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DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF WATERFORD POINTE

THIS DECLARATION, is made and entered into this 9th day of August, 1994
by Suntree Partners, a Florida general partnership, hereinafter referred to as
"Declarant".

RECITALS:

A. Declarant is the owner of certain property in the County of Brevard, State of
Florida, which is more particularly described on Exhibit "A" attached hereto and made a
part hereof (hereinafter referred to as the "Property").

B. Declarant intends to develop the Property into a community to be known as
Waterford Pointe.

C. Declarant has platted the Property as Waterford Pointe Unit One. The plat
was recorded in Plat Book 40, Page 68, Public Records of Brevard County, Florida.
Declarant shall encumber the Property with these covenants and restrictions and be
bound to these regulations and other Governing Documents (as hereinafter defined).

D. The Property is also subject to and encumbered by the Master Declaration
(as defined in Article I). The Property and each Lot (as defined in Article I) shall be
held, sold, conveyed, leased, mortgaged and otherwise dealt with subject to the
easements, covenants, conditions, restrictions, reservations, liens and charges set
forth in the Master Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be
held, sold and conveyed subject to the following easements, restrictions, covenants
and conditions which are for the purpose of protecting the value and desirability of, and
which shall run with, the Property and be binding on all parties having any right, title or
interest in the Property or any part thereof, their heirs, successors and assigns, and
shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Waterford Pointe Homeowners
Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or
more persons or entities, of a fee simple title to any Lot (as hereinafter defined) which
is a part of the Property, including contract sellers, but excluding those having such
interest merely as security for the performance of an obligation.

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Section 3. "Member" shall mean and refer to every person or entity who is an Owner, as hereinabove described, and in being such an Owner comprises the Membership of the Association.

Section 4. "Property" or "Properties" shall mean and refer to that certain real property described in the Recitals and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 5. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners and those areas dedicated to Brevard County, Florida, easements, and party walls which the Declarant has elected to maintain. The Common Areas to be owned by the Association at the time of conveyance of the first Lot are described as follows:

Tracts G, H, I, and J of Waterford Pointe Unit One, according to the Plat thereof, as recorded in Plat Book 40, Page 68, Public Records of Brevard County, Florida.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map or plat of the Property with the exception of the Common Area.

Section 7. "Declarant" shall mean and refer to Suntree Partners, a Florida general partnership, and its successors and assigns. The Declarant may assign all or a portion of its rights hereunder. In the event of a partial assignment, the assignee shall be deemed the Declarant and may exercise such rights of the Declarant specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

Section 8. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of Waterford Pointe.

Section 9. "Surface Water or Stormwater Management System" shall mean a system operated, maintained and managed by the Association 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, 40C-40, or 40C-42, Florida Administrative Code and operated, maintained and managed in a manner consistent with any applicable St. John's River Water Management District permit (the "Permit").

Section 10. "Mitigation and Conservation Areas" shall mean a system operated, maintained and managed by the Association to provide drainage, water storage,

conveyance, survival and growth of installed aquatic plant material or other surface water or stormwater management requirements as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, Florida Administrative Code and operated, maintained and managed in a manner consistent with the St. John's River Water Management District Permit.

Section 11. "Person" shall mean and include an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, sole proprietorship, joint venture, two or more persons having a joint or common interest, or any other legal entity.

Section 12. "Institutional Lender" shall mean a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, agency of the United States Government, mortgage banker or company, Federal National Mortgage Association, the Declarant or any affiliate of the Declarant or other lender generally recognized as an institution type lender, which holds a mortgage on one or more of the Lots.

Section 13. "Undeveloped Parcel" shall mean and refer to that certain real property described on Exhibit "B" attached hereto and by this reference made a part hereof, which is presently an unimproved and undeveloped parcel of land that the Developer may, but is not obligated to, develop, improve and, by annexation, subject to this Declaration.

Section 14. "Governing Documents" shall mean and collectively refer to the Declaration and the Articles of Incorporation and Bylaws of the Association.

Section 15. "Master Association" shall mean and refer to the Suntree Master Homeowners Association, Inc., the Florida not-for-profit corporation formed by Declarant to carry out the intent of the Master Declaration (as hereinafter defined). The relationship between the Association and the Master Association is more fully described in Article XII. The Owners are members of the Master Association with the voting rights described in Article VI of the Amended and Restated Articles of Incorporation of Suntree Homeowners Association, No. One, Inc. and Article XII of this Declaration.

Section 16. "Master Association Assessments" shall mean and refer to those charges made by the Master Association from time to time against the Property for the purposes set forth in the Master Declaration.

Section 17. "Master Documents" shall mean and refer to the Third Amended and Restated Declaration of Covenants, Conditions, and Restrictions For Suntree (hereinafter the "Master Declaration") and any Supplement to the Master Declaration and the Articles of Incorporation and Bylaws of the Master Association, as the same

may be amended from time to time and filed in the Public Records of Brevard County, Florida.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of every Lot, 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 the Common Area;

(b) the right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Association to mortgage the Common Area or dedicate or transfer all or part of the Common Area to any homeowners association, public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such mortgage, dedication, or transfer shall be effective unless an instrument agreeing to such mortgage, dedication, or transfer approved by two thirds (2/3) of each class of Members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right or enjoyment to the Common Area and facilities to members of his family, his tenants or contract purchasers who reside on his Lot, but not otherwise.

Section 3. Utility Easements. Public utilities serving the Property and the Lots, have been, or will be, installed in the Common Area and within or upon the Property for the use, benefit, and service of the Property, the Lots, and all improvements on the Property. A permanent, perpetual, mutual and non-exclusive easement shall exist over, across and into the Property, Lots, and all improvements upon the Property for installation, maintenance, and repair of all utilities for lines, wires, pipes, equipment, and other items necessary for supplying light, heat, air conditioning, water, sewer, power, telephone, any CATV and other means of communication to the Property, Lots, and the improvements upon the Property. Any and all use of the said utility easements shall be in accordance with the applicable provisions of this Declaration

Section 4. Public Easements. Fire, police, health and sanitation, and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Area.

Section 5. Lot Easements. Unless the Association elects to maintain easement areas on the Property, each Owner shall be responsible for the maintenance of all easements situated on their respective Lot or Lots for utility or drainage purposes.

Section 6. Declarant's Easement Over Lots. For so long as Declarant is the owner of any Lot, the Declarant hereby reserves unto itself the right to grant an easement to itself or any other entity over each such Lot owned for purposes of ingress and egress, drainage, utility, gas, telephone, cable television, and electrical services.

Section 7. Association's Right of Entry. The Association's duly authorized representatives or agents shall, at all reasonable times, have and possess a reasonable right of entry and inspection upon the Common Area or any Lot for the purpose of fully and faithfully discharging the duties of the Association. Non-exclusive easements are hereby granted in favor of the Association throughout the Property as may reasonably be necessary for the Association to perform its services required and authorized hereunder, so long as none shall unreasonably interfere with the use of any Lot. Furthermore, an easement is hereby granted in favor of the Association, including its agents and designees, for purposes of carrying out all obligations and/or rights of the Association pursuant to this Declaration. Furthermore, a nonexclusive easement is hereby created over all utility easements and drainage easements located on any Lot, whether now existing or hereafter created, including but not limited to all utility easements and drainage easements contained on the Plat, which easement is in favor of the Association, including its agents and designees, in perpetuity, to utilize for all proper purposes of the Association.

Section 8. Access. Declarant reserves unto itself, including its designees from time to time, and hereby grants to the Association and all Owners, including their respective tenants, guests and invitees, perpetual, non-exclusive easements of ingress and egress over and across: (i) any private streets, sidewalks, access ways, and parking areas constructed on the Common Areas from time to time; and (ii) over and across those portions of the Common Areas lying adjacent to and between the boundary line(s) of the Lot(s) and the private streets, sidewalks, access ways and/or parking areas, as the case may be, which portions of the Common Areas are either designated as or necessary for ingress and egress up to the Lot(s), it being the specific intent of the Declarant to hereby grant perpetual, uninterrupted and contiguous access for ingress and egress to and from Lot(s) to and from dedicated rights of way.

Section 9. Survival. Any and all easements, licenses, or other rights granted or reserved pursuant to this Article shall survive any termination of this Declaration.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting Membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised by a majority of all such members as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

- (a) the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership, or
- (b) the date exactly six (6) years after the recording of this Declaration;
or
- (c) At the election of the Declarant (whereupon the Class A Members shall be obligated to elect the Board and assume control of the Association).

Section 3. General Matters. When reference is made herein, or in the Articles of Incorporation, By-Laws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members and not of the Members themselves.

ARTICLE IV
**PROPERTY SUBJECT TO THIS DECLARATION AND
ADDITIONS TO THE PROPERTY**

Section 1. Property Subject to Declaration. The Property is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration.

Section 2. Additions to the Property. The Declarant and the Association reserve the right to add or cause to be added other real property, not now included within the Property to the Property, and such additional real property shall be subject to the provisions of this Declaration.

Section 3. Annexation Without Association Approval. The Declarant may from time to time within six (6) years of the date of this Declaration bring, in whole or in part, the Undeveloped Parcel under the provisions hereof by recorded supplemental declarations which shall not require the consent of the existing Owners or the Association, or any mortgagee, or the Federal Housing Administration and the Veterans Administration as long as the Federal Housing Administration and the Veterans Administration determine that the annexation is in accord with the general development plan heretofore approved by this Declaration. Nothing herein, however, shall prevent the Declarant from adding additional or other property to the Property under such common scheme.

The additional lands annexed in accordance with the provisions hereof shall become subject to the provisions of this Declaration upon the recording in the Public Records of Brevard County, Florida of an amendment or supplement hereto properly executed by the Declarant and without the consent of the members of the Association. Until such amendment is recorded, no provision of this Declaration shall be effective as to all or any portion of the Undeveloped Parcel, nor shall this Declaration constitute a cloud or encumbrance on the title of said Undeveloped Parcel.

Section 4. Additions or Modifications. Such amendments or supplements to the Declaration may contain such complementary additions and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Undeveloped Parcel, which is the subject of such amendments or supplements to the Declaration, and are not inconsistent with the scheme of this Declaration, as determined by the Declarant. Further, such amendments or supplements to the Declaration may contain provisions relating to such Undeveloped Parcel, or any portions thereof, dealing with, among other things, assessments and the basis thereof, rules and regulations, architectural controls and other provisions consistent with the nature of the development of such Property and pertaining to all or part of such Undeveloped Parcel to the exclusion of other portions of the Property.

Section 5. Other Annexation of Property. Land, other than land annexed in accordance with section 3 of this Article, may be annexed to the Property with the consent of two-thirds (2/3rds) of each class of Members of the Association and with the approval of the Federal Housing Administration and the Veterans Administration as long as there is a Class B membership. Such annexation shall become effective upon the recording of an amendment to this Declaration in the Public Records of Brevard County.

Section 6. Platting. As long as there is a Class B membership, the Declarant shall be entitled at any time and from time to time, to plat and/or replat all or any part of the Property and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion or portions of the Property without the consent or approval of an Owner.

Section 7. Amendment. As long as there is a Class B membership, the provisions of this Article cannot be amended without the written consent of the Declarant, and any amendment of this Article without the written consent of the Declarant shall be deemed null and void.

Section 8. Recordation. Upon each commitment of additional real property to this Declaration, a recordation of such additions shall be made as a supplement to this Declaration in the Official Records of Brevard County, Florida, such real property described therein shall be committed to the covenants contained in this Declaration and shall be considered "Property" as fully as though originally designated herein as Property.

Section 9. Merger. Nothing in these Articles is intended to limit or restrict in any way the Association's rights or ability to merge with any other association as the Board may feel is in the best interests of the Association and its Members. Upon a merger or consolidation of the Association with another association, all Common Area, rights and obligations shall by operation of law, be transferred to the surviving or consolidated association or, alternatively, the properties, rights and obligations of another association, by operation of law, may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants established by this Declaration within the Property together with the covenants and restrictions established by any supplement upon any other properties as one scheme. No such merger or consolidation, however, shall cause a revocation, change or addition to the covenants in the Declaration as it pertains to the Property, except as hereinafter provided.

ARTICLE V FUNCTIONS OF THE ASSOCIATION

Section 1. Through Board Action. The affairs and decisions of the Association shall be conducted and made by the Board of Directors (hereinafter the "Board"); the Members shall only have such power or rights of approval or consent as is expressly specified herein, or in the Association Articles or Bylaws. In the absence of a specific requirement of approval by Members, the Board may act on its own through its proper officers.

Section 2. Required Services. In addition to those other responsibilities specified in the Association Articles or Bylaws, the Association, or its management company if applicable, shall be required to provide the following services as and when

deemed necessary and appropriate by the Board and shall have easement rights necessary to perform same:

- A. All painting and maintenance of the Common Area, and all improvements thereon, as and when deemed necessary by the Board.
- B. Maintenance and care for all landscaped areas within the Common Area and the mowing of the front yard and side yard lawns of each Lot, including irrigation of all portions of each Lot, and maintenance of irrigation equipment. Maintenance of trees, shrubs, hedges, bushes, and plantings, on each Lot is the respective Lot owner's responsibility. The Board shall be entitled to determine, in its sole discretion and without notice to any Owner, the extent of Lot maintenance and the time of day or night that various portions of the Common Area and the Lots will be irrigated.
- C. Maintenance of any and all streets, roads, parking areas, sidewalks, lead walks, paths and entry features, road and Lot drainage, including curbs, gutters, storm sewers and swales, located throughout the Common Area or within any portions of the Property which may now or hereafter be dedicated to the public or to any governmental body.
- D. Payment of ad valorem and commercial personal property taxes, if applicable, with respect to the Common Area, both prior to and after conveyance of same by Declarant to the Association. This provision for payment of taxes prior to conveyance of legal title is fair in light of the Members' use and benefit of such property by virtue of easements created herein.
- E. Operation of the Common Area in accordance with the Rules and other standards adopted by the Board from time to time, both prior to and after conveyance of same by Declarant to the Association.
- F. Taking any and all actions necessary to enforce all covenants, restrictions and easements affecting the Property and performing any of the functions or services delegated to the Association in any covenants, conditions or restrictions applicable to the Property, or in the Association Articles or Bylaws.
- G. Conducting business of the Association, including arranging for ancillary administrative services such as legal, accounting, and financial, and communication services such as informing Owners of activities, notice of meetings, and other important events.
- H. Purchasing insurance as may be required hereby or by the Bylaws and any other insurance to the extent deemed necessary or desirable by the Board.

I. Acceptance of any instrument of conveyance with respect to any Common Area delivered to the Association.

Section 3. Authorized Services. The Association shall be authorized, but not required, to provide the following functions and services and shall have easement rights necessary to perform same:

- A. Lighting of roads, sidewalks, walks and paths throughout the Property;
- B. Fire protection and prevention;
- C. Garbage and trash collection and disposal;
- D. Conducting recreation, sport, craft and cultural programs of interest to Owners, including their families, tenants, guests and invitees;
- E. Protection and security, including, but not limited to, the employment of stationary or patrolling security guards within the Property and operation of a guardhouse;
- F. Maintenance of electronic and other surveillance devices;
- G. Installation, operation and maintenance of cable television facilities, or other communication systems throughout the Property;
- H. Such other services as are authorized in the Association Articles or Bylaws;
- I. Cleanup, landscaping, maintenance, dredging, water treatment or other care of canals, roads or other property (public or private) adjacent to or near the Property to the extent such care would, in the reasonable determination of the Board, be beneficial to the Property and to the extent that the Association has been granted the right to so care for the affected property by the owner thereof or other person authorized to grant such right, including, but not limited to, any appropriate governmental authority;
- J. Emergency repairs and other work on Lots reasonably necessary for the proper maintenance and operation of the Project, including, but not limited to party wall repairs as stated in Article VI hereof.

Section 4. Surface Water Management and Drainage. The surface water management and drainage system for the Property is part of one integrated system throughout the Project. An easement is hereby created over the Common Area in favor of the Association, including its agents or other designees, for surface water drainage and for the installation and maintenance of the surface water management and

drainage system for the Property; provided, however, that such easement shall be subject to improvements constructed within the Property as permitted by controlling governmental authority from time to time. The surface water management and drainage system shall be developed, operated and maintained in conformance with the requirements of the St. John's River Water Management District and/or any other controlling governmental authority. The Association shall maintain the entire surface water management and drainage system within the Property including, but not limited to, all lakes, canals, swale areas, retention areas, culverts, pipes, and related appurtenances regardless of location or whether owned by the Association.

Section 5. Irrigation System. A non-exclusive easement is hereby created over the applicable and necessary portions of the Common Area and the Lots in favor of the Association, including its agents or other designees, for the installation and maintenance of the irrigation system for the Property; provided, however, that such easement shall be subject to improvements constructed within the Property as permitted by controlling governmental authority from time to time, and provided that such easement shall not unreasonably interfere with the Declarant's or any Owner's (including their respective agents or other designees) intended or permitted use of the Common Area and/or the Lots.

Section 6. Actions by Association. Anything herein to the contrary notwithstanding, no general funds of the Association shall be utilized for bringing, supporting, investigating or otherwise abetting any legal action, claim or extra-judicial action except for (i) imposition, enforcement and collection of Assessments, including lien rights, pursuant to Article VII hereof, (ii) collecting of debts owed to the Association, (iii) bringing any contest or appeal of tax assessments relating to any property owned by the Association, (iv) actions brought by the Association to enforce the provisions of this Declaration, and (v) counterclaims brought by the Association in proceedings instituted against it, unless such legal action, claim or extra-judicial action shall be specifically approved for such purposes by 75% of the total votes of all Members of the Association in existence at any time.

ARTICLE VI **PRIVACY WALLS**

Section 1. Privacy Wall. The Declarant may construct privacy walls or fences within the Property ("Privacy Wall(s)"). A Privacy Wall shall hereinafter be defined as any wall or fence built by the Declarant, or later built by the Association, in any Common Area, easement, or elsewhere on the Property as a visual barrier, decorative or architectural feature, safety feature, or for any other reason at the sole discretion of the Declarant, or as a requirement of any municipality or governing authority.

Section 2. Maintenance of Privacy Walls. Unless the Association elects to maintain Privacy Walls, Owners shall be responsible for the maintenance of Privacy Walls situated on their respective Lot or Lots.

Section 3. Failure to Maintain a Privacy Wall. To the extent an Owner does not maintain the Privacy Wall contiguous with the boundary line of that Owner's Lot, and the Association has elected not to maintain said Privacy Wall, the Association shall have the right to paint, repair or otherwise maintain that portion of the Privacy Wall. Upon the occurrence of such an event, the Association shall have the right to assess said Owner for the costs thereof and the enforcement provisions contained in this Declaration shall apply.

Section 4. Easement for Privacy Wall. An easement is hereby created in favor of the Declarant and the Association for the construction, management, inspection, painting, maintenance and repair of Privacy Walls located within the Property. The easement shall extend five (5) feet into each affected Lot from the Privacy Wall. Entry upon a Lot by the Declarant or the Association, or their agents, as provided herein, may occur without notice and shall not be deemed a trespass.

ARTICLE VII **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) commencement assessments; (2) administrative assessments; (3) annual assessments or charges; (4) special assessments for capital improvements; (5) assessments for the costs of maintenance and operation of the Surface Water or Stormwater Management System; and (6) assessments for the costs of maintenance and operation of the Mitigation and Conservation Areas. All assessments, together with late fees, interest, costs, and reasonable attorneys' fees for collection thereof, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees for collection thereof, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due and all subsequent Owners until paid.

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 Property and for the improvement and maintenance of the Common Area, easement areas benefiting the Property, or right-of-way areas adjacent to the Property the Association chooses to maintain, or for any other purpose set forth in the Declaration that the Association deems necessary.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to any Owner, the maximum annual assessment shall be Twelve Hundred and 00/100 Dollars (\$1200.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year by five percent (5%) above the maximum assessment for the previous year unilaterally by the Board of Directors without approval by a vote of the Membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, to increase the maximum annual assessment more than five percent (5%) of the prior year's maximum annual assessment, a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for that purpose, must occur.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, or to repair any Privacy Walls, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Commencement Assessment. A Commencement Assessment of Two Hundred and 00/100 Dollars (\$200.00) per Lot shall be paid to the Association at the time of closing by the original purchaser of a Lot purchasing from the Declarant. The Association may use the Commencement Assessment for any of the purposes set forth in this Declaration. The Commencement Assessment shall be paid directly to the Association and shall be utilized in a manner consistent with other Assessments.

Section 6. Administrative Assessment. A one time Administrative Assessment of twenty-five and 00/100 Dollars (\$25.00) per Lot shall be paid by any successive purchaser, to the Association, of a Lot at the time of closing on the purchase of the Lot. The Administrative Assessment is designed to defray the costs of the Association of maintaining accurate records including transfers of title and changes in addresses of all of its Members and to assure that all new Members receive a complete set of Governing Documents that relate to the rules, regulations and responsibilities of ownership within the community. The Administrative Assessment shall be paid directly to the Association and may be used for any purpose as set forth in this Declaration.

Section 7. Uniform Rate of Assessment. All assessments must be fixed at a uniform rate for all Lots.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for in this Article shall commence as to all Lots on the date of the conveyance of the first lot to a Class A member (other than Pulte Home Corporation, a Michigan corporation, as Assignee of Declarant) and shall be applicable through December 31 of such year. Each subsequent annual assessment shall be imposed for the year beginning January 1 and ending December 31. The annual assessments shall be payable in advance in monthly installments, or in annual, semi-annual or quarter-annual installments if so determined by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of the months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the assessments shall be sent to every Owner subject thereto. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Notwithstanding anything herein to the contrary, as long as Class B Membership exists, as to unoccupied Lots owned by Declarant, Declarant may elect to pay twenty-five percent (25%) of the annual assessment on each such unoccupied Lot. Should Declarant so elect to pay this reduced assessment, Declarant shall pay all costs incurred by the Association in accomplishment of the purposes set forth in Article VII, Section 2 hereof, in excess of the total amount collected by the Association through all assessments. This obligation of the Declarant shall hereinafter be referred to as the Declarant's "Deficiency Obligation". Irrespective of any election on the part of the Declarant, any dwelling located on any lot owned by the Declarant which is occupied shall be subject to one hundred percent (100%) of any and all applicable assessments. Declarant may at any time revoke this election and place himself in the position of being obligated to pay the full impact of all assessments for each lot owned by the Declarant at the time said revocation is presented to the Association.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 10. Assumption of Delinquent Assessments by Successors. The personal component of the obligation for delinquent assessments shall not pass to the Lot Owner's successors in title unless expressly assumed by them. Irrespective of the assumption of the personal component of the obligation by any successors in title, the lien for delinquent assessments shall continue to be a lien upon the Lot until such time as it is fully paid.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Article shall be a lien superior to all other liens less and except real estate tax liens and the lien of any mortgage to any Institutional Lender which is now or hereafter placed upon any property subject to assessment as long as said mortgage lien is a first lien against the property encumbered thereby; provided, however, that any such mortgagee, when in possession, or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgagee acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee, shall hold title subject to the liability and lien of any assessment coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be deemed to be an assessment divided equally among, payable by and a lien against all Lots subject to assessment by the Association, including the Lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place. Notwithstanding any contrary provision hereof, no Institutional Lender acquiring title to a Lot through foreclosure or conveyance in lieu of foreclosure, and no purchaser at a foreclosure sale, and no persons claiming by, through or under such Institutional Lender or purchaser, shall be personally obligated to pay assessments that accrue prior to the Institutional Lender's or the foreclosure purchaser's acquiring title.

Section 12. Special Taxing Districts. In the event that a Special Taxing District is established to provide any services currently rendered by, or which are the responsibility of, the Association, these covenants and conditions shall no longer be of any force and effect as to any such services provided by said Special Taxing District; provided however the covenants and conditions set forth herein shall continue to bind and run with the land as to all of the Properties for services not provided by said Special Taxing District. If said Special Taxing District is terminated for any reason, these covenants and conditions shall thereupon apply in full force and effect as if said Special Taxing District had never been created.

ARTICLE VIII ARCHITECTURAL CONTROL

Except for those improvements constructed by Declarant, no building, fence, wall or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to, change, alteration or repair (other than repairing or restoring the exterior of any building located upon the Property to its original appearance and color) therein be made until the plans and specifications showing the nature, kind, shape, height, color, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an architectural committee composed of three (3) or more representatives appointed by the Board of Directors. In the event the Board of Directors, or its designated committee, fails to approve or disapprove such design and

location within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE IX USE RESTRICTIONS

The Property, which shall include all Lots that result from the subdividing and platting of the parcel owned by the Declarant and all common areas or tracts, shall be subject to the following restrictions, reservations and conditions, which shall be binding upon the Declarant and upon each and every Owner who shall acquire hereafter a Lot or any portion of the Property, and shall be binding upon their respective heirs, personal representatives, successors and assigns.

Section 1. Violation. If any person claiming by, through or under Declarant, or its successors or assigns, or any other person, shall violate or attempt to violate any of the covenants herein, it shall be lawful for the Declarant or any person or persons owning real estate subject to these covenants to bring any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenants, including action to enjoin or prevent him or them from so doing, or to cause the violation to be remedied and to recover damages or other dues for such violation. If the party or parties bringing any such action prevail, they shall be entitled to recover from the person or persons violating these restrictions the costs incurred by such prevailing party, including reasonable attorneys' fees and disbursements incurred through all appellate levels. Invalidation of any of these covenants by judgment of court order shall in no way affect any of the other covenants and provisions, contained herein, which shall remain in full force and effect.

Section 2. Residential Lots. All Lots included within the real estate to which these restrictions pertain shall be known and described as residential Lots. No structure shall be erected, altered, placed or permitted to remain on any of said Lots, other than one single-family dwelling and ancillary residential structures approved by the Board.

Section 3. Mining or Drilling. There shall be no mining, quarrying or drilling for minerals, oil, gas or otherwise undertaken within any portion of the Property. Excepted from the foregoing shall be activities of the Declarant or the Association, or any assignee of the Declarant or the Association, in dredging the water areas, creating land areas from water areas, or creating, excavating or maintaining drainage or other facilities or easements, and/or the installation of wells or pumps in compliance with applicable governmental requirements, or for sprinkler systems for any portions of the Property.

Section 4. Laundry Drying or Hanging. The outside drying or hanging of laundry is expressly prohibited on any and all portions of the Property, except under the limited provisions set forth hereafter. Owners are discouraged from any outside drying or hanging of laundry on a Lot. If any Owner does proceed with outside drying or hanging of laundry, such activity shall be restricted to the rear yard of the Lot, which must be enclosed by wall or privacy fence. Further, such drying or hanging of laundry shall be fully concealed so as not to be visible from outside the Lot. Any pole, line or other device used for hanging of laundry shall be portable and shall be removed when not in use.

Section 5. Antennas, Aerials, Discs and Flagpoles. No outside antennas, antenna poles, antenna masts, satellite television reception devices, electronic devices, antenna towers or citizen band (CB) or amateur band (ham) antennas shall be permitted except as approved in writing by the Association. The Association will approve an outside antenna, antenna pole, antenna mast, satellite television reception device, electronic device, antenna tower or citizens' band (CB) or amateur band (HAM) antenna only if it is so located that it cannot be seen from any street and is shielded from view from any adjoining Lot. A flagpole for display of the American flag or any other flag shall be permitted only if first approved in writing by the Association, as to its design, height, location and type of flag. No flagpole shall be used as an antenna.

Section 6. Games and Play Structures. All game and play structures shall be located at the side or rear of the improvement, or on the inside portion of the corner Lots within the set back lines. Tree house or platforms of a like kind or nature shall not be constructed on any part of the Lot located in front of the rear line of the improvement constructed thereon.

Section 7. Subdivision or Partition. No portion of the Property shall be subdivided except with the Association's prior written consent.

Section 8. Casualty Destruction to Improvements. In the event an improvement is damaged or destroyed by casualty, hazard or other loss, then, within a reasonable period of time after such incident, the Owner thereof shall either commence to rebuild or repair the damaged improvement and diligently continue such rebuilding or repairing activities to completion or, upon a determination by the Owner that the improvement will not be repaired or replaced promptly, shall clear the damaged improvement and grass over and landscape such Lot in a sightly manner consistent with the Declarant's plan for beautification of the Property. A destroyed improvement shall only be replaced with an improvement of an identical size, type and elevation as that destroyed unless the prior written consent of the Association is obtained.

Section 9. Common Area. Nothing shall be stored, constructed within or removed from any Common Area other than by the Declarant, except with the prior written approval of the Board of Directors.

Section 10. Insurance Rates. Nothing shall be done or kept on any Common Area which shall increase the insurance rates of the Association without the prior written consent of the Board of Directors.

Section 11. Surface Water/Stormwater Management System.

(a) The Association shall operate, maintain and manage the surface water or stormwater management system(s), denoted on the Plat of the Property in a manner consistent with the St. John's River Water Management District Permit requirements and applicable District rules, and shall assist in the enforcement of the restrictions and covenants contained herein. The Association shall be required to assist in the monitoring and successful establishment of the Mitigation Areas, if any, to the extent that the activities of the Association do not conflict with the terms of the Permit, and as further defined below. 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, treatment, conveyance or other surface water or stormwater management capabilities as permitted by the St. John's 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. John's River Water Management District.

(b) No structure of any kind shall be constructed or erected within, nor shall an Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of any drainage areas or the Surface Water/Stormwater Management System, nor shall any grading, alteration, or other modifications to these areas be made without the prior written permission of the Association, Brevard County, and the St. John's River Water Management District.

(c) No Owner shall in any way deny or prevent ingress and egress by the Declarant, the Association, Brevard County, or the St. John's River Water Management District to any drainage areas or the Surface Water/Stormwater Management System for maintenance or landscape purposes. The right of ingress and egress, and easements therefor are hereby specifically reserved and created in favor of the Declarant, the Association, the St. John's River Water Management District, Brevard County, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

(d) No Lot shall be increased in size by filling in any drainage areas or other portion of the Surface Water/Stormwater Management System. No Owner shall fill, dike, rip-rap, block, divert or change the established drainage areas or the Surface Water/Stormwater Management System that have been or may be created by easement without the prior written consent of the Association, Brevard County, and the St. John's River Water Management District.

(e) Any wall, fence, paving, planting or other improvement which is placed by an Owner within a drainage area, drainage easement, or the Surface Water/Stormwater Management System including, but not limited to, easements for maintenance or ingress and egress access, shall be removed, if required by the Association or the St. John's River Water Management District, the cost of which shall be paid for by such Owner as a Special Assessment.

(f) The St. John's River Water Management District and Brevard County shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water/ Stormwater Management System.

(g) The covenants and restrictions regarding the Surface Water/Stormwater Management System are in no way intended to obligate the Association to perform any repairs, maintenance, corrections or modifications to those areas that Brevard County or the St. John's River Water Management District will maintain as part of their governmental obligation, agreement with the Declarant, or as provided in any permits or ordinances.

Section 12. Mitigation and Conservation Areas.

(a) The Mitigation and/or Conservation Areas, as noted on the Plat of the Property, are part of the 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, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, Florida Administrative Code.

(b) The Association shall operate, maintain and manage the Mitigation and Conservation Areas in a manner consistent with the St. John's River Water Management District Permit requirements and applicable District rules, and shall assist in the enforcement of the restrictions and covenants contained herein. The Association shall be required to monitor and establish the Mitigation Areas. "Establishing" these areas shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance, survival and growth of installed aquatic plant material or other surface water or stormwater management requirements as permitted by the St. John's River Water Management District and Brevard County. 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. John's River Water Management District.

(c) No structure of any kind shall be constructed or erected, nor shall an Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of any drainage areas or the Mitigation and Conservation Areas without prior written permission of the Association, Brevard County and the St. John's River Water Management District.

(d) No Owner shall in any way deny or prevent ingress and egress by the Declarant, the Association, Brevard County or the St. John's River Water Management District to any drainage areas or the Mitigation and Conservation Areas for maintenance or landscape purposes. The right of ingress and egress, and easements therefor are hereby specifically reserved and created in favor of the Declarant, the Association, the St. John's River Water Management District or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

(e) No Lot shall be increased in size by filling in any drainage areas or Mitigation and Conservation Areas. No Owner shall fill, dike, rip-rap, block, divert or change the established drainage areas, or the Surface Water/Stormwater Management Systems that have been or may be created by easement without the prior written consent of the Association, Brevard County and the St. John's River Water Management District.

(f) Any wall, fence, paving, planting or other improvement which is placed by an Owner within a drainage area, drainage easement, Mitigation and Conservation Areas, but not limited to, easements for maintenance or ingress and egress access, shall be removed, if required by the Association, Brevard County, or the St. John's River Water Management District, the cost of which shall be paid for by the Owner as a Special Assessment.

(g) The St. John's River Water Management District and Brevard County shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this declaration which relate to the maintenance, operation and repair of the Mitigation and Conservation Areas.

(h) The covenants and restrictions regarding the Mitigation and Conservation Areas are in no way intended to obligate the Association to perform any repairs, maintenance, corrections or modifications to those areas that Brevard County or the St. John's River Water Management District will maintain as part of their governmental obligation, agreement with the Declarant or as provided in any permits or ordinances.

Section 13. Pets, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept within the Property, other than household pets provided they are not kept, bred or maintained for any commercial purpose, and provided that they do not become a nuisance or annoyance to any other Owner. No pet shall be allowed outside a Lot except on a leash. No pets shall be permitted to

place or have excretions on any portion of the Property other than the Lot of the owner of the pet unless the owner of the pet physically removes any such excretions from that portion of the Property. For purposes hereof, "household pets" shall mean dogs, cats, domestic birds and fish. Pets shall also be subject to applicable Rules and Regulations of the Association and their owners shall be held accountable for their actions. Commercial activities involving pets shall not be allowed. The Association or the Declarant may establish limits on the number and kind of pets that may be kept or permitted to be kept on any Lot.

Section 14. Signs. No signs, except a "for sale" sign not exceeding four square feet in surface area and one sign of not more than one (1) square foot used to indicate the name of the resident, shall be erected or displayed to the public view on any Lot. Notwithstanding the foregoing, the Declarant specifically reserves the right for itself, its successors, nominees and assigns and the Association to place and maintain any and all signs they may deem necessary, regardless of whether or not the sign complies with the mandates of the Association and its Members, in connection with construction, marketing, sales and rental of Lots and identifying or informational signs anywhere on the Property.

Section 15. Garbage Containers, Oil and Gas Tanks, Pool Equipment, Outdoor Equipment. All garbage and trash containers, and swimming pool equipment and housing must be underground or placed in walled-in areas or landscaped areas so that they are not visible from any adjoining Lot or any street. No oil tanks or bottled gas tanks shall be allowed without the express written consent of the Board of Directors and the Association. Adequate landscaping shall be installed and maintained by the Owner to conceal the oil or bottled gas tanks. No Lot shall be used or maintained as a dumping ground for rubbish, trash or other waste. There shall be no burning of trash or other waste material. Trash, garbage or other waste shall be kept only in closed containers and all equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

Section 16. Vehicles and Recreational Equipment. No commercial vehicle, (except police or other governmental automobiles), mobile home, motor home, house trailer or camper, boat, boat trailer or other recreational vehicle or equipment, horse trailer or van, or the like shall be permitted to be parked or to be stored at any place on any portion of the Property unless they are parked within a garage, or are located on a Lot so they cannot be seen from any street and are shielded from view from any adjoining Lot. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles used for pickup, delivery and repair and maintenance of a Lot, nor to any vehicles of the Declarant.

Any such vehicle or recreational equipment parked in violation of these or other regulations contained herein or in the Rules and Regulations adopted by the Association may be towed by the Association at the sole expense of the owner of such vehicle or recreational equipment if it remains in violation for a period of twenty-four

(24) consecutive hours or for forty-eight (48) nonconsecutive hours in any seven (7) day period. The Association shall not be liable to the owner of such vehicle or recreational equipment for trespass, conversion or otherwise, nor guilty of any criminal act by reason of such towing and neither its removal nor failure of the owner of such vehicle or recreational equipment to receive any notice of said violation shall be grounds for relief of any kind.

Section 17. Repairs. No maintenance or repairs shall be performed on any vehicles upon any portion of the Property except in an emergency situation. Notwithstanding the foregoing, all repairs to disabled vehicles within the Property must be completed within two (2) hours from its immobilization or the vehicle must be removed.

Section 18. Prohibited Structures. No structure of a temporary character including, but not limited to, trailer, tent, shack, shed, barn, tree house or out building shall be parked or erected on the Property at any time without the express written permission of the Association or Board of Directors.

Section 19. Nuisances. No obnoxious, unpleasant, unsightly or offensive activity shall be carried on, nor may anything be done, which can be reasonably construed to constitute a nuisance, public or private in nature. Any questions with regard to the interpretation of this section shall be decided by the Board of Directors, whose decision shall be final.

Section 20. Compliance with Documents. Each Owner and his family members, guests, invitees, lessees and their family members, guests, and invitees; and his or its tenants, licensees, guests, invitees and sub-tenants shall be bound and abide by this Declaration. The conduct of the foregoing parties shall be considered to be the conduct of the Owner responsible for, or connected in any manner with, such individual's presence within the Property. Such Owner shall be liable to the Association for the cost of any maintenance, repair or replacement of any real or personal property rendered necessary by his act, neglect or carelessness, or by that of any other of the foregoing parties which shall be paid for by the Owner as a Special Assessment as provided in Article VII. Failure of an Owner to notify any Person of the existence of the covenants, conditions, restrictions, and other provisions of this Declaration shall not in any way act to limit or divest the right to enforcement of these provisions against the Owner or such other person.

Section 21. Other Restrictions Established by the Association. The Association shall have the authority, as hereinabove expressed, from time to time to include within its promulgated residential planning criteria other restrictions as it shall deem appropriate. Said restrictions shall be governed in accordance with the criteria hereinabove set forth for residential planning criteria promulgated by the Association. However, once the Association promulgates certain restrictions, same shall become as binding and shall be given the same force and effect as the restrictions set forth herein

until the Association modifies, changes or promulgates new restrictions or the Association modifies or changes restrictions set forth by the Association.

Section 22. Common Area. Other than those improvements constructed by Declarant, no improvements shall be constructed upon any portion of the Common Area without the approval of the Association.

(a) No activities constituting a nuisance shall be conducted upon any Common Area.

(b) No rubbish, trash, garbage or other discarded items shall be placed or allowed to remain upon any Common Area.

(c) The Association may from time to time adopt reasonable rules and regulations concerning use of the Common Area which shall be binding upon all Members of the Association.

(d) The Association shall at all times pay the real property ad valorem taxes, if any, assessed against property owned by the Association and any other governmental liens which may be assessed against the real property owned by the Association. The Association at all times shall procure, maintain and pay for adequate policies of public liability and fire and extended casualty insurance upon the Common Area. All insurance policies shall be in the name of the Association and for the benefit of the Members and Owners and such other parties as the Association deems necessary. The insurance policies shall be in such amounts and subject to such conditions and with such provisions as the officers or Board of Directors of the Association may determine, not inconsistent with any provisions of this Declaration. The Board of Directors may obtain such other type of insurance as they deem advisable.

(e) Except for those capital improvements made to the Common Area by the Declarant at its expense, at all times hereafter, all capital improvements to the Common Area except for replacement or repair of those items installed by the Declarant and except for personal property related to the maintenance of the Common Area shall require the approval of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose unless such capital improvement is required by any Federal, State or local law or ordinance.

Section 23. Property Maintenance. In the event an Owner of any Lot shall fail to maintain the premises and improvements situated thereon in a manner satisfactory to the Association, including but not limited to landscaping, grass and shrubbery, the Owner shall be notified and given thirty days within which to correct or abate the situation. If the Owner fails to do so, the Association shall have the right (although it shall not be required to do so) to enter upon the Lot for the purpose of repairing,

maintaining and restoring the Lot and the exterior of the building and other improvements located thereupon at the sole cost of the Owner of the Lot. The cost of such repair, maintenance and restoration, together with reasonable attorneys' fees and costs for collection thereof incurred through all appellate levels, shall thereupon constitute a lien upon the Lot which lien shall become effective only upon the filing of a written claim of lien. The form, substance and enforcement of the lien shall be in accordance with the construction lien law of the State of Florida, and the Owner of the Lot shall, by virtue of having acquired the Lot subject to these restrictions, be deemed to have authorized and contracted for such repair, maintenance and restoration. The lien herein provided will be subordinate to a first mortgage lien.

Section 24. No Implied Waiver. The failure of the Association or the Declarant to object to an Owner's or other party's failure to comply with this Declaration or any other Governing Documents (including any Rules and Regulations promulgated) shall in no event be deemed a waiver by the Declarant or the Association, or any other person having an interest therein, of that Owner's or other party's requirement and obligation to abide by this Declaration.

Section 25. Imposition of Fines for Violations. It is acknowledged and agreed among all Owners that a violation of any of the provisions of this Article by an Owner or resident may impose irreparable harm to the other Owners or residents. All Owners agree that a fine may be imposed by the Declarant or Association for each day a violation continues after notification by the Declarant or the Association. All fines collected shall be used for the benefit of the Association. Any fine levied shall be paid within fifteen (15) days after mailing of notice of that fine. If not paid within the fifteen (15) days the amount of such fine shall accrue interest at a rate of ten percent (10%) per annum, and shall be treated as a Special Assessment as provided in Article VII.

Section 26. Association Waiver. In the event that a violation of any of these restrictions shall inadvertently occur, which violation shall not be of such nature to defeat the intent and purpose of these covenants, the Association shall have the right and authority to waive such violation.

Section 27. Rights of Declarant. Notwithstanding anything in this Declaration to the contrary, Declarant shall have the right to use the Property for ingress and egress thereover including the use of construction machinery and trucks thereon and no person shall in any way impede or interfere with the Declarant, its employees or agents, in the exercise of this right herein reserved, or interfere with the completion of the contemplated improvements or sale of Lots and improvements thereon. Furthermore, the Declarant may make such use of Property free from the interference of Owners or contract purchasers as may be reasonably necessary to facilitate the completion and sale of Lots and improvements thereon, including but not limited to, the maintenance of a sales office and model area, the showing of Property, the display of signs, and the right to construct or place sales and construction offices of a temporary nature on the Property.

ARTICLE X
ENFORCEMENT OF NONMONETARY DEFAULTS

Section 1. Nonmonetary Defaults. In the event of a violation by any Member or Owner (other than the nonpayment of any Assessments or other monies) of any of the provisions of the Governing Documents or restrictions set forth by the Association, the Association shall notify the Member or Owner of the violation by written notice. If the violation is not cured as soon as practicable, and in any event, no later than seven (7) days after the receipt of the written notice, or if the violation is not capable of being cured within the seven (7) day period, or if the Member or Owner fails to commence and diligently proceed to completely cure as soon as practical, the Association may, at its option:

(a) Specific Performance. Commence an action to enforce the performance on the part of the Member or Owner, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

(b) Damages. Commence an action to recover damages; and/or

(c) Corrective Action. Take any and all action reasonably necessary to correct such violation, which action may include, but is not limited to, removing any building or improvement for which architectural approval has not been obtained, or perform any maintenance required to be performed by this Declaration, including the right to enter upon a Lot to make such corrections or modifications as are necessary, or remove anything in violation of the provisions of the Governing Documents or any restrictions set forth by the Association.

Section 2. Expenses. All expenses incurred by the Association in connection with the correction of any violation, or the commencement of any action against any Owner, including administrative fees and costs and reasonable attorneys' fees and disbursements through the appellate level, shall be a Special Assessment assessed against the applicable Owner, and shall be due upon written demand by the Association and collectible as any other Special Assessment under this Article or Article VII.

Section 3. Late Fees. Any remedy sought by the Declarant or Association shall be subject to a late fee as set by the Board of Directors which shall bear an interest rate of ten percent (10%) per annum.

Section 4. No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by the Governing Documents shall not constitute a waiver of the right of the Association to enforce such right, provisions, covenant, or condition in the future.

Section 5. Rights Cumulative. All rights, remedies and privileges granted to the Association pursuant to any terms, provisions, covenants or conditions of the Governing Documents shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association from executing such additional remedies, rights or privileges as may be granted or as it might have by law.

Section 6. Enforcement By or Against the Persons. In addition to the foregoing, the Declaration may be enforced by the Declarant, the Association, or any Owner by any procedure at law or in equity against any Person violating or attempting to violate any provision herein, to restrain any violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this Declaration shall be borne by the Person against whom enforcement is sought, provided such proceeding results in a finding that such Person was in violation of this Declaration. The prevailing party in any such action shall be entitled to recover its reasonable attorney fees and disbursements through the appellate level.

Section 7. Certificate as to Default. Upon request by any Member, or Owner, or mortgagee holding a mortgage encumbering any Lot, the Association shall execute and deliver a written certificate as to whether such Member or Owner is in default with respect to compliance with the terms and provisions of this Declaration.

ARTICLE XI INDEMNIFICATION

Section 1. Indemnification of Officers, Directors or Agents. 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, by reason of the fact that he is or was a Director, employee, Officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association; and, with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful; or matter as to which such Person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such Person is fairly and reasonable 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, in

and of itself, create a presumption that the Person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

(a) To the extent that a Director, Officer, employee or agent of the Association is entitled to indemnification by the Association in accordance with this Article, he shall be indemnified against expenses (including attorneys' fees and appellate attorney's' fees) actually and reasonably incurred by him in connection therewith.

(b) The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of Members or otherwise. As to action taken in an official capacity while holding office, the indemnification provided by this Article shall continue as to a Person who has ceased to be a member of the Board of Directors, Officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a Person.

(c) The Association shall have the power to purchase and maintain insurance on behalf of any Person who is or was a Director, Officer, employee or agent of the Association, or is or was serving at the request of the Association as a Director, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

ARTICLE XII

RELATIONSHIP WITH THE MASTER ASSOCIATION

Section 1. Creation of the Master Association. Suntree Development Corp. and its successor, Suntree Partners (hereinafter "Declarant"), formed the Master Association for the purpose of holding title to the common area within Suntree (as defined in the Master Declaration) and enforcing the Master Declaration

Section 2. Rights and Duties of the Association. The Association shall:

- (a) abide by the Master Declaration and the covenants set forth therein; and
- (b) perform such other duties as are prescribed by the Governing Documents or which may be assigned to it from time to time by the Master Association or the Declarant.

Section 3. Membership in the Master Association. Each Owner shall be a Member of the Master Association.

ARTICLE XIII
GENERAL PROVISIONS

Section 1. Assignment of Rights and Duties to the Association. The Declarant may at any time assign and delegate to the Association all or any portion of the Declarant's rights, title, interests, duties or obligations created by this Declaration. It is understood that the Association has been formed as a property owners' association in order to effectuate the intent of the Declarant for the proper development, operation and management of the Property. Wherever herein the Declarant or the Association or both are given the right, duty or obligation to approve, enforce, waive, collect, sue, demand, give notice, or take any other action or grant any relief or perform any task, such action may be taken by the Declarant or the Association until such time as the Declarant is divested of all of its interest in any of the Property, or has terminated its interest in the Property. Thereafter, all rights, duties and obligations of the Declarant shall be administered solely by the Association in accordance with the procedures set forth herein and the Governing Documents.

Section 2. Covenants to Run with the Title to the Land. This Declaration, as amended and supplemented from time to time as herein provided, shall be deemed to run with the title to the Property and shall remain in full force and effect until terminated in accordance with provisions set out herein.

Section 3. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges and liens of this Declaration may be amended, changed or added to at any time and from time to time upon the execution and recordation of an instrument approved by Owners holding not less than two-thirds (2/3rds) vote of each class of membership in the Association, provided, that so long as the Declarant is the Owner of any Lot affected by this Declaration, the Declarant's consent must be obtained if such amendment, in the sole opinion of the Declarant, affects its interest. The foregoing sentence may not be

amended. No provision of this Declaration may be amended if such provision is required to be included herein by any law. Without limiting the generality of the foregoing paragraph, the Declarant specifically reserves the right to amend this Declaration in order to comply with the requirements of the Federal Housing Administration, Veteran's Administration, or Federal National Mortgage Association. As long as there is Class B membership, as that term is defined in Article III Section 2 hereof, the Federal Housing Administration or Veterans Administration must approve any amendment to this Declaration other than those to correct scrivener's errors or clarify any ambiguities herein.

The Declarant shall have the right at any time within six (6) years from the date hereof to amend this Declaration to correct scrivener's errors and to clarify any ambiguities determined to exist herein. No amendment shall impair or prejudice rights or priorities of any Institutional Lender without their written consent.

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. JOHN'S RIVER WATER MANAGEMENT DISTRICT.

Section 6. Communication. All communication from individual Owners to the Declarant, its successors or assigns; the Board of Directors of the Association; or any Officer of the Association, shall be in writing.

Section 7. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 8. Conflict. This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and Bylaws of the Association and the Articles of Incorporation shall take precedence over the Bylaws.

Section 9. Usage. Whenever used herein the singular number shall include the plural and plural the singular, and the use of any gender shall include all genders.

Section 10 Governing Law. The construction, validity and enforcement of this Declaration shall be determined according to the laws of the State of Florida. Any action or suit brought in connection with this Declaration shall be in Brevard County, Florida.

Section 11. FHAVA Approval. As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration (the "FHA") or the Veterans Administration (the "VA"); annexation of additional

properties, mergers and consolidations; dedication of Common Areas; mortgaging of Common Areas; and amendment of this Declaration. FHA or VA approval is also required for any amendments of the Association's Bylaws, the Articles of Incorporation or in the event of the Association's dissolution.

IN WITNESS WHEREOF, the undersigned, being the Declarant has hereunto set its hand and seal the day and year first above written.

WITNESSES:

Kellie Shepard
Witness
Name: Kellie Shepard
Address: 554 Carmel Dr.
Melbourne, FL 32940

Jane Lettonen
Witness
Name: JANE LETTONEN
Address: 998 SPANISH WELLS DR
MELBOURNE, FL 32940

SUNTREE PARTNERS,
a Florida general partnership
By: HMM, Inc., a Florida corporation
Its general partner
By: Miles D. Igo
Print name: _____
Its: President
400 St. Andrews Boulevard
Melbourne, Florida 32940

(CORPORATE SEAL)



STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 9th day of August, 1994, by Miles D. Igo, as President of HMM, Inc., general partner of Suntree Partners, a Florida general partnership. He is personally known to me and did not take an oath.

Kathy L. McCormick
Signature of Notary Public
Kathy L. McCormick
Print name of Notary Public
Notary Public State of Florida
My Commission Expires:

