

**Joined with the Developer  
And Accepted 10/21/2015.  
Recorded at Charlotte County  
Clerk of Circuit Court on  
12/4/2015 at 1:50 p.m.**

**AMENDED  
RESTATEMENT OF RESTRICTIONS  
FOR  
ROTONDA WEST**

KNOW ALL MEN BY THESE PRESENTS:

That heretofore, the original Declaration of Restrictions was recorded in Official Record Book 767, at Page 721, et. seq., of the Public Records of Charlotte County, Florida. That Declaration as it has previously been amended, is hereby further amended and is restated in its entirety.

WHEREAS, Cape Cave Corporation reserved unto itself and its assigns the right to modify, amend, abrogate, add to or derogate from the covenants and restrictions;

WHEREAS, Rotonda West Association, Inc., formerly known as Rotonda West Waterway Maintenance Association (hereinafter referred to as “Association”) has requested this amendment and joins in this amendment; and

WHEREAS, the Association did not join in the removal of St. Andrews and the Core Area as hereafter defined from the property subject to these Restrictions but did not object thereto.

NOW THEREFORE, Cape Cave Corporation hereby amends the Restrictions and declares that the property described in Section 4, Rotonda West, is and shall be held, transferred, sold and conveyed and occupied subject to the covenants, restrictions, easements, charges, and liens hereafter set forth.

The terms hereinafter used in this instrument shall be defined as follows:

- Accessory Building                      A non-habitable building with a roof structure that is smaller in size and secondary in purpose to the principal building, is located at the rear on a single Lot/Tract of the principal building or at the side of the principal building on a double Lot/Tract, and is completely detached from the principal building. Accessory buildings shall include, but are not limited to: detached garages, work shops, cabanas, greenhouses, and studies.
  
- Accessory Structure                      An Improvement that is detached from the Dwelling, is located on the same Lot/Tract as the Dwelling and, if walls are part of the accessory structure, eighty percent (80%) or more of the walls are open. Accessory Structures most commonly include, but are not

	limited to: decorative structures, children’s playhouses, pergolas, arbors and trellises. All Accessory Structures must be permanently tied down or mounted on a foundation so as to assure the rigidity and stability of the Accessory Structure.
Addition	An Improvement that is attached to the Dwelling by means of a common wall, covered walkway or fully enclosed breezeway. Additions most commonly include, but are not limited to garages, workshops and studies. (Also see Improvements)
Articles of Incorporation	Articles of Amendment of Certificate of Incorporation of Rotonda West Waterway Maintenance Association, Inc., recorded in Official Records Book 1257, Page 773 <i>et seq.</i> , of the Public Records of Charlotte County, Florida, as may be amended from time to time.
Assessment	A Lot/Tract Owner share of the funds required for the payment of expenses of the Association.
Association	Rotonda West Association, Inc., a Florida Corporation Not For Profit, its successors and/or assigns (formerly Rotonda West Waterway Maintenance Association, Inc).
Board	The Board of Directors of the Association.
Builder	Any person or entity who has received a building permit from Charlotte County.
Bylaws	2002 Amended and Restated By-Laws of Rotonda West Association, Inc., recorded in Official Records Book 2184, Page 1431 <i>et seq.</i> , together with the First Amendment to the 2002 Amended and Restated By-Laws of Rotonda West Association, Inc., recorded in Official Records Book 2519, Page 168 <i>et seq.</i> , both of the Public Records of Charlotte County, Florida, as may be amended from time to time.
Charge	Any legal or equitable indebtedness to the Association incurred by, or on behalf of, an Owner, other than Assessments for expenses of or obligations to the Association. Said obligations may arise by oral or written contract, by law or in equity, or may be created by the Governing Documents.
Commercial Improvement	Any Improvement built or constructed on a Lot/Tract zoned for commercial use.
Common Areas	All real property owned or leased by the Association for the common use and enjoyment of the Owners, or property which has been dedicated to the Association or Owners for common use or

	enjoyment, regardless of whether title has been conveyed to the Association.
County	County of Charlotte, State of Florida.
Dwelling	A living unit which is either freestanding (single family) or in a group of similar units (multifamily), including but not limited to a living unit located in a condominium, duplex, triplex, multifamily building, townhome or adult congregate living facility.
Governing Documents	These Restrictions, together with the Plats, Articles, Bylaws, Rules and Regulations, and Guidelines.
Grantor/Developer	Cape Cave Corporation, a Delaware corporation, its successors and/or assigns.
Guidelines	Those Guidelines which the Developer and/or the Board are authorized to adopt pursuant to the Governing Documents and/or applicable law, including but not limited to the New Construction Guidelines and the Residential Modification Guidelines.
Improved Lot/Tract	A Lot/Tract on which a Dwelling and/or Improvement has been constructed.
Improvement	Any structural component, except for new Dwellings, built, constructed or placed on a Lot/Tract or added to a Dwelling, including but not limited to Accessory Structures, Additions, walls, fences and other enclosures, spas, swimming pools, swimming pool cages, lanais, lanai cages, patios, terraces, walks and walkways, driveways, landscaping, lawn ornaments, monuments and other decorative structures, boat docks, boardwalks, sea walls, bulkheads and recreational equipment. All Improvements must be permanently tied down or mounted on a foundation so as to assure the rigidity and stability of the Improvement.
Lot/Tract	The parcels of land into which the property was divided as shown on the Plats, together with all Improvements thereon.
Lot/Tract Owner	The person or persons, or any other legal entity holding the fee simple title to any Lot/Tract in Rotonda West, as more particularly described in Section 4 hereof.
Member	The record Lot/Tract Owner(s) of legal title to a Lot/Tract.
Multifamily Lot/Tract	A Lot/Tract(s) which is zoned for multifamily development.
Multifamily Unit	The individual units on a Multifamily Lot/Tract which are subject

to exclusive ownership.

Multifamily Unit Owner	The record Owner of a Multifamily Unit.
New Construction Committee (“NCC”)	A committee appointed by the Grantor/Developer for the purpose of reviewing and approving all new construction of every type and description, except for Residential Improvements constructed on a Lot/Tract after the receipt of a certificate of occupancy for the Dwelling on the same Lot/Tract, which shall be approved by the Residential Modification Committee. The NCC shall also review and approve modifications to all Commercial Improvements. In the instance that the Grantor/Developer assigns the reserved rights relative to the NCC to the Association, in the event that the Grantor/Developer is dissolved without an assignment of reserved authority to a successor entity, or if the Grantor/Developer voluntarily relinquishes its right to appoint individuals to the NCC, then the Board will appoint individuals to the NCC.
New Construction Guidelines	Standards for the control of the design of all new Dwellings and all Commercial Improvements, including but not limited to roof pitch and materials, parking and driveway cross sections, exterior aesthetics, design, materials and colors, the location of air conditioning/heating systems and the location, design and color of mailboxes, landscaping and such other construction specifications as the NCC, in its sole discretion, deems appropriate.
Owner	The record owner, whether one or more persons or entities, of the fee simple title to any Lot/Tract, including but not limited to Multifamily Lots/Tracts, or Multifamily Units within Rotonda West.
Plats	The subdivision plats of the following subdivisions within Rotonda West: Rotonda Pinehurst recorded in Plat Book number 8 at pages 12A through 12K; and Rotonda Pebble Beach recorded in Plat Book number 8, pages 13A through 13L; and Rotonda Oakland Hills recorded in Plat Book number 8, pages 15A through 15K and Plat Book number 10 at page 3; and Rotonda Pine Valley recorded in Plat Book number 8 pages 16A through 16K; and Rotonda White Marsh recorded in Plat Book number 8 pages 17A through 17L; and Rotonda Broadmoor recorded in Plat Book number 8 pages 18A through 18L; and Rotonda Long Meadow recorded in Plat Book number 8 pages 19A through 19K; in the Public Records of Charlotte County, Florida.
Residential Improvement	Any Improvement built or constructed on a Lot/Tract zoned for

	residential use.
Residential Modification Committee (“RMC”)	A committee appointed by the Board for the purpose of reviewing and approving new construction of Residential Improvements constructed on a Lot/Tract after the receipt of a certificate of occupancy for the Dwelling on the same Lot/Tract and additions, alterations or modifications to Dwellings actually used as residences and Residential Improvements but not Dwellings used as model homes or Builders’ speculation houses, Dwellings owned by the Grantor/Developer or on Commercial Improvements.
Residential Modification Guidelines	Standards for the control of the design of Residential Improvements, and additions, alterations and modifications to Dwellings and Residential Improvements, including but not limited to design and aesthetics, roof pitch and materials, parking and driveway cross sections, exterior materials and colors, the location of air conditioning/heating systems and the location, design and color of mailboxes, landscaping and such other construction specifications as the Association deems appropriate, subject to approval by the Grantor/Developer.
Restrictions	This Amended Restatement of Restrictions for Rotonda West, as amended from time to time.
Rules and Regulations	Those rules and regulations promulgated by the Board of Directors, governing the use, occupancy, alteration, maintenance, sale/transfer and appearance of Multifamily Units, Lots/Tracts and Common Areas, together with Improvements located thereon, and the operation and administration of the Association, subject to any limits set forth in these Restrictions.
Subdivision	The subdivisions set forth on the Plats.
Unimproved Lot/Tract	A Lot/Tract on which no Dwelling or Improvement has been constructed.
Visible	With respect to any object or physical thing, said object or physical thing is visible from the street to a person standing at the finished grade of the street.
Voting Interests	The arrangement established in the Governing Documents by which the Lot/Tract Owners of each Lot/Tract collectively are entitled to one vote in the Association matters.

**Section 1. PURPOSE:** The purpose of these Restrictions is to produce an orderly and desirable community to protect and enhance property values in Rotonda West, Florida.

**Section 2. NUMBER - GENDER:** Whenever in the Governing Documents 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

**Section 3. THE ASSOCIATION:** Every Owner of property in Rotonda West is placed on notice that there is in existence a not for profit corporation known as “The Rotonda West Association, Inc”. All Owners shall be bound by the provisions of the Governing Documents, as amended from time to time and recorded in the Public Records of Charlotte County, Florida.

**Section 4. ROTONDA WEST:** The real property, as shown on the Plats, shall be held, transferred, sold, conveyed and occupied subject to the Governing Documents. Specifically excluded from these Restrictions and released from the restrictions previously recorded concerning Rotonda West is the subdivision of Rotonda St. Andrews recorded in Plat Book number 8 pages 21A through 21L and the Core area, an un-designated parcel interior to Parade Circle.

**Section 5. PLANS, SPECIFICATIONS AND ARCHITECTURAL REVIEW:** All plans and specifications including, but not limited to, new construction of Dwellings or Improvements on a Lot/Tract and additions, alterations and modifications to Dwellings or Improvements on a Lot/Tract, together with grading, filling, dredging and excavation of a Lot/Tract, must first be approved by the Grantor/Developer or Association as set forth in this Section. Refusal or approval of these plans and specifications by the Grantor/Developer or Association may be based on any grounds, including purely aesthetic grounds. Grantor/Developer, in its sole discretion, has assigned its review of building plans and specifications and site plans to two architectural control committees: 1) New Construction Committee (the “NCC”) and 2) Residential Modification Committee (the “RMC”).

(a) The NCC shall be comprised of the Grantor/Developer and at its absolute discretion such other person, entity or people as Grantor/Developer chooses. Following assignment by the Grantor/Developer to the Association of Grantor/Developer’s reserved rights relative to the NCC, in the event that Cape Cave is dissolved without an assignment of reserved authority to a successor entity, or if the Grantor/Developer voluntarily relinquishes its right to appoint individuals to the NCC, the Board shall appoint members to the NCC in the same manner as that set forth for the RMC.

(i) The NCC shall review applications relative to new construction of Dwellings, Residential Improvements constructed simultaneous with initial construction of the Dwelling on the same Lot/Tract as the Dwelling, Commercial Improvements and additions, alterations and modifications to Commercial Improvements.

(ii) No new construction of Dwellings, Residential Improvements constructed simultaneous with initial construction of the Dwelling on the same Lot/Tract as the Dwelling, Commercial Improvements or additions, alterations or modifications to Commercial Improvements shall be made without the prior written approval of the NCC. In seeking such approval, the Owner must submit a set of construction plans and specifications, including working drawings, a site plan, in a form reasonably satisfactory to the NCC, showing the location of the Dwelling(s) and all Improvements, together with landscaping, parking spaces, mailboxes, irrigation and utility lines, property lines and

setbacks, and adequate assurances demonstrating that the proposed construction or alteration meets the requirements of these Restrictions and all building, zoning, plumbing, electrical and other codes in effect at the time of construction or alteration of such Dwelling or Commercial Improvement. The NCC reserves the right to require proof of project completion funding from the Owner.

(iii) The NCC may establish and from time to time modify New Construction Guidelines.

(iv) Approval or disapproval of an application by the NCC, which shall be in writing, shall be based on the standards set forth in these Restrictions together with those in the New Construction Guidelines. In the event the NCC fails to approve or disapprove an application within forty-five (45) days after the NCC has received all documentation required by this Section, together with that required by the New Construction Guidelines, approval shall be deemed to have been given.

(v) The NCC may establish a schedule of fees and/or deposits to cover costs related to review of applications and plans, together with on-going inspections throughout the construction process, relative to new construction of Dwellings and Commercial Improvements and additions, alterations and modifications to Commercial Improvements.

(vi) The application, plans and other specifications required by the NCC shall be submitted in writing and mailed by certified or registered United States mail, postage prepaid, to NCC, CAPE CAVE CORPORATION, 4005 Cape Haze Drive, Cape Haze, Florida 33947. The NCC reserves the right to change the addresses provided above from time to time.

(b) The RMC shall be comprised of no less than three (3) members to be named by the Board of Directors. One (1) of the members shall be an active member of the Deed Restriction Committee. A majority shall constitute a quorum.

(i) The RMC shall review and approve/disapprove all applications relative to construction of Residential Improvements, Accessory Structures and Additions constructed on a Lot/Tract after the receipt of a certificate of occupancy for the Dwelling on the same Lot/Tract and additions, alterations and modifications to existing Dwellings, Residential Improvements, Accessory Structures and Additions. The RMC may not review additions, alterations or modifications to Dwellings used as model homes or Builders' speculation houses or Dwellings owned by Grantor/Developer or Commercial Improvements.

(ii) No construction of Residential Improvements, Accessory Structures or Additions constructed on a Lot/Tract after the receipt of a certificate of occupancy for the Dwelling on the same Lot/Tract or additions, alterations or modifications to a Dwelling, Residential Improvements, Accessory Structures or Additions shall be made without the prior written approval of the RMC. In seeking such approval, the Owner must submit a set of construction plans and specifications, including working drawings, a site plan, in a form reasonably satisfactory to the RMC, showing the location of the Dwelling(s) and all Residential Improvements, Accessory Structures and Additions, together with



landscaping, parking spaces, mailboxes, irrigation and utility lines, property lines and setbacks, adequate assurances demonstrating that the proposed construction or alteration meets the requirements of the Governing Documents and all building, zoning, plumbing, electrical and other codes in effect at the time of construction of such Residential Improvement or addition, alteration or modification to such Dwelling or Residential Improvement, and such other information as the RMC may reasonably require. The RMC reserves the right to require proof of project completion funding from the Owner.

(iii) The Association may establish and from time to time modify Residential Modification Guidelines, subject to Grantor/Developer approval, until relinquished. The Association may not establish or modify Residential Modification Guidelines for the control of the design of, and additions, alterations and modifications to, Dwellings used as model homes or Builders' speculation houses or Dwellings owned by Grantor/Developer or Commercial Improvements. Residential Modification Guidelines established or modified by the RMC must be adopted by the Association through its Board of Directors and subject to Grantor/Developer approval, until relinquished, prior to enforcement by the RMC.

(iv) Approval or disapproval of an application by the RMC, which shall be in writing, shall be based on the standards set forth in these Restrictions together with those in the Residential Modification Guidelines. In the event the RMC fails to approve or disapprove an application within forty five (45) days after the RMC has received all documentation required by this Section, together with that required by the Residential Modification Guidelines, approval shall be deemed to have been given.

(v) Appeals of unfavorable decisions rendered by the RMC may be filed with the Board of Directors by the original applicant. No appeals of any party other than the original applicant will be considered. Such appeal must be filed within fourteen (14) days of the date on which the written decision of the RMC was issued. The Board shall consider the appeal within forty five (45) days after the appeal is filed. The decision of the Board shall be final.

(vi) The Association may establish a schedule of fees and/or deposits to cover costs related to review of applications and plans, together with on-going inspections throughout the construction process, relative to new construction of Residential Improvements, Accessory Structures and Additions and additions, alterations and modifications to Dwellings, Residential Improvements, Accessory Structures and Additions.

(vii) The application, plans and other specifications required by the RMC shall be submitted in writing and hand-delivered or mailed to RMC, ROTONDA WEST ASSOCIATION, INC., 3754 Cape Haze Drive, Rotonda West, FL 33947. The Association reserves the right to change the address from time to time.

(viii) Permanent approved additions to a Dwelling which match the color and texture of the Dwelling and are approved by the RMC will not be construed as a shed even if used for storage.



(c) Grantor/Developer and the Association reserve the right, but not the obligation, to inspect construction as it proceeds in order to insure that the Improvements are being constructed according to the plans and specifications and site plan. Such inspections, if undertaken by the Grantor/Developer or the Association, shall be solely for the purpose of determining that construction is in compliance with the approved plans and specifications, site plan and these deed restrictions. Said inspections shall not be deemed trespass.

If inspections show that the Improvements are not being constructed in accordance with the approved plans and specifications, the site plan or the Governing Documents, then a letter shall be delivered to the contractor with a copy of same to the Lot/Tract Owner setting forth said objections. This letter shall be issued by the Grantor/Developer or Association, as appropriate, for deed restriction non-compliance. Upon receipt, the work shall stop until the objections shall have been complied with or resolved in writing. The issuance of a building permit or other license or substantial completion of improvements which may be in contravention of the plans and specifications, the site plan or these restrictions, shall not prevent the Association from enforcing these provisions.

(d) Non-liability. The review and approval or disapproval of all plans and specifications submitted for any proposed construction, improvement, modification, alteration, or addition shall not be deemed approval or certification of the proposed construction for structural safety or conformance with building or other County, State or Federal codes. The Grantor/Developer, Association, Board of Directors, officers and any members of the committees shall not be liable to any Owner, Builder or any other person or entity for any loss, damage, or injury arising out of or in any way connected with the performance or nonperformance of the duties hereunder or the approval or disapproval of any plans or specifications.

(e) New Construction Compliance Program. The Association may establish and from time to time modify rules regarding a New Construction Compliance Program to ensure that Lots/Tracts are maintained in an orderly manner throughout the construction process and cleared of all construction debris and other debris within a reasonable time following termination or suspension of construction and to further ensure that the Dwelling and other Improvements constructed on the Lot/Tract, together with the Lot/Tract itself, conform to all Association Governing Documents and County, State and Federal requirements and permits following termination or suspension of construction. All work undertaken in observance of the New Construction Compliance Program shall be in full compliance with all Association Governing Documents and County, State and Federal requirements and permits. As a component of the New Construction Compliance Program, the Association may establish a schedule of fees and/or deposits to ensure compliance with and to cover costs related to the administration of the New Construction Compliance Program. Any fees and/or deposits unclaimed after a period of six (6) months following completion of a project will be retained by the Association. Furthermore, failure to comply with the rules regarding the New Construction Compliance Program, including but not limited to ensuring that the Dwelling and other Improvements, together with the Lot/Tract itself, are properly maintained throughout and following termination or suspension of construction and further conform to all Association Governing Documents and County, State and Federal requirements and permits following termination or suspension of construction, may, in the Association's sole discretion, result in a forfeiture of the required fees and/or deposits.

**Section 6. CHARLOTTE COUNTY RULES AND REGULATIONS:** In addition to these Restrictions, property usage shall conform to all Ordinances, Resolutions and Rules and Regulations of Charlotte County, Florida, as amended from time to time.

**Section 7. COMMERCIAL USE PROHIBITION:** Each Dwelling shall be used as a single family residence and for no other purpose, excluding Dwellings used as models or speculation homes. No business or commercial activity shall be conducted in or from any Dwelling including but not limited to visitation of the Dwelling by clients, customers, suppliers or other business invitees, or door-to-door solicitation of residents. This restriction shall not be construed to prohibit any Owner from maintaining a personal or professional library in his Dwelling, from keeping his personal business or professional records in his Dwelling, from handling his personal, business or professional telephone calls or written correspondence in and from his Dwelling, or conducting a “no impact” home based business in and from his Dwelling. 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 create customer traffic to and from the Dwelling, create noise audible from outside the Dwelling, or generate fumes or odors noticeable outside the Dwelling, including but not limited to child and adult home day care facilities, nursing homes, rooming and boarding houses, beauty salons/barber shops, and animal breeding. This provision is a clarification of an existing restriction and shall be retroactive to and effective from the date of July 19, 1995. Any question with regard to the interpretation of this Section 7 shall be decided by the Association, whose decision shall be final.

This prohibition against commercial use in a Dwelling located on a Lot/Tract zoned for residential use shall not limit the ability of Owners to rent their Dwelling, except as provided in these Restrictions or the Rules and Regulations.

This prohibition against commercial use does not apply to lots 1 through 9 inclusive of the Plats.

**Section 8. EXTERIOR WALLS/FENCES/SCREENING:**

(a) No wall shall exceed four (4) feet in height regardless of where placed on the Lot/Tract. No fence over four (4) feet in height shall be erected on any Lot/Tract between the rear lot line and the rear of the Dwelling or, if applicable, the lanai or pool cage that is attached to the Dwelling, whichever is closest to the rear lot line. No fence over six (6) feet in height shall be erected on any Lot/Tract. Notwithstanding the foregoing, a fence or site screen tie-in (the portion of the fence or site screen that abuts and runs perpendicular to the Dwelling and then connects to the fence or site screen that runs parallel to the Dwelling) that is flush with the front corner of the Dwelling or up to four (4) feet back from the front corner of the Dwelling cannot exceed four (4) feet in height. The tie-in must be of the same design and type as the side fence. No walls or fences shall extend toward the street, past the front of the Dwelling. All walls or fences regardless of height shall be approved by the NCC in the case of fences or walls for new Dwellings and the RMC in the case of alteration to existing fences or walls or new fences or walls for existing Dwellings. All fence or wall construction, design, height, location, color and materials are subject to the Residential Modification Guidelines.

(b) Any fence or wall in existence as of July 31, 2003 shall be permitted to remain in existence, provided that upon the removal of the fence or wall or at such time that the fence or

wall becomes more than fifty percent (50%) destroyed or more than fifty percent (50%) of the fence or wall is to be replaced for whatever reason, the fence or wall shall be removed in its entirety and shall only be reconstructed or replaced in conformance with this Section 8.

(c) Any existing fence or wall may not be modified, altered, relocated or replaced without written approval from the RMC pursuant to Section 5.

(d) Site screening is to be distinguished from fencing based on its placement on the Lot/Tract and/or its intended purpose, and as determined by the Board of Directors in its sole discretion. Fencing is that which has been placed on the Lot/Tract to enclose or block an area for a reason other than as screening as required in Section 17 and Section 18. Site screening is only to be used to screen outside equipment and shall be limited to that which is necessary so that the outside equipment is not Visible. Site screening required by these Restrictions shall not be subject to the location requirements set forth in this Section 8.

(e) Exterior wall/fencing/screening height limitations do not apply to lots 1 through 9 inclusive of the Plats.

**Section 9. SHEDS, TEMPORARY STORAGE UNITS AND ACCESSORY BUILDINGS:** No sheds, temporary storage units or Accessory Buildings shall be erected or placed on any Lot/Tract, except that a detached garage may be allowed, with RMC approval, on a Lot/Tract on which a multi-family Dwelling has been constructed, but shall connect by an extension of the existing driveway or paved parking area. Each such garage shall measure at least two hundred forty (240) unobstructed square feet and have a minimum eight (8) foot wide garage door. This does not apply to lots 1 through 9 inclusive of the Plats.

(a) Any sheds or temporary storage units in existence as of July 19, 1995 shall be permitted to remain in existence provided:

(i) Such nonconforming sheds or temporary storage units shall not be enlarged or moved. Additionally, only ordinary repairs and maintenance, including repair or replacement of roof covering, walls, fixtures, wiring or plumbing, shall be permitted. In no case shall such repairs include structural alterations which would change the size, shape, occupancy, character or use of the shed or temporary storage unit, unless such alteration conforms to these Restrictions.

(ii) If any such nonconforming shed or temporary storage unit is destroyed to an extent of more than fifty percent (50%) of its replacement cost, it shall not be reconstructed.

(iii) If the Lot/Tract is sold, any shed or temporary storage unit must be removed.

(b) Any Accessory Building in existence as of November 30, 2012 shall be permitted to remain in existence provided:

(i) Such Accessory Buildings shall not be enlarged or moved. Additionally, only ordinary repairs and maintenance, including repair or replacement of roof covering, walls, fixtures, wiring or plumbing, shall be permitted. In no case shall such repairs

include structural alterations which would change the size, shape, occupancy, character or use of the Accessory Building, unless such alteration conforms to these Restrictions.

(ii) If any such nonconforming Accessory Building is destroyed to an extent of more than fifty percent (50%) of its replacement cost, it shall not be reconstructed.

**Section 10. ADDITIONS:** Additions may be allowed on residential single family or multifamily zoned property with prior approval of the RMC as set forth in Section 5(b) of the Restrictions. Any such Addition shall comply with the Residential Modification Guidelines and shall conform to the existing residential Dwelling on the Lot/Tract in roof pitch, roof height (except in the case of a second story addition), roofing materials, exterior finish, and exterior color and overall architectural compatibility.

**Section 11. SQUARE FOOTAGE, GARAGES, AND BUILDING HEIGHT:**

(a) Single-family residences constructed on a Lot/Tract zoned for residential use shall have no less than sixteen hundred (1600) square feet of air-conditioned living area. All single-family residences shall have a two car or more, fully enclosed garage measuring at least four hundred and fifty (450) square feet with a minimum 16 foot (16') wide garage door, or two eight foot (8') wide doors. To provide vehicle parking, the interior garage space shall be free from all obstructions, including but not limited to, stairs, HVAC equipment and water heaters.

(b) Duplexes constructed on a Lot/Tract zoned for residential use shall have a minimum air-conditioned living area of one thousand (1,000) square feet per Dwelling. Each Dwelling within the duplex shall have a one car or more fully enclosed garage, measuring at least two hundred and forty (240) square feet with a minimum eight-foot (8') wide garage door. To provide vehicle parking, the interior garage space shall be free from all obstructions, including but not limited to, stairs, HVAC equipment and water heaters.

(c) Triplexes constructed on a Lot/Tract zoned for residential use shall have a minimum air-conditioned living area of eight hundred (800) square feet per Dwelling. Each Dwelling within the tri-plex shall have a one car or more fully enclosed garage measuring at least two hundred and forty (240) square feet with a minimum eight-foot (8') wide garage door. To provide vehicle parking, the interior garage space shall be free from all obstructions, including but not limited to, stairs, HVAC equipment and water heaters.

(d) Buildings consisting of four (4) or more Dwellings shall have a minimum air-conditioned living area of eight hundred (800) square feet per Dwelling. Each Dwelling within the multifamily building shall have a one car or more fully enclosed garage measuring at least two hundred and forty (240) square feet with a minimum eight-foot (8') wide garage door. To provide vehicle parking, the interior garage space shall be free from all obstructions, including but not limited to, stairs, HVAC equipment and water heaters. This does not apply to lots 1 through 9 inclusive of the Plats.

(e) All of the above living area square footages are exclusive of open porches, lanais and garages.

(f) Detached garages may be allowed, with RMC approval, on a Lot/Tract on which a multi-family Dwelling has been constructed, but shall connect by an extension of the existing driveway or paved parking area. Each such garage shall be fully enclosed and shall measure at least two hundred forty (240) unobstructed square feet and have a minimum eight-foot (8') wide garage door.

(g) No carports, pole barns or vehicle canopies of any type shall be allowed on any Lot/Tract zoned for residential use.

(h) All Dwellings constructed on or after July 31, 2003 shall comply with the restrictions as to minimum square footage and garages per Dwelling set forth in this Section 11. All Dwellings constructed prior July 31, 2003 shall comply with the square footage and garage requirements set forth in the restrictions in place at the time of the construction.

(i) The restrictions as to minimum square footage and garages per Dwelling set forth in this Section 11 shall apply regardless of the applicable development standard found in the Charlotte County Code of Ordinances and irrespective of any variance, special exception or other approval granted by Charlotte County.

(j) No Dwelling or other Improvement constructed on a Lot/Tract zoned for single family residential use (i.e. located within a residential, single-family (RSF) district), regardless of the intended use, may have more than a maximum of two (2) floors, inclusive of habitable and non-habitable floors, nor may it exceed a total of thirty five feet (35') in height, measured from the Federal Emergency Management Agency (FEMA) flood zone base flood elevation, regardless of habitability, to the highest point of the roof structure based on a minimum roof pitch of no less than 5/12. Flat roofs are prohibited. This restriction on number of floors and total maximum height shall apply regardless of the applicable development standard found in the Charlotte County Code of Ordinances and irrespective of any variance, special exception or other approval granted by Charlotte County. This does not apply to lots 1 through 9 inclusive of the Plats.

(k) No Dwelling or other Improvement constructed on a Lot/Tract zoned for multi family residential use (i.e. located within a multifamily (RMF) districts), regardless of the intended use, may have a more than a maximum of two (2) floors, inclusive of habitable and non-habitable floors, nor may it exceed a total of thirty five feet (35') in height, measured from the FEMA flood zone base flood elevation, regardless of habitability, to the highest point of the roof structure based on a minimum roof pitch of no less than 5/12. Flat roofs are prohibited. This restriction on number of floors and total maximum height shall apply regardless of the applicable development standard found in the Charlotte County Code of Ordinances and irrespective of any variance, special exception or other approval granted by Charlotte County. This does not apply to lots 1 through 9 exclusive of the Plats.

(l) All Dwellings or other Improvements constructed on or after the date of recording of these Restrictions in the Public Records of Charlotte County, Florida shall comply with the restrictions as to number of floors and total maximum height set forth in this Section 11.

**Section 12. SIDEWALKS:** When needed in the high density multiple dwelling, commercial, and school areas, the Grantor/Developer at its sole discretion shall require Lot/Tract Owners, at



the Lot/Tract Owners own expense, to construct sidewalks to County specifications along the right-of-way abutting the respective Lot(s)/Tract(s) and such construction will be required only in conjunction with construction of buildings on the respective Lot(s)/Tract(s). In the event a separation of not in excess of 400 feet shall occur between sections of sidewalk, the Association may construct a sidewalk to join the existing sections of sidewalk, assessing the cost of construction to the abutting Lot/Tract Owners.

**Section 13. FLAG POLES, ANTENNAS AND RECEPTION OR TRANSMISSION DEVICES:**

(a) Flag poles may be installed on any property with the approval by the Association, however, flag poles cannot exceed twenty (20) feet in height on any Lots/Tracts zoned for single-family or multi family use. Flag poles cannot exceed thirty (30) feet in height on any Lot/Tract zoned for commercial use.

(b) Location and type of any outside antennas, poles, masts, towers or like devices used for reception or transmission, including but not limited to those used for the transmission of AM/FM radio, amateur (“HAM”) radio, Citizens Band (“CB”) radio, and Digital Audio Radio Services (“DARS”) signals, shall be first approved by the Association. However, no approval shall be needed for the installation of television antennas provided that they do not extend more than eight feet (8’) from the roof peak. Additionally, no approval shall be needed for the installation of satellite dishes and other antennas designed to receive direct broadcast satellite service, including direct-to-home satellite service, or video programming services via broadband radio service (wireless cable), or to receive or transmit fixed wireless signals, provided that such satellite dishes and other antennas are less than one meter (39.37”) in diameter.

(c) Any electrical or other interference with the proper operation of any electrical device in the surrounding area installed in accordance with these restrictions which may result from the installation of any device with the approval of the Association shall be corrected at the cost and expense of the Lot/Tract Owner of the Lot/Tract on which the device is located, and if such interference cannot be properly corrected, the owner of the offending device shall remove the same within ten (10) days after written notice from the Association at the Lot/Tract Owners’ sole expense.

(d) In addition to the restrictions contained herein the Board of Directors may adopt rules regarding the location of the satellite dishes and reception devices as long as the rules do not (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; (3) or preclude reception of an acceptable quality signal.

(e) Any non-conforming antenna in existence as of July 31, 2003 shall be permitted to remain in existence provided:

(i) Any such existing antenna may not be modified, altered, relocated or replaced without written approval from the RMC.

(ii) If any such existing antenna is removed or destroyed to an extent of more than fifty percent (50%) of its replacement cost it shall not be reconstructed except in conformity with these Restrictions.

(iii) If the Lot/Tract is sold, the non-conforming antenna must be removed.

**Section 14. PETS - ANIMALS:** Only pets of a normal domesticated household type (such as cats, dogs, rabbits, fish, and birds) are permitted. No reptiles, monkeys, rodents, amphibians, poultry, horses, cows, swine or livestock may be kept within a Dwelling or on a Lot/Tract or the Common Areas. Pets must be carried, leashed or otherwise restrained at all times when outside of a Dwelling or a fully-enclosed fenced Lot/Tract. No pets shall be permitted to roam freely. The ability to keep pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet that, in its sole and exclusive discretion, becomes a source of annoyance to other residents or endangers the health, safety and welfare of resident. Commercial activities involving pets, including but not limited to breeding for sale, is prohibited. All pets shall be licensed by the appropriate State or local authorities. Each Owner shall immediately remove their pets' feces from Lots/Tracts and Common Areas.

**Section 15. NUISANCE:** Nothing shall be done on a Lot/Tract or the Common Areas which is or may become an unreasonable annoyance or nuisance to any person or which would not be consistent with the maintenance of the highest standards for a first class residential community. No illegal, noxious, obnoxious, unpleasant, dangerous or offensive activity shall be carried on, nor shall anything be done which can be reasonably construed to constitute a nuisance, public or private in nature, or a source of embarrassment, discomfort or annoyance. No Owner, guest of such Owner, or lessee shall permit loud or disturbing noise within a Dwelling, and shall not play any sound equipment (radio, TV, musical instrument and the like) anywhere on the Lot/Tract, including both within and outside the Dwelling, so as to be heard outside of the Dwelling between the hours of 10:00 P.M. and 8:30 A.M. At all other times the volume of such equipment shall be maintained at a level which does not unreasonably interfere with the quiet possession or enjoyment of the adjacent Lots/Tracts. Any question with regard to the interpretation of this Section 15 shall be decided by the Board of Directors, whose decision shall be final. The use of each Dwelling shall be consistent with existing leases and the Governing Documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner. No solicitation will be allowed at any time within the community.

**Section 16. DWELLING MAINTENANCE, LANDSCAPING AND LOT CARE:**

(a) Any Improved Lot/Tract containing a Dwelling or other Improvement, as defined herein, shall be maintained so that the lawn shall not exceed a height of eight (8) inches including weeds in accordance with the Rules and Regulations adopted by the Association from time to time. No underbrush or other unsightly growth shall be permitted to grow or remain upon any such Lot/Tract. All lawns, landscaping and sprinkler systems and any such Lot/Tract, Dwelling, Improvements and appurtenances shall be kept in a safe, clean, orderly and attractive condition.

(b) Any Unimproved Lot/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/Tract and the Lot/Tract shall otherwise be maintained in compliance with local government ordinances and regulations and Rules and Regulations adopted by the Association from time to time regarding the maintenance of natural vegetation and limitations or prohibitions regarding invasive non-native vegetation, including but not limited to Brazilian Pepper and melaleuca and any other unsightly objects as determined by the Board. The Association reserves the right to



clear said vegetation with the cost of so doing being charged back to the Lot/Tract Owner. The Association shall mow the undeveloped Lots/Tracts, which expense may be a common expense of the Association included in the annual Assessment or levied as a special Assessment pursuant to Section 26 hereof.

**Section 17. CLOTHES DRYING:** Outdoor clothes drying equipment shall be in a site-screened or fenced area so as to not be Visible, subject to current Association guidelines. No clothes drying shall be allowed in the front of a house or the sides of a house that face the street. This amendment is deemed a clarification of the existing restriction and is retroactive to July 19, 1995, the date of recording the amendment to the Deed Restrictions that required site-screening.

**Section 18. TRASH - GARBAGE - OUTSIDE EQUIPMENT:** Except on the day immediately preceding the day of collection and the day of collection, trash containers shall be kept either inside the garage or within a site-screened area. Bottled gas tanks, swimming pool equipment, sprinkler pumps, generators and any other similar outdoor equipment, excluding air conditioning units and pool heaters, shall be placed in a site-screened area so that they shall not be Visible.

**Section 19. MAINTENANCE AND IMPROVEMENTS WITHIN CANAL AREA:** When an Improved Lot/Tract which borders a canal is improved with a Dwelling, it is the Lot/Tract Owner's responsibility, to also finish grade, sod and mow the area between any property line and the water's edge of the canal. The sodding is required to prevent soil erosion without impairing maintenance access. The finished grade shall be in compliance with the RWA Guidelines GRADE FOR CANAL FRONT LOTS RWA # A/CB100 or any subsequent publication which may be adopted or revised by the Association from time to time or Charlotte County requirements, whichever is more restrictive. The result will be a gentle slope extending from the edge of the canal to blend into the Lot/Tract. This will enhance the view of the canal and significantly ease canal bank maintenance.

The finished slope shall be subject to the Association's approval as to change in elevation. The Association has the right to maintain the areas which lie between the Lot/Tract Owner's lot line and the water's edge of all canals within Rotonda West. No Lot/Tract Owner shall improve, other than finish grading and the application of sod to, the canal bank area with Dwellings or Improvements without written approval from the Association and no Dwelling or Improvement shall be permitted which inhibits or prevents the Association from discharging its responsibilities to maintain the canals and canal bank area.

The Association reserves the right to remove, at the Lot/Tract Owner's expense, any Improvement which lies within the canal area and, in the sole judgment of the Association, inhibits or prevents the Association from discharging its right and responsibility to maintain the canals and canal bank area.

The Association may grant approval of request to improve the canal area under the following terms and conditions:

(a) Docks – Landing Platforms – Sea walls – Bulkheads – Boardwalks: Docks, boat landing platforms without cover, sea walls and boardwalks shall be permitted provided the construction specifications are approved by the Association and provided that no improvements

shall be permitted to extend more than four feet (4') from water's edge or more than 10% of the width of the water, whichever is less. Water's edge shall be measured at a water level of 3.0 feet above mean sea level. No Improvements of this kind shall be placed within fifteen feet (15') from each extended side lot line. Docks, landing platforms and boardwalks shall not exceed a maximum length (along the canal bank) of twenty four feet (24') and a width of eight feet (8') including that portion extending over the water's edge.

(b) Landscaping – Sprinkler Systems – Other Improvements: The Association may permit landscaping, grading, sprinkler systems and certain other Improvements provided the Lot/Tract Owner maintains the Improvements with the stipulation that if the Improvements are not being maintained, in the sole judgment of the Association, the Association shall be permitted to either maintain the Improvements or remove the Improvements at Lot/Tract Owner's expense.

(c) Irrigation Intake Pipes: Irrigation intake pipes which are subject to NCC and RMC approval may be installed on a tripod or standpipe to keep the pipe off of the bottom of the canal and may extend to a distance no greater than ten feet (10') from the shore line. So as to avoid damage from boats or other equipment used to maintain the canals and from residents who utilize the canals, no bottles or other floatation devices may be used to keep intake pipes close to the surface. Lot/Tract Owners who draw water from the canals to irrigate their lawns and landscaping are liable for any damage to their intake equipment, no matter the cause.

**Section 20. BOATS AND OTHER WATERCRAFT:** No boats or other watercraft shall be anchored offshore in the waterways when not in use. All boats and other watercraft shall be moored as closely adjacent and parallel to the bank as possible so that navigation of the waterways will not be impeded. No boat or other watercraft is permitted to be placed or stored in Rotonda West unless same is moored bow and stern as closely adjacent and parallel to the bank as possible or placed fully enclosed in a garage. Under no circumstances may a boat or other watercraft be kept on a trailer on a Lot/Tract, unless same is parked in a driveway and the Lot/Tract Owner has the appropriate pass, pursuant to Section 24 below. It is distinctly understood that the use of the waterways, in any manner, is to be at the risk of the member of the Association. Neither the Grantor/Developer nor the Association shall be liable for damages or injury resulting from the use of the waterways in any manner. Any damage or injury to others as a result of any action or activity from any Owner or his guest is the sole responsibility of the Owner.

(a) The owner of any boat or other watercraft that has sunk, is partially submerged, or is inoperable in any waterway in Rotonda West shall immediately be removed from the waterway by the owner. Failure to do so after five (5) days notice in writing, the Association shall remove or cause the same to be removed and the cost and expense of such removal shall be assessed against any Lot(s)/Tract(s) in Rotonda West which may be owned by the owner of the boat or other water craft as a Charge.

(b) All boats or other watercraft using the waterways shall observe the “**NO WAKE**” restriction.

**Section 21. SIGNS:**

(a) No signs freestanding or otherwise shall be displayed on any Lot/Tract zoned for residential use or in any road right-of-way in Rotonda West, without the prior written approval from the Association except for any property owned by the Grantor/Developer and lots 1 through 9 of the Plats. Any approval shall be based on sign specifications adopted by the Association, as may be amended from time to time. Such review specifications shall include, but are not limited to size, design, material, color, location and installation method.

(i) All temporary signs displayed on any Lot/Tract zoned for residential use shall be limited to a main body size of eighteen inches (18") by twenty four inches (24") or less. There shall be no more than one (1) temporary sign displayed on any Lot/Tract zoned for residential use. For purpose of this Section 21, "temporary signs" shall include, but not be limited to, "For Sale", "For Rent", "Open House", contractor and political signs, together with those signs authorized by Section 22 hereof relative to garage sales, lawn sales and auctions.

(ii) All signs shall be located so as not to obstruct any vehicle driver's view of the street, road or intersection.

(iii) Sign location shall be restricted to the front of the Lot/Tract and may not face any lake, pond, canal or golf course.

(iv) The Lot/Tract Owner, or Lot/Tract Owner's agent, shall maintain the approved sign in good working order and legibility including mowing any grassy area around the sign. Should the sign or the area around the sign not be maintained, and after written notice to the Lot/Tract Owner or Lot/Tract Owner's agent, the Association shall have the authority to enter on the Lot/Tract and remove the non-maintained sign. Such action shall only occur after reasonable notice of at least five (5) days to the Lot/Tract Owner or the entity or person listed on the sign. All Lot/Tract Owners hereby consent to entry upon their Lot/Tract for such purpose and agree that same shall not be deemed a trespass. The Association shall, at its option, return the sign or hold it to be picked up by the Lot/Tract Owner or entity or person listed on the sign. Any sign not picked up within thirty (30) days of removal by the Association will be deemed abandoned and may be discarded by the Association without further notice.

(v) The Association shall have the authority to enter on the Lot/Tract and remove any non-approved sign or sign that is not in an approved location.

(b) No signs, freestanding or otherwise shall be displayed on any commercially zoned Lot/Tract or road right-of-way in Rotonda West without the prior written approval from the Grantor/Developer until such time as the Grantor/Developer has assigned this retained right to the Association. Further, no signs free standing or otherwise, that are used by properly licensed Builders or general contractors for Dwellings constructed and actively utilized as model homes or speculative homes on any Lot/Tract in Rotonda West, regardless of zoning, may be displayed without the prior written approval from the Grantor/Developer until such time as the Grantor/Developer has assigned this retained right to the Association.

(i) Any approval shall be based on the review of the proposed sign specifications by the Grantor/Developer. Such review specifications, as adopted from time to time by

the Grantor/Developer, shall include, but are not limited to, size, design, material, color, location and installation method.

(ii) The Lot/Tract Owner, or Lot/Tract Owner's agent, shall maintain the approved sign in good working order and legibility including mowing any grassy area around the sign. Should the sign or the area around the sign not be maintained, and after written notice to the Lot/Tract Owner or Lot/Tract Owner's agent, the Grantor/Developer shall have the authority to enter on the Lot/Tract and remove the non-maintained sign. Such action shall only occur after reasonable notice of at least five (5) days to the Lot/Tract Owner or the entity or person listed on the sign. All Lot/Tract Owners hereby consent to entry upon their Lot/Tract for such purpose and agree that same shall not be deemed a trespass. The Grantor/Developer shall, at its option, return the sign or hold it to be picked up by the Lot/Tract Owner or entity or person listed on the sign. Any sign not picked up within thirty (30) days of removal by the Grantor/Developer will be deemed abandoned and may be discarded by the Grantor/Developer without further notice.

(iii) The Grantor/Developer shall have the authority to enter on the lot and remove any non-approved sign or sign that is not in an approved location according to the same procedures described in (ii) above.

**Section 22. GARAGE OR LAWN SALES AND AUCTIONS:** All Garage or Lawn sales and auctions (other than an auction of the real estate itself) require a permit from the Association and are not to exceed three (3) consecutive days duration and shall be conducted no more than twice in each calendar year. Signs advertising such event shall only be placed on property approved by the Association and shall be removed at the conclusion of the sale.

**Section 23. VEHICLES & PARKING:**

(a) Vehicles are defined as, but not limited to, automobiles, pick-up trucks, vans, sport utility vehicles (SUV), trucks, tractor-trailer rigs, motor homes, trailer homes, campers, trailers, boats and other watercraft, motorcycles, all terrain vehicles (ATV), golf carts, recreational vehicles or other types of transportation devices that may be defined as vehicles at the sole discretion of the Association and without regard to any other definition established by any government authority or the manufacturer.

(b) All vehicles, other than automobiles, pick-up trucks, SUVs, vans, motorcycles or other vehicles as may be approved from time to time at the sole discretion of the Grantor/Developer or Association must be parked in a fully enclosed garage. Any vehicle containing any commercial advertising signage parked on a driveway overnight cannot exceed four wheels. Box trucks are prohibited.

(c) No vehicle may be parked on any lawn, road right of way, easement or vacant Lot/Tract, except on a temporary basis, not to exceed 12 hours, and only for the necessary construction, repair or maintenance of an Improved Lot/Tract or Unimproved Lot/Tract.

(d) Any vehicle not required to park in a garage must park on a driveway. A driveway is defined as a concrete surface or paver bricks that provide continuous access to a garage except

for expanded driveways as herein provided. Circular driveways of concrete construction may be permitted in line with New Construction Guidelines and Residential Modification Guidelines.

(i) Existing single lane driveways leading to an existing one-car garage in a single-family residence may be expanded with a concrete or paver bricks driveway with the written approval of the RMC. All driveways must be constructed of concrete or paver bricks.

(ii) As to Dwellings where a single car garage and a non-expanded single lane driveway co-exist, additional vehicles may only be parked in one single lane wide strip on the front lawn immediately adjacent and parallel to the existing driveway.

(iii) Existing two lane driveways leading to a two-car garage in a single-family residence may be expanded with concrete or paver bricks by one lane that is no wider than nine (9) feet in width up to the entrance of the garage with the written approval of the RMC. The expanded lane shall not exit onto the street.

(iv) As to Dwellings with a two (2) car garage and/or two (2) car wide driveways, parking off the driveway is prohibited.

(v) Unregistered and/or inoperable vehicles must be stored in a garage.

(vi) Any vehicle repair and maintenance exceeding three (3) hours in length must take place in a garage.

(vii) No vehicle may be used as a domicile or residence even on a temporary basis.

**Section 24. OVERNIGHT VEHICLE PASS:** In order to alleviate any hardship upon any Lot/Tract Owner or Dwelling occupant, a pass or passes may be issued by the Association allowing a vehicle to be parked in a driveway overnight for a total of six (6) nights in a calendar month for the convenience of loading or unloading a boat or other watercraft, motor home, camper or camper trailer. No more than two (2) three (3) day passes shall be issued within a calendar month. This pass must be obtained in advance before any of the above is parked or placed on the Lot/Tract. A pass will be issued only to the Lot/Tract Owner or Dwelling occupant. Repeated violations or abuses may result in the suspension of the right to obtain any pass for a person, address or vehicle.

**Section 25. OWNERS' RESPONSIBILITIES:** All Owners shall be responsible for any and all violations of the Governing Documents by their family members, tenants, guests and invitees and by family members, guests and invitees of the tenants.

(a) Each Lot/Tract Owner in Rotonda West shall be required to connect to a central sewage and water system at the time of construction.

(b) All Dwellings shall have a house number that will be Visible from the street.

(c) Mail boxes shall be installed according to the United States Postal Service regulations and kept in good working order, repair and in a neat and clean appearance.

(d) In the event any lawsuit, administrative proceedings or other formal legal action or proceeding is undertaken arising from or related to the Governing Documents or as a result of an alleged breach of the Governing Documents, the prevailing party shall be entitled to recover all taxable costs and expenses of said proceeding or action, including reasonable attorneys' fees and expenses, whether incurred before the filing of suit, before trial, at trial, on appeal, or in any ancillary or supplementary proceedings, including but not limited to bankruptcy proceedings and including attorneys' fees incurred in determining the entitlement to and the amount of attorneys' fees to be awarded.

**Section 26. ASSOCIATION MEMBERSHIP AND ASSESSMENTS, CHARGES AND FEES:** Membership in the Association shall be automatic and mandatory for Lot/Tract Owners who are subject to these Restrictions. Members of the Association shall be entitled to one (1) vote in the affairs of such Association for each Lot/Tract held in title by said members. The Grantor/Developer shall have a total of one (1) vote, regardless of the number of Lots/Tracts owned by the Grantor/Developer. Membership shall be limited to those Lot/Tract Owners whose property is subject to annual and special Assessments. Annual and special Assessments levied by the Association shall be used for the management and operation of the Association, including but not limited to maintenance of the Rotonda West waterway system, drainage system, the right of way areas related to waterway and drainage purposes, enforcement of the Governing Documents, maintenance of real and personal property owned by the Association, maintenance, repair and replacement of the Common Areas and such other uses consistent with the Governing Documents. The Association shall have a lien securing all unpaid annual and special Assessments, Charges, costs, fines, collection expenses, fees and other amounts properly levied as permitted by statute or the Governing Documents against the Lot/Tract Owner's Lot/Tract.

(a) All Lot/Tract Owners agree, upon acceptance of the deed to their respective Lots/Tracts whether or not it shall be so stated in the deed or other conveyance, to pay to the Association the annual and special Assessments and Charges levied against their Lot/Tract. Annual and special Assessments and Charges shall not be levied against any Lot/Tract that cannot be developed.

(b) The Board of Directors may increase the following year's annual Assessment by not more than fifteen (15%) percent of the previous calendar year's annual Assessment. Any increase greater than the above must be approved by more than a majority of the Members voting, in person or by absentee voting, at a special or regular membership meeting called for that purpose. The Board of Directors shall not be limited in decreasing any annual Assessments.

(c) Notice shall be delivered or mailed (or electronically transmitted, when authorized) by the Association to the Lot/Tract Owner, setting forth the annual and/or special Assessment. All documents, correspondence and notices relating to the Assessments shall be mailed to the address that appears on the books of the Association (or electronically transmitted, when authorized). Failure of a Lot/Tract Owner to receive a statement for the Assessments shall not relieve the Lot/Tract Owner of the obligation to pay the amount due by the due date. Requests for changes in the mailing address of Lot/Tract Owners as shown on the books of the Association must be in writing. The Lot/Tract Owner shall have forty-five (45) days from the billing date to pay the amount due.



(i) Any Assessment payment not received by the due date shall be deemed delinquent.

(ii) At the time an Assessment becomes delinquent, an administrative late fee of the maximum amount allowed by law per Assessment will be added to the account. Additionally, interest shall accrue in an amount as determined by the Board of Directors which, unless otherwise specified, shall be at the maximum rate allowed by law as of the date of delinquency and will be added to the Assessment. The Board may waive interest or late fees for good cause shown, in hardships, and to settle disputes. The determination whether to waive late fees and/or interest shall be in the sole discretion of the Board and shall be exercised by the Board on a case-by-case basis.

(iii) At the time an Assessment becomes delinquent, a pre-lien letter/notice of delinquency, if required by law, shall be mailed to the Lot/Tract Owner by registered or certified mail, return receipt requested, and first-class United States mail, which notice shall include the amount of the delinquent payment, the late charge, the cost of the registered or certified mail, return receipt requested, and first-class United States mail, reasonable costs and expenses associated with the collection of said debt and the total amount remaining unpaid.

(iv) The Association shall have the right to place a lien on the subject property for any unpaid Assessments and Charges with interest, late fees, costs, collection expenses, and for reasonable attorney's fees incurred by the Association which are incident to the collection of the Assessment or enforcement of the lien, and attendant fees incurred by the Association incident to the collection of the Assessment. The lien shall be a continuing lien and shall secure Assessments, Charges, costs, fees and interest accruing after the recording of the lien until all such amounts are paid in full.

Upon payment in full thereof, the Association shall execute a proper recordable Satisfaction of the Lien. The recorded Satisfaction of Lien shall be sent to the Lot/Tract Owner.

(d) The Association shall take such action as it deems necessary to collect overdue annual and/or special Assessments or Charges by personal action or by enforcing and foreclosing any lien and it may negotiate disputed claims or liens and settle or compromise claims. All payments received shall first be applied to interest, late fees, costs, attorney's fees, Charges, fines and then to the oldest outstanding unpaid Assessment. The Association shall be entitled to bid at any sale held pursuant to a suit to foreclose a lien and to apply as a cash credit against its bid, all sums due it covered by the lien foreclosed. In the case of such foreclosure, the Lot/Tract Owner shall be required to pay reasonable rent, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same.

(e) The Association shall have the right to assign its claim and lien rights for the recovery of any unpaid annual and/or special Assessments or Charges to any Lot/Tract Owner or group of Lot/Tract Owners or to any third party.



(f) Grantor/Developer shall be obligated to pay the annual and/or special Assessments or Charges to the Association for all Lots/Tracts Grantor/Developer owns which are subject to Assessment.

(g) No Lot/Tract Owner shall be excused from the payment of the annual and/or special Assessments of Charges provided for herein because of his or her failure to use any of the Common Areas.

(h) Reference herein to the annual and/or special Assessments shall include such reasonable collection expenses, court costs and attorney's fees as may be expended in the collection of any such annual and/or special Assessments.

(i) Notwithstanding any other remedy available to the Association under the Governing Documents or applicable law, the Association shall have the following options when payment of Assessments or Charges is in default. The Association may, without order of the Court, direct rental income (by written notice to the tenant with copy to owner) from Lots/Tracts in default to be paid directly to the Association until all outstanding Assessments, Charges, interest, costs, collection expenses, attorney's fees and receiver's fees, if applicable, are satisfied. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a Lot/Tract in default paid directly to the Association, the court registry, or a receiver, as the Court may direct. The Association may choose any of these courses of action as the Board deems appropriate without same constituting a waiver or election of remedies.

**Section 27. LIEN FOR ASSESSMENTS AND CHARGES:** Annual and special Assessments, and installments thereof, and Charges with interest thereon at the highest rate allowed by law, late fees, and costs and expenses 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 Lot/Tract against which such Assessments or Charges are made. Each Assessment and all Charges against a Lot/Tract, together with interest thereon at the highest rate allowed by law, late fees, and costs and expenses of collection thereof, including attorney's fees, shall be the personal obligation of the person, persons or entity owning the Lot/Tract assessed and shall be the joint and several liability of all Lot/Tract Owners. Except as provided below, any person or entity which acquires title to a Lot/Tract, including a purchaser at a judicial sale, shall be jointly and severally liable with their predecessor in title for all unpaid Assessments and Charges against the predecessor for his/her share of the Assessments and Charges, with interest thereon at the highest rate allowed by law, late fees, and attorney's fees and other costs and expenses of collection incurred by the Association up to the time of the transfer, without prejudice to any right the transferee may have to recover from the transferor the amounts paid by the transferee. Said lien shall be effective from the date of recordation amongst the Public Records of Charlotte County, Florida. The lien shall set forth the amounts due to the Association as of the date the lien is signed and shall be acknowledged by an officer or agent of the Association. The lien shall secure additional amounts that become due, as well as interest, late fees, attorney fees, and other costs and expenses of collection. Upon recordation, the lien shall relate back to the date of recording the original Restrictions, except as to the first mortgages of record. As to first mortgages of record, the Association's lien is only effective from and after recording of a claim of lien against the Lot/Tract. Upon full payment of all sums secured by the

lien and costs and fees accrued, the party making payment shall be entitled to a recordable satisfaction of lien. If any first mortgagee or other person, persons, or entity obtains title to a Lot/Tract as a result of a foreclosure of a first mortgage or a deed is given in lieu of foreclosure of a first mortgage of record, such acquirer of title, shall be liable for the share of Assessments and Charges pertaining to such Lot/Tract or chargeable to the former Lot/Tract Owner, and which became due prior to the acquisition of title as a result of the foreclosure or deed in lieu of foreclosure of said first mortgage of record as provided in Section 720.3085, Florida Statutes (2015), as amended from time to time.

**Section 28. RIGHTS OF GRANTOR/DEVELOPER:**

(a) Grantor/Developer shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and the use of drains, sanitary storm sewers, water mains, electric and telephone lines and other utilities, and to give or grant a six foot right-of-way or easement therefore bordering any lot line.

(b) Rights of ingress and egress to the property for purposes of installing promised improvements are retained by the Grantor/Developer.

(c) The Grantor/Developer reserves the right to release in whole or in part any restriction or reservation hereunder. The Grantor/Developer further reserves the right to include in any contract or deed hereafter made any additional restrictive covenants not inconsistent with these herein contained.

(d) Any or all rights and reservations of the Grantor/Developer hereunder, including but not limited to the affirmative rights, may be transferred or assigned by the Grantor/Developer to the Association or similar corporate or non-corporate organization whose purpose it is to provide for the welfare of the residents of this subdivision.

(e) The Grantor/Developer may, in its sole discretion, modify, amend, abrogate, add to, or derogate from the covenants and restrictions herein provided. In the event Grantor/Developer shall transfer or assign all of the rights and reservations contained herein to the Association or other such organization as provided in Section 28(d), then such right to modify, amend, abrogate, add to, or derogate from the covenants and restrictions herein shall also become vested in the assignee as transferee. The Grantor/Developer or the assignee of such rights, if other than the Association, must provide the Association with notice of its intention to exercise its right to modify, amend, abrogate, add to, or derogate from the covenants and restrictions herein sixty (60) days prior to recording of the associated instrument in the Public Records of Charlotte County, Florida.

**Section 29. COVENANTS - RESTRICTIONS:** The foregoing covenants and restrictions which shall run with the land and which shall be binding upon all Owners, their heirs and assigns, shall be deemed for the benefit of all the lands in Rotonda West and they shall be and remain in full force for fifty (50) years from the 1st day of January, 1970, at which time they shall be automatically extended for successive periods of ten (10) years, unless by vote of a majority of the Lot/Tract Owners it is agreed to change them in whole or in part.

**Section 30. DURATION OF RESTRICTIONS:** These Restrictions shall continue in effect until terminated, amended, or abrogated. The covenants and restrictions herein shall also become vested in the assignee as transferee of the Grantor/Developer.

**Section 31. WATERWAY DISTRICT:** In the event a waterway maintenance district or other method of providing waterway maintenance for Rotonda West is created or established, the Association shall survive the creation of the District.

**Section 32. CONFLICT - INCONSISTENCY:** In the event of any conflict, inconsistency, or incongruity between the provisions of these Restrictions and any provisions of the prior recorded restrictions, as heretofore amended, the provisions of these Restrictions shall in all respects govern and control.

**Section 33. COMPLIANCE:** Every Owner, tenant, occupant and guest shall comply with these Restrictions as set forth herein and any and all changes from time to time that may be made by the Grantor/Developer or the Association, following assignment of amendment rights as set forth in Section 28.

**Section 34. DEED RESTRICTION ENFORCEMENT:** All Owners shall be responsible for any and all violations of Chapter 720, Florida Statutes and/or the Governing Documents, as they may be amended from time to time, by their tenants, guests and invitees. Failure of an Owner, an Owner's guest, tenant or invitee to comply with Chapter 720, Florida Statutes and/or the Governing Documents, as they may be amended from time to time, shall be grounds for immediate action at law or in equity, or both. Should a Multifamily Unit Owner violate Chapter 720, Florida Statutes and/or the Governing Documents, as they may be amended from time to time, the Association shall report same to the Lot/Tract Owner of the respective Multifamily Lot/Tract in which the Multifamily Unit Owner owns a Multifamily Unit. The Association shall proceed with enforcement measures as set forth below against the Lot/Tract Owner of said Multifamily Lot/Tract so long as the Multifamily Unit Owner continues to be in violation. Such action will include without limitation an action to recover sums due for fines, damages, injunctive relief, or any combination thereof and for recovery of reasonable attorney's fees, including lien filing and other fees and costs as provided by Section 720.305, Florida Statutes (2015), as amended from time to time.

(a) Fines: The Association may levy fines against a Lot/Tract Owner, or the Lot/Tract Owner's tenants, guests, or invitees, or both, who commit violations of Chapter 720, Florida Statutes and/or the provisions of the Governing Documents, as they may be amended from time to time. Fines shall be in amounts deemed necessary by the Board to deter future violations, but in no event shall any fine for a single violation exceed the maximum amount allowed by law. A fine may be levied on the basis of each day of continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$5,000.00 in the aggregate. Any fine of one thousand dollars (\$1,000) or greater not paid within thirty (30) days shall become a lien on the Lot/Tract of the Lot/Tract Owner who owes the fine. Said lien may be foreclosed in the same manner as a lien for assessments as provided for in these Restrictions. The fine shall also be a personal obligation of the person fined.

(b) Suspension of Use Rights: The Association may suspend, for a reasonable period of time, the right of a Lot/Tract Owner, or the Lot/Tract Owner's tenants, guests, or invitees, or

both, to use the Common Areas for failure of the Lot/Tract Owner, or the Lot/Tract Owner's occupant, licensee, or invitee to comply with Chapter 720, Florida Statutes and/or the provisions of the Governing Documents, as they may be amended from time to time. If a Lot/Tract Owner is more than 90 days delinquent in paying a monetary obligation due to the Association, the Association may suspend the right of a Lot/Tract Owner, or the Lot/Tract Owner's tenants, guests, or invitees, or both, to use the Common Areas until the monetary obligation is paid in full.

(c) **Suspension of Voting Rights:** The Association may suspend the voting rights of a Lot/Tract Owner for the nonpayment of any monetary obligation due the Association that is more than 90 days delinquent. The suspension shall end upon full payment of all obligations currently due or overdue to the Association.

(d) **Correction of Health and Safety Hazards:** Any violations of the Governing Documents which create conditions of on a Lot/Tract which are deemed by the Board of Directors to be a hazard to the public health or safety may be dealt with immediately as an emergency matter by the Association, and cost thereof shall be charged to the Lot/Tract Owner.

(e) **Lot/Tract Entry:** Association Officers, Directors, employees and appointed contractors shall, following notice to the Lot/Tract Owner where required in these Restrictions, have the right to enter onto a Lot/Tract to investigate and/or correct a violation of these Restrictions and such action will not be deemed trespassing.

(f) **Attorney's Fees:** In any legal proceeding arising out of an alleged failure of a Lot/Tract Owner, or the Lot/Tract Owner's tenants, guests, or invitees to comply with the requirements of Chapter 720, Florida Statutes and/or the provisions of the Governing Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs and expenses of the proceeding and a reasonable attorney's fee before trial, at trial and on appeal.

(g) **Waiver of Application of Governing Documents:** The Association shall have the right to waive the application of one or more of the covenants or restrictions of the Governing Documents, or to permit a deviation from said covenants or restrictions, as to any Lot/Tract where, in the discretion of the Board, hardship circumstances exist which justify such waiver or deviation. Such waiver or deviation shall be approved by a unanimous vote of the Board of Directors. Such waiver or deviation shall also be approved by the Grantor/Developer until such time as the Grantor/Developer relinquishes the right to approve such waivers and deviations or in the instance of dissolution of the Grantor/Developer corporation without an assignment of reserved amendment authority to a successor entity. In the event of any such waiver or permitted deviation, or in the event the Association fails to enforce violation of said covenants or restrictions, such actions or inactions shall not be deemed to prohibit nor restrict the right of the Association, or any other person having the right to enforce said covenants or restrictions, from insisting upon strict compliance with respect to all other Lots/Tracts, nor shall any such actions be deemed a waiver of any of the covenants or restrictions contained in the Governing Documents as same may be applied in the future.

(h) **No Election of Remedies:** All rights, remedies and privileges granted to the Association or Lot/Tract Owners under any terms, provisions, covenants, or conditions of the

Governing Documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the Governing Documents, or at law or in equity.

**Section 35. METHOD OF AMENDMENT OF DECLARATION:** Following assignment of the reserved amendment authority of the Grantor/Developer to the Association, as set forth in Section 28(d), or in the instance of dissolution of the Grantor/Developer corporation without an assignment of reserved amendment authority to a successor entity, these Restrictions may be amended in the following manner:

(a) An amendment may be proposed by a majority of the Directors, or by ten percent (10%) of the total Voting Interests.

(b) Proposals to amend the existing Restrictions shall contain the full text of the section to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, “SUBSTANTIAL REWORDING OF RESTRICTIONS. SEE ARTICLE NUMBER \_\_\_ FOR PRESENT TEXT.”

(c) A resolution for the adoption of a proposed amendment may be adopted by a vote of a majority of the Members present (in person or by absentee ballot) and voting at a duly noticed meeting at which a quorum is present. Amendments correcting errors, omissions or scrivener’s errors may be executed by the Officers of the Association, upon Board approval, without need for Association membership vote.

(d) An amendment when adopted shall become effective after being recorded in the Charlotte County Public Records according to law.

**Section 36.** In any case not herein otherwise specifically provided for, where the Association shall be required, for the safety and betterment of the members hereof, to expend money to correct any violation of these Restrictions upon the failure or refusal of any Lot/Tract Owner whose duty it is hereunder to do, such expenditure shall be a charge against the Lots/Tracts of such Lot/Tract Owner, and the Association may pursue such appropriate legal remedies, including the right to file a lien to collect such expenditure.

**Section 37.** These Amended Restatement of Restrictions for Rotonda West are subject to the rights in favor of Cape Cave Corporation in that certain Reservation and Irrevocable Partial Assignment of Rights Concerning Amended Restatement of Restrictions for Rotonda West recorded in Official Record Book 1412, Page 1533 of the Public Records of Charlotte County, Florida, as amended by that certain Modification of Reservation and Irrevocable Partial Assignment of Rights Concerning Amended and Restatement of Restrictions for Rotonda West recorded in Official Record Book 1601, Page 1382 of the Public Records of Charlotte County, Florida. Grantor/Developer’s execution of these Amended Restatement of Restrictions for Rotonda West does not constitute a waiver or release for the foregoing reserved rights.

**Section 38. GENERAL PROVISIONS:**

(a) Savings Clause: If any provision of the Governing Documents hereto, as the same now exist or as may be later amended or any portion thereof, shall be held invalid by any Court, or other governmental agency with proper authority to so hold, the validity of the remainder of said Governing Documents shall remain in full force and effect.

(b) Interpretation: The Board of Directors shall be responsible for interpreting the provisions of the Governing Documents. The Board's interpretations shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by Association's legal counsel that an interpretation adopted by the Board is not wholly unreasonable shall conclusively establish the interpretation is valid.

(c) Captions and Headings: The headings and captions used in the Governing Documents are solely for convenience sake and shall not be considered a limitation of any nature in interpreting the Governing Documents.

(d) Waiver: No provisions contained in the Governing Documents 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.

(e) 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.

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END OF SECTION 1.6