

**ROTONDA HEIGHTS CONSERVATION  
ASSOCIATION, INC.**

**REVITALIZED DECLARATION OF COVENANTS  
AND RESTRICTIONS FOR  
ROTONDA HEIGHTS CONSERVATION ASSOCIATION**

**May 30, 2018**

**REVITALIZED DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
ROTONDA HEIGHTS**

THIS REVITALIZED DECLARATION OF COVENANTS AND RESTRICTIONS FOR ROTONDA HEIGHTS SUBDIVISION ("Declaration") is adopted by THE ROTONDA HEIGHTS CONSERVATION ASSOCIATION, INC., a Florida corporation not for profit (the "Association") in accordance with Florida Statutes §§720.403 *et. seq.*

**WITNESSETH:**

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

WHEREAS, the Association is the successor in interest to the Developer, with full right and authority to enforce and amend, alter, or terminate the Heights Declaration in accordance with the requirements thereof and Chapter 720, Florida Statutes.

WHEREAS, the Members of the Association have approved this Declaration in accordance with the amendment requirements of the Prior Declarations and the Covenant Revitalization procedures of Florida Statutes § 720.403, *et. seq.*, to be effective in Rotonda Heights as more particularly described in the Article 3 hereof.

WHEREAS, prior to the recording hereof, the Florida Department of Economic Opportunity has approved this Declaration as a revitalized declaration of covenants in accordance with Florida Statutes § 720.406.

NOW THEREFORE, the Association hereby declares that the real property described herein shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth, and that all prior declarations of restrictions for Rotonda Heights, and all prior amendments thereto and restatements thereof, including without limitation the Prior Declarations, shall be superseded and restated in their entirety by this Declaration.

**ARTICLE 1. DEFINITIONS:**

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

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

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

- C. "Declaration" means the Original Declaration as altered and restated in this Declaration.
- D. "Developer" means Cape Cave Corporation, a Delaware corporation, and its successors and assigns.
- E. "Dwelling" means each residential single family or multifamily structure now or hereafter constructed within the Subdivision.
- F. "Lot" shall mean and refer to any platted Lot shown upon any recorded map of the Subdivision with the exception of Common Property as heretofore defined.
- G. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article 4, Section 1, hereof.
- H. "Owner" shall mean and refer to the record owners, whether one or more persons or entities, of the fee simple title to any Lot or Unit including, without limitation, any division of state, local or federal government, except that the term Owner shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- I. "Property" shall mean all property, including without limitation all Lots and Improvements, subject to this Declaration as generally described in Article 3 of this Declaration and more particularly described in attached Exhibit "A."
- J. "Structure" shall mean any construction not otherwise specifically described and includes, but is not limited to, parts and additions to buildings, cisterns, walls, fences and other enclosures, television and other antennas, walks, driveways, parking areas, seawalls, docks and boat landing platforms.
- M. "Subdivision" means all property subject to this Declaration under Article 3 hereof.
- N. "Unit" shall mean any and all multifamily housing units now or hereafter located within the Subdivision including but not limited to duplex, triplex, condominium or other multifamily units.

## **ARTICLE 2. DECLARATION PURPOSE**

**Section 1. Purpose:** The purpose of these Declarations and Architectural Review is to produce an orderly and desirable community and to protect and enhance property values in the Subdivision.

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

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

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

b. Such amendment, alteration or termination shall not be approved unless authorized two-thirds (2/3) of the votes cast at such meeting;

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

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

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

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

**ARTICLE 3. PROPERTY SUBJECT TO THIS DECLARATION**  
**ADDITIONS THERETO:**

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

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

**ARTICLE 4. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION:**

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

**Section 2. Voting Rights.** Every Lot shall be entitled to one vote to be cast by the Owner thereof. In the event that the Owner of any Lot is comprised of more than one person or entity, such persons or entities shall determine as between themselves how the vote for such Lot is to be voted but there shall never be any fractional voting with respect to any Lot nor more than one vote per Lot hereunder. Except as otherwise provided herein voting rights in the Association shall be

governed and controlled pursuant to the terms and provisions of the Articles of Incorporation and Bylaws of the Association as modified and amended from time to time.

# **ARTICLE 5. PROPERTY RIGHTS IN THE COMMON PROPERTY:**

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

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

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

a. The right of the Association to borrow money for the purpose of improving the Common Property and in aid thereof to mortgage said property. In the event of a default upon any such mortgage the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored;

b. The right of the Association to take such steps are reasonably necessary to protect the Common Property against foreclosure;

c. The right of the Association to suspend the enjoyment of the rights of any Member in and to the Common Property for any period during which any assessment remains unpaid, and for any infraction of the Association's published rules and regulations, and

d. The right of the Association to charge reasonable admission and other fees for the use of the Common Property; and

e. The right of the Association, subject to the requirements of this declaration and the bylaws of the Association, to dedicate or transfer all or any part of the Common Property to any public agency or authority or any utility (public or private) for such purposes and subject to such conditions as it may determine, provided that no such dedication or transfer, or determination as to the purpose or as to the conditions thereof, shall be effective unless approved in the manner set forth for amendment of this Declaration.

# **ARTICLE 6. COVENANT FOR ASSESSMENTS:**

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

together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the Owner of each lot at the time the assessment is imposed.

**Enforcement and Effect of Nonpayment of Assessment.** If any assessment is not paid on the date when due, then such assessment shall become delinquent and shall, together with interest thereon and costs of collection as hereinafter provided, become a continuing lien on the property subject to such assessment.

If any assessment is not paid within thirty (30) days after the delinquency day, the assessment shall bear interest from the date of delinquency at the annual percentage rate of ten percent (10%) and the Association may bring an action at law against the Owner personally obligated to pay the same or may foreclose the lien against the property. There shall be added to the amount of such assessment the costs and expenses of the Association incurred, including without limitation reasonable attorney's fees and court costs.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents and the property located in the Subdivision, and for the improvement and maintenance of the property, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Property and of the residences situated upon the Owner's Lots, including, but not limited to, the payment of taxes and insurance thereon, repair, replacement, and additions thereto, the cost of labor, equipment, materials, management, and supervision thereof.

**Section 3. Special Assessments for Capital Improvements.** In addition to annual assessments, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement upon the Common Property, including the necessary fixtures and personal property related thereto, provided that any such assessment shall be approved by a vote of the Members as provided for in Article 2, Section 3 of this Declaration. The due date of any special assessment hereunder shall be fixed in the resolution authorizing such assessment.

**Section 4. Increases in Assessments.** The Association shall not alter basis and amount of the annual assessment without such alteration first being approved by a vote of the Members as provided for in Article 2, Section 3 of this Declaration.

**Section 5. Interest.** Interest shall accrue with respect to delinquent assessments that are not paid within thirty (30) days after the date due at the annual percentage rate of ten percent (10%).

**Section 6. Effective Date of Lien and Certificate of Payment.** Every such lien for unpaid assessment, as between the Association on the one hand and the Owner and any grantee of such Owner on the other hand, shall attach to the Lot and improvements against which the delinquent assessment was made, provided, however that all such liens shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon property subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for assessments thereafter becoming due, nor from the lien of any subsequent assessment. Upon request, the Association shall furnish any Owner or mortgagee with a certificate setting forth whether the above described assessments have been paid and showing the amount of any unpaid assessments against the applicable Lot and the period or periods for which any such unpaid

maintenance assessments were assessed and fixed. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 7. Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use of the Association members; (b) all Common Property; (c) all properties exempted from taxation by the laws of the State of Florida, upon the terms and to the extent of such legal exemption as such exemption may exist from time to time; and (d) all properties during the period after foreclosure or other proceeding in lieu of foreclosure and prior to sale or transfer pursuant to a decree of foreclosure or other proceeding in lieu of foreclosure.

**Section 8. Duties of the Board of Directors.** The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

## **ARTICLE 7. ARCHITECTURAL REVIEW**

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, failed to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required in this Article will be deemed to have been fully complied with. Refusal or approval of the plans and specifications may be based on engineering, architectural or purely aesthetic grounds. No signs of any kind shall be displayed on any residential Lot unless the form and size of such signs be first approved by the Association.

## **ARTICLE 8. GOVERNMENTAL RULES AND REGULATIONS:**

In addition to this Declaration, property usage shall conform to all zoning restrictions of Charlotte County, as well as the aforementioned restrictions.

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## ARTICLE 9 - USE RESTRICTIONS

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

(a) Single Family. All single family residences shall have no less than Seven Hundred Fifty (750) square feet living area.

(b) Duplex. Residential duplex units shall have no less than five hundred (500) square feet of living area per unit.

(c) Multifamily. Residential multi-family zoned buildings with three (3) or more units shall have no less than four hundred fifty (450) square feet living space per unit. ""

Section 3. Pets. No animals other than commonly accepted domestic pets shall be kept on any Lot.

Section 4. Nuisances. Nothing shall be done and no condition shall be allowed to continue which may be or become a nuisance or is in violation of any of these restrictions. All vacant Lots shall be kept free of accumulations of brush, trash, or other material. After 14 days' notice to the owner, the Association reserves the right of entry on vacant Lots for the purpose of clearing away such violation and assessing the cost thereof against the Owner. ""

Section 5. Filling or Dredging. No filling or dredging shall be done beyond any lot line without the express written approval of Association. Nor shall any cutting of boat slips or other similar excavation within the lot line be done without the express written approval of Association. ""

Section 6. Boats. No boats shall be anchored offshore in any lake or canal. When not in use, boats shall be moved as closely adjacent to the bank as safety allows, to the end that navigation of the waterways will not be impeded. Use of the canal for navigation or anchorage is at the risk of the owner of the vessel and the Association shall not be liable for damages or injury resulting from submerged objects, collisions, or otherwise.

## ARTICLE 10. CONFLICT - INCONSISTENCY:

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

## ARTICLE 11. REVITALIZATION SAVINGS CLAUSE:

It is the intention of the Association that the provisions of this Declaration comply in all respects with the requirements of Florida Statutes §720.403, *et. seq.* (the "Statute") concerning covenant revitalization. Therefore, in the event any provision of this Declaration as applied to any Lot or Unit shall be more restrictive than the covenants contained in the previous declaration (the "Prior Declaration"), including but not limited to any provision with respect to voting rights or amendment, except as expressly permitted by Florida Statutes §720.404, the provisions of the applicable Prior Declaration shall control with regard to that Lot or Unit such that this Declaration shall in no case be more restrictive than the applicable Prior Declaration as it pertains to that Lot or Unit. Likewise, in the event of any conflict between the requirements of the Statute and this Declaration, including but not limited to any requirements relating to voting rights or amendment,



the provisions of the Statute shall control, and this Declaration shall be interpreted in such a manner as to be consistent with the requirements of the Statute.

**ARTICLE 12. ENFORCEMENT:**

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**ARTICLE 13. MISCELLANEOUS**

Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions. Said invalid covenant or restriction shall be deemed severable and all other remaining covenants or restrictions shall remain in full force and effect.

Executed this 29<sup>th</sup> day of May, 2018.

Brenda Wight  
Witness

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

Deanne Beymer  
Witness

By: James Harper  
James Harper, President

STATE OF FLORIDA  
COUNTY OF CHARLOTTE

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of May, 2018, by James Harper as President of ROTONDA HEIGHTS CONSERVATION ASSOCIATION, INC., a Florida corporation not-for-profit who (X) is personally known to me or who (-) has produced \_\_\_\_\_ as identification.

(SEAL)

Brenda D. Himmelhauser  
Notary Public – State of Florida



BRENDA D. HIMMELHAUSER  
MY COMMISSION # FF 922117  
EXPIRES: January 24, 2020  
Bonded Thru Budget Notary Services

ATTESTATION AND CERTIFICATION

I, Deborah Clements, as Secretary of ROTONDA HEIGHTS CONSERVATION ASSOCIATION, INC., a Florida corporation not-for-profit (the "Association"), hereby attest and certify that the above and foregoing Revitalized Declaration of Covenants and Restrictions for Rotonda Heights ("Revitalized Declaration") were considered at a duly noticed meeting of the Association convened on the 15 day of November, 2018, and were formally adopted by a vote of no less than a majority of the votes entitled to cast at that meeting. Furthermore, the Revitalized Declaration is being executed in accordance with Florida Statutes §720.407 following the adoption and approval of the Revitalized Declaration in accordance with the provisions of Florida Statutes §720.403 et. seq., including review and approval by the State of Florida Department of Economic Opportunity.


  
 Deborah Clements, Secretary

Exhibit "A" – Legal Description of Lots/Units & Owner Names

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