

**CITY OF LABELLE  
ORDINANCE 2018-14  
SANDY OAKS PLANNED UNIT DEVELOPMENT  
REZONE**

AN ORDINANCE OF THE CITY OF LABELLE, FLORIDA, AMENDING THE CITY OF LABELLE ZONING MAP FOR PROPERTY LOCATED AT 1050 SHADY OAKS AVENUE, CITY OF LABELLE, HENDRY COUNTY, FLORIDA; AMENDING THE ZONING DESIGNATION FROM SINGLE-FAMILY – LOW DENSITY RESIDENTIAL (R1-A) TO PLANNED UNIT DEVELOPMENT (PUD); PROVIDING FOR IDENTIFICATION OF THE SUBJECT PROPERTY; PROVIDING FOR INTENT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, River Hammock, Inc. is the “Owner” of real property, located north of Shady Oaks Avenue, east of Aqua Isles Mobile Home Park, and south of the Caloosahatchee River, City of LaBelle, Florida, further described in Exhibit “A”, attached hereto, and

**WHEREAS**, after duly advertised public hearings held on December 13, 2018, before the LaBelle Local Planning Agency “LPA”, and on January 10, 2019 before the City Commission; and,

**WHEREAS**, the City Commission for the City of LaBelle has determined that the requested rezoning is in compliance with the land use designation of “Outlying Mixed Use” and approval of the rezoning application will further the goals and objectives of the City of LaBelle Comprehensive Plan; and,

**WHEREAS**, the City Commission for the City of LaBelle has determined the rezone of the property to Planned Unit Development, is the most appropriate use of the property and this use will promote, protect and improve the health, safety, comfort, good order, appearance, convenience and general welfare of the public with the following conditions:

1. The Rezone request applied to the property is described in Exhibit ‘A’.
2. The PUD is limited to a maximum of 58 single-family detached dwelling units.
3. The PUD shall be limited to a maximum of two (2) boat slips and one (1) boat dock.
4. Allowable uses shall be limited to those listed in the Schedule of Uses, attached as Exhibit ‘B’. RV storage is not permitted within the PUD.
5. Development Standards will conform for the Development Standards Table, attached as Exhibit ‘C’.
6. All development must conform to the general design of the Master Concept Plan contained in Exhibit ‘D’ and the requirements of the Land Development Code. Prior to the City Commission public hearing, the MCP must be revised to delineate compliance with all conditions, including required landscape buffers, and the location of boat slips and dock uses.
7. Dwelling units must be consistent with the Conceptual Elevations attached as Exhibit ‘E’, and include minimum architectural features to ensure quality design, including but not

limited to front porches, varying rooflines, and/or brick, stucco or other texturized details. All accessory structures must be architecturally consistent with the principal structures.

8. A minimum of 50% of the dwelling units must provide for a minimum 25-foot front yard setback. No more than three (3) contiguous units may have a 20-foot front yard setback.
9. A 5-foot-wide sidewalk must be provided along the project's frontage on Shady Oaks Avenue, and along both sides of the internal to provide for safe bicycle/pedestrian connectivity. 10-foot wide landscaped islands/medians are required within the internal roadway (Sandy Oaks Lane), to be spaced a minimum of 250 feet apart, to provide for traffic calming.
10. Development must connect to the City's potable water and sanitary sewer system. A demonstration of capacity will be required at the time of development.
11. A Homeowners Association (HOA) must be established for maintenance of common areas and infrastructure within the community generally consistent with Exhibit 'F'. It is understood this document is a conceptual draft, and subject to modification at the time of plat recordation.
12. A landscape buffer for the purposes of screening shall be required along the western and eastern boundaries, equal to or greater than a 10-foot wide Type "A" Buffer per LDC Appendix B, Section 4-80.
13. A minimum of 15% of the development, or 1.0 acre, of common open space shall be provided.
14. All development activities must comply with the City's regulations relating to the protection of significant oak trees.
15. The PUD Master Concept Plan will remain valid for not more than three (3) years from the date of City Commission approval. Horizontal construction must commence within three (3) years or the MCP will be deemed vacated. Upon such time a new PUD zoning approval must be filed and approved by the City Commission. A one (1) time extension of 6 months may be submitted to the City prior to vacation of the MCP.

NOW THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LABELLE, FLORIDA, that:

1. After being read by title at a public hearing on December 13, 2018 and a duly advertised public hearing on January 10, 2019, Ordinance 2018-14 is hereby adopted, rezoning the property from R-1A to PUD.
2. If any Court of competent jurisdiction shall determine any portion or provision of this ordinance unconstitutional or invalid, that portion shall be severed and the remainder of the ordinance shall remain in full force and effect and given its ordinary meaning.
3. This ordinance shall be codified within The City of LaBelle Code and City of LaBelle Land Development Code.
4. This ordinance shall become effective upon the date of passage.

5. Any language within the City of LaBelle Code and/or City of LaBelle Land Development Code in conflict with the language or provisions contained herein is hereby declared null and void.
6. The City Commission hereby directs the Deputy Clerk to forward certified copies of this adopted ordinance within seven (7) days of the effective date hereof, to the Clerk of Circuit Court of Hendry County and the County Administrator for Hendry County.

PASSED AND ADOPTED in open session this 10<sup>th</sup> day January 2019.

THE CITY OF LABELLE, FLORIDA

By: \_\_\_\_\_  
David A Lyons, Mayor

Attest:

Thomas A. Smith, Clerk-Commissioner

**EXHIBIT A**

THE EAST 1/2 OF LOT 2 AND THE EAST 1/2 OF LOT 1 OF L.V. HULL'S SUBDIVISION AS RECORDED IN PLAT BOOK 3, PAGE 12 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; SUBJECT TO THE RIGHT OF WAY OF THE CENTRAL AND SOUTHERN FLORIDA FLOOD CONTROL DISTRICT CANAL 43.

## **EXHIBIT B**

### **SCHEDULE OF USES**

Single-Family Residential (limited to 58 dwelling units)

Accessory Uses, including, but not limited to:

Children's Playhouses

Patios/Porches

Gazebos

Private/Community BBQ Pavilions

Garages

Tool/Garden Sheds/Workshops, and other accessory buildings located in rear yards only

Swimming pools (above and below ground)

Solar Energy Structures, pursuant to LDC Appendix B, Chapter 4-85

Antennas/Satellite Dishes

Boat docks and slips (limited to one dock and two slips)

Community Center

Essential services, such as but not limited to: cable, fiber optic, and public utilities

Fences, maximum six (6) feet in height

Gates, maximum (6) six feet in height

Playground/Picnic Areas

## EXHIBIT C

### SITE DEVELOPMENT REGULATIONS

Min. Parcel Size	3,000 sq. ft.
Min. Lot Width	30 ft.
Min. Lot Depth	100 ft.
Max. Lot Coverage	40%
Maximum Height	35 ft.
Min. Living Area	500 sq. ft.
Principal Setbacks	
Front	20 ft*
Rear	20 ft.
Side	10ft./0 ft.
Min. Building Separation	10 ft.
Accessory Setbacks	
Front	20 ft.*
Rear	5 ft.
Side	5 ft.
Min. Open Space	15%

\* A minimum of 50% of the dwelling units must provide for a minimum 25-foot front yard setback. No more than three (3) contiguous units may have a 20-foot front yard setback.

# EXHIBIT D MASTER CONCEPT PLAN



EXHIBIT E  
MICRO COTTAGE CONCEPTUAL ELEVATION



River Cottage at  
*Sandy Oaks*

*[Signature]*  
Artist's Conception



**EXHIBIT E**  
**DRAFT HOMEOWNERS ASSOCIATION DOCUMENTS**

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR**

***SANDY OAKS***

This Declaration of Covenants, Conditions, Restrictions and Easements for SANDY OAKS, is made on \_\_\_\_\_, 2018, by \_\_\_\_\_, ("Declarant").

**STATEMENT OF PURPOSE**

A. Declarant is the owner of all the property shown on the subdivision plat for SANDY OAKS, recorded at Plat Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of Hendry County, Florida.

B. The lots within SANDY OAKS will be used for single-family dwellings. The easements within SANDY OAKS will be used by the various utility providers to furnish services to the neighborhood. The common areas consisting of easements for the roadways and surface water management system will be transferred to a nonprofit Florida corporation formed or to be formed by Declarant, which corporation will own and maintain such easements and surface water management system for the benefit of the property owners in SANDY OAKS.

NOW THEREFORE, Declarant hereby establishes this Declaration of Covenants, Conditions, Restrictions, and Easements for SANDY OAKS, which will run with the land and be binding on and inure to the benefit of every owner of property within SANDY OAKS.

**ARTICLE I  
DEFINITIONS**

The following definitions apply wherever the capitalized terms appear in this Declaration. Additional terms also may be defined the first time they appear.

1.1 "Articles" means the Articles of Incorporation of the Community Association, filed with the Secretary of State of Florida, as amended from time to time.

1.2 "Assessments" means, collectively, the following charges:

(a) "General Assessment" means the amount charged to each Member to meet the Community Association's annual budgeted expenses.

(b) "Individual Lot Assessment" means an amount charged to a

Member's individual Lot for any charges particular to that Lot.

(c) "Special Assessment" means a charge to each Member for capital improvements, repairs or emergency expenses.

1.3 "Board" means the Board of Directors of the Community Association.

1.4 "Bylaws" means the Bylaws of the Community Association.

1.5 "SANDY OAKS" refers to SANDY OAKS SUBDIVISION, the plat of which is recorded at Plat Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of Hendry County, and to any land later made subject to this Declaration, from time to time.

1.6 "Common Property" means those tracts of land or easements that are (i) deeded or assigned to the Community Association and designated in the deed or assignment as Common Property, or (ii) labeled as a Common Area on the Plat or (iii) the roads shown on the Plat within SANDY OAKS. The term "Common Property" also means any personal property appurtenant to any real property owned by the Community Association or acquired by the Community Association if the personal property is designated as such in the bill of sale or other instrument conveying it. "Common Property" does not mean any area that is (i) dedicated in the plat to the county or municipal government or other party other than the Community Association, or (ii) sold or dedicated by the Community Association.

1.7 "Community Association" means the SANDY OAKS LABELLE HOA, INC., a Florida nonprofit corporation, its successors and assigns, formed or to be formed by Declarant.

1.8 "Declarant" means SANDY OAKS, LLC, its successors and assigns. Declarant also may be an Owner. The various rights of Declarant under this Declaration may be separated and assigned to different parties and, if so assigned, each assignee will be considered "Declarant" as to the specific rights so assigned. Declarant may collaterally assign his rights as Declarant by mortgage or other instrument, and such assignees may elect to either exercise the assigned rights or designate another party to exercise such rights if such assignees succeed to Declarant's interest in SANDY OAKS or any portion thereof.

1.9 "Declaration" means this Declaration of Covenants, Conditions, Restrictions, and Easements for SANDY OAKS and all supplements and amendments to this Declaration.

1.10 "Drainage System" means the Surface Water Management System as defined below, all drainage easements and rights of way, detention areas, water management tracts, drainage facilities, conservation easements or areas, and buffer zones, as shown on the Plat. The "Drainage System" also means a system that is designed and constructed or implemented to control discharges necessitated by rainfall events, incorporating methods to (i) collect, convey, store, absorb, inhibit, treat, use, or reuse water; or (ii) prevent or reduce flooding, over-drainage, environmental degradation, and water pollution, or otherwise affect the quantity and quality of discharges from the system as permitted pursuant to the Florida Administrative Code.

1.11 "Lot" means any lot shown on a Plat along with any improvements constructed on the Lot.

1.12 "Member" means a member of the Community Association. Each Owner is also a Member. There are two classes of Members.

1.13 "Mortgagee" means any institutional lender that holds a bona fide mortgage encumbering a Lot. The term "institutional lender" specifically includes, but is not limited to, a bank, a savings and loan association, a mortgage lending company, an insurance company, a credit union, and the Federal National Mortgage Association or similar agency.

1.14 "Owner" means the record owner, whether that be one or more persons or entities, of (i) the fee simple title to any Lot, or (ii) a life estate in any Lot. "Owner" does not mean a Mortgagee.

1.15 "Plat" means the plat of SANDY OAKS and the plats of any additional land annexed to and made part of SANDY OAKS, from time to time.

1.16 "Public Records" means and refers to the Official Public Records of Hendry County, Florida.

1.17 "Rules" means the rules and regulations governing the use of the Common Property originally enacted by Declarant and revised from time to time by the Declarant or the Community Association. The procedures regarding the Rules are set forth in Paragraph 5.6.

1.18 "Surface Water Management System" shall refer to the surface water management system as permitted by the South Florida Water Management System General Permit No. SFWMD Permit Number \_\_\_\_\_, a copy of which is attached hereto as Exhibit "A".

**ARTICLE II**  
**PROPERTY SUBJECT TO THIS DECLARATION**

This article describes the real property of which SANDY OAKS will initially be comprised, and provides the method by which additional property may be added.

2.1 Initial Property. The property initially subject to this Declaration consists of the property shown on the plat of SANDY OAKS, as recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Public Records of Hendry County, Florida.

2.2 Annexation of Additional Property.

(a) Parties Authorized to Annex Property. Additional property may be annexed by the following parties:

(i) By Declarant. Unless waived by recorded instrument, Declarant will have the right, but not the obligation, from time to time in his sole discretion, to annex any property to SANDY OAKS, if such property is adjacent to or abuts any property shown on the Plat. In determining whether the property to be annexed is adjacent to or abuts the property shown on the Plat, Declarant may disregard any roads that are situated between the property shown on the Plat and the property to be annexed.

(ii) By Community Association. Additional property may be annexed to SANDY OAKS by the Community Association, but only after the termination of the Class B Membership.

(b) Procedure. The party effecting the annexation shall record a Supplemental Declaration in the Public Records. The Supplemental Declaration shall be executed by either Declarant, his assigns, or the president of the Community Association. The Supplemental Declaration shall contain the legal description of the property being annexed. The Supplemental Declaration may contain special provisions applicable to the property being annexed. These special provisions may limit the applicability of specific covenants, restrictions, and easements contained in this Declaration to the annexed property or may impose additional or different covenants, conditions, or restrictions to reflect the different character of the property being annexed. The party making the Supplemental Declaration will have sole discretion to determine the special provisions to be contained in the Supplemental Declaration; however, no special provisions may be included that exempt the owners of the property being annexed from equitably sharing in common expenses. Upon recording the Supplemental Declaration, the annexed property will become part of SANDY OAKS.

2.3 Further Subdivision or Replat of Lots is prohibited.

**ARTICLE III  
ARCHITECTURAL REVIEW AND  
CONSTRUCTION REQUIREMENTS**

To ensure that the homes and accessory buildings within the neighborhood are harmonious, Declarant will create an architectural review committee to approve all construction. Although certain requirements are specified herein, the architectural review committee will not be limited to the specific requirements but rather will have broad discretion.

3.1 Architectural Review Committee.

(a) Composition. The Architectural Review Committee will consist of a single person or a committee of persons selected by Declarant. Declarant may temporarily delegate this right to appoint members or may assign this right by written instrument recorded in the Public Records. Preference in appointment to the Architectural Review Committee shall be given to Declarant and the members who have resided in SANDY OAKS the longest. Members of the Architectural Review Committee will serve at the pleasure of the entity entitled to select the members and may be replaced at any time. If Declarant (or assignee) fails to appoint at least one person to the Architectural Review Committee and such vacancy continues for 30 days after the Community Association gives written notice to Declarant (or assignee) of such vacancy, the Community Association will have the right to appoint the members of the Architectural Review Committee until such time as Declarant (or assignee) exercises its right of appointment.

(b) Professional Advisor. The Architectural Review Committee may employ one or more architects or land planners to advise the Architectural Review Committee. Each advisor may sit on the Architectural Review Committee as either a voting or nonvoting member, at the discretion of the other members of the Architectural Review Committee. At the discretion of the Architectural Review Committee, the advisor may be paid a reasonable fee derived from application fees or payable by the Community Association from the General Assessment.

3.2 Architectural Review Procedure.

(a) Construction Subject to Review. All construction, improvements, remodeling, or modification on or to a Lot, except interior alterations not affecting the external appearance of the Lot or improvements on a Lot, must be approved in advance by the Architectural Review Committee. This specifically includes, but is not limited to, painting or other alteration of a building (including doors, windows, and trim); replacement of roof or other parts of a building other than with duplicates of the original material; installation of antennas, satellite dishes or receivers, solar panels, or other

devices; construction of fountains, swimming pools, whirlpools, or other pools; construction of privacy walls or other fences or gates; boat docks, boat houses, riverfront decks or construction within the Caloosahatchee River right of way; addition of awnings, flower boxes, shelves, statues, or other outdoor ornamentation; addition of window coverings; installation of a well; water pumps, aerators or water softeners, garbage can storage, sheds or storage buildings and initial landscaping and any material alteration of landscaping. This right is general and is not limited to the specific items listed in this paragraph or in Paragraph 3.4. Construction effected by or on behalf of Declarant will not be subject to approval by the Architectural Review Committee.

(b) Application. The plans to be submitted for approval shall include (i) the construction plans and specifications, including all proposed clearing and landscaping; (ii) elevations of all proposed improvements; (iii) a lot survey showing current and proposed improvements; and (iv) such other items as the Architectural Review Committee requires. No construction on any Lot shall be commenced and no Lot shall be modified except in accordance with the submitted plans. Any modification to the approved plans must also be reviewed and approved by the Architectural Review Committee.

(c) Basis for Decision. The Architectural Review Committee, in making its decisions, may consider purely aesthetic matters that in the sole opinion of the Architectural Review Committee will affect the desirability or suitability of the construction. The Architectural Review Committee will not be limited to the specific restrictions and requirements of this Article in making its decisions. The Architectural Review Committee may partially deny and partially approve the plans submitted for approval.

(d) Application Fee; Deposit. The Architectural Review Committee may establish procedures for the review of applications, and impose a reasonable fee to be paid by the applicant. The Architectural Review Committee also may require an applicant to post a security deposit to ensure that all work is effected only in accordance with approved plans. The Architectural Review Committee may retain the security deposit until all work has been completed in accordance with the approved plans.

(e) Notification of Approval. The Architectural Review Committee must notify an applicant in writing of its decision within 30 days of receiving a completed application. If approval or disapproval is not given within 30 days after submission of a completed application, the application will be deemed approved unless the applicant agrees to an extension. If the application is incomplete, or if the Architectural Review Committee requests additional information or documentation, the 30 days time for the Architectural Review Committee to notify an applicant shall commence upon receipt of the completion of the application or receipt of the requested additional information or documentation.

(f) Enforcement. If any construction or modification is undertaken that has not been approved or that deviates substantially from the approved plans, Declarant or the party delegated or assigned Declarant's right to appoint the Architectural Review Committee, or the Community Association or any Member may bring an action for specific performance, declaratory decree, or injunction without the necessity of proving inadequate remedy at law or irreparable harm, and will be entitled

to recover all costs of such action including attorneys' fees at trial or on appeal. Any such action also shall determine entitlement to any retained security deposit. The failure to strictly enforce these provisions as to a particular violation or violations will not be deemed a waiver to enforce these provisions as to future or continuing violations.

3.3 Liability. The Architectural Review Committee and Declarant will not be liable to the applicant or to any other party for inadequacy or deficiency in the plans resulting in defects in the improvements, and will not be obligated to ensure either that the proposed plans comply with any applicable building codes or that construction was done in accordance with the plans.

3.4 Specific Restrictions. The following restrictions shall apply to the Lots; however, the Architectural Review Committee will not be limited to these items when reviewing plans and will have broad discretion in the interpretation of these restrictions.

(a) Residential Building. No building may be erected, placed, or permitted to remain on any Lot other than one single-family dwelling, shed, and, if approved by the Architectural Review Committee, accessory buildings that do not furnish residential accommodations for an additional family.

(b) Building Restriction Lines. No dwelling shall be located nearer to the streets or adjacent Lots than the applicable building setback requirements on the applicable Plat or as provided by the Hendry County zoning regulations. Variances to platted setbacks or county zoning setbacks may only be approved by the Board of Directors of the Community Association. No accessory structures, walls, fences, hedges or trees which materially obstruct the view of the river from an adjoining lot shall be permitted or approved.

(c) Minimum Floor Space. Each single-story dwelling located on a Lot must contain at least 500 square feet of floor area. "Floor area" means only enclosed livable floor area and does not include garages, porches (open or with screened enclosures), terraces, or patios.

(d) No carports will be permitted.

(e) Driveways. All Lots must have a paved driveway of stable and permanent construction extending from the adjacent street to the dwelling. All driveways must be of concrete, asphalt, or other approved material.

(f) Exterior Color and Materials. The color and materials of all exterior surfaces will be subject to approval of the Architectural Review Committee. The Architectural Review Committee may promulgate a list of approved colors and materials for this purpose. This restriction includes window tints and films.

(g) Pools, Play Facilities, and Lighting. All recreation facilities constructed or erected on a Lot, including, without limitation, swimming pools, jacuzzis, spas, and any other play or recreation structures, basketball backboards, platforms, playhouses, dog houses, or other structures of a similar kind or nature must be adequately walled, fenced, or landscaped in a manner specifically approved by the



Architectural Review Committee before such facility is constructed or erected. All exterior lighting must be specifically approved by the Architectural Review Committee.

(h) Non-Interference With Easements. No structure, planting, or other material may be placed or permitted to remain on a Lot if it may damage or interfere with the installation and maintenance of any easement. Any utility easement area located on a Lot and all improvements on an easement area shall be maintained by the Owner of the Lot whereon the easement area lies, except that the Community Association shall maintain the surface water management system. This paragraph may be enforced by any person or party benefiting from the easements or responsible for the maintenance of them.

(i) Utility Connections. Connections for all utilities, including, but not limited to, water, sewage, electricity, telephone, and television must be run from the connecting point of the utility to the dwelling in such a manner as is acceptable to the respective utility authority or company and the Architectural Review Committee.

(j) Air Conditioning Units. No window or wall air conditioning unit will be permitted on any Lot.

(k) Mailboxes. All mailboxes, paper boxes, or other receptacles of any kind for use in the delivery of mail, newspapers, magazines, or similar material shall be erected or permitted in only the location approved by the Architectural Review Committee and must be constructed according to a size, design, and material approved by the Architectural Review Committee.

(l) Antennae, Aerials, and Satellite Dishes. No satellite dish visible either from a road or other Lot may be placed on any Lot or affixed to the exterior of any building without the prior written approval of the Architectural Review Committee.

(m) Clothes Drying Area. No clotheslines or other facilities or apparatus for the drying of clothes outside of a dwelling shall be constructed or maintained on a Lot if visible from other Lots or adjacent roads.

(n) Signs. The size, color, and design of all signs located on a Lot will be subject to the approval of the Architectural Review Committee. No sign of any kind shall be displayed to general view on any Lot (whether free-standing, attached to a building, or displayed in a window) except under any of the following circumstances:

(i) Directional or traffic signs, entrance or other identification signs may be installed by the appropriate governmental authority, by Declarant, or by the Community Association;

(ii) Declarant may display signs for the sale of Lots, homes, and promotion of the subdivision;

(iii) One "For Sale" sign not more than two feet square (as measured on each side of the sign) may be displayed on a Lot by the Owner or the agent for such Owner; and

(iv) A name plate and address plate in size and design approved by Declarant or the Architectural Review Committee may be displayed on a Lot.

(o) Fences. No fences, except as may be required by law or government regulation, may be erected on any Lot without prior written approval of the Architectural Review Committee. The Architectural Review Committee may specify the height, location, and materials as conditions of any approval. Fences shall be located

only where indicated on plans approved by the Architectural Review Committee but, generally, will be permitted only in the rear and side yards of a Lot. Accordingly, fences will not be permitted closer to the street than the front face of the dwelling located on a Lot. If the front of the dwelling is irregular in design, the Architectural Review Committee will determine the setback requirement for the fences. No chain link fence shall be allowed. All fence designs and materials are subject to the review and prior approval by the Architectural Review Committee. These restrictions will not apply to fences constructed by Declarant and these other fences constructed by Declarant may be constructed of chain link or other material.

(p) Docks—reserved for future language regarding possible community dock.

(q) Roofs. Roofs shall be a minimum pitch of 5:12 except that deviation from the minimum pitch may be approved by the Declarant for gambrel and similar type roofs. Notwithstanding the above, a mansard roof or flat roof over porches, Florida rooms and utility rooms may be permitted only if approved by the Declarant. Pitched roofs shall be constructed of flat or barrel cement tile or glazed tile, Galva-lum mill finish or decorator color. Asphalt and fiberglass shingles are prohibited. In the event a new and attractive material for roofing surfaces becomes available, Declarant may in its sole discretion approve the use of such new material.

(r) All construction shall be in accordance with all applicable Governmental Regulations and such other conditions and limitations as may be reasonably imposed by the Architectural Review Committee, as it in its sole and absolute discretion may determine.

3.5 Temporary Structures. No structure of a temporary nature, whether a trailer, tent, mobile home, shack, garage, barn, or any other such building, is permitted on a Lot. This restriction excludes temporary buildings used in connection with and during the construction of a dwelling if approved by the Architectural Review Committee.

3.6 Completion of Construction and Repairs. The improvement of a Lot and the construction, repair, or remodeling of any improvement must be diligently and continuously pursued once begun and, in any event, promptly completed. The Architectural Review Committee may, as a condition of approval, impose a deadline to complete construction and require a security deposit to comply with the deadline. In addition to any other remedies, the Architectural Review Committee may impose a fine, not to exceed \$100.00 per day, for each day of violation for work that is not diligently pursued, continued, and completed.

3.7 Sales Offices. Notwithstanding anything in this Declaration to the contrary, Declarant and parties approved by Declarant may construct and maintain sales offices and sales trailers, together with a sign or signs relating thereto, on a Lot or Lots or on any other property within SANDY OAKS until such time as all of the Lots are sold.

3.8 Destruction or Damage to Subdivision Improvements. Owners will be responsible for any and all damage caused to Common Property or subdivision improvements, including, but not limited to roadways, sidewalks or fences erected by anyone, whether such damage is caused by the Owner or the Owner's tenants, employees, agents, invitees, guests, contractors, or subcontractors. Any liability incurred under this provision will be both a personal obligation and an Individual Lot Assessment on such Owner's Lot.

3.9 Trees. No living trees with a diameter of six (6) inches or more, when measured at a height of eight (8) feet above the natural grade, may be removed, cut down, or destroyed without the prior approval of the Architectural Review Committee, except if the tree poses an immediate danger to life or property. This prohibition will not prohibit the usual and customary pruning or trimming of trees. If this provision is violated, an Owner may be required to replace the subject tree or otherwise mitigate the damage as directed by the Architectural Review Committee. An Owner must use reasonable care to preserve, in good health, all protected trees on the Owner's Lot. Owners shall also comply with local tree ordinances.

3.10 Conversion of Lots to Other Uses. Notwithstanding anything herein to the contrary, Declarant reserves the right to use any Lot owned by it for the purpose of ingress and egress to any adjoining property. Declarant also reserves the right to impose additional easements on any Lot owned by Declarant.

3.11 Other Covenants. The Lots also will be subject to any master covenants recorded in the Public Records for real property including the Lots.

#### **ARTICLE IV USE OF PROPERTY; INDIVIDUAL LOTS**

The following restrictions are imposed on the use of the Lots to promote a harmonious neighborhood and limit uses that may be a nuisance to other Owners.

4.1 Residential Use. No business or commercial building may be erected on any Lot and no business or commercial activity may be conducted on any Lot except for a sales and marketing program of the Lots by Declarant or parties approved by Declarant.

4.2 Leasing. Leasing is permitted for periods of not less than 30 continuous days. Owners are liable for any violations of this Declaration committed by their tenants, invitees or guests.

4.3 Maintenance of Exteriors. Each Owner shall at all times maintain in a sightly manner the exterior of all structures on the Owner's Lot and any and all fixtures

attached to the structures. If an Owner fails to undertake any necessary repair or maintenance within five days of notice of violation (given by Declarant or the Architectural Review Committee) or fails to complete the work within 15 days of the notice, Declarant or the Community Association may effect the repairs or maintenance to the Owner's Lot to preserve the beauty, quality, and value of the neighborhood and the cost of these repairs or maintenance plus a 25% administrative fee shall be payable by the Owner to the party effecting the work. If the Owner fails to make this payment within five days of demand, the cost and fee will constitute an Individual Lot Assessment against the Owner's Lot. If the work was effected by Declarant, the Community Association will be responsible to pay the requisite cost and fee to Declarant and collect the same from the Owner. Each Owner grants Declarant, the Community Association, and their respective contractors, employees, and agents a perpetual easement to enter onto the Owner's Lot to carry out the work, and releases those parties from all liability with respect to such work. Additionally, the Community Association may impose a fine, not to exceed \$100.00 per day, for each day this paragraph is violated by Owner.

4.4 Lot Maintenance. The Community Association shall maintain all unimproved areas of a Lot in an attractively landscaped and sightly manner. The Community Association shall mow and maintain all lawns and landscaping on the Lots. Vacant Lots shall be kept mowed so as not to exceed 12" in height. The Community Association shall keep the Lots adjacent to the Caloosahatchee River right of way between the Lot line and the mean high water mark of the Caloosahatchee River (as defined by extending the side lot lines of the Lot to the water's edge) mowed and maintained as provided in this section. Each Owner grants Declarant, the Community Association, and their respective contractors, employees, and agents a perpetual easement to enter onto the Owner's Lot to carry out the maintenance including lawn care, and releases those parties from all liability with respect to such work.

4.5 Litter, Trash, Garbage. No garbage, trash, refuse, or rubbish may be deposited, dumped, or kept on any Lot except in closed sanitary containers. Trash containers must be kept inside or otherwise hidden from public view. Trash containers may be placed at the front of the Lot on the day designated for pickup, but only if promptly returned to the proper storage area as soon as possible.

4.6 Nuisances. No Owner may cause or permit unreasonable noises or odors on the Owner's Lot. No Owner may commit or permit any nuisance, any immoral or illegal activity, or anything that may be an annoyance or a noxious or offensive activity to the other Owners or their guests. Soliciting within SANDY OAKS is strictly prohibited without the approval of Declarant or the Community Association. The Community Association may impose a fine, not to exceed \$100.00 per day, for each day this paragraph is violated, not to exceed a total of \$10,000.00.

4.7 Parking of Wheeled Vehicles and Boats. Cars, trucks, recreational vehicles, and trailers (collectively called "Vehicles") must be kept at all times completely on the concrete driveways and are not permitted to be parked on a Lot or on a street within the Plat except as otherwise specifically permitted in this paragraph. No more than two (2) vehicles may be parked on the driveways at any time. Owners are permitted to have no more than one golf cart per Lot. Boats and boat trailers are not permitted to be parked on a Lot or on a street within the Plat. Private cars or private trucks (exclusive of all other Vehicles) owned by an Owner or an Owner's guests may be parked in the Owner's driveway, but only if they do not display commercial signs. Commercial Vehicles may be parked in a street or driveway when necessary for providing services to an Owner, or for pickup and delivery service, but only while undertaking this activity and never overnight. Recreational vehicles, travel trailers, trailers, and campers may be parked in the driveway of a Lot for up to a total of 48 hours per week for loading and unloading only, and never for dwelling purposes. No Vehicles may be repaired or maintained on or adjacent to a Lot. Vehicles or equipment engaged in construction of subdivision improvements or dwellings on behalf of Declarant will be permitted within SANDY OAKS for any purpose. The Community Association may impose a fine, not to exceed \$100.00 per day, for each day this paragraph is violated, not to exceed a total of \$10,000.00.

4.8 Occupancy of each home shall be limited to two adults and one minor child.

4.9 Pets. Up to one (1) "household pet" not to exceed 30 pounds in weight, inside fish and inside birds may be kept on a Lot. All other pets and animals are strictly forbidden to be kept, bred, or maintained within SANDY OAKS unless approved by the Architectural Review Committee or Declarant. A "household pet" is a dog, cat, or other common domestic animal approved by the Architectural Review Committee. In no event may any pet, including household pets, be kept, bred, or maintained for any commercial purpose. Each Owner will be strictly responsible for the behavior of his or her household pets. An Owner shall not permit the household pets to become a nuisance or annoyance to other Owners. Each Owner will be responsible to immediately collect and dispose of waste and litter from the Owner's pets. Pets will not be allowed on the Common Property except in designated areas and then only in compliance with the Rules. Pets shall not be allowed to run at large or trespass on the Lots of other Owners. The Community Association may impose a fine, not to exceed \$100.00 per day, for each day this paragraph is violated, not to exceed a total of \$10,000.00.

## **ARTICLE V COMMON PROPERTY**

The Community Association will own and maintain the Common Property for the benefit of all Members and, when necessary, improve, convey, or lease the property.

## 5.1 Title to Common Property.

(a) Ownership. The Common Property and Surface Water Management System will be owned by the Community Association for the benefit of all owners.

(b) Conveyance. The Community Association is authorized to buy or lease real or personal property to be added to the Common Property. After termination of the Class B Membership, the Community Association may (with the consent of Declarant) sell or lease any part of the Common Property; however, membership approval is not needed for the Board of Directors to sell personal property or to grant easements on real property.

(c) Dedication. If the county or government agency requests that the Community Association convey title to or dedicate the Common Property or any portion of it to the public, or the entry road easement, the Community Association will be authorized to make such conveyance or dedication, but only with the approval of a majority of the Members. Upon such dedication, all obligations of the Community Association regarding the property so dedicated will cease except for requirements imposed as a condition of the dedication.

## 5.2 Maintenance; Management; Contracts.

(a) Community Association Responsibility. The Community Association will be responsible for the management, control, maintenance and improvement of the Common Property and roadway and must keep the same attractive, clean, and in good repair in accordance with this Declaration and applicable governmental regulations. It is the responsibility of the Community Association to operate and maintain the Surface Water Management System.

(b) Management Agreements. The Community Association may contract with Declarant or any other party for the performance of all or any portion of the management of the Community Association and the Community Association's maintenance and repair obligations. Management and maintenance costs will be included in the Assessments.

5.3 Capital Improvements. The Community Association may make capital improvements to the Common Property and may modify the uses of the Common Property.

5.4 Damage or Destruction of Common Property by Owner. If any Owner or any guest, tenant, licensee, agent, employee, family member, or pet of an Owner damages any of the Common Property, the Owner hereby authorizes the Community Association to repair the damage. The cost of repair will be the responsibility of that Owner and will become an Individual Lot Assessment payable by the responsible Owner.

5.5 Compliance with Laws. Lots and the Common Property may be used and must be maintained in accordance with all applicable laws, ordinances, and regulations, including, without limitation, all regulations and requirements of the South Florida Water Management District and the Florida Department of Environmental Protection.

5.6 Rules for Use of Common Property. Members will have the right to use the Common Property only in accordance with the terms of the Rules initially made by Declarant and revised from time to time by the Community Association. The Rules will be available without charge to any Member requesting the same.

5.9 Drainage System Located in Common Property. The Community Association will be responsible for the maintenance, operation, and repair of such portion of the Drainage System as is located on Common Property. Maintenance means the exercise of practices that allow the system to provide drainage, water storage, conveyance, or other storm water management capabilities as permitted by the South Florida Water Management District. Any repair or reconstruction of the Drainage System shall be as permitted or, if modified, as approved by the South Florida Water Management District.

## **ARTICLE VI GRANT AND RESERVATION OF EASEMENTS**

Every Owner has the benefit of certain easements and the responsibility for others.

6.1 Owners' Easement of Enjoyment of the Common Property. Every Owner will have a right and easement of enjoyment in and to the Common Property, subject to the restrictions imposed in this Declaration or in the Rules. This easement will be appurtenant to and shall pass with title to every Lot. Any Owner, subject to the provisions of this Declaration, the Articles, the Bylaws, and the Rules, may delegate the Owner's right to enjoyment of the Common Property to the Owner's family, tenants, and guests. The easements herein may not be removed from the intended use by subsequent owners or others.

6.2 Easements in Favor of Declarant and Community Association. Declarant reserves and dedicates for itself, its successors and assigns, and for the Community Association the following perpetual easements:

(a) Utilities. Easements, for ingress, egress, installation, replacement, repair, and maintenance of all public and private utilities and conveniences, upon all property subject to Public Utility Easements as shown on the Plat; across, over, through, and under the Common Property; and 15 feet in width along the front line of each Lot.

(b) Police Powers: Security. A blanket easement throughout SANDY OAKS for police powers and services supplied by the local, state, and federal governments and for any security services that may be provided by the Community Association.

## **ARTICLE VII ASSOCIATION ORGANIZATION**

Although Declarant will control the Community Association during the development stage, the Owners eventually will be responsible for the continuation of the Community Association.

7.1 Membership. Every Owner is a mandatory Member of the Community Association. Membership is appurtenant to and may not be separated from title to any Lot.

7.2 Voting Rights. The Community Association will have two classes of voting membership:

(a) Class A. Class A Members are all Owners of Lots other than Declarant, while Declarant is a Class B Member. Class A Members will be entitled to one vote for each Lot owned.

(b) Class B. The Class B Member is Declarant, who shall be entitled to 10 votes in all matters for each Lot owned by the Class B Member or his affiliates. Declarant may assign its Class B Membership. The Class B Membership will end and be converted to Class A Membership three months after the first to occur of the following events:

(i) The total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership;

(ii) 90% of the Lots within SANDY OAKS have been conveyed to Members other than the Class B Members; or

(iii) Declarant chooses to become a Class A Member, as evidenced by instrument to such effect, executed by Declarant and Declarant's mortgagees holding a mortgage encumbering SANDY OAKS or portion thereof, which is recorded in the Public Records.

7.3 Exercise of Vote. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the number of votes for that Lot will not be increased, and the Members must determine among themselves how the Lot's vote may be exercised. Corporations, trusts, partnerships, and other entities must notify the Community Association of the natural person who will be considered a Member of the Community Association and be entitled to exercise its vote.



#### 7.4 Board of Directors.

(a) Composition. The Board initially will consist of at least three persons appointed by Declarant. Upon termination of the Class B Membership, the Board will consist of at least five directors, selected in accordance with the Articles and Bylaws.

(b) Classes. Each director will be appointed or elected to one of three classes: Class 1, Class 2 or Class 3. Directors will be elected by class to provide for staggered terms. If the number of directors is increased, it shall be in multiples of two and each new position must be assigned to a class so that each class will have approximately an equal number of directors.

(c) Term of Office. The initial term for the Class 1 director(s) will be for one year. The initial term for the Class 2 director(s) will be for two years. The initial term for the Class 3 director(s) will be for three years. Subsequent terms for directors of any class will be for three years; however, directors will always serve until resignation, removal, or the election of their successors.

(d) Qualifications. After termination of the Class B Membership, each director must be a Member. If a director ceases to be a Member during the term of office, such person will be automatically removed from the Board, effective upon such occurrence.

(e) Voting Procedure. At each annual meeting, the Members will elect the directors to replace the directors of the class whose term of office is then expiring. Each Class A Member will have one vote for each seat to be filled and the Class B Member will have 10 votes for each Lot owned by the Class B Member or his affiliates. The candidate(s) receiving the highest number of votes will be declared elected. If there is a tie vote, the Class B Member will be given one additional vote and the opportunity to cast such vote to break the tie. The meeting will, in other respects, be conducted in accordance with the Articles and the Bylaws.

(f) Removal. Any director may be removed from office, with or without cause, by at least a majority vote of the Members.

(g) Vacancies; Replacement of Directors. Any vacancy occurring in positions as director may be filled by a majority vote of the remaining Board members. If the remaining Board members do not constitute a quorum, a special meeting of the Community Association may be called by any officer or by any Member to elect new members to the Board.

(h) Compensation. Directors will not receive compensation for their services unless approved by the Members. This will not prevent a Class B Member or an affiliate of a Class B Member from being compensated for management or other services.

7.5 Relationship to Articles and Bylaws. The Articles and Bylaws will govern all matters of the Community Association not set forth in this Declaration. The terms of this Declaration will prevail over any conflicting provisions in the Articles and Bylaws.

## **ARTICLE VIII OPERATION OF ASSOCIATION AND BOARD**

Most day-to-day decisions about the maintenance of the Common Property and enforcement of the Declaration are the responsibility of the Board of Directors, acting on the Members' behalf. For those decisions requiring Members' approval, the Community Meeting provides a public opportunity for discussion.

### **8.1 Annual Meeting.**

(a) **When Called.** The Annual Meeting will be called every year for the election to the Board of the class of directors whose term then expires and for other business requiring approval of the Members. The meeting date shall be as determined by the Bylaws.

(b) **Quorum.** Voting at an annual meeting requires the presence of (i) Members (in person or by proxy) representing 50% of votes, and (ii) Declarant or its representative so long as Declarant owns at least one Lot.

(c) **Notice.** Notice of the annual meeting may be given by (i) mailing a notice to each Member at the last address furnished to the Community Association, (ii) delivering notices to the Member's dwellings or Lots, or (iii) posting conspicuous notices for the meeting in the Common Property. Notice should be given at least 10 days before the annual meeting.

### **8.2 Board Meetings.**

(a) **Board's Responsibility.** Except as specifically provided in this Article or elsewhere in this Declaration, the Board has been delegated the power, and has the authority to act on behalf of the Community Association in all matters.

(b) **Quorum.** Voting at a Board meeting requires presence of a majority of the directors. Except as prohibited by law, action required to be taken by vote of the Board may be taken in the absence of a meeting by obtaining the written approval of a majority of the Board. Attendance of Board members by speaker telephone shall be permitted. In an emergency situation, the Board may hold an emergency meeting and take such action as is reasonably needed, without notice, by personal meeting or telecommunications messages, provided that same shall be thereafter reduced to writing, approved in writing by a majority of the Board and provided to the Members.

(c) **Notices.** Notices of all meetings of the Board shall be posted in a conspicuous place in the Common Property 48 hours in advance, absent emergency. In the alternative, if notice is not posted in a conspicuous place in the Community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. If the Board desires to levy an assessment at a meeting, the notice must include a statement that assessments will be

considered and describing the nature of the assessment. All meetings must be open to the Members, except for meetings permitted by law to be closed.

8.3 Record Keeping. The Board shall keep, or cause to be kept, minutes of all meetings, both of the Board and of the Community Association. For each action taken, the record must state the vote and a description of the action approved, and, if applicable, the reasons why the action was considered necessary and a summary of the information on which the decision was based. The record must be available for inspection by any Member, except for records of closed meetings of the Board. Officers may be elected by the Board by secret ballot.

## **ARTICLE IX ASSOCIATION BUDGET**

To fulfill its obligation to maintain the Common Property, the Board is responsible for the fiscal management of the Community Association.

9.1 Fiscal Year. The fiscal year of the Community Association will begin January 1 of each year and end on December 31 of that year. The Board may elect another fiscal year. The Board must prepare an annual Budget.

9.2 Budget. A copy of the budget must be provided to each Member or a notice must be given to the Members that a copy of the budget is available upon request and without charge. The annual budget will estimate total expenses to be incurred by the Community Association in carrying out its responsibilities. The budget must include:

- (a) The cost of wages, materials, insurance premiums, services, supplies, and other expenses required or permitted under this Declaration and applicable Statutes and Regulations;
- (b) Reasonable amounts, as determined by the Board, for working capital for the Community Association and for reserves;
- (c) Fees for professional management of the Community Association (which may include Declarant), legal counsel, and accounting;
- (d) Taxes, if the Common Property is taxed separately from the Lots;

9.3 Reserves. The Community Association shall accumulate and maintain adequate reserves for working capital, contingencies, and replacements, to be included in the annual budget and collected as part of the annual General Assessment. Extraordinary expenses not originally included in the annual budget will be charged first against such reserves. Except in the event of an emergency, reserves accumulated for one purpose may not be expended for any other purpose. If there is an excess of reserves at the end of a fiscal year, such excess may be used to reduce the following year's assessments.

9.4 Preparation and Approval of Annual Budget.

- (a) Initial Budget. Declarant will prepare the first annual budget.
- (b) Subsequent Years. Budgets other than the initial budget will be prepared at the direction of the Board at the end of the fiscal year. The budget and the annual General Assessment must be adopted by a majority of the Board.

9.5 Effect of Failure to Prepare or Adopt Budget. The Board's failure or delay in preparing or adopting the annual budget for any fiscal year will not waive or release a Member's obligation to pay General Assessments, whenever the amount of such assessments is finally determined. In the absence of an annual Community Association budget, each Member shall continue to pay the assessment at the rate established for the previous fiscal period until notified otherwise.

9.6 Financial Reporting. The Board shall prepare an annual financial report for the Community Association within 60 days of the close of the fiscal year and either provide each Member with a copy of the report or a notice that a copy is available without charge.

9.7 Capital Improvements. The Board shall determine whether capital improvements should be paid from General Assessments or by Special Assessment. Any repair or replacement of existing improvements will not be considered a capital improvement.

9.8 All sums collected by the Board with respect to Assessments, Reserves and charges of all types may be commingled in a single fund.

9.9 Amendment of Budget. The Board may amend the budget during any fiscal year and increase the amount of the annual General Assessment for such year if it appears that there will be insufficient income to meet the obligations of the Community Association.

**ARTICLE X  
COVENANTS TO PAY ASSESSMENTS**

The cost of fulfilling the Community Association's financial obligations is divided equitably among the Members by means of Assessments. To ensure that the Community Association has a reliable source of funds and to protect those Members who contribute their equitable share, assessments are mandatory and are secured both by a lien on the Lots and the Member's personal obligation.

10.1 Obligation for Assessments. Declarant covenants for each Lot, and, by acceptance of a deed or other transfer instrument, whether or not expressed in such deed or instrument, each Owner of any Lot is deemed to covenant and agree to pay to the Community Association the following (to be known collectively as "Assessments"):

- (a) General Assessment for expenses included in the budget,
- (b) Special Assessments for the purposes provided in this Declaration,
- (c) Individual Lot Assessments for any charges particular to that Lot.
- (d) General and special assessments for operation, maintenance and replacement of the Surface Water Management System.

10.2 Guarantee of Class B Member. The Class B Member agrees that it will be obligated to pay any operating expenses of the Community Association in excess of the revenue derived from the Assessments, including any increases made during a fiscal year, until the end of the first fiscal year of the Community Association. This obligation is called the "Budget Guarantee." The Class B Member may elect to renew the Budget Guarantee on an annual basis. In return for the Budget Guarantee, the Class B Member and its affiliates will not be liable for any Assessments on any Lots it owns. A Lot exempt from Assessments pursuant to this paragraph is referred to as an "Exempt Lot."

10.3 Equitable Division of Assessments. The General Assessment and Special Assessments shall be assessed among all Lots equally, except that Exempt Lots will not be subject to assessment.

#### 10.4 General Assessment.

(a) Establishment by Board. The Board will set the date or dates the General Assessment will be due, and it may provide for payment in monthly, quarterly, semiannual, or annual installments.

(b) Proration Upon Sale of Exempt Lot or Loss of Exemption. Upon conveyance of an Exempt Lot, or upon an Exempt Lot becoming subject to Assessments on account of the Class B Member not extending the Budget Guarantee, the annual General Assessment will become due for such Lot(s); provided however, that the General Assessment will be prorated on a monthly or daily basis, whichever the Board elects, and only the portion of the General Assessment attributable to the remainder of the fiscal year will be due. The portion of the General Assessment attributable to the portion of the fiscal year in which the affected Lot was an Exempt Lot will not be assessed.

(c) Late Fee and Interest. The Board may impose a reasonable administrative fee and a reasonable late fee. Additionally, interest will accrue at the highest lawful rate on delinquent payments.

(d) Statutory Changes. Any future amendments to applicable statutory law shall be incorporated herein by reference.

10.5 Special Assessment. In addition to the General Assessment, the Board may levy, in any fiscal year, a Special Assessment applicable as follows:

(a) Capital Improvements. Any capital improvement that has been approved in accordance with this Declaration.

(b) Emergency Assessment. By a 2/3 vote, the Board may impose a Special Assessment for any unusual or emergency maintenance or repair or other expense that this Declaration requires the Community Association to pay (including, after depletion of reserves, any unexpected expenditures not provided by the budget, or unanticipated increases in the amounts budgeted).

(c) Exemption. Exempt Lots will not be subject to Special Assessments, nor will an Exempt Lot be subject to payment of any Special Assessment or any portion thereof declared or assessed while such Lot was an Exempt Lot even if payments for such Special Assessments are made in installments becoming due subsequent to the time such Lot no longer is considered an Exempt Lot. [For example: if a Special Assessment is declared on January 1 while Lot 27 is an Exempt Lot, but the payment of the Special Assessment is not required until March of the same year, then even if Lot 27 is not an Exempt Lot as of February of such year, Lot 27 still will be considered exempt from such Special Assessment.]

10.6 Individual Lot Assessments. The Community Association may levy at any time an Individual Lot Assessment against a particular Lot for the purpose of defraying, in whole or in part, the cost of any special services to that Lot or any other charges designated in this Declaration as an Individual Lot Assessment. An Individual Lot Assessment may be levied on account of any legal expenses (at trial or on appeal) and costs incurred by the Community Association in enforcing this Declaration or in enforcing any other declaration, by-law, rule or regulation the Community Association is authorized to enforce, including any fines, mowing charges, or other costs incurred by the Community Association with respect to such lot.

10.7 Fines. The Community Association may levy reasonable fines, not to exceed \$100 per violation per day, against any member or any tenant, guest, or invitee, for any violation of this Declaration of Covenants, Conditions, Restrictions and Easements, the By-laws, rules or regulations, or the Articles of Incorporation of the COMMUNITY ASSOCIATION OF SANDY OAKS, INC. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$10,000.00 in the aggregate. A fine or suspension may be imposed only after at least 14 days notice to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

## 10.8 Effect of Nonpayment of Assessment; Remedies.

(a) Personal Obligation. All Assessments, together with any late fees, interests, and costs of collection when delinquent, including reasonable attorneys' fees (at trial or on appeal) whether or not a lawsuit is brought (collectively, the "Assessment Charge") shall be the personal obligation of the person or entity who was the Owner of the Lot at the time the Assessment Charge was levied, and of each subsequent Owner. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of the Lot.

(b) Creation of Lien. The Assessment Charge also shall be a continuing lien on the Lot against which the Assessment Charge is made, which lien is effective upon recording a claim of lien, but relating back to and having a priority as of the date of this Declaration. This lien in favor of the Community Association will secure the Assessment Charge, interest, attorney's fees and expenses that are then due and that may accrue subsequent to the recording of the claim of lien and before entry of final judgment of foreclosure. This lien in favor of the Assessment Charge is subject to the subordination provisions of Paragraph 10.8(d).

(c) Lawsuit for Payment; Foreclosure of Lien. The Community Association may bring an action at law against the Owner personally obligated to pay the Assessment Charge, or may foreclose the lien in a manner similar to foreclosure of a mortgage lien, or both. The Community Association, acting on behalf of the Owners, shall have the power to bid for an interest in any Lot foreclosed at such foreclosure sale and to acquire, hold, lease, mortgage, and convey the Lot.

(d) Subordination of the Lien to Mortgages. The lien of the Assessment Charge will be inferior to the first mortgage lien of any Mortgagee. Transfer of any Lot pursuant to foreclosure of such a mortgage, including a deed in lieu of foreclosure, shall extinguish the lien as to payments that became due before the transfer. The transferees of such Lot shall be liable for any assessments coming due after the transfer.

(e) Other Remedies. The Community Association may assess fines and suspend the voting rights and right to use of the Community Property by an Owner for any period during which regular annual Assessment against the Owner's Lot remains unpaid, but only as permitted by law.

10.9 Certificate of Payment. The treasurer of the Community Association or the manager of the Community Association, upon request of any Owner, shall furnish a certificate signed by a member of the Board or by the manager authorized by the Board stating whether any Assessments are owed by that Owner. The Board may establish a reasonable fee for such certificate. Such certificate will be conclusive evidence of payment of an Assessment through the date of the certificate.

## **ARTICLE XI INSURANCE AND INDEMNITY**

Insurance is essential to protect the interests of the various Owners and to ensure that funds will be available for rebuilding after a casualty; however, because insurance costs may increase significantly or new types of coverage may be available, this Article gives some flexibility to the Board to select insurance coverage that is reasonable for the conditions that exist at that time.

11.1 Review of Coverage. The Board shall review limits of coverage for each type of insurance at least once each year.

11.2 Public Liability. The Board shall obtain public liability insurance in such limits as the Board may from time to time determine, insuring against any liability arising out of, or incident to, the ownership and use of the Common Property. Whenever practicable, such insurance should be issued on a comprehensive liability basis and should contain a "severability of interest" endorsement that shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Community Association, the Board, or other Owners. Such insurance must always name Declarant as an additional insured.

11.3 Director Liability Insurance. The Board may obtain liability insurance insuring against personal loss for actions taken by members of the Board in the performance of their duties. Such insurance shall be of the type and amount determined by the Board in its discretion.

11.4 Other Insurance. The Board shall obtain such other insurance as the Board may deem prudent.

11.5 Repair and Reconstruction after Fire or Other Casualty. If fire or other casualty damages or destroys any of the Common Property, the Board shall arrange for and supervise the prompt repair and restoration of the improvements. The Board shall obtain funds for such reconstruction first from the insurance proceeds, then from reserves for the repair and replacement of such improvements, and then from any Special Assessments that may be necessary after exhausting insurance and reserves.

11.6 Indemnity of Declarant. In consideration of Declarant conveying the Common Property to the Community Association, the Community Association releases, indemnifies, and holds Declarant, his employees and agents harmless from any and all liability arising out of the Common Property and shall defend Declarant against all claims of any party. Such indemnity includes any attorneys' fees and costs incurred by Declarant at trial and on appeal.



## **ARTICLE XII GENERAL PROVISIONS**

This article sets forth rules of interpreting the Declaration, provides for enforcement, waives the right to a trial by jury, and sets forth the procedure to amend the Declaration.

12.1 Incorporation of the Land Use Documents. Any and all deeds conveying a Lot shall be conclusively presumed to have incorporated therein all of the terms and conditions of this Declaration.

12.2 Release from Minor Violations. Declarant and the Architectural Review Committee or either of them shall have the right, by written instrument, at any time to release a Lot from minor violations of this Declaration or the Plat including, without limitation (i) encroachments into easements, (ii) encroachments over building restriction lines, and (iii) construction of less than the required minimum square footage for the dwelling provided that the square footage is at least 75% or the required minimum.

12.3 Enforcement. The covenants and restrictions contained in this Declaration may be enforced by Declarant, any Owner, and any Mortgagee in any judicial proceeding seeking any remedy recognizable at law or in equity, including an action or lawsuit seeking damages, injunction (without proof of irreparable harm or inadequate remedy at law), specific performance, or any other form of relief, against any person, firm, or entity violating or attempting to violate any covenant or restriction herein. The failure by any party to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of such covenant or restriction or of the right of such party to thereafter enforce such covenant or restriction. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees and court costs at all trial and appellate levels. The South Florida Water Management District has the right to enforce, by proceedings at law or in equity, the provisions contained in this Declaration that relate to the maintenance, operation, and repair of the Surface Water Management System, the Drainage System and Conservation Easement. The South Florida Water Management District has the right to take enforcement action, including a civil action for an injunction and penalties, against the Community Association to compel it to correct any outstanding problems with the Surface Water Management System facilities or in mitigation or conservation areas under the responsibility or control of the Community Association. The Registered Agent of the Community Association shall maintain copies of further permitting actions for the benefit of the Community Association and its members.

12.4 Assignment. Declarant shall have the right, from time to time, to assign in whole or in part any of its rights or obligations under this Declaration.

12.5 Notices. Notices shall be given as to Owners by posting at the Owner's dwelling or vacant Lot, or mailing first class postage prepaid to the Owner's address maintained by the Community Association, or by posting a notice applicable to all Owners at the Common Property, and as to Declarant, by sending certified mail to the corporate address of Declarant filed with the Florida Secretary of State. Notices sent by mail shall be effective upon mailing.

#### 12.6 Amendment.

(a) Declarant specifically reserves the absolute and unconditional right, as long as Declarant owns any of the Lots, to amend this Declaration without the consent or joinder of any party to (i) conform to the requirements of the South Florida Water Management District, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration, Department of Housing and Urban Development, or any other generally recognized institution involved in the purchase and sale of home loan mortgages; (ii) conform to the requirements of mortgage lenders or title insurance companies; or (iii) perfect, clarify, or make internally consistent the provisions of this Declaration.

(b) Declarant reserves the right to amend this Declaration in any other manner without the joinder of any party, as long as no Owner's right to the use and enjoyment of the Owner's Lot is materially altered.

(c) This Declaration may be amended by consent of Owners of 60% or more of the Lots as evidenced by recording an instrument executed by said Owners, or if approved at the annual meeting of the members, by recording an instrument executed by the President of the Community Association in the Public Records, provided that no such amendment will be effective without the consent of Declarant, or his assigns, until Declarant and his affiliates own no Lots or other property within SANDY OAKS.

(d) Declarant, without the consent of any party, may bring within the scheme of this Declaration additional land by Supplementary Declaration in accordance with the procedures set forth in Paragraph 2.2.

(e) Any proposed amendment to the Declaration, the Articles of Incorporation or By-Laws of the Community Association that would affect the Surface Water Management System (including the environmental Conservation Easement, buffer areas and the water management portions of the common areas), or the Drainage System be submitted to the South Florida Water Management District for a determination whether the amendment necessitates ad modification of the Surface Water Management System Permit. If a modification is necessary, the South Florida Water Management District will so advise the permittee.

12.7 Captions and Statement of Purpose. Captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only, and in no way shall such captions or headings define, limit, or in any way affect any of the

terms or provisions of this Declaration. The Statement of Purpose is a summary of general information only and in no way shall such statement define, limit, or in any way affect any of the terms or provisions of this Declaration.

12.8 Gender and Plural Terms. Whenever the context so requires, any pronoun used in this Declaration may be deemed to mean the corresponding masculine, feminine, or neuter form of the pronoun, and the singular form of any noun or pronoun may be deemed to mean the corresponding plural form of the pronoun and vice versa.

12.9 Severability; Amendments to Laws. If any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, that judicial determination shall in no way affect any of the other provisions of this Declaration, which shall remain in full force and effect. All other references to applicable laws and regulations will incorporate amendments to those laws and regulations.

12.10 Duration and Renewal. This Declaration (but excluding the easements created in this Declaration, which are perpetual) and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens, and liens contained in this Declaration, including, without limitation, the provisions for assessment of Lots, shall run with and bind all of the Lots and inure to the benefit of Declarant, the Owners, and their respective legal representatives, heirs, successors, and assigns, for a term of 90 years from the date of this Declaration, after which time this Declaration shall be automatically renewed and extended for successive periods of 10 years each unless at least one year before the termination of the 90-year period or before each such 10-year extension, as the case may be, there is recorded in the Public Records an instrument agreeing to terminate this Declaration, which instrument is signed by a majority of all Owners and all Mortgagees, upon which event this Declaration shall be terminated upon the expiration of the 90-year term or the 10-year extension during which such instrument was recorded, as the case may be. This paragraph shall be binding and effective notwithstanding the Marketable Record Title Act, Florida Statutes, as hereafter amended.

12.11 Waiver of Jury Trial. In any action or litigation arising out of this Declaration, including collection of the assessments, all Owners and all parties agree that any dispute shall be determined by a judge and not a jury, and waive their right to a jury trial in

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed the day and year first above written.

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness

STATE OF FLORIDA  
COUNTY OF HENDRY

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared \_\_\_\_\_, to me personally known, and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ of \_\_\_\_\_, 2018.

(notary seal)

\_\_\_\_\_  
Notary Public  
My Commission Expires:

DRAFT