE, EFBOA, hereby declares and establishes this AMENDED AND RESTATED DECLARATION OF RIGHTS, RESTRICTIONS, AND COVENANTS RUNNING WITH THE LAND to be binding and effective as of the date of its acceptance for recording by the Office of the Recorder of Deeds for the District of St. Thomas and St. John, to be the amended and restated rights, conditions, covenants, reservations and restrictions upon which, residential parcels shall be improved, contracted for sale or sold, and conveyed by any owner or occupant thereof. Each and every one of these benefit each buyer, and occupant owner of any residential parcel in Estate Fish Bay or any interest therein, and shall inure to, and pass with, each and every parcel of such subdivision, and shall bind the respective successors in interest of the present owner thereof. These rights, conditions, covenants, reservations and restrictions are, and each thereof is, imposed upon such land and residential parcels, all of which are to be construed as restrictive covenants running with the title of such land and with each and every parcel or portion thereof. All deeds to parcels within the Estate Fish Bay (formerly referred to as Cocoloba Village) shall incorporate this Amended and Restated Declaration by reference thereto and citation of the recording thereof in the Office of the Recorder of Deeds for St. Thomas and St. John.

DEFINITIONS

Whenever used herein, the term "Association" shall refer to the Estate Fish Bay Owners' Association, Ltd., its successors, designees and/or assigns. The term "Board" shall refer to the Estate Fish Bay Owners' Association, Ltd.,

Board of Directors.

The terms "parcel", "parcels", and "property" shall in all instances be deemed to include all parcels and property as is described on the recorded Subdivision plat of Estate Fish Bay as it now exists or may hereafter be amended.

The covenants and restrictions below will be referred to as "restrictive covenants" and will be recorded with the appropriate governmental body and will be incorporated by reference to the book and page of recording in said realty records.

"Residential area" shall include all such area designated on the recorded Subdivision plat for individual residential parcels.

Provisions of the Covenants

1. Alterations or excavations of the terrain shall not be made which will substantially affect adjoining or other property. All alterations or excavations of the terrain will require the proper installation and maintenance of sedimentation traps and any other erosion control devices.

Individual entry roads and driveways shall be paved immediately after completion of the poured foundation work or paved immediately for all wood construction and constructed in such a manner that will not interfere with the drainage of the estate or public roads.

No private way or driveway that intersects with an Association road shall be constructed in such a manner as to reduce the width of any Association road. The intersection of driveways with the Association road will not be changed after the Association has approved the building plans. All alterations or excavations of the parcel shall be in accordance with applicable Virgin Islands law.

2. No structure(s) other than a single-family residence with attached or detached guest house as per Virgin Islands zoning laws for R-1 zoning are permitted to be erected on the parcels in the residential area. All requests for a zoning change or zoning variance must be submitted to the Board prior to submission to the government. If said request for a zoning change is ap-

proved by the Board, said request must further be approved by vote of two-thirds (2/3) of the members of the Association entitled to vote before submission to the government. If said request for a variance is approved by the Board, said request will also require approval of all adjacent property owners as defined by Virgin Islands Code before said request can be submitted to the government. No such residence shall be used as a commercial guest house or for any other commercial purpose whatsoever.

3. Before submitting your plans to the Department of Planning and Natural Resources (DPNR) and Coastal Zone Management (CZM), you must first submit to the Architectural Review Committee of the Association one copy of the topographical site plan (showing location of bound posts, buildings, driveway, parking, turnarounds, retaining walls and septic system), floor plans and elevations including elevation of roof ridge.

No excavation shall be made and no buildings shall be erected, nor shall any materials be stored upon said premises until such complete building plans and specifications for the building or buildings intended to be erected thereon, showing the location of said buildings on the premises, the elevation and slope and grade thereof, exterior color and finish including composition and color of all roofing materials, shall have been submitted in writing to the Board or its designees or assigns and the plans and specifications shall have been approved in writing by the Board, which approval shall not be unreasonably withheld or delayed. The Board will, in writing, either approve or ask for revisions to building plans within thirty (30) days of receipt.

In the event that the documentation submitted is not adequate for review, the Association will notify the landowner by written communication that the plans are not approved and what must be done prior to resubmission of the documentation. Should any landowner not be satisfied with action of the Association with regard to the request for approval of building plans or other action requiring approval, the landowner may within sixty (60) days of the Association's action request in writing a hearing with the Board of Directors, at which time the landowner may present any further evidence and or documentation for approval of the plans. Within seven (7) days of such hearing, the Board of Directors will provide written notice of its action to the landowner. This will be the final action taken by the Association with regard to a specific set of plans or other action submitted by the landowner. All construction work, commenced on said premises after the owner has Board approval and after the owner has obtained all required government permits, shall be completed within a reasonable time after the start of construction, in accordance with the Plans and Specifications approved by the Board.

The Board shall have the right to inspect all such construction work at all reasonable times to ensure compliance with the Plans and Specifications submitted to it. No alterations in the exterior appearance of any buildings or structure shall be made without like approval by the Board. One copy of all Plans and related data shall be furnished the Association for its records.

4. Since the establishment of standard inflexible building setback lines for location of houses on lots tends to force construction of houses both directly behind and directly to the side of other homes with detrimental effects on privacy, view of the ocean, preservation of important trees, etc., no specific setback lines are established by these covenants, other than those minimum setbacks required by any appropriate governmental authority.

In order to assure, however, that location of houses will be staggered where practical and appropriate, so that the maximum amount of view and breeze will be available to each house; that the structures will be located with regard to the topography of each individual parcel, taking into consideration the height of the adjoining and surrounding hillsides, the location of large trees and similar considerations, the Board reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any house or dwelling or other structure upon all parcels and every parcel within the residential area.

Provided, however, that such location shall be determined only after reasonable opportunity is afforded the parcel owner to recommend a specific site, and provided further, that in the event an agreed location is stipulated in writing in the contract of purchase, the Board shall approve automatically such location for a residence.

Similarly, no minimum square foot requirements of residences to be constructed on the parcels shall arbitrarily be established by these covenants, provided, however, that such minimum square foot requirements shall be taken into consideration as part of the architectural approval required from the Board in order to establish and maintain the residential integrity of the residential area. Conversely, no more than twenty (20) percent of a building lot may be imperviously covered, that is, impenetrable or impermeable cover unless it relates to cistern water collection.

5. Notwithstanding the provisions contained in the forgoing Article 4, or any other provisions in this Declaration, all restrictions, setbacks and easements imposed upon the Subdivision by the DPNR/CZM, or other applicable governmental authority, shall be deemed to be incorporated herein and made a part hereof. It is understood that the subdivision approval issued by the

DPNR/CZM contains restrictions on all parcels adjoining "waterway" easements whereby no lotting will be permitted within one hundred (100) feet of either side of the center line of a major gut or fifty year flood plain and thirty (30) feet from the center line, or twenty-five (25) feet from the edge of the gut, whichever is greater, of any secondary gut. Although lotting within the secondary gut easement may be permitted, sufficient area must remain outside of the easement for buildings, parking areas, all slopes, septic tanks, etc..

6. Structures and appurtenances shall be constructed in conformity with all applicable Virgin Islands laws and regulations.

7. No temporary structure such as a construction shanty shall be permitted on the said promises for a period of more than thirty (30) days after completion or occupancy of the residence, whichever occurs first.

8. No construction shanty, garage, trailer, mobile home, relocatable, demountable or other movable dwelling or any structure of a temporary, nature shall be used for residential purposes.

9. No parcel shall be subdivided, or its boundary lines changed, except with the written consent of the Board. However the Board hereby, expressly reserves to itself, its successors, designees or assigns, the right to replat any, two or more parcels shown on the plat of the subdivision in order to create a modified building parcel or parcels; and to take such other steps as are reasonably necessary, to make such replatted parcel suitable and fit as a building site, to include, but not to be limited to, the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of said replatted parcels.

10. No TV antennas and similar electronic appurtenances shall be erected and located in such a way as to have the least desirable effect on the aesthetic character of Estate Fish Bay and the view from other parcels.

11. No construction debris, refuse or garbage, no junked trucks, automobiles, motorcycles, boats, engines or parts thereof, no discarded or dismantled machinery, nor any unsightly debris of any nature shall be allowed to accumulate or be kept on the premises. Upon notice from the Board, materials must be removed within 30 days notice. Failure to comply with said notice will result in the Board directing the removal. All expenses incurred will be the responsibility of the property owner and may be assessed against the property.

12. No animals other than domestic dogs or cats or caged small birds shall be maintained or kept on the said premises, and no more than two {2} cats or dogs shall be permitted, and the premises shall not be used for the commercial boarding or keeping or raising of animals or birds.

13. No septic tank, seepage pit, drainage field, or other sewage disposal unit shall be constructed or installed on the premises unless it is of sufficient capacity and size for the purpose for which it is intended, in accordance with Virgin Island Codes and such sewage disposal unit or device shall be maintained by the parcel owners so that there is no odor, overflow, seepage or erosion therefrom nor any drainage on the parcels of adjacent owners nor on estate or public roadways.

14. Each parcel owner must construct a screening fence or hedge to shield and hide from view a small service yard in order to screen from the view of roadways and other parcels, wash lines, drying areas, garbage and refuse containers. Plans for such fence or hedge delineating the size design, texture, appearance and location must be approved by the Board prior to construction.

15. No sign larger than 12" x 18" in area shall be displayed on the said parcel, and it shall contain only the parcel owner's name and/or address. No sign shall indicate commercial use; however this restriction shall not preclude an owner from displaying a "For Rent" or a "For Sale" sign on his parcel, providing such sign does not exceed the legal size limit under the Virgin Islands Law.

16. The Purchaser agrees that, without the Board's written authorization, no parcel nor any portion thereof shall be used for as a means of access to an adjoining parcel.

17. The Association through the Board shall maintain the Estate's said roadway and roadway system in reasonable good condition. The cost of such maintenance and/or improvements shall be paid through annual operating dues paid by each parcel owner, special assessments for capital improvements or special individual assessments as stipulated in the By-laws of the Association.

18. The Property owner agrees to repair at his/her cost and to promptly restore to its original condition any part of a road damaged by motorized or other equipment used in Owner's construction or improvement to the said parcel or while en route to or from the said parcel.

19. No noxious, noisy, or offensive activity shall be carried on upon any parcel, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the area. There shall not be maintained any plants or animals, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property owners.

20. The Association reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, over and under the ground to erect, maintain and use electrical and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, sewer, water or other public conveniences, or utilities, on, in or over each parcel. Such easements and right-of-way shall, as far as practicable, be confined to five (5) feet around the perimeter of each parcel, and shall, wherever possible, be designed to by-pass or avoid existing or immediately contemplated new structures. And provided, further, that the Association may cut drain ways for surface water wherever and whenever such action may appear to the Board to be necessary, in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by any licensee of the Association, but this reservation shall not be considered an obligation of the Association to provide or maintain any such utility or service.

21. No provision in any deed, or any agreement or understanding written or otherwise, made by any property owner or group of property owners, in any manner, directly or indirectly, providing against ownership, occupancy or use of common facilities by any individual solely, because of race, creed, color or national origin shall be valid.

22. Each parcel owner shall provide space for parking all automobiles of the Associations roadway prior to the occupancy of any dwelling constructed on said lot. Storage or permanent parking of vehicles on Association roads will not be permitted and such vehicles will be removed by the Association at the expense of the property owner.

23. All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all the parties and persons claiming under them to specifically include but not limited to, the successors and assigns, if any, of the Association for a period ending De-

ember 31, 1993, after which time, all said covenants shall be automatically extended for successive periods of ten (10) years, unless an amended instrument signed by the majority of the then owners of parcels substantially affected by such change in covenants and entitled to vote, has been recorded, agreeing to change said covenants in whole or in part.

24. In the event of a violation or breach of any of the Restrictions contained herein by any parcel owner, or agent of such owner, the owners of parcels in the neighborhood or subdivision, or the Association, may jointly or severally have the right to proceed at law or in equity, to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Association, its successors, designees and assigns shall have the right, whenever there shall have been built on any parcel in the Subdivision, any structure which is in violation of these restrictions, to enter upon such property where such violation exists, and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass.

The failure to enforce any rights, reservations, restrictions, or conditions contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of restrictions of these events, shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

In WITNESS WHEREOF, ESTATE FISH BAY OWNERS' ASSOCIATION, LTD., has caused this Amended and Restated Declaration of Rights, Restrictions and Covenants Running with the Land by virtue of a majority vote of the membership of the Estate Fish Bay Owners' Association, Ltd.

Witnesses: Estate Fish Bay Owners' Association

This version of the EFBOA covenants was signed by Terry Pishko, former president of EFBOA in 2003 and has been edited for clarity. The original copy is on file in our offices and can be copied for you on request.