

AMENDED AND RESTATED  
DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
GULF COVE POINT PROPERTY OWNERS' ASSOCIATION, INC.

*[Substantial rewrite of Declaration.  
See existing Declaration and all amendments thereto for present text.]*

WHEREAS, the totality of the Community Property is commonly referred to as Gulf Cove Point (the "Community");

WHEREAS, the Community is a planned development of single-family homes consisting of ninety-two (92) Lots and Living Units intended for use and occupancy as single family residences, as well as Common Areas;

WHEREAS, for purposes of preserving, enhancing and protecting the value, attractiveness and desirability of the Community and the general health, safety, and welfare of the Members, the Community Property was subjected to the Original Declaration of Covenants and Restrictions;

WHEREAS, GULF COVE POINT PROPERTY OWNERS' ASSOCIATION, INC (the "Community Association"), a Florida Corporation Not for Profit, is the entity responsible for the operation of the Community;

NOW THEREFORE, it is hereby declared and reaffirmed that the Community Property, including all residential Lots, Living Units, Common Areas and facilities therein, shall be held, conveyed, encumbered, leased, rented, used, occupied, and improved subject to the following conditions, covenants, limitations, and restrictions, which are established for the purposes of preserving, enhancing and protecting the value, attractiveness and desirability of the Community Property and the general health, safety, and welfare of the Members. All of the conditions, covenants, limitations, and restrictions herein shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in any of the Community Property or improvements thereon.

**ARTICLE 1  
DEFINITIONS**

Section 1. The terms used in this Declaration and recorded exhibits hereto, the Articles of Incorporation and the Bylaws shall have the definitions set forth in the Home Owners' Association Act, unless otherwise defined herein, as follows, and, where appropriate, the singular may refer to the plural and the plural may refer to the singular:

a. "Architectural Standards" shall mean and refer to the published criteria, guidelines and standards governing architectural and construction Improvements or modifications or alterations to existing architectural or construction Improvements upon any Lot or Living Unit within the Community, whether expressed in this Declaration or published elsewhere by the Board of Directors.

b. "Articles of Incorporation" shall mean and refer to the Amended and Restated Articles of Incorporation of Gulf Cove Point Owners Association, Inc., as may be amended from time to time.

c. "Assessment" shall mean and refer to a sum or sums of money payable to the Association by the Owner of one or more Lots or Living Units within the Community, including Annual Assessments and Special Assessments, which if not paid by the Owner of a Lot or Living Unit within the Community, can result in a lien against the Lot or Living Unit.

d. "Association" shall mean and refer to Gulf Cove Point Property Owners' Association. Inc.

e. "Board of Directors" shall mean and refer to the Board of Directors of Gulf Cove Point Property Owners' Association, Inc.

f. "Bylaws" shall mean and refer to the Amended and Restated Bylaws of Gulf Cove Point Property Owners' Association. Inc., as may be amended from time to time.

g. "Common Area" shall mean all real property within the Community which is owned or leased by the Association or dedicated for use or maintenance by the Association of its Members, including, regardless of whether title has been conveyed to the Association.

h. "Common Expense" shall mean and refer to all expenses incurred by the Community Association in the performance of its duties, including, but not limited to, the expenses of the operation, maintenance, repair, replacement, or protection of the Common Area and Community Association Property, costs of carrying out the powers and duties of the Community Association, including management fees, reasonable transportation services, insurance for Directors and officers, road maintenance and operation expenses, in-house communications, and security services, and the expenses of any items or services required by any federal, state, or local governmental entity to be installed, maintained, or supplied to the Community by the Community Association, including, but not limited to, fire safety equipment or water and sewer service, and any other expense, whether or not included in the foregoing, designated as a Common Expense in the Declaration or Bylaws.

i. "Common Properties" or "Community Property" shall mean and refer to those areas of land described and/or shown on the recorded subdivision plats depicted on Exhibit "A" attached hereto, and intended to be devoted to common use and enjoyment of the Owners of the Lots and Living Units.

j. "Construction Activity" shall mean and refer to building, erecting, placing, making, altering, modifying, removing, repairing, deleting or demolishing any Living Unit, Improvement, or portion of any Lot, including over, upon, connected with, or beneath the surface of a Lot, or painting, excavating, or grading, seeding, sodding, or planting for landscaping purposes, including the furnishing of trees, shrubs, bushes, or plants, or painting or changes in exterior colors, finishes and materials.

k. "Declaration" shall mean and refer to this Amended and Restated Declaration of Covenants and Restrictions, as may be amended from time to time.

l. "Governing Documents" shall mean and refer collectively to the following: (a) this Amended and Restated Declaration of Covenants and Restrictions; (b) the Articles of Incorporation; (c) the Bylaws; (d) the Rules and Regulations; and (e) the Plat or other official document of the Community, including the Architectural Standards.

m. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision plats of the Community.

n. "Living Unit" shall mean and refer to any portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family.

o. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article 3 herein.

p. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot, but notwithstanding any applicable theory concerning a mortgage encumbering any Lot, shall not mean refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

q. "Original Declaration of Covenants" shall mean the original Declaration of Covenants and Restrictions recorded in the Official Records of Charlotte County at Book Number 746, Page 1383 on October 7, 1983.

r. "Plat" shall mean and refer to certain described lands in Official Records of Charlotte County, as described on Exhibit "A" attached hereto.

s. "Properties" shall mean and refer to all such existing properties and additions thereto, as are subject to this Amended and Restated Declaration or any subsequent amendments.

t. "Rules and Regulations" shall mean and refer to the administrative rules and regulations governing the use, and Improvements of the Lots, Living Units, and Common Areas and procedures for administering the Association and Declaration, as adopted, amended and rescinded from time to time by resolution of the Board of Directors.

## **ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION**

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Charlotte County, Florida, and is more particularly described as follows:

See Exhibit "A" attached hereto

Section 2. Common Properties. The properties described in Exhibit "A" attached hereto, being the SECOND REPLAT IN PORT CHARLOTTE SUBDIVISION, SECTION NINTEY FIVE, a subdivision according to the plat thereof, shall be referred to as "Common Properties", shall be dedicated as private streets, recreational and/or park areas, for drainage and utility purposes and for ingress and egress and that the use of said Common Properties shall be restricted and devoted to the common use and enjoyment of the Owners of the Lots and Living Units as herein defined.

Section 3. Additions to Existing Property. Additional land may become subject to this Declaration in the following manner:

a. Additions. Upon approval in writing of the Association pursuant to a vote of its members as provided in its Governing Documents, the Owner of any property who desires to add to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file or record a Supplemental Declaration of Restrictions.

b. Mergers. Upon a merger or consolidation of the Association with another association as provided in its Governing Documents, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, 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 properties except as hereinafter provided.

### **ARTICLE 3 MEMBERSHIP AND VOTING RIGHT IN THE ASSOCIATION**

Section 1. Association; Membership; Voting Rights. The administration, management and Ownership of the Common Properties and administration and enforcement of the Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations, and the Architectural Standards, shall be by the Association, which shall perform its functions pursuant to the following:

a. Membership. Every person or entity who is a record Owner of a fee interest in any Lot located in the Gulf Cove Point Community shall be a Member. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

b. Voting Interests. Members of the Association are entitled to one (1) vote for each Lot owned by them in the Community. The voting rights of an Owner that is not an individual, such as a corporation, limited liability company, partnership or trust, may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a written instrument provided to the Association.

c. Approval or Disapproval of Matters. Whenever the decision or approval of a Member is required upon any matter, whether or not the subject of an Association meeting, such decision or approval may be expressed by any person eligible to cast the vote on behalf of such Lot if present, in person or by proxy, at an Association meeting, unless the joinder of all record Owners is specifically required.

d. Change of Membership. Following written approval of the Association, as elsewhere required herein, a change of membership in the Association shall be established by the new Owner's membership becoming effective by evidence of such Ownership being recorded in the Official Records of Charlotte County, Florida; and the membership of the prior Owner shall thereby be automatically terminated.

e. Termination of Membership. The termination of membership in the Association does not relieve or release any former Member from liability or obligation incurred under or in any way connected with the Association during the period of such membership, nor does it impair any rights or remedies which the Association may have against any former Member arising out of or in any way connected with such membership and the covenants and obligations incident thereto.

f. Association as Owner. The Association has the power to acquire and purchase Lots and Living Units and to hold, lease, mortgage, and convey Lots and Living Units . This power may be exercised by the act of at least a majority of the Board of Directors.

g. Membership Roster. The Association shall maintain a current roster of names and mailing addresses of Owners. A copy of the roster shall be available to any Owner upon request.

h. Limitation on Liability. Notwithstanding the duty of the Association to maintain and repair the Common Area, the Association, its Officers, Directors and agents, shall not be liable to any Member, tenant, guest or invitee for any property damage other than the cost of maintenance and repair, caused by any latent condition of any property to be maintained and repaired by the Association, or caused by the elements or Members or other persons.

i. Board of Directors. Except as otherwise provided by law or the Governing Documents, the Association shall act through its Board of Directors and its Officers, and no vote of the Members shall be required unless otherwise required by the Governing Documents or the Home Owners' Association Act. The Officers and Directors of the Association have a fiduciary relationship to the Members. No Member, not an Officer or Director, has authority to act for, on behalf of, or bind the Association by virtue of membership in the Association.

j. Delegation of Management. The Association may contract for the management and maintenance of the Common Area and Association Property and authorize a management agent to assist the Association in carrying out its powers and duties under the Governing Documents and by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of Rules and Regulations, and maintenance, repair and replacement of the Common Area or Association Property, with funds made available by the Association for such purposes. The Association, its Directors and Officers, shall, however, retain at all times the powers and duties provided in the Governing Documents.

k. Powers and Duties. The powers and duties of the Association include those set forth in the Governing Documents and afforded under Florida law and Chapters 720 and 617, Florida Statutes, as amended from time to time.

#### **ARTICLE 4 PROPERTY RIGHTS IN THE COMMON PROPERTIES**

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 2 herein, every Member subject to Assessments as provided in Article V, herein shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Use of Common Properties for Drainage. The Common Properties may be used for drainage and the temporary retention of storm water run-off from The Properties and other contiguous property, as well as for open space, recreation, rights of ingress and egress, and other related activities. No structure, planting or other material shall be placed or permitted to remain in the Common Properties which might impair or interfere with the drainage or temporary retention of storm water run-off of the Community or other contiguous property.

a. As hereinbefore provided, the obligation to maintain the Common Properties for drainage purposes shall be an obligation of the Association unless and until the area becomes subject to a governmental special Assessment district for maintenance and control thereof at which time the Association shall relinquish control and each member of the Association shall be required to make payments of the Assessment established by the governmental authority.

b. In the event this Association is dissolved or otherwise ceases to exist, then in such event the Association shall have the right to assign, transfer and deliver over to a governmental authority or to any other like organization the powers herein reserved to this Association.

c. The property herein referred to may also become subject to a municipal special Assessment district for maintenance and control of the drainage system. In the event that the subject property does become subject to such municipal special Assessment district, then the Association herein described, i.e., Gulf Cove Point Property Owners' Association. Inc., shall relinquish control of the drainage system and transfer title thereto to such district. In such event the maintenance Assessments hereinafter referred to shall be reduced by the amount the Association has budgeted for maintenance and control of the drainage system, and the Members shall be billed and shall be responsible for payment of their individual share to such maintenance district. In the event that the Association establishes a higher level of maintenance over the drainage system than that required by the governmental authority,

then in such event the Assessments will be increased by that amount and shall be payable proportionately by the Members.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

a. The right of the Association, in accordance with its Governing Documents to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage, the lenders' right hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members, and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and.

b. The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and,

c. The right of the Association, as provided in this Declaration, the Articles of Incorporation, and By-Laws, to suspend the enjoyment and voting rights of any Member for any period during which any Assessment remains unpaid, and for any infraction of this Declaration, and the published Rules and Regulations; and,

d. The right of individual Members to the exclusive use of parking spaces on their Lot as provided in this Declaration;

e. The drainage and temporary retention of storm water run-off uses of the Common Properties referred to in Section 2 of this Article, and elsewhere herein; and;

f. The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer or determination as to the purposes or as to the conditions hereof shall be effective unless an instrument signed by the President and Secretary of the Association be recorded, certifying that at a special or regular meeting of members called for such purpose, of which written notice was sent to all Members at least thirty (30) days in advance setting forth the purpose of the meeting, a two-thirds (2/3) majority of the combined votes of both classes of Members who voted in person or by proxy was obtained, agreeing to such dedication or transfer.

Section 4. Utility Easements. There is reserved unto the Association the right to grant easements for the installation and maintenance of public utilities and temporary roads on the Common Properties in addition to those already reserved. No such grant shall require the removal or relocation of any improvements existing on the Common Properties on the date of the grant.

Section 5. Party Walls. Each wall which is built as a part of the original construction of Living Units upon The Properties and placed on the dividing line between portions of the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

a. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

b. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or commissions.

c. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

d. Easement. Each Owner of a Living Unit grants to the Owners of adjoining Living Units and to the Association an easement over, upon, and across his land for the purpose of performing such maintenance as may be required including, but not limited to, repairing party walls, painting and lawn and sprinkler maintenance.

e. Right to Contribution Runs with Land. The right of any Owner to contribute from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

f. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and the decision shall be by a majority of all the arbitrators.

Section 6. The Association has the right to grant permits, licenses and easements over the Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the project.

Section 7. Insurance, Destruction, and Reconstruction. Except as otherwise provided herein, the Association, as agent for and in behalf of the Owner and the respective mortgages, shall obtain and maintain fire and extended coverage insurance with a responsible insurance company upon all of the insurable improvements of the entire subdivision, including the Living Units and the Common Properties, for the full replacement or insurable value thereof. The Association shall maintain flood insurance in at least the amount required by institutional first mortgagees. The premium for all insurance shall be paid by the Association and shall be included in the Assessment for Common Expenses. The Association shall have full authority as agent for the insured to compromise and settle all claims against the carrier and may institute legal proceedings for the collection thereof. The original policy of insurance shall be held by the Association and institutional first mortgages shall be furnished, upon request, mortgage endorsements covering their respective interests. Each Owner shall be responsible for insuring; (1) his own personal property within his Living Unit; (2) all paint, finishing, covering, wallpaper, and decoration of the interior surfaces of all walls, floors, ceilings, and doors bounding, or contained within, the interior of his Living Unit; and (3) all alterations or additions made by the Owner, or by any of his predecessors in title other than Developer, to his Living Unit or Lot. Notwithstanding the foregoing, any insurance otherwise required to be maintained by the Owners by the terms hereof may be included in the insurance coverage purchased by the Association and paid for as part of the Common Expenses. If so authorized by the Board of Directors.

In the event of a destruction or casualty loss to any of the improvements in the subdivision, all insurance proceeds payable under the Association's policies shall be collected by the Association. The proceeds shall be held by the Board of Directors in trust and used for the immediate repair and reconstruction of the damage improvements. The Board of Directors shall disburse the proceeds held by it upon written draw requests signed by two directors of the Association authorized to sign checks as reconstruction progresses. Any surplus of insurance proceeds shall be added to the Association funds. In the event the proceeds are not sufficient to pay the cost of the reconstruction, the Association's insurance carrier shall not have a right of subrogation against any Owner, but if it is determined by the

Board of Directors that the damage was proximately caused by the gross negligence or willful and wanton misconduct or intentional acts of an Owner, such Owner may be assessed a sum sufficient to reimburse the Association for any deficient in insurance proceeds, which sum shall be payable by such Owner within thirty (30) days after delivery of written notice of Assessment.

In the event of a total or substantial destruction of all of the improvements in the subdivision, the improvements shall be restored as above provided unless the Owners of seventy-five (75%) percent of the Lots vote to terminate the provisions of this Declaration. No further consent from any other person or entity shall be necessary to effectuate a termination in the manner above described. In the event the provisions of this Declaration are to be terminated, then all Owners and Lots shall immediately convey all their right, title, and interest in and to their respective Lots to the Association, to be held by the Association in trust. The recording of each such conveyance to the Association in the Public Records of Charlotte County will have the immediate effect of releasing all liens upon the respective Lot and shall cause their instantaneous transfer to that Owners' share of the funds to be subsequently distributed by the Association herein. Upon recording an instrument evidencing the termination of the provisions of this Declaration, the proportional share of each Owner in the funds to be distributed by the Association herein provided shall be established in accordance with the respective values of the Lots, including the Living Units thereon, prior to the destruction as such values are determined by three experienced real estate appraisers selected by the Board of Directors.

The Board of Directors shall collect all insurance proceeds payable as a result of such destruction. The Board of Directors shall effect a public or private sale of the subdivision property, by whatever means it shall deem best, for the highest and best price, for cash or terms, as soon as practicable consistent with local real estate market conditions. The Board of Directors may make partial distributions of each Lot's share of the funds collected at such times as in such aggregate amounts as the Board of Directors may deem appropriate. In determining the amount of any partial distribution, the Board of Directors shall ensure that sufficient funds are retained by it to cover unpaid or anticipated costs, fees, or other liabilities of the Association. When the Board of Directors has collected all insurance proceeds and all proceeds from the sale of the subdivision property and, to the extent applicable, the assets of the Association and has paid all applicable Association liabilities and reasonable appraiser's fees and other costs reasonably incurred, the Board of Directors shall make a final distribution of each Lot's share of the remaining funds held by the Association.

Any distribution, whether partial or final, of a Lot's share of the funds held by the Board of Directors shall be made jointly to the record title Owner of the Lot and the record Owners of any mortgages or other liens encumbering the Lot at the time of the recording of the conveyance to the Association by the Owner. All mortgages and other liens upon the respective Lots shall be fully released and discharged as provided herein even though the share of a particular Lot in the funds distributed by the Board of Directors is insufficient to pay all liens in full; in such event the lienholder who had priority against the title to the Lot shall have priority of payment of the Lot's share of such funds. Nothing herein provided shall in any way relieve the Owner of his personal liability for any deficient which may remain upon any liens which encumbered his Lot at the time of his conveyance to the Association.

Mortgagees and other lienholders will evidence their acceptance and consent to the foregoing provisions by the acceptance of their mortgages or perfection of their liens. The provisions of this Section 9 may be enforced by injunction, by suit for specific performance, or by other appropriate remedy upon suit filed by the Association in a court of competent jurisdiction, and in any such action the Association shall be entitled to recover its attorney's fees and court costs.



**ARTICLE 5.**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligations of Assessments. Subject to the limitations on Assessment liability herein, the Owner of each Lot within the Community, by acceptance of a deed or other document of conveyance, whether or not it shall be so expressed in such deed, including any purchaser at a judicial sale, hereby covenants and agrees to pay to the Association: (a) the Lot's share of annual Assessments based on the annual budget adopted by the Association; (b) the Lot's share of special Assessments for Association expenditures not provided for by the annual Assessments; and (c) any other charges against less than all of the Lots, as specifically authorized by the Governing Documents or the Home Owners' Association Act.

a. The annual and special Assessments shall be established and collected as provided herein and in the Bylaws. The annual and special Assessments and charges, together with interest, late fees, costs, and reasonable attorney's fees shall bind each respective Lot as well as each Owner and each Owner's heirs, devisees, personal representatives, successors and assigns. In any conveyance, voluntary or otherwise, the transferee shall be jointly and severally liable with the transferor for all unpaid Assessments and charges, together with interest, late fees, costs and reasonable attorney's fees coming due prior to the time of such conveyance, without prejudice to the rights of the transferee to recover from the transferor the amounts paid by the transferee.

b. Share of Assessments. Except as otherwise provided in the Governing Documents, each Lot which has been submitted to the terms of the Declaration shall be liable for its share of Assessments, and other applicable charges. Any Common Area or property dedicated to and accepted by any governmental authority or public utility shall be exempt from the payment of Assessments.

c. Establishment of Lien. Any and all Assessments levied by the Association in accordance with the provisions of the Declaration, together with interest at the highest rate allowed by law, administrative late fees, attorney's fees incident to collection, and costs of collection are hereby declared to be a charge and continuing lien upon the Lot against which each such Assessment or charge is made, and shall also be the personal obligation of the Owner of each Lot assessed. The Association's continuing lien shall be effective from and relate back to the date of recording of the Original Declaration of Covenants and is superior to any homestead rights an Owner may acquire. No Owner may exempt himself, herself or itself from personal liability for Assessments, or release the Owner's Lot from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area, or by abandonment of the Lot. The Community Association's continuing lien may be perfected by recording a Claim of Lien in the Official Records of Charlotte County, Florida in accordance with the Home Owners' Association Act. A Claim of Lien shall secure payment of all Assessments due at the time of recording, including interest, late fees, costs and attorney's fees as provided above, as well as all Assessments, interest, late fees, costs and attorney's fees coming due subsequently until the Claim of Lien is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by the Claim of Lien, the party making payment is entitled to a Release of Lien in recordable form.

d. Priority of Lien. The foregoing notwithstanding, the Community Association's continuing lien for unpaid Assessments or other charges shall be subordinate and inferior to all taxes, assessments, and other levies which by law would be superior thereto, and any recorded first Institutional Mortgage, but shall be superior to, and take priority over, any other mortgage or lien regardless of when recorded. Any lease of a Lot shall be subordinate and inferior to the Association's continuing lien, regardless of when the lease was executed. Notwithstanding anything to the contrary contained in the Declaration, the liability of a first position Institutional Mortgagee, or its successor or assignee as a subsequent holder of the first mortgage, who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments that became due before the first Institutional Mortgagee's acquisition of title, shall be the lesser of: (a) the Lot's unpaid Common Expenses and regular periodic or special Assessments that accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which

payment in full has not been received by the Community Association; or (b) one percent (1%) of the original mortgage debt, unless a greater amount is allowed to be recovered by the Home Owners' Association Act. The foregoing limitations on first mortgagee liability apply only if the Institutional Mortgagee filed suit against the Owner and initially joined the Community Association as a defendant in the mortgage foreclosure action. Joinder of the Community Association is not required if, on the date the complaint is filed, the Community Association was dissolved or did not maintain an office or agent for service of process at a location that was known to or reasonably discoverable by the mortgagee. Any unpaid Assessment which cannot be collected as a lien against any Lot by reason of the provisions herein shall be treated as a Common Expense divided equally among, payable by and assessed against all Lots, including the Lot for which the foreclosure or conveyance in lieu of foreclosure took place.

e. Collection of Assessments. If an Owner fails to pay any Assessment, or installment thereof, within twenty (20) days after the due date, the Community Association shall have any or all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Community Association: (a) to charge interest on such Assessment at the highest rate allowed by law from the date it became due until paid, as well as to impose an administrative late fee in the greater amount of five percent (5%) of the delinquent installment or \$25.00; (b) to bring an action in equity, including to foreclose its claim of lien. (The claim of lien may be foreclosed by an action in the name of the Community Association in a manner consistent with Florida law); and/or (c) to bring an action at law for a money judgment against the delinquent Owner without waiving any lien foreclosure rights of the Community Association.

f. Certificate. The Community Association shall, within ten (10) days of receipt of a written request for same, furnish to any Owner responsible for Assessments, or his, her or its mortgagee, a certificate in writing signed by an Officer or authorized agent of the Community Association, setting forth whether said Assessments and any other moneys due the Association have been paid. Such certificate may be relied upon by any person other than an Owner. The Community Association may charge a fee for the preparation of such certificate, with the amount of the fee stated thereon.

g. Resale Capital Assessment. The Community Association may levy a resale capital Assessment upon the transferee in any conveyance of a Lot or Living Unit by an Owner. The amount of the resale capital Assessment and the manner of payment shall be determined by resolution of the Board of Directors from time to time; provided, however, that all Lots or Living Units similarly situated shall be assessed at a uniform rate. The due date for payment of a resale capital Assessment shall be the date of closing of the conveyance. Payment of the resale capital Assessment shall be the obligation of the transferee. For purposes of this provision, the term "conveyance" shall mean the transfer of record legal title to a Lot or Living Unit by deed or other authorized means of conveyance, with or without consideration, and shall also refer to a transfer of possession and beneficial Ownership by means of an agreement for deed. It does not refer to a transfer of title resulting from foreclosure of a lien, the death of the transferor, or a transfer of title to a Director or the transferor's spouse without changing occupancy, solely for estate planning or tax purposes. A resale capital Assessment shall be collectible as any other Assessment under this Declaration.

h. Common Areas. No Common Areas or land that has been dedicated to and accepted by any governmental authority or public utility shall be subject to Assessments.

## **ARTICLE 6. ARCHITECTURAL CONTROL**

Section 1. Review by Board of Directors. The Board of Directors, in its review of all proposed construction, modifications, Improvements, or alterations to the Living Units or Lots shall be guided by the following standards of environmental control included in this Declaration and any published Architectural Standards.

a. Architectural Control. No Construction Activity upon a Lot and/or Living Unit may commence, be performed or occur unless and until a request therefor, including the plans, specifications and location of the same, shall have been submitted to and approved in writing by the Board of Directors. All submissions shall be evaluated as to harmony of external design and as to conformance with the Architectural Standards. Approval or disapproval of the same shall be made by the Board of Directors and returned to the applicant within a reasonable time, not to exceed forty-five (45) days after receipt of same. Approval of modifications to Living Units or Lots shall be contingent upon the Owner's execution of an Agreement and Covenant to Run With the Land, in a form acceptable to the Board of Directors.

b. Architectural Standards. The Board of Directors is authorized to adopt, amend, modify; repeal and enforce published architectural guidelines and standards governing the location, size, type, or appearance of any structure or other improvement on a Lot and/or Living Unit, including, but not limited to, the following:

1. Permitted choices of color for various improvements on a Lot and/or Living Unit;
2. Permitted uses of material for various improvements on a Lot and/or Living Unit;
3. The permitted size of the structure or improvement on a Lot and/or Living Unit;
4. The permitted design of the structure or improvement on a Lot and/or Living Unit;
5. The permitted location of the structure or improvement on a Lot or Living Unit.

Section 2. Existing Trees. Existing trees on the property will not be removed unless their removal proves to be necessary due to the emplacement of the structure or structures. Location and size of all existing trees, including those proposed to be removed, shall be indicated on landscaping plans and specifications, and subject to the approval of the Board of Directors.

Section 3. Landscaping Approval. No trees, bushes, shrubs or plants shall be planted or emplaced on any Lot or in any Common Property until the plans and specifications for the placement of any such trees, bushes, shrubs or plants have been submitted to and approved by the Board of Directors. Said plans as submitted shall show in detail and to scale the proposed elevations and locations of said trees, bushes, shrubs or plants, including the locations of same in relation to all other Lots subjects to these restrictions. The Board of Directors maintains an approved list of trees. Only trees on the Board of Directors approved list of trees will be approved for planting on a Lot or in a Common Property.

Section 4. Board Approval. Approval of said plans by the Board of Directors may be withheld if in the opinion of the Board of Directors the view of any Lot would be impeded by the location of such tree, bush, shrub or plant, or in any other manner. In any event, the Board shall have the right to require any member to remove, trim, or prune any tree, or shrub, which in the reasonable belief of the Board impedes or detracts from the view of any Lot.

Section 5. Variances. The Board of Directors may, with the approval of the Charlotte County Planning and Zoning Board, approve variances to the requirements of Article IX, Section 2.

Section 6. Attorneys' Fees. In all litigation involving architectural or environmental control, the prevailing party shall be entitled to collect and shall be awarded attorneys' fees and court costs.

Section 7. Termite Inspections/Treatment: The Association shall conduct a program of periodic inspection of the Living Units for termite infestation. The cost of such inspections and necessary treatment (including tenting) shall be initially borne by the Association but assessed to the Owners in any building so treated in accordance with Section 1 of this Article. The repair of termite damage to a Living Unit shall remain the responsibility of the Owner.

Section 8. Drainage and Utility Easements. No structures, trees or shrubs or other Improvements shall be

placed upon or within any drainage or utility easement.

## **ARTICLE 7 EXTERIOR MAINTENANCE**

Section 1. Exterior Maintenance. Pursuant to agreement with the Owner, or upon determination by the Association that an Owner has failed to maintain the exterior of his Living Unit in accordance with general standards of the community and above and beyond maintenance furnished by the Association, then, after reasonable notice to the Owner specifying such failure and upon Owner's neglect or refusal to correct the same, then, in such event, and in addition to maintenance upon the Common Properties, the Association may provide such exterior maintenance upon each such Living Unit as, in the opinion of the Association, may be necessary. The cost thereof shall be assessed to the Owner and shall be added to and become a part of the maintenance assessment as more particularly described in Section 2 hereof.

Section 2. Assessment of Cost. The cost of such exterior maintenance shall be assessed against the Lot or Living Unit upon which such maintenance is done and shall be added to and become part of the Annual Maintenance Assessment or charge to which such Lot or Living Unit is subject under Article V hereof and, as part of this Annual Assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article V hereof. Provided that, the Board of Directors of the Association, when establishing the Annual Assessment against each Lot or Living Unit for any assessment year as required under Article V hereof, may add thereto the estimated cost of the exterior maintenance for that year but, thereafter, shall make such adjustment with the Owner as is necessary to reflect the actual cost thereof.

Section 3. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or the exterior of any Living Unit at reasonable hours on any day except Sunday.

The Association has the irrevocable right of access to the interior of any Living Unit for emergency maintenance, emergency repair, or emergency replacement of any Common Areas or of any portion of a Living Unit to be maintained by the Association pursuant to the Declaration or as necessary to prevent damage to the Common Areas or to the Living Unit.

Section 4. Common Area Maintenance. Common Area Maintenance may include, but is not necessarily limited to, the following items:

- a. Grounds maintenance of the Common Area including the pond, mowing, fertilizing, insecticides, landscaping plant material, etc.
- b. Irrigation system maintenance.
- c. Roof maintenance.
- d. Waste removal from Common Areas.
- e. Maintenance of perimeter feature, if any, and/or signs.
- f. Maintenance of private streets and roads.

- g. Utilities for Common Areas including water, sewer and electricity.
- h. Taxes and insurance including real and personal property taxes for Common Areas and liability and fire insurance.
- i. Other miscellaneous items which may be included such as exterminating services, security system maintenance and fire extinguisher services.
- j. A reserve for future maintenance and repairs.

Section 5. Individual Maintenance. There shall be included in the monthly maintenance charges the cost of exterior painting and repairing or replacing of roofs and exterior building surfaces. The Board of Directors alone is responsible for choosing the color palette for the painting of all exterior building surfaces, as well as choosing the material and color for replacement of roofs.

## **ARTICLE 8 WATER AND SEWER UTILITIES**

Section 1. Prohibition of Individual Wells and Septic Tanks. No individual water wells, septic tanks or other individual sewage disposal facility shall be permitted on any Lot or Living Unit.

Section 2. It shall be a requirement that no water closet be installed in any building or home to be constructed on any of the properties having a capacity in excess of 3.5 gallons.

## **ARTICLE 9 UNIFORM GENERAL REQUIREMENTS**

Section 1. Residential Lots; Use and Minimum Square Footage Requirements. The Lots in this Community are designed as single-family residence Lots. No single-family residence shall be otherwise subdivided. Any subletting of the residence, sharing rent with another not a lessee or subletting by renting a room or rooms is expressly prohibited.

Section 2. Minimum square footage and building setback requirements shall be in accordance with the Ordinances and Building Codes of Charlotte County.

Section 3. Recreational Vehicles. No travel trailer, mobile home, recreational vehicle, boat, tent, storage building, garage, barn or out building erected on any Lot shall at any time be used as a residence, temporarily or permanently. The phrase "recreational vehicle" shall mean every licensed vehicle and conveyance designed, used or maintained primarily as a travel trailer, motor home, camper, boat and boat trailer or other similar use. With written approval from the Board of Directors, travel trailers, recreational vehicles, campers and boats may be brought to a Lot for the purpose of loading or offloading but only for a maximum of four (4) hours. Overnight parking of travel trailers, recreational vehicles, campers and boats is strictly prohibited.

Section 4. Parking and Vehicle Operations. No truck exceeding one-ton capacity or recreational vehicle or boat shall be parked overnight in areas zoned residential unless the truck is employed in the construction of new residential units. All vehicles operating, trailered, or stored within Gulf Cove Point Community are subject to the following restrictions:

- a. The speed limit is ten (10) miles per hour
- b. Vehicles must be parked in designated parking areas only, except service vehicles when being used for servicing a Living Unit or Lot. No parking or driving on the grassy areas at any time. Long term and overnight parking in the streets is not permitted.
- c. Only two (2) vehicles are authorized per Living Unit, which for purposes of this paragraph includes motorcycles.
- d. Vehicles which cannot be registered to be lawfully operated on streets and highways of Florida, or inoperable motor vehicles, are expressly prohibited, including but not limited to mopeds, three and four wheelers, and trail bikes.
- e. No truck with a homemade cap or container in or over the bed, or with commercial advertising, is permitted to be parked in the Community overnight.

Section 5. Signs. No sign of any kind shall be displayed to the public view on any Lot. Provided however, the Board of Directors may permit, in its discretion, name plaques for the living Unit occupants, one small sign notifying the public that a unit has a security device, and one "For Sale Sign" that may be shown in a front window of the residence. Any Owner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag, in a respectful manner, not larger than 4<sup>1</sup>/<sub>2</sub> feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association.

Section 6. Animals. No pets, animals, livestock or poultry of any kind shall be raised, bred, kept or brought onto any Lot or Association property by guests, visitors, or lessees. Each Lot Owner shall be allowed to keep one (1) dog or cat owned by said Owner in the Owner's Living Unit, which dog or cat shall not exceed twenty (20) pounds in weight at maturity. Dogs or cats shall not be permitted outside of the Owner's Living Unit unless attended by an adult or child over twelve (12) years of age and on a leash. Dogs shall only be walked on a leash and taken upon those portions of the Common Areas designated by the Association from time to time for such purposes, or kept on the Owner's Lot. All pet Owners are obligated to clean up after their pet and shall immediately clean up and dispose of pet waste upon the Common Area or another Owner's Lot. All pets shall be registered, licensed and inoculated as required by law. Notwithstanding the above provisions, any occupant of a Living Unit, whether Owner or tenant may keep small domestic birds or fish in the Living Unit as long as they do not constitute a nuisance.

The Association shall comply with all local, state and federal laws regarding service animals and emotional support animals. It is the Association's position that the state, county, and city law enforcement and/or animal control are the authority on whether a pet should be deemed a danger and/or nuisance to the member, families, and guests of the Gulf Cove Point Community. The Association shall defer to state, county, and city law enforcement and/or animal control to determine whether a pet should be removed from the Gulf Cove Point Community and/or destroyed.

Section 7. Trash Storage. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste must be kept in sanitary containers and placed in the trash enclosures, if provided in the project. No Lot on which improvements have been constructed or erected shall be allowed to become or remain overgrown or unsightly. All residents must use a covered trash can while storing garbage outside of the unit. These trash cans must be kept in the back lanai area and put out at the street for pickup only on trash collection days or the evening of the preceding day. Place the cans on the curb or driveway not on the lawn and return the cans to the back lanai area as soon as possible but not later than the evening of the pickup day.

Section 8. Planting and Landscaping. No hedge or shrub planting which obstructs sight lines at elevations between two (2') feet and six (6') feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25') feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10') feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within the above-described limits of intersections unless the foliage line is maintained at or above six (6') feet above the roadway intersection elevation to prevent obstruction of sight lines. The Board of Directors may grant exceptions in specific instances.

The only types of edging that is authorized for use at Gulf Cove Point is the scalloped or straight block, which may be used next to the sidewalks and driveways where it is outlining these concrete structures. The only other authorized edging permitted between the plant or flower gardens in the grassy area is the four inch by six inch mower edged curb of the same design. The removal of sod, the creation of island planting areas in addition of any new plants or shrubs must be approved in writing by the Board of Directors, or its designee.

Section 9. Tree Preservation. No trees shall be removed from any Lot without the consent of the Board of Directors.

Section 10. Oil, Gas and Mineral Operations. No operations with respect to oil, gas and minerals, including, without limitation, drilling, development, refining, exploration, quarrying, mining or extractions of any kind shall be permitted upon any Lot nor shall oil or gas wells, tanks, tunnels, mineral excavations or shafts be no permitted upon any Lot. No derrick, drilling rig or other structure designed for use in drilling for oil or gas shall be erected, maintained or permitted on any Lot or parcel.

Section 11. Easements. Easements for the installation and maintenance of public utilities and drainage facilities are reserved as noted on the recorded plat. Within these easements, or any easement granted by the Association, no structure, planting or other material shall be placed or permitted to remain which may damage, impair or interfere with the installation and maintenance of utilities. The easement area of each Lot, tract or parcel and all permitted improvements within said easement areas shall be maintained continuously by the Owner of the Lot, tract, or parcel, except for those improvements for which a public authority or utility company is responsible. Each Owner is granted an easement over, upon and across the land of the adjoining Owner on each side for the purpose of maintaining, painting and repairing the extension of the wall on said Owner's property.

Section 12. Encroachment on Lots. In the event that any portion of any roadway, drainage way, walkway, parking area, roof drainage system, water lines, sewer lines, utility lines, sprinkler system or any other structure as originally constructed by Developer or its designee, successor or assign encroaches on any Lot, it shall be deemed that the Owner of such Lot has granted a perpetual easement to the Owner of the adjoining Lot or the Association as the case may be, for continuing maintenance and use of such encroaching roadway, walkway, parking area, roof drainage system, water line, sewer line, utility line, sprinkler system or structure. The foregoing shall also apply to any replacements of any such roadway, walkway, parking area, roof drainage system, water lines, sewer lines, utility lines, sprinkler system or structure if same are constructed in substantial conformance to the original. Other encroachments may be maintained as herein provided. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

Section 13. Easement for Walkways. The Association reserves to itself the right to construct walkways between the homes for the benefit of the occupants and their guests. To this extent and for this purpose the Developer reserves an easement over and across said walkways.

Section 14. It is understood and agreed that said premises may not and shall not be used for convalescing or custodial care as a home occupation.

Section 15. Rules and Regulations. The Board of Directors may adopt Rules and Regulations governing the details of the operation and use of the administration of the Association, the operation and use of the Common Areas, Common Properties, Association Property, Lot, and Living Unit, and all Members shall abide thereby. Such Rules and Regulations shall be equally applicable to all Members, and uniform in their application and effect.

Section 16. Sales or Lease of a Lot. In order to maintain a community off congenial residents who are financially responsible and thus protect the value of the Properties, the sale and leasing of a Lot by an Owner shall be subject to the following provisions:

Section 16.1. Approval of Leasing.

All rentals and leases shall be subject to prior approval of the association. For purposes hereof, occupancy of a living unit by a person or persons in the absence of the Owner, except for the spouse of the Owner, or parents, children, grandchildren or siblings of either the Owner or his spouse, shall be treated as a lease and must be approved by the Association. Within a reasonable time, not less than thirty (30) days prior to the commencement of the proposed lease term, an Owner or his agent shall apply to the Association for approval of such lease on the application form prescribed by the Association. The Owner or the intended lessee shall furnish such information as the Association may reasonably require, including a copy of the proposed lease and the prospective lessee shall make himself or herself available for a personal interview by the screening committee prior to the approval of such lease. The screening committee may, in its discretion, conduct the interview over the telephone if it would be inconvenient for the applicant to appear for a personal interview in Charlotte County. It shall be the Owner's obligation to furnish the lessee with a copy of all pertinent subdivision documents including this Declaration of Covenants and Restrictions, and current Rules. Authorization must be received by the Landlord or Agent from the Association before possession of the unit is granted to the tenant. A fee of \$100 plus \$50 for a background check must accompany each application and tenancy agreement. Please make CHECKS PAYABLE to Gulf Cove Point P.O.A. A background check is required of new Owners and tenants. Returning tenants are not subject to the fees, but the information and signature required must be supplied to the Association for each new tenancy. Each lease, or addendums attached thereto, shall contain an agreement of the tenant to comply with this Declaration and all other documents governing or affecting the Properties; shall contain a provision appointing the Association as agent for the Owner so the Association may act on behalf of the Owner to enforce the lease, evict the tenant, or otherwise; and shall contain a provision authorizing the tenant to pay rental directly to the Association upon receipt of written notification from the Association that the Owner is delinquent in paying Assessments; and if the lease does not so provide it shall be deemed to include such provisions. The Owner shall not be relieved of any liability or responsibility hereunder by virtue of the existence of said lease or any of the foregoing provisions.

It shall be the duty of the Association to notify the Owner of approval or disapproval of such proposed lease within thirty (30) days after receipt of the application for lease on the prescribed form with all required information and the personal interview of the proposed lessee, whichever date last occurs. Each tenant shall be jointly and severally liable with the Owner for any damages to the Common Properties or other injuries or damage caused by the acts, omissions or negligence of such, tenants or those claiming by, through or under them.

Section 16.2. General Provisions Regarding Leasing.

Only entire Living Units may be leased. Rental of rooms or less than the entire Living Unit is prohibited. There shall be no assignment or subletting of Living Unit. Living Units may only be occupied by tenants as a single family residence. Single family residential use shall mean occupancy by a single housekeeping unit composed of one (1) person; two (2) people no matter how related; or three (3) or more persons all of whom are related to each other by blood, marriage, legal adoption or acting as guardian, legal custodian, or legal designee of a parent for a minor



child residing within the living unit, it being the intention of this provision to prohibit occupancy of a unit by three (3) or more unrelated adults while clarifying that nothing herein shall be applied or construed to permit discrimination based upon familial status, handicap, or other protected classifications under Fair Housing Laws. Guests of tenants must be registered with the Association. The maximum stay for guests of tenants is fourteen (14) days. Guests of tenants may not use the Living Unit except when the tenant is also in residence. All leases shall be for a minimum period of thirty (30) days. An Owner of a leased Living Unit may not use any portions of the Common Properties except as a guest.

#### Section 16.3. Disapproval of Leasing by Association.

If a proposed tenant or lease is disapproved by the Association, the Owner shall be so advised in writing and the lease shall not be made. Any lease made in violation of this Declaration shall be void and the Association may institute suit to evict the tenant in which event the Unit Owner violating this paragraph shall be liable for all court costs and reasonable attorney's fees incurred by the Association, both at trial and appellate levels.

The Board of Directors may disapprove a proposed tenant or lease for any of the following reasons which shall constitute "good cause" for disapproval:

- a. The person seeking approval (which shall include all proposed occupants) has been convicted of misdemeanor or a felony involving physical violence towards a child and/or adult, or convicted of a misdemeanor or felony of a sexual nature involving a child or adult, or who is registered in a sex-offender registry in Florida or any other state in the United States of America, or who has been convicted of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802).
- b. The application for approval on its face, facts discovered in connection with the Association's investigation, or the conduct of the applicant, indicates that the person seeking approval (which shall include all proposed occupants) intends to conduct themselves in a manner inconsistent with the Governing Documents. By way of example, but not limitation, a tenant taking possession of the Living Unit prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with the Governing Documents.
- c. The person seeking approval (which shall include all proposed occupants) has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other housing facilities or associations, or by his conduct in this Community as a tenant, Unit Owner or occupant of a Living Unit;
- d. The person seeking approval (which shall include all proposed occupants) has failed or refused to provide the information, fees or appearances required to process the application in a timely manner; or has provided false information as part of the application process;
- e. All Assessments, fees, fines and other charges against the Lot and/or Owner have not been paid in full.
- f. No person shall be denied the right to lease because of race, color, religion, sex, national origin, disability, or familiar status.

If the Association disapproves a prospective tenant or lease for "good cause" as set forth above, the Association shall have no duty to furnish an alternative lessee or tenant and the transaction shall not be made.

#### Section 16.4. Approval of Sale of Lot and Living Unit.

An Owner may sell a Lot and Living Unit to (1) a member of the Association, (2) the Owner's spouse, or (3) a trust of which the Owner, his spouse or their lineal descendants are the sole beneficiaries, with no requirement to obtain approval of the Board of Directors. Sale of any Lot under Time Sharing, Interval ownership or similar arrangement is prohibited. All other sales must be approved in advance by the Board of Directors. The approval of the Association that is required for the transfer of ownership of Lots and Living Units shall be obtained in the following manner:

a. Notice to Association:

An Owner intending to make a sale of the Lot and Living Unit or any interest therein shall give to the Association notice of such intention, on forms prescribed by the Association and such other information concerning the intended purchase as the Association may reasonably require and shall be accompanied by a copy of the proposed contract of sale signed by the proposed purchaser. Such notice, at the Owner's discretion, may include a demand by the Owner that the Association provide a purchaser of the Lot if the proposed purchase is not approved. The prospective purchaser shall make himself or herself available for a personal interview by the screening committee prior to approval of such sale. The Board of Directors or a screening committee may, in its discretion, construct the interview over the telephone if it would be inconvenient for the applicant to appear for a personal interview in Charlotte County.

b. Certificate of Approval:

Within thirty (30) days after receipt of such notice and information and the holding of a personal interview, the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the President, Vice President, Secretary or Treasurer of the Association, in recordable form.

c. Disapproval of Sale or Transfer. If the Association shall disapprove a transfer of ownership of a Lot, the matter shall be disposed of in the following manner:

If the notice of sale given by the Owner shall so demand, then within thirty (30) days after receipt of such notice and information and the holding of a personal interview, whichever date last occurs, the Association shall deliver or shall send by certified mail to the Owner an agreement to purchase the Lot signed by a purchaser approved by the Association, or an agreement to purchase signed on behalf of the Association, by its President or Vice President and attested by its Secretary, in which event the Owner shall sell the Lot to the named purchaser at the price and upon the terms stated in the disapproved contract to sell, excepting that at the option of the named purchaser the purchase price may be in cash at closing.

1. The sale shall be closed within thirty (30) days after delivery or mailing of the agreement to purchase or upon the date designated in the disapproved contract, whichever date shall be later. A certificate of approval of the Association executed by any of its officers in recordable form shall be delivered to the purchaser.

2. If the Association shall fail to purchase or provide a purchaser upon demand of the Owner in the manner provided, or if the purchaser furnished by the Association shall default in his agreement to purchase, and proposed transaction shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided, in recordable form.

3. If the Association determines that the proposed sale is not bona fide, it shall not be required to purchase the Lot or obligated to provide an alternative purchaser.

Section 16.5. Screening Fees. The Association may require the payment of a preset screening fee simultaneously with the giving of notice of intention to sell or lease, said screening fee to be set by the Board of Directors from time to time and shall be in conformance with applicable law. The Board of Directors may waive the screening fee for Owner-arranged tenancies involving the same tenants.

Section 16.6. Unauthorized Transactions. Any sale or lease not authorized pursuant to the terms of this Declaration shall be voidable at the election of the Association; provided, however, that such void-ability shall exist for a period no longer than one hundred, twenty (120) days from the consummation of such transaction, such consummation being evidenced by the recording of a deed of conveyance of the Lot or by occupancy of the living unit; provided further that the Association must commence an action to set aside such transaction within such one hundred, twenty (120) day period.

Section 17. Window Coverings. Coverings for all windows and sliding glass doors must be installed within thirty (30) days of occupancy. Coverings must be decorative blinds, curtains, drapes, or other acceptable window coverings in the discretion of the Board of Directors of the Association. Bed coverings (such as sheets, spreads or blankets"), newspaper, and aluminum foil, or similar materials are not authorized window covering materials.

Section 18. Nuisance. No nuisance shall be allowed within Gulf Cove Point Subdivision, nor any use or practice that is a source of annoyance to residents which interferes with the peaceful possession and proper use of the property by its residents. All parts of the Lot and Living Unit shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist. No unit Owner, tenant or guest shall permit any use of the Lot or Living Unit or use of the Common Properties that will increase the cost of Insurance upon any portion of the subdivision property. No Immoral, improper, offensive or unlawful use shall be made of the Association's property or of any Owner's property or any part thereof.

## **ARTICLE 10 GENERAL PROVISIONS**

Section 1. Amendments. Anything in this Declaration to the contrary notwithstanding, this Declaration of Covenants and Restrictions may be amended from time to time by the Association by recording among the Public Records of Charlotte County, Florida, an instrument executed by the President and attested to by the Secretary of the Association indicating that at a meeting called for that purpose, the fee Owners of fifty-one (51%) percent of the Lots in the hereinabove described property have approved such amendment. Provided further that any amendment which would affect the surface water management system, including the water management portions of the Common Areas, as provided in Article 9 hereof, must have the prior approval of the South Florida Water Management District.

Section 2. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration and their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded. Thereafter, and after the expiration of said initial thirty (30) year period, said covenants shall be automatically extended for successive periods of ten (10) years.

Section 3. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 4. Enforcement. Each Owner, tenant, guest, and invitee, shall at all times comply with all of the covenants, conditions and restrictions in the Governing Documents. All violations of the Governing Documents shall be reported immediately to management personnel engaged by the Community Association. Before undertaking any remedial, disciplinary or enforcement action against a person alleged to be in violation, the Community Association may, but is not required to unless otherwise provided herein or by law, give the alleged violator reasonable written notice of the alleged violation. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents, shall be presented to and determined by the Board of Directors, whose interpretation of the Governing Documents shall be final and binding. If any person, firm or entity subject to the Governing Documents fails to abide by them, as they are interpreted by the Board of Directors, the Association shall have the ability to take any action to compel compliance as set forth below:

Legal Action. Judicial enforcement of the Governing Documents shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any Governing Document either to restrain violation or to recover damages, or against the land to enforce any lien thereon; and failure by the Community 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. If an action is commenced, the Community Association shall, in addition, be entitled to recover its costs and attorney's fees incurred in enforcing the Governing Documents. Certain disputes must be submitted to dispute resolution procedures conducted by the Florida Department of Business and Professional Regulation, Division of Florida Condominiums, Time Shares and Mobile Homes (the "Division"), as more particularly set forth in Section 720.311, Florida Statutes.

a. Entry by the Community Association. The violation of any conditions or restrictions, or breach of any covenant herein contained, or in any of the Governing Documents, shall also give the Community Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon a Lot and improvements thereon where such violation or breach exists and summarily abate and remove any construction or other violation that may be or exists thereof at the sole cost and expense of the Owner of the offending Lot. The Community Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal.

b. Fines. The Community Association may levy reasonable fines of up to \$250.00 per violation against any Owner, tenant, guest, or invitee for the failure of the Member or any Member's Family, tenant, Guest or Invitee to comply with any provision of the Declaration, the Bylaws, or the Rules and Regulations. A fine may be levied for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$5,000.00 in the aggregate. A fine of less than \$1,000.00 may not become a lien against a parcel. A fine of an amount greater than \$1,000.00 may become a lien against a parcel and may be foreclosed. In any action to recover a fine, the Association is entitled to recover its reasonable attorney's fees and costs from the other party as determined by the Court. A fine may not be imposed without at least fourteen (14) days' notice to the person sought to be fined and an opportunity for a hearing before a committee of at least three Members appointed by the Board of Directors who are not Officers, Directors, or employees of the Community Association, or the spouse, parent, child, brother, or sister of an Officer, Director, or employee of the Community Association. If the committee, by majority vote, does not approve a proposed fine, it may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine levied by the Board of Directors. If the Board of Directors imposes a fine, the Community Association must provide written notice of such fine by mail or hand delivery to the Lot Owner and, if applicable, to any family member, tenant, guest or invitee of the Lot Owner.

c. Suspension for Noncompliance. The Community Association may suspend, for a reasonable period of time, the right of an Owner, tenant, guest, or invitee to use Common Areas and facilities for the failure of the Member or any Member's family, tenant, guest or invitee to comply with any provision of the Declaration, the Bylaws, or the Rules and Regulations. However, a suspension may not prohibit the right of an Owner, tenant, guest, or invitee to

have vehicular and pedestrian ingress to and egress from his or her Lot, including, but not limited to, the right to park. A suspension for noncompliance may not be imposed without at least fourteen (14) days' notice to the person sought to be suspended and an opportunity for a hearing before a committee of at least three Members appointed by the Board of Directors who are not Officers, Directors, or employees of the Community Association, or the spouse, parent, child, brother, or sister of an Officer, Director, or employee of the Community Association. The role of the committee is limited to determining whether to confirm or reject the suspension levied by the Board of Directors. If the committee, by majority vote, does not approve a suspension, it may not be imposed. If the Board of Directors imposes a suspension, the Community Association must provide written notice of such suspension by mail or hand delivery to the Lot Owner and, if applicable, to any Member's family, tenant, guest or invitee.

d. **Suspensions for Failure to Pay.** If an Owner is more than ninety (90) days delinquent in paying any monetary obligation due to the Community Association, the Community Association may suspend the rights of the Owner or any Owner's family, Member's family, tenant, guest or invitee to use the Common Area and facilities until the monetary obligation is paid in full. This subsection does not apply to that portion of Common Area used to provide access or utility services to a Lot. A suspension does not prohibit the right of an Owner, tenant, guest, or invitee to have vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park. The Community Association may suspend the voting rights of an Owner for the nonpayment of any monetary obligation due the Community Association that is more than ninety (90) days delinquent. A voting interest or consent right allocated to a Lot or Owner which has been suspended by the Community Association may not be counted towards the total number of voting interests for any purpose, including, but not limited to, the number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under the Home Owners' Association Act or pursuant to the Governing Documents. The suspension ends upon full payment of all obligations currently due or overdue the Community Association. All suspensions imposed pursuant to this Section shall be approved at a properly noticed meeting of the Board of Directors but do not require notice or an opportunity for hearing. Upon approval, the Community Association shall notify the Owner, tenant, guest, or invitee, as applicable, by mail or hand delivery.

e. **Individual Assessments.** Any fines levied by the Association against an Owner, tenant, or Owner's guest, Owner's family member, or invitee, shall be included in the individual expenses applicable to such Owner's Lot/Living Unit and shall be assessed as an Assessment against the Owner's Lot/Living Unit.

f. **Application of Fines.** All proceeds received by the Association from fines shall be applied to the payment of the Common Expenses.

g. **Nonexclusive Remedy.** Fines shall not be construed as an exclusive remedy and shall exist in addition to all other rights and remedies to which the Association may be legally entitled, however, any fine paid by an Owner shall be deducted or offset against any damages that the Association may otherwise be entitled to recover from such Owner.

**Section 5. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision hereof, which shall remain in full force and effect.

**Section 6. Information.** The Association is required to make available to family residence Lot Owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, Bylaws, other rules concerning the project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

**Section 7. Financial Statements.** Any holder of a first mortgage shall be or is entitled, upon written request, to a financial statement of the Association for the immediately preceding fiscal year.

Section 8. Lender's Notices. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the property number or address, any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of

a. Any condemnation loss or any casualty loss which affects a material portion of the project or any property on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

b. Any delinquency in the payment of Assessments, or charges owned by an Owner of a property subject to a first mortgage held, insured or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of 60 days;

c. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

d. Any proposed action which would require the consent of a specified percentage of mortgage holders.

Section 9. Insurance and Fidelity Bonds. The Association has a duty to maintain in effect casualty and liability insurance and fidelity bond coverage.

## **ARTICLE 11 RESERVATIONS**

Section 1. There is reserved to the Association the Ownership and control of all Common Areas dedicated for drainage easements so that the Association shall have the right and power to operate and maintain the drainage system.

Section 2. The Association reserves to itself the right to levy Assessments including special Assessments against all Owners for the purpose of operating and maintaining such drainage system and in connection therewith, reserves to itself the lien rights as provided in this Declaration and pursuant to the Homeowners Association Act.

Section 3. In the event that the Corporation is dissolved or its existence is otherwise terminated, then in such event the Association reserves the right to transfer and assign its Ownership and control over such drainage maintenance areas to a governmental authority or to another incorporated property Owners' association with like powers.

## **ARTICLE 12 MISCELLANEOUS**

Conflict In the event of a conflict, the Governing Documents shall govern in the following descending order:

- a. this Declaration of Covenants, as amended from time to time;
- b. the then current Articles of Incorporation, as amended from time to time;
- c. the then current Bylaws, as amended from time to time ;
- d. the then current Rules and Regulations; and
- e. the Plat or other official document of the Community, including the Architectural Standards.