

FILED on 3-18-2019

**AMENDED, RESTATED AND COMBINED DEED OF
RESTRICTIONS OF
CAPTAIN'S COVE HOMEOWNERS' ASSOCIATION, INC.**

**(EFFECTIVE 2018 UPON MEMBERSHIP APPROVAL
AND RECORDATION IN THE PUBLIC
RECORDS) CAPTAIN'S COVE, UNIT 1
CAPTAIN'S COVE, UNIT 2**

CAPTAINS COVE, UNIT 3

For the purpose of enhancing and protecting the value, attractiveness and desirability of the Parcels, this Community was created by a Deed of Restrictions for Captain's Cove, Unit 1, recorded in the official Records Book 1 190, at Pages 1964, et seq., of the Public Records of Lee County, Florida;

Deed of Restrictions for Captain's Cove, Unit 2, recorded in Official Records Book 1324, at Pages 106, et seq., of the Public Records of Lee County, Florida; and Deed of Restrictions for Captain's Cove, Unit 3, recorded in Official Records Book 1432, at Pages 1413, et seq., all of the Public Records of Lee County, Florida.

The Community is further described in Plat Book 30, Page 61, for Unit One; and in Plat Book 32, Page 35, for Unit Two; and in Plat Book 33, Page 137, for Unit Three, all of the Public Records of Lee County, Florida. A copy of the Plats and the legal descriptions for the Community are attached as Exhibit "A".

All real property in the Community shall be held, owned, sold, transferred, conveyed and occupied subject to the covenants, conditions and restrictions hereinafter set forth, which shall be binding upon persons having any right, title or interest in or to the subject real property, and their heirs, successors and assigns and shall constitute covenants running with the land.

The name of the Homeowners' Association created to operate the Community is Captain's Cove Homeowners' Association, Inc., hereinafter called the "Association."

1. DEFINITIONS

1.1 "Act", or "Homeowners' Association Act", or "HOA Act" means Chapter 720 Florida Statutes, as it now exists or as it may be amended from time to time including the definitions therein contained. However, except where specific incorporation of the Act or its procedures is set forth in the Governing Documents, it is the intention of these Restrictions that the Community and Association be operated in conformance with the law as it existed when the Community was created, so as to avoid impairment of contract rights or vested rights.

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1.2 "Articles" means the Articles of Incorporation of the Association, a copy of which is attached hereto as Exhibit "B" and made a part hereof.

1.3 "Architectural Review Committee", or "ARC" means and refers to the Board of Directors of the Association, or a Committee appointed by the Board of Directors of the Association, for the purposes set forth in these Restrictions as to the Architectural Review Committee.

1.4 "Assessment" means the assessments levied by the Association against the Parcels, and shall be deemed to include both regular and special assessments.

1.5 "Association" shall mean and refer to Captain's Cove Homeowners' Association, Inc., a Florida Corporation Not For Profit, its successors and assigns.

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

1.7 "Bylaws" means the Bylaws of the Association.

1.8 "Charge" means any legal or equitable indebtedness to the Association incurred by, or on behalf of, a Unit Owner, other than Assessments for Common Expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Governing Documents.

1.9 "Common Area" or "Common Properties" means real property owned by the Association for the common use and enjoyment of the owners, or property which has been dedicated to the Association or Parcel Owners for common use or enjoyment.

1.10 "Common Expenses" means the expenses payable by the Members to the Association for the purposes and in the manner set forth in these Restrictions, the Articles or Bylaws.

1.11 "Community" means the three subdivisions collectively referred to as "Captain's Cove" which is made up of Captain's Cove, Unit 1, Captain's Cove, Unit 2, and Captain's Cove, Unit 3.

1.12 "Guest" means a person who enters upon a Parcel at the invitation of a Parcel Owner, Resident or Occupant, for the purpose of visiting.

1.13 "Improvement" means any structural component built or constructed on a Lot or added to a Dwelling Unit, or placed on a Lot, including but not limited to houses, swimming pools, garages, spas, fences, and recreational equipment which is affixed to the Lot.

1.14 "Invitee" means a person or persons that enter the Community for purposes of personal business with the Owner or Occupant.

1.15 "Lot" means any plot of land located within the Community and designated as a "Lot" on any Plats of the Community and intended for residential use, but shall not include the Common Areas as hereinafter defined. Lot 33 in Captain's Cove is reserved for use as a community recreation area.

1.16 "Maintenance" means the exercise of reasonable care to keep buildings, roads, landscaping, lighting and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted.

1.17 "Member" means those Owners who are holders of membership interests in the Association as such interests are set forth in Article 2.

1.18 "Occupant" means the person(s) occupying a Dwelling Unit as a Resident or Guest.

1.19 "Owner", "Lot Owner" or "Parcel Owner" means the record Owner of fee simple title to any Parcel and the Dwelling Unit thereon, whether one or more persons or entities.

1.20 "Parcel" means the underlying real property, the Lot, and the Dwelling Unit thereon, if any. A "Homesite Parcel" is a Parcel that has been improved with a Dwelling Unit or two Lots with a Dwelling Unit that has been constructed across a Parcel line so that neither Parcel can be further improved with an additional Dwelling Unit. A "Vacant Parcel" is a Parcel without a Dwelling Unit.

1.21 "Restrictions" means this Deed of Restrictions and all other terms and provisions contained in this document, as the same may be amended from time to time.

1.22 "Rules and Regulations" means the rules, regulations and policies governing the Community that may be promulgated by the Board from time to time by resolution, including, but not limited to, any architectural guidelines adopted by the Board.

1.23 "Resident" means the person or persons occupying a Dwelling Unit and may be an Owner, Guest or Tenant.

1.24 "Tenant" means a person occupying a unit, other than the Owner, whether pursuant to a verbal or agreement, where said occupancy by the non-owner involves consideration, the payment of money, the exchange of goods and services, etc.

1.25 Plurality; Gender. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular and the use of any gender shall be deemed to include all or no genders.

2. MEMBERSHIP AND VOTING RIGHTS

2.1 Member. Every Owner of a Parcel in the Community subject to assessment shall be a Member Association. Membership is not divisible from ownership of a Parcel that is subject to assessment. Owners agree to maintain such membership in good standing as long as they own such property.

2.2 Transfer. Transfer of ownership, whether voluntary or by operation of law, shall terminate membership in the Association and said membership is then vested in the transferee.

2.3 Multiple Owners. When more than one person or entity shall at any time be the Owner of a Parcel subject to a membership interest, the vote attributed to such Parcel shall be exercised as provided in the Bylaws.

3. ASSESSMENTS

3.1 Common Expense. The costs and expenses incurred by the Association with regard to the ownership, operation, maintenance and repair of the Common Areas and the administration of affairs of the Association shall constitute Common Expenses. Other expenses properly and reasonably incurred by the Association in performing and carrying out its duties and obligations as specified in these Restrictions shall constitute Common Expenses.

3.2 Allocation of Assessments. Except for any maintenance surcharge which may be imposed on any Parcel pursuant to this Deed of Restrictions, assessments of the Association shall be apportioned on a per Parcel basis, either as a Homesite Parcel or a Vacant Parcel. In the event that any Member owns two (2) adjacent Parcels, one of which is improved with a Dwelling Unit, the improved Parcel shall be assessed as a Homesite Parcel, and the Vacant Parcel shall be assessed as a Vacant Parcel. If a Dwelling Unit has been constructed across a Parcel line so that neither Parcel can be further improved with an additional Dwelling Unit, the Parcels shall be assessed as one Homesite Parcel.

3.3 Purpose of Assessment. There is hereby imposed upon each Parcel and its Owner, the affirmative covenant and obligation by acceptance of a deed or title to a Parcel to pay assessments to the Association, and upon the Association the obligation to assess, collect and expend for the Association's Expenses as listed but not necessarily limited to:

3.3.1 Charges levied for utility services to the Common Areas, whether supplied by a private or public firm, including without limitation, charges for water, gas, electricity, telephone, sewer and any other type of utility or service charge for Common Areas. Additional utility services, including, but not limited to, bulk cable television, may be provided by the Association, as a Common Expense, if approved by a majority of the participating Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting of the Association at which a quorum is present. Lots with no Dwelling Units shall not be assessed for those utilities until a Certificate of Occupancy is issued for the Dwelling Unit.

3.3.2 The premiums on any policy or policies of insurance required herein, together with the costs of such other policies of insurance as the Board shall determine to be in the best interest Association.

3.3.3 The cost to the Association of purchasing adequate fidelity insurance or bonds to protect against dishonest acts on the part of Officers,, Directors, trustees, agents and employees of the Association and other persons who operate or are responsible for operating the Association.

3.3.4 Expenses necessarily incurred in maintaining, preserving, repairing and replacing the Common Areas and other facilities within the jurisdiction of the Association.

3.3.5 Sums necessary to repair, replace, construct or reconstruct buildings or improvements located in the Common Areas to the extent insurance proceeds are insufficient to pay the costs thereof.

3.3.6 The costs of administration for the Association, including any secretaries, bookkeepers and other employees necessary to carry out the obligations and covenants of the Association under these Restrictions, Articles or Bylaws. In addition, the Association may retain a manager or management company to assist in the operation of the Association and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company so retained are a Common Expense.

3.3.7 The costs to the Association to indemnify its Officers and members of the Board for costs and expenses incurred in pursuance of their duties, obligations and functions hereunder.

3.3.8 The costs of establishing an adequate capital fund for replacement and/or capital refurbishment of the Common Areas in amounts determined proper and sufficient by the Board. Each Owner understands that no Owner shall have any separate or divisible interest, claim or right to any such funds comprised of the same.

3.3.9 Special assessments that may be levied to defray Common Expenses for which insufficient funds exist or are expected to be produced under the budget.

3.3.10 Expenses properly incurred by the Association, including but not limited to expenses of the operation, maintenance, repair, replacement, protection of the Common Area, 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 the Act, these Restrictions, or the Bylaws.

3.3.11 Other costs and expenses determined by the Board to be reasonable and necessary in carrying out and accomplishing the purposes, duties and obligations of the Association that are not inconsistent with these Restrictions, the Articles or Bylaws.

3.4 Lien. Assessments for Common Expenses, including Regular Assessments, Special Assessments, and Charges and installments thereof, with interest thereon and costs of collection, including reasonable attorney's fees and costs incurred in attempting to collect said Assessments or Charges before suit or after the filing of suit, at the trial level, Appellate level or otherwise, are hereby declared to be a continuing lien upon the Parcel against which such Assessments or Charges

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3.5 Remedies for Delinquency in the event any Owner fails to pay assessment or any instalment thereof charged to the Panel thirty (30) days after the same becomes due an administrative late charge of **\$20.00 (twenty Dollars) per Month** will be added to your Annual dues until paid. And the Association, through its board shall have, but not be limited to the following remedies.

3.5.1 To accelerate the entire amount of any assessments for the remainder of the calendar year, notwithstanding any provisions for the payment thereof in installments.

3.5.2 To advance on behalf of said Owner funds to accomplish the needs of the Association. The money so advanced, including attorney's fees and expenses which might have been reasonably incurred because of or in connection with such advance, including costs and expenses of the Association if it must borrow to pay expenses because of said Owner, together with interest at the highest rate allowable by law, may thereupon be collected or enforced by the Association and such advance or loan by the Association shall not waive the default.

3.5.3 To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in a like manner as the foreclosure of a mortgage on real property or as otherwise provided by law.

3.5.4 To file an action at law to collect said assessments, plus interest at the highest rate allowable by law plus court costs, without waiving any lien rights and/or rights of foreclosure by the Association.

3.5.5 The Association may apply to a court of competent jurisdiction, either in connection with the institution of a foreclosure suit, a personal suit, or otherwise to have rental proceeds of a Parcel in default paid directly to the Association, the court registry, or a receiver, as the court may direct.

3.5.6 The Association may choose any of these courses of action, as the Board deems appropriate, without same constituting a waiver or election of remedies. Tenants who rent Parcels in this Association are deemed to assent to terms of this provision.

3.5.7 Payments received after the due date established by the Board shall be applied first to interest, late fees, costs and attorney fees and then to the principal owed regardless of any restrictive endorsement included with the payment.

4. USE RESTRICTIONS

All Owners agree to abide by these Restrictions, the Articles of Incorporation, the Bylaws and Rules and Regulations of the Association as they may be amended from time to time.

4.1 Animals. No animals, birds or reptiles of any kind shall be raised, bred or kept on any lot except that dogs, cats and other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose. No animal, bird or reptile shall be kept in such manner as to constitute a nuisance. Pet owners shall not allow any pet to use the Common Areas except when on a hand held leash accompanied by its owner and then only so long as the pet does not make a mess or otherwise disturb the Common Areas or other parcels.

4.2 Vehicle Parking and Storage. No vehicle shall be parked on any part of the Community except on paved streets or driveways. No trailers or commercial vehicles, other than those present on business, may be parked in the Community. Boat trailers, campers, travel trailers and boats on trailers may be parked on a driveway for a period not to exceed three days. Overnight parking of such vehicles should not be the norm, but rather confined to exceptional circumstances, for example, loading or unloading a camper prior to or after a trip. For periods longer than three days, a member may petition the Board of Directors for their assent. Utility trailers, commercial vehicles, boat trailers, campers, travel trailers and boats shall be allowed to be stored under a house or in an area where screened with a wall at least six feet high from the road and adjacent property owners if approved by the Association. No abandoned or inoperative vehicles shall be left on any property. Commercial vehicles means vehicles of every kind whatsoever, which from viewing the exterior of the vehicles or any portion thereof, shows or tends to show any commercial markings, signs, displays, equipment or otherwise indicates a commercial use. The Board shall have the final authority in determining acceptability of any vehicle or allowing for temporary parking of service vehicles.

4.3 Signs. No "For Rent" or "For Sale" signs larger than 24 inches by 24 inches shall be erected or displayed in or on any Parcel or in or on any structure or in or on any vehicle. No signs of a commercial nature shall be erected. Security signs and building permit signs are permissible.

4.4 Television and Other Outdoor Antennae. No television, radio, satellite, or other antenna or satellite system may be installed on the Common Areas by any person other than the Association, except as provided herein. Certain television, satellite, or other antenna systems may be erected or installed on Lots/Dwellings subject to compliance with the following requirements:

Permitted antennas include (collectively hereinafter referred to as "antennas"):

- Direct broadcast satellite dishes (DBS) that are less than one meter in diameter.
- Multi-channel, multi-point distribution service devices (MMDS) that are less than one meter in diameter or diagonal measurement. Such devices may be mounted on "masts" to reach the height needed to establish line of sight contact with the transmitter provided no mast may be higher than twelve feet above the roof line of a residence without prior written approval of the Association.
- Television broadcast antennas for local stations, which may be any reasonable size, which may be secured to a mast located no higher than twelve feet above the roof line. Any mast located higher than twelve feet above the roof line must be approved in writing by the Association.

Location of Antennas. To the extent feasible, all antennas must be placed in locations that are not visible from any street and in a location to minimize annoyance or inconvenience to other residents of the community if this placement would still permit reception of an acceptable quality signal.

4.5 Clotheslines. No clothesline shall be allowed except if set on removable stanchions, which shall be removed when not in use. No clothesline shall be placed so as to be visible from the street.

4.6 Commercial Activity. No business or commercial activity of any kind shall be conducted on or from any Lot nor in or from any residence except as provided herein. Nor may the address or location of the residence or Association's name be publicly advertised as the location of any business or commercial activity. This restriction shall not be construed to prohibit any Owner from maintaining a personal or professional library, from keeping personal business or professional records in his residence, or from handling personal, business or professional communication and written correspondence in and from his residence. Parcels may not be used for commercial or business purposes, including, without limitation, caring for children or adults or any use that requires an occupational license. Occupants may use Parcels for "home office" or "telecommuting"

purposes, if such uses do not involve customers or clients coming onto the property, the posting of any signage in the Community, the storage of equipment, products, or materials in the Community.

4.7 Structural Changes. No structural additions or alterations (including nesting poles) may be made to any improvements on the Lot without the approval of the Board, other than erection or removal of non-support carrying interior partitions wholly within the home and other than the interior work done in a Dwelling Unit, which is not visible from the exterior.

4.8 Sheds. No permanent outbuilding, tent, shack, detached garage, shed, or temporary building of any kind is allowed.

4.9 Boundary Walls. No boundary wall shall be constructed with a height of more than six feet above the ground level of adjoining property. No walls or shrubbery shall be allowed unless they are properly maintained and cared for and do not create an unsightly appearance or become structurally unsafe. Waterfront walls of solid construction, solid waterfront hedges or solid mangrove hedges shall not be permitted in excess of six feet in height as measured from the substrate. In the front and back (canal) no wall, hedge or fence shall extend beyond the setback line of the property. The heights or elevations of any wall shall be measured from the existing property elevation. Any questions as to such heights may be conclusively determined by the Board.

4.10 Gates. Gates, fences, chains, cables, barriers, or any such construction, that are intended to block access and utilization of any driveway located on any parcel are not allowed; such barriers are deemed as being detrimental to allowing emergency vehicles and personnel ready access to a parcel or an adjacent parcel(s).

4.11 Enclosures. No Owner or Occupant may enclose an entranceway, patio, porch, or lanai except with the prior written consent of the Board.

4.12 No Owners or Occupant may cause or allow any obstruction of a road or other common ways of ingress or egress within the Common Areas, nor shall anything be allowed to remain in Common Areas or on the Parcels which would be unsightly or hazardous.

4.13 No rubbish, refuse, garbage or trash is to accumulate in places other than the appropriate receptacles.

4.14 No lakes, ponds, swales, canals or ditches may be dug on any Parcel without the written consent of the Board. No Lot or Parcel shall be increased in size by filling in the water on which it abuts.

4.15 Owners, their family, invitees, guests and tenants shall abide by Rules and Regulations promulgated from time to time by the Board or committee established by the Board provided, however, that copies of such regulations are available to each Member prior to the time said regulations become effective.

4.16 Boat Landings, Boat Canopies, docks, piers, and mooring posts shall be constructed only in accordance with plans and specifications approved in writing by the Board and shall not extend beyond a distance of twenty percent (20%) of the canal width from the property line. The owners and occupants of land in the Community shall have an easement in common for the purpose of navigation on all waterways. No boathouse shall be constructed on or adjacent to any of the waterfront lots in the Community, nor shall any boat canal or slip be dug or excavated into any of the waterfront lots. No vessel or boat shall be anchored offshore in any of the waterways adjacent to the community so the same shall in any way interfere with navigation.

4.17 All buildings erected in the community shall conform in area and setback limitations to the following table (no building shall be erected on any lot which does not comprise at least the number of square feet designated on this table):

Minimum Square feet of Living Area.....800 Square Feet

Setbacks:

Back or Canal –25 feet to eaves

Side – 10% average lot width

Front – The front setback shall be a minimum of 25 feet and shall also be at least 5 feet greater or less than the front setback of an existing home on any adjacent lot with a common boundary line unless the positions of the adjacent homes prohibit this. (All setback distances are measured to eaves of home)

Where two or more lots are acquired and used as a single building site, the side Lot lines shall refer only to the lines bordering on the adjoining property owner.

The method of determining the square footage of proposed building and structures shall be to multiply the outside horizontal dimensions of the living area of the building or structure, at each floor level. Living area does not include garages, carports, roofed screen porches and the like.

4.18 There shall be no prefabricated or manufactured homes allowed in the Community. All homes being erected or constructed in the Community shall not be ground level nor block and stucco. Any homes erected or constructed in the Community after the date of this Amendment shall be built as stilt homes on pilings or columns.

4.19 Gravel, stone, sand, or loose material driveways are not allowed.

4.20 In the event the Association is required to seek enforcement of any provision of these Restrictions, Articles, Bylaws, or Rules and Regulations, then the offending Owner (for himself or his family, guests, invitees or leases) shall be liable to the Association for costs incurred in the

Amended and Restated Deed of Restrictions

enforcement action, including reasonable attorney's fees and costs, whether incurred before the filing of suit, after filing, or in connection with trial or appellate proceeding or otherwise.

5. MAINTENANCE, REPAIR AND REPLACEMENT

5.1 Maintenance of Parcels by Owners. Every Owner must keep and maintain his Parcel, including, but not limited to, the dwelling and other improvements thereon, at his expense, in good order, condition and repair, and must promptly perform maintenance and repair work on his Lot and Dwelling Unit. In this regard, each Owner shall be responsible for the maintenance, repair and repainting and shall keep same in a neat and orderly fashion.

5.2 Owner Liability. Should any Owner do any of the following:

5.2.1 Fail to perform the responsibilities as set forth in this Article or,

5.2.2 Cause any damage to any improvement which the Association has the responsibility to maintain, repair and/or replace; or

5.2.3 Undertake unauthorized improvements or modifications to his Lot or Dwelling Unit exterior; then

Except in an emergency, when no notice is required, the Association upon reasonable prior written notice to the Owner, shall have the right, through its agents and employees, to enter upon said Lot and cause the required repairs or maintenance to be performed, or as the case may be, remove unauthorized improvements or modifications. The cost thereof shall be added to and become a part of the assessment to which the Owner is subject, and shall be due and payable within thirty (30) days after rendition of a bill by the Association. The costs incident to said repair, maintenance or removal shall be the personal obligation of the Owner to the Association and become a lien against the subject Parcel, Lot or Dwelling Unit with the same force and effect of the lien that would be created by the said Owner's failure to pay the regular or special assessments when due.

6. ACQUISITION OF REAL PROPERTY; ADDITIONS AND ALTERATIONS TO COMMON AREAS

The Association may acquire or purchase real property if authorized by the affirmative vote of two-thirds (2/3) of the voting interest of the Association. There shall be no material alterations or substantial additions to the Common Areas by the Association, except as authorized by the Board of Directors. Provided, however, that if any such alterations or additions require or obligate the expenditure of Association funds of more than five percent (5%) of the Association's budget for the fiscal year in which the work is authorized, including reserves, the Board shall obtain approval of a two-thirds (2/3) of voting interests in the Association present (in person or by proxy) and

voting at an Association meeting, or by written agreement of two-thirds (2/3) of the entire voting interests in the Association. Necessary maintenance of the Common Areas, or Association Property regardless of the level of expenditure, is the responsibility of the Board of Directors.

7. ENFORCEMENT

7.1 In the event of a violation of the Governing Documents or Rules and Regulations by an Owner, Resident, Tenant, Guests or Invitees, (other than the non-payment of any Assessment or other charges), the Association shall notify the Owner of the violation, by written notice. If such violation is not cured as soon as practicable after receipt of such written notice, or if any similar violation is thereafter repeated, the Association may, at its option:

7.1.1 Impose a fine against the Parcel as provided in Florida Statutes and in the Bylaws; and/or

7.1.2 Commence an action to enforce the performance on the part of the Owner or other party, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

7.1.3 Commence an action to recover damages; and/or

7.1.4 Take any actions reasonably necessary to correct such violation; and/or

7.1.5 Elect any or all other remedies, restrictions or penalties available under law.

All expenses incurred by the Association in connection with enforcing these Governing Documents and Rules and Regulations, including reasonable attorney fees and costs, shall be assessed against the applicable Owner as a separate assessment, and shall be due upon written demand by the Association. The Association shall have a lien for any such Assessment and any interest, costs or expenses associated therewith, including attorneys' fees and costs incurred in connection with such Assessment, and may take such action to collect such Assessment or foreclose said lien as in the case and in the manner of any other Assessment as provided above. Any such lien shall only be effective from and after the recording of a claim of lien in the public records of Lee County.

7.2 Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his Dwelling Unit or occupying his Parcel, including family members, Tenants, Guests and Invitees if any act or omission shall result in any damage to the Common Areas, or any liability to the Association, the Owner shall be assessed for same as in the case of any other assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association, but without rights of subrogation as to the Association's carrier. Furthermore, any violation of any of the provisions of these Governing Documents, by a Resident of any Parcel, or a Guest or Invitee, shall also be deemed a

of
violation by the Owner, and shall subject the Owner to the same liability as if such violation was that of the Owner.

8. AMENDMENTS

Except as elsewhere provided herein, these Restrictions may be amended in the following manner:

8.1 An amendment may be proposed by the President of the Association, a majority of the Board, or by petition of twenty percent (20%) of the Voting Interests in the Association.

8.2 The subject matter of a proposed amendment must be included in the notice of any meeting at which a proposed amendment is to be considered.

8.3 An amendment so proposed may be approved by a majority of a participating Voting Interests in the Association present and voting, in person or by proxy, at a duly convened meeting of the Association at which a quorum is present.

8.4 An amendment shall be evidenced by a certificate of the Association that must include recording data identifying the original Deed of Restrictions for each Unit within the Community and these Restrictions and be executed in the form required for execution of a deed. An amendment of these Restrictions is effective when properly recorded in the public records of Lee County.

8.5 Automatic Amendment. These Restrictions shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Bylaws and the Articles of Incorporation. Whenever Chapter 617, Chapter 720 or other applicable statutes or administrative regulations are amended to impose procedural requirements less stringent than set forth in these Restrictions, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors, without a vote of the Members, may adopt by majority vote, amendments to these Restrictions as the Board deems necessary to comply with such operational changes as may be authorized by future amendments to chapters 607, 617 and 720 of the Florida Statutes, or other statutes or administrative regulations regulating the operation of the Association.

9. TERM OF DEED OF RESTRICTIONS AND TERMINATION

9.1 This Deed of Restrictions has an initial term often (10) years and shall automatically renew for successive five (5) year periods unless terminated at that time upon the written consent of a majority of participating voting interests in the Association.

9.2 If these Restrictions are terminated in accordance herewith, every Owner, by acquiring title, covenants and agrees that the termination documents shall require that common areas shall be owned and held in equal shares by the Owners as tenants in common.

10. ARCHITECTURAL CONTROL

The Association, acting through the Board, shall have the authority to review and approve plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel, and to enforce standards for the external appearance of any structure or improvement located on the parcel, as set forth in the Governing Documents and in any architectural guidelines promulgated by the Board. If there are any conflicts between the Deed of Restrictions and the architectural guidelines, if any, the Deed of Restrictions will control.

10.1 Approval Necessary

No dwelling, building, garage, pool, decking, paving, fence, wall, retaining wall, patio, screened enclosure, pier, dock, walkway or other structure or improvement of any kind shall be erected, constructed, placed or maintained on or adjacent to any Parcel, nor shall the exterior of any Dwelling Unit or other Improvement (including any roofing or other building materials) be altered or modified, nor shall any other Improvements on any Parcel be altered, changed, repaired or modified, unless, prior to the commencement of any work, appropriate plans specifying the exact location of such improvements, structures or altered structure on the Parcel, with reference to the street and side lines, shall have been first submitted in writing for approval and approved in writing by the Board. The foregoing prior approval applies to painting or any other maintenance or repair which changes the exterior appearance. It is specifically intended that the Board shall be empowered to approve or disapprove the colors of the exteriors of dwellings and other improvements constructed on the property at the time of any repainting or other resurfacing.

All required approvals or disapprovals of the Board must be in writing to be valid for purposes of these Restrictions. Decisions of the Board shall be based on aesthetics, harmony, balance and compatibility of the proposed improvements with the then existing structures within the Community. Improvements or changes shall be performed by licensed contractors or Owner contractor in accordance with plans and specifications prepared by licensed architects, where applicable. The Board shall either grant such approval or deny the same based upon its sole discretion as to whether the improvements will be aesthetically pleasing, consistent with the architecture of the buildings in the Association, and similar to other such improvements previously allowed.

In the event the Board Fails to approve or disapprove the requested item within thirty (30) days after the Board has acknowledged receipt of a complete application, it shall be considered as being approved.

10.2 Construction to be in Conformance with Plans

After such plans and specifications and other data submitted have been approved by the Board, no building, fence, wall, retaining wall, or other Improvement or Structure of any kind shall be erected, constructed, placed, altered or maintained upon any Parcel unless the same shall be erected, constructed or altered in conformity with the plans and specifications and Parcel plans approved by the Board.

1 1. GENERAL PROVISIONS

11.1 The Association, or any Owner, has the right to enforce, by any proceeding at law or in equity, restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents or the Rules and Regulations. Failure by the Association or any Owner to enforce any of the above shall in no event be deemed a waiver of the right to do so thereafter.

11.2 Additional residential property and Common Area(s) may be annexed to the Community only by amendment of these Restrictions.

11.3 Notices. Except as provided specifically by law, notices to the Association required or desired hereunder or in the Bylaws may be sent by first class mail or hand delivery to the address as may be designated by from time to time, in writing to the Owners. Except as provided specifically by law; notices to any Owner may be sent by electronic transmission, first class mail or hand delivery to the address as may be designated by him from time to time, in writing to the Association.

11.4 Signature of President and Secretary. Wherever the signature of the President of the Association is required and if not available, the signature of a Vice-president may be substituted, and wherever the signature of the Secretary of the Association is required and is not available, the signature of another Board Member may be substituted, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.

11.5 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by these Restrictions, the exhibits annexed hereto or the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida, and venue shall lie in the County.

11.6 Severability. The invalidity in whole or in part of any covenant or restriction, or any Article, sub-section, sentence, clause, phrase or word, or other provision of the Governing Documents or the Rules and Regulations adopted as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof.

11.7 Waiver. No provisions contained in this Governing Documents or Rules and Regulations shall be deemed to have been waived because of any failure to enforce the same, irrespective of the number of violations or breaches, which may occur.

11.8 Ratification. Each Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law, or otherwise) and each occupant by reason of his occupancy shall be deemed to have acknowledged and agreed that all the provisions of these Restrictions the Articles, Bylaws and Rules and Regulations of the Association, are fair and reasonable in all material respects.