

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, RESTRICTIONS AND RESERVATIONS**

**OSPREY POINT
FORT MYERS, FLORIDA**

KNOW ALL MEN BY THESE PRESENTS that on May 7, 1996 the original Declaration of Covenants, Conditions, Restrictions and Reservations for Osprey Point were recorded in Official Record Book 2703, at Page 269 *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 Deed Restrictions (hereinafter "Osprey Point" or the "Property") is legally described as:

All Lots 1 through 25, inclusive, and other real property of that certain subdivision known as Osprey Point, per Plat Book 58, Page 3, Public Records of Lee County, Florida.

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 Deed Restrictions 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 any other ownership interest in the Property, or the lease, occupancy or use of any portion of a lot or the Property, constitutes an acceptance and ratification of all provisions of this Deed Restrictions as amended from time to time, and an agreement to be bound by its terms.

1. CONFIRMATION OF PRIOR STATEMENT OF SUBMISSION: The owners of parcels of Osprey Point, do hereby confirm the statements as reflected in the Public Records of Lee County, Florida as follows: Statement of Submission, Official Record Book 2703 at Pages 269, Public Records of Lee County, Florida.

2. DEFINITIONS. All terms and words in this Declaration and its recorded exhibits shall have the definitions, if any, specified in the Declaration of Covenants, Conditions and Restrictions for Osprey Point, as originally recorded in Book 2703 at Pages 269 *et seq.*, Official Records of Lee County, Florida, (the "Declaration"), as it may be amended from time to time, or, if different, the meanings stated below, unless the context clearly requires otherwise.

1.1 "Association" or "Neighborhood Association" means Osprey Point at Gulf Harbour Homeowners Association, Inc., a Florida corporation not for profit.

1.2 "Board" means the Board of Directors of the Association.

1.3 "Master Association" means Gulf Harbour Master Association, Inc., a Florida corporation not for profit.

1.4 "Master Association Declaration" means the Declaration of Covenants, Conditions and Restrictions for Gulf Harbour Yacht & Country Club, as originally recorded in Book 1783, at Page 3511, *et seq.*, Official Records of Lee County, Florida, (the "Master Association Declaration"), as it may be amended from time to time.

1.5 "County" A reference in any of the Governing Documents to "the County" or to any County other than Lee County, Florida, is unintentional and shall be construed as intended to mean and refer to Lee County.

1.6 "Osprey Point" means the Properties subject to this Declaration.

1.7 "Osprey Point Documents" means this Declaration and all recorded exhibits hereto, as the same may be amended from time to time.

1.8 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Osprey Point, as amended from time to time.

1.9 "Governing Documents" means the Master Association Declaration, and the Articles of Incorporation and Bylaws of the Master Association, as well as this Declaration and all recorded exhibits to it, all as amended from time to time. If there is an irreconcilable conflict between the provisions of any two of these documents, the first document to appear in the foregoing list shall prevail.

1.10 "Guest" means a person who is physically present in, or occupies a Living Unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

1.11 "Institutional Mortgagee" means the holder of a mortgage against a Lot or Living Unit, which mortgagee is a bank, savings and loan association, mortgage company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any other institutional lender providing financing of acquisition, development or construction, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Lot or Living Unit which mortgage is guaranteed or insured (as evidenced by a recorded instrument) by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or any other public or private corporation engaged in the business of guaranteeing or insuring first mortgage loans, and their successors and assigns. An "Institutional Mortgage" is a mortgage held by an Institutional Mortgagee encumbering a Living Unit.

1.12 "Lease" means the grant by an owner of a temporary right to occupy the owner's Living Unit for valuable consideration.

1.13 "Living Unit" "Unit" or "Residence" means any or all the residential dwellings which have been or will be constructed on the Lots, each intended for use and occupancy as a residence for a single family.

1.14 "Lot" or "Parcel" means any one or more platted parcels of land into which the Properties have been subdivided as shown in Exhibit "A," upon each of which a Residence has been or will be constructed. Wherever it appears, "Lot" shall be interpreted as if it is followed by the words "and Living Unit constructed thereon." (emphasis supplied) except where the context clearly requires a different interpretation.

1.15 "Occupant" when used in connection with a Living Unit, means any person who is physically present in the Living Unit on two or more consecutive days, including staying overnight. "Occupy" means the act of being an occupant.

1.16 "Owner" or "Member" means a record owner of legal title to a Lot.

1.17 "Properties" or "Neighborhood" means all the real property which is subject to this Declaration.

1.18 "Rules and Regulations" means the use restrictions governing procedures for administering the Association and the Properties, as adopted, amended or rescinded by resolution of the Board of Directors.

1.19 "Service Charge" means a charge against the owners of one or more Lots or Living Units for any service, material or combination thereof which may be provided by the Neighborhood Association for the use and benefit of those owners, such as contracting in bulk for repairs, services, materials or maintenance. The amount paid or incurred by the Association on behalf of the owners

accepting or receiving the repairs, services, materials or maintenance shall be passed on in the form of a service charge against the Lots or Living Units so benefited. The owner(s) are deemed to agree to such assessment by subscribing, requesting, or accepting the material or service.

1.20 "Temporary" or "Temporarily" means not more than thirty (30) days in any period of six (6) consecutive months.

2. ASSOCIATION; MEMBERSHIP; VOTING RIGHTS. The administration and management of this Neighborhood shall be by Osprey Point at Gulf Harbour Homeowners Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

2.1 Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached as Exhibit "B" .

2.2 Bylaws. The initial Bylaws of the Association shall be the Bylaws as attached as Exhibit "C" to this Declaration, as they are amended from time to time.

2.3 Delegation of Management. The Association may contract with a management agent to assist the Association in carrying out its powers and duties by performing such functions as submission of proposals, collection of assessments, payment of bills, keeping of records, and enforcement of covenants and rules, with funds made available by the Association for such purposes. The Association and its officers however, shall retain at all times the powers and duties provided in Sections 720.301-720.312, Florida Statutes (2006) as amended from time to time, and in the Governing Documents.

2.4 Members. Every person or entity who is a record owner of a fee simple interest in any Lot shall be a member of the Association. Membership is appurtenant to, runs with, and shall not be separated from, the real property interest upon which membership is based. The burden of notifying the Association of a change of membership shall be borne by the new member; and the Association shall not be required to recognize a change of membership until the new member furnishes satisfactory proof of ownership.

2.5 Voting Interests. The members of the Association are entitled to one (1) vote in Association affairs for each Lot or Parcel owned by them. Votes shall be cast as provided in the Bylaws.

2.6 Termination of Membership. 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 his membership, nor does it impair any rights or remedies which the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

2.7 Association As Owner of Lots. The Association has the power to purchase Lots and Living Units, and to acquire and hold, lease, mortgage, and convey them, by act of a majority of the Board of Directors. However, if at any time the Association owns two (2) or more Lots, it may not purchase any more Lots without the prior approval of a majority of the voting interests.

2.8 Membership Roster. The Association shall maintain a current roster of names, mailing addresses, and email addresses of owners and primary occupants. A copy of the up-to-date roster shall be available to any owner upon request.

2.9 Board of Directors. Except as otherwise specifically provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Association have a fiduciary relationship to the members.

2.10 Powers and Duties. The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws, and those provided in Chapter 720, Florida Statutes, to the extent not inconsistent with the foregoing documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. The Association has the power to enter into agreements and to acquire leaseholds, memberships and ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the Neighborhood. If the Association has the authority to maintain a class action suit as plaintiff, the Association may also be joined as a defendant in an action as the representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual owner or class of owners to bring any action which may otherwise be available.

2.11 Official Records. The official records shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within ten (10) business days after receipt by the Association of a written request for access. This requirement may be complied with by having a copy of the official records available for inspection or copying within the Neighborhood. The Association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspections, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The Association shall maintain an adequate number of copies of the recorded Governing Documents, to ensure their availability to members and prospective members, and may charge only its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

3. ASSESSMENTS. The Association has the authority to levy assessments to pay common expenses. Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the Neighborhood Common Areas and association property, the expenses of insurance for the Association and/or Directors and officers; the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as common expense by this Declaration or the Bylaws. If the Board enters into such a contract, the cost of a duly franchised cable television or broadband telecommunications service(s) obtained pursuant to a bulk contract(s) shall be a common expense.

3.1 Covenant to Pay Assessments. Each Lot within the Neighborhood, hereby covenants, and each subsequent owner of any Lot (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 to the Association:

- (A) the Lot's pro rata share of annual assessments based on the annual budget adopted by the Association;
- (B) the Lot's pro rata share of any special assessments levied for expenses not provided for by the annual budget; and
- (C) any service assessments or charges against less than all of the Lots specifically authorized in this Declaration or the Bylaws.

Assessments shall be established and collected as provided herein and in the Bylaws. The assessments and charges, together with interest, costs, and reasonable attorney's fees shall bind each Lot in the hands of the owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance of title, voluntary or otherwise, the transferee shall be jointly and severally liable with the transferor for all unpaid assessments coming due prior to the time of such conveyance, without prejudice to the rights of the transferee to recover from the transferor any amounts paid by the transferee therefore, Except as provided elsewhere in this Declaration as to the Developer and First Institutional Mortgagees, no owner may be excused from the payment of assessments unless all owners are similarly excused.

3.2 Share of Assessments. Except as otherwise provided below, each Lot and the owner thereof shall be liable for an equal share of all annual and special assessments, such share being a fraction of the whole, the numerator of which is the number "one" and the denominator of which is the total number of Lots then included within the Neighborhood. The total number of single family Parcels is twenty-five (25) and the assessments for common expenses shall be shared by all owners on an equal basis, namely 1/25th.

3.3 Establishment of Liens to Secure Payment. All assessments and charges levied by the Association in accordance with the provisions of this Declaration or any of the Governing Documents, together with interest at the highest rate allowed by law, and costs of collection (including, but not limited to costs and reasonable attorney's fees) are hereby declared to be a charge and continuing lien upon the Lot and Living Unit against which each such assessment or charge is made, and shall also be the personal obligation of the owner of each Lot and Living Unit assessed. This lien is superior to any Homestead rights the owner may acquire. No owner may be exempt from personal liability for assessments and charges, or release any Lot from the liens and charges hereof, by a waiver of use rights, or by abandoning the Lot. The Association's lien is activated by recording a Claim of Lien by the Association in the public records of the County, setting forth the amount and due date of each unpaid assessment or charge as of the date the Claim of Lien is recorded. The Claim of Lien secures payment of all assessments and charges due at the time of recording (including interest, costs and attorney's fees as provided above), as well as all assessments and charges coming due subsequently, until the lien is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by a Claim of Lien, the party making payment is entitled to a satisfaction in recordable form.

3.4 Priority of Liens. Except as otherwise provided by law, the Association's lien for unpaid assessments and charges shall be subordinate and inferior to that of any recorded Institutional Mortgage, unless the Association's Claim of Lien was recorded before the mortgage. The Association's lien is superior to, and takes priority over, any other mortgage regardless of when recorded. A lease of a Living Unit is also subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under any of them, shall hold title subject to the liability and lien of any assessment or charge coming due after taking title. Any unpaid assessment or charge which cannot be collected by reason of this Section, shall be treated as a common expense, collectible from all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

3.5 Collection of Assessments. If any owner fails to pay any assessment, charge, or installment thereof, within ten (10) days after the due date, the 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 Association.

(A) To charge interest on such assessment or charge, from the due date until paid, at the highest rate allowed by law; and, in addition, to impose a late payment penalty which may not exceed the greater of Twenty-five Dollars, or such other maximum as may be provided for by law.

(B) To suspend the voting rights of the owner in the Association during the period of delinquency.

(C) To file an action in equity to foreclose its lien. Unless another procedure is required by law, the lien may be foreclosed by an action brought by the Association in the same manner as provided in Section 718.116 of the Florida Condominium Act, as amended from time to time, for the foreclosure of liens on condominium parcels for unpaid condominium assessments.

(D) To bring an action at law for a money judgment against the owner without waiving any foreclosure rights of the Association.

3.6 Certificate. The Association shall, within fifteen (15) days of request for same, furnish to any owner liable for assessments a certificate in writing signed by an officer of the Association, setting forth whether all assessments and charges against the owner's Lot have been paid. Any person, except the owner, who relies on the certificate shall be protected thereby.

3.7 Termination of the Association. If the Association no longer exists for any reason, and if no other Neighborhood Association has assumed its duties and functions, the Community Association shall have the power to perform all functions of the Association and shall be authorized to assess all owners for the cost of such services.

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

4.1 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 or Lot unless and until the plans, specifications and location of same shall have been submitted to, and approved in writing by the Architectural Review Committee (hereinafter "ARC"). All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography. The ARC 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 ARC the plan shall be deemed denied. All approved modifications or improvements shall be completed within one year from the date of approval. All changes, alterations or modifications to an approved plan must also be approved pursuant according to these same requirements.

4.2 The ARC. The architectural review and control functions of the Association shall be administered and performed by at least (2) members of the Board of Directors. The members of the ARC 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 ARC 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 ARC in carrying out its functions. Notwithstanding anything to the contrary contained herein or elsewhere all decisions of the ARC are subject to review by all of the Board of Directors and the full Board of Directors has the authority to overrule, void or otherwise modify in all respects any decision of the ARC.

4.3 Powers and Duties. The ARC 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 Deed Restrictions, 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 ARC (and/or the management company) of three (3) complete sets 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, or Lot including without limitation, any building, fence, well, swimming pool, tennis court, enclosure, sewer, drain, disposal system, decorative building or landscape devise, yard art, object or other improvement, the construction or placement of which is proposed upon the Properties. The ARC 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 Deed Restrictions 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 ARC may be made by a certificate, in recordable form, executed by the Chairman of the ARC. Any party aggrieved by a decision of the ARC 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 ARC that the improvement or work is not in compliance with the approved plans and specifications then upon written demand from the ARC the work shall be suspended until such time as the ARC 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 ARC may be denied or withheld pending payment of the assessments, fines or other charges or correction of the violation.

4.4 Variations. The ARC may authorize variances from compliance with any of the architectural provisions of this Deed Restrictions when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental which must be signed by at least two (2) members of the ARC. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Deed Restrictions 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 Deed Restrictions 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. The Board of Directors may overrule and void any variance granted by the ARC if such action is taken within twenty (20) days from the date the variance is granted.

4.5 Nonliability of ARC Members. Neither the ARC nor any member thereof, now its duly authorized ARC 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 ARC's duties hereunder, unless due to the willful misconduct or bad faith of a member, and only that member shall be liable therefore. The ARC 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 ARC 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.

5. APPURTENANCES; PROPERTY RIGHTS; EASEMENTS.

5.1 Appurtenances to Each Lot. The owners of each Lot have certain rights and obligations appurtenant to such ownership, including without limitation the following:

- (A) Membership in the Association, and the right to cast one (1) vote in Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles of Incorporation and the Bylaws of the Association.
- (B) The non-exclusive right to use the Neighborhood Common Areas for the purposes intended, subject to the restrictions and limitations provided in the Governing Documents.
- (C) Beneficial ownership of an undivided share of the assets and common surplus of the Association equal to the owner's share of liability for the assessments levied by the Association as set forth above. The ownership of an undivided share of the common surplus does not entitle the owner to a distribution of the common surplus.
- (D) Membership and voting rights in the Master Association, and the non-exclusive right to use Master Association Common Areas, subject to the restrictions and limitations provided in the Governing Documents.
- (E) Other appurtenances as may be provided in the Governing Documents.

The appurtenances to a Lot and Living Unit automatically pass with the title, whether separately described or not, and cannot be separated from the title to the Lot and Living Unit. The shares in the funds and assets of the Association cannot be assigned, pledged -or transferred except as an appurtenance to the Living Units.

5.2 Use and Possession. An owner is entitled to exclusive use and possession of his Lot and Living Unit. He is entitled to non-exclusive use of the Neighborhood Common Areas (all real property shown on the Plat of Osprey Point except the Lots) in accordance with the purposes for which they are intended, but no use of any Lot or Common Area may unreasonably interfere with the rights of other owners or residents. No Lot may be sub-divided or any part separately sold, leased or otherwise transferred. Every owner, and his tenants, guests and invitees, shall have a perpetual non-exclusive easement for ingress, egress and access in, to and over the walkways and private roads laid out on the Community Association Common Areas for use in common with all other owners, their tenants, guests and

invitees. The portions of the Neighborhood Common Areas not used for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the owners and each owner shall have a permanent and perpetual easement for the use and enjoyment of such lands as common open space, subject to recorded restrictions and regulation by the Association. These easements shall be appurtenant to and shall pass with the title to every Lot subject to the following:

(A) The right and duty of the Association to levy assessments against each Lot for the upkeep, maintenance, repair or betterment of the Neighborhood Common Areas and improvements thereon.

(B) The right of the Association to dedicate or transfer or grant an easement covering all or any part of the Neighborhood Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be determined by the Board. No such easement shall materially interfere with the rights of the owners to use the Common Areas for the purposes intended.

(C) The right of an owner to the non-exclusive use and enjoyment of the Neighborhood Common Areas and facilities thereon shall extend to the members of his immediate family who reside with him, and to his tenants, guests and invitees, subject to regulation from time to time by the Association.

5.3 Title to Neighborhood Common Areas. The Association shall be responsible for the maintenance and operation of the Neighborhood Common Areas, and any improvements and personal property thereon.

5.4 Easements. Each of the following easements and easement rights is reserved through the Properties and is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Properties. Any lien encumbering these easements shall automatically be subordinate to the rights of the owners with respect to such easements. Each Lot shall be subject to an easement in favor of all other portions of the Properties for the location of utilities, and for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of roofs, roof eaves and overhang (limited, however, to no more than eighteen (18) inches deep), pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Properties.

(A) Utility and other Easements. The Association has the power, without the joinder of any owner, to modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, in any portion of the Neighborhood Common Area, and to relocate any existing easements in any portion of the Neighborhood Common Area, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Neighborhood Common Area. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use and enjoyment of the Lots. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.

(B) Encroachments. If for any reason other than the intentional act of the owner or the Association, any Living Unit or Lot encroaches upon any of the Neighborhood Common Areas, upon any other Lot, or any Neighborhood Common Area encroaches upon any Lot, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

(C) Ingress and Egress. A non-exclusive easement shall exist in favor of each owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Neighborhood Common Areas as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the Neighborhood Common Areas as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

(D) Drainage. A perpetual, non-exclusive easement shall exist in favor of the Association, the Community Association, and their employees or other designees for the use of drainage areas established throughout the Neighborhood, and an easement for ingress, egress, and access to enter any portion of the Neighborhood in order to construct, maintain or repair, as necessary, any drainage areas and facilities thereon and appurtenances thereto, specifically including without limitation, access over and across portions of the Neighborhood Common Areas by utility companies to utilize such areas for facilities for the transporting of treated effluents for irrigation purposes. No structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with any easement provided for in this Section or the use rights set forth elsewhere in the Governing Documents.

(E) Landscape Maintenance. The Association and its agents, assigns and business invitees shall have an easement over all Lots for the purpose of performing landscape maintenance on the Lot as provided hereinafter below.

6. MAINTENANCE; IMPROVEMENTS.

6.1 Maintenance of Living Units. The maintenance, repair and replacement of each Lot and Living Unit is the responsibility of its owner. The owner shall keep the appearance of the Lot and all landscaping and improvements in a condition materially comparable to when they were new, except normal wear and weathering. The owner is responsible for his own driveway.

6.2 Enforcement of Maintenance. If the owner of a Lot and Living Unit fails to maintain it as required in this Declaration, the Association may 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, with or without consent of the owner. The Association's right of entry does not extend to the inside or interior of the dwelling or Living Unit. The Association may repair, replace, or maintain any item which constitutes a significant hazard to other property or residents, or which has a material adverse effect on the appearance of the Neighborhood. Any expenses so incurred by the Association shall be assessed against the owner as service assessments, together with reasonable attorney's fees and all other expenses of enforcement.

6.3 Negligence: Damage Caused by Condition in Living Unit. The owner of each Lot and Living Unit shall be personally liable- for the expenses of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his guests, employees, agents, or lessees; but such liability shall be limited to the extent that such expenses are not met by the proceeds of insurance available to the injured person.

7. INSURANCE; DUTY TO RECONSTRUCT.

7.1 Duty to Insure and to Reconstruct. Realizing that the Master Associations rules regarding each owners duty to insure and reconstruct supersede this section, each owner shall at all times maintain property casualty insurance including but not limited to coverage for hurricane, fire and flood, on his residence and all other insurable improvements in an amount equal to the full replacement cost thereof. if any Living Unit or other improvements located on any Lot 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 commenced within three (3) months from the date that such damage or destruction occurred, and shall complete the repair or replacement within twelve (12) months thereafter.

All such repairs or replacements must restore the improvements to substantially their original character, design and appearance, and shall utilize and conform with the original foundation and appearance of the original improvements, except as otherwise approved by the Association.

7.2 Failure to Reconstruct. If the owner of any Lot fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 7.1 above, the Association shall give written notice to the owner of his default. If the owner has not notified the Association of satisfactory arrangements to meet his obligations within thirty (30) days after the Association mailed such notice, the Association shall be deemed to have been granted the right by the owner, as such owner's attorney-in-fact, to remove all debris and damaged improvements, or 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 Lot 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 improvements. 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 and residence to secure payment.

7.3 Failure to Insure: Association as Additional Insured. For the purpose of this Section 7, each owner of a Lot within the Neighborhood agrees that the Association shall be an additional insured under any contract of property insurance and/or flood insurance relating to his Lot and improvements constructed thereon. Further, the Association may require that all such policies be in an amount sufficient to finance the repair or replacement of the improvements, taking into account local construction costs and property values as they may, from time to time exist. The Association has the right to require each owner to produce proof of insurance. If an owner fails or refuses to maintain such insurance coverage deemed reasonably necessary by the Association, or if the owner allows the required insurance coverage to lapse, or for some other reason, causes the same to become ineffective, the Association may but is not obligated to, purchase whatever coverage it deems reasonably necessary for the Association's benefit. The costs incurred by the Association in procuring insurance shall become due and payable by the owner in all respects, together with interest, reasonable attorney's fees and costs of collection, immediately upon the Association notifying the owner, in writing, that it has procured such insurance, and the costs thereof.

7.4 Association's Right of Entry. For the purpose of performing the duties authorized by this Section 7, the Association, through its duly authorized agents and employees, shall have the right, after reasonable notice of not less that 48 hours sent via certified mail, to the owner, to enter upon the Lot at reasonable hours. Association's right of entry does not, however, extend to the inside or interior of the dwelling or Living Unit.

7.5 Association Insurance: Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force at all times the insurance coverage which it is required to carry, and may obtain and keep in force any or all of such other or additional insurance coverage as it may deem necessary. The premiums shall be a common expense. The name of the insured shall be the Association as agent for the owners without naming them, and their mortgagees.

7.6 Required Coverage. The Association shall maintain adequate liability insurance and casualty insurance covering all buildings and other insurable improvements (if any) within the Neighborhood Common Areas, with coverage equal to the maximum insurable replacement value thereof, as determined annually by the Board of Directors; such insurance to afford the following protection:

(A) Property. Loss or damage by fire, extended coverage (including windstorm) vandalism, and malicious mischief, and other hazards covered by what is commonly referred to as an "all risk" property contract.

(D) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as shall be required by the Board of Directors, with cross liability endorsement to cover liabilities of the owners as a group to any single owner.

(C) Automobile. Automobile liability for bodily injury and property damage for owned and/or non-owned motor vehicles, in such limits of protection and with such coverage as shall be required by the Board of Directors.

(D) Fidelity Bonding. Adequate fidelity bond coverage for all individuals having control of or access to Association funds.

7.7 Optional Coverage. The Association may purchase and carry such other insurance coverage as the Board of Directors may determine from time to time to be in the best interest of the Association and owners. Some common examples are:

(A) Flood insurance.

(D) Broad Form Comprehensive General Liability Endorsement.

(C) Directors and Officers Liability.

(D) Medical Payments.

7.8 Description of Coverage. A detailed summary of the coverage's included in the Association's policies shall be available for each owner upon request. All Association insurance policies shall be available for inspection by owners upon request.

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

7.10 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, and all proceeds shall be payable to the Association.

7.11 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be used to defray the cost of repair or reconstruction. Any proceeds remaining after defraying costs shall become part of the Association's common surplus.

7.12 Association as Agent. The Association is hereby irrevocably appointed agent for each owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Living Units.

8. GENERAL COVENANTS AND USE RESTRICTIONS.

8.1 Residential Use. Each Living Unit shall be occupied by only one family and its temporary guests at any time, as a residence and for no other purpose. No time-sharing, business or commercial activity shall be conducted in or from any Living Unit. No person may publicly advertise the address of a Living Unit as the address of any business. The use of a Living Unit as a public lodging establishment shall be deemed a business or commercial use. This Section 8.1 shall not be construed to prohibit any Living Unit occupant from maintaining a personal or professional library, from keeping his personal, business or professional records in his Living Unit, or from handling his personal, business or professional telephone calls, written correspondence, or other communications in and from his Living Unit commercial or conducting business activity by an owner which does not change the residential ambiance of the Neighborhood, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Neighborhood by persons making deliveries or pick-ups, employees or other business associates, or customers and clients. Such uses are expressly declared customarily incident to residential use.

8.2 Building: Setback Lines. Size of Buildings. Site Restrictions and Building Height. All structures shall conform to the requirements of the County and the Governing Documents.

8.3 Leasing of Homes: In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of homes by their owners shall be restricted as provided in this section. All leases of homes must be in writing. A homeowner may lease only his entire home, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person as opposed to an artificial entity such as a corporation, partnership, trust, etc.

8.3.1 Procedures.

(A) Notice by the Owner. An owner intending to lease his home shall give to the Board of Directors or its designee written notice of such intention at least 10 days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, a fully executed copy of the proposed lease, and such other information as the Board may reasonably require. The Board may require a personal interview with any lessee and his spouse, if any, as a pre-condition to approval. The applicant must sign for having received copies of the rules and regulations of the Association.

(B) Board Action. After the required notice and all information or interviews requested have been provided, the Board shall have 10 days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.

(C) Disapproval. A proposed lease shall be disapproved only if a majority of the whole Board so votes, and in such case the lease shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, the following:

1. the owner is delinquent in the payment of assessments, fines or other charges at the time the application is considered;
2. the owner has a history of leasing his home without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his home;
3. the real estate company or rental agent handling the leasing transaction on behalf of the owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval;
4. the application on its face indicates that the person seeking approval or any of the proposed occupants intend to conduct themselves in a manner inconsistent with the covenants and restrictions applicable to the Association;
5. the prospective lessee or any of the proposed occupants have been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
6. the prospective lessee or any of the proposed occupants have a history of conduct which evidences disregard for the rights and property of others.
7. the prospective lessee or any of the proposed occupants evidences a strong possibility of financial irresponsibility;
8. the lessee or any of the proposed occupants, during previous occupancy, has evidenced an attitude of disregard for the Association rules;
9. the prospective lessee or any of the proposed occupants gives false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid.
10. the owner fails to give proper notice of his intention to lease his home to the Board of Directors.

(D) Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee without securing consent to such eviction from the owner.

(E) Applications: Assessments. Applications for authority to lease shall be made to the Board of Directors on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying assessments may not be delegated to the lessee.

(F) Committee Approval. To facilitate approval of leases proposed during times when many of its members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) unit owners, one of whom must be a Director.

- 8.3.2 Term of Lease and Frequency of Leasing. No home may be leased more often than two (2) times in any calendar year, with the minimum lease term being ninety (90) days. The foregoing notwithstanding, during the period of January 1 to April 30 each year the minimum lease term shall be thirty (30) days. For purposes of this restriction, the first day of occupancy under the lease shall conclusively determine in which year the lease occurs. No lease may be for a period of more than one (1) year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted. However, the Board may, in its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee is allowed.
- 8.3.3 Exceptions. Upon written request of a unit owner, the Board of Directors may approve one additional lease of the home within the same calendar year, but only under unusual circumstances to avoid undue hardship and inequity.
- 8.3.4 Occupancy During Lease Term.
- (A) When a home has been leased for a period of one (1) year, the home may be occupied by the lessee and his family, as the term "family" is defined in above.
- (B) When a home has been leased for a period of less than one (1) year, no one but the lessee and that person's spouse, if any, and their natural or adopted children, if any, may occupy the home during the term of the lease.
- (C) Guests may occupy leased homes when the lessee is in residence. The total number of house guests in a leased home is limited to two (2) persons per bedroom. Such guests may stay for a period not to exceed ten (10) days, and the number of occasions for this type of guest occupancy shall be limited to once during the lease term.
- 8.3.5 Occupancy in Absence of Lessee. If a lessee absents himself from the home for any period of time during the lease term, his family authorized to occupy the home who are already in residence may continue to occupy the home and may have house guests subject to all the restrictions. If the lessee and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the home.
- 8.3.6 Use of Common Area and Association Property. To prevent overtaxing the facilities, an owner whose home is leased may not use the recreation or parking facilities during the lease term.
- 8.3.7 Regulation by Association. All of the provisions of the governing documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a home as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the governing documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.
- 8.3.8 Fees and Deposits for the Lease of Homes. Whenever herein the Board's approval is required to allow the lease of a home, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. A separate fee may be charged for each person intending to occupy the home except only one fee may be charged for a husband and wife and minor children. No fee may be charged for approval of a renewal or

extension of a lease with the same lessee. The Association may also require a security deposit to protect against damage to the Common Area or association property.

8.3.9 Unapproved Leases. Any lease of a home not approved pursuant to this Section 10 shall be void and unenforceable unless subsequently approved by the Board.

8.4 Nuisance. No obnoxious, loud, or offensive activity shall be carried on upon any Lot or in any Living Unit, nor shall anything be done that is or may become a reasonable source of annoyance or nuisance to other residents. It is hereby affirmed that Osprey Point as a community enjoys a peaceful and calm atmosphere, and intends to maintain that standard.

8.5 Temporary Structures. No structure of a temporary character, including trailer, tent or shack shall be used on any Lot, either temporarily or permanently.

8.6 Signs. In order to maintain an attractive community, no sign, banner, advertisement or poster (including "open house", "for sale" or "for rent" signs) shall be exhibited, displayed, inscribed, painted, or affixed, in, on or upon any part of the Properties with the exception of one (1) sign no larger than two (2) square feet in any area may be placed on each Parcel or Lot advertising "For Sale", unless the Parcel is a corner Parcel, in which case one such sign for each side of the street frontage is permitted. The only other exception is the use of a temporary Open house sign on the day of the Open house. If the Master Association sign restrictions are more restrictive then all signs must conform to the restrictions set by the Master Association This provision includes signs inside of residence's windows or the windows of motor vehicles. The Board of Directors shall have the right to summarily remove and destroy all unauthorized signs.

8.7 Appearance: Refuse Disposal. Each owner shall keep his Lot free and clear of weeds, underbrush, unsightly growths, trash and debris and shall reasonably maintain his Living Unit. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers suitably screened from view from the street and adjacent Lots. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No garbage incinerators shall be permitted.

8.8 Maintenance. The Association shall have the right to repair any structure or improvement on any Lot which constitutes a danger or nuisance or is in unsightly disrepair, provided that the owner is given reasonable notice of the Association's intent to do so, which reasonably specifies the proposed action. The Association shall charge the expense of same against the owner of said Lot, which charge shall be a lien on the Lot which may be foreclosed, and which shall secure the Association's attorneys fees and other costs in connection with said foreclosure.

8.9 Awnings and Windows. Awnings, hurricane shutters, solar film, and other window shading or decoration shall be subject to the prior approval and control of the Association. Hurricane or storm shutters shall not be stored on the exterior of any structure unless approved by the Association.

8.10 Fences. No fence, wall, hedge or other similar structure shall be erected on any Lot, except as permitted by the Association.

8.11 Maintenance of Premises. The lawns, landscaping and sprinkler systems of each Lot shall be maintained by the Association at the expense of the Lot Owners through assessments, regular and special. All residences, property, structures, improvements, landscaping, buffer areas and appurtenances shall be kept in a safe, clean, orderly and attractive condition, and in harmony with the general character of Osprey Point by and at the expense of the Lot Owners, and all structures shall be maintained in a finished, painted and attractive condition. In the event that a Lot Owner fails or refuses

to comply with these provisions, the Association shall have the authority (but not the obligation) to take whatever

action is reasonably necessary in its judgment to bring the Lot and its improvements into conformity and the expenses of so doing shall be an obligation of the Lot Owner collectable as a special assessment. The Association is granted an easement upon the Lot and its improvements for these purposes.

8.12 Outside Lighting. No spotlights, floodlights, or other outdoor high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon without the written authorization of the Association. Low intensity lighting which does not unreasonably disturb the owners or other occupants of the Properties shall be allowed. The owner of each Lot shall maintain the front garage lights and keep them operating by using light sensors during all hours of darkness. The owner's responsibility includes the photoelectric cell and replacement of light bulbs.

responsibility includes the photoelectric cell and replacement of light bulbs.

8.13 Pets. The owner of each Living Unit may keep no more than two (2) commonly accepted household pets such as a dog or cat, and reasonable numbers of tropical fish or caged birds in a Living Unit, subject to reasonable regulation by the Association or the Association. All pets must be carried under the owner's arm or leashed at all times while outside of the Unit. The owner is responsible for cleaning up after his pet immediately. The Board reserves the right to fine and/or exercise available punitive measures for anyone that does not clean-up after their pet. The ability to keep such pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Properties. In keeping with Section 8.4, Osprey Point, as a community enjoys a peaceful and calm atmosphere, and intends to maintain that standard. It is therefore our wish to avoid and prevent repetitive pet noises, including barking. No poultry or livestock may be kept on the Properties. Pets shall not be left unattended on screened porches, lanais, yards or in garages.

8.14 Trucks. Commercial Vehicles. Recreational Vehicles. Motor Homes. Mobile Homes.

Boats. Campers. Trailers and Other Vehicles.

Motor Vehicles: Parking. All owners of Lots and current residents as of the day this Declaration is recorded in the public record of Lee County, Florida are exempt from the restrictions in Section 8.14 for as long as they continue to own their Lot and/or reside in their present home in Osprey Point. The restrictions in Section 8.14 shall apply to all purchasers of Lots and persons who become residents after the date this Declaration is recorded in the Public Record of Lee County Florida.

No motor vehicle (which by definition includes "motorcycles") shall be parked anywhere on the property except on an individual driveway or within a garage. No trucks, or vehicles which are primarily used for commercial purposes, other than service vehicles temporarily present on business, nor any trailers, may be parked on community property, unless fully enclosed within a garage. Boats, boat trailers, trailers, semi trailers, house trailers, campers, travel trailers, mobile homes, motor homes, recreational vehicles, and the like, and any vehicles not in operable condition or validly licensed, may not be kept within the community unless fully enclosed within a garage. For the purpose of the foregoing sentence, the term "kept" shall mean present for either a period of six (6) consecutive hours or overnight, whichever is less.

(A) "Commercial Vehicles" means all vehicles of every kind whatsoever, which from viewing the exterior of the commercial markings, signs, lettering, displays, equipment, inventory, apparatus or otherwise indicates a commercial use.

(B) "Trucks" means any motor vehicle which is designed or used principally for the carriage of goods and includes a motor vehicle to which has been added a cabinet box, a bed, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers, whether or not said cabinet box, bed, platform or rack has been enclosed by a cap, "topper" or other enclosure. This shall specifically include "pickup trucks", "El Caminos", "Rancheros" and like vehicles but shall not include passenger "custom" and like vans (provided same are not "commercial" vehicles, as defined above) currently marketed under the following manufacturers name plates: Dodge Caravan, Chrysler Town & Country, Chevrolet Astro, Ford Winstar and all other vehicles of similar design and custom passenger vans. The term truck shall not include "Jeeps" if same do not have a cabinet box, bed, platform, box or rack, as described above and if same are not "non-passenger" vehicles, as described below) such as Ford Explorers, Chevrolet Suburbans, Jeep Wagoneers, Dodge Durangos, and the like.

(C) "Boats" means anything manufactured, designed, marketed or used as a craft for water flotation, capable of carrying one or more persons, or personal property.

(D) "Campers" means all vehicles, vehicle attachments, vehicle toppers, trailers or other enclosures or devices of any kind whatsoever, manufactured, designed, marketed or used for the purpose of camping, recreation or temporary housing of people or their personal property.

(E) "Trailers" means any vehicles or devices of any kind whatsoever which are manufactured, designed, marketed or used to be coupled to or drawn by a motor vehicle.

(F) "Mobile Homes" means any structure or device of any kind whatsoever, which is not self-propelled but which is transportable as a whole or in sections, which is manufactured, designed, marketed or used as a permanent dwelling.

(G) "Motorcycle" means any motor vehicle on two or three wheels propelled by an engine of 20 horsepower or more and shall include "ATV's", motor scooters, motorcycles, and mopeds powered by engines of- horsepower or more.

(H) "Motor Homes" or "Recreational Vehicle" means any vehicles which are self-propelled, built on a motor vehicle chassis, and which are primarily manufactured, designed, marketed or used to provide temporary living quarters for camping, recreational or travel use. Vehicles satisfying the foregoing criteria and which contain shower facilities, restroom facilities, and full cooking facilities shall be considered motor homes.

(I) No vehicle which is not currently licensed or cannot operate on its own power shall remain on the premises for more than twenty-four (24) hours. As used in this section, the term licensed shall mean that the vehicle displays, at all times, a license plate or license tag to which is affixed a sticker indicating that the vehicle is currently registered with the State of Florida or other state as the case may be.

(J) A speed limit of twenty (20) miles per hour applies through the Association roadway. Unnecessary vehicle noises are to be avoided within the grounds.

(K) Vehicle maintenance is not permitted within the community except in garages. For purposes of this section, vehicle maintenance shall include, but not be limited to, changing of oil and other fluids, engine maintenance or repair, body maintenance or repair. Cleaning the exterior and interior

of the vehicle, waxing and checking fluid levels is permissible. Emergency repairs to vehicles such as changing a flat tire is allowed.

8.15 Garages. Carports and Accessory Buildings.

(A) No detached garage or other accessory building shall be erected. Each residence shall have an attached or built in garage which shall accommodate no less than one (1), nor more than three (3), automobiles. Repair of vehicles shall be permitted only inside the garage. When ingress and egress to the garage is not desired, the garage doors shall remain closed.

(B) Carports are not permitted.

(C) No garage shall ever be permanently enclosed or converted to other uses without substitution) of another enclosed garage and approval of the Association. All garages must have a minimum 16-foot wide overhead style garage door, or two (2) 8-foot wide overhead style garage doors.

8.16 Garage Sales. No garage sale, estate sale, flea market, auction, or similar event

shall be held on any Lot.

8.17 Mailboxes. Light Fixtures. Mailboxes, garage exterior light fixtures, and their supporting structures shall be substantially uniform in style and/or color, appearance and location, are required to be maintained, repaired and replaced by the Homeowner, and are subject to regulation by the Association.

8.18 Antennas. Radio Equipment and Flagpoles. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, unless expressly approved in writing by the Association, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Federal Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae, restrictions relating to safety, location and maintenance of antennae. The Association may adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to side or rear yard locations, not visible from the street or neighboring properties, and integrated with the residence and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules. Antennae shall be installed in compliance with all federal, state and local, laws and regulations, including zoning, land-use and building regulations. A flagpole, for display of the American Flag only, may be permitted if its design and location are first approved by the ARC. An approved flagpole shall not be used to mount an antenna. It is the intent of this Section to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances which is sometimes caused by ham radios, CB base stations or other high-powered broadcasting equipment.

8.19 Swimming Pools. No above ground swimming pools are permitted. An owner may, if approved by the Association, construct a swimming pool and screened enclosure on his Lot. In the event such construction requires entry of or access over an adjoining Lot, the entry or access shall be only with the consent of the owner of the adjoining Lot, which consent may not be withheld without good cause.

(A) A fine or suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be fined or suspended and an opportunity for a hearing before a hearing panel of at least three (3) members, appointed by the Board, who are not officers, Directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, Director, or employee. If the panel, by majority vote (which may be taken by secret ballot), does not approve a proposed fine or suspension, it may not be imposed.

(B) The requirements of this Section do not apply to the imposition of suspensions or charges upon any member because of the failure of the member to pay assessments or other charges when due, if such action is authorized by the Governing Documents.

(C) Suspension of common area use rights shall not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(D) Collection of Fines. A fine shall be treated as a special charge due to the Association ten (10) days after written notice from the Association to the owner of the imposition of the fine. If not paid by the due date, the fine shall accrue interest at the highest rate allowed by law, and may itself be the subject of a late payment fee. Unless prohibited by law, failure to pay a fine so levied within thirty (30) days from the date written notice is sent to the party shall entitle the Association, if allowed by law, to secure the fine with a claim of lien which may be foreclosed in the same manner as assessments.

(E) Application. All monies received from fines shall become part of the common surplus.

(F) Nonexclusive Remedy. Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover at law from such owner.

9. THE MASTER ASSOCIATION. By taking title to a Lot, the owner becomes subject to the terms and conditions of the Master Association Declaration as it may be amended from time to time.

9.1 Membership in the Master Association. Each Lot shall have as an appurtenance one membership in the Master Association, which membership shall carry such rights and obligations, and be exercised in such manner, as is more fully set forth in the Governing Documents. The Membership cannot be sold, conveyed or assigned separately from the Lot. Assessments and dues levied by the Master Association shall be paid directly by the Lot owner to the Master Association.

9.2 Membership and Voting in the Master Association. All owners in this Neighborhood are automatically members of the Master Association.

9.3 Notices to the Master Association. Copies of all recorded amendments to this Declaration, the Articles of Incorporation and bylaws of the Association, shall be forwarded to the Master Association no later than thirty (30) days after becoming effective. The Association shall also provide a current list of the names and mailing address of all owners within fifteen (15) days after receiving a written request for same from the Master Association. Failure to perform these duties does not invalidate an amendment.

10. DURATION OF COVENANTS; AMENDMENT OF AMENDED & RESTATED DECLARATION:

10.1 Duration of Covenants. The covenants, conditions, and restrictions of this Amended & Restated Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, and any owner, their respective legal representatives, heirs, successors and assigns, for a period that expires on the ninety-ninth (99th) anniversary of the date of recordation of the Amended & Restated Declaration of Covenants, Conditions and Restrictions for Osprey Point. Upon the expiration of said period, this 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, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least three-fourths (3/4ths) of the votes cast at a duly held meeting of members of the Association vote in favor of terminating this Declaration at the end of its then current term. Written notice of any meeting at which such a proposal will be considered shall be given at least forty-five (45) days before the meeting. If the members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Association the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. The certificate shall be recorded in the Public Records of Lee County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

10.2 Amendments: Proposal. Notwithstanding the foregoing, this Amended & Restated Declaration may be amended from time to time by a vote of the members. Amendments may be proposed by the Board of Directors or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests. The proposed amendments must be submitted to a vote of the members not later than the next annual meeting.

10.3 Amendments: Vote Required. Except as otherwise provided by law, or by specific provision of the Osprey Point Documents, a proposed amendment to this Declaration shall be adopted if it is approved by at least 67% of the voting interests present in person or by proxy and voting at a meeting, provided that notice of each proposed amendment has been given to the members in accordance with law. Unless otherwise provided by law, notice of proposed amendments shall be in substantially the same form as is specified in Chapter 718, Florida Statutes, for proposed amendments to a Declaration of Condominium. No amendment shall change any Lot's share of liability for assessments or any owner's voting rights, unless the owner consents to the amendment.

10.4 Amendments; Certificate; Recording; Effective Date. A copy of each amendment shall be attached to a certificate attesting 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 Amended & Restated Declaration was originally recorded, and shall be executed by the President or Vice 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 the County.

10.5 Exceptions. Wherever in this Amended & Restated Declaration the consent, approval, or affirmative vote of more than a majority of the voting interests, is required in order to authorize or take a particular action, the language requiring the particular number of consents, approvals, or votes may not be amended except by the same vote required to authorize or take the action.

11. GENERAL PROVISIONS.

11.1 Severability. If any section, subsection, sentence, clause, phrase or portion of this Declaration is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portion thereof.

11.2 Headings and Capitalization. The headings of Sections and paragraphs herein, and the capitalization of certain words, are for convenience only, and do not affect the meaning or interpretation of the provisions of this Declaration.

11.3 Notices. Any notice required to be sent to any owner under the provisions of this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as owner in the records of the Association at the time of such mailing. The owner bears the responsibility for notifying the Association of any change of address.

11.4 Interpretation. The Board of Directors is responsible for interpreting the provisions of this Amended & Restated Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

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.