

## **Amended and Restated Declaration of Covenants and Restrictions**

**On September 10, 1981, the original Declaration of Covenants and Restrictions for the community commonly referred to as Oak Hollow was recorded in Official Record Book 677, at Pages 735 et seq., of the Public Records of Charlotte County, Florida. That Declaration, as it has previously been amended is hereby further amended in part, and is restated in its entirety, as amended.**

### **WITNESSETH:**

This Amended and Restated Declaration of Covenants and Restrictions is made by Oak Hollow Property Owners' Association, Inc., a Florida corporation not for profit. The real property subject to this Declaration is legally described in Article II of the original Declaration, as amended. Copies of the plat maps are attached to this Declaration for ease of reference.

No additional land is being included in the Oak Hollow Community by this Declaration. The covenants and restrictions contained in this declaration run with the land and, are binding upon, and inure to the benefit of, all present and future Owners of Lots. The acquisition of an ownership interest in the real property, or the lease, occupancy, or use of any portion of a lot or Living Unit, constitutes an acceptance and ratification by the Owner of all provisions of this Declaration, as it may be amended from time to time, and an agreement to be bound by its terms.

### **ARTICLE 1. DEFINITIONS**

**Section 1.** The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

- (A) **“Association”** shall mean and refer to **OAK HOLLOW PROPERTY OWNERS’ ASSOCIATION, INC.**
- (B) **“The Properties”** shall mean and refer to all such existing properties, and additions thereto, subject to this Declaration under the provisions of Article II hereof.
- (C) **“Common Properties”** shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties and intended to be devoted to common use and enjoyment of the owners of The Properties, as more fully described in the original Declaration.
- (D) **“Lot”** means any one or more of the platted parcels of land into which the Community is subdivided, upon each of which a Residence has been or will be constructed. Wherever it appears, “Lot” is to be interpreted as though followed immediately by the words “and the Living Unit constructed thereon,” unless the context clearly requires a different interpretation.
- (E) **“Living Unit”** shall mean and refer to any portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family.
- (F) **“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, but notwithstanding any applicable theory concerning a mortgage encumbering any Lot, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (G) **“Member”** shall mean and refer to all those Owners of Lots subject to this Declaration.

## **ARTICLE II. ASSOCIATION**

The administration and management of the property within this Neighborhood is by Oak Hollow Property Owners' Association, Inc., a Florida corporation not for profit:

**Section 1. Membership.** Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by these covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member. Membership is appurtenant to, runs with, and cannot be separated from, the real property ownership interest upon which it is based. The burden of notifying the Association of a change of membership shall be borne by the new member; and The Association shall not be required to recognize a change of membership until the new member furnishes satisfactory proof of ownership.

**Section 2. Voting Rights.** Members who are not more than ninety (90) days delinquent in the payment of their maintenance assessments shall be entitled to one vote for each Lot in which they hold the interests required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

**Section 3. Quorum.** The presence (either in person or by proxy) at any regular or special meeting of members entitled to cast, thirty (30%) percent of the membership shall constitute a quorum for any action.

**Section 4. Powers and duties.** The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws, and those provided in Chapter 720, Florida Statutes, particularly Sections 720.301 through 720.312, Florida Statutes (2000), as they may be amended from time to time. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. The Association has the power to enter into agreements and to acquire leaseholds, memberships and ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the Neighborhood. If the Association has the authority to maintain a class action suit as plaintiff, the Association may also be joined as a defendant in an action as to the representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual Owner or class of Owners to bring any action which may otherwise be available.

**Section 5. Board of Directors.** Except as otherwise expressly provided by law or by the Governing Documents, the Association acts through its Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Association have a fiduciary relationship to the members.

**Section 6. Delegation of management.** The Association may contract with a manager or management agent to assist the Association in carrying out its powers and duties by performing such functions as submission of proposals, collection of assessments, keeping of records, and enforcement of covenants and rules, with funds made available by the Association for such purposes. The Association and its officers however; retain at all times the powers, duties, and non-delegable responsibilities imposed by Sections 720.301-720.312, Florida Statutes (2000), as amended from time to time, and by the Governing Documents.

**Section 7. Termination of membership.** Termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former Owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

**Section 8. Association as Owner of Lots.** The Association has the power to purchase Lots and to acquire and hold, lease, mortgage and convey them, by act of a majority of the Directors. The Association has the right to purchase a Lot at a foreclosure sale resulting from the Association's foreclosure of its lien for unpaid assessments, or to take title by deed in lieu of foreclosure. However, the acquisition of any Lots not resulting from the Association's foreclosure action, must have the prior approval of a majority of the voting interests of the Association present in person or by proxy and voting at a special meeting called for the purpose.

**ARTICLE III.  
PROPERTY RIGHTS IN THE COMMON PROPERTIES**

**Section 1. Members' Easements of Enjoyment.** An Owner is entitled to exclusive use and possession of his Lot and Living Unit subject to the Governing Documents. He/she is entitled to non-exclusive use of the Neighborhood Common Areas for their intended purposes, but no use of any Lot or Common Area may unreasonably interfere with the property rights of other Owners or residents and all use or enjoyment is limited by and must conform to the requirements, powers and duties of the Association as set forth in this Declaration, the Articles, Bylaws of rules and regulations promulgated by the Board of Directors.

**Section 2. Use of Common Properties for Drainage.** The Common Properties may be used for drainage and the temporary retention of storm water run-off from The Properties and other contiguous property, as well as for open space, recreation, rights of ingress and egress, and other related activities. No structure, planting or other material shall be placed or permitted to remain in the Common Properties which might impair or interfere with the drainage or temporary retention of storm water run-off of The Properties or other contiguous property.

- (A) As hereinbefore provided, the obligation to maintain the Common Properties for drainage purposes shall be an obligation of the Association until the area becomes subject to a governmental special assessment district for maintenance and control thereof at which time the Association shall relinquish control and each member of the Association shall be required to make payments of the assessment established by the governmental authority.
- (B) In the event this Association is dissolved or otherwise ceases to exist, then in such event the Association shall have the right to assign, transfer and deliver over to a governmental authority or to any other like organization the powers herein reserved to this 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, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage, the lenders' right 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; and
- (B) the right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and
- (C) the right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment and voting rights of any member as set forth herein; and

- (D) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and
- (E) the right of individual members to the exclusive use of parking spaces as provided in Section 5 of this Article; and
- (F) the drainage and temporary retention of storm water run-off uses of the Common Properties referred to in Section 2 of this Article, and elsewhere herein; and
- (G) the right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer or determination as to the purposes or as to the conditions hereof, shall be effective unless an instrument signed by the President and Secretary of the Association be recorded, certifying that at a special or regular meeting of members called for such purpose, of which thirty (30) days written notice was sent to each member, a two-thirds (2/3) vote of the entire membership was obtained, agreeing to such dedication or transfer.

**Section 4. Parking Rights.** The Association may designate and maintain upon the Common Properties certain parking spaces for the exclusive use of the members, their families and guests. The use of any parking space by any other person may be enjoined by the Association or the Members entitled thereto. No parking shall be permitted in other than designated parking areas.

**Section 5. Party Walls.** Each wall which is built as a part of the original construction of homes upon The Properties and placed on the dividing line between portions of the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

- (a) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- (b) **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
- (c) **Weatherproofing.** Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the who cost of furnishing the necessary protection against such elements.
- (d) **Easement.** Each unit owner grants to the owners of adjoining units and to the Association an easement over, upon, and across his land for the purpose of performing such maintenance as may be required including, but not limited to, repairing party walls, painting and lawn and sprinkler maintenance.
- (e) **Right to Contribution Runs With Land.** The right of any Owner to contribute from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
- (f) **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one (1) arbitrator, and such arbitrators

shall choose one (1) additional arbitrator, and the decision shall be by a majority of all the arbitrators.

**Section 6. Special Exterior Wall and Patio Easements for Lots Having Zero Lot Lines.**

- (a) **Exterior Walls.** Each residence shall contain one windowless exterior wall (the "Special Exterior Wall") which shall face an adjacent lot ("Adjacent Lot").
- (b) **Drainage Easement and Roof Runoff.** An easement is hereby granted to the Association, its officers, agents and employees to enter upon, across, over and under any Lot for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of a Lot so as to improve the drainage of water from the Lots or Common Area. It shall be the responsibility of each Owner to take appropriate measures, whether by landscaping or otherwise, to protect and Adjacent Owner's Lot of the Common Area from water running off of such Owner's roof onto an Adjacent Owner's Lot or onto the Common Area and no Owner shall have liability to otherwise be responsible to any other Owner or to the Association for any loss, expense or damage resulting from such roof runoff.
- (c) **Patio and Repair Easements.** Subject to the temporary easements herein-after described, a perpetual six-foot exclusive easement is hereby created, covering the ground area between: (1) a line running the length of the Special Exterior Wall and extending to the front and rear of each Lot containing the Wall; and (2) the property line of each Adjacent Lot for the benefit of the Owner of each such Adjacent Lot. All Patio Easements may be used by the Owner of each Adjacent Lot for any purposes consistent with this Declaration. In addition to the Patio Easement, each Owner of a residence shall have an easement on the property surrounding an Adjacent Owner's Residence, whether the same is located on such other Owner's Lot, the perpetual easement above described, or the Common Area, for the purpose of temporarily utilizing ladders and such other equipment as may be required to repair any Special Exterior Wall or other exterior wall or the roof of a Residence. Such easement shall be of a temporary nature and shall exist only for such reasonable period of time as is required to make such repairs or perform such maintenance. Such temporary easement shall extend onto such other Owner's Lot, perpetual easement, or the Common Area for only such distance as is reasonably required to undertake and perform such repair and maintenance work.
- (d) **Right of Owner with Respect to Maintenance of Special Exterior Wall.** The Owner of the residence containing the Special Exterior Wall shall have the right at all reasonable times to enter the Patio Easement Area and such other portion of the Adjacent Lot as is reasonably necessary for the purpose of repairing, maintaining, or restoring the Special Exterior Wall; provided, however, that such access shall be permitted only at reasonable times during daylight hours and with the prior knowledge of the Owner of the Adjacent Lot.
- (e) **Restrictions on Owner of Adjacent Lot.** The Owner of the Adjacent Lot shall avoid any action which shall in any way restrict the use and maintenance of the Special Exterior Wall and the adjoining six-foot easement by its Owner including, but not limited to, refraining from attaching any objects to such wall, such as wires, trellises and plantings; defacing the wall in any manner; placing graphics or other design work (whether painted or otherwise) on the special exterior wall; using the wall as a playing surface for any sport; or causing any excessive planting to be installed within the limits of said six-foot easement.
- (f) **Restrictions on Owner with Residence Containing Special Exterior Wall.** The Owner of the Residence containing the Special Exterior Wall shall similarly be prohibited from attaching anything to such wall or from altering it in any way other than painting the wall

in such manner as shall be approved by the Board or the Architectural Review Committee. Additionally, the Owner of such Residence shall not make any openings for windows or otherwise on such wall and shall take no other action, except as specifically contemplated herein, in connection with such Wall which shall interfere with the privacy of the Owner or the Adjacent Lot.

**Section 7.** The Association has the right to grant permits, licenses and easements over the common areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the project. The Association has the right of reasonable entry upon any Lot or Living Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the project.

#### **ARTICLE IV ASSESSMENTS**

The Association has authority to levy assessments against the Lots to pay common expenses if the operation, maintenance, repair, replacement, or protections of the Neighborhood Common Areas and all improvements thereon, the costs of providing insurance for the benefit of the Association, its Directors and officers, and its members; the expenses of carrying out the powers and duties of the Association, and any other expense, whether included in the foregoing or not, that is expressly designated as a common expense in this Declaration or in the Bylaws.

**Section 1. Covenants.** Each Owner of a Lot, and each subsequent Owner of any Lot (including a purchaser at a judicial sale), by acceptance of a deed or other instrument of conveyance, whether it is so expressed in the deed or instrument of conveyance or not, it is deemed to covenant and agree to pay to the Association:

- (a) The Lot's pro rata share of annual assessments based on an annual budget of common expenses adopted by the Board of Directors;
- (b) the Lot's pro rata share of special assessments levied for capital improvements or other expenses that cannot be paid from the annual assessments adopted in the manner set forth in the Bylaws;
- (c) Service charges and other user fees, or charges (including fines) imposed against, or payable by, less than all of the Lots, as authorized elsewhere in this Declaration, in the Bylaws of the Association, or the Rules and Regulations of the Association.

Assessments are established and collected as provided herein, and in the Bylaws. The obligation to pay the assessments and other charges described above, together with late payment fees, interest, costs, and reasonable attorney's fees incurred in the collection process, shall bind each Lot in the hands of its Owner, and his heirs, devisees, personal representative, successors and assigns. Except as otherwise provided with respect to Institutional First Mortgages, whenever title of a Lot or Living Unit is transferred for any reason, the new Owner is jointly and severally liable with the previous Owner for all assessments and other charges that are unpaid at the time of the transfer, regardless of when the obligation was incurred, without prejudice to any right the new Owner may have to recover from the previous Owner any such amounts the new Owner is required to make. No Owner may avoid personal liability for assessments and charges, or release any Lot from the liens and charges hereof, by waiving use rights, or by abandoning the Lot.

**Section 2. Shares of assessments.** Except as otherwise provided below, each Lot and the Owner thereof shall be liable for an equal share of annual and special assessments, such share being a fraction of the whole, the numerator of which is the number "one" and the denominator of which is the total number of Lots included within the Neighborhood. Except as provided elsewhere in this Declaration

as to Institutional Mortgages, no Owner may be excused from the payment of assessments unless all Owners are similarly excused.

**Section 3. Establishment of liens to secure payment.** All assessments, charges and other sums due the Association in accordance with the foregoing, together with any late payment fees, interest at the highest rate allowed by law, and costs of collection (including, but not limited to costs and reasonable attorney's fees) create a continuing lien upon the Lot and Living Unit against which each such assessment or charge is made, and they are also the personal obligation of the Owner of each Lot and Living Unit at the time they came due. This lien relates back to the date this Declaration was originally recorded. The lien is activated by recording a Claim of Lien in the public records of Charlotte County, setting forth the amounts then past due and the due dates, as of the date the Claim of Lien is recorded. The recorded Claim of Lien secures payment of all unpaid assessments and charges due at the time of recording (including late payment fees, interest, costs and attorney's fees as provided above), as well as all assessments and charges that subsequently come due, until the lien is satisfied or a final judgement of foreclosure obtained. Upon full payment of all sums secured by a Claim of Lien, the party making payment is entitled to a satisfaction in recordable form.

**Section 4. Priority of liens.** Except as otherwise provided by law, the Association's lien for unpaid assessments and other charges is subordinate and inferior to that of any recorded Institutional First Mortgage, unless the Association's Claim of Lien was recorded before the mortgage. The Association's lien is superior to, and takes priority over, any other mortgage regardless of when recorded, as well as all other recorded liens except federal tax liens and liens for unpaid property taxes. A lease of a Living Unit is subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

**Section 5. Collection of assessments.** If any Owner fails to pay any assessment, other charge, or installment thereof, within thirty (30) days after the due date, the Association shall have any or all of the following remedies, to the fullest extent permitted by law, which remedies are cumulative, so they are not in lieu of, but are in addition to, all other remedies available.

- (a) To charge interest at the highest rate allowed by law on the amount of the assessment or other charge, from the due date until paid.
- (b) To impose a late payment fee of up to Twenty-five Dollars (\$25.00).
- (c) To file an action in equity to foreclose the lien. Unless another procedure is required by law, the lien may be foreclosed by an action brought by the Association in the same manner as provided in Section 718.116 Florida Statutes, as amended from time to time, for the foreclosure rights of the Association.
- (d) To bring an action at law for a money judgement against the Owner without waiving any foreclosure rights of the Association.
- (e) To the extent lawful, to suspend the voting rights of the Owner in Association matters until the Owner's account is current.
- (f) To deny Association approval of any proposed lease of the Owner's Living Unit.
- (g) To accelerate the due date for the entire remaining unpaid amount of the annual assessment against the Owner's lot for the remainder of the fiscal year, notwithstanding any provision of the Governing Documents calling for installment payments of annual assessments.

**Section 6. Estoppel Certificate.** The Association shall, within fifteen (15) days after receiving a written request for same, furnish to any Owner, purchaser or mortgage lender a certificate in writing signed by an officer of the Association, setting forth whether all assessments and charges against the

Owner's Lot have been paid, and itemizing any that have not been paid. Any person, except the Owner, who relies on the certificate shall be protected thereby.

## **ARTICLE V ENVIRONMENTAL CONTROL COMMITTEE**

**Section 1. Appointment of Committee.** There shall be appointed by the Board of Directors of the Association, an Environmental Control Committee, which committee shall consist of three or more members.

**Section 2. Review by Committee.** The Committee, in its review of all proposed construction, modification, or alterations to existing structures, shall be guided by the following standards of environmental control, to-wit; those included in Article VIII hereof, and

- (a) Architectural Control:** No building, fence, wall, or other addition or modification to existing structures shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change or alteration to the lot or the improvements thereon, including, but not limited to patio covers, pools, pool enclosures, porch enclosures, be made, no change in exterior color or any other work which in any way materially alters the exterior appearance of any structure, landscaping, lot or common area be performed until the plans, draws to appropriate scale, and specification showing the nature, kind shape, height, material and location of the same including exterior color scheme shall have been submitted to an approved in writing as to harmony of external design and location in relation to surrounding structures, topography and vegetation by the Environmental Control Committee. Approval or disapproval of the same shall be made by the Committee and returned to the applicant within a reasonable time, not to exceed (45) days after receipt thereof.
- (b) Existing Trees:** Existing trees on the property will not be removed unless their removal proves to be necessary due to the emplacement of the structure of structures. Location and size of all existing trees including those proposed to be removed, shall be indicated on landscaping plans and specification, and subject to the approval of the Environmental Control Committee.
- (c) Landscaping Approval.** No trees, bushes, shrubs or plants which at maturity and without clipping or pruning thereof, would exceed the height of the dwelling house on any lot or in common areas shall be planted or emplaced until the plans and specifications for the placement of any such trees, bushes, shrubs or plants have been submitted to and approved by the Environmental Control Committee as to the preservation of the natural view and aesthetic beauty which each Lot and the community is intended to enjoy. Said plans as submitted shall show in detail and to scale the proposed elevations and locations of said trees, bushes, shrubs or plants, including the locations of same in relation to all other Lots subject to these restrictions.
- (d) Committee Approval:** Approval of said plans by the Environmental Control Committee may be withheld if in the opinion of the Committee the view of any Lot would be impeded by the location of such tree, bush, shrub or plant. Further, approval may be denied if the Committee or Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to the Neighborhood in part or in whole, or inconsistent with the architectural integrity and scheme of the Property. The Association may remedy any violation of this provision, construction, installation or erection of any improvement or landscaping without the approval of the Committee or breach of any covenant herein contained by entering upon the land where such violation or breach exists and



summarily abate and remove, at the expense of the Owner of the land, any construction or other violation that may be or exist thereon. The Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal. Any costs and expenses incurred by the Association in abatement of any violations including attorney's fees, shall be assessed against the Owner of said Lot, which assessment, if unpaid, shall become a lien on the Lot and foreclosed, or otherwise collected in the same manner as assessments for common expenses.

**Section 3. Variances.** The Board of Directors of the Association or the Environmental Control Committee appointed by the Board may, with the approval of the Charlotte County Planning and Zoning Board, approve variances to the requirements of Article VII, Section 2.

**Section 4. Attorney's Fees.** In all litigation involving architectural or environmental control, the prevailing party shall be entitled to collect and shall be awarded attorney's fees and court costs.

## **ARTICLE VI EXTERIOR MAINTENANCE**

**Section 1. Exterior Maintenance.** Pursuant to agreement with Owner, or upon determination by the Association that an Owner has failed to maintain the exterior of his Living Unit in accordance with general standards of the community, then, after reasonable notice to the Owner specifying such failure and upon Owner's neglect or refusal to correct the same, then, in such event, and in addition to maintenance upon the Common Properties, the Association may provide exterior maintenance upon each such Living Unit or Lot, which maintenance, repair or replacement may include, but is not limited the following: paint, repair, replacement, and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements or any portions of the Lot and improvements thereon visible from the street.

The cost thereof shall be assessed to the Owner and shall be added to and become a part of the maintenance assessment as more particularly described in Section 2 hereof.

**Section 2. Assessment of Cost.** The cost of such exterior maintenance shall be assessed against the Lot or Living Unit upon which such maintenance is done and shall be added to and become part of the assessment or charge to which such Lot or Living Unit is subject under Article IV hereof and, as part of such annual assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article IV hereof.

**Section 3. Access at Reasonable Hours.** For the purpose solely of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Lot or the exterior of any Living Unit at reasonable hours on any day except Sunday.

**Section 4. Common Area Maintenance.** Common Area Maintenance may include, but is not necessarily limited to, the following items:

- (a) Grounds maintenance of the common area including mowing, fertilizing, insecticides, etc.
- (b) Irrigation system maintenance.
- (c) Pool maintenance including cleaning, chemicals, maintenance of pumps, pool heating, including gas and maintenance of heating pumps, etc.
- (d) Maintenance of recreation building and other attendant facilities, including air conditioning equipment.

- (e) Parking lot cleaning and maintenance.
- (f) Waste removal from common areas.
- (g) Maintain perimeter feature, if any, and/or signs, if any.
- (h) Utilities for common areas including water, sewer and electricity.
- (i) Taxes and insurance including real and personal property taxes for common areas and liability and fire insurance.
- (j) Other miscellaneous items which may be included such as exterminating services, security system maintenance and fire extinguisher services.
- (k) A reserve for future maintenance and repairs.

**Section 5. Negligence; Damage Caused by Condition in Living Unit or Lot.** The Owner of each Living Unit or Lot shall be liable for the expenses of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his guests, employees, agents or lessees; but, unless the negligence is of such character as to evidence gross recklessness or willful or wanton disregard for life or property, the Owner shall be liable only to the extent that such expense is not met by proceeds of insurance. If any condition, defect or malfunction existing within a Living Unit, whether caused by the Owner's negligence, or otherwise, shall cause damage to the Common Areas or to other Living Units, the Owner of the offending Living Unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not met by insurance. If one or more of the damaged Living Units is not occupied at the time the damage is discovered, the Association may enter without prior notice to the Owner and take reasonable actions to prevent the spread of damage. Any expenses so incurred by the Association shall be assessed against the owner, together with reasonable attorney's fees and other expenses of enforcement.

## **ARTICLE VII WATER AND SEWER UTILITIES**

**Section 1. Mandatory Connection.** Developer and its wholly owned subsidiary, General Development Utilities, Inc. required owners of Lots or Living Units to connect to and make use of the water and/or sewer services furnished by Utilities and shall pay to Utilities, in addition to the prescribed connection charges and monthly service charges then in effect under the rules, regulations and rate schedules of Utilities, a utilities extension fee (for plant capacity and main lines). The water and/or sewer services are now operated by Charlotte County and lot owners are required to comply with county regulations concerning same.

**Section 2. Prohibition of Individual Wells and Septic Tanks.** No individual water wells, septic tanks or other individual sewage disposal facility shall be permitted on any Lot or Living Unit from such time when central water and/or sewer services are made available, without the express written approval of the Environmental Control Committee and Charlotte County.

**Section 3.** It shall be a requirement that no water closet be installed in any home to be constructed on any of the properties having a capacity in excess of 3.5 gallons.

**Section 4.** General Development Corporation, as the Developer, reserves to itself and its successors and assigns all water rights below 400 feet in depth under all of the properties described in the original Declaration but with no right of surface access thereto.

## **ARTICLE VIII UNIFORM GENERAL REQUIREMENTS**

**Section 1. Residential Lots; Use and Minimum Square Footage Requirements.** The lots in this subdivision are divided into several categories; namely, single-family lots having an area of approximately 7,500 square feet, single-family, zero lot-line lots having an area of approximately 5,000 square feet and multi-family tract. No single-family residence shall be otherwise subdivided. Any subletting of the residence, sharing rent with another not a lessee, or subletting by renting a room or rooms is expressly prohibited. No business buildings may be erected on a Lot and no business may be conducted on any part thereof, nor shall any building or portion thereof be used or maintained as a professional office. No person may publicly advertise the address of a Lot or Living Unit as the address of any business. The use of a Living Unit as a public lodging establishment shall be deemed a business or commercial use. This Section will not be construed to prohibit any Living Unit occupant from maintaining a personal or professional library, from keeping his personal, business or professional records in his Living Unit, or from handling his personal, business or professional telephone calls, written correspondence, or other communications in and from his Living Unit. Such uses are expressly declared customarily incident to residential use. This Section is, however, intended to prohibit commercial or business activity by an Owner or Neighborhood, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Neighborhood by persons making deliveries, pick-ups, employees or other business associates, or customers and clients.

**Section 2.** This property being a Planned Development District as prescribed by Charlotte County, the design and development standards shall be in accordance with the Final Development Plan for Oak Hollow CC-06, filed with the Charlotte County Building and Zoning Department in accordance with Charlotte County's Zoning Regulations for Planned Development Districts. Accordingly, minimum square footage and building setback requirements shall be in accordance with the Final Development Plan aforesaid, being designated as Charlotte County PD-80-6, approved March 17, 1981 by the Board of County Commissioners of Charlotte County.

**Section 3. Recreational Vehicles.** No travel trailer, mobile home, recreational vehicle, boat, tent, storage building, garage, barn, or out building erected on any lot shall at any time be used as a residence, temporarily or permanently. The phrase "recreational vehicle" shall mean every licensed vehicle and conveyance designed, used or maintained primarily as a travel trailer, motor home, camper, boat and boat trailer or other similar use.

**Section 4. Parking.** No truck exceeding three-fourths (3/4) ton payload capacity or recreational vehicle or boat or boat trailer or utility or maintenance trailer and similar vehicles shall be parked overnight (unless in an enclosed garage) in areas zoned residential unless the truck or trailer is employed in the construction or reconstruction of residential units or relocation of residence. No modified pick-ups or vans that do not fit on the residential driveway shall be allowed. Overnight parking on the streets or roadways is prohibited. All vehicles must be registered with the Association and display an Oak Hollow sticker, including those vehicles of guests or tenants who intend to remain on the property for seventy-two (72) hours or more. Storage of vehicles is prohibited. If any resident suspects another of violating this provision or if anyone witnesses a vehicle parked on the property in violation of this provision, the resident shall notify the Board of Directors, in writing. If the Board learns of a violation of this provision, it shall take such further action as deemed necessary under the circumstances, including towing the vehicle. All expenses associated with enforcing compliance with this provision, shall be borne by the owner of the unit which has violated this provision (whether it be by the owner, his/her guest, invitee, tenant, lessee, tenant's guests or licensee), including towing charges, storage expenses, costs and attorney's fees incurred by the Association. Such charges, if unpaid after thirty (30) days of demand, shall be assessed as an individual assessment against the unit and collectable in the same manner as any other assessments, including lien and foreclosure. The remedies provided herein are cumulative and in addition to any other remedy provided in the Declaration, Association's Bylaws, Rules and Regulations or Florida Law.

**Section 5. Signs.** No sign of any kind shall be displayed to the public view on any single family residence Lot, except signs permitted by Charlotte County, which must be approved in writing by the Board of Environmental Control Committee in advance of posting.

*This section was rewritten in the 2005 Amendment. The green font that is underlined is from the 2005 amendment. There are a couple of questions in red. The previous wording is shown in black font with a strikethrough.*

**Section 6. Animals.**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other domestic pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. The ability to keep such a pet is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents on the Properties. All pets must be carried under the Owner's arm or leashed when outside the Living Unit. Owners are responsible for the conduct and to the clean-up after their pts(s). Pets shall not be left unattended on screened porches, lanais or in garages.

**Section 7. Trash Storage.** No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste must be kept in sanitary containers and placed in the trash enclosures, if provided in the project. No lot on which improvements have been constructed or erected shall be allowed to become or remain overgrown and/or unsightly.

**Section 8. Planting.** No hedge or shrub planting which obstructs sight lines at elevations between two (2') and six (6') feet above the roadways shall be placed or permitted to remain on any corner lots within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25') feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10') feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within the above described limits of intersections unless the foliage line is maintained at or above six (6') feet above roadway intersection elevation to prevent obstruction of sight lines.

**Section 9. Tree Preservation.** No large trees measuring six (6') inches or more in diameter at ground level may be removed without the written approval of the Environmental Control Committee unless located within ten (10') feet of the main dwelling or accessory building or within ten (10') feet of the approved site for such building. No trees shall be removed from any Lot without the consent of the Environmental Control Committee.

**Section 10. Oil, Gas and Mineral Operations.** No operations with respect to oil, gas and minerals, including without limitation, drilling, development, refining, exploration, quarrying mining or extractions of any kind shall be permitted upon any Lot nor shall oil or gas wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick, drilling rig or other structure designed for use in drilling oil or gas shall be erected, maintained, or permitted on any Lot or parcel.

**Section 11. Easements.** Easements for the installation and maintenance of public utilities and drainage facilities are reserved as noted on the recorded plat. Within these easements, or any easement granted by the Developer pursuant to Article IV, Section 6, no structure, planting or other material shall be placed or permitted to remain which may damage, impair or interfere with the installation and maintenance of utilities. The easement area of each Lot, tract, or parcel and all permitted improvements within said easement areas shall be maintained continuously by the Owner of the Lot, tract, or parcel, except for those improvements for which a public authority or utility company is responsible. Each Owner is granted an easement over, upon and across the land of the adjoining Owner on each side for the purpose of maintaining, painting and repairing the extension of the wall on said Owner's property.

**Section 12. Encroachment on Lots.** In the event that any portion of any roadway, drainage way, walkway, parking area, roof drainage system, water lines, sewer lines, utility lines, sprinkler system or any other structure as originally constructed by Developer or its designee, successor or assign encroaches on any Lot, it shall be deemed that the Owner of such Lot has granted a perpetual easement to the Owner of the adjoining Lot or the Association as the case may be, for continuing maintenance and

use of such encroaching roadway, walkway, parking area, roof drainage system, water lines, sewer line, utility line, sprinkler system or structure if same are constructed in substantial conformance to the original. Other encroachments may be maintained as herein provided. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

**Section 13. Easement for Walkways.** The Developer reserves to itself and its successors and assigns the right to construct walkways between the homes for the benefit of the occupants and their guests. To this extent and for this purpose the Developer reserves an easement over and across said walkways.

**Section 14.** It is understood and agreed that said premises may not and shall not be used for convalescing or custodial care as a home occupation.

**Section 15. Additional Rules and Regulations.** The Board of Directors of the Association, may establish such additional rules and regulations as may be deemed by it to be for the best interests of the Association and its members.

**Section 16. Fines.** In addition to all other remedies available at law or in equity, the Board of Directors may levy reasonable fines against owners, tenants, and guests who commit violations of the provisions of the documents or Association rules and regulations. The fines shall be in an amount deemed necessary by the Board to deter future violations. Each day a violation continues shall be considered a separate violation and a fine may be levied on the basis of each day of a continuing violation with a single notice and opportunity for hearing up to an aggregate of One Thousand (\$1,000.00) Dollars or the maximum permitted by law. The procedure for imposing such fines shall be as follows:

- A. The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing before a committee of at least three members appointed by the Board of Directors who are not officers, directors, or employees of the Association or the spouse, child, brother, or sister of an officer, director or employee; after reasonable notice of not less than fourteen (14) days, and the notice shall include:
  1. A statement of the date, time, and place of the hearing;
  2. A statement of the provisions of the Declaration, Bylaws, or rules which have allegedly been violated; and
  3. A short and plain statement of the matters asserted by the Association.
- B. The party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. If the committee, by majority vote does not approve a proposed fine, it may not be imposed.
- C. Fines shall be treated as an assessment due to the Association thirty (30) days after written notice to the Owner of the imposition of the fine. Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled. Outstanding fines, if unpaid after thirty (30) days from the due date, shall be assessed against the Owner of the Lot and/or Living Unit, which assessment may become a lien on the Lot and/or Living Unit and foreclosed or otherwise collected in the same manner as assessments for common expenses.

**Section 17. Leasing.** In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of living units by their owners shall be restricted as provided for in this section.

All leases of living units must be in writing. A living unit owner may lease only his/her entire living unit, and then only in accordance with the provisions of this Section, after receiving the approval of the Association. For purposes hereof, occupancy of a Unit by a person or persons in the absence of the Owner, except for the spouse of an Owner, parents, grandparents, children, grandchildren or siblings, of either the Owner or spouse, in excess of twenty-one (21) days, shall be treated as a lease. Only natural persons may lease units for single family residential purposes, defined as follows: occupancy by a single housekeeping unit composed of one (1) person; two (2) people no matter how related; or three (3) or more persons all who are related to each other by blood, marriage, legal adoption or acting as guardian, legal custodian, or legal designee of a parent for a minor child residing within the unit,, it being the intention of this provision to prohibit occupancy of a unit by three (3) or more unrelated adults while clarifying that nothing herein shall be applied or construed to permit discrimination based upon familial status, handicap, or other protected classifications under Fair Housing Laws.

### 17.1 Procedures:

- A. Notice by the Living Unit Owner.** An owner or owner's agent intending to lease their living unit for a period of six (6) months or more, or renew or extend a lease so that the tenancy exceeds six (6) months, shall give to the Board of Directors, or its designee, written notice of such intention thirty (30) days prior to the proposed transaction, the application fee, together with the name and address of the proposed lessee, an executed copy of the proposed lease, and such other information as may reasonably be required. The personal appearance of any lessee and his spouse, if any, may be required as a condition of approval.
- B. Lessee Applicants.** Application for permission to lease for more than six (6) months shall be made on application forms available from the Association, to include provisions authorizing credit, criminal and past tenancy investigation checks. The lessee applicant shall pay to the Association a transfer fee, up to the amount allowed by law, to cover the investigative checks. The fee is non-refundable.
- C. Approval.** After the required notice, payment of application fee, and all investigation checks, information or appearances requested have been provided, the Board shall approve or disapprove the proposed lessee within the thirty (30) day time period. If the Board neither approves nor disapproves within the time stated above, such failure to act shall be deemed the equivalent of approval, and on demand from lessee the Board shall issue a written letter of approval to the lessee.
- D. Disapproval.** A proposed lessee may be disapproved by the Board for cause if investigative results do not meet the required minimum criteria promulgated from time to time by the Board of Directors, or are otherwise unsatisfactory. The minimum criteria shall include the following:
  - 1. The owner is delinquent in the payment of assessments at the time the application is considered;

2. The owner has a history of leasing his unit to troublesome lessees and/or refusing to control and accept responsibility for the occupancy of his unit;
3. The application on its face appears to indicate that the person seeking approval intends to conduct himself in a manner inconsistent with applicable covenants and restrictions;
4. The prospective lessee has been convicted of a felony involving violence to persons or property, or a felon demonstrating dishonesty or moral turpitude;
5. The prospective lessee has a history of conduct which evidences disregard for the rights and property of others;
6. In the case of a renewal, the lessee has during previous occupancy, evidenced an attitude of disregard for applicable covenants and restrictions;
7. The prospective lessee gives false information or incomplete information to the Association as part of the application procedure.

**E. Assessments.** The legal responsibility for paying Association assessments shall not be delegated to or become the responsibility of the lessee.

**F. Failure to Give Notice of Obtain Approval.** If proper notice is not given, the Board may approve or disapprove the lessee. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee with **thirty (30) days'** notice, and without securing consent to such eviction from the owner or owners agent.

**G. Disapproval Notice.** Notice of disapproval of the lessee shall be sent or delivered to the owner and owner's agent presenting the proposed intent to lease.

**H. Board Delegation.** The Board may by resolution, delegate approval powers to an ad hoc committee, which shall consist of at least two (2) Board members, two (2) association members, and the Manager.

**17.2 Regulation by Association.** All of the provisions of the documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a living unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenant(s) in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not. The Board may require the use of a lease addendum to

incorporate the terms of this paragraph into any lease approved by the Board. The unit owners shall have a duty to bring his or her tenant's conduct into compliance with this Declaration or the rules and regulations by whatever action is necessary, including without limitation the institution of eviction proceedings, without notice to cure, where legally permissible. If the unit owner fails to bring the conduct to the tenant into compliance, the Association shall then have the authority to act as agent of the owner to undertake whatever action is necessary to abate the tenant's non-compliance, including without limitation the right to institute an action for eviction against the tenant in the name of the Association. The Association shall have a right to recover any costs or fees, including attorney's fees, from the unit owner which shall be secured by assessment and lien in the same manner as common expense charges.

## **ARTICLE IX GENERAL PROVISIONS**

**Section 1. Amendments.** Anything in this Declaration to the contrary notwithstanding, this Declaration of Covenants and Restrictions may be amended from time to time by recording among the Public Records of Charlotte County, Florida, an instrument executed by the President and attested to by the Secretary of the Association indicating that at a meeting called for that purpose at which a quorum has been attained, two-thirds (2/3) of the fee owners present, in person or by proxy, voted to approve such amendment, provided however, an amendment shall not be adopted unless approved by not less than 230 fee owners. Alternatively, amendments to this Declaration may be approved in writing, without a meeting, with the approval of 230 fee owners. Any amendment which would affect the surface water management system, including the water management portions of the common areas, as provided in Article IX hereof, must have the prior approval of the South Florida Water Management District.

**Section 2. Duration.** Except as provided in Section 1 hereof, 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 the Association, or the Owner of any land subject to this Declaration and their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, unless the same be amended, modified or revised pursuant to the provisions of Section 1 of this Article. Thereafter, and after the expiration of said initial twenty (20) year period, said covenants shall be automatically extended for successive periods of ten (10) years unless amended, modified, or revised as provided in Section 1 of this Article.

**Section 3. Notices.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, or hand delivered to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing or delivery.

**Section 4. Enforcement.** Every Owner, tenant, guest or other invitee shall at all times comply with all the covenants, conditions and restrictions of the Governing Documents including this Declaration, the Articles, Bylaws and Rules and Regulations. Violations of the Governing Documents should be reported immediately in writing to a member of



the Board of Directors. Before undertaking any remedial, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents fails to abide by them, as they are interpreted by the Board of Directors of the Association, that person shall be liable to be fined by the Association for each such failure to comply or other violation. Judicial enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants, conditions and restrictions; 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.

Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Association and its authorized agent or representative in addition to all other remedies, the right to enter upon the land where such violation or breach exists and summarily abate and remove, at the expense of the Owner of the land, any construction or other violation that may be or exist thereon. Any costs and expenses incurred by the Association in abatement or any violations including attorney's fees, shall be assessed against the Owner of said Lot, which assessment, if unpaid, shall become a lien on the Lot and foreclosed, or otherwise collected in the same manner as assessments for common expenses. All rights and remedies available to the Association, whether set forth herein or in law, are cumulative and in addition to each other. The prevailing party in any legal, equitable or administrative action sought to enforce this Declaration, the Articles, the Bylaws or rules and regulations of the Association shall be entitled to an award of prevailing party attorney's fees and costs, at pretrial, trial and appellate levels.

**Section 5. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision hereof, which shall remain in full force and effect.

**Section 6. Financial Statements.** Any holder of a first mortgage shall be or is entitled upon written request, to a finance statement of the Association for the immediately preceding fiscal year.

**Section 7. Lender's Notices.** Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the property number or address, any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of

- A. Any condemnation loss or any casualty loss which affects a material portion of the project or any property on which there is a first mortgage held, insured, insured or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

- B. Any delinquency in the payment of assessments or charges owned by an owner of a property subject to a first mortgage held, insured or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of 60 days;
- C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- D. Any proposed action which would require the consent of a specified percentage of mortgage holders.

**Section 8. Insurance and Fidelity Bonds.** The Association has a duty to maintain in effect casualty and liability insurance and fidelity bond coverage as specified in the FNMA Lending Guide, Chapter Three, Part 5, Insurance Requirements.

## **ARTICLE X DRAINAGE SYSTEM**

**Section 1.** There is reserved to the Association the ownership and control of all areas dedicated for drainage assessments so that the Association shall have the right and power to operate and maintain the drainage system.

**Section 2.** The Association reserves to itself the right to levy assessments against all Owners for the purpose of operating and maintaining such drainage system and in connection therewith, reserves to itself the lien rights as provided elsewhere in this Declaration.

**Section 3.** In the event that the corporation is dissolved or its existence is otherwise terminated, then in such event the Association reserves the right to transfer and assign its ownership and control over such drainage maintenance areas to a Governmental authority or to another incorporated property owners' association with like powers.