

**SUBSTANTIAL REWORDING. SEE GOVERNING
DOCUMENTS FOR CURRENT TEXT.**

**RESTATEMENT OF COVENANTS AND
RESTRICTIONS FOR ROTONDA HEIGHTS**

THIS RESTATEMENT OF COVENANTS AND RESTRICTIONS FOR ROTONDA HEIGHTS SUBDIVISION (“Amended Declaration”) is adopted as of this _____ day of _____, 20__ by the Rotonda Heights Conservation Association, Inc., a Florida corporation not for profit (the "Association").

WITNESSETH:

WHEREAS, Cape Cave Corporation, a Delaware corporation (“Developer”) executed and recorded in the Official Records of Charlotte County, Florida, at Official Record (“O.R.”) Book 336, Page 315, a Declaration of Restrictions with respect to the real property described therein and otherwise known as the Rotonda Heights (the “Original Declaration”) which was subsequently thereafter amended by one or more instruments including but not limited to those recorded in O.R. Book 1432, Page 1940; O.R. Book 1931, Page 0301; O.R. Book 2086, Page 1090; O.R. Book 2969, Page 272; and O.R. Book 3936, Page 876, of the Public Records of Charlotte County, Florida (all of the foregoing collectively with the Original Declaration, the “Prior Declarations”);

WHEREAS, the Members of the Association and the Florida Department of Economic Opportunity approved a Revitalized Declaration in accordance with the amendment requirements of the Prior Declarations and the Covenant Revitalization procedures of Florida Statutes § 720.403, *et. seq.*, to be effective in Rotonda Heights (the “Revitalized Declaration”), which Revitalized Declaration is recorded in O.R. Book 4320, Page 1267 of the Public Records of Charlotte County, Florida;

WHEREAS, pursuant to the Revitalized Declaration and all prior declarations of restrictions for Rotonda Heights, the Association holds the authority to amend, alter or terminate the restrictions of record for Rotonda Heights.

NOW THEREFORE, the Association hereby declares that the real property described herein shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth, and that all prior declarations of restrictions for Rotonda Heights, and all prior amendments thereto and restatements thereof shall be superseded and restated in their entirety by this instrument.

ARTICLE 1. DEFINITIONS:

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- A. "Association" shall mean and refer to THE ROTONDA HEIGHTS CONSERVATION ASSOCIATION, INC., a Florida corporation not for profit.
- B. "Common Property" shall mean and refer to those areas of land shown on any recorded plat of the Subdivision but not limited to parks, ponds, lakes, canals and recreational areas, except that

it shall not include (i) any platted Lot unless the Association is the owner thereof, and (ii) any property which has been dedicated to and accepted by any public authority or body.

- C. "Declaration" means the Original Declaration as altered and restated in this Declaration.
- D. "Developer" means Cape Cave Corporation, a Delaware corporation, and its successors and assigns.
- E. "Dwelling" means each residential single family or multifamily structure now or hereafter constructed within the Subdivision.
- E. "Lot" shall mean and refer to any platted lot shown upon any recorded map of the Subdivision (including without limitation those that are residentially or commercially zoned) with the exception of Common Property as heretofore defined.
- F. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article 4, Section 1, hereof.
- G. "Owner" shall mean and refer to the record owners, whether one or more persons or entities, of the fee simple title to any Lot or Unit including, without limitation, any division of state, local or federal government, except that the term Owner shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- H. "Property" shall mean all property, including without limitation all Lots and Improvements, subject to this Declaration.
- I. "Structure" shall mean any construction not otherwise specifically described and includes, but is not limited to, parts and additions to buildings, cisterns, walls, fences and other enclosures, television and other antennas, walks, driveways, parking areas, seawalls, docks and boat landing platforms.
- K. "Vehicle" includes, but is not limited to, all automobiles, pick-up trucks, vans, sport utility vehicles (SUV), trucks, tractor-trailer rigs, motor homes, trailer homes, campers, trailers, boats, motorcycles, all-terrain vehicles (ATV), golf carts, recreational vehicles and all other types of transportation devices that may be defined as vehicles in the discretion of the Association and without regard to any other definition established by any government authority or the manufacturer.
- L. "Driveway" shall mean a paved concrete surface that provides continuous access to a garage.
- M. "Subdivision" means all property subject to this Declaration under Article 3 hereof.
- N. "Unit" shall mean any and all multifamily housing units now or hereafter located within the Subdivision including but not limited to duplex, triplex, condominium or other multi-family units.
- O. "Number and Gender". Whenever in this Declaration the context so requires, the singular number shall include the plural, and the converse; and the use of any gender shall be deemed to include both genders.

- P. “Nuisance” shall mean conduct, omission, or activity which obstructs the reasonable use of the Property; significantly affects, interferes or otherwise negatively impacts another’s ability to use and enjoy their own property; endangers life, safety, or health; is offensive to the senses; or violates the laws of decency, as determined in the Association’s sole discretion.

ARTICLE 2. DECLARATION PURPOSE

Section 1. Purpose: The purpose of this Declaration is to produce an orderly and desirable community and to protect and enhance property values in the Subdivision.

Section 2. The Association: Every owner of property in the Subdivision is placed on notice that there is in existence a corporation known as “The Rotonda Heights Conservation Association, INC, a Florida Corporation”. All owners shall become a member of the Association upon purchasing or otherwise acquiring ownership of a Lot in the Subdivision and shall be bound by the provisions of the Articles of Incorporation, the By-Laws of said Association, and these Declarations, as amended from time to time and recorded in the Public Records of Charlotte County, Florida.

Section 3. Amendments. This Declaration may at any time be amended, altered or terminated in whole or in part in the manner hereafter set forth:

a. Every such amendment, alteration or termination shall be submitted to a vote of the Members at a meeting thereof held not less than 30 days after written notice of such meeting and the purpose thereof is provided to each such Member;

b. Such amendment, alteration or termination shall not be approved unless authorized by a majority of the votes cast at such meeting at which a quorum is present;

c. Such amendment, alteration, or termination shall become effective if so approved upon the same being recorded in the Public Records of Charlotte County, Florida;

d. The voting provisions contained in this amendment procedure shall apply only to the voting procedure to amend the Declaration and all other voting rights of members shall be determined as provided in the Articles of Incorporation and Bylaws of the Association.

Section 4. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by, and bind the Association and the Owners and their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless otherwise determined by a vote of the Members.

Section 5. Notices. Any notice required to be sent to any Member or Owner under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing or transmitted electronically via email or similar approved methods to the last known email address of the person who appears as Member or Owner on the records of the Association at the time.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

ARTICLE 3. PROPERTY SUBJECT TO THIS DECLARATION

ADDITIONS THERETO:

The real property and all improvements thereto which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Charlotte County, Florida, and is more particularly described as follows:

All of that property described in the Plat of Rotonda Heights recorded at Plat Book 8 pages 26A through 26Z of the Official Records of Charlotte County Florida.

ARTICLE 4. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION:

Section 1. Membership. Every Owner shall be a Member of the Association.

Section 2. Voting Rights. Except as otherwise provided herein voting rights in the Association shall be governed and controlled pursuant to the terms and provisions of the Articles of Incorporation and Bylaws of the Association as modified and amended from time to time.

ARTICLE 5. PROPERTY RIGHTS IN THE COMMON PROPERTY:

Section 1. Member's Easements of Enjoyment. Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Property and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Property. In accordance with the provisions of the Original Declaration and the Supplemental Declaration, the Developer has conveyed title to the Common Property to the Association.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- a. The right of the Association to borrow money for the purpose of improving the Common Property and in aid thereof to mortgage said property;
- b. The right of the Association to take such steps are reasonably necessary to protect the Common Property against foreclosure;
- c. The right of the Association to suspend the enjoyment of the rights of any Member in and to the Common Property for any period during which any assessment remains unpaid, and for any infraction of the Association's published rules and regulations;
- d. The right of the Association to charge reasonable admission and other fees for the use of the Common Property;
- e. The right of the Association, subject to the requirements of this declaration and the bylaws of the Association, to dedicate or transfer all of any part of the Common Property to any public agency or authority or any utility (public or private) for such purposes and subject to such conditions as it may determine;

f. The right of the Association to formulate, publish, impose, and enforce regulations for the use and enjoyment of the Common Property, which regulations may restrict the use of common areas, including but not limited to, use of the waterways, restrictions on watering from any common waterway, etc.

ARTICLE 6. COVENANT FOR ASSESSMENTS:

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner by acquiring any ownership interest in a Lot or Unit hereby covenants and agrees to pay to the Association (1) annual assessments and associated charges; and (2) special assessments as such annual and special assessments may be fixed, established, and collected by the Board of Directors of the Association. The annual and special assessments, together with such fees and interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the Lot or Unit subject thereto and shall be a continuing lien upon each Lot or Unit against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the Owner of each Lot at the time the assessment is imposed.

Section 2. Enforcement. The Association may bring a legal action against any Owner personally obligated to pay any delinquent assessment and/or may enforce or foreclose the Association's lien against any Lot or Unit for the full amount of the assessment together with interest thereon, and any late fees impounded as provided herein. The defaulting Owner shall be responsible for all actual costs, disbursements and expenses incurred by the Association in collecting the delinquent assessment and interest thereon as provided herein, including reasonable attorney's fees and costs, whether or not litigation is commenced and including appellate fees and costs. In the event that a judgment against the defaulting Owner is obtained, the amount of the judgment shall include accrued interest on the assessment, applicable late fees, and a sum, to reimburse the Association for all costs, disbursements and expenses (including, without limitation, reasonable attorney's fees, including appellate attorney's fees and costs) incurred by the Association in connection with said action.

Section 3. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of maintaining the Subdivision, protecting and promoting the recreation, health, safety, and welfare of the residents and the property located in the Subdivision, enforcement of the provisions and restrictions of this Declaration, and for the improvement and maintenance of the property, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Property and of the residences situated upon the Owner's Lots, including, but not limited to, the payment of taxes and insurance thereon, repair, replacement, and additions thereto, the cost of labor, equipment, materials, management, and supervision, the enforcement of these restrictions and all other uses consistent with this Declaration and the Articles of Incorporation and the Bylaws of the Association.

Section 4. Special Assessments. In addition to annual assessments, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any unusual, nonrecurring or unbudgeted Association expense, provided that any such assessment shall be approved by a majority of the votes cast at an annual or special meeting of the Members of the Association as required by this Declaration and the other governing documents of the Association.

Section 5. Increases in Assessments. The Association shall not increase the amount of the annual assessment in any year by more than fifteen percent (15%) over the amount of the annual assessment for the prior year without such increase first being approved by a majority of the votes cast at an annual or special meeting of the Members.

Section 6. Interest and Late Fees. Interest and late fees, up to the maximum allowed by Florida Statutes, shall accrue with respect to delinquent assessments in the manner determined from time to time by the Board of Directors of the Association.

Section 7. Effective Date of Lien and Certificate of Payment. Every such lien for unpaid assessment, as between the Association on the one hand and the Owner and any grantee of such Owner on the other hand, shall attach to the Lot and improvements against which the delinquent assessment was made as of the date such assessment became due and payable, provided, however that all such liens shall be subordinate to the lien of an Institutional Mortgagee recorded prior to the time of recording of the claim of lien of the Association pursuant to this Section. Upon request, the Association shall furnish any Owner or mortgagee with a certificate setting forth whether the above described assessments have been paid and showing the amount of any unpaid assessments against the applicable Lot and the period or periods for which any such unpaid maintenance assessments were assessed and fixed. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use of the Association members; and (b) all Common Property

Section 9. Fees and Charges. The Association shall have the authority to impose and collect reasonable fees or charges for information, documentation or services for the benefit of any Owner or the Association, and for administrative expenses incurred in connection with the transfer of a Lot in the Subdivision, the Board of Directors of the Association may promulgate guidelines for assessment of such fees and charges.

ARTICLE 7. ARCHITECTURAL REVIEW

Section 1. Members of Committee. The Design Review Board shall consist of three (3) members appointed by the Board of Directors and shall hold office until such time as such person has resigned or has been removed or a successor has been appointed, as provided herein. Members of the Design Review Board may be removed at any time without cause. The Board of Directors shall have the right to appoint and remove all members of the Design Review Board.

Section 2. Purpose and Function of Design Review Board. The purpose and function of the Design Review Board shall be to (a) create, establish, develop, foster, maintain, preserve and protect within the Subdivision a unique, pleasant, attractive and harmonious physical environment, and (b) review, approve and control the design of any and all buildings, structures, signs and other improvements of any kind, nature or description, including landscaping, to be constructed or installed upon all Properties and all Common Area within the Subdivision. Neither the Design Review Board, or any of its members, shall have any liability or obligation to any person or party whomsoever or whatsoever to check every detail of any plans and specifications or other materials submitted to and approved by it or to inspect any Improvements constructed upon Properties or Common Area to assure compliance with any plans and specifications approved by it or to assure compliance with the provisions of the Design Review Manual, if any, for the Subdivision or this Declaration.

Section 3. All Improvements Subject to Approval. No buildings, structures, walls, fences, pools, patios, paving, driveways, sidewalks, signs, landscaping, planting, irrigation, landscape device or object, or other Improvements of any kind, nature or description, whether purely decorative, functional or otherwise, shall be commenced, constructed, erected, made, placed, installed or maintained upon any of the Properties or Common Area, nor shall any change or addition to or alteration or remodeling of the exterior of any previously approved buildings, structures, or other Improvements of any kind, including, without limitation, the painting of the same (other than painting, with the same color and

type of paint which previously existed) shall be made or undertaken upon any Lot or Common Area except in compliance and conformance with and pursuant to plans and specifications therefor which shall first have been submitted to and reviewed and approved in writing by the Design Review Board.

Section 4. Standards for Review and Approval. Any such review by and approval or disapproval of the Design Review Board shall take into account the objects and purposes of this Declaration and the purposes and function of the Design Review Board. Such review by and approval of the Design Review Board shall also take into account and include the type, kind, nature, design, style, shape, size, height, width, length, scale, color, quality, quantity, texture and materials of the proposed building, structure or other Improvement under review, both in its entirety and as to its individual or component parts, in relation to its compatibility and harmony with other, contiguous, adjacent and nearby structures and other Improvements and in relation to the topography and other physical characteristics of its proposed location and in relation to the character of the Subdivision community in general. The Design Review Board shall have the right to refuse to give its approval to the design, placement, construction, erection or installation of any Improvement on Properties or Common Area which it, in its sole and absolute discretion, deems to be unsuitable, unacceptable or inappropriate for the Subdivision. The Design Review Board may also adopt exceptions to the requirements set forth herein and in Article 9 of this Declaration for planned developments with twenty (20) or more units.

Section 5. Design Standards and Design Review Manual for the Subdivision. The Design Review Board may develop, adopt, promulgate, publish and make available to all Owners and others who may be interested, either directly or through the Association, at a reasonable charge, and may from time to time change, modify and amend, a manual or manuals setting forth detailed architectural and landscape design standards, specifications and criteria to be used by the Design Review Board as a guide or standard for determining compliance with this Declaration and the acceptability of those components of development, construction and improvement of any Properties or Common Area requiring review and approval by the Design Review Board. Any such single Design Review Manual or separate Architectural Design Standards Manual and separate Landscape Design Standards Manual may include a detailed interpretation or explanation of acceptable standards, specifications and criteria for a number of typical design elements, including, without limitation, site planning, architectural design, building materials, building construction, landscaping, irrigation, and such other design elements as the Design Review Board shall, in its discretion, determine. Such Design Review Manual, if created by the Design Review Board shall be used by the Design Review Board and other affected persons only as a guide and shall not be binding upon the Design Review Board in connection with the exercise of its review and approval functions and ultimate approval or refusal to approve plans and specifications submitted to it pursuant to this Declaration.

Section 6. Procedure for Design Review. The Design Review Board may develop, adopt, promulgate, publish and make available to all Owners, their architects and contractors and others who may be interested, either directly or through the Association, at a reasonable charge, and either included within or separate and apart from the Design Review Manual, reasonable and practical rules and regulations governing the submission of plans and specifications to the Design Review Board for its review and approval. Unless such rules and regulations are complied with in connection with the submission of plans and specifications requiring review and approval by the Design Review Board, plans and specifications shall not be deemed to have been submitted to the Design Review Board. Additionally, the Design Review Board shall be entitled, in its discretion, to establish, determine, charge and assess a reasonable fee in connection with and for its review, consideration and approval of plans and specifications pursuant to this Article, taking into consideration actual costs and expenses incurred during the review process, including the fees of professional consultants, if any, to and members of the Design Review Board, as well as taking into account the costs and expenses associated with the development, formulation and publication of any Design Review Manual adopted by the Design Review Board pursuant to this Declaration.

Section 7. Duration of Approval. Any approval of plans, specifications and other materials, whether by the Design Review Board, or the Board of Directors of the Association following appeal, shall be effective for a period of one (1) year from the effective date of such approval. If construction or installation of the building, structure or other Improvement for which plans, specifications and other materials have been approved, has not commenced within said one (1) year period, such approval shall expire, and no construction shall thereafter commence without a resubmission and approval of the plans, specifications and other materials previously approved. The prior approval shall not be binding upon the Design Review Board on resubmission in any respect. Any construction or work for which plans, specifications or other materials have been approved by the Association must be completed within one (1) year from the commencement of construction on the Lot unless otherwise approved by the Board of Directors.

Section 8. Inspection of Construction. Any member of the Design Review Board or any officer, director, employee or agent of the Association may, but shall not be obligated to, at any reasonable time, enter upon, without being deemed guilty of trespass, any Properties or Common Area and any building, structure or other Improvement located thereon, in order to inspect any building, structure or other Improvement constructed, erected or installed or then being constructed, erected or installed thereon in order to ascertain and determine whether or not any such building, structure or other Improvement has been or is being constructed, erected, made, placed or installed in compliance with this Declaration and the plans, specifications and other materials approved by the Design Review Board.

Section 9. Evidence of Compliance. Upon a request therefor from, and at the expense of, any Owner upon whose Lot the construction, erection, placement or installation of any building, structure or other Improvement has been completed or is in the process, the Design Review Board shall cause an inspection of such Lot and the Improvements then located thereon to be undertaken within thirty (30) days, and if such inspection reveals that the buildings, structures or other Improvements located on such Lot are in compliance with plans, specifications and other materials approved by the Design Review Board, the Design Review Board shall direct the Association through its President, Secretary or other officer of the Association thereunto duly authorized, upon the payment by the requesting Owner of a reasonable fee approximating the actual costs associated with such inspection and the preparation of such notice, to provide to such Owner a written statement of such compliance in recordable form. Such written statement of compliance shall be conclusive evidence of compliance of the inspected Improvements with the provisions of this Article as of the date of such inspection.

Section 10. Interior Alterations Exempt. Nothing contained in this Article shall be construed so as to require the submission to or approval of the Design Review Board of any plans, specifications or other materials for the reconstruction or alteration of the interior of any building, structure or other Improvement constructed on Properties or Common Area after having been previously approved by the Design Review Board, unless any proposed interior construction or alteration will have the effect of changing or altering the exterior appearance of such building, structure or other Improvement.

Section 11. Exculpation for Approval or Disapproval of Plans. The Design Review Board and any and all officers, directors, employees, agents and members of the Association, shall not, either jointly or severally, be liable or accountable in damages or otherwise to any Owner or other person or party whomsoever or whatsoever by reason or on account of any decision, approval or disapproval of any plans, specifications or other materials required to be submitted for review and approval pursuant to the provisions of this Article, or for any mistake in judgment, negligence, misfeasance or nonfeasance related to or in connection with any such decision, approval or disapproval. Each person who shall submit plans, specifications or other materials to the Design Review Board for consent or approval pursuant to the provisions of this Article, by the submission thereof, and each Owner by acquiring title to any Lot or any interest therein, shall be deemed to have agreed that he or it shall not be entitled to

and shall not bring any action, proceeding or suit against the Design Review Board, the Association nor any individual member, officer, director, employee or agent of any of them for the purpose of recovering any such damages or other relief on account of any such decision, approval or disapproval. Additionally, plans, specifications and other materials submitted to and approved by the Design Review Board, or the Board of Directors of the Association on appeal, shall be reviewed and approved only as to their compliance with the provisions of this Declaration and their acceptability of design, style, materials, appearance and location in light of the standards for review and approval specified in this Declaration and the Design Review Manual, and shall not be reviewed or approved for their compliance with any applicable Governmental Regulations, including, without limitation, any applicable building or zoning laws, ordinances, rules or regulations. By the approval of any such plans, specifications or materials, neither the Design Review Board, the Association, nor any individual member, officer, director, employee or agent of any of them, shall assume or incur any liability or responsibility whatsoever for any violation of Governmental Regulations or any defect in the design or construction of any building, structure or other Improvement, constructed, erected, placed or installed pursuant to or in accordance with any such plans, specifications or other materials approved pursuant to this Article.

ARTICLE 8. GOVERNMENTAL RULES AND REGULATIONS:

Section 1. Compliance. In addition to this Declaration, property usage shall conform to all Ordinances, Rules and Regulations of every governmental entity with jurisdiction over the Property as they may be amended from time to time.

Section 2. Permitted Uses of Owners' Property. Each home, residential Lot, or multi-family unit (excluding builder's models and speculation homes) shall be used as a home and for no other purpose. No business or any commercial activity whatsoever, shall be conducted in or from any home including, but not limited to, (i) visitation by clients, customers, invitees, employees, or suppliers, (ii) delivery, shipping and/or production of any product or material, or (iii) door-to-door solicitation of residents.

Section 3. Exceptions. This restriction shall not be construed to prohibit any Owner from maintaining a personal or professional library in his home, from keeping his personal business or professional records in his home, from handling his personal, business or professional telephone calls or written correspondence in and from his home or conducting a "no impact" home-based business in and from his home. Such uses are expressly declared customarily incident to residential use. Examples of businesses which are prohibited and are considered "impact" businesses are businesses or commercial activity or ventures that result in vehicular traffic to and from the home, parking at the home, create noise audible from outside the home, or generate fumes or odors noticeable outside the home, generate more than normal residential trash, including but not limited to, a home day care, beauty salon/barber, and animal breeding, commercial plant nursery or mail order business with regular shipping and receiving of goods via commercial delivery service.

Section 4. Non-Conforming Activities. Any party in violation of this Article 8 on the date this Amended Declaration is recorded in the Public Record shall be granted ninety (90) days from the date of recording in which to eliminate the violation, and shall thereafter be subject to enforcement action shall be commenced.

Section 5. Nothing in this article shall limit the ability of an Owner to rent property to a single-family unit, but shall prohibit adult living facilities, congregate living facilities, group homes, halfway houses, and similar uses. Each Owner shall be responsible for any violation of this by a tenant occupying the Owner's property.

ARTICLE 9 - USE RESTRICTIONS

Section 1. Residential Use. In all residentially owned areas of the Subdivision, no more than one detached, single-family dwelling may be constructed on any Lot, except that more than one Lot may be used for one dwelling, in which event, all restrictions set forth in this Amended Declaration shall apply to such Lots as if they were a single Lot, subject to the easements indicated on the plat of the Subdivision and established herein.

Section 2. Structures. All residences and Structures, of any kind, shall be erected in compliance with Charlotte County setbacks and the easement dedication described on the Plat. Above ground swimming pools are prohibited.

Section 3. Multi Family Square Footage and Garages. All residential structures hereafter constructed within the Subdivision shall comply with the following requirements:

a. Single Family. All single-family residences shall have no less than one thousand five hundred (1,500) square feet of enclosed air-conditioned living area. All single-family residences shall have an attached two car, or larger, fully enclosed garage with at least four hundred (400) square feet of enclosed unobstructed interior space for vehicle parking, and either a minimum sixteen (16) foot wide overhead garage door; or two (2) eight (8) foot wide overhead garage doors.

b. Duplex. Residential duplex units shall have no less than one thousand two hundred fifty (1,250) square feet of enclosed air-conditioned living area per unit. Each duplex unit shall have a one car, or more, fully enclosed garage, with at least two hundred (200) square feet of enclosed unobstructed interior space for vehicle parking with a minimum eight (8) foot wide overhead garage door. Tandem parking space layouts in multi-family development are prohibited.

c. Multifamily. Residential multi-family zoned buildings with three (3) or more units shall have no less than one thousand (1,000) square feet of enclosed air-conditioned living space per unit. Each multi-family unit shall have a one car, or more, fully enclosed garage with no less than two hundred (200) square feet of enclosed unobstructed interior space for vehicle parking, with a minimum eight (8) foot wide overhead garage door. Tandem parking space layouts in multi-family development are prohibited.

d. No carports of any type shall be allowed on any residential single or multi-family zoned property.

Section 4. Commercial Property. Commercial Property: All commercial and industrially zoned properties within the Subdivision shall conform to the zoning requirements of Charlotte County, Florida. In addition to, and without limiting the use restrictions and architectural control provisions of this Declaration, the Association may, in its absolute discretion, require certain site screening and noise barriers and other similar measures to protect neighboring properties from commercial and industrial uses. The Association may adopt certain guidelines to control the impact of commercial activities on residential property.

Section 5. Accessory Structures. Other than a residential dwelling and its attached garage, no detached garage, barn, shed, utility structure or other unattached building shall, at any time, be erected or used on any Lot, temporarily or permanently, whether as a residence or for any other purpose. Any such structure existing prior to May 18, 2006 (hereafter "Non-Conforming Structure") shall be permitted to remain, subject to the maintenance and other provisions of this Amended Declaration, but shall not be enlarged, enhanced, improved, or relocated. Each Non-Conforming Structure shall be completely

removed upon the earlier of (a) the sale of the Lot on which it is located; or (b) its destruction or damage to the extent of fifty percent (50%) of replacement cost, or greater.

The Board of Directors of the Association may approve exceptions to this provision. Such exceptions shall be at the Board's sole discretion and will be considered on a case-by-case basis under the following guidelines:

- (a) Must not exceed 100 cubic feet;
- (b) Must be completely hidden from sight of road and abutting properties;
- (c) Must not exceed six (6) feet in height;
- (d) Must be maintained in good condition;
- (e) Must be made of non-metallic material.

Section 6. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that cats, dogs, and other household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose; provided further that no person owning or in custody of a dog shall allow the dog to stray or go upon another Lot without the consent of the Owner of such Lot; and provided further that no more than a total of two (2) animals may be kept on any Lot. Each dog or cat must be on a leash and in full physical control by the Owner or Owner's family member at all times when the dog or cat is outside of the Owner's Lot. **ALL EXCRETIONS SHALL BE IMMEDIATELY REMOVED BY THE OWNER OR CARETAKER OF THE PET FROM THE PROPERTY, PLACED IN A SEALED CONTAINER AND DEPOSITED IN THE OWNER'S SOLID WASTE CONTAINER.** The ability to keep pets is a privilege, not a right, and the Association may order and enforce the removal of any pet that, in its determination, for any reason becomes a source of annoyance to other residents or endangers the health, safety and welfare of resident. Commercial or similar activities involving pets, including but not limited to breeding for sale, is prohibited in the single or multi-family zoned areas of the Subdivision. All pets shall be licensed by the appropriate State or local authorities. Feeding of any and all wildlife is expressly prohibited. The Association's Board of Directors may adopt and may amend, in its sole discretion from time to time, rules and regulations with regard to cats, dogs and other customary household pets kept pursuant to this Section, including without limitation by requiring that pets may not be left without supervision outside on an Owner's Lot for any extended period of time.

Section 7. Fences and Walls. Construction of any fence or wall (hereafter "Fence") of any height in any location must be approved by the Design Review Board in accordance with Article 7 of this Declaration, and is further subject to the following additional requirements:

- a. Sight screen fencing is required for pool equipment and any other mechanical equipment, excluding air conditioning equipment, on the side of any house.
- b. The height, location, setback, style, and other characteristics of any Fence shall be subject to and governed by rules and regulations promulgated and amended from time to time by the Board of Directors of the Association (the "Fence Rules and Regulations"). Any previously approved Fence in place as of the date the Fence Rules and Regulations are amended that does not comply with the newly amended requirements shall be permitted to remain, subject to the maintenance and other provisions hereof, but shall not be enlarged, enhanced, improved, or relocated; and shall be completely removed upon its destruction or damage to the extent of fifty percent (50%) of replacement cost, or greater.
- c. Any Fence in place as of the date this Amended Declaration is first recorded in the public records that does not comply with the foregoing requirements shall be permitted to remain, subject to the maintenance and other provisions hereof, but shall not be enlarged, enhanced,

improved, or relocated; and shall be completely removed upon the earlier of (a) the sale of the Lot on which it is located; or (b) its destruction or damage to the extent of fifty percent (50%) of replacement cost, or greater

d. No existing fence or wall may be modified, altered, relocated or replaced without written approval from the Association.

Section 7.1. Hedges. A hedge is a dense row of landscape shrubs. Hedges are permitted only if such hedge:

- (a) Is planted a minimum of four (4) feet from the adjacent property line. Separate requirements may be considered for a hedge that abuts a common area;
- (b) Does not encroach onto adjacent property;
- (c) Is agreed to by the Owner of any adjacent property; and
- (d) Does not restrict the view of the abutting property owners.

The Association Board of Directors will review all hedge requests and apply these guidelines on a case-by-case basis. The Board of Directors shall have the discretion to allow exceptions to these guidelines upon a case-by-case basis.

Section 8. Vehicles. Vehicles, including without limitation, automobiles, pick-up trucks, SUV's, vans, motorcycles and privately-owned commercial vehicles (other than box trucks) with curb weight under 10,000 pounds may be parked either on a driveway or in a fully enclosed garage. All other vehicles must be parked in a fully enclosed garage. The Association may adopt guidelines from time to time defining which other vehicles may be parked on a driveway. No vehicle may be parked on any lawn, road right of way, easement or vacant Lot, except on a temporary basis, not to exceed 8 hours or overnight, and only for the necessary construction, repair or maintenance of an improved or vacant Lot. Un-licensed and inoperable vehicles must be stored in a garage. Any vehicle repair and maintenance exceeding 3 hours in length must take place in a garage. No vehicle may be used as a domicile or residence even on a temporary basis. No recreational vehicle may be parked outside of a fully enclosed garage without the issuance of a pass from the Association, which will not be issued to allow such parking for more than seven (7) days. The Association will adopt guidelines for the issuance of recreational vehicle parking pass.

Section 9. Storage. No Lot shall be used for the storage of rubbish, landscape debris, building materials, machinery and/or recreational equipment unless out of public view behind Association approved sight screening. Trash, garbage or other waste shall not be kept except in sanitary containers properly concealed from public view. All garbage containers, recycling containers, and other trash receptacles must be removed from the street side and properly stored and secured in a sight screened area according to guidelines adopted by the Board of Directors within 48 hours of trash collection. The Board of Directors may adopt guidelines regarding garbage and recycling containers.

Section 10. Clothes Hanging and Drying. All outdoor clothes hanging and drying activities shall be done in a manner so as not to be visible from any street or any adjacent or abutting property and are hereby restricted to the areas between the rear dwelling line and the rear yard line and, in the cases of Lots bordering a side street, to that portion of the aforementioned area which is not between the side street and the side dwelling line. All clothes poles shall be capable of being lifted and removed by one (1) person in one (1) minute's time and shall be removed by the Owner when not in actual use for clothes drying purposes.

Section 11. Antennas and Roof Structures. No television, radio, or other electronic towers, aerials, antennas, satellite dishes or devices 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, except that this prohibition shall not apply to those antennas specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennas that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennas.

To the extent that reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not visible from the street or neighboring property, and integrated with the dwelling and surrounding landscape. Antennas shall be installed in compliance with all state and local laws and regulations, including zoning, land use, and building regulations.

Section 12. Lot and Dwelling Upkeep. All Owners of Lots with completed houses thereon shall, as a minimum, be obligated to have the grass regularly cut, trimmed and irrigated, weeds controlled, trees maintained, including any street trees and all trash and debris removed. This obligation shall include the right of way or tract area lying between the Owner's Lot line and the pavement of the street. The Owner of each Lot shall maintain the Dwelling located thereon in good repair, including, but not limited to the exterior paint and appearance of the Dwelling. No Owner may change the original color of the exterior of his Dwelling without the prior written consent of the Design Review Board. If an Owner of a Lot fails, in the Board's sole discretion, to maintain their Lot or Dwelling, or the right of way or tract area as required herein, the Board, after giving such Owner at least ten (10) days written notice, is hereby authorized, but shall not be hereby obligated, to maintain that Lot, Dwelling or right of way or tract area and said Owners shall reimburse Association for actual costs and administrative fees incurred therewith, and all of which shall become a lien until paid in full.

Any unimproved Lot or tract not containing a Dwelling or other improvement shall be maintained so that no refuse or unsightly objects shall be placed or allowed to remain on the Lot or tract and the Lot or tract shall otherwise be maintained in compliance with all applicable ordinances and regulations, this Declaration, and any rules, regulations or guidelines adopted by the Association from time to time. The Association reserves the right but not the obligation to adopt guidelines for the maintenance of unimproved vacant Lots or tracts, and to provide guidance and assistance to owners to clear vegetation and/or to clear refuse, unsightly objects or to address other maintenance concerns as determined by the Association. Failure of an Owner to maintain a vacant Lot or tract in accordance with this declaration or any adopted rules, regulations, or guidelines will constitute a violation of this Declaration subject to enforcement in accordance with the provisions of Article 12 hereof. The Association may mow the mowable areas of all undeveloped Lots and tracts, which expense may be a common expense of the Association included in the annual assessment or levied as a special assessment pursuant to Article 6 hereof.

Section 13. Window Treatments. No newspaper, aluminum foil, reflective film, nor any other material, other than usual and customary window treatments, shall be placed over the windows of any Dwelling. Installation of hurricane shutters over windows may be addressed by separate guidelines.

Section 14. Signs. No sign, billboard or advertising of any kind (including on motor vehicles, vessels, or conveyances) shall be displayed to public view anywhere within the subdivision without the prior written approval of the Board of Directors of the Association or the Design Review Board, which shall establish criteria, in its sole and absolute discretion, for the display of all forms of signage (including signs on motor vehicles) within the Subdivision.

Section 15. Prohibition of Certain Activities. No damage to, or waste of, the Common Property or any part thereof, shall be committed by any Owner or any tenant or invitee of any Owner. No noxious, destructive or offensive activity shall be permitted on or in the Common Property, or the Lots, or any part thereof, nor shall anything be done thereon which may be or may become an unreasonable annoyance or Nuisance to any other Owner. No Owner may maintain, treat, landscape, sod, or place or erect any improvement or structure of any kind on the Common Property without the prior written approval of the Board of Directors.

Section 15.1. Open Burning. Open burning within the Subdivision is subject to rules and regulations promulgated and amended from time to time by the Board of Directors. In addition, open burning is subject to the following requirements and restrictions. Open burning may be permitted only for the following uses, provided that no smoke violations or other nuisance or hazard is created:

- a. Cooking fires on private property, provided that the fire is in an approved container or on a site provided for such purpose(s). At no time shall the flame height of a cooking fire reach over one foot. An approved container for cooking fires is as follows:
 - i. A three-foot by three-foot block type container with one grate for cooking, one grate for oak split logs or charcoal and leaving one foot off the ground for air flow (no other wood shall be used).
 - ii. Rolling containers for cooking and smoking using wood or charcoal.
 - iii. Gas grills must be approved by United Laboratories (UL).
 - iv. Charcoal grills must be UL approved.
- b. Warming or camping fires shall be permitted on private property so as long as no building materials or yard waste are burned.
- c. Ceremonial or any other celebration burning fires may be permitted upon written request to the Association.

Open burning for the purpose of clearing of land for development purposes or agricultural operations or disposing of or burning building materials or yard waste is expressly prohibited within the Subdivision. All uses not listed above as permitted uses are hereby expressly prohibited. Open burning shall at all times be subject to local, state, and federal law and regulations, including burn bans. At any time, the Association or its designee shall have the authority to shut down and extinguish any cooking, warming or ceremonial fire deemed a nuisance or otherwise not in compliance with the Declaration. The Owner upon whose property open burning occurs shall be liable for any and all damage or emergencies caused by negligent, unlawful or unauthorized acts with regard to open burning, which shall result in a lien against said property for the amount of damages and costs incurred.

Section 15.2. Drones. Small unmanned aircraft systems (sUAS) otherwise known as drones (“Drones”) shall be registered with the Federal Aviation Administration (“FAA”) prior to use within the Subdivision. Recreational Drones or any other non-commercial Drones shall not be utilized except within the airspace above the user’s own Lot. Drones shall not be permitted in the airspace above Common Property. Recreational drones must adhere to the provisions of Aviation Circular 91-57A and Section 336 of Public Law 112-95, which include following a community-based set of safety guidelines, such as those developed by organizations such as the Academy of Model Aeronautics (AMA), and following the guidelines provided by the Small UAS Rule (Part 107). Reference is hereby made to Florida Statutes Section 934.50, *Freedom from Unwarranted*

Surveillance Act, (2017) as amended from time to time, (the “Act”), the provisions of which are hereby incorporated by reference. The Act prohibits the use of drones equipped with an imaging device by a person “to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent.” “Surveillance” is defined as (1) with respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such persons with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or (2) with respect to privately owned real property, the observation of such property's physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons. A violation of the Act shall constitute a breach of this Declaration subject to enforcement by the Association in accordance with the provisions hereof.

Section 16. Rules and Regulations. No Owner or other permitted user shall violate the reasonable Rules and Regulations for the use of the Common Property, as the same are from time to time adopted by the Board.

Section 17. Flags and Flagpoles. An Owner may display only one removable and portable United States flag and one other flag on the Owner's Dwelling, provided the flags are displayed in a respectful way. All flag displays shall be subject to reasonable standards for size, placement, and safety, as adopted by the Association, consistent with Title 36 U.S.C. Chapter 10, Chapter 720, Florida Statutes and any applicable local ordinance relative to the proper display of the flag.

Section 18. Above Ground Tanks Prohibited. The placement or maintaining on a Lot of any and all kinds of above ground fuel tanks is strictly prohibited. This prohibition shall include, but not be limited to, fuel tanks of gas, kerosene, diesel fuel, propane or similar fuels, but shall exclude small attachable tanks for gas grills. In ground tanks may be installed on a Lot provided the tank is permitted by local, state or federal regulations and is installed and maintained in accordance with such regulations. Approval for such in ground tank must be received from the Association. The Association may establish rules and regulations for the installation and maintenance of in ground tanks.

Section 19. Waterways. When a Lot which borders a lake, pond or canal or other body of water located within the boundaries of the Subdivision (“Waterway”) is improved with any structure, the Owner shall finish grade, sod and mow the area between any property line and the water’s edge. The finished grade shall be in compliance with the Association’s guidelines which may be adopted or revised from time to time and shall be subject to the Association’s approval as to all matters including change in elevation.

The Association shall have the right, but not the obligation, to maintain all areas which lie between an Owner's Lot line and the edge of all Waterways. No Owner shall improve, other than finish grading, and sodding, the Waterway bank area with any other improvements without the written approval from the Association and no improvement shall be permitted which shall inhibit or prevent the Association from discharging its responsibilities to maintain the Waterway area.

The Association reserves the right to remove, at Owners expense, any improvement which lies within the Waterway easement area and, in the sole judgment of the Association, inhibits or prevents the Association from discharging its right and responsibility to maintain the Waterway area.

No vessel powered by any type of internal combustion engine shall be operated on any of the waterways within the subdivision.

Section 20. Boat Docks - Landing Platforms. Boat docks, boardwalks, and boat landing platforms are permitted only to the extent that the Lot Owner enters into a License Agreement with the Association in form and substance acceptable to the Association in its sole discretion and to the extent that such boat dock, boardwalk, or landing platform is subject to and in full compliance with the rules, regulations, and guidelines that the Association or its Board of Directors has promulgated, or may hereafter promulgate, and may modify or amend at any time from time to time.

ARTICLE 10. CONFLICT - INCONSISTENCY:

In the event of any conflict, inconsistency, or incongruity between the provisions of this Declaration and any provisions of the prior recorded Declaration, as heretofore amended, the provisions of this Declaration shall in all respects govern and control.

Savings Clause. It is the intention of the Association that the provisions of this Amendment comply in all respects with the requirements of applicable Florida and federal law (“Law”) including without limitation regulations of the Federal Aviation Administration with respect to Drones, as that term is defined above. Therefore, in the event of any conflict between the requirements of Law and this Declaration, the provisions of the applicable Law shall control, and this Declaration shall be deemed modified to the least extent necessary to be enforceable and in compliance with law and shall be interpreted in such a manner as to be consistent with the requirements of the Law.

ARTICLE 11. COMPLIANCE:

Every owner, tenant and occupant shall comply with this Declaration as set forth herein and any and all changes from time to time that may be made by the Association.

ARTICLE 12. ENFORCEMENT:

Section 1. Compliance by Owners. Every Member shall comply with the restrictions and covenants set forth herein and any and all rules, regulations or guidelines which may be adopted by the Board of Directors of the Association.

Section 2. Enforcement. Failure of a member to comply with the Declaration, as amended and restated, the Bylaws of the Association, or any guidelines approved rules or regulations adopted by the Association, its Board of Directors, or any committee thereof shall be grounds for immediate action which may include without limitation: (i) action to recover any sums due to the Association, (ii) injunctive relief, (iii) imposition of fines, (iv) foreclosure of liens, or (v) any combination thereof or other relief available at law or in equity. In any such action, the Association shall be entitled to recover without limitation all reasonable attorney’s fees, costs and expenses incurred by the Association, whether pre-suit, through trial, on appeal, or post judgment collection and enforcement proceedings.

In addition to all other remedies, a fine of up to \$100 per violation or \$100.00 per day for continuing violations, may be imposed in accordance with Chapter 720, Florida Statutes. The maximum fine for a continuing violation shall be \$1,000; however, the maximum fine may be increased to no more than \$5,000 on a case-by-case basis, but only upon a favorable vote of three-fifths (3/5) of the Board of Directors of the Association. The hearing committee contemplated by Florida Statutes §720.305(2)(a) shall be for the sole purpose of approving or denying, by a majority vote, the validity of the fine or suspension imposed and shall not decide the amount of the fine. All fines, liens, and other enforcement proceedings shall be in accordance with the requirements of Chapter 720, Florida Statutes.

Section 3. Subsequent Violations. The Association may develop procedures to address recurring and repeat violations of a similar nature.

ARTICLE 13.

In any case not herein otherwise specifically provided for, where the Association shall be required, for the safety and betterment of the members hereof. The Association shall be allowed to expend money to correct any violation of this Declaration upon the failure or refusal of any owner whose duty it is hereunder to do, such expenditure shall be a charge against the Lot or Lots of such owner, and the Association may pursue such appropriate legal remedies, including the right to file a Lien to collect such expenditure.

Witness

ROTONDA HEIGHTS CONSERVATION
ASSOCIATION, INC.,
A Florida corporation not-for-profit

Witness

By: _____
James Harper, President

STATE OF FLORIDA

COUNTY OF CHARLOTTE

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by James Harper as President of ROTONDA HEIGHTS CONSERVATION ASSOCIATION, INC., a Florida corporation not-for-profit who () is personally known to me or who () has produced _____ as identification.

(SEAL)

Notary Public – State of Florida

ATTESTATION

I, Deborah Clements, as Secretary of ROTONDA HEIGHTS CONSERVATION ASSOCIATION, INC.,

a Florida corporation not-for-profit (the “Association”), hereby attest and certify that the foregoing

AMENDED RESTATEMENT OF COVENANTS AND RESTRICTIONS FOR ROTONDA HEIGHTS was considered at a duly noticed meeting of the Association convened on the _____ day of _____, 20__, and was formally adopted by a vote of no less than two thirds (2/3) of the votes entitled to cast at that meeting.

Deborah Clements, Secretary