

**Learning Garden of South Gulf Cove  
Use Agreement**

THIS AGREEMENT is made and entered into this 3rd day of SEPTEMBER 2020 by and between THE SOUTH GULF COVE HOME OWNERS ASSOCIATION, INC. (the "Association"), a Not For Profit Corporation under the laws of Florida, having its principal office at 14859 Ingraham Boulevard, FI 33981 and CHARLOTTE COUNTY (the "County"), a political subdivision of the State of Florida, 18500 Murdock Circle, Port Charlotte, Florida 33948.

WITNESSETH:

WHEREAS, the Association intends to improve, maintain and operate the "Learning Garden" on 1.76 acres of County park land located at 13577 Blake Drive in South Gulf Cove; and

WHEREAS, the County previously contracted with the Community Trust of South Gulf Cove, Inc., to develop and maintain the Learning Garden and that contractual relationship has since ended; and

WHEREAS, the Association will assume responsibility for the Learning Garden, and use the Learning Garden to educate visitors on the best plants to use in the landscaping, the Best Management Practices for fertilization, herbicide and pesticide control, and irrigation for residential and commercial properties in Southwest Florida; and

WHEREAS, the County, per Section 3.4 of the Charlotte County Parks and Recreation Masterplan, seeks to refocus the Parks and Recreation Divisions on the provision of larger parks, and promote the reclassification, repurposing, or disposition of neighborhood and mini-parks by transfer to another provider, such as homeowners associations or private non-profit organizations; and

WHEREAS, the County has determined that it is in the best interests of its citizens to allow the Association to improve, maintain and operate the Learning Garden; and

WHEREAS, the Association and County desire to enter into this Agreement to accomplish this partnership.

NOW, THEREFORE, based on the premises and the mutual covenants, conditions, and considerations hereinafter expressed, the parties agree as follows:

1. Purpose. The purpose of this agreement is to enter into a use agreement to allow the Association to use County park land for an educational Learning Garden for the general public.
2. Property Improvement:
  - County shall provide:
    - a. Technical assistance
    - b. Access to the property
  - Association shall provide:
    - a. Grants and other funds to improve and maintain gardens and associated educational programs.
    - b. Planning and design for garden improvements
    - c. Installation of garden improvements
3. Property Operations and Maintenance:
  - County Shall provide:
    - a. Review gardens on a quarterly basis to ensure agreement compliance
  - The Association shall provide:
    - a. Coordination of volunteers to maintain garden
    - b. Funding for maintenance of garden
    - c. Educational programs
    - d. Maintenance and management of garden and garden activities to ensure safety for volunteers, workers, and the general public
    - e. Review of grants, and copies of all grants being written for the garden.
    - f. Installation, operation and payment of utilities for the garden.
4. Authorized Representatives and Notices:

The parties appoint the following as their Authorized Representatives, who shall have the power to make the day-to-day administrative decisions in connection with the operation of this agreement, to receive any notices sent by the other party, and any other powers specifically delineated in this agreement. The Authorized Representative for County and for the Association shall not have the power to exercise any power not specifically granted to such Authorized Representative by the Board of County Commissioners of County and the Board of Directors of The South Gulf Cove Home Owners Association, Inc. Each of the parties' Authorized Representatives may designate or appoint a different Authorized Representative, provided that notice is provided to the other party of the identity and address of the new Authorized Representative as provided in

this paragraph. In the event either party hereunder desires or is required to provide any notice to the other party, the party desiring or required to provide such notice shall provide it to the Authorized Representative for the other party in writing, send it by certified mail, return receipt requested, postage prepaid, at the address listed below:

Authorized Representative for the Association:

President, Board of Directors  
14859 Ingraham Boulevard  
Port Charlotte, FL 33981

Authorized Representative for County:

County Administrator  
18500 Murdock Circle  
Port Charlotte, FL 33948

With a copy of any notices to:

Community Services Director  
1120 Centennial Boulevard  
Port Charlotte, FL 33953

5. Term/Termination:

The term of this agreement shall begin on the day and year first above written and shall be subject to renewal on an annual basis unless either party to this Agreement notifies the other in writing of its intent not to renew at least thirty (30) days prior to the expiration of the original term.

6. Default:

Should either party fail in any respect to comply with the terms of this Agreement and should the other party notify them in writing of the matters regarding which default is asserted, and should the defaulting party fail to either cure the default within thirty (30) days after the giving of notice or to commence within thirty (30) days to rectify the default and continue thereafter to use due diligence to rectify the default until it is full rectified or cured, then the other party may terminate this Agreement at any time thereafter during the continuance of the default by giving written notice to the defaulting party of the election to terminate. If the Association defaults and fails to rectify and fully cure default under the terms of this Agreement, the County may remove all Improvements made by the Association.

7. Insurance:

The Association agrees to provide the following insurance, to remain in effect until the termination of this agreement:

- a. General Liability Insurance - bodily injury and property damage with per occurrence limit of \$1,000,000.00. The County shall be named additional insured on respective General Liability insurance policy.

The Association shall furnish valid proof of respective insurance for the above-required insurance and certificates acknowledging County as additional named insured on the General Liability policy to the County and copies of such certificates to the Director of Community Services.

8. Modification of Agreement:

No modifications, amendments, or alterations to the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

9. Assignment:

Neither party may assign their powers or duties under this Agreement, in whole or in part, without the prior written approval of the other party.

10. Severability:

In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, conditions or covenant shall not be construed as a waiver of a subsequent breach by the other party.

11. Florida Law:

This Agreement shall be governed and construed in accordance with Florida law. The parties agree that in the event of any litigation arising out of any alleged breach or non-performance of this Agreement, the venue for such litigation shall be in Charlotte County, Florida.

12. Public Records:

The County and the Association shall maintain all records it makes or receives in connection with the performance of its duties under this Agreement in accordance with the provisions of Chapter 119, Florida

Statues. The County and the Association shall maintain all such records throughout the term if this Agreement, at which time the County and the Association shall forward such records to the respective Authorized Representative of both parties.

13. Indemnification:

The Association shall indemnify, save, and hold harmless the County and all its officers, agents or employees from all suits, actions, claims, demands and liabilities of any nature whatsoever arising out of, because of, or due to breach of this Agreement by the Association or its subcontractors, agents, clients, volunteers or employees. Neither the Association nor any of the other above- named will be liable under this paragraph for damages arising out of injury or damage to persons or property directly caused by or resulting from the sole negligence of the County or any of its officers, agents or employees.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

SOUTH GULF COVE HOME  
OWNERS ASSOCIATION, INC.

By: 

Peter Watson, President

WITNESS:  
SOUTH GULF COVE HOME  
OWNERS ASSOCIATION, INC.

By: 

Vice President

BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY, FLORIDA

By: \_\_\_\_\_

William G. Truex, Chairman

ATTEST:  
Roger D. Eaton, Clerk of the Circuit

Court and Ex-Officio Clerk to the  
Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Janette S. Knowlton, County

Attorney

LR 2020-\_\_\_\_\_