

**PROPOSED AMENDMENT
AMENDED RESTATEMENT OF RESTRICTIONS
FOR ROTONDA WEST**

Additions indicated by underlining.
Deletions indicated by ~~strike-through~~.

Proposed Amendment: **Terms, Section 16(b), Section 27, and Section 28 of the Amended Restatement of Restrictions**

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

Limited Common Expense Those expenses affiliated with the maintenance of more than one Lot/Tract, the costs of which are assessed only against the benefiting Owners, if so provided in these Restrictions.

* * * * *

Section 16. DWELLING MAINTENANCE, LANDSCAPING AND LOT CARE

(Subsection (a) Remains Unchanged)

(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 shall~~ be a Limited Common Expense ~~common expense of the Association assessed only against the Owners of the undeveloped Lots/Tracts on an equal basis based on the costs of mowing to be incurred. The Board shall have the discretion to determine a formula for determining the mowing costs. Any unpaid Limited Common Expense shall be collected pursuant to Sections 27 and 28 hereof, and the Association shall have a lien securing all unpaid amounts, however, the limitation in Section 27(b) regarding increases in the annual Assessment shall not apply to Limited Common Expenses. included in the annual Assessment or levied as a special Assessment pursuant to Section 27 hereof.~~

* * * * *

Section 27. 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, Limited Common Expenses (which shall be allocated in accordance with these Restrictions), 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. The provisions of this Section 27 shall apply to Limited Common Expenses even if not specifically stated, except for paragraph (b).

(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 (i) 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 28. 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. The provisions of this Section 28 shall apply to Limited Common Expenses even if not specifically stated. 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, as amended from time to time.
