

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Amended November 30, 2004

Amended August 1, 2006

THIS DECLARATION, made on the date hereinafter set forth by the TOWNHOMES OF SUNTREE ASSOCIATION, INCORPORATED, hereinafter referred to as "Declarant":

WITNESSETH:

Whereas, Declarant is the owner of certain property in Brevard County, State of Florida, which is more particularly described on Exhibit A attached hereto.

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

### ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to the TOWNHOMES OF SUNTREE ASSOCIATION, INCORPORATED, its successors and assigns.

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

Section 3. "Properties" shall mean and refer to the certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area owned by the Association is described on Exhibit B attached hereto.

Section 5. "Residential Tract" shall mean and refer to any plot of land shown upon any recorded subdivision map of Properties, with the exception of the Common Area, and/or road rights-of-way as shown or as subsequently shown on any recorded subdivision map of Properties if dedicated to a public authority for maintenance.

Section 6. "Unit" shall mean the fee simple title to any residential dwelling within the Property.

Section 7. "Declarant" shall mean and refer to the TOWNHOMES OF SUNTREE ASSOCIATION, INCORPORATED, its successors and assigns.

## ARTICLE II

### PROPERTY RIGHTS

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

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) The right of the Association to suspend the voting rights and right to use the recreational facilities by an owner for any period during which any assessment against his/her lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The right of the Association to dedicate or transfer all or any part of the the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of eligible voters agreeing to such a dedication or transfer has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a unit, which is subject to assessment, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any unit, which is subject to assessment.

Section 2. All members shall be owners and shall be entitled to one vote for each unit owned. When more than one person holds an interest in any unit, all such persons shall be members. The vote for such unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any unit. When more than one person holds an interest in any unit, and such persons cannot jointly agree as to how the vote should be cast, no vote shall be allowed with respect to such unit.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Each owner of any unit by acceptance of deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges to be paid monthly, and (b) special assessments for capital improvements, such assessments to be established and collected as hereafter provided. The monthly and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for improvements and maintenance of the Common Area and each of the units situated on the Properties.

Section 3. Assessment for Indirect Costs. All units shall be subject to a monthly assessment computed and determined on an annual basis for indirect costs, including but not limited to taxes, insurance, accounting, and general administrative expenses and overhead relative to the operation of the association.

Section 4. Assessment for Services and Exterior Maintenance. All units shall be subject to a monthly assessment for exterior maintenance, maintenance of the grounds and the common area and capital improvements thereon, and services required by the Association, including but not limited to, trash pick-up, electrical expenses for exterior lighting, and sprinkler systems, and other services which may be approved and provided by the Association from time to time.

Section 5. Annual Assessment. (a). The annual assessment may not be increased by more than ten per cent (10) above the assessments for the previous year without a vote of the membership, unless the Board of Directors in their sole discretion determines that certain additional maintenance and services are necessary and essential to the effective operation of the association.

(b) The annual assessment may be increased above ten percent (10%) by a majority of members consisting of fifty-one percent (51%) of eligible members who are voting in person or by proxy, at a meeting duly called for this purpose, except as otherwise provided for herein; provided, however, that the Board of Directors may increase the annual assessment by more than ten percent (10%) without a vote when it deems it necessary for additional maintenance and services essential to the effective operation of the Association as provided in Paragraph 5 (a) above.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum, except as provided in paragraphs 5 (a) and 5 (b) above.

Section 6. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any major project not covered by the regular maintenance fees. Any special assessment in excess of two hundred and fifty dollars (\$250.00) per unit would require approval by the general membership. The membership approval may be obtained using a mail ballot. Any participating ballot must be returned within thirty (30) days of date of notification. The final decision would reflect the majority of the membership participating.

Section 7. Notice and Quorum for any action authorized under Sections 5 and 6. Written notice of any meeting called for the purpose of taking any action authorized under Section 5 or 6 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement. The required quorum shall be one half (1/2) of the required quorum at the preceding meeting. At no time will the quorum be less than thirty (30) percent of the eligible voters.

Section 8. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all units and may be collected on a monthly basis.

Section 9. Due Dates of Annual Assessments. The Board of Directors shall fix the amount of the monthly assessment for each unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment payable monthly shall be sent to every owner subject hereto. The Board of Directors shall establish the due dates. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified unit have been paid. A properly executed certificate of the Association as to the status of assessments on a unit is binding upon the Association as to the date of its issuance.

Section 10. Effect of Nonpayment of Assessments; Remedies of the Association. Monthly assessments not paid within thirty (30) days after the due date shall bear a penalty of five dollars (\$5.00) per month from the due date. Special assessments not paid within thirty (30) days of the due date shall bear interest from the due date of ten percent (10%) per month. The Association shall have a lien placed on the owner's property for any assessment unpaid after six (6) months. This shall include interest thereon and all costs which have been assessed against the owner. The said lien shall be effective from and after the time of recording in the public records of Brevard County, Florida, of a Claim of Lien stating the description of the property, the name of the owner of record, the amount due and payable, and the date when due; and the said

lien shall continue in effect until all sums secured by the lien have been fully paid. All such claims of the lien shall include only assessments which are payable and due when the said Claim of Lien is recorded, and all such Claims of Lien shall be signed and verified by an officer or agent of the Association. Where any such liens shall have been paid in full, the party making payment thereof shall be entitled to receive a Satisfaction of such lien in such form that it may be recorded in the public records of Brevard County, Florida. The Board of Directors may take such action as they deem necessary to collect assessments, by personal action or by enforcing and foreclosing said lien, and may settle and compromise the same if in the best interest of the Association. The delinquent owner shall pay all costs; including reasonable attorneys' fees, incurred by the Association incident to the collection of such assessments, together with all sums advanced, taxes, mortgages and insurance. The lien shall be deemed to cover said additional costs and advances. Filing of one action shall not be a bar to the filing of other actions. The Association, through its Board of Directors, shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien, and it may apply as a cash credit against its bid all sums due the Association covered by the lien enforced. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his unit.

## ARTICLE V

### EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each unit which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, streets, driveways, curbs, and other exterior areas. Such exterior maintenance shall not include glass surfaces or balcony screen enclosures. In the event that the need for maintenance or repair of a unit is caused through the willful or negligent acts of its owner, or through the willful or negligent acts of the family, guests or invitees of the owner of the unit needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which said unit is subject and be due and payable within thirty (30) days of notification of same.

## ARTICLE VI

### ARCHITECTURAL CONTROL

No building, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall be submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and

topography by the Board of Directors of the Townhomes of Suntree Association, Incorporated.

## ARTICLE VII

### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the lots shall constitute a party wall, and to the extent not inconsistent with the provisions of the Article, the general rules of law regarding party walls and liability for the property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion of such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an owner, who by his neglect or willful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right To Contribution Runs With Land. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator and the arbitration shall be governed by the rules of the American Arbitration Association. The decision shall be by the majority of the arbitrators and the arbitrators shall have the authority to award to the prevailing party an amount for expenses, costs fees, including, but not limited to, the cost of the arbitration

## ARTICLE VIII

### MAINTENANCE AGREEMENT

Section 1. For the purpose of the Association providing the required maintenance pursuant to the terms of this Declaration, the Association shall have the right to enter into a maintenance agreement with a third party, for the purpose of contracting for maintenance and operation of the Common Areas and/or other areas and facilities for the common benefit of the residents. The Board of Directors of the Association shall determine terms and conditions of any such agreement.

## ARTICLE IX

### RENTAL UNITS

In the event that a unit shall be utilized as a rental unit, the following provisions apply:

1. Effective August 1, 2006, no new rental units shall be allowed in the Townhomes of Suntree.
2. Effective August 1, 2006, any current rental unit sold shall not be sold as a rental unit.
3. Current rental units shall continue to abide by the regulations listed below.
  - a. Owners shall supply the association Board of Directors with a copy of the lease agreement.
  - b. For the purpose of membership in the Association, the Owner of the rental unit and not the individual tenants thereof shall be the "Owner" for the purposes of assessment and membership.
  - c. Minimum rental period shall be at least seven (7) months. Each tenant residing not less than seven (7) months shall be entitled to the full use and enjoyment of all common property.
  - d. Owners of any property used as a rental property are required to supply the tenant of said property with copies of this Declaration, the By-laws, and any other pertinent materials. It is the Owners' responsibility to ensure enforcement of such Articles, By-laws, and/or relevant regulations pertinent to the common welfare of the residents and to the maintenance of all Properties.
4. Owners shall supply to the Association Board of Directors a signed statement from the tenant accepting of all requirements and conditions contained in the aforementioned documents.
5. If owners fail to enforce such Articles, By-Laws and/or relevant regulations, tenants shall be subject to eviction by the Association Board of Directors.

## ARTICLE X

### GENERAL COVENANTS AND RESTRICTIONS

Section 1. The laws and ordinances of the State of Florida and Brevard County, as well as the rules and regulations of their administrative agencies now or hereafter in effect, are hereby incorporated herein and made a part thereof.

Section 2. Each dwelling unit shall have access to a public street, either directly or indirectly via an approach, private road, pedestrian way, court or other area dedicated to a public or private use or common easement guaranteeing access. Permitted uses are not required to front on a public dedicated road. County officials or the Board of Directors, or utility companies as authorized by the Board of Directors, shall be allowed access on privately owned roads, easements and common open space to insure police and fire protection of the area, to meet emergency needs, to conduct services, as is their responsibility and to generally insure the health and safety of residents of the properties within the Association.

Section 3. No signs of any kind shall be exhibited in any way on above described properties without approval of the Board of Directors or its duly authorized agent. Typical residential "For Sale" signs may be erected, on a temporary basis only, at the entrances to the Properties. These may be placed only in the designated areas. The Board of Directors or its agent reserves the right to issue permits for the erection of certain signs on a temporary basis, which would vary from the usual norm of other signs. All permits will only be issued to owners.

Section 4. No husbandry shall be conducted or maintained on said properties, provided, however, that house pets only shall be excluded from this restriction.

Section 5. No fence or hedge shall be erected or maintained on the property as described in Exhibit A. The Board of Directors or its agent, in its discretion, may approve minor projections above the restricted height for architectural features. No wall or fence of any kind whatsoever shall be constructed on any lot.

Section 6. No house trailers or mobile homes shall be parked on any said lots. No lots shall be used as a junkyard or an auto graveyard. No trucks with commercial logos, mobile homes, or house trailers of any kind shall be permitted to park in the subdivision for a period of more than four hours unless the same is present in the actual active continuous construction or repair of buildings. Trailers and trucks shall not be used for living purposes. No other vehicle shall be used for living purposes. Trucks without commercial logos may be parked overnight in areas zoned residential at the discretion of the Board of directors, provided they are parked in garages or carports.

Section 7. Vehicles which are not properly licensed, leaking fluids, which can cause damage to the roadways, or are in a state of disrepair may not be parked on the roadway/parking surfaces of the Common Property. Such vehicles must be parked in garages/carports where they are screened from the common areas. Any owner whose vehicle damages the surface of the common roadway will be required to reimburse the Association for the full cost of repairing damaged surfaces.

Section 8. Temporary parking, not to exceed four hours, is allowed on the even side of the street only. Overnight parking is not allowed on any street or roadway.

Section 9. In the event a construction project of any sort is abandoned and remains so for a period of six months, the Board of Directors of the Association may take possession of the site and complete the construction accordingly. In such an event, the Board of Directors may sell the building and recover its cost for performing the work. The Board of Directors also reserves the right to take possession of such uncompleted construction and destroy the work, landscaping the area and selling the property in order to recover its cost.

Section 10. No residential dwelling unit may be used for commercial purposes. The Board of Directors or its agent may allow certain professional and commercial uses in residential units after a request is made and authority granted in writing.

Section 11. Trailers, boats, campers or other similar equipment may not be stored in the residential areas of said properties except in carports or in enclosed areas, which completely screen or blind the equipment from common areas, recreational areas, streets or adjacent residences.

Section 12. Each unit owner grants unto the adjacent unit owners an easement for roof overhang not to exceed an outward dimension of four feet (4') from the property line.

## ARTICLE XI

### GENERAL PROVISIONS

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

Section 2. Duration. These restricted covenants, easements, reservations and requirements upon the land described within Exhibit A shall run with the land and remain in full force and effect until January 1, 2010, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless a vote by the majority of owners, voting on due notice in writing, but in no event less than thirty (30)

percent of the entire body of eligible voters, said voters agree to change said covenants in whole or in part for the best interest of the Association. Such modifications to these covenants shall be evidenced by the recording in the public records of Brevard County, Florida, amendments to this Declaration of Restrictions setting forth such modifications.

Section 3. Enforcements. Enforcements shall be by proceedings of law or in equity against any person or persons violating or attempting to violate any covenant now or hereafter imposed by the provisions of this document either to restrain violations or to recover damages, or both. The party bringing the action shall be entitled to recover, in addition to the cost and disbursements allowed by law, such sums as the court may adjudge to be reasonable for the service of his attorney. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. These covenants and restrictions are severable and the invalidation of one shall not invalidate any other covenant hereof, and each covenant shall be independent to such extent.

Section 5. Amendment. The Association or its members or duly authorized agent or agents, by recorded instrument reserves the right from time to time, to subsequently amend, alter or change these covenants and restrictions, and use restrictions, by filing an amendment thereto upon the public records of Brevard County, Florida, as more particularly set forth in Section 2 above.

Section 6. Governmental Compliance. The laws of the State of Florida and the County of Brevard as well as the rules and regulations of their administrative agencies, now or hereafter in effect with regard to sewage disposal, water, sanitation and drainage are hereby incorporated herein and made part hereof.

Section 7. Conflicts. This Declaration is subject to the terms and conditions of the Declarations of Covenants, Conditions and Restrictions of the Townhomes of Suntree Association, Incorporated, as recorded in Official Records Book 1780, at page 439, of the public records of Brevard County, Florida. In the event that there should exist any conflict between this Declaration and the Declaration of the Suntree Masters Homeowners Association, Incorporated, then in such event the provisions of the latter Declaration shall govern.

EXHIBIT "A"

A resubdivision of a portion of Tract C of Suntime Planned Unit Development, stage 1, as recorded in Plat Book 24, Page 54 of the Public Records of Brevard County, Florida, lying in Brevard County, Florida, more particularly as follows:

Begin at the most Northerly corner of Tract C, shown on Sheet 3 of the plat of the SUNTREE PLANNED UNIT DEVELOPMENT, STAGE ONE, as recorded in Plat Book 24 at Page 54 of the Public Records of Brevard County, Florida, thence run S 30 degrees 21' 22" E along the Northeasterly line of said Tract C, for 50.92 feet; thence run along the Easterly line of said Tract C, bearing S 14degrees 55'53" W for 465.73 feet; thence continue along the Easterly line of said Tract C, bearing S 33degrees 05'45" W for 55.0 feet; thence run N 56degrees 54'15" W for 117.00 feet; thence run S 33 degrees 05'45" W for 40.22 feet; thence run N 56degrees 54'15" W for 202.44 feet to a point on the Westerly line of said Tract C; said point lying on the arc of a circular curve that is concave to the Southeast, said point bears N 72 degrees 39'20" W from the center of said curve; thence run Northeasterly along the arc of said curve having a radius of 520.00 feet, through a central angle of 42degrees 17'58" for an arc distance of 383.90 feet to the point of tangency; thence run N 59degrees 38'38" E along the Westerly line of said Tract C for 208.96 feet to the Point of Beginning, said parcel contains 2.876 acres more or less.

Exhibit B

Tract 6 as shown on the plat, SUNTREE PLANNED UNIT DEVELOPMENT, Stage 1, as recorded in the Plat Book 24, Pages 54 - 57 of the Public Records of Brevard County, Florida.

Exhibit C

The total number of projected units within each residential tract as described in Exhibit A is as follows:

Tract A - 168 Projected Units

Tract B - 29 Projected Units

Tract C - 52 Projected Unit Tract D - 132 Projected Units

Tract E - 44 Projected Units