

**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION.
FOR PRESENT TEXT SEE EXISTING DECLARATION.**

AMENDED AND RESTATED GULF HARBOUR MASTER COVENANTS

KNOW ALL MEN BY THESE PRESENTS that on May 14, 1985 the original River's Edge Master Covenants (n/k/a Gulf Harbour Master Covenants) were recorded in Official Record Book 1783, at Page 3511 *et seq.*, of the Public Records of Lee County, Florida. That Declaration, as it has previously been amended, is hereby further amended and is restated in its entirety.

The land subject to this Declaration (hereinafter "Gulf Harbour" or the "Property") is legally described in Exhibit "A" to the original Declaration which said Exhibit is attached hereto and hereby incorporated as Exhibit "A". No additional land is being added by this instrument and no land is being removed by this instrument. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners. The acquisition of title to a Lot or Unit or any other ownership interest in the Property, or the lease, occupancy or use of any portion of a Lot or Unit in the Property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.

1. DEFINITIONS. The following words and terms used in this Declaration or any of the governing documents (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.1 "**Assessment**" means a homeowner's (as defined in Section 1.22 below) share of the funds required for the payment of common expenses.

1.2 "**Articles**" and "**Bylaws**" as used herein, means the Articles of Incorporation and the Bylaws of Gulf Harbour Master Association, Inc., as amended from time to time. A copy of the Amended and Restated Articles of Incorporation and Bylaws are attached hereto as Exhibits "B" and "C" respectively.

1.3 "**Association**" means Gulf Harbour Master Association, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the Common Areas and amenities in Gulf Harbour.

1.4 "**Board**" means the Board of Directors responsible for the administration of Gulf Harbour Master Association, Inc.

1.5 "**Common Areas**" means all real property and all improvements and fixtures thereon owned, leased or the use of which has been granted to the Association for the common use and enjoyment of its members. The Common Areas of the Association include all land described above and subject to this Declaration save and except for the individual Lots or Units and Neighborhood Common Areas. Solely by way of illustration and not by way of limitation the Common Areas include all roads except Limited Private Roads, all lakes, water bodies and retention areas, the surface water and storm water management system, including related easements, as permitted by South Florida Water Management District (SFWMD), sidewalks, bicycle paths, lighting, open green space, and all amenities and easements designed for the common use of members of the Association. The Association is responsible to maintain, repair and replace the Common Areas.

1.6 "**Common Expenses**" means the expenses incurred by the Association in the course of performing its duties under the governing documents and the law. Common expenses of the Association include the costs of operating the Association, the costs of administration, maintenance, operation, repair and replacement of the Common Areas, other expenses declared by the governing documents to be common expenses, and any other valid expenses or debts of the common property as a whole of the Association.

1.7 "**Common Surplus**" means the excess of all receipts of the Association, including but not limited to assessments, fees, profits and revenues over the common expenses.

1.8 "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions of Gulf Harbour as amended from time to time.

1.9 "**Family**" or "**Single Family**" shall refer to any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them a person or persons who are not related to some or all of the others.

1.10 "**Governing Documents**" means and includes this Declaration, the Articles and Bylaws, and all recorded exhibits thereto, as amended from time to time.

1.11 "**Guest**" means any person who is not the owner or a lessee of a home or a member of the owner's or lessee's family, who is physically present in, or occupies a home on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

1.12 "**Gulf Harbour Golf & Country Club**" means the golf course, club house, maintenance

barn, fitness center, swimming pool, tennis courts, parking lots, the original pro-shop, the island and all other related and associated facilities within Gulf Harbour none of which however are Common Area of Gulf Harbour.

1.13 "**Home**" means a residential dwelling unit intended for residential use that is constructed on the Properties.

1.14 "**Institutional Mortgagee**" means the mortgagee (or its assignee) of a mortgage against a Lot or Unit, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Lot or Unit, which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

1.15 "**Lease**" means the grant by a residential owner of a temporary right of use of the owner's home for valuable consideration.

1.16 "**Lot or Unit**" or "**Parcel**" means the total number of Lots, Units or parcels of land located within the real property described in Exhibit "A" intended and subdivided for residential use upon which a fee simple title to the Lot or Unit has been conveyed to the owner and is shown on the Plat or other description of the Property, but shall not include the Common Areas. The Lots or Units may be depicted and numbered on sketches or surveys attached to other documents as recorded in the Public Records of Lee County, Florida.

1.17 "**The Marina at Gulf Harbour**" means the marina and docking facility within Gulf Harbour including but not limited to the boat slips, the individual docks, the fuel dock, the dock, the café, the ship's store, the seawall, the walkways along the seawall and associated parking facilities none of which are Common Area of Gulf Harbour.

1.18 "**Members**" means and refers to those persons who are entitled to membership in the Association as provided in its Articles of Incorporation and Bylaws.

1.19 "**Neighborhood**", or "**Neighborhood Association**" means the various homeowner and condominium associations within Gulf Harbour.

1.20 "**Neighborhood Common Area**" means any and all real property (or interest therein) located within Gulf Harbour that has been specifically set aside for the common use and enjoyment only of owners of property in a particular Neighborhood. Common Area includes Neighborhood Common Area.

1.21 "**Occupy**" when used in connection with a home, means the act of staying overnight in a

home. "**Occupant**" is a person who occupies a home.

1.22 "**Owner**", "**Parcel Owner**", "**Homeowner**" or "**Lot Owner**" or "**Unit Owner**" means the record owner of legal title to a Lot or Unit.

1.23 "**Primary Occupant**" means the natural person approved for occupancy of a home when title to the Lot or Unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person. When used in reference to a home owned in one of the forms listed above, the term "primary occupant" shall be synonymous with the term "owner".

1.24 "**Property**", "**Properties**" or "**Community**" means all the real property that is subject to this Declaration.

1.25 "**Private Roads**" means those roads which are part of the Common Area within Gulf Harbour and which are available for the common use and enjoyment of all owners of Lots or Units in Gulf Harbour.

1.26 "**Limited Private Roads**" means those roads which are common only to a certain limited area of Gulf Harbour whether or not the roads are also Neighborhood Common Area and that are generally available only for the common use and enjoyment of the owners of property lying within such limited area or for members of a particular Neighborhood Association. Limited Private Roads that are Neighborhood Common Area shall be maintained, repaired and replaced by the Neighborhood Association at its sole expense. Limited Private Roads that are not Neighborhood Common Area shall be maintained by the Master Association but the cost shall be an individual expense of the owners in the benefited limited area as determined by the Board of Directors. The Limited Private Roads shall be specifically identified upon the completion of a survey of the Community. The Board is authorized without further approval of the Members to attach the survey to the Declaration as an Exhibit upon completion.

1.27 "**Privacy Patrol**" means the authority designated by the Association for the purpose of operating the access gates and controlling access to Gulf Harbour.

1.28 "**Structure**" means that which is built or constructed, or any piece of work artificially built or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground. The term shall be construed as if followed by the words "or part thereof". The term includes without limitation, swimming pools, fences, antennas, playground equipment.

1.29 "**Voting Interests**" means the total number of possible votes in the Association which is equal to the total number of residential Lots and Units in Gulf Harbour.

2. ASSOCIATION.

2.1 Purpose. The purpose of the Association shall be to hold title, operate, maintain and repair the Common Area, including, but not limited to roadways, retention areas, the surface water management system and any improvements thereon, and medians in the streets within the Properties designated by the Board of Directors; to pay costs incident to these responsibilities and the costs of street lighting for the Common Area, to contract with bulk service providers and to take such other action as the Association is authorized to take as provided by law and herein.

2.2 Membership. Every owner of a Lot or Unit shall be a member of the Master Association, and by acceptance of a deed or other instrument evidencing his ownership interest, each owner accepts his membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles and Bylaws, and the rules and regulations of the Association, as amended from time to time.

2.3 Voting Rights. Voting rights are set forth in the Bylaws of the Association.

2.4 Articles of Incorporation. A copy of the Amended and Restated Articles of Incorporation of the Association is attached to this Declaration as Exhibit "B".

2.5 Bylaws. A copy of the Amended and Restated Bylaws of the Association is attached to this Declaration as Exhibit "C".

2.6 Delegation of Management. The Association may contract for the management and maintenance of those portions of the Property it is required to maintain, and may authorize a licensed management agent to assist the Association in carrying out its powers and duties by performing functions which may include but are not limited to the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the Common Areas with funds made available by the Association for such purposes.

2.7 Acts of the Association. Unless the approval or affirmative vote of the owners is specifically made necessary by some provision of the law or the governing documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the owners. The officers and Directors of the Association have a fiduciary relationship to the owners. An owner does not have the authority to act for or bind the Association by reason of being a Lot or Unit.

2.8 Powers and Duties. The powers and duties of the Association include those set forth in Chapter 617, the Florida Corporation Not for Profit Statute, and Chapter 720, the Florida Homeowner Association Statute, and in the governing documents. The Association may contract, sue or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Common Areas and the authority to levy assessments to pay expenses as more fully provided herein below. The Association has the power to enter into

agreements to acquire leaseholds, memberships and other ownership, possessory, easement or use interests in lands or facilities for the use and enjoyment of the owners.

2.9 Official Records. The Association shall maintain its official records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

2.10 Purchase of Lot or Unit. The Association has the power to purchase a Lot or Unit in Gulf Harbour in connection with the foreclosure of an Association lien and to hold, lease, mortgage, encumber or convey any such Lot or Unit, such power to be exercised by the Board of Directors without prior approval of the members. In all other cases approval of the members is required as provided in Section 2.11 below.

2.11 Interests in Real Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 2.10 above, the power to acquire, encumber or convey ownership interests in real property shall be exercised by the Board of Directors only after approval by at least a majority of the total voting interests of the Association.

2.12 Disposition of Personal Property. Any personal property owned by the Association, may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the owners.

2.13 Roster. The Association shall maintain a current roster of names and mailing addresses of owners, based upon information supplied by the Lot or Unit owners. Lot and Unit owners are responsible for notifying the Association of any change in their mailing address or names. All such notices shall be in writing. A copy of the roster shall be made available to any member upon request. In the absence of a signed, written request by the owner to change the owner's name or mailing address the Association shall mail all notices and other information to the name and address shown on the roster. The Association shall have no obligation to perform any search to discover another address or name other than that shown on the roster.

2.14 Bulk Service Contracts. The Board of Directors may contract for cable television, satellite, telecommunications, broadband, internet, community channel and other similar services on a bulk basis, on behalf of all Association members, or any portion thereof. The expenses related to any contract shall be deemed assessments for all Association members or assessments only for certain Association members, as applicable, and may be included in the Association's annual budget or levied as a special assessment. The Association shall further have the authority to execute and grant such easements, license and other legal documents relating to Gulf Harbour as may be necessary to implement this Section.

3. ASSESSMENTS and CAPITAL CONTRIBUTION. The provisions of this section shall

govern assessments payable by all owners of Lot or Units, for the common expenses of the Association and individual assessments for costs and charges directly attributable to one or less than all of the Lots or Units.

3.1 Covenant to Pay Assessments. Each owner of a Lot or Unit by the act of becoming an owner covenants and agrees, and each subsequent owner of any Lot or Unit (including any purchaser at a judicial sale), by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

(A) The Lot or Unit owner's share of annual assessments based on the annual budget adopted by the the Board of Directors of the Association;

(B) The Lot or Unit owner's pro rata share of special assessments for capital improvements or other Association expenditures not provided for by annual assessments;

(C) Any individual assessments properly levied for charges against individual Lot or Unit owner(s) without participation from other owners.

Assessments and charges shall be established and collected as provided herein and elsewhere in the governing documents. The owner of each Lot or Unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 3.11 below, whenever title to a Lot or Unit is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments and charges against the transferor, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee. No owner may waive or otherwise escape liability for the assessments and charges provided for herein by waiver or non-use of the Common Areas, by abandonment, or otherwise. Except as provided elsewhere in the governing documents as to Institutional Mortgagees, no owner may be excused from the payment of assessments unless all owners are similarly excused. Assessments and other funds collected by or on behalf of the Association become the property of the Association. No Lot or Unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Lot or Unit. No owner can withdraw or receive distribution of his prior payments to the common surplus or Association reserves, except as otherwise provided herein or by law.

3.2 Purposes of Assessments. The assessments levied by the Association shall be used for the purposes of promoting the general welfare of the Lot or Unit owners and residents of Gulf Harbour; to operate, maintain, repair, improve, construct, and preserve (on a non-profit basis) the Common Areas for the benefit of its members, their guests, tenants and invitees; and to perform all other duties and responsibilities of the Association as provided in the governing documents. Common expenses shall include but not be limited to the funds necessary to:

(A) pay all operating expenses of the Association;

- (B) pay for emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss;
- (C) pay for capital improvements;
- (D) pay all expenses required for the operation, management, repair, maintenance, improvement and replacement of the Common Areas;
- (E) pay all utility charges incurred in connection with the operation of the Association and the Common Areas;
- (F) pay for insurance as required elsewhere herein;
- (G) pay for providing gate and privacy patrol services;
- (H) pay for bulk service contracts;
- (I) pay for any and all services deemed necessary by the Board of Directors;
- (J) pay for any other expense deemed necessary by the Board of Directors.

3.3 Share of Annual and Special Assessments. The owners of each Lot or Unit shall collectively be liable for one pro rata share of the annual and special assessments levied by the Association for common expenses of the Association. The pro rata share shall be determined by means of a fraction the numerator of which shall be one (1) and the denominator of which shall be the total of number of Lots, Units or parcels in Gulf Harbour. By way of example only, if there are 1,500 total Lots and Units in Gulf Harbour the owner(s) of a particular Lot or Unit shall be liable for 1/1,500th of the annual assessment and special assessment if any.

3.4 Individual Assessments. The Master Association may levy assessments against one or less than all Lot or Unit owners for charges, costs or expenses that in the discretion of the Board of Directors are directly attributable to said owner(s) and/or to owners in a defined geographic area or Neighborhood within Gulf Harbour. If an owner, group of owners or Neighborhood Association within Gulf Harbour fail to fulfill their obligation to maintain, repair or replace a defined geographic area or Neighborhood within Gulf Harbour for which they are responsible the Master Association has the right, but not the obligation, to perform the work and charge the cost thereof as an individual assessment as provided herein. Individual assessments shall be secured by a lien and collected in the same manner as annual and special assessments.

3.5 Initial and Resale Capital Contribution. The Master Association shall require the initial purchaser of each Lot or Unit and all subsequent purchasers thereof, at the time of closing the conveyance from seller to purchaser, to pay the Master Association an initial or resale capital

contribution as the case may be. The amount of the initial and resale capital contribution shall be twenty-five (25%) of the current year's annual assessment. Further, the applicable amount of the initial and resale capital contribution shall be the amount in effect when the bona fide purchase contract is fully executed and no change in the resale capital contribution shall apply to bona fide purchase contracts entered into before such change. The funds derived from initial and resale capital contributions shall be used at the sole discretion of the Master Association for the exclusive purpose of capital improvements and deferred maintenance reserves. The initial and resale capital contributions, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the purchaser of the Lot or Unit and shall be secured by a continuing lien upon the Lot or Unit. Said lien may be foreclosed in the same manner as provided herein for an assessment lien. For purposes of this Section, the term "conveyance" shall mean the transfer of record legal title to a Lot or Unit by deed or other authorized means of conveyance, with or without valuable 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, or death of the transferee, nor to a transfer of title to the transferor's spouse or family members without changing occupancy, solely for estate planning or tax reasons.

3.6 Lien. The Association has a lien on each Lot or Unit for unpaid past due Association assessments and charges, together with interest, late payment penalties and reasonable attorney fees incurred by the Association in enforcing this lien. The lien is perfected by recording a Claim of Lien in the public records of Lee County, which Claim of Lien shall state the description of the property encumbered thereby, the name of the record owner, the amounts then due and the dates when due. The Claim of Lien must be signed and acknowledged by an officer or agent of the Association. The lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The Claim of Lien shall secure all unpaid assessments, and charges, plus interests, late fees, costs and attorney fees which are due and which may accrue or come due after the recording of the Claim of Lien and before the entry of a final judgment of foreclosure. Upon full payment, the person making payment is entitled to a satisfaction of the lien.

3.7 Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid assessments or charges by the procedures and in the same manner as is provided for the foreclosure of a mortgage. All unpaid assessments, fines, charges, interest, late fees, attorney fees and costs also constitute a personal obligation of the owners, and the Association may, in addition to any other remedy herein provided, bring an action at law against any owner liable for such unpaid amounts. If final judgment is obtained, such judgment shall include interest on the assessments as above provided and reasonable attorney fees to be fixed by the Court, together with the costs of the action, and the Association shall be entitled to recover reasonable attorney fees in connection with any appeal of such action.

3.8 Priority of Liens. The Association's lien for unpaid charges or assessments shall be subordinate and inferior to any recorded institutional first mortgage, unless the Association's Claim of Lien was recorded before the mortgage, but shall be superior to, and take priority over, any other mortgage regardless of when recorded. Any lease of a Lot or Unit shall be subordinate and inferior

to the lien of the Association, regardless of when the lease was executed.

3.9 Application of Payments; Failure to Pay; Interest. Assessments, charges and installments thereon paid on or before thirty (30) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. In addition to interest the Association may also charge an administrative late payment fee in an amount not to exceed the maximum amount allowed by law. Assessments, charges and installments thereon shall become due, and the Lot or Unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, late payment fees, fines, costs and attorney fees, and then to the oldest outstanding unpaid delinquent charges or assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. No payment by check is deemed received until the check has cleared.

3.10 Acceleration. If any special assessment or installment thereof or a regular assessment as to a Lot or Unit becomes more than thirty (30) days past due, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Lot or Unit's assessments for that fiscal year. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorney fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address appearing on Association's roster, and shall be deemed given upon mailing of the notice, postpaid. The Notice may be sent with the same letter as the intent to foreclose a Claim of Lien.

3.11 Certificate as to Assessment/ Mortgagee Questionnaire. Within fifteen (15) days after request by a Lot or Unit owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the Lot or Unit owner with respect to the Lot or Unit have been paid. The Association may charge a fee not to exceed the maximum amount allowed by law to issue the estoppel letter. The Association may also charge a fee not to exceed the maximum amount allowed by law plus attorney's fees if any to complete a mortgagee questionnaire. The Association is not obligated to respond to mortgagee questionnaires.

3.12 Mortgage Foreclosure. Unless otherwise provided by law, if the mortgagee of a first mortgage or an institutional mortgage of record acquires title to a Lot or Unit as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such acquirer of title shall not be liable for the share of common expenses or assessments attributable to the Lot or Unit, or to the former owner of the Lot or Unit, which came due prior to the mortgagee's acquisition of title. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all owners, including such acquirer and his successors and assigns. No owner or acquirer of title to a Lot or Unit by foreclosure, or by a deed in lieu of

foreclosure, may be excused from the payment of any assessments coming due during the period of his ownership.

4. EASEMENTS AND COMMON AREAS. The following easements are hereby granted to and/or reserved by the Association for itself and its successors and assigns. Said easements are perpetual.

4.1 Easements for the performance of all its duties and responsibilities over, under, across and through the Properties are hereby reserved for the Association and its agents, employees, licensees and invitees.

4.2 Easements over, under, across and through the Properties are hereby granted to the Association for the purpose of access to each Lot, Unit or Neighborhood Common Area for the purpose of providing necessary maintenance of same as determined by the Association.

4.3 Appurtenant Easements. Subject to the restrictions found elsewhere in this Section 4, the owner of each Lot or Unit, their guests, lessees and invitees, shall have as an appurtenance to their Lot or Unit a perpetual nonexclusive easement for ingress and egress over, across and through the Common Areas, for the use and enjoyment of all recreational facilities, such use and enjoyment to be shared in common with the other owners of Lot or Units, their guests, lessees and invitees, subject to the provisions of this Declaration.

4.4 Interior Roadway Easements. The Association has an easement on, over and under the right of way of all private, public and limited private roads, sidewalks and pathways in Gulf Harbour for ingress and egress and for the erection, construction, maintenance and use of electric power and telephone poles, all utilities, wires, cables, conduits, water mains, sewers, irrigation and drainage lines, ditches and swales, underdrains, and any other equipment or appurtenances pertaining to the installation, maintenance, transmission or use of electricity, telephone, television signal transmission, including cable, wireless and satellite transmissions of all types, gas, street lighting, and all other utilities or conveniences. The Association shall have the right to establish traffic and parking regulations and to enforce such regulation by all means lawful for such enforcement on drives and roadways. The Association may install speed bumps and other traffic calming or control devices as it sees fit.

4.5 Utility Easements. A perpetual easement shall exist upon, over, under and across the Properties for the purpose of maintaining, installing, repairing, altering and operating sewer lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal systems, pipes, valves, gates, pipelines, cable television, wireless and satellite transmissions of all types and all machinery and apparatus appurtenant thereto as may be necessary for the installation and maintenance of utilities servicing all owners of Lots or Units and servicing the Common Areas, all such easements to be of a size, width and location so as to minimize and not unreasonably interfere with the use of any improvements which are now, or will be, located upon said property. The Association, through its

Board of Directors, has the authority to grant additional such easements, and to modify, move or vacate such existing easements as may be necessary to efficiently and effectively provide utility and other services to the Lots or Units, and Common Areas.

4.6 Buffer Areas, Open Space, Drainage and Storm and Surface Water Management Systems and Easements. The buffer areas and open space are Common Areas. The maintenance, operation and preservation of the buffer areas and open space are the responsibility of the Master Association. The Master Association shall also be responsible to maintain and operate the drainage and storm and surface water management systems within the Common Area, including but not limited to the utilities and water and sewer system aspects thereof. The Master Association shall own, operate, and maintain the water management system as permitted by the South Florida Water Management District, including without limitation, all lakes, retention areas, culverts, and related appurtenances. The Association, and the Owners as beneficiaries of the water management system, is hereby provided the right to legally enforce the warranties, covenants, and assurances provided herein. The water management system, including all water management and drainage aspects of all easements and rights of way, as well as any other covenants creating obligations of performance with respect to the drainage systems, will be continuously maintained. The Association shall have an easement on, over and under all property lying within twenty (20') feet of the normal water line of all lakes, ponds and retention areas and within ten (10') feet of the top of the bank of all canals, swales and ditches serving as part of the water management system for access to and maintenance of all portions thereof and for installation and maintenance of drainage control devices and apparatus. The maintenance of the foregoing areas is integral to maintaining and enhancing the property values within Gulf Harbour and therefore the level of maintenance shall be commensurate with that expected in a first class community.

4.7 Subordination. Notwithstanding any of the foregoing to the contrary, it is understood that these covenants and restrictions are subordinate, and will be subordinate without the necessity of any other instrument, to any existing easement or easements to any public or quasi-public utility for the installation and maintenance of service lines in the Common Areas.

4.8 Extent of 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 Articles and Section 6.10 of the Bylaws, to borrow money for the purpose of improving and/or maintaining the Common Areas and providing the services herein, and, to aid thereof, to mortgage said properties;

(B) the right of the Association to impose rules and regulations governing the use of the Common Areas and Association property as further provided in the Bylaws; and

(C) the right of the Association to a non-exclusive easement over, across and through each Lot or Unit as necessary to meet the Association's maintenance responsibilities.

4.9 Any owner of a Lot or Unit in the Properties which Lot or Unit contains a structure which encroaches upon another Lot or Unit or, the Common Areas shall have a valid easement for the encroachment and maintenance of same, as long as it stands and exists.

4.10 Country Club and Golf Course. A portion of the lands in Gulf Harbour comprise the Gulf Harbour Golf & Country Club (hereinafter the “Country Club”) which includes the golf course and facilities related thereto. The Country Club and related facilities are not Common Area. The Country Club and its related facilities are owned and operated independently of all other property and facilities in Gulf Harbour. No property owner shall have any right, title, interest or membership in or to the Country Club other than such membership as he or she may purchase from the owner of the same. Anyone playing golf upon the golf course shall have an easement and license to go upon lands adjacent thereto to retrieve errant golf balls so long as such person does not damage adjacent property while retrieving the golf ball. Any golfer causing damage by his or her errant golf ball or while retrieving it shall be solely responsible for such damage, and the owner of the golf course shall have no responsibility therefore.

Errant Golf Balls. ALL PERSONS OWNING, OCCUPYING, USING OR ENTERING ON THE GOLF COURSE, OR COMMON AREA OR LOT NEAR OR ADJACENT TO THE GOLF COURSE ARE HEREBY NOTIFIED THAT THERE IS A POSSIBILITY THAT ERRANT AND MISDIRECTED GOLF SHOTS MAY RESULT IN INJURY OR DAMAGE TO PERSONS OR PROPERTY. NEITHER THE ASSOCIATION, ANY DIRECTOR, OFFICER, EMPLOYEE NOR AGENT THEREOF SHALL BE LIABLE FOR ANY SUCH INJURY OR DAMAGE INCLUDING WITHOUT LIMITATION, AS TO THE DESIGN OF THE GOLF COURSE OR ANY PROPERTY ADJACENT OR NEARBY THE GOLF COURSE OR AS TO ANY MAINTENANCE OF ANY OF THE FOREGOING. ACCORDINGLY, ALL PERSONS OWNING, OCCUPYING, USING OR ENTERING UPON ANY PROPERTY WITHIN, ADJACENT TO OR NEAR THE GOLF COURSE ASSUMES THE RISK OF INJURY OR DAMAGE FROM SUCH ERRANT GOLF BALLS. THIS DISCLAIMER IS NOT INTENDED TO RELIEVE A GOLFER FROM ANY LIABILITY THAT ARISES FROM DAMAGE OR INJURY CAUSED BY HIS OR HER ERRANT GOLF BALL.

4.11 The Gulf Harbour Marina. A portion of the lands in Gulf Harbour comprise The Gulf Harbour Marina (hereinafter the “Marina”) which includes the boat slips and boating facilities related thereto. The Marina and related facilities are not Common Area. The Marina and its related facilities are owned and operated independently of all other property and facilities in Gulf Harbour. No property owner shall have any right, title, interest or membership in or to the Marina other than such membership as he or she may purchase from the owner of the same.

5. MAINTENANCE.

5.1 Association Maintenance. The Association shall have the maintenance, repair and replacement responsibility for all Common Area located within Gulf Harbour and not forming a part

of the individual Lot or Units or Neighborhood Common Area including but not limited to the landscaping, lakes, parks, and entrances and the electrical fixtures and utilities serving the Common Areas.

5.2 Lot or Unit Owner Maintenance. The individual Lot or Unit owners or as applicable any Neighborhood Association shall have the maintenance, repair and replacement responsibility of the following:

(A) The home, structure and all structural components. The roofs and exterior of the structure shall be cleaned on a regular basis to remove and discourage mold growth.

(B) All grounds, green areas, drain courses, sprinkler systems and other portions of the properties located on the individual Lots or which are Neighborhood Common Area.

(C) Lot, Units and Neighborhood Common Area shall be kept in a neat and well maintained condition at all times, free from debris and rubbish and the lawn areas shall be regularly mowed, watered and maintained.

5.3 Enforcement of Maintenance. If the owner of a Lot or Unit or as applicable a Neighborhood Association fails to maintain the Lot, Unit, Neighborhood Common Area as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the Lot, Unit or Neighborhood Common Area, with or without consent of the Lot or Unit owner or Neighborhood Association. The Association may repair, replace or maintain any item which constitutes a hazard to other property or residents, prevents the Association from fulfilling its maintenance responsibilities, or which has a materially adverse effect on the appearance of the Properties. Any expenses so incurred by the Association shall be billed directly to the owner of the Lot or Unit or Neighborhood Association to which such services are provided, and shall be a charge against the Lot or Unit, secured by a lien against the Lot or Unit as provided in Section 3 above.

5.4 Negligence; Damage Caused by Condition in Lot or Unit. Each Lot or Unit owner shall be liable for the expenses of any maintenance, repair or replacement of Common Areas, other Lot or Units, or personal property made necessary by his act or negligence or by that of any member of his family or his guests, employees, agents, or lessees.

6. ARCHITECTURAL CONTROL TO PRESERVE THE BEAUTY, QUALITY AND VALUE OF THE COMMUNITY.

6.1 Improvements Requiring Approval. No building, structure, enclosure or other improvement shall be erected or altered, nor shall any grading, excavation, landscaping, change of exterior color, or other work which in any way alters the exterior appearance of any structure, Lot or Unit, or portion of Common Area or Neighborhood Common Area, be made, unless and until the plans, specifications and location of same shall have been submitted to, and approved in writing by

the Architectural Review Board (hereinafter “ARB”). All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography. The ARB shall have thirty (30) days after delivery of all required information, plans and materials to approve or deny any such plan, and if not denied within such period, said plans shall be deemed approved unless within the same period the Board of Directors denies the plan in which case regardless of any action or inaction by the ARB the plan shall be deemed denied. All approved modifications or improvements shall be completed within one hundred eighty (180) days from the date of approval. All changes, alterations or modifications to an approved plan must also be approved pursuant according to these same requirements.

6.2 The ARB. The architectural review and control functions of the Association shall be administered and performed by the Architectural Review Board (the ARB), which shall consist of at least three (3) persons, who shall be members of the Association. All members of the ARB shall be appointed by and shall serve at the pleasure of the Board of Directors of the Association. The Board of Directors can appoint all or some of the Directors to the ARB. A majority of the ARB shall constitute a quorum to transact business at any meeting of the ARB, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARB. Any vacancy occurring on the ARB because of death, resignation, or other termination of service of any member thereof, shall be filled by the Board of Directors. The members of the ARB shall receive no compensation for services other than reimbursement for actual expenses approved in advance by the Board of Directors incurred by them in the performance of their duties hereunder. The ARB shall, with the prior approval of the Board of Directors, have the power to engage the services of professionals for compensation for purposes of aiding the ARB in carrying out its functions. Notwithstanding anything to the contrary contained herein or elsewhere all decisions of the ARB are subject to review by the Board of Directors and the Board of Directors has the authority to overrule, void or otherwise modify in all respects any decision of the ARB.

6.3 Powers and Duties. The ARB shall have the following powers and duties:

(A) To recommend, from time to time, to the Board of Directors of the Association the creation or modification and/or amendments to the Architectural Planning Criteria. Any Architectural Planning Criteria or modifications or amendments thereto shall be consistent with the provisions of this Declaration, and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association at a meeting duly called and noticed and at which a quorum is present. Notice of the adoption, modification or amendment to the Architectural Planning Criteria, including a verbatim copy of such adoption, change or modification, shall be delivered to each member of the Association. However, receipt of notice of a Board meeting concerning the Architectural Planning Criteria or a copy of any adoption of or modification or amendment to the Architectural Planning Criteria shall not affect the validity of such change or modification.

(B) To require submission to the ARB of one (1) complete set of all plans and specifications for any improvement, structure of any kind or any other work which in any way alters the

exterior appearance of any structure, Lot or Unit or Neighborhood Common Area, including without limitation, any building, fence, well, swimming pool, tennis court, enclosure, sewer, drain, disposal system, decorative building or landscape devise, object or other improvement, the construction or placement of which is proposed upon the Properties. The ARB may also require submission of samples of building materials proposed for use on or as part of any home, and may require such additional information as may reasonably be necessary to completely evaluate the proposed structure or improvement in accordance with this Declaration and the Architectural Planning Criteria.

(C) To approve or disapprove any improvement or structure of any kind, including, without limitation, any building, fence, wall, screen enclosure, drain or disposal system, or other improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon the Properties, and which is visible from the outside of any home. Evidence of approval by the ARB may be made by a certificate, in recordable form, executed by the Chairman of the ARB. Any party aggrieved by a decision of the ARB or Board of Directors shall have the right to make written request to the Board of Directors of the Association within thirty (30) days of the decision, for a re-review thereof. The determination of the Board upon re-reviewing any such decision shall in all events be dispositive.

(D) To adopt a procedure for inspecting approved changes during and after construction to insure conformity with approved plans. If it is determined by the ARB that the improvement or work is not in compliance with the approved plans and specifications then upon written demand from the ARB the work shall be suspended until such time as the ARB authorizes the work to be recommenced.

(E) Notwithstanding anything to the contrary contained herein if an owner is delinquent in the payment of assessments, fines or other charges or has failed to correct a violation of these covenants or the rules of the Association for which they have been given notice the approval of the ARB may be denied or withheld pending payment of the assessments, fines or other charges or correction of the violation.

(F) The Master Association recognizes and respects the ARB authority granted to the Neighborhood Associations and the desire of the Neighborhood Associations to establish and enforce architectural specifications for their particular neighborhood. As such when approving or disapproving any proposed plans that have already been approved by the respective Neighborhood Association ARB, if any, the Master ARB will give great weight to the decision of the Neighborhood Association ARB and will strive to render decisions consistent with the Neighborhood Association ARB. The Master ARB may also adopt and implement an expedited approval process and thereby choose to forego a full review of any proposed plans that have already been approved by a Neighborhood Association ARB and which otherwise meet the requirements of the Master architectural guidelines.

6.4 Variances. The ARB may authorize variances from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental which must be signed by at least two (2) members of the ARB. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variances were granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the Lot, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal authority.

6.5 Nonliability of ARB Members. Neither the ARB nor any member thereof, nor its duly authorized ARB representative, shall be liable to the Association or any Owner or any other person or entity for any loss, damage, or injury arising out of or in any way connected with the performance or nonperformance of the ARB's duties hereunder, unless due to the willful misconduct or bad faith of a member, and only that member shall be liable therefore. The ARB shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration, or addition solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Development. The ARB shall take into consideration the aesthetic aspects of the architectural designs, placement or buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

7. ASSOCIATION'S SUPERIOR RIGHTS AND POWERS; CONFLICT.

7.1 Ownership in Gulf Harbour. In taking title to a Lot or Unit, each Owner becomes subject to the terms and conditions of this Declaration. In the case of any inconsistencies between the terms of this Declaration and any other Declaration of Condominium or other recorded covenants, the terms of the more restrictive provision shall control unless such terms are prohibited by this Declaration, in which event the terms of this Declaration shall control.

7.2 Supremacy of Declaration; Authority to Enforce Other Governing Documents. The Master Association governing documents shall control over all Neighborhood Association governing documents except that the Neighborhood Association governing documents may be more restrictive in which case the more restrictive provision shall control. In addition to all of the rights and obligations which have been conferred or imposed upon the Association pursuant to this Declaration and the Articles and Bylaws of the Association, the Association shall be entitled to exercise any of the rights contained in any governing documents of the Neighborhood Associations within Gulf Harbour. Further all such other associations and all committees thereof within Gulf Harbour shall also be subject to all superior rights and powers conferred upon the Association pursuant to this Declaration and the Articles and Bylaws. No other association within Gulf Harbour shall take any

action in derogation of the rights of, or contrary to, the interests of the Association.

8. USE RESTRICTIONS. The following rules and standards apply to Gulf Harbour and shall be enforced by the Association pursuant to Section 13 hereof. The use restrictions for a particular Neighborhood may not be less stringent or restrictive than that of the Master Association but may be more stringent or restrictive than those listed herein in which case the more restrictive provision shall control.

8.1 Home; Maximum Occupancy. Each home shall be occupied by only one family at any time. Each home shall be used as a home and for no other purpose. No business or commercial activity shall be conducted in or from any home including but not limited to visitation of the home by clients, customers, suppliers or other business invitees, or door-to-door solicitation of residents. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library in his home, from keeping his personal, business or professional records in his home, from handling his personal, business or professional telephone calls or written correspondence in and from his home, or conducting a “no impact” home based business in and from his home. Such uses are expressly declared customarily incident to residential use. Examples of businesses which are prohibited and are considered “impact” businesses are businesses or commercial activity or ventures that create customer traffic to and from the home, create noise audible from outside the home, or generate fumes or odors noticeable outside the home, including but not limited to, a home day care, beauty salon/barber, and animal breeding. This provision is intended to be and shall be retroactive to and effective from the date of recording of the original Declaration, however any persons in violation of this amended provision on the date it is recorded in the Public Record shall be given a grace period of up to ninety (90) days to comply before enforcement action shall be commenced. In order to avoid undue hardship the Board of Directors may, in its sole discretion, extend the grace period once for up to an additional ninety (90) days. The maximum number of occupants in a home shall not exceed two (2) persons per bedroom.

8.2 Minors. All occupants under eighteen (18) years of age shall be supervised by an adult to insure that they do not become a source of unreasonable annoyance to other residents.

8.3 Pets. The ability to keep pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet that, in its sole and exclusive discretion, becomes a source of annoyance to other residents or endangers the health, safety and welfare of residents. No reptiles, monkeys, rodents, amphibians, poultry, swine or livestock may be kept on the properties. Commercial activities involving pets, including but not limited to breeding for sale, is prohibited. All pets shall be licensed by the appropriate State or local authorities. Each homeowner shall immediately remove their pet’s feces from Lots, Common Areas or Neighborhood Common Area. Pets must be leashed when not on the owner’s Lot or in a Unit.

8.4 Nuisances. No owner shall use his home, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another home, or which would not be consistent with the maintenance of the highest standards for a first

class residential community, nor permit the premises to be used in a disorderly or unlawful way. The use of each home shall be consistent with existing laws and the governing documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner. No solicitation will be allowed at any time within the community.

8.5 Signs. Except as provided herein no owner may post signs of any type whatsoever in Gulf Harbour. The temporary posting or display of one (1) "For Sale", "For Rent", "Open House" or other similar signs shall be permitted with the prior approval of the Board of Directors. The Board may adopt specifications regarding the size, shape, location, number and duration of permissible signs. Lot owners may post security/alarm signs issued by the security/alarm service provider in accordance with Chapter 720, Florida Statutes. The Board may but is not obligated to allow other types of signs as it deems permissible from time to time and adopt specifications regarding same. The Association shall have the right to remove any unapproved sign without prior notice to the owner and entry upon a Lot or Unit for such purpose shall not be deemed a trespass. The Board may also establish real estate open house hours and limit access to the community accordingly.

8.6 Garages. In order to maintain a harmonious and aesthetic appearance, all garage doors within Gulf Harbour shall remain closed except when in present active and actual use. No garage shall be enclosed or converted to other use without the approval of the ARB. Garages shall not be used as bedrooms regardless of the existence of doors and closets.

8.7 Lots and Lot Structures. Other than one single family home, and related garage, no structure, trailer, house trailer, tent, shack, shed, barn or other outbuilding shall be used or placed on any Lot or the Common Areas or Neighborhood Common Area at any time either temporarily or permanently without the approval of the ARB. The Board may allow the temporary placement and use of portable storage containers/moving PODS when an Owner is moving or remodeling his or her home. The Board is authorized to adopt restrictions concerning placement, size, duration and other aspects of using such devices.

8.8 Motor Vehicles and Boats. No mechanical repairs of vehicles or boats are permitted on the properties outside of garages except in an emergency. No car covers are permitted. No boats, ATV's, swamp buggies, dune buggies, go carts, wave runners, jet skis, motorcycles, mo-peds, trailers, motor homes, travel trailers, campers, recreational vehicles or commercial vehicles shall be parked anywhere on the properties outside of garages for more than four (4) hours except as allowed herein. Commercial vehicles that are on the premises to provide services to an owner or the Association may be parked for the period of time necessary to perform the service. Boats, trailers, motor homes, travel trailers, campers and recreational vehicles, may also be parked outside of a garage for the purpose of being actively loaded, unloaded or cleaned in preparation for use or after use. However in no event shall such loading, unloading or cleaning exceed forty-eight (48) hours in any seven (7) day period. As used herein the term "commercial vehicle" means trucks, vans, including but not limited to "panel vans" lacking windows on all sides, and other vehicles which are used for business purposes including but not limited to any vehicle which displays a company name or logo on its exterior, is adorned with signs, flags, advertisements or any type of lettering or

graphics of a commercial nature, or any vehicle with racks, ladders, staging, or other equipment or attachments of a commercial nature, including supplies used for commercial purposes, on or visible in the vehicle. Additionally, and notwithstanding the foregoing, any vehicle, by whatever name designated, which is used for transporting goods, equipment or paying customers shall be considered a commercial vehicle regardless of any definition found elsewhere to the contrary. Further, any vehicle, whether commercial or non-commercial, with vehicle body parts such as the hood, door, quarter panel, bumper or bed removed shall be placed completely inside a garage so that it is not visible from any adjacent street or Lot or Unit. All vehicles shall have a current license and registration. No vehicle, trailer, or boat of whatever type described herein shall be parked on the roadways, streets, lawns or other unpaved areas. Law enforcement and other government issued vehicles are excepted from these restrictions. The operation of any motor vehicle as defined under Chapter 322, Florida Statutes, which is compelled by any power other than human muscular power, including, but not limited to, gasoline power or electric power shall be prohibited to be operated or used on streets, roads, sidewalks and/or Common Area within Gulf Harbour, unless the motor vehicle is operated by a person with a valid driver's license and the motor vehicle complies with all prerequisites established under Florida law for operating said vehicle on public streets, roads and thoroughfares. The term "motor vehicle" as used herein extends to and includes, but is not limited to, motorized bicycles (mopeds), motorized skateboards, motorized scooters, mini or micro motorcycles, mini-bikes, go-carts, golf carts, and similar motorized toy vehicles. The term "motor vehicle" does not include motorized wheelchairs or "jazzy" type scooters that are operated by persons who require them for mobility due to a disability. The Board may make limited exceptions to these restrictions from time to time for appropriate reasons as it deems advisable. The Association shall have the right to tow any vehicle parked in violation of these restrictions.

8.9 Moving Storage Containers/PODS. The Board may allow the temporary placement and use of portable storage containers/moving PODS when an Owner is moving or remodeling his or her home. The Board is authorized to adopt and enforce restrictions concerning placement, size, duration and other aspects of using such devices.

8.10 Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflection film or other items, whether installed within or outside the home, visible from the exterior of the home, shall be subject to the rules and regulations of the Association. Mirror window film is prohibited. Hurricane shutters and hurricane window film are not prohibited however the ARB may adopt uniform specifications and guidelines covering the type, style, installation, duration and color of hurricane shutters.

8.11 Landscaping. All areas of Lot or Units not covered by structures, walkways or paved parking facilities shall be maintained by their owners as lawn or landscaped areas to the roadways edge of any abutting streets and to the waterline of any abutting lakes, canals or water management areas. As contained in the original Declaration stone, gravel or paving may not be used as a substitute for grass in a lawn. All lawn and landscaping shall be completed at the time of completion of the structure as evidenced by the issuance of a Certificate of Occupancy by the appropriate governmental agency and shall thereafter be kept in good condition by the owner. Lawns must be

regularly cut and mulched areas regularly mulched. The landscaping on Lot or Units, including without limitation the trees, shrubs, lawns, flowerbeds, walkways and ground elevations, shall be maintained by the owner thereof in a well groomed manner. Lots contiguous to lakes and/or drainage ditches or swales shall extend and maintain their lawns and landscaping to the waters edge or to the opposite side of the drainage ditch or swale as the case may be. Upon ten (10) days written notice to the Lot Owner the Association shall have the irrevocable right to enter upon any Lot and perform lawn, landscaping or other maintenance which the owner has failed to perform. Said action shall not be deemed a trespass. The cost of such maintenance shall be charged to the Lot owner and if said charge is not paid with thirty (30) days shall be secured by a lien against the Lot.

8.12 General.

(A) No towels, garments, rugs, etc., may be hung from windows, railings or other parts of the homes. No clotheslines or drying yards shall be located so as to be visible from neighboring homes or from the interior roadways within Gulf Harbour.

(B) No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any part of the premises and no refuse pile or unsightly objects shall be allowed to be placed or remain anywhere thereon.

(C) No obnoxious or offensive activity shall be carried on within Gulf Harbour or upon any part, portion or tract thereof, nor shall anything be done which may be or become a source of unreasonable nuisance or annoyance to the Community or its residents.

(D) Trash, garbage, recycling and other waste shall be kept only in sanitary containers which shall be kept in a clean and sanitary condition and screened from view from neighboring homes and the interior roadways except when out for pick-up. Recycle bins and trash shall not be put on the curb for pick-up prior to 6:00 p.m. the night before the scheduled pick-up and shall be removed from the curb no later than 6:00 p.m. the day of pick-up. Placement of trash and recycle bins shall otherwise conform with applicable County regulations. No Lot shall be used as dumping ground for rubbish, trash, waste or natural waste matter (lawn clippings, leaves etc.). No incinerator or out door burning shall be permitted.

(E) No antenna of any kind shall be placed or erected upon any Lot or Unit or affixed in any manner to the exterior of any building other than a satellite antenna less than one meter in diameter, an aerial designed to receive over-the-air television broadcast, or an antenna designed to receive multichannel, multi point distribution service which may be installed only at a location on a Lot or Unit recommended by the ARB. In approving the installation and location of any antenna the ARB and Board shall comply with all applicable laws, whether state or Federal.

(F) No exterior lights shall be installed on the exterior of any walk, fence or building or on the grounds surrounding any building without the prior approval of the ARB.

(G) All recreational facilities and improvements constructed or placed on a Lot or Unit, including but not limited to swimming pools, spas, tennis courts, ramps, jungle gyms, playground type structures, play houses, tree forts, platforms, basketball hoops/backboards, dog houses or any other structure of a similar type, kind or nature shall be allowed only upon written approval of the ARB in advance of placement or construction. All lighting must be approved by the ARB with primary consideration given to the effect of the proposed lighting on the surrounding residences.

(H) Skateboarding and riding scooters on the Common Area is prohibited.

8.13 Roads; Access Control. The roads within Gulf Harbour are not public roads and the use of same are controlled by the Master Association and in the case of the limited private roads by the Neighborhood Associations subject to all provisions of the Master Association governing documents. The Master Association shall have the right to control and regulate all types of traffic on the roads, including but not limited to the right to prohibit or deny vehicular and pedestrian access to Gulf Harbour to any person not entitled to same pursuant to the governing documents.

8.14 Water Management and Drainage Areas; Lakes. The water management, retention and drainage areas (lakes) are part of the Common Area of the Association. The use of the water management and drainage areas is restricted as provided in this Declaration and by rules adopted by the Board from time to time. The maintenance, repair and replacement of the water management and drainage areas are the obligation of the Master Association. The maintenance of such areas is integral to maintaining and enhancing the property values within Gulf Harbour and therefore the level of maintenance shall be commensurate with that expected in a first class community. Such maintenance shall include regular control/removal of algae, cattails and exotics as such ability exists using services provided by local vendors providing lake and water body maintenance. Swimming or bathing in the water retention areas is prohibited. Docks or other structures shall not be erected in water retention areas without the prior written approval of the Board of Directors. All other uses of the water retention areas shall be subject to the prior written approval of the Board of Directors. Boats and watercraft of any kind are prohibited except as authorized by the Board of Directors for the purpose of lake maintenance. Fishing is prohibited in all lakes.

NEITHER THE ASSOCIATION NOR ANY OF ITS OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY OR WATER LEVEL OF/IN ANY LAKE, POND, CANAL, CREEK, STREAM, RIVER OR OTHER WATER BODY WITHIN THE PROPERTIES, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY OR AS IS PROVIDED HEREIN. FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE FOR ANY PROPERTY

DAMAGE, PERSONAL INJURY OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY WATER BODY, AND ALL PERSONS USING SAME DO SO AT THEIR OWN RISK.

ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTIES LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO RELEASE THE LISTED PARTIES FROM ALL CLAIMS FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY ADVISED THAT FROM TIME TO TIME ALLIGATORS AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES WITHIN OR NEARBY THE PROPERTIES AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

THE WATER IN THE AFOREMENTIONED AREAS IS NOT POTABLE. DO NOT DRINK THE WATER.

8.15 Leasing. No home may be leased for a lease term of less than thirty (30) days or greater than one (1) year. No option for the lessee to extend or renew the lease for any additional period shall be permitted. However, a lease may be renewed from year to year. No subleasing or assignment of lease rights by the lessee is allowed. The maximum number of occupants in a home shall not exceed two (2) persons per bedroom. In order to avoid undue hardship the Board may temporarily deviate from these provisions and grant limited exceptions under circumstances the Board shall, in its sole discretion, deem just and appropriate. Any such deviation or exception shall not constitute a permanent deviation or exception and shall be strictly limited as decided by the Board. The owner or the owner's agent must notify the Master Association of the names of all tenants of a leased Lot or Unit at least five (5) days before occupancy. The Association may also require the tenants to provide such other information and complete such forms as may be deemed necessary by the Board of Directors. All leases shall be deemed to incorporate all the provisions of the governing documents and an agreement by the tenants under the lease to abide by same. The Master Association may without further approval of the owner of the leased Lot or Unit terminate the lease for violations of the governing documents by the tenants, or the tenant's family or guests and thereafter evict the tenants from the Lot or Unit.

9. INSURANCE. In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

9.1 Association; Required Coverage. The Association shall maintain adequate property insurance covering all the Common Areas and all Association property. The Association shall also

provide adequate general liability insurance. The amounts of coverage shall be determined annually by the Board of Directors. The name of the insured shall be the Association and the owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure. The insurance carried by the Association shall afford at least the following provisions:

(A) Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract.

(B) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the Lot or Unit owners as a group to a Lot or Unit owner.

(C) Automobile. Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles when used for Association business, in such limits of protection and with such coverage as may be determined by the Board of Directors.

(D) Workers Compensation. The Association shall maintain Workers' compensation insurance if required by law.

(E) Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and Lot or Unit owners.

9.2 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide the insurer waives its right to subrogation as to any claim against the Association, Lot or Unit owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

9.3 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the owners and their respective mortgagees in the following share:

(A) Common Areas. Proceeds on account of damage to Common Areas shall be held in as many undivided shares as there are Lot or Units, the shares of each owner being the same as his share in the Common Areas.

(B) Mortgagee. If a mortgagee endorsement has been issued as to a home, the shares of the

mortgagee and the owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against Lot or Unit or Lot or Units, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings.

Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

9.4 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the owners in the following manner: The proceeds shall be paid to defray the costs of reconstruction or repair by the Association. Any proceeds remaining after defraying cost shall be distributed to the beneficial owners, remittances to home owners and their mortgagees being paid jointly to them.

9.5 Association as Agent. The Association is hereby irrevocably appointed as agent for each Lot or Unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the homes, Lot or Units or Common Areas.

9.6 Damage to Common Areas. Where loss or damage occurs to the Common Areas or Association property, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

(A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the Common Areas, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all Lot or Unit owners for the deficiency. Such special assessments need not be approved by the Lot or Unit owners. The special assessment shall be added to the funds available for repair and restoration of the property.

9.7 Owner's Duty to Insure. Each Lot or Unit owner is responsible for insuring the real and personal property within his own Lot or Unit and home. Each owner must recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance liability including all risk, flood, liability, etc.

9.8 Owner's Duty to Reconstruct. If any home or other improvements located on any Lot or Unit and home are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the owner of such improvements shall cause repair or replacement to be contracted for within thirty (30) days from the date of damage and the work commenced within ninety (90) days from the date that such damage or destruction occurred, and to complete the repair or replacement within nine (9) months thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design and condition, shall utilize and

conform with the original foundation and appearance of the original improvements except as otherwise approved by the Board of Directors. The Board of Directors may deviate from and/or relax the provisions contained herein under circumstances deemed appropriate in the sole and exclusive discretion of the Board.

9.9 Owner's Failure to Reconstruct. If the owner of any home fails to contract for, commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 9.8 above, the Association shall give written notice to the owner of his default. If after thirty (30) days the owner has not made satisfactory arrangements to meet his obligations, the Association shall be deemed to have been granted the right by the owner, as such owner's attorney-in-fact, to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this section, which shall be in the sole discretion of the Board of Directors, the owner of the home shall be deemed to have assigned to the Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvement. The Association shall have the right to recover from the owner any costs not paid by insurance, and shall have a lien on the Lot or Unit and home to secure payment. The Board of Directors may deviate from and/or relax the provisions contained herein under circumstances deemed appropriate in the sole and exclusive discretion of the Board.

10. AMENDMENTS; TERMINATION.

10.1 Duration. The conditions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the owner of any real property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for thirty (30) years from the recording date hereof. Thereafter, the Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, and subject to existing laws and ordinances, that there shall be no renewal or extension of this Declaration if prior to one (1) year in advance of an effective date of a proposed termination, at least two-thirds (2/3rds) of the total voting interests affirmatively vote, in person or by proxy, at a duly held meeting of members of the Association in favor of terminating this Declaration. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, to be given at least ninety (90) days in advance of said meeting. If the Association votes to terminate this Declaration, the President and Secretary shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, and the total number of votes cast against such resolution. Said certificate shall be recorded in the

Public Records of Lee County, Florida at least one (1) year prior to the effective date of termination, and may be relied upon for the correctness of the facts contained therein as they relate to termination of this Declaration.

10.2 Amendments by Members. Except as otherwise provided herein or by law, this Declaration may be amended at anytime by affirmative vote of at least a two thirds (2/3rds) of the voting interests who are present and voting, in person or by proxy at a duly called meeting of the members of the Association. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration is recorded, and shall be executed by the President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County, Florida.

11. ENFORCEMENT; GENERAL PROVISIONS.

11.1 Enforcement. Enforcement of these covenant, conditions and restrictions may be by a proceeding at law or in equity and may be instituted by the Association, its successors or assigns, or by any owner, against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against any Lot or Unit to enforce any lien created by these covenants. Failure of the Association or any owner to enforce any covenants, condition or restriction herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

11.2 Owner and Member Compliance. The protective covenants, conditions, restrictions and other provisions of the governing documents and the rules promulgated by the Association shall apply to members and all persons to whom a member has delegated his right of use in and to the Common Areas, as well as to any other person occupying any home under lease from the owner or by permission or invitation of the owner or his tenants (express or implied), and their licensees, invitees or guests. Failure of any owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the governing documents shall not in any way act to limit or divest the Association of the power to enforce these provisions. Each Lot or Unit owner shall be responsible for any and all violations by his or her tenants, licensees, invitees or guests and by the guests, licensees and invitees of his or her tenants, at any time.

11.3 Litigation. Enforcement actions for damages, or for injunctive relief, or both, on account of any alleged violation of law, or of the governing documents or Association rules, may be brought by any owner, or the Association against:

- (A) the Association;
- (B) the Lot or Unit owner;

(C) anyone who occupies or is a tenant or guest of a Lot or Unit; or

(D) any officer or Director of the Association who willfully and knowingly fails to comply with these provisions.

11.4 Attorney Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, residential Lot or Unit owner, officer, Director or the Association to comply with the requirements of the law, or the governing documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorney fees as may be awarded by the court.

11.5 No Election of Remedies. All rights, remedies and privileges granted to the Association or owners under the law and the governing documents shall be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

11.6 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, and notice thereby given, when mailed, with the proper postage affixed to the last known address of the owner appearing in the roster record of the Association in the absence of such roster information then the notice shall be mailed to the address of the Lot or Unit. Notice to one of two or more co-owners or any officer, director, partner, beneficiary or trustee of an owner of a Lot or Unit shall constitute notice to all owners. It shall be the obligation of every member to immediately notify the Secretary of the Association or management company in writing of any change of address or name.

11.7 Severability. Should any covenant, condition or restriction herein contained, or any section, subsection, sentence, clause, phrase or term of this Declaration or its recorded exhibits be declared to be void, invalid, illegal, or unenforceable, for any reason, by any court having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect. Nothing contained in this Amended and Restated Declaration of Restrictions is intended to affect vested rights. If any provision contained herein is deemed by a competent court of law to have such affect, then such provision will be deemed null and void but have no affect on the remaining provisions herein.

11.8 Interpretation; disputes. The Board of Directors is responsible for interpreting the provisions of this Declaration, its exhibits and rules promulgated by the Board. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel retained by the Board that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation. In the event there is any dispute as to whether the use of the Property complies with the covenants and restrictions contained in this Declaration, its exhibits or the rules promulgated by the Board the matter shall be referred to the Board and the determination of the Board with respect to such dispute shall be dispositive on the

issue and binding on all parties.

11.9 Non-Profit Status. Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity inconsistent with its non-profit status under applicable state or federal law.

11.10 Use of Singular and Plural and Gender. Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

11.11 Headings. The headings used in the governing documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

12. DISCLAIMER OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, OR ANY RULES AND REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING, BINDING ON OR ADMINISTERED BY THE ASSOCIATION (COLLECTIVELY, THE “ASSOCIATION DOCUMENTS“), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OR ANY SUCH PERSONS, WITHOUT LIMITING THE FOREGOING:

12.1 IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;

12.2 THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, LEE COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES.

12.3 ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO THE HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE

OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

12.4 EACH OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON ANY PORTION OF THE PROPERTIES SHALL BE BOUND BY THESE DISCLAIMERS AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECT WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED HEREIN.

12.5 AS USED HEREIN "ASSOCIATION" SHALL INCLUDE WITH ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.