

Prepared by and Return To:
James H. Fallace
James H. Fallace, P.A.
1900 So. Hickory Street
Melbourne, Florida 32901

Landy Crawford Clerk Circuit Court
Recorded and Verified Brevard County, FL
Pgs. 26 # Maps 1
Tr. of Fund 1 1
Stamp Fees _____
Stamp-Mod _____ Int Tx _____
Service Chg 5.00 Refund 10.00

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
EMERALD POINTE

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR Emerald Pointe (the "Declaration") is made this 21st day of July, 1995, and contains certain covenants and restrictions made by THE SUNTREE PARTNERS, a Florida general partnership (the "Developer").

DEVELOPMENT PLAN

SUNTREE PLANNED UNIT DEVELOPMENT is a planned unit development ("SUNTREE PUD") located in Brevard County, Florida. The land plan for the SUNTREE PUD community contemplates a variety of land uses, including and without limitation: single family detached homes, cluster homes and condominium units. The land plan contemplates public or private streets, open spaces, sanitary sewer, and drainage and water services. Emerald Pointe is a subdivision of SUNTREE PUD containing Fifty (50) lots and common properties in the SUNTREE PUD community.

At the time of their development, each subdivision and condominium in the SUNTREE PUD has been subjected to use restrictions and architectural controls. These use restrictions and controls are contained in documents entitled Declaration of Covenants, Conditions and Restrictions, recorded in Official Records Book 1545, Page 144 and subsequently amended pursuant to documents entitled and recorded as follows:

- (1) Amendment to Declaration of Covenants, Conditions and Restrictions recorded in Official Records Book 1965, Page 895;
- (2) Amendment to Declaration of Covenants, Conditions and Restrictions recorded in Official Records Book 2206, Page 837;
- (3) Amended and Restated Declaration of Covenants, Conditions and Restrictions of Suntree recorded in Official Records Book 2368, Page 1026;
- (4) Amendment to Declaration of Covenants, Conditions and Restrictions recorded in Official Records Book 2400, Page 1616;

c:\wpdocs\suntree\emerald.dec16/28/95

EX 3487-11256

821458

95 JUL -3 PM 1:46

- (5) Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded in Official Records Book 2615, Page 2281;
 - (6) Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded in Official Records Book 2722, Page 306;
 - (7) Declaration of Annexation as recorded in Official Records Book 3104, Page 727;
 - (8) Suntree Homeowners Association No. One, Inc. Certification as recorded in Official Records Book 3207, Page 3203;
 - (9) Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Suntree, as Amended, recorded in Official Records Book 3210, Page 624;
 - (10) First Amendment to Second Amended and Restated Declaration of Covenants and Restrictions for Suntree PUD as recorded in Official Records Book 3250, Page 3538;
 - (11) Second Amendment to Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Suntree, as Amended, recorded in Official Records Book 3265, Page 1631;
 - (12) Third Amendment to Second Amended and Restated Declaration of Covenants and Restrictions for Suntree PUD as recorded in Official Records Book 3321, Page 3607;
 - (13) Third Amendment to Second Amended and Restated Declaration of Covenants and Restrictions for Suntree PUD as recorded in Official Recorded Book 3321, Page 3612;
 - (14) Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of Suntree, as Amended, recorded in Official Records Book 3330, Page 4562; and
 - (15) Declaration of Annexation as recorded Official Records Book 3384, Page 3115,
- (hereinafter collectively, the "Master Covenants").

The Master Covenants provide for their enforcement by an overall Master Association ("Master Association"). Each owner of a lot or unit in SUNTREE PUD which has been subjected to the Master Covenants is a member of the Master Association.

In addition to the Master Covenants, other covenants and restrictions may be imposed on a subdivision by the developer of that condominium or subdivision. These covenants relate only to the particular subdivision and are generally enforced by a

subdivision association ("Subdivision Association" or the "Association").

The Developer anticipates that Emerald Pointe will be encumbered by both the Master Covenants, which will be enforced by the Master Association, and by this Declaration which pertain only to Emerald Pointe, which will be enforced by the Subdivision Association.

PURPOSE OF THIS DOCUMENT

The purpose of this document is to subject Emerald Pointe which is described in the Plat of Emerald Pointe, SUNTREE PLANNED UNIT DEVELOPMENT, TRACTS 19 and 20 recorded in Plat Book 41, Page 64, of the Public Records of Brevard County, Florida (the "Plat"), to the covenants and restrictions contained in this Declaration. This Declaration is sometimes referred to as the "Covenants."

Developer declares that Emerald Pointe shall be conveyed and occupied subject to all matters set forth in this Declaration and the Plat. These Covenants shall run with title to the land and shall be binding upon the Developer and upon all parties acquiring any interest in Emerald Pointe after the recording of these Covenants in the Public Records of Brevard County, Florida.

ARTICLE 1 MUTUAL BENEFITS AND OBLIGATIONS

The Covenants contained in this Declaration are for the purpose of protecting the value and desirability of Emerald Pointe and made for the mutual benefit of each and every owner of a lot or unit in Emerald Pointe. They are intended to be nondiscriminatory. They are also intended to create enforceable rights and obligations in favor of and against each lot and its owner. Each owner, his or her family, friends, guests, tenants and invitees shall comply with the provisions of these Covenants while present within Emerald Pointe.

ARTICLE 2 DEFINITIONS

In addition to any terms defined in and throughout this Declaration, the following words when used in this Declaration shall have the following meaning:

2.1 "Assessments" shall mean all annual, special, and other assessments and monetary obligations made or imposed by the Association against lots and/or units in Emerald Pointe made in accordance with the terms of these Covenants.

2.2 "Board of Directors" shall mean the Board of Directors of the Association.

2.3 "Common Property" or "Common Area" shall mean Tracts M, M1, and M2, Candlewick Drive and related improvements as shown in the Plat and all other real property (including improvements thereto) owned by the Association, which is intended for the common use and benefit of all owners and which is to be deeded to the Association at the time that the control of the Association is turned over to the owners.

2.4 "Lot" shall mean each lot or plot of land shown on the Plat for Emerald Pointe Subdivision map, regardless of whether a dwelling has been constructed on such lot, with the exception of the Common Property and/or road right-of-ways if dedicated to a public authority or the Association.

2.5 "Master Association" shall mean SUNTREE MASTER HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, incorporated on July 22, 1975. The Master Association is responsible for maintaining the Common Property, including without limitation, the Stormwater Management System for SUNTREE PUD.

2.6 "Owner" shall mean each person who owns record title to a lot, including contract sellers, but excluding those that have such interest merely as security for performance of an obligation.

2.7 "Declarant" or "Developer" shall mean and refer The 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 assigns to it. Any such assignment may be made on a non-exclusive basis.

2.8 "Subdivision" shall mean all the property known as EMERALD POINTE being a part of the SUNTREE PLANNED UNIT DEVELOPMENT, identified in the Plat recorded in the Public Records of Brevard County, Florida, and all other property subject to these Covenants by the Developer or otherwise annexed as provided herein.

2.9 The "Association" or the "Subdivision Association" shall mean and refer to Emerald Pointe Homeowners Association, Inc., a Florida corporation not for profit, its successors and assigns.

2.10 "Surface water or Stormwater Management System" shall mean a 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, 40C-40, or 40C-42, F.A.C. The storm water management system will be owned and maintained by the Subdivision Association except for Tract M-2 which is the responsibility of the Master Homeowner Association.

2.11 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of Emerald Pointe.

2.12 "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.

2.13 "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 institutional type lender, which holds a mortgage on one or more of the Lots.

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

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

2.16 "Master Documents" shall mean and refer to the documents identified in the Development Plan section of this Declaration including 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.

2.17 "Property" or Properties" shall mean and refer to that certain real property described in the Development Plan and Purpose sections of this Declaration and such additions thereto as may be brought within the jurisdiction of the Association.

ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS

3.1 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.

3.2 The Association shall have two classes of voting Membership:

Class A: Class A members shall be all owners, with the exception of the Declarant, of any plot of land shown upon any recorded plat of the Property ("Lot" or "Lots"). Each Class A member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, each such person shall be members, however, the vote for such Lot shall be exercised as they collectively determine, and 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 (as defined in the Declaration), who shall be entitled to three (3) votes for each Lot owned. Unless converted earlier and voluntarily by the Declarant, the Class B membership shall cease and be converted to Class A membership upon the first to occur of either of the following events:

- (a) the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or
- (b) six (6) years from the date of the original recording of the Declaration in the public records of Brevard County, Florida; or
- (c) at the election of the Declarant (whereupon the Class A Members shall be obligated to elect the Board of Directors and assume control of the Corporation).

3.3 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 4
PROPERTY SUBJECT TO THIS DECLARATION AND
ADDITIONS TO THE PROPERTY

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

4.2 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.

4.3 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.

4.4 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 the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants 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 5
SUBDIVISION ASSESSMENTS

5.1 General Purpose. The Subdivision Association is organized for the purpose of providing common services to lot owners, owning and maintaining the lake and grounds, landscaping on Common Property, entrance sign and lights, and providing the enforcement of the Declaration, and engaging in activities for the mutual benefit of the owners. All lot owners are members of Subdivision Association. Provisions relating to the Subdivision Association are contained in the Articles of Incorporation and By-Laws of the Subdivision Association. The initial services to be provided by the Subdivision Association are: maintenance of Common Property, maintenance of roads in the Subdivision, insurance on Common Property, entrance sign and sign lighting for Emerald Pointe streets.

The Subdivision Association shall be responsible for the maintenance, operation and repair of the Stormwater Management System. Maintenance of the Stormwater Management System shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance or other Stormwater Management System capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the Stormwater Management System shall be as permitted, or if modified, as approved by the St. Johns River Water Management District. The

St. Johns River Water Management District 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 Stormwater Management System. Any amendment to the Declaration which alter the Stormwater Management System, beyond maintenance in its original condition, including the water management portions of the Common Property, must have the prior approval of the St Johns River Water Management District.

5.2 Enforcement of Assessments.

5.2.1 Personal Obligation. Each owner is personally responsible and liable for assessments which become due during the time such owner owns the lot. The personal obligation of an owner for assessments shall not pass to such owner's successors in title unless assumed by them.

5.2.2 Lien. All lots are subject to a continuing lien to secure unpaid assessments due to the Subdivision Association in accordance with the provisions of these covenants, whether or not the deed to the lot refers to these covenants. This continuing lien also secures interest on unpaid assessments and the cost of collecting unpaid assessments, including reasonable attorney's fees. Notice of the lien shall be given by recording a claim of lien in the Public Records of Brevard County, Florida, stating the lot description, the name of the record owner, the amount due and the due date. A claim of lien may be filed against a lot for unpaid assessments after conveyance of the lot. The Subdivision Association shall, without charge, on written request of any owner or the mortgagee of any owner, furnish a certificate in recordable form signed by an officer or duly authorized agent of the Subdivision Association which sets forth the assessments levied against an owner and the owner's lot and whether the assessment has been paid. A properly executed certificate shall be binding on the Subdivision Association as of the date of its issuance. The lien shall remain in effect until all sums due to the Subdivision Association have been fully paid.

5.3 Annual Assessments. The Subdivision Association shall fix the amount and due date of the annual assessment, the periods of collection, whether annually, semi-annually, quarterly or monthly. Initially, annual assessments shall be payable in equal monthly installments. The Board of Directors shall notify the owners of each lot of the amount and the date on which the assessments are payable and the place of payment. Annual assessments shall be uniform. The initial annual assessment for the first fiscal year shall be \$1,200.00, with an additional start-up fee of \$200.00 payable at the initial closing of each lot.

5.4 Date of Commencement of Annual Assessments. The Annual assessment for each lot shall begin upon conveyance of the lot to a Class A member who is not the Developer. The first annual assessment for each lot shall be made for the balance of the fiscal year of the Subdivision Association. The first annual assessment shall be due and payable in advance in the installments and at the place established by the Subdivision Association at the time of such conveyance. ALL PROPERTY EXCEPT THAT WHICH IS LEGALLY PLATTED INTO INDIVIDUAL LOTS AS PER THE RECORDED PLAT OF EMERALD POINTE SHALL BE EXEMPT FROM ASSESSMENTS. FURTHERMORE, ALL PROPERTY OWNED BY THE DEVELOPER, IN THE ORDINARY COURSE OF BUSINESS, INCLUDING INDIVIDUALLY PLATTED LOTS, SHALL BE EXEMPT FROM ASSESSMENTS, HOWEVER, THE DEVELOPER WILL PAY ALL COSTS INCURRED BY THE ASSOCIATION IN ACCOMPLISHMENT OF THE PURPOSES IDENTIFIED IN SECTION 5.1 HEREIN, IN EXCESS OF THE TOTAL AMOUNT COLLECTED BY THE ASSOCIATION THROUGH ALL ASSESSMENTS.

5.5 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 \$1,200.00 per Lot.

5.5.1 From and after January 1 of the year immediately following the conveyance of the first Lot to any 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.

5.5.2 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 by more than five (5%) percent, 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.

5.5.3 The Board of Directors may fix the Annual assessment at an amount not in excess of the maximum.

5.6 Special Assessments. In addition to the Annual Assessments, the Subdivision Association may levy a special assessment to pay in whole or in part for the cost of any major construction, reconstruction, repair or replacement of a capital improvement owned by the Subdivision Association or repair any privacy walls without concurrence of the owners. A major repair is a repair made to an existing capital improvement which exceeds Two-Thousand-Five-Hundred (\$2,500.00) DOLLARS, and the useful life of which is greater than one (1) year. Replacement of a capital improvement means any replacement of an existing capital improvement.

The Subdivision Association may also levy or collect a special assessment to acquire a new capital improvement or for any other

purpose (other than major repair or replacement of a capital improvement) if the special assessment is approved by a vote of sixty (60%) percent of the votes of each class of the Members of the Subdivision Association.

5.7 Classes of Special Assessments. There are two (2) classes of lots for special assessment purposes:

5.7.1 Class I: All lots which have a home constructed thereon which has been issued a certificate of occupancy.

5.7.2 Class II: All lots which are not Class I lots.

Special assessments for each class shall be uniform. Special assessments for each Class II lot shall not be more than twenty-five (25%) percent of the assessment for Class I lots.

5.8 Effect of Non-Payment of Assessment; Remedies of the Subdivision. Any assessment not paid within fifteen (15) days after the due date shall bear interest from the date due at the rate of EIGHTEEN (18%) PERCENT PER ANNUM or the highest rate allowed under the laws of the State of Florida, whichever is less, until paid. The Subdivision Association may bring an action against the owner of the lot for payment of the assessment and may enforce its lien for the assessment by foreclosure or any other means available under the law. The Subdivision Association may waive payment of late fees and interest on an assessment, but may not waive payment of the assessment. No member may waive or otherwise escape liability for assessments by non-use of Common Property or by abandonment of the lot owned by such owner.

5.9 Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Declaration 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 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.

5.10 Damage by Owners. The owner of a lot shall be responsible for any expense incurred by the Subdivision Association to maintain, repair or replace Common Property which is necessary by reason of the owner's carelessness, neglect or willful action or by that of the owner's family, his guests, agents, tenants or invitees. Any such expense shall be a part of the assessment to which the owner's lot is subject and shall be due any payable in the same manner as annual assessments provided for in these Covenants.

ARTICLE 6 OWNER'S RIGHTS

6.1 Right to Use Common Property. Each Owner and members of such owner's family residing with the Owner or the tenant of a non-resident owner has the non-exclusive right to use Common Property for the purpose for which it is intended, which shall be appurtenant to and shall pass with title to the lot owned by the Owner, subject to the following provisions:

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

6.1.2 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 the Owner's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

6.1.3 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.

6.2 Utilities. Each Owner shall have access to the underground utility lines, lift and pumping stations, pipes, sewers and drainage lines constructed in the roads or other easements as shown on the Plat recorded for the Subdivision, as the same may be

relocated from time to time, subject to regulations and ordinances of Brevard County.

6.3 Lot Easements. The Association elects to maintain easement areas on the Property.

ARTICLE 7
RIGHTS OF THE Subdivision Association

7.1 Enforcement Rights. The Subdivision Association, its agents or employees, shall have the right, but not the obligation, to enter upon any lot to cure any violation of these Covenants, including without limitation, the right to remove any structure which is in violation of these Covenants and to enforce maintenance and repair of lots and improvements. Any such removal, curing, maintenance or repair shall be at the expense of the owner of the lot on which the violation has occurred or exists, which expense shall be payable by such owner to the Subdivision Association on demand. Entry to remove and cure any violation of these Covenants shall not be a trespass and the Subdivision Association shall not be liable for any damages on account of the entry.

The rights of the Subdivision Association described in this Section shall not be construed as a limitation of the rights of the Developer or any owner to prosecute proceedings at law or in equity for the recovery of damages against persons violating or attempting to violate these Covenants or for the purpose of preventing or enjoining any violations or attempted violations. The remedies contained in this Section shall be construed as cumulative of all other remedies provided at law or in equity. The failure of the Subdivision Association to enforce these Covenants, however long continuing, shall not be a waiver of the right to enforce these Covenants at a later time. In any action brought by the Subdivision Association to enforce the provisions of these Covenants, the Subdivision Association shall be entitled to recover its attorney fees and costs if it is the prevailing party.

7.2 Other Assessments. Any amounts owed by any Owner to the Subdivision Association as a result of the Subdivision Association's abating or curing violations of these Covenants or maintaining or repairing lots or homes shall be due and payable within fifteen (15) days from the date of receipt of a statement for such amounts from the Subdivision Association. If any of said sums are not paid when due, they shall be added to and become part of the annual assessment to which the lot is subject and enforceable as provided in these Covenants.

7.3 Common Property Rights. The Subdivision Association shall have the right:

7.3.1 To adopt reasonable rules and regulations pertaining to the use of the Common Property and lots, the preservation and maintenance of such property, and the safety and convenience of the owners;

7.3.2 To convey or encumber any Common Property if authorized by the Class B member until it terminates and thereafter if authorized by two-thirds (2/3rds) of the Class A members. No dedication or transfer shall be effective unless an instrument agreeing to the dedication or transfer, by the Class B membership (until Class B membership terminates) and thereafter by the president and secretary of the Subdivision Association certifying that the conveyance was approved by two-thirds (2/3rds) of the Class A members eligible vote, is recorded. The authorization contemplated by this subparagraph may be obtained at a meeting of the members or by execution of a written consent by the owners of the requisite number of lots, or both of such methods.

7.3.3 To grant easements and rights-of-way over the Common Property as it deems necessary or appropriate for the proper servicing and maintenance of the Common Property and for the development and improvement of any portion of the community.

7.3.4 To assess fines for violation of these Covenants which shall be added to the next installment of the annual assessment to which the lot is subject and be enforceable as provided in Section 3 of these Covenants.

7.3.5 To release any Common Property from the dedication to the Subdivision Association by the plat if approved by the Class B membership until it terminates and thereafter, by two-thirds (2/3rds) of the Class A voting membership.

7.4 Association's Rights of Entry. The Subdivision 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 purposes 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 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 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.

7.5 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:

7.5.1 lighting of roads, sidewalks, walks and paths throughout the Property;

7.5.2 fire protection and prevention;

7.5.3 garbage and trash collection and disposal;

7.5.4 conducting recreation, sport, craft and cultural programs of interest to Owners, including their families, tenants, guests and invitees;

7.5.5 protection and security, including, but not limited to, the employment of stationary or patrolling security guards within the Property and operation of a guardhouse;

7.5.6 maintenance of electronic and other surveillance devices;

7.5.7 installation, operation and maintenance of cable television facilities, or other communication systems throughout the Property;

7.5.8 such other services as are authorized in the Association Articles or Bylaws;

7.5.9 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 the other person authorized to grant such right, including, but not limited to, any appropriate governmental authority;

7.5.10 emergency repairs and other work on the Lots reasonably necessary for the proper maintenance and operation of the Subdivision, including, but not limited to party wall repairs.

ARTICLE 8
RIGHTS RESERVED BY DEVELOPER

8.1 Eminent Domain. If all or part of any easement granted by Developer over property of the Developer is taken by eminent domain, no claim shall be made by the Subdivision Association or any owner other than Developer for any portion of any award, provided Developer shall grant a similar easement, if necessary, to provide owners with access to their lots and with utility service.

8.2 Easements for Utilities and Cable Television. Developer reserved a perpetual easement on, over and under the easements and Common Property shown on the Emerald Pointe plat for construction and maintenance of electric and telephone poles, wires, cables, conduits, water mains, drainage lines or drainage ditches, sewers, irrigation lines and other conveniences or utilities. To the extent permitted by law, Developer reserves an exclusive easement over, on and under each lot for the installation and maintenance of utilities, lines, wires, pipes, power, telephone, CATV, radio and television cables within the Subdivision. The owners of lots subject to the easements reserved in this section shall acquire no right or interest in utility or cable television equipment placed on, over or under the portions of the Subdivision which are subject to such easements. All easements reserved by the Developer are and shall remain private easements and the sole and exclusive property of the Developer.

8.3 Drainage Easement. Drainage flow shall not be obstructed or diverted from drainage easements. Developer may, but shall not be required to, cut drainways for surface water wherever and whenever necessary to maintain reasonable standards of health, safety and appearance. Except as provided in this Section, existing drainage shall not be altered so as to divert the flow of water onto an adjacent lot or into sanitary sewer lines.

8.4 Maintenance Easement. Developer reserves an easement in, on, over and upon each lot for the purpose of preserving, maintaining or improving the Common Property.

8.5 Developer Rights re: Temporary Structures, Etc. Developer reserves the right to erect and maintain temporary dwellings, model houses and/or other structures upon lots owned by Developer and to erect and maintain such commercial and display signs as Developer, in its sole discretion, deems advisable. Developer reserves the right to do all acts necessary in connection with the construction of improvements on the lots. Notwithstanding anything in this Declaration to the contrary, Developer shall have the right to use the Property and any lot for ingress and egress thereover, including the use of construction machinery and trucks thereon and no person shall in anyway impede or interfere with Developer, 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 or improvements thereon. Furthermore, the Developer may make such use of the 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, 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 on the property. Nothing contained in these Covenants shall be construed to restrict the foregoing rights of the Developer.

8.6 Further Restrictions. So long as the Developer owns any lot in Emerald Pointe, Developer reserves the right to impose further restrictions and to grant or dedicate additional easements and rights-of-way on the Property, any lot in Emerald Pointe, and on the Common Property. The easements granted by Developer shall not materially or adversely affect any improvements or unreasonably interfere with use of the Common Property.

8.7 Release of Restrictions, Easements. If a home is erected or the construction of a home is substantially advanced in a manner that violates the restrictions contained in these Covenants or in a manner that encroaches on any setback line, lot line, Common Property or easement area, Developer shall have the right to release the lot from the restriction it violated. Developer shall also have the right to grant an easement to permit encroachment by the home over the lot line, or on the Common Property or the easement area, so long as the Developer, in the exercise of its sole discretion, determines that the release or easement will not materially adversely affect the health and safety of owners, the value of adjacent lots and appearance of Emerald Pointe. Notwithstanding any contrary provisions of this Declaration, the Developer shall have the right without the approval or consent of any member of the Association to convey any portion of the Common Property that is the subject of any encroachment by a home to the owners of the home. Nothing contained in this Section shall be construed to conflict with any adopted ordinance of Brevard County.

8.8 Easement for Access and Drainage. The Developer and the Subdivision Association shall have a perpetual non-exclusive easement over all areas of the surface water or Stormwater Management System for access to operate, maintain or repair the Stormwater Management System. By this easement, the Developer and Subdivision Association shall have the right to enter upon any portion of any lot which is a part of the surface water or Stormwater Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water or Stormwater Management System as required by the St. Johns River Water Management District permit. Additionally, the Subdivision Association shall have a perpetual exclusive easement for drainage over the entire surface water or Stormwater Management System. No

person shall alter the drainage flow of the surface water or Stormwater Management System, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

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

ARTICLE 9
Master Association Rights

Common Areas in the SUNTREE PUD community are maintained by the Master Association. Members of the Master Association are the owners of lots and condominium parcels in each subdivision and condominium in SUNTREE PUD. The Master Association for the SUNTREE PUD community has certain powers, rights and duties with respect to Emerald Pointe and SUNTREE PUD which are set forth in its Articles of Incorporation and By-Laws and in the Master Covenants. Generally, the Master Association has certain maintenance, operation and management responsibilities with respect to its roadways, bridges, drainage facilities, rights of way, medians, entranceways, traffic control systems, lakes and other common areas to be used in common with all residents of SUNTREE PUD, the payment of real estate ad valorem taxes assessed against such common areas and for other services, all of which are more particularly described in the SUNTREE PUD Master Covenants. If the Subdivision Association or any owner refuses or fails to perform the obligations imposed on it under these Covenants and the Articles and By-Laws of the Subdivision Association, the Master Association is authorized to perform the obligation that the Subdivision Association or owner has failed or refused to perform. Any expenses incurred by the Master Association shall be reimbursed by the Subdivision Association or the owner, as the case may be. Developer anticipates, but does not guaranty, that each lot and condominium unit in SUNTREE PUD shall be subjected to the Master Covenants as it is developed.

ARTICLE 10
ARCHITECTURAL CONTROLS

10.1 Duties and Powers of Subdivision Association. Except for the construction of homes and other improvements upon any lot and improvements to the Common Property by the Developer, and except as otherwise provided in this Declaration, NO IMPROVEMENTS SHALL BE CONSTRUCTED ON THE COMMON PROPERTY AND NO ALTERATIONS OF THE EXTERIOR OF ANY HOME OR ALTERATION OR PERMANENT IMPROVEMENT OF ANY LOTS SHALL BE EFFECTED WITHOUT THE PRIOR WRITTEN CONSENT OF THE SUBDIVISION ASSOCIATION OR AN ARCHITECTURAL COMMITTEE COMPOSED OF THREE (3) OR MORE REPRESENTATIVES APPOINTED BY THE BOARD OF

DIRECTORS OF THE ASSOCIATION AND, IF CONSENT OF THE SUBDIVISION ASSOCIATION IS GRANTED, THE MASTER ASSOCIATION. The Subdivision Association shall have the right to approve or disapprove any building, fence, wall, screened enclosure, grading, floor, elevation and drainage plan, drain, mailbox, solar energy device, antenna, satellite dish, decorative building, landscaping plan, landscape device or object, or other improvement, change or modification and to approve or disapprove any exterior additions, changes, modifications or alterations to the home. Disapproval of any change, addition, modification or alteration may be solely on the grounds of aesthetics. It is Developer's intent to protect the community from nuisances and maintain the aesthetic quality, with substantial uniformity, of the homes. The Subdivision Association may adopt additional standards and criteria to effect the purposes of this Section and Article.

10.2 Duties of Subdivision Association. The Subdivision Association shall approve or disapprove the plans for an improvement or modification within thirty (30) days after the same is submitted to it in proper form. If the plans are not approved within such period, they shall be deemed to have been disapproved. The plans submitted to the Subdivision Association for approval shall include all plans necessary for construction and shall meet the following standards:

10.2.1 Be not less than 1/8" - 1' scale.

10.2.2 Show the elevation of the ground on all sides of the proposed structure as it will exist after the modification.

10.2.3 Include a list of proposed materials and samples of exterior materials and finishes which cannot be described to the Subdivision Association's satisfaction.

The Subdivision Association shall not be responsible for defects in plans or specifications or for defects in the improvements. The Subdivision Association's review of plans is limited solely to appearance of the improvements and does not include any review to determine compliance with applicable building codes.

Any landscaping plan changes or alterations submitted to the Subdivision Association shall provide for an include the following items:

10.2.3.1 A landscape plan providing at least four (4) trees of species approved by the Subdivision Association, of 10'-12' minimum height;

10.2.3.2 A list of plant stock included in the plan; and

10.2.3.3 The size of such stock at the time of planting.

The entire lot, together with the land between the street pavement and the right-of-way line adjacent to the lot, shall be landscaped and maintained. No gravel, rocks, artificial turf or other similar materials shall be permitted as a substitute for a grass lawn. It shall be the goal of the Subdivision Association in the approval of any landscape plan and layout plan to preserve all existing trees where possible.

10.3 Exterior Maintenance.

10.3.1 External Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each lot and/or unit which is subject to assessment hereunder provided that an adequate reserve has been voted upon by the membership of the Association. Assessments shall pay for normal wear and tear but not for design deficiencies, inadequate installation and/or damages that are recoverable under any insurance policy. External Maintenance includes: paint, repair, replacement and care of exterior building surfaces due to normal wear and tear; maintain trees, shrubs, sprinklers and grasses; maintain walks, streets as platted to and owned by the Association, driveways, walls and curbs. The unit owner that has improvements and/or additions made to their units, such as eaves, extensions to fences, etc., shall be responsible for their maintenance or an additional assessment in proportion to those improvements and/or additions shall be added to that unit's annual assessment. All exterior roofs and replacement of shrubs will be the responsibility of the individual unit owners.

10.3.2 Willful Neglect. In the event that the need for maintenance or repair of a unit or the improvements thereon is caused through the willful or negligent acts of its unit owner, or through the willful or negligent acts of the family, guests or invitees of the owner of the unit needing such maintenance or repair, the cost of such exterior maintenance shall be the responsibility of the unit owner or those costs shall be added to and become part of the assessments which such unit is subject.

10.4 Miscellaneous Use Restrictions.

10.4.1 No fences shall be constructed on any lot without the prior written approval of the Association which may be withheld for any reason. All shrub lines must be approved by the Subdivision Association prior to construction.

10.4.6 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 Subdivision Association is obtained.

10.4.7 Nothing shall be stored, constructed within or removed from any Common Area other than by the Subdivision Association unless prior written approval is obtained.

10.4.8 Nothing shall be done or kept on any Common Area which shall increase the insurance rates of the Subdivision Association without prior written consent of the Subdivision Association.

10.4.9 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 they do not become a nuisance or annoyance to any other Owner. Residents are encouraged to have such animals neutered. Pets shall be kept only in the home, within screened patio or pool areas, or fenced yards if permitted. No animal shall be permitted off the Lot unless on a leash. Pets shall not 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 Subdivision Association and their owners shall be held accountable for their actions. The Subdivision Association may establish limits on the number and kind of pets that may be kept or permitted on any Lot.

10.4.10 No commercial activity shall be conducted on any lot with the exception of the Developer's real estate sales office or agent.

10.4.11 No mineral, oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon any lot and no derrick or other structure designed for use in boring for oil or natural gas shall be

erected, maintained or permitted on any lot; or shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any lot. Excepted from the foregoing shall be activities of the Developer or the Subdivision Association, or any assignee of the Developer or the Subdivision Association, in dredging the water areas, 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.

10.4.12 All signs, billboards and advertising structures of any kind are prohibited, except building and subcontractor signs during construction periods, and one (1) sign to advertise the property for sale during any sales period. No signs may be nailed or attached to trees. "For Sale" signs shall not exceed four (4') square feet or be taller than thirty-six (36") inches and in accordance with uniform sign standards adopted by the Subdivision Association or Master Association or approved in writing by the Subdivision Association and Master Association as to appearance and location.

10.4.13 No hedge or shrub planting which obstructs sight lines at elevations between three (3') feet and six (6') feet above any roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and line connecting them at points twenty-five (25') feet rounded property corner from the intersection of the street property lines extended. The same sightline limitations shall apply on any lot within ten (10') feet from the intersection of the street property lines extended. The same sightline limitations shall apply on any lot within ten (10') feet from the intersection of a street property line with the edge of a driveway or alley pavement. Except as herein provided, no trees shall be permitted to remain within such distance of such intersections unless the foliage is maintained at sufficient height to prevent obstruction of such sightlines. Any such tree of a rare or unusual species may be permitted to remain in place upon application to and written permission from the Developer and approval by the appropriate city, county or state official or department.

10.4.14 No mailbox or paperbox of any kind for use in the delivery of mail, newspapers, magazines or similar material shall be erected on any lot or Common Property until the size, location, design and type of material for the box are approved by the Subdivision Association. If the United States mail services involved shall indicate a willingness to make delivery to wall receptacles attached to home, each owner, on the request of the Subdivision Association, shall

promptly replace the boxes previously employed for such purpose of purposes with all receptacles attached to homes.

10.4.15 No home shall be leased or rented for a period of less than seven (7) months without the express consent of the Subdivision Association. A copy of the lease on each home shall be delivered to the Subdivision Association at or before the time the tenant takes possession of the home.

10.4.16 The parking of vehicles is restricted as follows:

10.4.16.1 Automobiles. Automobiles without any advertising or logos on the vehicle shall be permitted to be parked in driveways and garages. Automobiles with advertising or logos shall be parked only in garages.

10.4.16.2 Passenger Van. Passenger vans not outfitted for recreational purposes and without any advertising or logos shall be permitted to be parked in driveways and garages. Passenger vans outfitted for recreational purposes or with advertising or logos shall be permitted only in garages.

A "passenger van" is a van that weighs less than five thousand (5,000) pounds, has seating for more than two (2) passengers, and has non-commercial license plates. "Outfitted for recreational purposes" shall mean a van that has running water, LP gas or sanitary waste facilities. No removable ladders or other commercial equipment shall be stored on the exterior of any passenger van. A "non-passenger van" is any van that does not comply with the definition of a "passenger van." A non-passenger van shall be subject to the same restrictions as a truck rated one-half (1/2) ton or less, as more fully provided in subparagraph 8.4.11.3 below.

10.4.16.3 Trucks and Non-Passenger Vans. Trucks rated one-half (1/2) ton or less, without any advertising or logos, used as the resident's regular or usual form of transportation, and non-passenger vans without any advertising or logos shall be permitted in Emerald Pointe if parked in garages. Trucks of more than one-half (1/2) ton, or trucks or non-passenger vans with any advertising or logos, or trucks not the resident's regular or usual form of transportation are not permitted to be parked in Emerald Pointe unless present solely for the actual and continuous repair or construction of residence.

10.4.16.4 Boats, Campers and Trailers. Boats, campers and trailers shall be permitted to be parked in Emerald Pointe only if parked in garages.

10.4.16.5 Travel Trailers, Motor Coaches, Motor Homes and Mobile Homes. Travel trailers, motor coaches, motor homes and mobile homes and any other trailer or vehicle not specifically permitted above in this subparagraph 8.4.11, shall not be parked in Emerald Pointe at any time.

10.4.16.6 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.

10.4.16.7 Hardship. In cases of undue hardship, the Subdivision Association may grant a special exception of limited duration to the provisions of this section upon written request to the Subdivision Association.

10.4.16.8 Lawns and Streets. No vehicle shall be parked on any lawn, yard, travel area of streets, or other area not intended for vehicular use.

10.4.17 Owners shall not do anything that will disturb or interfere with the reasonable rights and comforts of other owners.

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

10.4.19 No sheets or aluminum foil shall be permitted in any window. Solar film may be installed with written consent of the Subdivision Association if it is non-metallic in appearance.

10.4.20 Unless appropriate written consents or permits are obtained from all applicable governmental agencies, each of the following activities within, or uses of, jurisdictional wetlands (that is, wetlands within the jurisdiction of the St. Johns River Water Management District, the Department of Environmental Protection, and the U.S. Army Corps of Engineers, or any of them) within Emerald Pointe are hereby prohibited and restricted:

10.4.20.1 The construction, installation or placement of signs, buildings, fences, walls, roads or

other structures and improvements in or above the ground of the wetlands;

10.4.20.2 The dumping or placing of soil or other substances or materials as landfill or the dumping or placing of trash, waste or unsightly or offensive materials on jurisdictional wetlands;

10.4.20.3 The cutting or removal or destruction of trees, shrubs or other vegetation from wetlands; and

10.4.20.4 The excavation, dredging or removal of loam, peat, gravel, rock, soil or other material substance from wetlands areas.

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

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

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

10.5.3 The Subdivision 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 Subdivision Association.

10.6 Fines. It is acknowledged and agreed among all Owners that a violation of any of the provisions of these Declarations or this Article by an Owner or residence will result in irreparable harm to other Owners or residents and the Developer. Each Owner, the Association and the Developer shall have the right to other specific performance of the terms and provisions of these covenants and this Declaration. All Owners agree that a fine may be imposed by the Developer or Association for each day of violation of these covenants continues after notification by the Developer 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. Not paid within fifteen (15) days, the amount of such fine shall accrue interest at a rate of ten (10%) percent per annum, and shall be treated as a special assessment as provided in these Declarations.

ARTICLE 11
UTILITY PROVISIONS

11.1 Water system. The central water supply system provided by the City of Cocoa for the service of Emerald Pointe shall be used as the sole source of water. Each owner shall pay water meter charges established by the City and shall maintain and repair all portions of such water lines located within the boundaries of his lot.

11.2 Sewage System. The central sewage system provided by Brevard County for the service of Emerald Pointe shall be used as the sole sewage system for each lot. Each owner shall maintain and repair all portions of such sewer lines located within the boundaries of his lot and shall pay when due the periodic charges or rates for the furnishing of such sewage collection and disposal service made by the operator thereof. No septic tank or drain field shall be placed or allowed within Emerald Pointe.

11.3 Garbage Collection. Garbage, trash and rubbish shall be removed from the lots by the entity selected by Brevard County. Each lot owner shall pay when due the periodic charges or taxes for such garbage collection service.

11.4 Electrical and Telephone Service. All telephone, electric and other utility lines and connections between the main or primary utility lines and the residence and the other buildings located on each lot shall be concealed and located underground in a manner acceptable to Brevard County.

ARTICLE 12
GENERAL PROVISIONS

12.1 Privacy Wall. The Declarant may construct privacy walls or fences within the Property ("Privacy Wall"). 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.

12.2 Maintenance of Privacy Walls. The Association elects to maintain Privacy Walls.

12.3 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.

12.4 Duration and Amendment. These Covenants shall run with and bind the land submitted or subjected hereto and shall be and remain in effect for a period of twenty (20) years after which time they will be automatically extended for periods of ten (10) years, and shall inure to the benefit of and be enforceable by the Developer, the Subdivision Association, the owners and their respective legal representatives, heirs, successors and assigns, unless modified or terminated by a duly recorded written instrument executed in conformity with requirements described below. These Covenants may be amended, modified or terminated for any reason, by a duly recorded written instrument executed by the president or vice president and secretary or assistant secretary of the Developer until the Developer no longer owns any lots, and thereafter by the president or vice president and secretary or assistant secretary of the Subdivision Association upon affirmative vote of two-thirds (2/3rds) of the owners; provided, however, no such amendment shall affect the right or lien of any institutional mortgagee without such mortgagee's express consent. Additionally, the Developer specifically reserves the absolute and unconditional right so long as it owns any lots to amend the Declaration to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other general recognized institution involved in the purchase and sale of home loan mortgages or to clarify the provisions herein, without the consent or joinder of any party. Notwithstanding anything contained in these Covenants to the contrary, the provisions of these Covenants affecting the rights or duties of the Developer shall not be amended or terminated at any time without the consent in writing of the Developer.

Any amendment or termination of any covenant, or part thereof, which would affect the surface water management system, including the water management portions of the Common Property, must have the prior approval of the St. Johns River Water Management District.

12.5 Notices. Any notice required to be sent to any person pursuant to any provision of these Covenants shall be effective if such notice has been deposited in the United States Mail, postage prepaid, addressed to the person for whom it is intended at his last known place of residence, or to such other address as may be furnished to the secretary of the Subdivision Association. The effective date of the notice shall be the date of mailing.

12.6 Severability. Whenever possible, each provision of these Covenants shall be interpreted in a manner that is effective and valid. If any provision of these Covenants is prohibited or held invalid, the prohibition or invalidity of such provision shall not

affect any other provision which can be given effect. To this end, the provisions of these Covenants are declared to be severable.

12.7 Assignment by Developer. Developer shall have the sole and exclusive right to transfer to such persons, firms, or corporations as it shall select, who acquire any part of Emerald Pointe for development, in whole or in part, any or all of the easements and rights whatsoever given to or reserved by Developer in these Covenants. All easements and rights reserved in these Covenants shall be for the benefit of Developer, its successors and any entities to whom such rights are assigned in writing.

If the Developer sells, transfers, or assigns all of its then remaining interest in Emerald Pointe to any person or entity, such person or entity shall be deemed to be the successor developer of Emerald Pointe and the Class B member of the Subdivision Association; if Developer transfers or assigns less than all of its remaining interest in Emerald Pointe to another person or entity, the successor in interest shall not be the successor developer or the Class B member unless the Developer specifically assigns its rights, obligations and privileges under these Covenants and the Articles of Incorporation of the Subdivision Association to such person or entity by instrument recorded in the Public Records of Brevard County, Florida.

12.8 Disputes and Construction of Terms. In the event of any dispute arising under these Covenants, or in the event of any provision of these Covenants requiring construction, the issue shall be submitted to the Board of Directors of the Master Association for non-binding arbitration or mediation. The Board of Directors shall give all persons having an interest in the issue an opportunity to be heard after reasonable notice. The Board shall, when appropriate, render its decision in writing, mailing copies thereof to all parties who have noted their interest.

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

12.10 Enforcement/Attorney Fees. In addition to any other rights or remedies provided in this Declaration, this Declaration may be enforced by the Developer, the Association, or any Owner by 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. In any action or proceeding to enforce the provisions of this Declaration or in any way relating to this Declaration, the prevailing party shall be entitled to recover from the unsuccessful

party all attorney fees incurred at all trial and appellate levels in addition to all other costs and other expenses.

12.11 Indemnification of Officers, Directors or Agents. The Association shall be entitled to indemnify and procure insurance for any person acting as an officer, director or agent for the Association.

12.12 Conflict. This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and By-Laws of the Association and the Articles of Incorporation shall take precedence over the By-Laws.

12.13 Governing Law/Venue. The construction, validity, enforcement of this Declaration shall be determined in accordance with the laws of the State of Florida and the exclusive venue for enforcement of this Declaration shall be in Brevard County, Florida.

IN WITNESS WHEREFORE, the Developer has executed this instrument on the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

DEVELOPER:

THE SUNTREE PARTNERS, a Florida
general partnership

By: HMM, INC., a Florida
corporation, as Managing
General Partner

By: Miles D. Igo
Miles D. Igo, President

Address:
Melbourne, FL 32940

Kelli Shepard
Witness Signature

Kelli Shepard
Print Witness Name

Robert B. Lynds
Witness Signature

ROBERT B. LYNDS
Print Witness Name

STATE OF FLORIDA)
) ss:
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me this 29
day of June, 1995, by Miles D. Igo, as President of
HMM, INC., a Florida corporation, as Managing General Partner of

~~THE SUNTREE PARTNERS~~, a Florida general partnership, who is personally known to me, or who has produced n/a as identification, and who did take an oath.

Kellie Shepard
Notary Public Signature

Kellie Shepard
Print Notary Public Name
My Commission Expires:



KELLIE SHEPARD
My Commission CC319109
Expires Oct. 20, 1997
Bonded by ANB
800-852-5878