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Clerk Of Courts, Brevard County

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DECLARATION OF COVENANTS AND RESTRICTIONS FOR MAGNOLIA POINTE

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR MAGNOLIA POINTE (the "Declaration") is made this 6th day of May, 1998, 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: townhomes, cluster homes and condominium units. The land plan contemplates public or private streets, open spaces, sanitary sewer, and drainage and water services. The Developer intends to develop a subdivision to be named Magnolia Pointe, in two (2) phases and plat the subdivision in two (2) separate and distinct plats identified as Magnolia Pointe, Unit One, ("Unit One") and Magnolia Pointe, Unit Two ("Unit Two"). The Developer anticipates that there will be a total of 124 lots in Magnolia Pointe which will include all Units. Unit One is anticipated to comprise approximately 45 lots; Unit Two is anticipated to comprise approximately 79 lots. The plats for the various Units may be recorded out of order and at different times and it is anticipated that the Developer will record the Plat for Unit One prior to recording the plat for Unit Two. The Developer intends to subject all of the property identified in the Unit One Plat and the Unit Two Plat to these Covenants and Restrictions. For purposes of this Declaration the term Magnolia Pointe shall include all property including the properties identified in the plats for Unit One and Unit Two. Magnolia Pointe is a subdivision of the SUNTREE PUD.

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, of the Official Public Records of Brevard County, Florida, 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;
- (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; OR Book/Page: 3837 / 3904
- (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;
- (15) Declaration of Annexation as recorded Official Records Book 3384, Page 3115;
- (16) First Amendment to the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of Suntree recorded in Official Records Book 3493, Page 3141;
- (17) Second Amendment to the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of Suntree;
- (18) Third Amendment to the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of Suntree as recorded in Official Records Book 3669, Page 4619;
- (19) Fourth Amendment to the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of Suntree as recorded in Official Records Book 3669, Page 4622;
- (20) Fifth Amendment to the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of Suntree as recorded in Official Records Book 3669, Page 4626;
- (21) Sixth Amendment to the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of Suntree as recorded in Official Records Book 3684, Page 4864; and
- (22) all other amendments or restatements thereof which may be recorded in the Public Records of Brevard County, Florida; all of the Public Records of Brevard County, Florida (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 Magnolia Pointe and are generally enforced by a subdivision association as hereinafter defined.

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

PURPOSE OF THIS DOCUMENT

The purpose of this document is to subject Magnolia Pointe which is described in the Plat of Magnolia Pointe, Unit One, recorded in Plat Book 43, Page 98, of the Public Records of Brevard County, Florida (hereinafter the "Unit One Plat", Property or Properties) and additional plats of land annexed into Magnolia Pointe, and subjected to and encumbered by the covenants and restrictions contained in this Declaration. This Declaration is sometimes referred to as the "Covenants." For purposes of this Declaration the term "Magnolia Pointe" shall mean the property identified in the Unit One Plat, and subsequent

Plats recorded in the Public Records of Brevard County, Florida including Magnolia Pointe, Unit Two and all property subsequently annexed and made subject to this Declaration.

Developer declares that Magnolia Pointe shall be conveyed and occupied subject to all matters set forth in this Declaration and the Unit One 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 Magnolia 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 Magnolia Pointe and made for the mutual benefit of each and every owner of a Lot in Magnolia 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 Magnolia 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 in Magnolia Pointe made in accordance with the terms of these Covenants.
- 2.2 "Board of Directors" or "Board" shall mean the Board of Directors of the Association as defined herein.
- 2.3 "Common Property" or "Common Area" shall mean Tracts A, C, D, E, E-1 and F, as shown in Unit One 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 Unit One Plat for Magnolia Pointe subdivision map with the exception of the Common Property and/or any road right-of-ways 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" or Member shall mean each person who owns record title to a Lot within Magnolia Pointe, including contract sellers, but excluding those that have such interest merely as security for performance of an obligation.
- 2.7 Party Wall shall mean a wall which rests longitudinally along the Lot lines of two adjacent Lots as support for contiguous dwellings, with one half (50%) of the width of each wall being constructed on each side of the boundary lines of the contiguous Lots and which is utilized for the structural integrity and for the common benefit of two or more Townhomes or Dwellings.
- 2.8 "Declarant" or "Developer" shall mean and refer to 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 assigned to it. Any such assignment may be made on a non-exclusive basis.
- 2.9 "Subdivision" shall mean all the property known as Magnolia Pointe being a part of the SUNTREE PLANNED UNIT DEVELOPMENT, initially identified in the Unit One Plat, recorded in the Public Records of Brevard County, Florida, and all other property subject to and encumbered by these Covenants by the Developer or otherwise annexed into Magnolia Pointe as provided herein.
- 2.10 The "Association" or the "Subdivision Association" shall mean and refer to Magnolia Pointe Homeowners Association, Inc., a Florida corporation not for profit, its successors and assigns.
- 2.11 "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. No portion of the Storm Water Management System will be owned and maintained by the Subdivision Association except for the lakes in Tracts A, C, D and E as set forth in the Unit One Plat. Tract C is dedicated to the St. Johns Water Management District.

2.12 "Declaration" and "Covenants" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of Magnolia Pointe and all amendments hereto.

2.13 "Conservation Easement Areas" or "Wetland Preservation Areas", as used herein, shall mean certain real property identified as CONSERVATION EASEMENT AREAS or WETLANDS PRESERVATION AREAS on the Unit One Plat of the Subdivision or plats of property annexed herein and subjected to and encumbered by this Declaration herein.

2.14 "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.

2.15 "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.

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

2.17 "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.

2.18 "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 or amendment 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.

2.19 "Property" or "Properties" shall mean and refer to that certain real property described in the Development Plan and Purpose sections of this Declaration including all Property on the Unit One Plat, and such additions thereto as may be brought within the jurisdiction of the Association.

2.20 "Undeveloped Parcels" shall mean and refer to that certain real property described in Schedule 2.20 which is attached hereto and incorporated herein, and to be known as Magnolia Pointe, Unit Two which is presently unimproved and undeveloped, but which Developer may, but is not obligated to, develop, improve and, by annexation, subject to the covenants and restrictions of this Declaration.

2.21 "Reclaimed Water" shall mean water that meets or exceeds FDER standards for reuse and that is used for a beneficial purpose after flowing out of any waste water treatment facility.

2.22 "Reuse Water" shall mean and have the same definition as set forth in the Brevard County Code, and as defined by the St. John's River Water Management District and include the application of Reclaimed Water.

2.23 "Townhome" or "Dwelling" shall mean any attached single family residence constructed upon any Lot and sharing at least one, but not more than two Party Walls with adjacent residences for structural support and integrity and constructed within a single structure housing three or more such residences.

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 or independent of 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 a member, 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 herein 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) eight (8) 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 Additions to the Property. The Developer 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.

4.3 Annexation Without Association Approval. The Developer may from time to time bring, in whole or in part, the Undeveloped Parcels under the provisions hereof by recorded supplemental declaration, or amendment hereto, which shall not require the consent of the existing Owners, or the Association, or any mortgagee. Nothing herein shall prevent the Developer from adding additional or other property to the Property under a 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 an amendment or supplement hereto properly executed by the Developer and without the consent of the Members of the Association. Until such amendment or supplement is recorded, no provision of this Declaration shall be effective as to all or any portion of the Undeveloped Parcels, nor shall this Declaration constitute a cloud or encumbrance on the title to any Undeveloped Parcels.

4.4 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 any Undeveloped Parcels of property annexed pursuant to this Declaration 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 Developer. Further, such amendments or supplements to the Declaration may contain provisions relating to such Undeveloped Parcels, 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 Parcels, to the exclusion of the other portions of the Property.

4.5 Other Annexation of Property. Land, other than land annexed in accordance with section 4.3 of this Article, may be annexed to the Property with the consent of the Members of the Association. Such annexation shall become effective upon the recording of an amendment or supplement to this Declaration in the Public Records of Brevard County, Florida.

4.6 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 or the Association.

4.7 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, *ab initio*, unless subsequently approved and adopted by the Declarant.

4.8 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 Public Records of Brevard County, Florida, and such real property described therein shall be committed and subjected to and encumbered by the covenants contained in this Declaration and shall be considered "Property" as fully as though originally designated and defined herein as Property.



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4.9 **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, shall become 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. However, no such merger or consolidation shall cause a revocation, change or addition to the covenants in the Declaration as it pertains to the Property, except as provided herein.

**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 the 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, insurance on Common Property, roofs, exterior walls and Party Walls, entrance sign and sign lighting for Magnolia Pointe streets and maintenance of Lots, exterior surfaces, walls, roofs and landscaping as provided herein.

The Subdivision Association shall be responsible for the maintenance, operation and repair of the portions 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 alters 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.

The Subdivision Association shall have the right to increase or reduce the level of services it provides and to add or delete services by affirmative vote of the Members in accordance with the By-Laws of the Subdivision Association; except that, the Subdivision Association shall be responsible for the maintenance, operation and repair of the portion of the Stormwater Management System to be maintained by it and shall not delete, reduce or modify any services related to the Stormwater Management System without prior approval of the St. Johns River Water Management District. In order to pay for these services, the Subdivision Association shall charge assessments against the Lots and their owners which may be in addition to any assessments charged by the Master Association for such Stormwater Management System Services provided by it. Each Owner is personally obligated for assessments which come due during the time such Owner owns the Lot.

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 becoming due during a person's ownership of a Lot shall not pass to such owner's successors in title unless assumed by them or unless such assessments have become a lien on such Lot in accordance herewith.

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, 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. The Subdivision Association may charge a reasonable fee for furnishing a certificate setting forth the assessments levied or due against an Owner or Lot. 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. Except as otherwise provided herein, the initial annual assessment for the first fiscal year shall be \$1,800.00 with an additional start-up fee of \$200.00 payable by the Buyer, at the initial closing of each Lot. The \$200.00 start-up fee per Lot shall be paid to the Association at the time of closing

Does not apply

by the first purchaser of a Lot other than the Declarant. All undeveloped and unimproved Lots which have been purchased by, and or sold to any person or entity, other than those owned by the Developer, shall pay an annual assessment of \$900.00 payable in monthly payments of \$75.00 per month until the earlier of (i) 180 days from the issuance of a building permit by the appropriate governmental authority for any improvement to be constructed upon a Lot; or (ii) such time as a Townhome or Dwelling or other improvement has been constructed on such Lot and a certificate of occupancy has been issued for such Townhome or Dwelling by the appropriate state, county or municipal government. Upon issuance of the certificate of occupancy or the 181st day, the Owner thereof, including the contractor or the builder of the Dwelling or Townhome, if applicable, shall be assessed from the date of issuance of the certificate of occupancy or the 181st day, the full annual assessments paid by other Lot Owners within the Subdivision for the year in which the certificate of occupancy is so issued or the 181st day occurs, with all assessments owed for that year being pro-rated and increased from the date of issuance of the certificate of occupancy or the 181st day. The Association may use the start-up fee for any of the purposes set forth in this Declaration. The start-up fee shall be paid directly to the Association. Annual assessments may also be used for the maintenance or repair of the Surface Water or Stormwater Management System; including but not limited to work within retention areas, drainage structures and drainage easements.

5.4 Date of Commencement of Annual Assessments. The annual assessment for each Lot whether improved or unimproved 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 A RECORDED PLAT OF MAGNOLIA 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 THROUGH AND UNTIL THE DATE OF TURNOVER OF THE ASSOCIATION TO THE MEMBERS.

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 \$1,800.00 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 a maximum of ten percent (10%) 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 ten (10%) percent, a vote of two-thirds (2/3rds) 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 any amount not in excess of the maximum provided herein.

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 and 00/100 (\$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 two-thirds (2/3) 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 Dwelling or Townhome 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 in full. 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 any Plat recorded for the Subdivision, as the same may be relocated from time to time, subject to regulations and ordinances of Brevard County and the Association.

6.3 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.

6.4 Party Walls/Roofs.

6.4.1 **Ownership.** Except as provided herein, each Owner shall be deemed the sole owner of that portion of any Party Wall or roof constructed solely upon his Lot to the center line of such Party Wall or where such roof overlaps or connects with the roof of another adjacent Townhome or Dwelling. Each Owner is granted a perpetual easement over that portion of an adjacent Lot, on which such Party Wall or roof is constructed, solely for the purpose of the maintenance, repair, and use of said Party Wall or roof as a common structural support or protector for each Dwelling or Townhome sharing a Party Wall or roof area.

6.4.2 **Maintenance.** Each Owner shall have equal responsibility for the general maintenance, repair, and upkeep of Party Walls and roofs. No Owner shall at any time use any part of said Party Wall, in such a manner, as will unreasonably interfere with, impair, or obstruct any adjacent Lot Owner's use or benefit of such Party Wall or his/her Lot or which shall damage or impair the structural integrity of the Party Wall. Each Owner and the Association shall have the right to enter on



the Property of another Owner with whom a Party Wall is shared, in so far as it may be reasonably necessary for the repair or maintenance of any Party Wall, and as such, shall take and observe all such necessary precautions and care so as to not damage the property of another Owner, and shall provide such Owner with reasonable notice of the intent and need to enter upon his Lot or within his Townhome, for the purpose of repairing and/or maintaining the shared Party Wall.

6.4.3 **Damage/Repairs to Party Wall.** In the event of structural damage or the destruction of any Party Wall from any cause, other than the negligence or intentional or willful acts of any Owner, or his guests, invitees or family, the Association shall repair or rebuild said wall as it deems necessary, and each Owner, or their successors and assigns, shall have the right to the full use of said wall so repaired or rebuilt. The Subdivision Association may, but is not required to, impose an assessment against each Owner of a Townhome sharing the repaired or rebuilt Party Wall. Owners within the Building in which the Party Wall is located, or against all Owners within the Subdivision, for the costs and expenses to repair the Party Wall, with such assessments being payable and collected as provided in this Declaration for other assessments imposed by the Subdivision Association. If any Owner or his guests, invitees or family members' negligence or intentional acts causes damage to or destruction of a Party Wall, such negligent Owner shall bear the entire cost of repair or reconstruction. If any Owner shall neglect or refuse to pay for all of such cost to repair the Party Wall, the Subdivision Association may, but shall not be required to repair the damaged Party Wall with the cost to repair the Party Wall being levied as an additional assessment against the Owner damaging the Party Wall which shall constitute a continuing lien upon the Owner's Townhome and collectable as provided herein for other assessments imposed by the Subdivision Association.

*deferrals on
new Owner
budget*

6.4.4 **Damage/Repair to Roof.** In the event of damage or destruction of any roof upon any Townhome, or Dwelling, the Association within its sole and absolute discretion, shall repair and/or replace such roof as it deems necessary to insure proper integrity, and aesthetic appearance of the Townhome, or Building in which it is constructed. The costs of the repairing or replacing any roof upon any individual Townhome, shall be paid by the Association, and the Association shall have the right to levy an assessment against the Owner of such Townhome, or all Owners within the Building, upon which the repair or replacement roof is located, or all Owners within the Subdivision, for the cost to repair or replace such roof(s). In the event that the entire roof upon any Building(s) containing one or more Townhomes, requires repairs or replacements whether in part or whole, the Association at its discretion, shall repair and/or replace such roofs, and be entitled to levy a special assessment upon the Owners within a Building sharing a roof, or upon all Owners within the Subdivision, divided proportionately, for an equal proportionate share of such costs or expenses. The right and/or authority to repair and replace any roof upon any Townhome or Building, shall be within the sole and absolute discretion of the Association. In the event that any roof is damaged or destroyed by any negligent or intentional acts of any Owner, or his/her guests, invitees, or family, such Owner shall be responsible for and shall pay the entire cost for such repair or replacement of the roof, caused by his/her negligent or intentional acts. The Association shall have a continuing lien to secure all unpaid costs or expenses to repair any or replace any roofs upon any Townhome or Building pursuant to this Section, and for any costs or expenses incurred by the Association to repair or replace any roof it is required to repair or replace as a result of the Owner(s) failure to repair such roof as provided herein.

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 including the maintenance and repair of Party Walls, and roofs, if necessary. Except as provided herein, 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, lease, grant an exclusive use or license in, or encumber any Common Property if authorized by two-thirds (2/3) vote of the Class A and Class B 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 subdivision.

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 5 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 or Townhome for the purposes of fully and faithfully discharging the duties of the Association including but not limited to, maintenance of landscaping, exterior or interior walls, Party Walls and roofs of any Townhome. 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 throughout the Property, 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 or other right of ways contained on any Plat for Magnolia Pointe 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's Articles or Bylaws;

7.5.9 cleanup, landscaping, maintenance, dredging, water treatment or other care of canals (in accordance with all necessary permits and approvals of any federal, state or local government laws, regulations or ordinances), 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.

7.5.11 maintenance of lawns and other landscaping.



7.5.12 painting and maintenance of exterior surfaces of Dwellings and Townhomes.

7.5.13 repair and maintenance of roofs or Party Walls.

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 reserves a perpetual easement on, over and under the easements and Common Property shown on any Magnolia 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, upon obtaining all necessary permits and approvals from all necessary federal, state or local governmental authorities, 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 and any easements thereon.

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 Magnolia 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 Magnolia 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 Townhome or Dwelling or other structure is erected or the construction of a home or structure 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 or structure 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 Magnolia 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 and their assigns, such as the St. Johns River Water Management District, or its successors and assigns, 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 and their assigns, such as the St. Johns River Water Management District, or its successors and assigns, 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 and their assigns, such as the St. Johns River Water Management District, or its successors and assigns, 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 and conveyance of any Lot and shall be deemed to run with the land more particularly described on any Plat for Magnolia Pointe and all other land annexed hereunder.

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 Magnolia 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, entrance ways, 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. Each Lot Owner in the Subdivision will be subject to the obligations set forth in the Master Covenants.

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, bird feeder, 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 at a minimum, 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.

10.2.4 Set forth drainage plans and specifications acceptable to Developer.

10.2.5 Set forth set back in compliance with county or other appropriate governmental agency or authorities.



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 and include the following items:

10.2.3.1 A landscape plan providing for at least three (3) trees of species approved by the Subdivision Association, with a minimum height of six (6) feet;

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 by the Association. 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 Maintenance of Townhomes/Dwellings and Lots.

10.3.1 External Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot and improvement or Townhome constructed thereon, 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 and/or damages that are recoverable under any insurance policy and/or cost for maintaining appropriate insurance upon the Common Property, exterior walls, roofs or Party Walls. External Maintenance includes: paint, repair, replacement and care of exterior building surfaces due to normal wear and tear, maintenance of roofs and the structural components of exterior walls and Party Walls, maintenance of trees, sprinklers and grasses; maintenance of walks, streets as platted to and owned by the Association or upon any Lot not encompassed within the Townhome or Dwelling, driveways, entranceway and detached walls and curbs, with specific and express limitation that the Association shall not be required to provide fertilization of any grasses, lawns, trees or shrubbery more than twice (2) a year during any given year, shall not be required to prune, trim or otherwise maintain trees or hedges more than twice (2) a year, nor shall the Association be required to provide any form of bug or weed control for any lawns, grasses, trees or shrubs more than twice (2) a year and the Owner of any Lot shall be responsible for the maintenance of any and all flowerbeds or other shrubs, as expressly stated herein. For any Lot that has additional improvements and/or additions made thereto, an appropriate amount as determined by the Association shall be added to that Lot's annual assessment. All exterior landscaping not initially provided by the Developer, Association or any builder of the Townhome shall require prior approval of the Subdivision Association.

10.3.2 Willful Neglect. In the event that the need for maintenance or repair of a Lot or the improvements thereon including any change to exterior walls, roofs or Party Walls of any Townhome is caused through the willful or negligent acts of its Lot Owner, or through the willful or negligent acts of family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be the responsibility of the Lot Owner or those costs shall be added to and become part of the assessments of that Lot.

10.4 Miscellaneous Restrictions.

10.4.1 No fences or privacy walls shall be constructed on any Lot without the prior written approval of the Association which may be withheld for any reason. Additionally, all shrub lines must be approved by the Subdivision Association prior to construction or installation.

10.4.2 All Lots in Magnolia Pointe are residential parcels and shall be used exclusively for attached single family residential purposes. Detached auxiliary buildings, including dog houses or storage buildings, are not permitted without prior approval of the Subdivision Association. No Townhome or Dwelling constructed on a Lot shall have less than 1,200 square feet or more than 3,500 square feet of living space.

10.4.3 Trash, garbage or other waste shall not be kept on any Lot except in sanitary containers such as trash bags or trash cans or garbage compactor units. Garbage containers, if any, shall be kept in a clean and sanitary condition, and shall be so placed or screened as not to be visible from any road or adjacent property within sight distance of the Lot at any time except during refuse collection. No swimming pools shall be allowed on any Lot except for any Common Areas. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted. No Lot shall be used or maintained as a dumping ground for rubbish, trash or other waste. Clotheslines, if any, shall be contained within the fenced areas of Lots. No clothing or cleaning articles shall be hung or displayed on any part of the Lot so that it is visible outside of the Lot. Any pole, line or other device used for hanging of laundry shall be portable and shall be removed when not in use. Nothing herein contained shall be construed to conflict with §163.04, Florida Statutes.

*Owner
part of
fee.*



10.4.4 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 Subdivision Association and all antenna, antenna poles, antenna masts, satellite television reception devices, electronic devices, antenna towers or citizen band (CB) or amateur (ham) antennas shall, at a minimum, comply with the following:

(a) Only the following three types of television antennas are permitted.

1) A flat plate antenna no larger than 14 inches by 14 inches by 2 inches may be installed on the side or back outside wall of a home under the eaves and shall not protrude more than 9 inches from the surface of the house. All such antennas shall be painted the same color as the adjacent surface of the house.

2) A mast-type antenna (with prior approval) (such as Yagi type) no larger than 24 inches in length, including the base, 1½ inches in diameter, may be installed on the side or back outside wall of a home provided that such antenna does not extend above the roof at the point of installation.

3) A satellite antenna no larger than 20 inches in diameter may be (with prior approval) installed on the side or back outside wall of a home, or on a railing, door or ground mount. If ground mounted, the top of the antenna may not be higher than 5 feet above the average grade at the perimeter of the house and the base shall be shielded by landscaping on all sides.

4) Any satellite antenna approved by the Subdivision Association.

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

(c) The above dimensions are based upon common measuring standards, (feet and inches) physically taken (measured) from the furthest outside edge to furthest outside edge of installed equipment (length/width, height and depth). Manufacturers' listed dimensions are not determinative of actual dimensions.

(d) All other outdoor antennas, including, but not limited to, radio and shortwave, are prohibited with the exception of those installed by Brevard County Utilities for monitoring utility installations. A flagpole for display of the American flag or any other flag shall be permitted only if first approved in writing by the Subdivision Association, as to its design, height, location and type of flag. No flagpole shall be used as an antenna. Flagpoles which attach to the exterior of any Townhome or Dwelling by use of a bracket or other support may be installed with the prior approval of the Subdivision Association.

10.4.5 No permanent basketball or other similar devices shall be placed or constructed upon any Lot. All easily movable game and play structures (those which are readily subject to movement or removal) including, portable or movable basketball hoops and supports, shall be located at the side or rear of the improvement, or on the inside portion of the corner Lots. Tree houses or platforms of a like kind or nature shall not be constructed on any part of the Lot.

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 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 All exterior landscaping on any Lot must be approved by the Subdivision Association or Architectural Committee prior to planting or installation.

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 any period 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 Vans. 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 (½) ton or less, as more fully provided herein.

10.4.16.3 Trucks and Non-Passenger Vans. Trucks rated one-half (½) 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 Magnolia Pointe. Trucks which are of more than one-half (½) ton, or trucks or non-passenger vans with any advertising or logos, or trucks which are not the resident's regular or usual form of transportation are not permitted to be parked in Magnolia Pointe unless present solely for the actual and continuous repair or construction of residence, but in no event shall any such trucks remain parked in Magnolia Pointe for more than 3 months. This provision does not supersede or relieve any Unit Owner from more restrictive provisions contained in the Master Documents.



10.4.16.4 Boats, Campers and Trailers. Boats, campers and trailers shall be permitted to be parked in Magnolia 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 herein, shall not be parked in Magnolia Pointe at any time.

10.4.16.6 Repairs. Except for the waxing or washing of vehicle(s) owned by an Owner of a Lot, on such person's Lot, 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 Magnolia 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 Property Maintenance. Except as provided herein, in the event an Owner of any Lot shall fail to maintain the premises and improvements situated thereon in a manner satisfactory to the Subdivision Association, except for those areas or items to be maintained by the Subdivision Association, the Owner shall be notified and given thirty (30) days within which to correct or abate the situation. If the Owner fails to do so, the Subdivision 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 of an Institutional Lender.

10.7 **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 order, enforce and file all actions to obtain orders or judgments for specific performance and injunction 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 Magnolia 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/Reuse Water System.** The central sewage system provided by Brevard County for the service of Magnolia 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 Magnolia Pointe. The Association shall maintain and repair all portions of sewer lines located within the boundaries of any Common Area or Common Property. The Declarant and/or Association shall have the right and ability, but shall not be required, to contract with Brevard County, Florida, with regard to the establishment, maintenance and operation of a Reuse Water System for the Subdivision, and the Association shall have the right to control and regulate all use of the Reuse Water System, and all use of Reuse or Reclaimed Water within the Subdivision, including setting reasonable restrictions on the time and duration of use of such Reuse or Reclaimed Water or Reuse Water System. The Declarant and the Association hereby reserves and creates a perpetual easement in favor of the Declarant and the Association, over, under, upon and across all Property within the Subdivision for the construction, installation, repair and maintenance of a Reuse Water System for the Subdivision or of any sewer lines located thereon.

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 CONSERVATION EASEMENT AND WETLAND PRESERVATION AREAS

12.1 "Conservation Easement Area" or "Wetland Preservation Area" shall mean (in addition to the definition in Section 2.12) all of such areas described and designated on the Unit One Plat.

Conservation Easement Areas and Wetland Preservation Areas shall and are hereby declared to be subject to a Conservation Deed Restriction pursuant to Section 704.06, F.S., in favor of the St. Johns River Water Management District ("District"), for the purpose of retaining and maintaining the Conservation Easement Areas or Wetland Preservation Areas in their predominantly natural condition as a wooded water recharge, retention, percolation and environmental conservation easement area. In furtherance of this conservation Deed Restriction, all the following uses of the Conservation Easement Areas or Wetland Preservation Areas are hereby prohibited and restricted without the prior written consent of the St. Johns River Water Management District, to wit:

12.1.1 The construction, installation or placement of signs, buildings, fences, walls, roads or any other structures and improvements on or about the ground of the Conservation Easement Areas.

12.1.2 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.





- 12.1.3 The removal or destruction of trees, shrubs or other vegetation from the Conservation Easement Areas.
- 12.1.4 The excavation, dredging or removal of loam, peat, gravel, rock, soil or other material substance in such a manner as to affect the surface of the Conservation Easement Areas or Wetland Preservation Areas.
- 12.1.5 Surface use, except for purposes that permit the land or water area to remain in predominantly natural condition.
- 12.1.6 Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- 12.1.7 Acts or uses detrimental to such retention of land or water areas.

Notwithstanding Subparagraph 13.5, the Conservation Easement Areas and Wetland Preservation Areas hereby created and declared shall be perpetual.

The District, its successors or assigns, shall have the right to enter upon the Conservation Easement or Wetland Preservation Areas at all reasonable times and in a reasonable manner, to assure compliance with the aforesaid prohibitions and restrictions.

The Subdivision Association and all subsequent owners of the Conservation Easement or Wetland Preservation Areas shall be responsible for the periodic removal of trash and other debris which may accumulate on such Conservation Easement or Wetland Preservation Areas.

The prohibitions and restrictions upon the Conservation Easement and Wetland Preservation Areas as set forth in this Section may be enforced by the District or its successor agency, by proceedings at law or in equity including, without limitation, actions for injunctive relief. The provisions and restrictions of this Section may not be amended without prior approval from the District.

All rights and obligations arising hereunder are appurtenances and covenants running with the land denoted "Conservation Easement" or "Wetland Preservation Areas" and shall be binding upon and shall inure to the benefit of the District and its successors and assigns. Upon conveyance by the Developer to third parties of any land affected by this easement, the Developer shall have no further liability or responsibility hereunder, provided the deed restriction covering the Conservation Easement and Wetland Preservation Areas is properly recorded.

**ARTICLE 13
GENERAL PROVISIONS**

13.1 **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. Privacy Walls may not be constructed by any Owner on a Lot without prior written approval of the Subdivision Association.

13.2 **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.

13.3 **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.

13.4 **Easement for Privacy Wall.** An easement is hereby created in perpetuity, in favor of the Declarant and the Association along the rear Lot lines of all exterior Lots (those Lots bordering other lots, subdivisions, developments or property not within the Property) within the Subdivision, for the construction, management, inspection, painting, maintenance and repair of Privacy Walls along such rear Lot lines. The easement shall extend ten (10) feet from the rear Lot line of any and all exterior Lots of the Subdivision, into each affected Lot. 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.

13.5 **Duration and Amendment.** These covenants and restrictions of this Declaration 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 from the date this Declaration

is recorded 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. For so long as there remains Class B membership voting rights, the Declarant may amend, change, supplement, modify or terminate this Declaration without the approval of the Owners. In addition to any other manner herein provided for the amendment of this Declaration, these covenants and restrictions may be amended, changed, supplemented, modified or terminated at any time and for any reason from time to time upon the execution and recordation of an instrument approved by the Owners holding not less than two-thirds (2/3) vote of each class of membership in the Association. No provision of this Declaration may be amended if such provision is required to be included herein by any law. Additionally, no such amendment shall adversely affect the right or lien of any Institutional Lender 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 the St. John's Water Management District, any other governmental agency or authority or any other generally 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. Notwithstanding anything contained herein to the contrary, this provision shall not restrict the right of the Developer to annex additional property in accordance with paragraph 4.3 of this Declaration, without the consent of the other members of the Association.

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

13.6 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.

13.7 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.

13.8 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 Magnolia 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 Magnolia Pointe to any person or entity, such person or entity shall be deemed to be the successor developer of Magnolia Pointe and the Class B member of the Subdivision Association; if Developer transfers or assigns less than all of its remaining interest in Magnolia 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.

13.9 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.

13.10 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.

13.11 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, including, without limitation, any action for declaratory relief, 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.



13.12 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.

13.13 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.

13.14 Governing Law/Venue. The construction, validity and 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.

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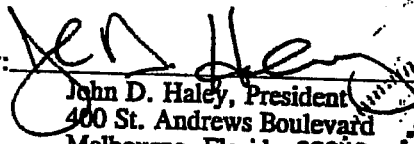

IN WITNESS WHEREFORE, the Developer has executed this instrument on the day and year first above written.

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: 
John D. Haley, President
400 St. Andrews Boulevard
Melbourne, Florida 32940

(Corporate Seal)


Witness Signature

DAVID LARKIN
Print Witness Name


Witness Signature

Kellie Shepard
Print Witness Name

STATE OF FLORIDA
COUNTY OF BREVARD


000000

The foregoing instrument was acknowledged before me this 4 day of May, 1998, by John D. Haley, 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.

(Seal)



NOTARY PUBLIC, SIGNATURE
Print Notary Public Name Kellie Shepard
My Commission Expires _____

 Kellie Shepard
My Commission CC891019
Expires October 29, 2001



CFN 98085705
OR Book/Page: 3837 / 3923

Prepared by and Return to:
David G. Larkin, Esq.
Fallace & Associates, P.A.
1900 S. Hickory Street, Suite A
Melbourne, Florida 32901

Sandy Crawford

Clerk Of Courts, Brevard County

#Pgs: 5 #Names: 2
Trust: 3.00 Rec: 21.00 Serv: 0.00
Deed: 0.00 Excise: 0.00
Mtg: 0.00 Int Tax: 0.00



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**DECLARATION OF ANNEXATION AND FIRST AMENDMENT TO
THE DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
MAGNOLIA POINTE**

This DECLARATION OF ANNEXATION AND FIRST AMENDMENT TO THE DECLARATION OF COVENANTS AND RESTRICTIONS FOR MAGNOLIA POINTE (hereafter "First Amendment") is made this 10 day of July, 2000 by The Suntree Partners, a Florida general partnership (the "Developer").

RECITALS

A. Developer is the Declarant under the DECLARATION OF COVENANTS AND RESTRICTIONS FOR MAGNOLIA POINTE dated May 6, 1998, recorded in Official Records Book 3837, Page 3903 of the Public Records of Brevard County, Florida (collectively the "Declaration");

B. Pursuant to Article 4 of the Declaration entitled "Property Subject to this Declaration and Additions to the Property" the Developer may amend the Declaration and annex the Undeveloped Parcels of property, in whole or in part, as defined in Section 2.20 of the Declaration so as to bring such property under the terms, provisions and restrictions of the Declaration; and

C. Developer desires to amend the Declaration to subject the Undeveloped Parcel of property identified in the Declaration as Magnolia Pointe, Unit Two, according to the Plat thereof, as recorded in Plat Book 45 Page 79 of the Public Records of Brevard County, Florida (the "Unit Two Plat") and subject the property in the Unit Two Plat to the terms, provisions and restrictions of the Declaration.

AMENDMENTS

NOW THEREFORE, in accordance with the Declaration, the foregoing Recitals are incorporated into this Amendment and the Declaration is hereby amended and supplemented as follows:

1. The portion of the Declaration located on page 3 identified as the "Purpose of this Document" shall be amended to read as follows:

The purpose of this document is to subject Magnolia Pointe which is described in the Plat of Magnolia Pointe, Unit One, recorded in Plat Book 43, Page 98, of the Public Records of Brevard County, Florida (hereinafter the "Unit One Plat", "Unit 1 Plat", Property or Properties) and Unit Two Plat and additional plats of land annexed into Magnolia Pointe, and subjected to and encumbered by the covenants and restrictions contained in this Declaration. This Declaration is, sometimes referred to as the "Covenants." For purposes of this Declaration the term "Magnolia Pointe" shall mean the property identified in the Unit One Plat

and Unit Two Plat, and subsequent Plats recorded in the Public Records of Brevard County, Florida including Magnolia Pointe, Unit Two and all property subsequently annexed and made subject to this Declaration.

Developer declares that Magnolia Pointe shall be conveyed and occupied subject to all matters set forth in this Declaration, the Unit One Plat and Unit Two 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 Magnolia Pointe after the recording of these Covenants in the Public Records of Brevard County, Florida.

2. Section 2.3 of the Declaration entitled "Common Property" or "Common Area" shall be amended to read as follows:

"Common Property" or "Common Area" shall mean Tracts A, B, C, D, E, E-1, F, K, L, M, N and S as shown in the Unit One Plat and Unit Two 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 the control of the Association is turned over to the owners.

3. Section 2.4 of the Declaration entitled "Lot" shall be amended to read as follows:

"Lot" shall mean each lot or plot of land shown on the Unit One Plat and Unit Two Plat for the Magnolia 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.

4. Section 2.9 of the Declaration entitled "Subdivision" shall be amended to read as follows:

"Subdivision" shall mean all property known as MAGNOLIA POINTE being a part of the Suntree Planned Unit Development, identified in the Unit One Plat and Unit Two Plat and recorded in the Public Records of Brevard County, Florida and all other properties subject to these covenants by the Developer or otherwise annexed as provided herein.

5. Section 2.11 of the Declaration entitled "Surface Water" or "Stormwater Management System" shall be amended to read as follows:

"Surface Water" or "Stormwater Management Systems" shall mean a system and constructed or implemented to control discharges which are necessitated by rainfall events incorporating methods to collect, convey, store, absorb, inhabit, 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 Surface Water or system, as permitted pursuant to Chapters 40C-4, 40C-40 or 40C-42, F.A.C. No portion of the Stormwater's Management System will be owned and maintained by the Subdivision Association, except for lakes in Tracts A, C, D and E as set forth on the Unit One Plat and the lakes in Tracts B, K, L, M, N and S, as set forth on the Unit Two Plat. Tracts A, C, D, E, K, L, M and N are dedicated to the St. Johns River Water Management District as Conservation Easement Areas.



6. The first sentence of Section 12.1 of the Declaration entitled "Conservation Area" or "Wetland Preservation Area" shall be amended in its entirety to read as follows:

"Conservation Easement Area" or "Wetland Preservation Area" shall mean (in addition to the definition in Section 2.13) all such areas described and designated as such on the Unit One Plat and Unit Two Plat.

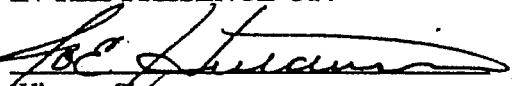
7. The property identified in the Unit Two Plat is hereby annexed into and made a part of Magnolia Pointe pursuant to Article 4, Section 4.2 of the Declaration and is subjected to the restrictions, limitations and covenants of the Declaration.

8. All other terms, covenants, restrictions and provisions of the Declaration not expressly amended and modified hereunder shall remain in full force and effect as set forth in the Declaration.

IN WITNESS WHEREFORE, the Developer has executed this Declaration of Annexation and First Amendment to the Declaration of Covenants and Restrictions for Magnolia Pointe on the day and year first indicated above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

DEVELOPER:



Witness Signature

THE SUNTREE PARTNERS, a Florida
general partnership

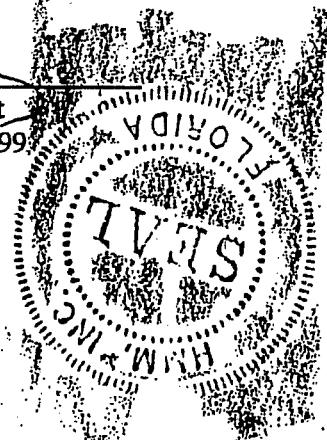
JOE HUTCHISON
Print Witness Name

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


Witness Signature

By: 
John D. Haley, President
Address: P.O. Box 410999
Melbourne, FL 32941

Kellie Shepard
Print Witness Name



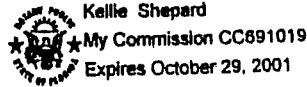
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STATE OF FLORIDA)
) ss:
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me this 10 day of July, 2000, by John D. Haley, as President of HMM, INC., a Florida corporation, as 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:



CFN:2000143608
OR Book/Page: 4198 / 0189

MAGNOLIA POINTE HOMEOWNERS ASSOCIATION, INC.
 ADOPTED ANNUAL BUDGET
 JANUARY 1, 2001 THROUGH DECEMBER 31, 2001

INCOME	MONTHLY	YEARLY
MAINTENANCE FEE	5550.00	66,600.00
TOTAL INCOME	5550.00	66,600.00
ADMINISTRATION		
ACCOUNTING	15.00	180.00
BANK CHARGES	6.00	72.00
OFFICE & POSTAGE	35.00	420.00
LEGAL	50.00	600.00
LICENSES	20.00	240.00
TAXES, INCOME	8.00	96.00
MANAGEMENT FEE	256.00	3072.00
CLEANING SERVICE	60.00	720.00
R & M GATE	65.00	780.00
TERMITE BOND	150.00	1800.00
R/M BUILDING	50.00	600.00
R/M FOUNTAIN	75.00	900.00
POOL SERVICE CONTRACT	185.00	2200.00
R/M POOL	25.00	300.00
LAWN SERVICE CONTRACT	1625.00	19500.00
LAKE SERVICE CONTRACT	155.00	1860.00
IRRIGATION CONTRACT	225.00	2700.00
LAWN SPRAYING	400.00	4800.00
LANDSCAPE/MULCH	140.00	1680.00
INSURANCE		
INSURANCE/LIABILITY	1034.00	12408.00
UTILITIES		
ELECTRIC	295.00	3540.00
TELEPHONE	90.00	1080.00
WATER	40.00	480.00
RESERVES (SEE SCHEDULE)	496.00	5952.00

**SECOND AMENDMENT TO THE DECLARATION OF COVENANTS AND
RESTRICTIONS
FOR
MAGNOLIA POINTE**

THIS SECOND AMENDMENT TO THE DECLARATION OF COVENANTS AND RESTRICTIONS FOR MAGNOLIA POINTE (hereinafter referred to as the "Second Amendment") is made this _____ day of _____, 2006 by _____.

RECITALS

- A. On or about the 4th day of May, 1998, The Smtree Partners, a Florida general partnership (hereinafter referred to as the "Developer"), executed that certain DECLARATION OF COVENANTS AND RESTRICTIONS FOR MAGNOLIA POINTE dated May 6, 1998 and recorded May 7, 1998 in Official Records Book 3837, Page 3903, Public Records of Brevard County, Florida (hereinafter collectively referred to as the "Declaration").
- B. On or about July 10, 2000, the Developer amended the Declaration under and by virtue of that certain Declaration of Annexation and First Amendment to the Declaration of Covenants and Restrictions for Magnolia Pointe dated July 10, 2000 and recorded July 31, 2000 in Official Records Book 4198, Page 0186, Public Records of Brevard County, Florida.
- C. Section 13.5 of the Declaration provides that the Declaration "may be amended, changed, supplemented, modified or terminated at any time and for any reason from time to time upon the execution and recordation of an instrument approved by the Owners holding not less than two-thirds (2/3 rds) vote of each class of membership in the Association."
- D. The Class B Membership of the Association has ceased in accordance with the provisions of Section 3.2 of the Declaration.
- E. Owners holding not less than two-thirds (2/3 rds) vote of the Class A Membership in the Association desire to amend the Declaration to place specific restrictions on the leasing or renting of homes located within Magnolia Pointe pursuant to Section 10.4.15.
- F. Owners holding not less than two-thirds (2/3 rds) vote of the Class A Membership in the Association desire to amend the Declaration to place specific restrictions on the locations and times that certain trucks are permitted to park within Magnolia Pointe pursuant to Section 10.4.16.3.

NOW THEREFORE, in accordance with the provisions of Section 13.5 of the Declaration, the Declaration is hereby amended and supplemented as follows:

1. Recitals; Defined Terms. The recitals set forth hereinabove are true and correct in all respects and are incorporated herein by reference as fully as if set forth herein verbatim. Defined

(capitalized) terms set forth herein shall have the same meanings herein as are given to such terms in the Declaration, unless otherwise expressly provided herein.

2. Section 10.4.15 of the Declaration Section 10.4.15 of the Declaration is hereby revised to read in its entirety as follows:

No home on a Lot shall be leased or rented for any period less than twelve (12) months. Further, no home on a lot shall be leased or rented without the express consent of the Association, which consent an Owner shall obtain prior to the effective date of any such lease or rental agreement. The Owner shall deliver to the Association, within ten (10) business days before the effective date of any such lease or rental agreement, a copy of the proposed lease or rental agreement. The Owner shall provide to the proposed lessee or renter copies of all current declarations of covenants & restrictions, bylaws, and regulations as may be enforceable at the time of the lease or rental agreement by the Association and/or the Master Association. Each lease or rental agreement shall contain language which requires lessees and renters to acknowledge that they have received, read and agreed to be bound by the declarations of covenants and restrictions, bylaws and regulations of the Association and the Master Association. Each Owner is solely responsible for any violation thereof with respect to such Owner's Lot. At no time shall the Association permit more than ten percent (10%) of the total units in the subdivision to be leased or rented.

3. Section 10.4.16.3 of the Declaration. Section 10.4.16.3 of the Declaration is hereby revised to read in its entirety as follows:

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 Magnolia Pointe. Such trucks and non-passenger vans shall not be parked in driveways, streets or overflow parking areas (including pool parking areas), between the hours of midnight and seven a.m. (7:00 a.m.) on any given day unless otherwise permitted, in writing, by the Board of Directors. Trucks that are more than one-half (1/2) ton, or trucks or non-passenger vans with advertising or logos, are not permitted to be parked in Magnolia Pointe unless present solely for the actual repair of a common element or residence, but in no event shall any such truck remain parked in driveways, streets or overflow parking areas (including pool parking areas) between the hours of midnight and seven a.m. (7:00 a.m.) on any given day unless otherwise permitted, in writing, by the Board of Directors. This provision does

not supercede or relieve any Unit Owner from the more restrictive provisions contained in the Master Documents.