

**ATTORNEY-CLIENT PRIVILEGED**

March 30, 2009

Sent via U.S. Mail

Board of Directors  
Osprey Landing at Gulf Harbour Homeowners Association, Inc.  
c/o Detali & Associates, P.A.  
Attn: Don Taliaferro  
4061 Bonita Beach Road, Suite 201  
Bonita Springs, FL 34134

**RE: Certificate of Amendment  
Our File No. 67145.001**

Dear Board Members:

Please find enclosed original Certificate of Amendment to the Amended and Restated Declaration and Bylaws of Osprey Landing at Gulf Harbour Homeowners Association, Inc., which has been recorded in the Public Records of Lee County, Florida. Please keep this document in safekeeping with all other important Association related documents.

Please do not hesitate to contact us should you need further assistance.

Sincerely,



Donna M. Pavese  
Real Estate Legal Assistant

/dmp  
Enclosure

F:\WPDATA\CJS\Osprey Landing\Board ltr re recorded Certificate of Amendment 03-30-09.wpd



This instrument prepared by:  
Christopher J. Shields, Esq.  
PAVESE LAW FIRM  
1833 Hendry Street  
Fort Myers, Florida 33901  
(239) 334-2195

INSTR # 2009000068413, Pages 8  
Doc Type RES, Recorded 03/17/2009 at 02:52 PM,  
Charlie Green, Lee County Clerk of Circuit Court  
Rec. Fee \$69.50  
Deputy Clerk ACENTORINO  
#1

**CERTIFICATE OF AMENDMENT  
TO THE  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, RESTRICTIONS AND RESERVATIONS  
FOR  
OSPREY LANDING  
FORT MYERS, FLORIDA  
AND  
BYLAWS OF OSPREY LANDING AT GULF HARBOUR  
HOMEOWNERS ASSOCIATION, INC.**

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**THE UNDERSIGNED**, being duly elected and acting President and Secretary, respectively, of **OSPREY LANDING AT GULF HARBOUR HOMEOWNERS ASSOCIATION, INC.**, a Florida corporation not-for-profit, do hereby certify that all the resolutions set forth below were approved, evidenced by a written statement or ballot manifesting their intention that such amendments be adopted. The resolutions were approved and adopted by the votes indicated for the purposes of amending the Amended and Restated Declaration of Covenants, Restrictions and Reservations for Osprey Landing and the Amended and Restated Bylaws of Osprey Landing at Gulf Harbour Homeowners Association, Inc., as recorded in Official Records Book 3703, Pages 2276 *et seq.*, and as may have been subsequently amended, in the Public Records of Lee County, Florida.

1. The following resolution was approved by a positive vote of at least a majority of the voting interests of the Association:

**RESOLVED:** That the Amended and Restated Declaration of Covenants, Restrictions and Reservations for Osprey Landing be and is hereby amended, and the Amendment to the Amended and Restated Declaration of Covenants, Restrictions and Reservations for Osprey Landing is adopted in the form attached hereto as **Exhibit "A,"** and made a part hereof;

2. The following resolution was approved by a positive vote of at least a majority of the voting interests of the Association:

**RESOLVED:** That the Amended and Restated Bylaws of Osprey Landing at Gulf Harbour Homeowners Association, Inc., be and is hereby amended, and the Amendment to the Amended and

Restated Bylaws of Osprey Landing at Gulf Harbour Homeowners Association, Inc. is adopted in the form attached hereto as **Exhibit "B,"** and made a part hereof;

**RESOLVED:** That the officers and directors are hereby instructed and authorized to execute the aforementioned document and cause it to be filed of public record, together with a Certificate of Amendment.

Dated this 19 day of February, 2009.

**OSPREY LANDING AT GULF HARBOUR HOMEOWNERS ASSOCIATION, INC.**

WITNESSES #1:

By: [Signature]  
Print Name: Nicole Joanne Guadalupe

By: [Signature]  
Print Name: John Demaria  
Title: President

WITNESS #2

By: [Signature]  
Print Name: Debi Taliaferro

Attest: [Signature]  
Print Name: Marianne Crouch  
Title: Secretary

STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was acknowledged before me this 19 day of February 2009, by John Demaria, as President of Osprey Landing at Gulf Harbour Homeowners Association, Inc., a Florida corporation not-for-profit, on behalf of the corporation. He/She is personally known to me or has produced Known, as identification and did not take an oath.



[Signature]  
Notary Public  
Krystal Smith  
Printed Name of Notary

STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was acknowledged before me this 19 day of February 2009, by Marianne Crouch, as Secretary of Osprey Landing at Gulf Harbour Homeowners Association, Inc., a Florida corporation not-for-profit, on behalf of the corporation. He/She is personally known to me or has produced Known, as identification and did not take an oath.



[Signature]  
Notary Public  
Krystal Smith  
Printed Name of Notary

EXHIBIT "A"  
AMENDMENT  
TO THE  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, RESTRICTIONS AND RESERVATIONS  
FOR  
OSPREY LANDING  
FORT MYERS, FLORIDA

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The Amended and Restated Declaration of Covenants, Restrictions and Reservations for Osprey Landing shall be amended, as follows (otherwise, all other provisions shall remain the same):

[New language is shown in underlined type; Deleted language is shown in ~~strike through~~ type.]

1. **A new Section 1.22 shall be added to the Declaration as follows:**

1.22 "Structure" means something built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground, or which is attached to something having a permanent location on the ground. The term shall be construed as if followed by the words "or part thereof." The term includes, without limitation, all Living Units, swimming pools, spas, fences, flagpoles, antennas, basketball backboards, skateboard ramps, swing sets or other play equipment, and storage sheds.

2. **A new Section 3.8 shall be added to the Declaration as follows:**

3.8 **RESALE CAPITAL ASSESSMENT.** The Association shall levy a Resale Capital Assessment upon the transferee in any conveyance of a Lot or Unit by a member. The amount of Resale Capital Assessment initially shall be \$500.00 unless raised or lowered by action by the Board; provided, however, all Lots or Units similarly situated shall be assessed at a uniform rate. The due date shall be the date of the closing of the conveyance. Payment of the Resale Capital Assessment shall be the legal obligation of the transferee. For purposes of this Section, the term "conveyance" shall mean the transfer of record legal title to a Lot or Unit by deed or other authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed. It does not refer to a transfer of title resulting from foreclosure of a lien, or the death of the transferee, nor to a transfer of title to a Director or the transferor's spouse without changing occupancy, solely for estate planning or tax reasons.

Resale capital assessments shall be considered an assessment and can be collected as such in accordance with the provisions under Article 3.5

2. **Section 4 of the Declaration shall be amended as follows:**

**4. ARCHITECTURAL AND AESTHETIC CONTROL.** The Developer originally sought to create a Neighborhood of architecturally harmonious homes. This community was developed with the intent that homes harmonize with each other and present a pleasing and consistent style. This style is not the result of a formal architectural code but rather the result of the vision of the original developers. In response to recent legislative changes, this community is in the process of adopting more detailed guidelines and standards. Among the techniques employed to accomplish this result is the use of certain carefully chosen colors for exterior paint and roof materials. In order to protect the integrity of the development plan and preserve the values of the Living Units, no owner shall make any material change whatsoever in the exterior color of any portion of his Residence or any appurtenant structure, nor in the color or style of roofing materials used on the Residence or appurtenant structure, without prior written approval of Association. To ensure the preservation of the existing harmonious design and to prevent a design that is not in keeping with the style and form of the existing structures, the Board of Directors hereby has adopted a specific pallet of colors and paver materials (4x8) for existing and renovated driveways, painting of homes and extension of residences that compliment the Association's paint schedule and roof tile design as its guidelines and standards. Owners shall be permitted to use only the architectural styles, colors, materials, roof pitches and door and window styles that are already in use within the community for comparable lot types. Exhibit "1" - Paint Concepts provides the color pallets. Exhibit "2" outlines the paver requirements. Except for the initial construction of Living Units and related improvements by the Developer, no building, structure or other improvement, as more specifically defined in Section 1.22 of this Declaration, shall be erected or altered on any Lot, nor shall any grading, excavation, landscaping, or other work which in any way materially alters the exterior appearance of any structure, Lot or Neighborhood Common Area be performed without the prior written approval of the Board of Directors. Driveway renovation can include use of 4x8 pavers set in sand. A specific neutral color lot is available that is compatible with each homes' paint schedule. Driveway size can not go beyond the right/left edge of the house dependent upon how the garage sits on the lot. The Board has adopted a process for design and review to assist homeowners with proposed home or lot alteration plans. Exhibit "3" outlines the design and review process. In obtaining the written approval, owner, or any other person applying, shall comply with all applicable requirements and procedures of the Governing Documents. Refusal to approve proposed changes may be based on purely aesthetic reasons.

3. **Section 6.1 of the Declaration shall be amended as follows:**

**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 comparable to when they were new, except normal wear and weathering. The owner is responsible for his own driveway.

Driveway renovation can include use of 4x8 pavers set in sand. A specific neutral color lot is available that is compatible with each homes' paint schedule. Driveway size can not go beyond the right/left edge of the house dependent upon how the garage sits on the lot.

4. **Section 8.15 of the Declaration shall be amended as follows:**

**8.15 GARAGES, AND CARPORTS ~~AND ACCESSORY BUILDINGS.~~**

(A) No detached garage or ~~other accessory building~~ carport 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)~~ two (2), 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.

5. **Section 8.18 of the Declaration shall be amended as follows:**

**8.18 Antennas, Radio Equipment and Flagpoles.** No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or devise 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, CD base stations or other high-powered broadcasting equipment. ~~This Section 8.18 shall not apply to the Developer or its agents to market Osprey Landing owned by Developer.~~

6. **Section 8.19 of the Declaration shall be amended as follows:**

**8.19 Swimming Pools.** No above ground swimming pools, hot tubs or free standing spas, or similar items that are not "built-in" 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 adjoining Lot, which consent may not be withheld without good cause.

7. **A new Section 8.21 shall be added to the Declaration as follows:**

**8.21 Outdoor Equipment.** All garbage and trash containers, oil tanks, bottled gas tanks, swimming pool and spa equipment and housing and sprinkler pumps and other such outdoor equipment must be underground, or placed in areas not readily visible from adjacent streets, or adequate landscaping must be used as screening around these facilities.

8. **A new Section 8.22 shall be added to the Declaration as follows:**

**8.22 Screen Enclosures and other Improvements.** Improvements to or located within a screen enclosure are subject to architectural review under Section 4 of this Declaration. This includes: extension of an existing enclosure, outdoor or summer kitchens and bar areas, built-in barbeque grills, tiki huts and the like.

EXHIBIT "B"  
AMENDMENT  
TO THE  
AMENDED AND RESTATED  
BYLAWS OF  
OSPREY LANDING AT GULF HARBOUR  
HOMEOWNERS ASSOCIATION, INC.

---

The Amended and Restated Bylaws of Osprey Landing at Gulf Harbour Homeowners Association, Inc., shall be amended, as follows (otherwise, all other provisions shall remain the same):

[New language is shown in underlined type; Deleted language is shown in ~~strike through~~ type.]

**1. Section 1.2 of the Bylaws shall be amended as follows:**

**1.2 Principal Office.** The principal office of the Association shall be ~~c/o Henke Property Management, Inc., Attn: Carol Henke, CAM, P.O. Box 07038, Fort Myers, FL 33919, and shall be at such location~~ at the office of the designated Management Company or such other location as may be determined by the Board

**2. Section 4.2 of the Bylaws shall be amended as follows:**

**4.2 Qualifications.** Each Director must be a Member, or the spouse of a Member. No person shall be elected or appointed for successive terms totaling more than ~~four (4)~~ three (3) years, unless there occurs a hiatus of at least one (1) year between terms. Initial terms by appointment for less than one year shall be excluded from consideration in determining the total number of years served.

**3. A new Section 10 shall be added to the Bylaws as follows:**

**10. ARCHITECTURAL REVIEW COMMITTEE.** The ARC provided for in Section 4 of the Declaration shall be selected, and conduct its affairs as provided in this Section.

**10.1 Members; Qualification.** The Architectural Review Committee, hereinafter the "ARC," shall be composed of three (3) persons, all appointed by the Declarant, who may also be Directors of the Association. Whenever possible and practical, one of the committee members should be an architect, general contractor, or other person with professional expertise in building, landscaping, or architectural design.

**10.2 Selection; Terms.** The members of the ARC shall be appointed by the President of the Association to serve terms of one year beginning on January 1 of each year. If a mid-term vacancy occurs for any reason, the President shall appoint a successor to fill the unexpired

term. Members of the ARC, once appointed, may be removed by vote of a majority of all the voting interests, or by vote of a majority of the Board of Directors.

**10.3 Compensation.** If approved by the Board of Directors, any or all members of the ARC may be compensated for their services.

**10.4 Meetings.** The ARC shall meet at least once during each quarter, and otherwise at the call of the Chairman as necessary, to carry out its duties and functions. The ARC shall meet with the same formalities and notice requirements as required for Board meetings, unless otherwise permitted by law. Written notice of meetings shall be provided to the Neighborhood Association at least one week in advance, and any Owner wishing to appear before the ARC may do so. Special meetings may be called as needed by the Chairman.

**10.5 Procedures, Voting.** A majority of the members of the ARC present in person at any duly called meeting shall constitute a quorum. All questions shall be decided by a majority of the entire committee. Where a question involves proposed changes to a Lot or Living Unit owned by a member of the ARC, that member shall be disqualified from participation in the proceedings, and his place shall be taken by the then President of the Association. If a proposed change is not approved, the reasons for disapproval shall be stated in writing. Minutes of all meetings of the ARC shall be kept in a business-like manner, and shall be available at reasonable times for inspection or photocopying by any owner. Copies of the plans and specifications for all approved changes and construction shall be kept for at least five years. All decisions of the ARC are strictly advisory and all final decisions as to a particular change to a Lot or Living Unit shall be made by the Board of Directors, taking into consideration the ARC's recommendation.