

THIS DOCUMENT PREPARED BY  
AND RETURN TO:  
Jennifer L. Davis, Esq.  
ARIAS BOSINGER, PLLC  
845 E. New Haven Ave.  
Melbourne, FL 32901

----- the space above this line is reserved for recording purposes -----

**CERTIFICATE OF ADOPTION OF SIXTH AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
SUNTREE**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, as President and Secretary of the SUNTREE MASTER HOMEOWNERS ASSOCIATION, INC. (hereinafter "Association"), pursuant to the Florida Statutes and the FIFTH AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SUNTREE, recorded in Official Records Book 8775, Page 2833, *et seq.*, of the Public Records of Brevard County, Florida, as amended and supplemented (hereinafter "Fifth Amended Declaration"), hereby certify that the SIXTH AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SUNTREE, which document is attached hereto and by reference made a part hereof (hereinafter "Sixth Amended Declaration"), was duly adopted at a meeting of the members on the 22<sup>nd</sup> day of March, 2023 (hereinafter the "Meeting").

Said Fifth Amended Declaration was approved in accordance with the requirements of Article XI, Section 5 of the Fifth Amended Declaration, as amended, by the affirmative vote of a majority of Members who were voting in person or by proxy at the Meeting of the Members at which a quorum was attained. Proper notice was given for the Meeting pursuant to the By-Laws of the Association and the Florida Statutes. The Notice of the Meeting stated the purpose, time, date and location of the Meeting.

The Association is a homeowners association created pursuant to the laws of the State of Florida, and does hereby declare that the Fifth Amended Declaration is merged into and is superseded and completely replaced by the Sixth Amended Declaration attached hereto.

IN WITNESS HEREOF, the Association has caused these presents to be executed in its name, this 24<sup>th</sup> day of April, 2023.

Signed, sealed and delivered  
in the presence of:

*Michael K. Beasy*  
(Sign - Witness 1)  
Michael K. Beasy  
(Print - Witness 1)

*Olivia Hayes*  
(Sign - Witness 2)  
Olivia Hayes  
(Print - Witness 2)

*Olivia Hayes*  
(Sign - Witness 1)  
Olivia Hayes  
(Print - Witness 1)

*Theresa O'Brien*  
(Sign - Witness 2)  
Theresa O'Brien  
(Print - Witness 2)

SUNTREE MASTER HOMEOWNERS  
ASSOCIATION, INC.

By: *Michael Zocchi*  
(Sign)  
Michael Zocchi  
(Print)

President, Suntree Master Homeowners  
Association, Inc.

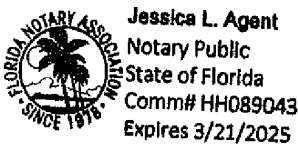
Attest: *Ronald M. Fagnoli*  
(Sign)  
RONALD M. FAGNOLI  
(Print)

Secretary, Suntree Master Homeowners  
Association, Inc.

STATE OF FLORIDA  
COUNTY OF Brevard

The foregoing was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 24<sup>th</sup> day of April, 2023, by Michael Zocchi, as President, and Ronald Fagnoli, as Secretary, of SUNTREE MASTER HOMEOWNERS ASSOCIATION, INC., a Florida not for profit corporation, on behalf of the corporation, who are ☒ personally known to me or who have ☐ produced \_\_\_\_\_ as identification.

NOTARY PUBLIC



*J. L. Agent* (Sign)  
Jessica L Agent (Print)

State of Florida, At Large  
My Commission Expires: 03/21/2025

SIXTH AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SUNTREE

THIS SIXTH AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SUNTREE ("Declaration") is made the date this Declaration is recorded in the Public Records of Brevard County, Florida, by the Owners of SUNTREE MASTER HOMEOWNERS ASSOCIATION, INC., a Florida corporation not-for-profit.

RECITALS

WHEREAS, SUNTREE MASTER HOMEOWNERS ASSOCIATION, INC., ("Association") is an existing and active Florida non-profit corporation operating pursuant to Chapter 720, Florida Statutes, and other applicable laws;

WHEREAS, the Association is, among other things, responsible for the operation, maintenance and administration of the community known as Suntree PUD;

WHEREAS, SUNTREE DEVELOPMENT CORP., a Florida corporation, its successors and assigns (collectively referred to as "Declarant") developed Suntree PUD, which is located on the real property more particularly described on Exhibit "A" hereto ("Property");

WHEREAS, the Declarant subjected the Property to a set of covenants, conditions and restrictions in that certain Declaration of Covenants, Conditions and Restrictions of Suntree, as recorded in Official Records Book 1545, Page 144, *et seq.*, of the Public Records of Brevard County, Florida, as amended and restated from time to time, and as preserved by that certain Affidavit in Compliance with Section 712.06 of the Florida Statutes Dealing with Florida's Marketable Record of Title Act, recorded in Official Records Book 5278, Page 3401, *et seq.*, of the Public Records of Brevard County, Florida (collectively referred to as "Previous Declaration");

WHEREAS, the Association is desirous of amending the Previous Declaration with this Declaration; and

WHEREAS, pursuant to Article XI, Section 5 of the Previous Declaration, this Declaration shall be approved by the affirmative vote of a majority of Members voting in person or by proxy at a meeting of the Members at which a quorum is attained.

NOW THEREFORE, in consideration of the foregoing, the Association does hereby declare that the Previous Declaration is merged into and is superseded and completely replaced by this Declaration, such that the Property and all additions thereto shall be owned, held, and conveyed subject to the covenants, restrictions, easements, reservations and liens herein established, all of which shall be covenants running with the land and shall be binding and inure to the benefit of the Association and the Owners of Units within the Property, their respective successors and assigns, and any other parties having any right, title or interest in such real property.

## ARTICLE I DEFINITIONS

Section 1. “Association” shall mean and refer to SUNTREE MASTER HOMEOWNERS ASSOCIATION, INC., (formerly known as “Suntree Homeowners Association, No One, Inc.”), its successors and assigns.

Section 2. “Board of Directors” shall mean the members in good standing of the Association who are elected by the membership of the Association in accordance with the Articles of Incorporation and By-Laws, to direct the day-to-day affairs of the Association.

Section 3. “Common Area” shall mean all real and personal property (including the improvements thereto and interests therein) dedicated to or owned by the Association for the common use and enjoyment of the Owners, or property which has been dedicated to the Association or Owners for common use and enjoyment.

Section 4. “Common Expenses” shall mean and refer to the costs and expenses incurred by the Association with regard to the ownership, operation, maintenance and repair of the Common Areas, including but not limited to the Surface Water Management System, the administration of affairs of the Association, and other expenses properly and reasonably incurred by the Association in performing and carrying out its duties and obligations as specified in this Declaration. Common expenses shall be payable by the Members to the Association.

Section 5. “Declarant” shall mean and refer to The Suntree Partners, its successors and assigns.

Section 6. “Governing Documents” shall mean and refer to the Association’s Declaration, its Articles of Incorporation, By-Laws or any other rules, policies, criteria, and/or regulations of the Association.

Section 7. “Guest” shall mean and refer to a person who enters a Unit at the invitation of an Owner, Resident, Tenant or Occupant, for the purposes of visiting.

Section 8. “Lot” shall mean and refer to each portion of the Properties located in the platted subdivision and which is designated for one single family unit excluding (a) the Common Areas and road rights-of-way, and (b) tracts that are (i) boundary platted but not platted into individual lots and (ii) reserved by Declarant, the Association, its successors or assigns, for future development into Lots, as shown or as subsequently shown on any recorded subdivision map of the Properties.

Section 9. “Member” shall mean and refer to the Owner of any Unit. If the Owner consists of more than one person or trustee, or is another entity, the Owner shall designate one individual to act on behalf of the Member. The Member shall be responsible for providing the Association with notice of any change in mailing address, facsimile number or electronic mail address.

Section 10. “Occupant” shall mean and refer to the person occupying a Unit as a Resident or Guest.

Section 11. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit, including contract sellers, but excluding those having such interest merely as security for the performance of obligation. A contract seller is any owner who sells a Unit under a contract for deed or an agreement for deed and who retains title to the Unit until full purchase price is paid.

Section 12. “Properties” shall mean that certain real property presently annexed and subjected to this Declaration, as well as any other land subjected to this Declaration in the future by Declarant, the Association, its successors or assigns after it is annexed, excluding any land removed (de-annexed) from the Declaration in accordance with the provisions herein. “Properties” shall not include any real property unless it is annexed and subjected to this Declaration.

Section 13. “Rental Unit” shall mean a Unit that is rented or leased to a person or entity who is not the Owner of the Unit including but not limited to a rental apartment Unit.

Section 14. “Resident” shall mean and refer to the person or persons occupying a Unit and may be an Owner, Tenant, or Guest.

Section 15. “Sub-Association” shall mean each second tier homeowners association and each second tier condominium association created which governs a specific neighborhood within the Properties.

Section 16. “Tenant” shall mean and refer to a person occupying a Unit, other than the Owner, whether pursuant to a verbal or written agreement, where said occupancy by the non-Owner involves consideration, the payment of money, the exchange of goods or services, etc.

Section 17. “Unit” shall mean and include (i) any Lot within the Properties, (ii) any condominium parcel as defined by Chapter 718, Florida Statutes (“Condominium Act”), in any condominium development within the Properties, (iii) any share, membership or other interest in any cooperative or other entity organized and operated for the purpose of making residential-dwellings available to its shareholders, members or other beneficiaries, which share membership or other interests, entitles the Owner thereof to possession of any residential dwelling within the Properties including sellers, but including those having an interest merely as security for performance of an obligation, and (iv) any dwelling in any rental apartment project within the Properties. Unit shall not include a time-share unit of ownership.

Section 18. “Neighborhood” shall mean and refer to those portions of the Properties that are platted or dedicated under a common name or those portions of Properties that are declared by the Declarant, the Association, its successors or assigns to be a Neighborhood. A list of all Neighborhoods shall be maintained by the Association and revised from time to time as needed.

Section 19. “Water Management” shall mean the portions of the Common Areas which comprise a Surface Water or Stormwater Management System which is designed and constructed

or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40\_c-40, of 40C-42, F.A.C.

Section 20. "Violations" shall mean and refer to any contravention, transgression or non-compliance with any article, section, provision or whatever, of the Governing Documents of the Association, as amended. A notice of any proposed fine or enforcement action may be sent to the last address known by the Association of the alleged violation and Owner before enforcement action is taken.

Further, a violation is considered separate and independent for each day it exists, whether continuous or not, until corrected; abated; or otherwise resolved by the Board of Directors (For example, if a violation exists on day 1 and is not corrected until day 7, 6 separate violations have occurred.)

## ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement in and to the Common Area which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon Common Area;

(b) the right of the Association to impose fines and to suspend the voting rights and right to the use of the Common Area and recreational facilities by the Owner for any period during which any assessment against his Unit remains unpaid and for a period not to exceed sixty (60) days for any infraction of its Governing Documents or Rules and Regulations; and

(c) the right of the Association to dedicate or transfer all or any part of Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least 2/3 of the Board of Directors and the deed or dedication has been executed by the Association and recorded in the public records.

Section 2. Delegation of Units. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his Tenants, Guests, invitees or contract purchasers who reside on the Unit, subject to the Governing Documents presently in effect and any which may become effective in the future. Any such delegation shall not relieve any Owner from their or its responsibilities and obligations provided herein.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every person or entity who is the record Owner of a fee or undivided fee interests in any Unit (which by definition is within the Properties and subject to assessments by the Association), including sellers under a contract for deed, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Units shall be subject to assessments as provided herein.

Section 2. Voting Rights. The Association shall have one class of voting membership. The Owners of each Unit shall be entitled to one vote for each Unit owned. If a Unit is owned by more than one person, the vote for the Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Unit. If joint or multiple Owners are unable to agree among themselves as to how the vote is to be cast for their Unit, or if more than one vote is cast for any Unit, the vote for that Unit shall not be counted for any purpose except for establishing a quorum. If a Member casts a vote on behalf of a Unit, it shall be conclusively presumed that such Member was acting with the authority and consent of all Owners of that Unit. Any corporation that owns a Unit is also an Owner and Member of this Association. One person designated by the corporate Member (regardless of whether or not such person is otherwise a Member of this Association) shall be deemed to have the authority to vote for the corporation and to act in every respect in the same manner as an individual Member of this Association might act as to the Unit owned by the corporation.

### ARTICLE IV COVENANT FOR MAINTENANCE, ASSESSMENTS, SPECIAL ASSESSMENTS, FINES, AND LIENS

Section 1. Creation of the Lien and Personal Obligation of Assessments and Fines. The Association, as to each portion of the Properties hereby covenants, and each Owner by acceptance of a deed to any portion of the Properties hereby covenants and agrees, whether or not it shall be so expressed in such deed, to pay to the Association: (1) annual assessments or charges for Common Expenses, (2) fines assessed by the Association for any violation of the Governing Documents, (3) individual assessments, and (4) special assessments for capital improvements or casualty, such assessments and fines to be established and collected as hereinafter provided. The assessments and fines, together with interest thereon, and costs and expenses of collection, including reasonable attorney's fees and costs incurred in attempting to collect said assessments and fines before suit or after the filing of suit, at the trial level, appellate level or otherwise, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such fine or assessment is made. Each such assessment or fine together with interest thereon and costs and expenses of collection, including reasonable attorney's fees and costs incurred in attempting to collect said assessments and fines before suit or after the filing of suit, at the trial level, appellate level or otherwise, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessments or fines fell due. Except as provided below, the successors or assigns in title, including any person or entity which acquires title to a Unit at a judicial sale

shall be jointly and severally liable with the previous Owner for all assessments, fines, interest thereon, late charges, and costs and expenses of collection, including reasonable attorney's fees and costs incurred in attempting to collect said assessments and fines before suit or after the filing of suit, at the trial level, appellate level or otherwise, levied against the previous Owner. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or recreational facilities or by abandonment of his Unit. The Association's lien, whether recorded or not, shall not be affected by the sale or transfer of any Unit.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Residents in the Properties, and in particular for the improvement and maintenance of the properties, services and facilities which are devoted to the purpose and related to the use and enjoyment of the Common Areas and of the Units and Lots situated upon the Property, including but not limited:

(a) Charges levied for utility services to the Common Areas, whether supplied by a private or public firm, including without limitation, charges for water, gas, electricity, telephone, sewer and any other type of utility or service charge for Common Areas;

(b) The premiums on any policy or policies of insurance required herein, together with the costs of such other policies of insurance as the Board shall determine to be in the best interest of the Association;

(c) The cost to the Association of purchasing adequate fidelity insurance or bonds to protect against dishonest acts on the part of officers, directors, trustees, agents and employees of the Association and other persons who operate or are responsible for operating the Association;

(d) Expenses necessarily incurred in maintaining, preserving, repairing and replacing the Common Areas and other facilities within the jurisdiction of the Association;

(e) Sums necessary to repair, replace, construct or reconstruct buildings or improvements located in the Common Areas to the extent insurance proceeds are insufficient to pay the costs thereof;

(f) The costs of administration for the Association, including any secretaries, bookkeepers and other employees necessary to carry out the obligations and covenants of the Association under the Governing Documents. In addition, the Association may retain a manager or management company to assist in the operation of the Association and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company so retained are a Common Expense;

(g) The costs to the Association to indemnify its officers, committee members and members of the Board for costs and expenses incurred in pursuance of their duties, obligations and functions hereunder;



(h) The costs of establishing an adequate reserve fund for replacement and/or capital refurbishment of the Common Areas in amounts determined proper and sufficient by the Board. Each Owner understands that no Owner shall have any separate or divisible interest, claim or right to any such funds comprised of the same;

(i) Special assessments that may be levied to defray Common Expenses for which insufficient funds exist or are expected to be produced under the budget;

(j) Expenses properly incurred by the Association, including but not limited to expenses of the operation, maintenance, repair, replacement, casualty, protection of the Common Area, costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as Common Expense by Chapter 720, Florida Statutes, the Declaration, or the By-Laws; and

(k) Other costs and expenses determined by the Board to be reasonable and necessary in carrying out and accomplishing the purposes, duties and obligations of the Association that are not inconsistent with this Declaration, the Articles or Bylaws.

Section 3. Budget. The Board shall prepare and adopt an estimated annual budget, as required by the By-Laws of the Association, which shall reflect the estimated Common Expenses for the next succeeding year.

Section 4. Amendment of Budget. Adjustments may be made by the Board in assessments from time to time to allow for any changes for Common Expenses.

Section 5. Maximum Annual Assessments. The annual assessment may be increased each year not more than the greater of (a) 5% or (b) the percentage increase in the Consumer Price Index of the United States over the actual annual assessment for the previous year, unless the Members, by a vote of a majority of a quorum voting in person or by proxy at a meeting duly called for this purpose, approve a greater increase. The Board of Directors may fix the annual assessment at an amount not in excess of the annual assessment allowed under this Section.

Section 6. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment applicable to that year only for the purposes of defraying in whole or in part the cost of any unanticipated Common Expenses construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, or any other expenses as determined by the Board, provided that any such assessment shall have the assent of at least 2/3 of the Members who are voting in person or by proxy at a meeting duly called for this purpose. If there is no quorum at the meeting, the chairman presiding over such meeting shall adjourn the meeting to a later date, time and place to attempt to establish quorum. If a quorum is not attained at the reconvened meeting, there shall be no special assessment levied in the current fiscal year, but the same special assessment may be voted upon in the following or subsequent fiscal years. Special assessment shall be levied against all Lots.

Notwithstanding the above required approval of the Members, if the special assessment (i) is necessary in response to damage caused by an event for which a state of emergency is declared pursuant to Florida Statute §252.36 in the area encompassed by the Association; or (ii) is required by any governmental authority having jurisdiction over the Property, the Board of Directors may levy the special assessment without approval of the Members.

Section 7. Individual Assessment. The Board of Directors may levy an individual assessment against any Owner and that Owner's Unit in order to cover costs incurred by the Association due to that Owner's failure to maintain that Owner's Unit pursuant to the Governing Documents, to reimburse the Association for loss and/or damage to the Association or to any Common Area or Property or easement area caused by that Owner or that Owner's Tenant, family member, employee, agent, contractor, invitee and/or Guest, and not covered by insurance, or for any other purpose authorized by this Declaration. The Board of Directors may also levy an individual assessment against any Owner and that Owner's Unit to reimburse the Association for costs incurred pursuant to this Declaration in bringing an Owner and/or that Owner's Unit into compliance with the provisions of the Governing Documents, including, but not limited to, enforcement costs such as attorneys' fees and costs incurred prior to the commencement of any legal proceeding. Should the Association be the prevailing party in any proceeding arising from an Owner filing suit against the Association, the Board shall be entitled to recover its reasonable attorneys' fees, paralegal fees and costs of the proceeding incurred while defending such action by levying an individual assessment against such Owner and that Owner's Unit.

Section 8. Notice for Any Action Authorized Under Sections 5 and 6. Any action authorized under Section 5 or 6 shall be taken in accordance with the procedures set forth in the By-Laws for holding a special meeting of the Members, except that the notice required shall be not less than thirty (30) days.

Section 9. Uniform Amount of Assessment. Both annual and special assessments must be fixed at a uniform amount for all Units.

Section 10. Date of Commencement of Assessments: Due Dates. The assessments provided herein shall commence (i) as to each Lot, at the time the Lot is platted and annexed and (ii) as to each condominium parcel as defined in the Condominium Act, at the time the condominium parcel is created pursuant to the Declaration of Condominium Ownership. No portion of the Properties shall be assessed other than Units. The first annual assessment for each Unit shall be adjusted according to the number of months remaining in the calendar year and shall be due payable within thirty (30) days after the date on which the plat or dedication of condominium ownership is recorded. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment year. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon written demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on the Unit is binding upon the Association as of the date of its issuance as to any recipient who has relied thereon.

Section 11. Effect of Nonpayment of Assessments and Fines. Any assessment not paid within thirty (30) days after the due date shall be considered delinquent and shall bear interest at the highest lawful rate permitted in the State of Florida from the due date until fully paid. If any Owner is delinquent in the payment of any assessment and/or any installment of any assessment, the Association shall have the authority to impose on and collect from that Owner an administrative late fee in an amount not to exceed Twenty-Five Dollars and no/100 (\$25.00) or five percent (5%) of the amount of the assessments that are delinquent and/or each installment of any assessment that is delinquent, whichever is the greater amount. The Association shall have a continuing lien on the Unit for any unpaid assessments, together with interests, late fees, administrative fees, administrative costs, collection costs, and attorneys' fees and costs which the assessment accrued. The said lien shall be effective from and after the time of recording in the public records of Brevard County, Florida, of a claim of lien stating the description of the Unit, the name of the record Owner, the amount due and payable and the date due, and the said lien shall continue in effect until all sums secured by the lien shall have been fully paid.

All such claims of lien shall include only assessments and fines (to the extent allowed by law) which are payable and due when the said claim of lien is recorded, and all such claims of lien shall be signed and verified by an officer or agent of the Association. Where any such liens shall have been paid in full, the party making payment shall be entitled, upon written request, to receive a satisfaction of such lien in a form that may be recorded in the public records of Brevard County, Florida, upon written request. The Board of Directors may take such action as they deem necessary to collect assessments and fines and interest thereon, by personal action or by enforcing and foreclosing said lien, and may settle and compromise the same if in the interest of the Association. The delinquent Owner shall pay all costs, including attorney's fees, incurred by the Association incident to the collection of such fines, costs, fees, interest and assessments, together with all sums advanced for taxes, mortgages and insurance. The lien shall be deemed to cover said additional costs and advances. Filing of one action shall not be a bar to filing of other actions. The Association through its Board of Directors, will be entitled to bid at any sale held pursuant to a suit to foreclose a fine or assessment lien, and it may apply as a cash credit against its bid all sums due the Association covered by the lien enforced.

In addition to all other remedies, as may be provided by the Association's Governing Documents, specifically Article XVII of this Declaration, and to the maximum extent lawful, in the sole discretion of the Appeals Committee to be established by the Board of Directors in accordance with the requirements of Florida Statutes §720.305(2), a fine or fines or suspension of voting rights or rights to use certain Common Areas and recreational facilities of the Association may be imposed upon an Owner, Tenant, Guest or invitee, as well as any Sub-Association. Such fine or suspension may be imposed for failure to comply with the Governing Documents, including those regarding payment of assessments, provided the following procedures are adhered to:

A. Notice: The Board of Directors of the Association shall cause the Owner, Tenant, Guest and/or invitee or Sub-Association of the alleged Violation or Violations to be notified, with such notice to be sent via certified mail return receipt requested to the last known mailing address of the Owner, Tenant, Guest and/or invitee or Sub-Association on file with the Association, and cause such individual or entity to be provided with at least fourteen (14) days' notice of the intent to fine or suspend use rights to certain Common Areas. Included in the notice

shall be the date, place and time of a hearing before the Appeals Committee at which time the party sought to be fined or issued a suspension may present evidence and reasons why a fine(s) or suspension(s) should not be imposed.

B. Hearing: The alleged non-compliance shall be presented to the Appeals Committee at a hearing at which time the party sought to be fined or issued a suspension for the alleged Violation shall have an opportunity to present defenses and reasons why a fine(s) or suspension(s) should not be imposed. A written decision of the Appeals Committee shall be submitted to the party responsible for the alleged Violation not later than twenty-one (21) days after the meeting of the Appeals Committee. The party sought to be fined or issued a suspension shall have a right to be represented by counsel and/or cross-examine witness.

C. Fines and/or Revocation of Certain Privileges: The Appeals Committee may impose a reasonable fine not to exceed \$100.00 per violation, or, in the case of a Violation which exists for more than one (1) day (hereinafter a "continuing violation"), may impose a reasonable fine on the basis of each day of said continuing violation not to exceed \$2,500.00 in the aggregate, against any Owner, Tenant, Guest and/or invitee, or Sub-Association. Additionally, or alternatively, the Appeals Committee may suspend the rights of any Owner, or Owner's Tenants, Guests, or invitees, or both, or Sub-Association, to use the Common Areas and facilities, to the extent allowed by law.

D. Payment of Fines: Fines shall be paid not later than fifteen (15) days after notice of the imposition of fine is provided to the violator.

E. Collection of Fines: To the extent allowed by law, fines shall be a charge and continuing lien against the subject Unit or Sub-Association property and shall be treated as an assessment, including the right of foreclosure, all as subject to the provisions for the collection of assessments set forth in the Association's Governing Documents.

F. Application of Proceeds: All monies received from fines shall be allocated as directed by the Board of Directors.

G. In addition to other remedies available, if a Member is more than ninety (90) days delinquent in the payment of any monetary obligation due to the Association, the Association may suspend the rights of the Member, or the Member's Tenant, Guest or invitee, to use Common Areas and facilities until the monetary obligation is paid in full. This subsection G. does not apply to that portion of Common Areas which may be used to provide access or utility services to a Unit. A suspension may not prohibit an Owner or Tenant of a Unit from having vehicular and pedestrian ingress to and egress from the Unit, including, but not limited to, the right to park. The suspension ends upon full payment of all monetary obligations currently due and overdue to the Association.

H. In addition to other remedies available, the Association may suspend the voting rights of a Member or Unit for the nonpayment of any monetary obligation due to the Association that is more than ninety (90) days delinquent. A voting interest or consent right allocated to a Member or Unit which has been suspended by the Association shall be subtracted

from the total number of voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under the Association's Governing Documents. The suspension ends upon full payment of all monetary obligations currently due and overdue to the Association.

I. All suspensions imposed pursuant to subsections G. and H. must be approved at a properly noticed Board meeting. Upon approval, the Association must notify the Owner and, if applicable, the Owner's Tenant, Guest or invitee by mail or hand delivery.

Section 12. Subordination of the Lien to Mortgage. The lien of the Association for assessments or other monies shall be subordinate and inferior to the lien of any first mortgage in favor of an institutional lender recorded prior to the recording of a lien by the Association. Sale or transfer of any Unit shall not affect the lien provided for in this Declaration or relieve such Unit from the lien for any subsequent assessments. In all instances of the sale or transfer of any Unit which does not result from the issuance of a certificate of title or deed in lieu of foreclosure relating to a first mortgage, the liability of the Owner who obtains title to the Association will be all amounts due for such Unit as of the date of the sale or transfer of title, including, but not limited to, all unpaid assessments, interest, late fees, administrative fees, administrative costs, collection costs, enforcement costs and reasonable attorney's fees and costs in addition to all amounts coming due on and after the date of the sale or transfer of title. Upon the sale or transfer of any Unit pursuant to a certificate of title issued in a foreclosure proceeding or a deed in lieu of foreclosure, the liability of the Owner who obtains title through said certificate of title or deed in lieu of foreclosure (the "Successor Owner") for amounts due as of the certificate of the title or date of the deed in lieu of foreclosure, shall be as follows: (i) if the Successor Owner is the former first mortgage holder or its assigns, and title was transferred pursuant to a certificate of title in a foreclosure action in which the Association was named as a defendant or through a deed in lieu of foreclosure, the Association will be entitled to recover the greater of: (1) The amount recoverable pursuant to such a transfer as provided by Chapter 720, Florida Statute, as amended from time to time; or (2) The amount which is the lesser of (a) unpaid assessments for such Unit which accrued or became due during the twelve (12) months immediately preceding the certificate of title or deed in lieu of foreclosure; or (b) one percent (1%) of the original mortgage debt; (ii) in all other instances, including, but not limited to, instances in which former first mortgage holder or its assigns is not the Successor Owner, and instances in which the first mortgage holder or its assigns is the Successor Owner, but the other conditions stated above are not satisfied, the Association will be entitled to recover all amounts due for such Unit as of the date of the certificate of the title including, but not limited to all unpaid assessments, interest, late fees, administrative fees, administrative costs, collection costs, enforcement costs and reasonable attorney's fees and costs in addition to all amounts coming due on and after the date of the sale or transfer of title. The amounts due as stated above will be due within thirty (30) days of the transfer of title. If not paid by that date, the Association can pursue all collection rights provided for in the Declaration.

Section 13. Exemption of Certain Properties. Notwithstanding the foregoing, the Declarant has conveyed or will convey certain properties to the SUNTREE COUNTRY CLUB, INC., a not-for-profit corporation. These properties, which are described on composite Exhibit A attached thereto and made a part hereof, while subject to the other portions of the Declaration, shall be entirely exempt from this Article IV, and Article IV shall be entirely inoperative as to the real property described in composite Exhibit A.

Section 14. Assignment of Rents. All Owners hereby absolutely assign and transfer to Association all the leases, rents, issues and profits of any nature from the Unit which may be obtained by Owner when the Unit is not occupied by Owner (collectively "Rents"). Although this assignment is effective immediately, so long as Owner pays any assessment or any other monetary obligation of Association in a manner such that said assessments or monetary obligations are not considered to be delinquent in any way (hereinafter, non-payment of any assessment or any other monetary obligation of Association such that the assessments or monetary obligations are considered delinquent may be referred to as a "Default"), Association gives to and confers upon Owner the privilege under a revocable license to collect as they become due, but not prior to accrual, the Rents and to demand, receive and enforce payment, give receipts, releases and satisfactions, and sue in the name of Owner for all such Rents.

Upon any occurrence of Default, the license granted to Owner herein shall be automatically revoked without further notice to or demand upon Owner, and Association shall have the right, in its discretion, without notice, by or without agent or by or without a receiver appointed by a court, and without regard to the adequacy of any security for the assessments or any other monetary obligations of Association, (a) to notify Tenants, subtenants, Occupants and any property manager to pay Rents to Association or its designee, and upon receipt of such notice such persons are authorized and directed to make payment as specified in the notice and disregard any contrary direction or instruction by Owner, and (b) in the name of Association, to sue for or otherwise collect Rents, including those past due, and apply Rents, less costs and expenses of operation and collection efforts, including late assessments or monetary obligations, interest, costs of collection and attorneys' and paralegals' fees, to the assessments or any other monetary obligations of Association in such order and manner as Association may determine or as otherwise provided for herein or by law. However, the Tenants, subtenants, Occupants and any property manager need not make such payments to Association in excess of, or prior to the due dates for, monthly Rents unpaid at the time of the Board's request.

After collecting any such Rents, and upon the deduction of any late assessments, interest, costs of collection, and attorneys' and paralegals' fees, Association may (but shall not be required to) remit any balance to Owner. All such payments made by Tenants, subtenants, Occupants, and any property manager to Association shall reduce, by the same amount, Tenants, subtenants, Occupants and any property manager's obligation to make monthly rental payments to Owner, despite any agreement between Tenants, subtenants, Occupants and any property manager and Owner to the contrary. Association's exercise of any one or more of the foregoing rights shall not cure or waive any Default or notice of Default hereunder. The above provision shall not be construed to release Owner from any obligation, including the obligation for assessments or monetary obligations, for which he or she would otherwise be responsible. Should any Tenants, subtenants, Occupants or any property manager refuse to provide said Rents to Association for any

agent or receiver thereof within thirty (30) days of the date of demand, Owner hereby authorizes Association to pursue any and all collection efforts (including suit or eviction) against any Tenants, subtenants, Occupants or any property manager, and/or against Owner, for non-payment of said Rents. The payment of any and all costs or fees (including attorneys' and paralegals' fees) accumulated by Association in pursuit of any action for non-payment of Rents, or assessments or any other monetary obligations, shall be the responsibility of Owner.

Association shall have the right to require that the Owner use a form of lease to be supplied by the Association. Owner hereby also agrees to provide any and all executed leases or rental or occupancy agreements to the Association after execution of any such lease or rental or occupancy agreement. Association shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Owner under any lease or rental or occupancy agreement, and Owner hereby agrees to indemnify Association for, and to save it harmless from, any and all liability arising from any of said leases or rental or occupancy agreements or from this assignment provision. This assignment shall not place responsibility for the control, care, management, or repair of said Unit upon Association, or make Association responsible for liable for any negligence in the management, operation, upkeep, repair, or control of the Unit resulting in loss or injury or death to any Tenants, subtenants, Occupants, property managers, licensees, employees or strangers. Nonetheless, Owner hereby additionally authorizes Association to enter and take possession of the Unit and to manage and operate the same, to let or re-let said premises or any part thereof, to cancel and to modify leases, to evict Tenants, subtenants, or Occupants, bring or defend any suits in connection with the possession of said premises as Association, in its discretion, may deem proper. The payment of any and all costs or fees accumulated by Association in pursuit of any such actions, or any actions stemming from the authorities granted to Association by this assignment, shall be the responsibility of Owner, and in the absence of the payment of such costs and fees by Owner, Association shall additionally have the authority to collect Rents as otherwise provided by this assignment to provide such payment.

Owner hereby authorizes Association to give notice in writing of this assignment at any time to any Tenants, subtenants, Occupants or property managers under any said leases or rental or occupancy agreements.

The invalidation of any provision or provisions of the covenants and restrictions set forth herein (or any portion thereof) by judgment or court order shall not affect or modify any of the other provisions or portions of said covenants and restrictions, which other provisions (or portions thereof) shall remain in full force and effect.

## ARTICLE V COVENANTS FOR MAINTENANCE

Section 1. Maintenance of Common Area and Other Property. Maintenance of the Common Area and improvements thereto and property owned by the Association shall be the responsibility of the Association. Such Common Area and improvements thereon and property owned by the Association shall be maintained in good condition at all times, based on the standards set by the Board of Directors. The Association shall be responsible for the maintenance, repair and replacement of landscaping, trees, shrubs, grass, sprinkler heads, walks, drives and parking areas

(other than the walkway and driveway of any Lot) situated on the Common Area, specifically including, without limitation, the responsibility to operate and maintain the surface water management system in accordance with the requirements of the St. Johns River Water Management District. The St. Johns River Water Management District has the right to take enforcement action, including civil action for an injunction and penalties against the Association, to compel the Association to correct any outstanding problems with the Surface Water Management system or in mitigation or conservation areas, if any, under the responsibility or control of the Association.

Section 2. Permits, Licenses and Easements. Subject to the provisions herein, the Association shall have the right to grant permits, licenses and easements over, upon, across, under and through the Common Areas for utilities, roads and other purposes reasonably necessary or useful for the property maintenance and operation of the Property, as so determined by the Board.

Section 3. Maintenance of Lots and Units by Owners. Each Owner shall keep all Units owned by him, and all improvements therein or thereon, in good order and repair and in compliance with the Governing Documents, including but not limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements and external appurtenances, all in a manner and with such frequency as is consistent with good property management, and must promptly perform maintenance and repair work on his Lot and Unit. Each Owner shall be responsible for and pay the cost of maintaining, repair and replacement everything within the confines of the Unit and on the Lot.

Section 4. Maintenance of Lots Abutting Lakes or Rights-of-Way. Sub-Associations or Owners of Lots which abut a lake or right-of-way shall be responsible for maintaining all landscaping, trees, hedges, etc., located on Sub-Association property, Association property or the Owner's Lot, up to the adjacent lake edge and/or the concrete curb of the road right-of-way in a neat and attractive manner. Such maintenance shall include, but not be limited to, pressure cleaning sidewalks and driveway aprons, the frequent cutting and edging of the lawn, replacement of turf, proper cutting, pruning or trimming of any landscaping, and the removing, clearing, cutting or pruning of underbrush, weeds, or other unsightly growth located on the Sub-Association Property, Association property, or Lot up to the adjacent lake edge, and/or the concrete curb of the Brevard County Road Right-of-Way. The Association shall not be responsible for the maintenance, repair or replacement of any seawall or other similar type structure which may have been installed on Association Properties during the construction of any adjoining community(ies). Rather, the maintenance, repair or replacement of any such seawall or other similar type structure shall be the sole responsibility of the Owner of Lot for which the construction of the seawall or other similar type structure was intended to benefit. Further, the Association shall not be responsible for any landscaping, trees, hedges, etc., which may have been installed on Association Properties during the construction of any adjoining community(ies). Rather, the maintenance, repair or replacement of any such landscaping, trees, hedges, etc., shall be the sole responsibility of the Owner of Lot for which the installation of the landscaping, trees, hedges, etc., was intended to benefit.



Section 5. Maintenance of Hedges Adjacent to Certain Roads. Upon the written approval of the Association, Owners of Lots or Sub-Associations adjacent to Wickham Road, Saint Andrews Boulevard, N. Pinehurst Avenue, S. Pinehurst Avenue, Spyglass Hill Road, Forest Lake Avenue, Interlachen Road, or Inverness Avenue shall be permitted to maintain hedges which may encroach upon the Brevard County right-of-way maintained by the Association located along aforesaid roads, so long as any hedges are maintained in a neat and attractive manner and such encroachment does not affect or damage the Association's sprinkler or irrigation system. Such hedges shall be maintained by the Lot Owner or Sub-Association in a manner which meets Association standards. Invasive species shall be prohibited from being planted and/or maintained in the encroachment area. The Association, in its sole unfettered discretion, shall have the right to deny any proposed encroachment or remove the encroachment.

Section 6. Remedies for Maintenance Violations. If, after delivery to the Owner of written notice given in the manner provided in the rules adopted from time to time by the Board of Directors, any Owner fails to perform the duties imposed by Article V or to remedy any violation, in addition to the remedy set forth in Article XVII, Section 3 of the Declaration, the Association shall have the right (but not the obligation), to enter upon the Unit in question to repair, maintain, repaint, and restore the Unit to good, attractive condition and repair. If the Association elects to repair, maintain, repaint, or restore the Unit as provided herein, the cost of such restoration shall be levied as an individual assessment, and be a binding personal obligation of the Owner as well as a lien (enforceable in the same manner as any other assessment or fine provided for herein) upon the Unit.

## ARTICLE VI ADDITIONS AND ALTERATIONS BY ASSOCIATION

There shall be no material alterations or substantial additions to the Common Areas or Property by the Association, except as authorized by the Board of Directors. Provided, however, that if any such alterations or additions require or obligate the expenditure of Association funds of more than five percent (5%) of the Association's budget for the fiscal year in which the work is authorized, including reserves, the Board shall obtain approval of not less than two-thirds (2/3) of the voting interests present, in person or by proxy, at a regular or special meeting of the membership, or by written agreement of two-thirds (2/3) of the entire voting interests. Necessary maintenance of the Common Areas or Property, regardless of the level of expenditure, is the responsibility of the Board of Directors.

## ARTICLE VII ARCHITECTURAL CONTROL

Section 1. The Association, acting through the Board or the Architectural Review Committee ("ARC"), shall have the authority to review and approve plans and specifications for the location, size, type, or appearance of any structure or other improvement on the Unit or Lot, and to enforce standards for the external appearance of any structure or other improvement located on a Unit or Lot, as set forth in Governing Documents, including but not limited to any architectural guidelines or criteria promulgated by the Board. If there are any conflicts between this Declaration and architectural guidelines and criteria, if any, the Declaration will control. The

members of the ARC will be determined by the Board of Directors and appointed in a manner set forth in the Bylaws of the Association. The ARC is responsible for design control throughout the properties through application of the Architectural Control Criteria ("ARC Criteria"), which criteria is developed, changed and published from time to time at the discretion of the Board of Directors. The ARC derives its authority from the Board of Directors as provided for in the By-Laws. The Board may act as the ARC, and in the absence of the Board's appointment of an ARC, the Board shall be the ARC.

Section 2. The ARC shall not be responsible for defects in plans or specifications or for defects in the improvements. The ARC's review of plans is limited solely to appearance of the improvements and does not include any review of compliance with building codes. This shall not be deemed to excuse any Owner from compliance with local building and construction codes, ordinances and/or regulations and improvements constructed shall conform to the requirements of such laws, codes, ordinances and regulations, as revised from time to time by the Board.

Section 3. Each Unit or other permitted use shall have access to a public street, either directly, via an approach, private road, pedestrian way, court or other dedicated to the private use or common easement guaranteeing access. Permitted uses are not required to front on a public dedicated road.

Section 4. No dwelling, building, outbuilding, garage, pool, decking, paving, fence, wall, retaining wall, awning, patio, screened enclosure, pier, dock, walkway or other structure or improvement shall be commenced, constructed, erected, placed or maintained upon any Lot or Unit, nor shall the exterior, nor any exterior additions or changes (including but not limited to the installation of storm shutters, screen doors, security bars and the like), be made until the plans and specifications therefore, including, as applicable, front side and rear elevations, time line for completion and floor plans, two plans indicating and fixing the exact location of such improvements, structures or such altered structure on the Unit or Lot with reference to the street and side lines thereof, and which conform to the ARC Criteria, have been submitted to and approved in writing by the ARC.

Section 5. An application must be submitted to the ARC for any proposed construction, improvements, changes, modifications, alterations, additions or otherwise to a Lot or the exterior of a home on a Lot, along with a non-refundable application/review fee in the amount of Thirty Dollars and no/100 (\$30.00). The Board of Directors shall have the authority to increase or decrease the application/review fee from time to time as it deems necessary. The Association's ARC Criteria, which may be amended from time to time, shall set forth the procedures for submitting an application to the ARC. When all the plans and specifications required have been submitted to and received by the ARC and if the ARC fails to take action within 30 days to (a) approve, (b) disapprove, (c) disapprove pending receipt of additional information, then these plans and specifications will be considered approved. All required approvals or disapprovals of the ARC must be in writing to be valid for purposes of this Declaration. Decisions of the ARC shall be based on the Association's ARC criteria, as well as the aesthetics, harmony, balance and compatibility of the proposed improvements with the then-existing structures within the community. Improvements or changes shall be performed by licensed contractors or Owner contractors in accordance with plans and specifications prepared by licensed architect, where

applicable. The ARC shall either grant such approval or deny same based upon its sole discretion as to whether the improvements will be aesthetically pleasing, consistent with the architecture of the buildings in the Association, and similar to other such improvements previously allowed.

Section 6. After such plans and specifications and other data submitted have been approved by the ARC, no building, outbuilding, garage, fence, wall, retaining wall, or other improvement or structure of any kind shall be erected, constructed, placed, altered or maintained upon any Unit or Lot unless the same shall be erected, constructed or altered in conformity with the plans and specifications approved by the ARC.

Section 7. Minimum distances between structures shall be as determined by the corresponding recorded Plat, as recorded in the Official Records of Brevard County, Florida, or local ordinances.

Section 8. A minimum of twenty-five (25) feet setback shall be required from the nearest part of any building wall to the edge of any public right-of-way or private street. A minimum of twenty-five (25) feet set-back shall be maintained between the walls of all structures and the perimeter of the plat. A minimum of five (5) feet set-back shall be maintained between walls of all structures and Common Areas. Rear Lot lines set-back dimensions shall be determined at the discretion of the ARC but not less than 20 feet. The minimum set-back between walls of all structures and the Lot line created by adjoining Lots shall be the dimensions stated per story, in Section 9, less seven and one-half feet (7.5).

Section 9. The maximum length of a structure is 200 feet. The minimum floor area for a single family dwelling Unit is 1,200 square feet. In multifamily dwellings the minimum floor area is as follows:

Efficiency Units – 500 square feet, one bedroom Units 600 square feet, 2 bedroom Units 900 square feet, 3 bedroom Units 1,050 square feet.

Section 10. A minimum of two off street parking spaces per dwelling Unit shall be provided. Each space must contain at least 200 square feet of area and be convenient to residential use. Parking areas shall not be separated from structures to be served by any public right-of-way. Within commercial area, one off-street parking space shall be provided for each 200 square feet of floor area. Within all common parking area a minimum of 50 square feet of landscaped areas shall be distributed throughout the parking area.

Section 11. All utilities, including telephone, television, cable, and electrical systems, except on arterial roads, shall be installed underground. Electrical transformers shall be placed on the ground and shall be contained in pad mount enclosures or vaults. Landscaping with shrubs and plants to screen all utility facilities permitted above ground must be provided as specified by the ARC.

Section 12. The minimum construction requirements for streets or roads, sidewalks, sewer facilities, utilities and drainage shall be in compliance with the requirements of the Brevard County subdivision regulations.

Section 13. All landscaping will be installed on the Lot in accordance with the ARC Criteria adopted and published from time to time.

Section 14. Walls and Fences: No wall or fence shall be constructed on any Lot until after the height, type, design and location thereof shall have been approved in writing by the Association. All walls and fences shall comply with the restrictions and criteria set forth in the Association's ARC Criteria, as may be amended from time to time.

Section 15. All single family detached homes must have not less than a one (1) car garage.

Section 16. No structures shall be constructed, dug, or erected in any of the Common Areas, canals, lakes or other connecting bodies of water except as approved by the ARC.

Section 17. All buildings shall be connected at the Owner's expense to central water and sewer utilities within ninety (90) days after completion of construction. However, wells may be maintained for outside use including watering of lawns, swimming pools, etc., subject to approval of duly constituted public authorities and the Board of Directors or its agents.

Section 18. No Lot can be further subdivided into more than one Lot without the specific written authorization and approval by the Association. In no event shall a Lot be subdivided so as to create a violation of any of the restrictions herein established or ordinances and regulations of Brevard County.

Section 19. In the event a construction project of any sort is abandoned and remains so for a period of ninety (90) days, the Board of Directors may take possession of the site and complete the construction accordingly. In such event, the Board of Directors may sell the building and recover its costs for performing the work. The Board of Directors also reserves the right to take possession of such uncompleted construction and destroy the work, landscaping the area and selling the property in order to recover its costs. The Board of Directors shall have the right to levy an individual assessment and lien such property to recover costs and expenses of this action.

## ARTICLE VIII SUBDIVISION OF THE RESIDENTIAL TRACT

Section 1. Any residential tract may be subdivided or subjected to condominium ownership and secondary homeowners groups or associations in these subdivisions and condominiums may be formed (herein "Sub-Associations"). The actions of these Sub-Associations shall be subject to and conditioned by the Governing Documents.

Section 2. Any additional Common Area or common facility created by the subdivision or condominium as described above shall be maintained by the Sub-Association by dedication or conveyance of the Common Areas or facilities to the Sub-Association or by the provisions of the Declaration of Condominium ownership. If the Sub-Association desires to dedicate the Common Area to the Association for maintenance and the Association is willing to

accept the same, such Common Area shall become "Common Area" as defined in Article I, Section 3.

Section 3. If the Sub-Association or any Owner refuses or fails to perform the obligation imposed on it under its covenants, articles and bylaws of the Sub-Association, this Association is authorized to perform the obligation that the Sub-Association or Owner has failed or refused to perform, but also has no obligation to do so. Any expenses incurred by the Association shall be reimbursed by the Sub-Association or the Owner, as the case may be.

## ARTICLE IX RENTAL UNITS

The renting, leasing or licensing of a Unit is defined as occupancy of the Unit by any person other than the Owner, whether pursuant to verbal or written agreement, where said occupancy by the non-owner involves consideration (the payment of money, the exchange of goods, services, points, or any other exchange of value). The terms "renting," "leasing" and "licensing" shall be used interchangeably for the purpose of this Declaration. The terms "rent," "lease" and "license" shall be used interchangeably for the purpose of this Declaration. The terms "tenant," "lessee" and "licensee" shall likewise be used interchangeably in this Declaration. The following provisions shall apply to the leasing of Units:

Section 1. All leases or licenses of a Unit must be in writing. All leases and licenses shall be for a minimum period of six (6) consecutive months.

Section 2. For the purpose of membership in the Association, the Owner of the Rental Unit and not the individual tenants thereof shall be the "Owner" for the purposes of assessment, membership, and ultimate responsibility for compliance with all provisions of this Declaration.

Section 3. Each tenant actually residing in a Unit for a period of not less than six (6) consecutive months shall be entitled to the full use and enjoyment of all Common Areas and shall be entitled to all of the rights of an Owner as set forth in Article II of the Declaration. Any person residing on the Property less than six (6) consecutive months has no rights as Owner but may use the Common Area. This Declaration shall be binding on all tenants and an owner shall have the responsibility to provide the tenants with a copy of the Association's governing documents, including rules and regulations, as well as applicable Brevard County regulations concerning street parking and golf cart use prior to the start date of any lease, and to require of the tenant's full compliance with the provisions thereof.

Section 4. Upon demand by the Association, the owner shall provide a rental summary that shall include the occupant(s)' names, start and end date of the lease, among any other requested information.

Section 5. No time sharing plan as the term is defined in Chapter 721, Florida Statute, as amended from time to time, or any similar plan of fragmented or interval ownership of a Unit shall be permitted on the Properties, and no attempt to create the same by lease or otherwise shall be allowed. All short-term rentals and licenses (which are for less than a six (6) month period) are

strictly prohibited. Owners and tenants are prohibited from listing or advertising a Unit, whether directly or through a third-party, as being available for short-term rental or license. Without limitation, this provision is intended to prohibit lot use, listings, and arrangements similar to and including those associated with AirBnB, VRBO, and other short-term rental/license companies, applications, and websites. Upon reasonable suspicion of a violation of these provisions, the Board of Directors may require an Owner and/or tenant to provide a notarized sworn statement, under penalty of perjury, affirming the Unit is not, has not, and will not be used for these purposes. Said affirmation must be provided in a form acceptable to the Board, in its sole discretion. Failure to provide said affirmation within fourteen (14) days of such request by the Board shall constitute an independent violation of this Declaration and shall further establish a rebuttable presumption that the Owner and/or tenant has violated these provisions. The burden of proving said rebuttal shall be borne by the Owner and/or tenant by a preponderance of evidence.

Section 6. If a tenant, occupant, guest or invitee fails to abide with all covenants, restrictions, and rules, the Owner shall be responsible for the conduct of the tenants, occupants, guests and invitees and shall be subject to all remedies set forth in the Association's Governing Documents, as each may be amended from time to time, and Florida law, without waiver of any remedy available to the Association as to the tenant. The Owner shall have the duty to bring his tenant's conduct (and that of the other occupants, guests and invitees of the Rental Unit) into compliance with the Association's Governing Documents, as each may be amended from time to time, by whatever action is necessary, including without limitation the institution of eviction proceedings without notice to cure, where legally permissible.

The Owner further grants the Association a continuing power of attorney to act as agent for the Owner specifically to terminate any lease and evict or remove the occupants of the Rental Unit in the enforcement of this Section. If the Owner fails to bring the conduct of the tenant into compliance with the Association's Governing Documents, as each may be amended from time to time, in a manner deemed acceptable by the Association, the Association shall have the authority, but not the obligation, to act as agent of the Owner to undertake whatever action it deems appropriate, in its sole discretion, to abate the tenant's noncompliance with the Association's Governing Documents, as each may be amended from time to time (or the other noncompliance of other occupants, guests or invitees), including without limitation the right to terminate the lease or license and institute an action for eviction against the tenant in the name of the Association in its own right, or as agent of the Owner. The Owner hereby grants a continuing power of attorney to the Association to take act as landlord and evict the non-complying occupants.

The Owner and tenant shall be jointly and severally liable to the Association for any and all costs, attorney fees and/or expenses incurred by the Association to make repairs, clean-up, maintenance and/or replacement or to pay any claim for injury and/or damage to any portion of the Association property resulting from, related to, arising from and/or associated with the willful actions, the omissions and/or the negligence of the tenant.

The Association shall have the right to recover, and the Owner and tenant shall be jointly and severally liable for any and all costs or fees, including attorneys' fees, incurred in connection with enforcement of this Section, including pre-suit costs and attorneys' fees, which shall be secured by a continuing lien in the same manner as assessments for common expenses, and secured

by a claim of lien that may be foreclosed by the Association. Any lease shall provide or be deemed to provide that the Association shall have the authority to direct that all rental income related to the Lot or Living Unit be paid to the Association until all past due and current obligations of the Association have been paid in full, including but not limited to all past due assessments, charges, other monetary obligations, late fees, interest, attorneys' fees and cost and expenses of collection.

Section 7. Additional Rules. The Board may also from time to time adopt rules and regulations pertaining to the administration and implementation of this Article IX.

## ARTICLE X MAINTENANCE AGREEMENT

For the purpose of the Association providing the required maintenance pursuant to the terms of this Declaration, the Association shall have the right to enter into a maintenance agreement with a third party or parties for the purpose of contracting for maintenance and operation of the Common Areas and/or other areas and facilities for the common benefit of the Residents. The terms and conditions of any such agreement shall be determined by the Board of Directors of the Association. Any expenses incurred by the Association related to the maintenance and operation of the Common Areas and/or other areas and facilities, as contemplated by the maintenance agreement, shall be considered a Common Expense of the Association.

## ARTICLE XI GENERAL COVENANTS AND RESTRICTIONS

Section 1. The laws and ordinances of the State of Florida and Brevard County as well as the rules and regulations of their administrative agencies now or hereafter in effect, are applicable.

Section 2. The Board of Directors shall have the right to waive in writing, any provision of Article VII or Article XI unless such waiver would violate State or County rules and/or regulations or would impair the health, safety or welfare of the other Members and the overall quality of Suntree PUD, or be inconsistent with the original general scheme of development.

Section 3. County officials, officials of the Board of Directors and utility companies shall be allowed access on privately owned roads, easements and Common Areas to ensure police and fire protection of the area, to meet emergency needs, to conduct services as are their responsibility and to generally ensure health and safety of Residents of Suntree PUD.

Section 4. Rules. The Board of Directors may, from time to time, adopt and/or amend Rules and Regulations for the purpose of regulating the conduct and actions of the members, and the use, transfer, maintenance, and appearance of Lots and Units, as well as the use of the Common Areas, and the preservation of the property of the Association. In lieu of mailing copies of any proposed amendment to the Rules to each member, the Association shall publish one time the proposed amendment to the Rules in the Florida Today newspaper or other local publication. Written notice of any meeting at which Rules and Regulations that regulate the use, transfer,

maintenance, appearance of Units may be adopted, amended, or revoked must be mailed, delivered, or electronically transmitted (to the extent permitted by law) to the Members and posted conspicuously on the Property or broadcast on closed-circuit television not less than thirty (30) days before the meeting. A written notice concerning changes to the Rules and Regulations that regular the use of Lots must include a statement that changes to the Rules and Regulations regarding the use of Lots will be considered at the meeting. Any Rules and Regulations created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the Owners, and, unless otherwise permitted by law, uniformly applied and enforced. The Association shall publish a copy of each new Rule and Regulation adopted on its website ([www.suntreeflorida.com](http://www.suntreeflorida.com)) within 45 days after its adoption. Owners, their families, invitees, Guests, and Tenants shall abide by Rules and Regulations promulgated from time to time by the Board.

Section 5. All signs shall comply with the restrictions and criteria set forth in the Association's ARC Criteria, as may be amended from time to time.

Section 6. No animal breeding for commercial purposes shall be conducted or maintained in Suntree PUD. The term "pet" shall mean and refer to only domesticated species of dogs, cats, birds and fish. Domestic pets must be kept on and confined to the homeowners individual Lot, dwelling or patio areas, except that such pets may be exercised on the streets and Common Area of the Association. Whenever domestic pets are exercised off the homeowner's property, the pets must be controlled by means of a leash. Furthermore any pet feces deposited on private property, streets or Common Areas of the Association must be promptly removed and suitably disposed of by the custodian of the pet.

Section 7. The parking of vehicles in Suntree PUD is restricted as follows:

(a) Automobiles: Automobiles, without logos or advertising, shall be permitted to be parked in driveways, carports and garages. Automobiles with logos or advertising shall be parked only in garages or carports. At the discretion of the Board of Directors, an exception may be made to permit law enforcement vehicles to park in driveways (or outside of a garage or carport);

(b) Passenger Vans: A passenger van is a van without provision to carry exterior items, is not "outfitted for recreational purposes," and has a non-commercial license plate. "Outfitted for recreational purposes" shall mean a van that has either 110 volt electrical and LP gas or sanitary waste facilities. Passenger vans without any logos shall be permitted to be parked in driveways, car-ports, and garages. Passenger vans displaying logos or advertising may be parked only in carports and garages (but not in driveways). No removable ladders or other commercial equipment shall be stored on the exterior of any passenger van.

(c) Non-passenger Vans: A non-passenger van is any van that does not comply with the definition of a passenger van. Non-passenger vans may be parked in carports or garages (but not in driveways). Non-passenger vans shall be permitted in the Suntree PUD when parked in any vehicle storage area designated for such person by the Association. Vans of persons actively



engaged in construction, repair, maintenance shall be permitted within Suntree PUD during such construction or repair.

(d) Non-Commercial Trucks: Trucks, including pick-up trucks, with or without camper tops or toppers, without logos advertising or commercial equipment in the bed or on the exterior of the vehicle, shall be permitted to be parked in driveways, carports and garages.

(e) Commercial Trucks: Those trucks with logos, advertising and/or carrying commercial equipment such as ladders, or other commercial type equipment may be parked only in carports, garages or area designated for parking of such vehicles by the Board of Directors. Commercial trucks of persons actively engaged in the construction, repair, maintenance shall be permitted within the Suntree PUD during such construction or repair.

(f) Travel Trailers, Motor Coaches, Motor Homes, Mobile Homes: In addition to any other vehicles or trailers not specifically permitted herein, travel trailers, motor coaches, motor homes, mobile homes and similar type vehicles shall not be parked in Suntree at any time except during the incidental loading and unloading of the vehicle unless parked in a garage, in the designated recreational vehicle park, or other areas designated by the Board of Directors.

(g) Lawns: No vehicle shall be parked on any improved lawn, yard, or portion thereof, empty Lot or other area not intended for vehicular use.

(h) Abandoned Vehicles: No residential Lot, vacant Lot, or Common Area shall be used as a junk yard, or auto graveyard. Nor shall any abandoned, unlicensed or inoperative vehicle be maintained on any Lot or Common Area within Suntree. Minor vehicle maintenance or repair may be performed in driveways provided that such maintenance or repair is completed within four (4) hours on the day started.

(i) Exceptions: The Board of Directors may grant a special exception of limited duration to the provisions of this Section 7, upon written request of any person specifying the reasons for such exception. Within any multifamily residential subdivision without garages or carports, passenger vans, non-passenger vans and trucks without logos or commercial equipment (as herein defined), may be parked in the parking area for such multifamily subdivision.

Section 8. Street Parking: No parking is permitted in the travel section of any roadway or street between the hours of midnight and 7:00 a.m.

Section 9. Trailers, boats, campers, or other similar equipment may not be parked in Suntree except in enclosed garages or in areas specifically designated as recreational vehicle storage areas. Golf carts, when not in use, shall only be parked in an enclosed garage.

Section 10. Boats: Boats are prohibited from being used in the lakes within Suntree PUD, except by specific individual permit issued by the Board of Directors. No combustion engines shall be used for the purpose of propelling a boat in any lakes within Suntree, except for lake maintenance boats. No boat docks shall be permitted within Suntree except those constructed after written approval of plans have been granted by the ARC.

Section 11. Small boats shall only be permitted to be stored on land so that they are fully screened from view. For purposes of this section “small boats” shall include kayaks, canoes, paddleboats, and such other non-motorized watercraft.

Section 12. No Unit may be used for commercial purposes without consent of the Board of Directors. The Board of Directors may allow certain professional and commercial uses in Units after a request has been made and authority granted in writing, provided such professional and commercial use of Units does not cause, create, or entail any of the following: (i) increased vehicular traffic or parking; (ii) clients, customers, or patrons visiting or entering Suntree; (iii) sales activity or solicitation within Suntree; (iv) any form of advertising or signage on or within Suntree; delivery of supplies or other items to any portion of Suntree; or (vi) any other manifestation of such business activity which may be construed as a nuisance, in the sole, unfettered discretion of the Board of Directors. No machinery shall be operated, placed or stored upon or in any Unit except machinery customarily used in the operation and maintenance of a private residence.

Section 13. No clothing or other household fabrics shall be hung in the open on any Lot or Unit unless from an umbrella or retractable clothesline which is screened from view when in use and promptly removed or retracted when not in use.

Section 14. No internal combustion engine powered vehicles, other than maintenance vehicles and golf carts are allowed on the pedway.

Section 15. Portable temporary storage units (such as containers provided by PODS, Smart Boxes, or other similar moving and storage companies for the storage of personal property) will be permitted under the following conditions: (i) Owner is responsible for providing prior written notice to the Board of Directors of the placement and storage of a portable temporary storage unit and must supply the Board of Directors with the dates of use of the portable temporary storage unit; (ii) a portable temporary storage unit will only be permitted within Suntree for a time period of no more than five (5) days; (iii) portable temporary storage units may only be placed on an Owner’s driveway; (iv) only one (1) portable temporary storage unit shall be permitted per Lot; (v) Owner is responsible for the cost and repair of any damage caused by the placement, storage and/or removal of such portable temporary storage unit within Suntree; and (vi) the length of time needed for the portable temporary storage unit may be extended through communication with the Board of Directors. Additional time may be granted for extenuating circumstances. The Board of Directors reserves the right to grant additional time as determined on a case-by-case basis.

Section 16.   Antennas.

(a) Only the following antennas less than one meter in diameter are allowed on Property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest in the Property (except for safety and historical preservation considerations).

(1) an antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, or

(2) an antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and

(3) an antenna that is designed to receive television broadcast signals.

(b) These antennas are subject to the following conditions:

(1) The homeowner completes an application requesting a modification of the exterior of home or property not originally approved by the appropriate ARC.

(2) A flat plate antenna may be installed on the side or back outside wall of a home and shall not protrude more than 9" from the surface of the house. All such antennas shall be painted the same color as the adjacent surface of the house.

(3) A mast-type antenna (such as a Yagi Type) no larger than 1 ½" in diameter may be installed on the side or back outside wall of a home or side or back fascia parallel to the roof line provided that such antenna does not extend above the roof at the point of installation.

(4) A satellite antenna may only be installed on the side or back outside wall of a home or on a railing, door or ground mount, however, antennas 18" or less in diameter may be mounted on the lowest part on the fascia board of a house in the rear or side rear and the dish may extend no higher than 24" above the roof line at the point of installation, must blend in with the roof color and, if mounted on the side or rear wall of the house, the antenna must not protrude more than 36" from the surface of the house and must blend in with the house color. If ground mounted, the top of the antenna may not be higher than 5 feet above the average grade at the perimeter of the house and all parts of the antenna including base not affecting signal quality shall be completely shielded by landscaping on all exposed sides. All parts of the antenna and mounting which can be painted must be painted the same color as the adjacent color of the house or roof.

(5) No antenna shall be installed on the front of a home or in the front yard of a home. No antenna shall be mounted on the chimney or roof of a house. No exterior mast, tower, pole, aerial, satellite station or dish, antenna or appurtenances thereto shall be erected except as permitted above. All wires or conduits to the permitted antenna shall be painted the same color as the adjacent surface of the house and shall not protrude more than 3" from the surface of the house.

(6) All other outdoor antennas, including, but not limited to, radio and shortwave, are prohibited with the exception of those installed by Brevard County Utilities for monitoring utility installations.

(c) In the event that the above antenna location precludes reception of an acceptable quality signal, then the property Owner shall have the antenna installer so certify and request alternative location where the antenna would be the least obtrusive to aesthetic considerations and still receive an acceptable quality signal.

(d) All applications and modifications will be acted expeditiously and without unreasonable delay and also not unreasonably increase the cost of installation, maintenance or use by landscaping, aesthetic or other considerations.

(e) All applications conforming to the above requirements of FCC rule 96-32, adopted 5 August, 1996, as amended, will be approved.

Section 17. All storage buildings, utility sheds, green houses and other similar structures, not made an integral part of the architectural design of the main structure are prohibited.

Section 18. Trash, refuse and garbage must be placed in suitable containers and shall not be placed at curb-side earlier than 6:00 p.m. of the evening before scheduled pick up and the containers must be returned to an appropriate storage location, screened from view pursuant to the ARC Criteria by 7:00 p.m. of the day of the pick up. The term "Trash, refuse and garbage" includes all residue matter that is normally disposed of by public or private solid waste collectors, including, but not limited to, food, bottles, cans, and newspapers. Grass cuttings, clippings and organic yard trash shall not be placed at curbside before noon of the second day prior to the yard trash pick up date. All storage of trash, refuse and garbage receptacles must be in accordance with ARC criteria.

Section 19. Fishing is permitted in lakes owned by the Association by Residents and Guests only. It is recommended that fish taken from these lakes not be eaten because of the high contamination of chemicals in the water. Hooked fish should be handled carefully and returned to the water.

Section 20. Swimming is not permitted in the lakes nor is any lake to be used to dispose of trash or debris.

Section 21. Motorcycles will be permitted only on normal roadways. "Off Road" vehicles, ATV and similar type vehicles as well as excessively noisy vehicles will not be permitted to operate within Suntree PUD.

Section 22. Owner and/or Occupants shall exercise extreme care to avoid making or permitting to be made loud or objectionable noises or playing or permitting to be used or played, musical instruments, radios, phonographs, stereos, television sets, amplifiers and any other instrument or device in such a manner as may disturb Owners, Tenants or other Occupants of other Units. The Association defers to the Brevard County Sheriff's office for enforcement of this provision.

Section 23. Soliciting. Soliciting shall be defined as the act of going from residence to residence or street to street for the purpose of collecting, selling, taking orders for selling, passing

out advertising leaflets and the like, obtaining contributions and similar acts of door-to-door or street-to-street vending activities.

Such acts of soliciting shall not be allowed within Suntree PUD unless a permit is granted by the Board of Directors prior to embarking on soliciting activities. When soliciting within a Sub-Association controlled portion of Suntree PUD, additional permission must be granted by that Sub-Association prior to entering that Sub-Association private residential area.

Section 24. Each of the foregoing provisions may be enforced by the Association or by any Owner of a Unit in the manner set forth in Article XVI Section 3 and/or Article IV, Section 1 of this Declaration. In addition, the Association shall have the right to establish fines for the violation of the Governing Documents as provided in Article XVII Section 3 and Article IV of this Declaration and to enforce payment of fines as provided in Article IV and Article XVII and in any manner permitted under the laws of the State of Florida.

Section 25. Surface Water or Stormwater Management System.

The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management systems except those systems which are the responsibility of the county. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the St. Johns River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or if modified as approved by the St. Johns River Water Management District.

Any amendment to the Declaration which alters the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District.

## ARTICLE XII ASSOCIATION INSURANCE

The following provisions shall govern insurance covering the Association:

(a) Insurance policies covering the Common Areas shall be purchased by the Association and be issued by an insurance company authorized to do business in Florida.

(b) The named insured shall be the Association itself and as agent for Owners without naming them and as agent for their mortgagees without naming them.

(c) One copy of each insurance policy, or a certificate evidencing such policy, and endorsements thereto, shall be furnished by the Association to each first mortgagee if requested in writing.

(d) The above paragraph notwithstanding, each Member releases and indemnifies the Association, its Members, employees and agents and shall hold them harmless for injuries or damages to persons or property because of the Member's neglect, recklessness or intentional acts.

(e) The Association shall maintain insurance covering the following:

(1) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement including wind; and

(2) Such other risks as from time to time are customarily covered with respect to property similar in construction, location and use, including but not limited to vandalism and malicious mischief.

(3) Comprehensive general public liability including host liquor liability and hired, owned and non-owned automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Association Property, adjoining driveways and walkways, or any work, matters or things related to the Association property or this Declaration, with such coverage as shall be required by the Board, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, combined single limit and with a cross liability endorsement to cover liabilities of the Owners as a group to any Owner, and vice versa.

(4) The Association shall obtain and maintain adequate insurance or fidelity bonding of persons who control or disburse funds of the Association. The fidelity bond or insurance policy shall cover the maximum funds that will be in the custody of the Association or its managing agent at any one time. As used in this Article, the term "persons who control or disburse funds of the Association" includes, but is not limited to, individuals authorized to sign checks, the President, Secretary, and Treasurer of the Association.

(5) Workers Compensation coverage if required by law.

(6) Umbrella liability in an amount of at least \$1,000,000.

(7) Directors and Officers liability coverage as deemed appropriate by the Board.

(8) Flood insurance if deemed appropriate by the Board.

(9) Other insurance as the Board shall determine from time to time to be desirable.

(f) When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to:

(1) subrogation against the Association and against the Owners individually and as a group,

(2) pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk,

(3) avoid liability for a loss that is caused by an act of the Board, or by a member of the Board or by one or more Owners.

(g) Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one or more Units or Lots or their appurtenances or of the Common Areas by particular Owners shall be assessed against and paid by such Owners.

(h) Insurance policies obtained by the Association shall be for the benefit of the Association, the Owners and their mortgagees, as their interests may appear. Proceeds because of damage to the Common Areas shall be held in undivided shares for each Owner, such shares being the same as the undivided shares in the common areas appurtenant to each Parcel.

(i) The Association is irrevocably appointed agent for each Owner and for each Owner of a mortgage or other lien upon a Parcel and for each Owner of any other interest in the Association property to adjust claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

(j) The insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within or upon their Lot or Dwelling Unit nor casualty or theft loss to an Owner's property. It shall be the obligation of the individual Owner if such Owner so desires to purchase and pay for insurance as to such and other risks.

### ARTICLE XIII INDEMNIFICATION

Section 1. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that they are or were a director, officer, or committee member of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence, misfeasance or malfeasance in the performance of their duty to the Association unless and only to the extent the court in which such action or suit was brought shall determine upon application, that despite the adjudication of liability, but in view of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The

termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption the person did not act in good faith and in a manner they reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe their conduct was unlawful.

Section 2. To the extent a director, officer or committee member of the Association is successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Article or in defense of any claim, issue or matter therein, they shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by them in connection therewith.

Section 3. Any indemnification under this Article (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer or committee member is proper in the circumstances because they met the applicable standard of conduct set forth in this Article. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion.

Section 4. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board. This is subject to the director, officer or committee member making arrangement to repay such amount unless it shall ultimately be determined that they are entitled to be indemnified by the Association as authorized in this Article.

Section 5. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any law, agreement, vote of members or otherwise, both as to action in their official capacity while holding such office or otherwise, and shall continue as to a person who has ceased to be a director, officer or committee member and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 6. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, committee member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against them and incurred by them in any such capacity, or arising out of their status as such, whether or not the Association would have the duty to indemnify them against such liability under the provisions of this Article.

#### ARTICLE XIV ASSOCIATION LIABILITY



Notwithstanding the duty of the Association to maintain and repair parts of the Association Property, the Association shall not be liable to Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Common Areas. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Owners, regardless of whether or not the same shall have been approved by the Association pursuant to the provisions hereof.

Notwithstanding anything contained herein or in the Governing Documents, Association shall not be liable or responsible for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Owner, or permitted person. Without limiting the generality of the foregoing:

(a) It is the express intent of the Association documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the association property and the value thereof;

(b) The Association is not empowered, and has not been created, to act as an entity that enforces or ensures the compliance with the laws of the United States, State of Florida, Brevard County and/or any other jurisdiction or the prevention of tortious activities; and

(c) Any provisions of the Association's Governing Documents setting forth the uses of assessments that relate to health, safety and/or welfare shall be interpreted and applied only as limitations on or enabling authority for the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person, even if assessment funds are chosen to be used for any such reason.

Each Owner (by virtue of his acceptance of title) and each other person having an interest in or lien upon, or making any use of, any portion of the association property (by virtue of accepting such interest or making such uses) shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the association arising from or connected with any matter for which the liability of the association has been disclaimed in this provision.

As used in this Article, "Association" shall include within its meaning all of the Association's directors, officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors and assigns.

## ARTICLE XV GENERAL PROVISIONS

Section 1. Governmental Compliance. All restrictive covenants listed and/or contained herein are subject, in all instances to compliance with State of Florida and County of Brevard health ordinances, restrictions and regulations, zoning regulations or other established pertinent

restrictions, and in particular when State and County requirements are more stringent than the requirements of the restrictions contained herein.

Section 2. Duration. These restrictive covenants, easements, reservations and requirements upon the Properties shall run with title to the Properties and remain in full force and effect, until January 1, 2000, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless terminated by written instrument executed by 2/3 of all members effective at any termination date.

Section 3. Enforcement.

If any person or entity shall violate or attempt to violate the terms of the Association's Governing Documents, it shall be lawful for the Association or any Owner to (1) pursue proceedings for the recovery of damages against those so violating or attempting to violate the terms of the Governing Documents; (2) maintain a proceeding in any court of competent jurisdiction against those so violating or attempting to violate the terms of the Governing Documents for the purpose of preventing or enjoining all or any such violations or attempted violations; or (3) maintain a proceeding for any other equitable or legal recourse or remedy available at law or in equity. In addition, whenever there shall have been built, or there shall exist on any Unit, any structure, building, physical object or condition which is in violation of the Governing Documents, the Association (but not any Owner) shall have the right, but not the obligation, to enter upon the Unit where such violation exists and summarily abate and remove the same, all at the expense of the Owner of such Unit, which expense shall constitute an assessment which shall be treated and shall be collected as set forth herein, and such entry and abatement or removal shall not be deemed a trespass or make the Association liable in any way to anyone for any damages on account thereof. The remedies contained in this provision shall be construed as cumulative of all other remedies now or hereafter provided by law or elsewhere in the Governing Documents. The failure of the Association or an Owner to enforce any covenant or restriction or any obligation, right, power, privilege, authority or reservation contained in the Governing Documents, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation thereof occurring prior or subsequent thereto. The offending Owner and/or Tenant, Guest and invitee shall be responsible to the Association for all costs and fees of enforcement specifically including, without limitation, such fees and costs before trial, at trial and on appeal.

Reasonable attorneys' fees, paralegals' fees and costs of the proceeding are recoverable whether or not suit is instituted and as may be awarded by any state, federal or bankruptcy court, any arbitrator, any administrative law court, and at administrative, trial or appellate levels. Further, reasonable attorneys' fees, paralegal fees and costs of the proceeding shall include but not be limited to: (a) notices of delinquency or non-compliance with the Governing Documents of the Association; (b) demands for payment or compliance with this Governing Documents of the Association; (c) notices of liens; (d) assignment of liens; (e) releases of liens; (f) recording costs; (g) the Association's management company's fees and costs; (h) court costs; (i) reasonable attorneys' fees and paralegals' fees, as specified in the preceding sentence; and (j) all other charges associated with or incidental to collection of the assessment or the enforcement of the Governing Documents of the Association. Any and all reasonable attorneys' fees, paralegal fees and costs of

the proceeding that are recovered by the Association pursuant to this subsection (d) may be charged as a lien against the Unit which is the subject of such proceeding and such lien may be foreclosed against such Unit in the manner prescribed elsewhere in the Governing Documents of the Association, or as provided by Florida law, as the case may be. The priority of such lien shall relate back to the original recording date of this Declaration, unless such priority is specifically modified elsewhere in the Governing Documents of the Association, or pursuant to the Florida Statutes as same may be amended from time to time.

Section 4. Severability. The invalidity in whole or in part of any covenant or restriction, or any Article, Section, subsection, sentence, clause, phrase or word, or other provisions of the Association's Governing Documents as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof.

Section 5. Amendment.

This Declaration may be amended by the affirmative vote of the majority of Members who are voting in person or by proxy at a meeting of the Members at which a quorum has been attained (e.g., once a quorum of those Members attending in person or by proxy has been obtained at an annual or special meeting of the Members of the Association, a majority of those Owners attending the meeting in person or by proxy may amend this Declaration). An amendment of the Declaration shall become effective when properly recorded in the Public Records of Brevard County, Florida.

Whenever Chapters 617 or 720 of the Florida Statutes, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than those set forth in this Declaration, the Board may operate the Association pursuant to the less stringent requirements without the need to change this Declaration. The Board of Directors, without a vote of the Members, may also adopt by majority vote amendments to this Declaration as the Board deems necessary to comply with such operational changes as may be authorized by future amendments to Chapters 617 and 720 of the Florida Statutes, or other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

Section 6. Annexation

(a) Additional land within the area described in Deed Book 1281, Page 391 of the public records of Brevard County may be annexed (that is, made subject to provisions of the Declaration) by the Association unless fifty-one percent (51%) of the Members vote at an annual meeting to amend this Section to prohibit further annexation.

(b) Annexation shall be accomplished by execution of an instrument by the Board (and owner of the land) in the manner required for execution of deeds describing the land being annexed. After recording such instrument in the public records of Brevard County, such additional land shall be part of the Properties and subject to provisions of this Declaration. De-annexation shall be accomplished in like manner.

(c) Association agrees that it will not de-annex Units in a subdivision or condominium after one Unit in the platted subdivision or condominium in which the Units are located has been sold to a non-builder Owner. Nothing contained in this Section, however, shall prevent the Association from de-annexing any Properties that are not platted or subdivided into Units (including any platted tracts which were reserved for future development even if the same were intended to be a later phase of a subdivision or condominium.

Section 7. Easements. The Association reserves for itself, its successors and assigns, a right-of-way easement to erect, maintain and use utilities, electric and telephone poles, wire cables, conduits, storm sewers, sanitary sewers, water mains, gas sewer, water lines or other public conveniences for utilities on, in and over any area designated as an easement, provide street and/or right-of-way area on a recorded plat. Further, the Association reserves for itself, its successors and assigns, an exclusive easement for the installation and maintenance of radio and television cable within such right-of-way, easements and Common Areas.

Section 8. Gender and Number. The use of any gender herein shall be deemed to include all or no gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

Section 9. Ratification. Each Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law, or otherwise) to a Unit and each Occupant by reason of his occupancy shall be deemed to have acknowledged and agreed that all the provisions of Governing Documents, are fair and reasonable in all material respects.

## ARTICLE XVI SEXUAL OFFENDERS AND SEXUAL PREDATORS

The Suntree Master Subdivision is a family-oriented community which highly values its children and is a place that families with young children find highly desirable. The multiple parks, playgrounds, recreational open spaces and school bus stops within the Suntree Master Subdivision are frequently visited and used by children, thereby passing the residences of persons who may target the children for criminal activities. For these reasons, the Association desires to protect the Residents of the Suntree Master Subdivision from criminal activity to the maximum extent afforded by controlling law and further desires to promote and advance the health, safety and welfare of the Residents of the Suntree Master Subdivision.

Section 1. Definitions. For purposes of this Article XVI, the terms "Permanent Residence" and "Temporary Residence" shall have the meanings set forth below:

(a) "Permanent Residence" shall have the meaning as defined in Section 775.21, *Florida Statutes*, as amended (*The Florida Sexual Predators Act*), which currently defines Permanent Residence as a place where the person abides, lodges, or resides for five (5) or more consecutive days.

(b) "Temporary Residence" shall have the meaning as defined in Section 775.21, *Florida Statutes*, as amended (*The Florida Sexual Predators Act*), which currently defines

Temporary Residence as a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of five (5) or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

Section 2. Residency of Sexual Offenders and Sexual Predators Prohibited.

(a) It is prohibited for any person who has been deemed a sexual predator under the provisions of Section 775.21, *Florida Statutes*, or has been convicted of a violation of an offense that provides for the assignment of such status under Florida law to include, but not be limited to, Section 794.011<sup>1</sup>, Section 800.04<sup>2</sup>, Section 827.071<sup>3</sup>, Section 847.0135(5)<sup>4</sup>, or Section 847.0145<sup>5</sup>, *Florida Statutes*, regardless of whether adjudication has been withheld (the term convicted to include not only the listed Florida statutory provisions, but, also, a conviction of a similar offense with similar elements of proof by a Federal, or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and, further, includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any State of the United States or other jurisdiction), when the victim of the offense for which the conviction resulted was sixteen (16) years of age or less at the time the offense was committed, to establish a Permanent Residence or Temporary Residence located within the Suntree Master Subdivision, when such residence is located within three thousand (3,000) feet of any:

(1) public or privately designated park (such as miniparks, playgrounds and recreational open spaces), regardless of whether the public or privately designated park (such as miniparks, playgrounds and recreational open spaces) lies within the Suntree Master Subdivision or not; or

(2) school bus stop, regardless of whether the school bus stop lies within the Suntree Master Subdivision or not.

(b) For the purposes of determining the minimum distance separation requirement, distance shall be measured by following a straight line from the outer property line of the Permanent Residence or Temporary Residence closest to the nearest outer property line of the public or privately designated park (such as miniparks, playgrounds and recreational open spaces), or school bus stop.

(c) A person residing within three thousand (3,000) feet of any public or privately designated park (such as miniparks, playgrounds and recreational open spaces), or school bus stop does not commit a violation of this Amendment, if any of the following apply:

---

<sup>1</sup> Sexual Battery.

<sup>2</sup> Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

<sup>3</sup> Sexual performance by a child.

<sup>4</sup> Computer Pornography and Child Exploitation Prevention Act.

<sup>5</sup> Selling or buying of minors.

(1) The person established the Permanent Residence or Temporary Residence prior to or as of the effective date of this Amendment (i.e., the date it is recorded in the Public Records of Brevard County, Florida). As such, the provisions of this Amendment shall not be applied to persons residing at a prohibited location on the effective date of this Amendment such that it is not the intent of this Amendment to impair valid, existing and *bona fide* contract rights; provided, however, that the provisions of this Amendment shall apply upon termination of any leasehold relationship arising from a landlord tenant relationship or the expiration of a lease. Similarly, when a person who is the subject of this Amendment changes residences, this Amendment shall fully apply to such persons.

(2) The person was a minor when he/she committed the offense and was not convicted as an adult.

(3) The person is a minor.

(4) The public or privately designated park (such as miniparks, playgrounds and recreational open spaces), or school bus stop was opened after the person established the Permanent Residence or Temporary Residence and reported and registered the residence pursuant to Section 775.21<sup>6</sup>, 943.0435<sup>7</sup> or 944.607<sup>8</sup>, *Florida Statutes*.

Section 3. Renting Real Property to Sexual Offenders and Sexual Predators Prohibited.

(a) It is prohibited for any Owner or lessor to let, rent or lease any Unit with the knowledge that it will be used as a Permanent Residence or Temporary Residence by any person prohibited from establishing such Permanent Residence or Temporary Residence pursuant to the terms of this Article XVI of the Declaration, if such Unit is located within three thousand (3,000) feet of any:

(1) public or privately designated park (such as miniparks, playgrounds and recreational open spaces), regardless of whether the public or privately designated park (such as miniparks, playgrounds and recreational open spaces) lies within the Suntree Master Subdivision or not; or

(2) school bus stop, regardless of whether the school bus stop lies within the Suntree Master Subdivision or not.

Hereafter, persons prohibited from establishing such Permanent Residence or Temporary Residence pursuant to this Article XVI of the Declaration shall sometimes be referred to as “Sexual Predators.”

---

<sup>6</sup> The Florida Sexual Predators Act.

<sup>7</sup> Registration of Sexual Offenders.

<sup>8</sup> Notification to Department of Law Enforcement of Information on Sexual Offenders.

(b) Each Owner shall confirm from a thorough and properly conducted nationwide search of the National Sex Offender Public Registry (<http://www.nsopw.gov/>) database or a nationwide search performed by a member in good standing of the National Association of Professional Background Screeners (<http://www.napbs.com>) or other organization which performs at least an equally comprehensive search and listing of sexual offenders, whether any prospective renter, lessee or adult Resident is a registered sexual offender or sexual predator as defined or determined by State law and more importantly, whether such prospective renter, lessee or adult Resident is a Sexual Predator as defined herein, prior to letting, renting or leasing any Unit for use as a Permanent Residence or Temporary Residence that is located within three thousand (3,000) feet of any:

(1) public or privately designated park (such as miniparks, playgrounds and recreational open spaces), regardless of whether the public or privately designated park (such as miniparks, playgrounds and recreational open spaces) lies within the Suntree Master Subdivision or not; or

(2) school bus stop, regardless of whether the school bus stop lies within the Suntree Master Subdivision or not.

An Owner or lessor may use the National Sex Offender Public Registry (<http://www.nsopw.gov/>) database for the purposes of fulfilling the search requirements of this subsection.

(c) If it is discovered that a renter, lessee or adult Resident is a registered sexual offender or sexual predator as defined or determined by State law, and the Owner can prove by dated material they fulfilled the search requirements of this subsection, in addition to conducting a national criminal background check using such renter, lessee or adult Resident's social security number and the results of the search showed the renter, lessee or adult Resident was not a registered sexual offender or sexual predator at the time of the search, the Association shall be responsible for the fees and costs associated with evicting the violating renter, lessee or adult Resident from the home. Should the Owner fail to provide such dated material as evidence, the Owner shall be responsible for the fees and costs associated with evicting the violating renter, lessee or adult Resident from the home.

#### Section 4. Remedies.

In the event any person specifically including but not limited to any Owner, lessor, Tenant, lessee or other Occupant of a Unit violates any portion of this Article XVI as same may be amended from time to time, the Association may avail itself of any and all rights, power and authority it has to compel compliance and all the remedies available to the Association shall not be mutually exclusive and the exercise of one or more remedies shall not preclude the exercise of any other remedy.