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**INDEX OF DECLARATION OF COVENANTS AND RESTRICTIONS**

**FOR**

**ISLAND COTTAGES**

**ARTICLE 1 MUTUALITY OF BENEFIT AND OBLIGATION**

Article 1.1 Mutuality  
Article 1.2 Benefits and Burdens

**ARTICLE 2 DEFINITIONS**

Article 2.1 Association  
Article 2.2 Board  
Article 2.3 Common Area  
Article 2.4 Developer  
Article 2.5 Limited Common Area  
Article 2.6 Lot  
Article 2.7 Owner  
Article 2.8 Property or Subdivision  
Article 2.9 PUD  
Article 2.10 Surface Water or Stormwater Management System

**ARTICLE 3 PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS AND DELETIONS**

Article 3.1 No Implied Extension of Covenants  
Article 3.2 Additional Lands  
Article 3.3 Withdrawal of Lands

**ARTICLE 4 THE ASSOCIATION**

Article 4.1 Membership  
Article 4.2 Classes and Voting

**ARTICLE 5 COMMON AREA RIGHTS**

Article 5.1 Conveyance of Common Area  
Article 5.2 Owners' Easement of Enjoyment

- Article 5.3 Right of the Developer to Designate Property as Common Area or to Withdraw Property from the Common Area
- Article 5.4 Maintenance of Common Area and Compliance with Applicable Permits
- Article 5.5 Easement for Maintenance Purposes

## **ARTICLE 6 EXTERIOR MAINTENANCE AND ASSESSMENTS**

- Article 6.1 Regular Maintenance
- Article 6.2 Remedial Maintenance
- Article 6.3 Access

## **ARTICLE 7 ARCHITECTURAL CONTROL**

- Article 7.1 Architectural Review and Approval
- Article 7.2 Architectural Review Board
- Article 7.3 Powers and Duties of the ARB
- Article 7.4 Compensation of ARB
- Article 7.5 Review of Initial Construction by Developer
- Article 7.6 Variance
- Article 7.7 Limited Liability

## **ARTICLE 8 COVENANTS FOR MAINTENANCE ASSESSMENTS**

- Article 8.1 Creation of the Lien and Personal Obligation of Assessments
- Article 8.2 Purpose of Assessments
- Article 8.3 Calculation and Collection of Assessments
- Article 8.4 Effect of Non-Payment of Assessment: Lien, Personal Obligation, and Remedies of Developer
- Article 8.5 Subordination of Lien to Mortgages
- Article 8.6 Working Capital Fund
- Article 8.7 Developer's Assessments

## **ARTICLE 9 UTILITY PROVISIONS**

- Article 9.1 Water System
- Article 9.2 Sewage System
- Article 9.3 Garbage Collection
- Article 9.4 Utility Service

**ARTICLE 10            USE RESTRICTIONS AND RIGHTS RESERVED  
BY DEVELOPER**

- Article 10.1    Residential Use
- Article 10.2    Living Area
- Article 10.3    No Detached Buildings
- Article 10.4    Setbacks
- Article 10.5    Easements Areas
- Article 10.6    Measurements of Setbacks
- Article 10.7    Landscaping
- Article 10.8    Motor Vehicles and Boats
- Article 10.9    Nuisances
- Article 10.10    Antenna
- Article 10.11    Lakes
- Article 10.12    Insurance and Casualty Damage
- Article 10.13    Trees
- Article 10.14    Artificial Vegetation
- Article 10.15    Signs
- Article 10.16    Lighting
- Article 10.17    Animals
- Article 10.18    Maintenance of Lots and Limited Common Areas
- Article 10.19    Fences
- Article 10.20    Maintenance of Driveways
- Article 10.21    Window Air Conditioning
- Article 10.22    Compliance with Laws
- Article 10.23    Platting and Additional Restrictions
- Article 10.24    Leasing
- Article 10.25    Common Area
- Article 10.26    Environmental Permits and Restrictions

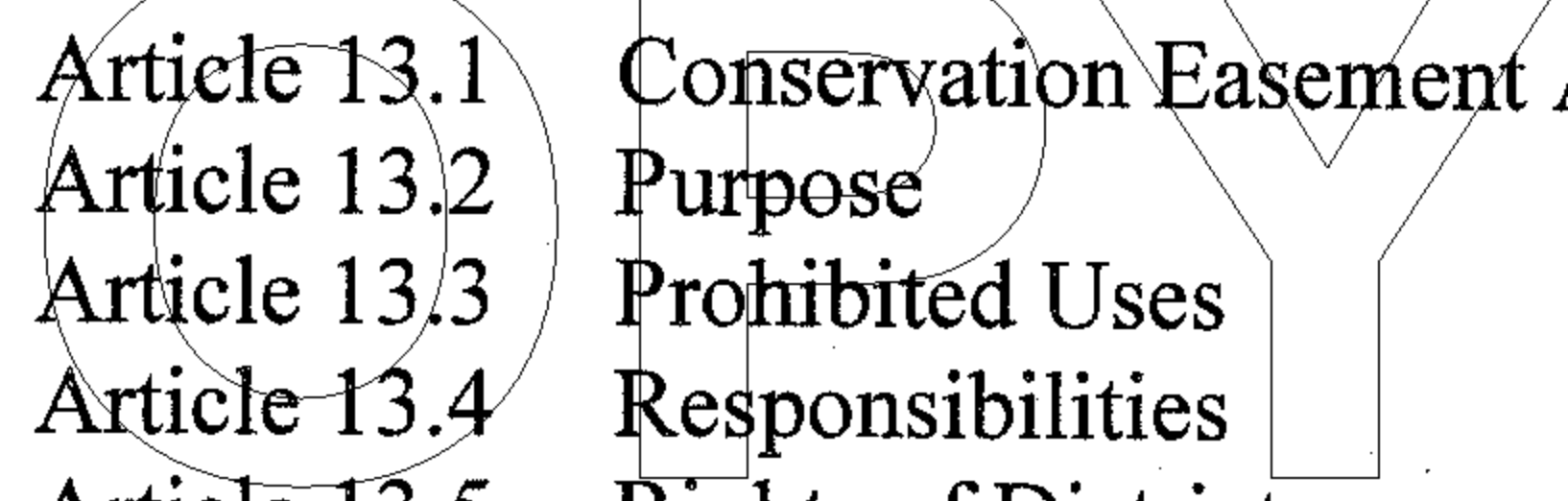
**ARTICLE 11            RIGHTS AND EASEMENTS RESERVED BY DEVELOPER  
AND/OR ASSOCIATION**

- Article 11.1    Easements for Ingress, Egress, Utilities and  
Drainage
- Article 11.2    Drainage Flow
- Article 11.3    Future Easements
- Article 11.4    Cable Television or Radio
- Article 11.5    Easements for Maintenance Purposes
- Article 11.6    Developer Rights Re: Temporary Structures, Etc.

**ARTICLE 12            RIGHTS AND EASEMENTS GRANTED BY DEVELOPER**

- Article 12.1    Easement for Ingress and Egress
- Article 12.2    Easement for the Benefit of Out Parcel
- Article 12.3    Rights of Developer to Restrict Access
- Article 12.4    Rights of Developer to Alter Roadways

**ARTICLE 13            CONSERVATION EASEMENTS**

- 
- Article 13.1    Conservation Easement Areas
  - Article 13.2    Purpose
  - Article 13.3    Prohibited Uses
  - Article 13.4    Responsibilities
  - Article 13.5    Rights of District
  - Article 13.6    Amendment

**ARTICLE 14            GENERAL PROVISIONS**

- Article 14.1    Remedies for Violations
- Article 14.2    Fines
- Article 14.3    Severability
- Article 14.4    Additional Restrictions
- Article 14.5    Titles
- Article 14.6    Termination or Amendment
- Article 14.7    Assignment of Permit Responsibilities and  
Indemnification
- Article 14.8    Conflict or Ambiguity in Documents
- Article 14.9    Usage
- Article 14.10   Effective Date
- Article 14.11   Disclaimers as to Water Bodies

- Exhibit A – Property
- Exhibit B – Articles of Incorporation
- Exhibit C – Bylaws
- Exhibit D – Common Area
- Exhibit E - Roadways

**DECLARATION**  
**OF**  
**COVENANTS AND RESTRICTIONS**  
**FOR**  
**ISLAND COTTAGES**

THIS DECLARATION is made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by **ST. AUGUSTINE DEVELOPMENT CORPORATION**, a Florida corporation (the "Developer"), which declares that the real property described on Exhibit A attached hereto and made a part hereof (the "Property"), which is owned by the Developer, shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, liens and all other matters set forth in this Declaration which shall be deemed to be covenants running with the title to the Property and shall be binding upon the Developer and all parties having or acquiring any right, title or interest in the Property or any part thereof.

**ARTICLE 1**  
**MUTUALITY OF BENEFIT AND OBLIGATION**

ARTICLE 1.1 **Mutuality**. The covenants, restrictions, and agreements set forth in this Declaration are made for the mutual and reciprocal benefit of every parcel within the Property, and are intended to create mutual equitable servitudes upon each such parcel in favor of the other parcels, to create reciprocal rights among the respective Owners, and to create privity of contract and an estate between the grantees of each and every parcel within the Property, their heirs, successors and assigns.

ARTICLE 1.2 **Benefits and Burdens**. Every person who is an Owner does by reason of taking title to land located within the Property agree to all the terms and provisions of this Declaration and shall be entitled to its benefits and subject to its burdens.

**ARTICLE 2**  
**DEFINITIONS**

The following words, when used in this Declaration shall have the following meanings:

ARTICLE 2.1 **Association**. The Island Cottages Homeowners Association, Inc., a Florida corporation not-for-profit. This is the Declaration to which the Articles of Incorporation (the "Articles") and Bylaws (the "Bylaws") of the Association make reference. Copies of the Articles and Bylaws are attached as Exhibits B and C, respectively.

ARTICLE 2.2 **Board**. The Board of Directors of the Association.

ARTICLE 2.3 **Common Area**. All real property (including easements, licenses and rights to use real property) and personal property located within or adjacent to the Property, if any, which is owned by the Developer, or by the Association, and which the Developer has designated for the common use of the Owners by reference thereto in this Article 2.3, or by recording a Supplementary Declaration, pursuant to the terms of Article 5.3 hereof. The Common Area initially designated by the Developer shall consist of the real property (and

interests therein) more particularly described on Exhibit D attached hereto and made a part hereof together with all improvements constructed therein by Developer, but not owned or maintained by a public or private utility company.

ARTICLE 2.4 **Developer.** St. Augustine Development Corporation and its successors and such of its assigns as to which the rights of the Developer hereunder are specifically assigned. Developer may assign all or only a portion of such rights in connection with portions of the Property. In the event of such a partial assignment, the assignee may exercise such rights of the Developer as are specifically assigned to it. Any such assignment may be made on a non-exclusive basis. Reference in this Declaration to St. Augustine Development Corporation as the Developer of the Property is not intended and shall not be construed, to impose upon St. Augustine Development Corporation any obligations, legal or otherwise, for the acts or omissions of third parties who purchase lots or parcels within the Property from St. Augustine Development Corporation and develop and resell the same.

ARTICLE 2.5 **Limited Common Area.** The Limited Common Area of a Lot shall consist of the portion of the Property between the front Lot line and the nearest edge of the paved road surface (as it may exist from time to time) and between the rear Lot line and the nearest shore line of any lake adjacent to the Lot, within the area bounded by the extension of the side Lot lines, together with any portion of the Property contiguous to a Lot which, as a result of the natural configuration of the Property, is primarily of benefit to such Lot. Any question concerning the boundary of a Limited Common Area shall be determined by the Board of Directors of the Association.

ARTICLE 2.6 **Lot.** Any platted Lot or any other parcel of real property located within the Property, on which one or more residential dwellings have been or could be constructed.

ARTICLE 2.7 **Owner.** The record owner or owners of any Lot.

ARTICLE 2.8 **Property or Subdivision.** The real property described on the attached Exhibit A and such additions and deletions thereto as may be made in accordance with the provisions of Articles 3.2 and 3.3 of this Declaration.

ARTICLE 2.9 **PUD.** Planned Unit Development Ordinance Number 2003-34 as enacted by the Board of County Commissioners of St. Johns County, Florida, as the same may be amended from time to time.

ARTICLE 2.10 **Surface Water or Stormwater Management System.** A system which is designed and constructed or implemented within the Property 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. or regulations of similar import. For purposes of this Declaration, the Surface Water or Storm Water Management System shall be deemed to be a part of the Common Area.

**ARTICLE 3**  
**PROPERTY SUBJECT TO THIS DECLARATION:**  
**ADDITIONS AND DELETIONS**

ARTICLE 3.1 **No Implied Extension of Covenants.** Each Owner and each tenant of any improvements constructed on any Lot, by becoming an Owner or tenant, shall be deemed to have agreed that (a) the Property described on Exhibit A and such additional property as may be annexed pursuant to Article 3.2 hereof shall be the only Property subject to this Declaration, (b) that nothing contained in this Declaration or in any recorded or unrecorded plat, map, picture, drawing, brochure or other representation of a scheme of development, shall be construed as subjecting, or requiring the Developer to subject any other property now or hereafter owned by the Developer to this Declaration, and (c) that the only manner in which additional land may be subjected to this Declaration is by the procedure set forth in Article 3.2 hereof.

ARTICLE 3.2 **Additional Lands.** Notwithstanding the transfer of control of the Association to the Class A members and the termination of the Developer's Class B membership as provided in Section 4.2 hereof, as long as the Developer owes any part of the Property, the Developer may, but shall not be obligated to, subject additional land to this Declaration (or to the assessment provisions of this Declaration) from time to time provided only that (a) any additional land subjected to this Declaration (or its assessment provisions) shall be contiguous to the Property then subject to this Declaration (for purposes of this Article 3.2, property separated only by public or private roads, water bodies, golf courses, or open space shall be deemed contiguous), and (b) the Owners of property within additional lands made subject to this Declaration (or its assessment provisions) shall be and become subject to this Declaration (or its assessment provisions), and shall be responsible for their pro rata share of common expenses for which assessments may be levied pursuant to the terms of Article 8 of the Declaration. Addition of lands to this Declaration shall be made and evidenced by filing in the public records of St. Johns County, Florida, a Supplementary Declaration executed by the Developer with respect to the lands to be added. Developer reserves the right to supplement this Declaration to add land to the scheme of this Declaration (or its assessment provisions) pursuant to the foregoing provisions without the consent or joinder of any Owner or mortgagee of land within the Property. By accepting a deed to a Lot, each Owner agrees that it will not oppose any necessary application to rezone the additional land to be subjected to this Declaration so that the additional land may be developed under the same development scheme as the Property.

ARTICLE 3.3 **Withdrawal of Lands.** With the consent and joinder of Owners holding a majority of the votes in the Association, the Developer may, but shall have no obligation to, withdraw at any time, or from time to time, portions of the Property from the terms and effect of this Declaration. Upon the Developer's request, the consent and joinder of each and every Owner to such withdrawal shall not be unreasonably withheld. The withdrawal of lands as aforesaid shall be made and evidenced by filing in the public records of St. Johns County, Florida, a Supplementary Declaration executed by the Developer with respect to the lands to be withdrawn.



## ARTICLE 4 THE ASSOCIATION

ARTICLE 4.1 **Membership.** Each Owner, including the Developer (at all times so long as it owns any part of the Property), shall be a member of the Association, provided that any such person or entity who holds such interest only as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot.

ARTICLE 4.2 **Classes and Voting.** The Association shall have two classes of membership:

(a) **Class A Members.** The Class A Members shall be all Owners, with the exception of the Developer, who shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members of the Association. However, the vote for any such Lot shall be exercised as the Owner's thereof shall determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) **Class B Members.** The Class B Member shall be the Developer who shall be entitled to one (1) vote, plus two (2) votes for each vote entitled to be cast in the aggregate at any time and from time to time by the Class A Members. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

(i) Three (3) months after ninety percent (90%) of the Lots have been conveyed to members of the Association other than the Developer; or

(ii) Such earlier date as the Developer may choose to terminate the Class B Membership upon notice to the Association.

## ARTICLE 5 COMMON AREA RIGHTS

ARTICLE 5.1 **Conveyance of Common Area.** All of the Common Area owned by Developer shall be conveyed or assigned to the Association, subject to covenants, easements, restrictions and other matters of record, on or before the date the Developer's Class B Membership in the Association terminates. Upon the recordation of any deed or deeds conveying Common Area to the Association, the Association shall be conclusively deemed to have accepted the conveyance evidenced by such deed or deeds.

ARTICLE 5.2 **Owners' Easement of Enjoyment.** Each Owner shall have a right and easement of enjoyment in and to the Common Area for its intended purpose, which shall be appurtenant to, and shall pass with, the title to the land of such Owner, subject to the following:

(a) The right of the owner of the Common Area, with the consent of the Developer (if different from such owner) to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility;



(b) All provisions of this Declaration, any plat of all or any parts of the Property, governmental restrictions, including the provisions of the PUD;

(c) Reasonable rules and regulations governing use and enjoyment of the Common Area adopted by the Developer or the Association;

(d) The rights of the Developer under Article 5.3 to add to or withdraw land from the Common Area;

(e) Easements, restrictions, agreements and other matters of record.

The foregoing easement of enjoyment in favor of the Owners shall not be construed to create or imply any other easements or rights not expressly created by this Declaration, it being the intent hereof to limit the Owners' rights of use of specific portions of the Common Area to only the intended purposes of such portions of the Common Area. For example, the creation of each Owner's right to drain such Owner's Lot into the portions of the Common Area included within the Surface Water or Stormwater Management System, does not create any right of access by any Owner to such portions of the Common Area over any other Owner's Lot or other privately owned portions of the Subdivision.

**ARTICLE 5.3 Right of the Developer to Designate Property as Common Area or to Withdraw Property from the Common Area.** Notwithstanding anything to the contrary contained in this Declaration, the Developer shall have the right, in its sole discretion, to designate land, easements, use rights and personal property owned by the Developer as Common Area, provided only that such land shall be located within the Property or contiguous to the Property (for purposes of this Article 5.3, property separated only by public or private roads, water bodies, golf courses, or open space shall be deemed contiguous). For so long as the Developer shall own any Lot, the Developer may, at any time, withdraw, or cause to be withdrawn, land from the Common Area in the Developer's sole discretion. The prior sentence notwithstanding, in the event such withdrawal of Common Area shall materially and adversely affect any Lot, or materially and adversely affect access, visibility, or drainage to or from any Lot, the Developer shall not have the right to withdraw such Common Area without the consent and joinder of the Owner of the Lot which is so affected. Addition of land to and withdrawal of land from the Common Area shall be evidenced by recording a Supplementary Declaration in the public records of St. Johns County, Florida, which shall specifically reference such addition or withdrawal. Withdrawal of land from the Common Area by the Developer shall terminate any and all easements and rights of use of the Owners in such land. No land owned by the Developer shall be deemed to be Common Area unless such land is expressly referenced as such under Article 2.3 hereof, or subsequently designated as such by the Developer pursuant to Article 2.3 hereof and this Article 5.3, even if the Developer consents or acquiesces to the use of such land by the Owners. In the event any land, easements, use rights, or personal property owned by the Association shall be withdrawn from the Common Area pursuant to this Article 5.3, upon the Developer's written request, the Association shall promptly execute and deliver to the Developer any and all deeds, bills of sale, assignments or other conveyance documents as may be necessary or appropriate to effectuate the withdrawal of such Common Area.

**ARTICLE 5.4 Maintenance of Common Area and Compliance with Applicable Permits.** The Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Common Area and any improvements and landscaping (except utilities owned and maintained by public or private utility companies providing water, sewer, electrical, fire protection, cable television, telephone, or similar utilities to the Property, or any portion thereof) situated on the Common Area, if any. The Association shall maintain all lakes, drainage areas, drainage easements, and control structures, and shall preserve and protect all designated conservation areas, upland buffers and littoral zones located within, adjacent, or in near proximity to the Property, in accordance with all permit requirements and conditions contained in applicable dredge fill, consumptive use, surface water permits, or any other applicable permits issued by the United States Army Corps of Engineers ("ACOE"), Florida Department of Environmental Protection ("FDEP"), St. Johns River Water Management District ("SJRWMD"), and St. Johns County, Florida and all statutes, rules, regulations and requirements pertaining to surface water management, drainage and water quality promulgated by the SJRWMD, the FDEP, and all other local, state and federal authorities having jurisdiction. The Association shall maintain those portions of the Common Area designated by applicable permit as conservation tracts, stormwater management tracts or similar designations, in accordance with all permit requirements, rules, and regulations promulgated by all local, state and federal authorities having jurisdiction. The Association shall be responsible for the maintenance, operation and repair of the Surface Water or Stormwater Management System. Maintenance of the Surface Water or Stormwater Management System shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance of other surface water, or stormwater management capabilities as permitted by the SJRWMD. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be as permitted, or if modified, as approved by the SJRWMD. All maintenance obligations of the Association shall be performed as ordered by the Board of Directors of the Association, and all or any portion of the cost of such maintenance incurred by the Association pursuant to this Article 5.4, shall be a common expense of the Association to be collected and paid in the manner prescribed by this Declaration.

**ARTICLE 5.5 Easement for Maintenance Purposes.** The Developer hereby grants to the Association and its successors, assigns, agents, and contractors, an easement in, on, over and upon those portions of the Property as may be reasonably necessary for the purpose of maintaining the Common Area, including the Surface Water or Storm Water Management System, or other portions of Property to be maintained by Association, in accordance with the requirements of this Declaration. The easement granted hereby shall not be exercised by any party in a manner which unreasonably interferes with the use, occupancy, or enjoyment of any improved portion of the Property. Further, in the event that any portion of the Property shall be damaged or altered in any way as the result of the exercise of the easement rights granted hereby, such portions of the Property shall be immediately restored to the condition that existed immediately prior to such damage or alteration by the party exercising such rights.

**ARTICLE 6**  
**EXTERIOR MAINTENANCE AND ASSESSMENTS**

ARTICLE 6.1 **Regular Maintenance.** The Association shall provide regular landscape maintenance upon all Lots, which maintenance may include but is not limited to lawn mowing, fertilization, pest control, weeding, and shrubbery trimming (the "Regular Maintenance"). The cost of the Regular Maintenance shall be included within the annual assessments collected pursuant to Article 8.3 hereof. Regular Maintenance shall not include watering or the repair or maintenance of any lawn irrigation system installed on any Lot, which shall be the sole obligation and responsibility of the Lot Owner.

ARTICLE 6.2 **Remedial Maintenance.** The Association may provide maintenance upon any Lot or Limited Common Area requiring same, when necessary in the opinion of the Association's Board of Directors to preserve the beauty, quality, or value of any or all portions of the Property. Such maintenance shall include but not be limited to painting, roof repair and replacement, repair of gutters, downspouts, and exterior building surfaces, and yard clean-up and yard maintenance not included within the Regular Maintenance provided in Article 6.1, to include yard maintenance required to remedy any adverse condition caused by an intentional or negligent act of the Lot Owner (the "Remedial Maintenance"). Each affected Owner shall have fifteen (15) days within which to perform the required Remedial Maintenance after being notified in writing by the Association that such maintenance is necessary before the Association undertakes the Remedial Maintenance. The cost of Remedial Maintenance undertaken by the Association shall be assessed against each Lot upon which such maintenance is performed. Assessments for the cost of Remedial Maintenance shall not be considered a part of the annual or special assessments imposed upon the Property pursuant to Article 8 hereof. Any such assessments shall be a lien upon each Lot assessed and the personal obligation of the Owner each Lot and shall become due and payable in all respects, together with interest, late fees, attorneys fees, and costs of collection, as provided for in Article 8, and shall be subordinate to mortgage liens to the extent provided by Article 8.5 hereof.

ARTICLE 6.3 **Access.** For the purpose of performing the maintenance authorized by this Article 6, the Association, through its duly authorized agents or employees, shall have the right, to enter upon any Lot at reasonable hours on any day except Sunday. In the case of emergency repairs, access will be permitted at any time with only such notice as under the circumstances is practically affordable.

**ARTICLE 7**  
**ARCHITECTURAL CONTROL**

ARTICLE 7.1 **Architectural Review and Approval.** Except for the initial construction of residential dwellings and related structures, landscaping, and other improvements ("Initial Construction"), no landscaping, improvement or structure of any kind, including without limitation, any building, fence, wall, screen enclosure, yard ornaments, sewer, drain, disposal system, landscape device or object, driveway or other improvement shall be commenced, erected, placed or maintained upon any Lot, nor shall any addition, change or alteration therein or thereof be made, unless and until the plans, specifications and location of the same have been submitted to, and approved in writing by the Association. All plans and specifications shall be

evaluated as to visual and acoustical privacy and as to the harmony of external design and location in relation to surrounding structures, topography, existing trees and other natural vegetation and as to specific conformance with architectural criteria which may be imposed from time to time by the Developer or the Association. It shall be the burden of each Owner to supply two (2) sets of completed plans and specifications to the Architectural Review Board ("ARB") and no plan or specification shall be deemed approved unless a written approval is granted by the ARB to the Owner submitting same. The ARB shall approve or disapprove plans and specifications properly submitted within thirty (30) days of each submission. Any change or modification to an approved plan shall not be deemed approved unless a written approval is granted by the ARB to the Owner submitting same.

**ARTICLE 7.2 Architectural Review Board.** The architectural review and control functions of the Association shall be administered and performed by the ARB, which shall consist of three (3) or five (5) members who need not be members of the Association. The Board of Directors of the Association shall have the right to appoint all of the members of the ARB. A majority of the ARB shall constitute a quorum to transact business at any meeting of the ARB, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARB. Any vacancy occurring on the ARB because of death, resignation, or other termination of service of any member thereof shall be filled by the Board of Directors.

**ARTICLE 7.3 Powers and Duties of the ARB.** The ARB shall have the following powers and duties:

(a) To recommend amendments to the architectural criteria to the Board at such time as the Board shall have the right to adopt or amend architectural criteria for the Property. For so long as the Developer shall be entitled to elect or appoint a majority of the members of the Board, only the Developer shall have the right to promulgate, amend, eliminate, or replace architectural criteria applicable to architectural review to be conducted by the Association. At such time as members of the Association shall elect a majority of the members of the Board, such architectural criteria shall be promulgated, amended, eliminated, or replaced by the Board. Any amendment of the architectural criteria shall be consistent with the provisions of this Declaration. Notice of any amendment to the architectural criteria, which shall include a verbatim copy of such amendment, shall be delivered to each member of the Association. The delivery to each member of the Association of notice and a copy of any amendment to the architectural criteria shall not, however, constitute a condition precedent to the effectiveness or validity of such amendment. It shall not be necessary for the architectural criteria, or any amendment thereto, to be recorded.

(b) To require submission to the ARB of two (2) complete sets of all plans and specifications for any improvement or structure of any kind requiring review and approval of the ARB pursuant to this Article 7. The ARB may also require submission of samples of building materials proposed for use on any Lot, and may require tree surveys to show the effect of the proposed improvements on existing tree cover, and such additional information as reasonably may be necessary for the ARB to completely evaluate the proposed structure or improvement in accordance with this Declaration and applicable architectural criteria.



(c) To approve or disapprove in accordance with the provisions of this Article 7, any improvements or structures of any kind (other than Initial Construction), or any change or modification thereto, the construction, erection, performance or placement of which is proposed upon any Lot, and to approve or disapprove any exterior additions, changes, modifications or alterations therein or thereon. Any party aggrieved by a decision of the ARB shall have the right to make a written request to the Board, within thirty (30) days of such decision, for a review thereof. The determination of the Board upon review of any such decision shall be dispositive.

(d) To adopt a schedule of reasonable fees for processing requests for ARB approval of proposed improvements. Such fees, if any, shall be payable to the Association, in cash, at the time that plans and specifications are submitted to the ARB.

(e) All approvals given by the ARB, and by the Developer pursuant to Article 7.5 hereof, shall be evidenced by a stamp, seal or similar graphic representation which shall be affixed to the plans for the applicable improvements.

ARTICLE 7.4 **Compensation of ARB.** The Board may, at its option, pay reasonable compensation to any or all members of the ARB.

ARTICLE 7.5 **Review of Initial Construction by Developer.** No Initial Construction shall be commenced upon any Lot unless and until the plans, specifications and location of the same have been submitted to, and approved by, the Developer in writing. All plans and specifications shall be evaluated as to visual and acoustical privacy, as to harmony of external design and location in relation to surrounding structures, if any, topography, existing trees and other natural vegetation, and as to consistency with this Declaration and architectural criteria made applicable to Initial Construction by the Developer from time to time.

ARTICLE 7.6 **Variance.** The ARB may authorize variances from compliance with any architectural provisions this Declaration or applicable architectural criteria when circumstances such as topography, natural obstructions, hardships, or aesthetic or environmental considerations require same. Such a variance must be evidenced by a document signed by an authorized representative of the ARB. If such a variance was granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variance was granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and particular provisions of this Declaration or applicable architectural criteria covered by the variance, nor shall it effect in any way an Owner's obligation to comply with all governmental laws and regulations, including but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal authority.

ARTICLE 7.7 **Limited Liability.** In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Developer, the ARB, or the Association as contemplated by this Article 7, neither the Developer, the ARB, nor the Association shall be liable to an Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person

and arising out of or in any way related to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld by the Developer, the ARB, or the Association.

## **ARTICLE 8**

### **COVENANTS FOR MAINTENANCE ASSESSMENTS**

**ARTICLE 8.1 Creation of the Lien and Personal Obligation of Assessments.** Each Owner of a Lot within the Property hereby covenants, and by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any annual assessments, and any special assessments established and collected as hereinafter provided. All such assessments, together with interest thereon from the due date at the highest lawful rate, late fees as hereafter provided, and costs of collection thereof (including reasonable attorneys' fees), shall be a charge and continuing lien upon each Lot against which each such assessment is made, and shall also be the personal obligation of each Owner. No Owner may avoid liability for the assessments by waiver of rights to use, or by non-use of, the Common Areas or by abandonment.

### **ARTICLE 8.2 Purpose of Assessments.**

**ARTICLE 8.2.1** The annual assessments levied by the Association shall be used for the purposes of management and accounting fees, taxes, insurance, and utility charges relating to the Common Area, to fund the obligations of the Association set forth in Article 5.4 and 6.1 hereof, and for all other purposes reasonably contemplated by this Declaration, the Articles, the Bylaws, or any cost sharing or similar agreement to which the Association is or may become a party. Further, such annual assessments may be levied to fund reasonable reserves for deferred maintenance of, or non-recurring expenses related to, the Common Area including, the Surface Water or Stormwater Management System. The maintenance responsibilities of the Association payable through assessment of the Owners shall specifically include, but not be limited to, the perpetual maintenance of all retention ponds, drainage swales, and all other drainage and stormwater management improvements lying within the Property, and all other such improvements, constituting a part of the Surface Water or Stormwater Management System permitted by the St. Johns River Water Management District under Permit No. 40-109-88139-1 (the "Surface Water Permit") including operation, sampling, testing and maintenance of monitoring wells as required by the Surface Water Permit.

**ARTICLE 8.2.2** The Board of Directors may levy special assessments for any purpose relating to permissible or required activities of the Association pursuant to this Declaration, the Articles, or the Bylaws. Any funds collected pursuant to such a special assessment shall be used solely for the purpose or purposes identified by the Board of Directors at the time such special assessment is levied.

**ARTICLE 8.3 Calculation and Collection of Assessments.** Annual assessments shall be established by the Board of Directors based upon an annual budget. Each Owner's pro rata share of the total annual assessment or any special assessment shall be based upon the following calculations:

(a) Owners of Lots shall pay a pro rata share of annual and special assessments which shall be allocated among the Owners as provided in subparagraph (b) of this Article 8.3. The annual assessment amount may be increased by an amount not to exceed fifteen percent (15%) of the prior annual assessment amount per Lot, such annual increases to be cumulative and self-operative. Further, by a vote of not less than three-fifths of the members of the Board of Directors, the foregoing assessment amount per Lot maybe increased above the fifteen percent (15%) limitation set forth in this Article 8.3.

(b) All annual and special assessments shall be established at a uniform rate per Lot.

(c) The assessment obligations of each Owner other than the Developer shall commence upon the recordation of this Declaration in the current public records of St. Johns County, Florida. Annual assessments shall be collectable in advance on a periodic basis established by the Board of Directors from time to time, which periodic basis shall not be less frequent than annually. Special assessments shall be collectible in advance in the manner established by the Board of Directors at the time such special assessments are authorized.

**ARTICLE 8.4 Effect of Non-Payment of Assessment: Lien, Personal Obligation, and Remedies of Developer.** The lien of the Association shall be effective from and after recording in the public records of St. Johns County, Florida, a claim of lien stating the description of the Lot encumbered thereby, the name of the Owner, the amount and the due date. Such claim of lien shall include assessments which are due and payable when the claim of lien is recorded as well as assessments which may accrue thereafter, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as herein provided. Upon full payment of all sums secured by such claim of lien; the same shall be satisfied of record, and the affected Owner shall pay the cost of such satisfaction. If any assessment payment is not paid within fifteen (15) days after the due date, the Association may charge a late fee not to exceed Twenty-five Dollars (\$25.00) for each unpaid assessment payment, and such unpaid assessment payment shall also bear interest from the due date at the highest lawful rate. The Association may at any time bring an action to enforce the lien authorized hereby by appropriate foreclosure proceedings and/or a suit on the personal obligation against the Owner. There shall be added to the amount of such delinquent assessment the costs of collection incurred by the Association, or such Owner, which shall specifically include without limitation reasonable attorneys' fees for trial and appeal.

**ARTICLE 8.5 Subordination of Lien to Mortgages.** The lien of the assessments provided for by this Declaration shall be subordinate to the lien of any bona fide mortgage which is perfected by recording prior to the recording of the claim of lien for any such unpaid assessments. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of the affected Lot by deed in lieu of foreclosure, pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure of such mortgage. No sale or other transfer shall release any Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments. A written statement of the Association that the lien is subordinate to a mortgage, shall be dispositive of any question of subordination.



ARTICLE 8.6 **Working Capital Fund.** The Association may establish a working capital fund which shall be funded as set forth in this Article 8.6. Upon the initial transfer of title of a Lot from the Developer to an Owner, the Owner may be required by the Developer to pay to the Association a working capital contribution of Two Hundred Fifty and No/100 Dollars (\$250.00). This working capital contribution shall not be considered an advance payment of any assessments due pursuant to this Article 8. The working capital fund established by the Association may be used for any purpose for which the Association's Board of Directors deems appropriate, including without limitation, for operational expenses, reserves, capital improvements, or similar uses.

ARTICLE 8.7 **Developer's Assessments.** Notwithstanding any provision of this Declaration to the contrary, during the Development Period (as defined below) the Lots and other portions of the Property owned by the Developer shall not be subject to any annual or special assessments levied by the Association or to any lien for such assessments. During the Development Period, the Developer shall pay the balance of the actual operating expenses of the Association, **excluding costs of major repairs, deferred maintenance, replacements and reserves**, remaining after the levying of and payment of assessments due from Owners other than the Developer pursuant to assessments levied by the Board of Directors pursuant to this Declaration. The Developer shall be obligated to fund such balance only as the expenses are actually incurred by the Association during the Development Period. The Development Period shall begin upon the conveyance of the first Lot in the Property to an Owner other than the Developer and shall continue until (i) the Developer shall notify the Association that it will no longer pay for operating deficits of the Association; or (ii) the Class B Membership shall cease and be converted to Class A Membership. Upon termination of the Developer's agreement to pay operating deficits, the Developer shall become obligated to pay assessments on Lots owned by it within the Property on the same basis as other Owners. In no event shall the Developer be obligated to pay for operating deficits of the Association after the Developer no longer owns any Lots within the Property.

## ARTICLE 9 **UTILITY PROVISIONS**

ARTICLE 9.1 **Water System.** The central water supply system provided for the service of the Property shall be used as sole source of potable water for all water spigots and outlets located within or on all buildings and improvements located on each Lot. Each Owner shall pay water meter charges of the supplier thereof and shall maintain and repair all portions of the water lines serving the Owner's Lot in accordance with the requirements of the applicable utility supplier. No individual potable water supply system or well for consumptive purposes shall be permitted on any Lot without the prior written consent of the Association.

ARTICLE 9.2 **Sewage System.** The central sewage system provided for the service of the Property shall be used as the sole sewage system for each Lot. Each Owner shall maintain and repair all portions of the sewer lines serving the Owner's Lot in accordance with the requirements of the applicable utility provider, and shall pay when due the periodic charges or rates for the furnishing of such sewage collection and disposal services made by such utility provider. No sewage shall be discharged onto the open ground or into any wetland, lake, pond,

park, ravine, drainage ditch or canal or roadway and no septic tank or drain field shall be placed or allowed within the Property.

ARTICLE 9.3 **Garbage Collection.** Garbage, trash and rubbish shall be removed from the Lots only by parties or companies approved by the Association, which approval shall not be unreasonably withheld.

ARTICLE 9.4 **Utility Service.** It shall be the responsibility of the Owner or occupant of each Lot to make direct arrangements with the suppliers of electricity, water, sewer, and any other utility services for service to such Lot.

**ARTICLE 10**  
**USE RESTRICTIONS AND RIGHTS**  
**RESERVED BY DEVELOPER**

ARTICLE 10.1 **Residential Use.** The Lots subject to this Declaration may be used for residential dwellings and for no other purpose except that one or more Lots may be used for model homes during the development and sale of Lots within the Property or other properties. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof. No Lot shall be divided, subdivided or reduced in size without the prior written consent of the Developer. Assessments for common expenses attributable to any Lot which may be subdivided pursuant to this Article 10.1 shall be reallocated by the Developer, in its sole discretion, at the time written consent for such subdivision is given by the Developer.

ARTICLE 10.2 **Living Area.** Each detached single family residence constructed upon a Lot shall contain a minimum of **one thousand seven hundred fifty (1,750) square feet** of heated and air conditioned living area.

ARTICLE 10.3 **No Detached Buildings.** No garages, tool or storage sheds, tents, trailers, tanks, temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot without the prior written consent of the Developer.

ARTICLE 10.4 **Setbacks.** The following set back requirements shall apply to all of the Lots:

**Front.** Twelve (12) feet from the edge of the Right-of-Way with a second front on a road or alley set at five (5) feet.

**Side.** Five and one-half (5 ½) feet on one side and two and one-half (2 ½) feet on the garage side, providing for a minimum clearance of eight (8) feet between the walls of structures on adjoining lots.

**Rear (Alley Front).** Ten (10) feet, providing a minimum twenty five (25) foot setback is maintained for garages, and a five (5) foot setback is maintained for accessory use structures.

ARTICLE 10.5      **Easement Areas.** No dwelling shall be erected within any easement area shown on any plat of all or any portion of the Property or within any easement reserved by Article 11.1 of this Declaration.

ARTICLE 10.6      **Measurement of Setbacks.** All setbacks shall be measured from the exterior wall of the dwelling to the applicable Lot or parcel boundary.

ARTICLE 10.7      **Landscaping.** The Developer shall landscape each Lot and Limited Common Area appurtenant thereto at the time of Initial Construction of a residence on such Lot. Thereafter, prior to making a substantial modification to the landscaping installed by the Developer, the Owner shall, pursuant to Article 7 hereof, submit a landscaping plan showing the proposed modification in such detail as may be required by the ARB and obtain the approval of the ARB for the modification. Subsequent to approval by the ARB of landscaping plans submitted pursuant to this Article 10.7, the Owner shall be obligated to complete the landscaping of his Lot and Limited Common Area in accordance with such plans and this Article 10.7, within thirty (30) days following approval of the landscaping plan. In the event the landscaping is not completed as provided herein, the Association shall have the right to enter the Lot and complete said landscaping in accordance with the approved plans, in the same manner as exterior maintenance may be performed by the Association pursuant to Article 6 of this Declaration. The Association shall be entitled to a lien against the Lot in an amount equal to one hundred ten percent (110%) of the cost to complete landscaping on such Lot and Limited Common Area, which sum may be collected as provided in Article 6 hereof.

ARTICLE 10.8      **Motor Vehicles and Boats.** No boats, recreation vehicles or other motor vehicles, except four wheel passenger automobiles, shall be placed, parked or stored upon any Lot, nor shall any maintenance or repair be performed upon any boat or motor vehicle upon any Lot, except within a garage, so as to be totally isolated from public view on a regular basis. Commercial vehicles shall not be parked within the Property within public view on a regular basis. Construction trailers may be parked only with the prior written consent of the Developer and in an area designated by the Developer. In order to maximize the aesthetics of streetscapes within the Subdivision, all four-wheel passenger automobiles shall be parked within designated parking areas and/or garages to the maximum extent that shall be reasonably practical.

ARTICLE 10.9      **Nuisances.** Nothing shall be done or maintained on any Lot that may be or become an annoyance or nuisance to any party. Any activity on a Lot that interferes with television, cable or radio reception on another Lot shall be deemed a nuisance and a prohibited activity. If a dispute or question arises as to what may be or become a nuisance, the issue shall be submitted to the Association's Board of Directors, whose decision shall be dispositive of such dispute or question. No immoral, improper or unlawful use shall be made of any portion of the Property and all valid laws, zoning ordinances and regulations of governmental agencies having jurisdiction thereof shall be complied with.

ARTICLE 10.10      **Antenna.** The installation of all aerials, antennae or satellite dishes shall be subject to the approval of the ARB in accordance with architectural criteria imposed by the Developer or the Association from time to time and in accordance with all applicable rules and regulations of the Federal Communications Commission or other governmental authorities having jurisdiction.

ARTICLE 10.11 **Lakes.** The Developer, shall have the sole right to pump or otherwise remove water from any lake adjacent to or near the Subdivision for the purpose of irrigation or other use, or to place any refuse in such lake or lakes, provided such is done in accordance with all applicable permits issued by the St. Johns River Water Management District and/or the Army Corp. of Engineers. The Developer shall have the sole and absolute right (but no obligation) to control the water level of such lake or lakes and to control the growth and eradication of plants, fowl, reptiles, animals, fish and fungi in or on any such lake, provided such is done in conformity with all applicable permits issued by the St. Johns River Water Management District and/or the Army Corp. of Engineers. Following the termination of the Developer's Class B Membership in the Association, the Association shall succeed to the rights of the Developer under the foregoing two sentences. No gas or diesel driven boat shall be permitted to be operated on any lake. Lots which now or may hereafter be adjacent to or include a portion of a lake (the "lake parcels") shall be maintained by the Owners of such Lots to the waters edge, so that such grass, planting or other lateral support to prevent erosion of the embankment adjacent to the lake and the height, grade and contour of the embankment shall not be changed without the prior written consent of the Association. Further, all shoreline vegetation shall be maintained and controlled by the Owner of any lake parcel pursuant to the requirements of Article 10.18 hereof. If the Owner of any lake parcel fails to maintain the embankment or shoreline vegetation as part of its landscape maintenance obligations in accordance with the foregoing, the Association shall have the right, but no obligation, to enter upon any such lake parcel to perform such maintenance work which may be reasonably required, all at the expense of the Owner of such lake parcel pursuant to the provisions of Article 6 of this Declaration. Title to any lake parcel shall not include ownership of any riparian rights associated therewith. No docks, bulkheads or other structures shall be constructed on such embankments unless and until same shall have been approved by the Developer. The Association shall have the right to adopt reasonable rules and regulations from time to time in connection with use of the surface waters of any lake adjacent to or nearby the Subdivision. The Association shall have the right to deny such use to any person who in the opinion of the Association may create or participate in the disturbance or nuisance on any part of the surface waters of any such lake. The use of the surface waters of any such lake shall be subject to rights granted to other persons pursuant to the rules and regulations of the Association.

WITH RESPECT TO WATER QUALITY, WATER LEVELS, WILDLIFE AND LAKE BANKS, SLOPES AND LAKE BOTTOMS, ALL PERSONS ARE REFERRED TO ARTICLE 14.11 HEREOF.

ARTICLE 10.12 **Insurance and Casualty Damages.** Each Owner shall be required to obtain and maintain in force and effect a policy of fire and other casualty insurance with coverage adequate to cover the full replacement cost of the dwelling and other improvements located on the Owner's Lot. In the event of damage or destruction by fire or other casualty to the improvements on any Lot, the Owner shall commence reconstruction of the improvements within six (6) months from date of casualty and shall repair or rebuild such damaged or destroyed improvements in a good workmanlike manner, within a reasonable time not to exceed one year and in accordance with the provisions of this Declaration. The improvements shall be reconstructed in accordance with the original plans and specifications including color scheme, placement on Lot and materials. All debris must be removed immediately and the Lot shall be



restored to an orderly condition within a reasonable time not to exceed sixty (60) days from the date of such damage or destruction.

ARTICLE 10.13     **Trees.** No tree or shrub, the trunk of which exceeds six (6) inches in diameter one (1) foot above the ground, shall be cut down, destroyed or removed from a Lot without the prior express written consent of the Developer.

ARTICLE 10.14     **Artificial Vegetation.** No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the ARB.

ARTICLE 10.15     **Signs.** No sign of any kind shall be displayed to the public view on any Lot except as may be approved as to size and design and in accordance with criteria established by the Association. The foregoing restriction shall not apply to any signage installed by the Developer.

ARTICLE 10.16     **Lighting.** No lighting shall be permitted which alters the residential character of the subdivision.

ARTICLE 10.17     **Animals.** Dogs shall be kept under control by each Owner at all times and leashed when outside the boundaries of the Owner's lot. Animals shall be kept for pleasure of Owners only and not for any commercial or breeding use or purposes. If, in the discretion of the Board, any animal shall become dangerous or an annoyance or nuisance to other Owners, or destructive of wildlife or property, such animal may not thereafter be kept on a Lot. Further, in the event any group of animals shall collectively become dangerous or an annoyance or nuisance to other Owners, or destructive to wildlife or property, the Board shall have the right to require the applicable Owner to reduce the number of animals kept on the Lot, or to take such other remedial action as the Board shall specify.

ARTICLE 10.18     **Maintenance of Lots and Limited Common Areas.** No weeds, underbrush or other unsightly vegetation shall be permitted to grow or remain upon any Lot or Limited Common Area, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere within the Property. The Association shall maintain all landscaping in a neat, attractive and orderly manner, including maintenance of grass, plants, plant beds, trees, turf, proper irrigation and lake edge maintenance, all in a manner with such frequency as is consistent with good property management. All structures and other improvements placed upon a Lot shall at all times be maintained in a neat and attractive condition by the Owner of the Lot. In order to implement effective control and provide Regular and Remedial Maintenance, pursuant to the provisions of Article 6, hereof, the Association, its agents and assigns, shall have the right to enter upon any Lot for the purpose of performing Regular and/or Remedial Maintenance which, in the opinion of the Board, if not performed, distracts from the overall beauty and safety of the Property.

ARTICLE 10.19     **Fences.** Except as approved by the Developer as part of Initial Construction, or as subsequently approved by the ARB, no fence, wall or other barrier shall be constructed upon any Lot or any other portion of the Property.

ARTICLE 10.20      **Maintenance of Driveways.** Each Lot Owner shall be responsible for maintenance of the driveway serving his Lot.

ARTICLE 10.21      **Window Air Conditioning.** No window air conditioning units shall be installed on any building within the Subdivision.

ARTICLE 10.22      **Compliance with Laws.** All Owners and other occupants of the Property shall at all times comply with the terms of the PUD, and all environmental, land use, marketing and consumer protection ordinances, statutes, regulations, and permits applicable to the Property or any improvements constructed thereon.

ARTICLE 10.23      **Platting and Additional Restrictions.** The Developer shall be entitled at any time, and from time to time, to plat or replat all or any part of the Property owned by it, and to file any covenants and restrictions, or amendments to this Declaration, with respect to any undeveloped portion or portions of the Property owned by the Developer.

ARTICLE 10.24      **Leasing.** No dwelling, or any portion thereof, located within the Property shall be leased for less than six (6) consecutive months.

ARTICLE 10.25      **Common Area.** The Common Area shall be used only for its intended purpose. Further, to the extent that any dock, bulkhead or similar structure shall be constructed as part of the Common Area, access to such facilities by boats shall be limited to temporary mooring to accommodate arriving or departing passengers, and under no circumstances shall any boat be moored to such facilities overnight.

ARTICLE 10.26      **Environmental Permits and Restrictions.** THE PROPERTY WAS DEVELOPED IN ACCORDANCE WITH REQUIREMENTS OF PERMIT NUMBER 200303466 (NW-MRE), ISSUED BY THE ARMY CORPS OF ENGINEERS ("ACOE"), AND PERMIT NUMBER 40-109-88139-1, ISSUED BY THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT ("SJRWMD"). THE PERMITS ARE OR WILL BE OWNED BY THE ASSOCIATION AND THE ASSOCIATION HAS THE OBLIGATION TO ASSURE THAT ALL TERMS AND CONDITIONS THEREOF ARE ENFORCED. THE ASSOCIATION SHALL HAVE THE RIGHT TO BRING AN ACTION, AT LAW OR IN EQUITY, AGAINST AN OWNER VIOLATING SUCH PERMITS.

PROVIDED, HOWEVER, ANY OWNER OWNING A LOT WHICH CONTAINS OR IS ADJACENT TO JURISDICTIONAL WETLANDS OR CONSERVATION AREAS AS ESTABLISHED BY ACOE OR SJRWMD, SHALL, BY ACCEPTANCE OF TITLE TO THE LOT, BE DEEMED TO HAVE ASSUMED THE OBLIGATION TO COMPLY WITH THE REQUIREMENTS OF THE FOREGOING PERMITS AS SUCH RELATE TO THE OWNER'S LOT.

EXCEPT AS REQUIRED OR PERMITTED BY THE AFOREMENTIONED PERMITS ISSUED BY THE ACOE AND SJRWMD, NO OWNER SHALL ALTER, FILL, DREDGE, PLACE SOD OR EXCAVATE, OR PERFORM SIMILAR ACTIVITIES ON ANY PORTION OF THEIR RESPECTIVE LOTS, UNLESS AND UNTIL SUCH ACTIVITY IS AUTHORIZED BY OR EXEMPT FROM THE REQUIREMENTS OF THE ACOE AND SJRWMD.

IN THE EVENT THAT AN OWNER VIOLATES THE TERMS AND CONDITIONS OF SUCH PERMITS AND FOR ANY REASON THE DEVELOPER OR THE ASSOCIATION IS CITED THEREFORE, THE OWNER AGREES TO INDEMNIFY AND HOLD THE DEVELOPER AND THE ASSOCIATION HARMLESS FROM ALL COSTS ARISING IN CONNECTION THEREWITH, INCLUDING WITHOUT LIMITATION, ALL COSTS AND ATTORNEYS FEES AS WELL AS ALL COSTS OF CURING SUCH VIOLATION NOTWITHSTANDING ANY OTHER PROVISIONS CONTAINED ELSEWHERE IN THIS DECLARATION, THE ACOE AND SJRWMD SHALL EACH HAVE THE RIGHTS AND POWERS ENUMERATED IN THIS PARAGRAPH. THE ACOE AND SJRWMD SHALL HAVE THE RIGHT TO ENFORCE, BY A PROCEEDING AT LAW OR IN EQUITY, THE PROVISIONS CONTAINED IN THIS DECLARATION WHICH RELATE TO THE PERMITS AND THE JURISDICTIONAL LANDS SUBJECT TO THE REGULATION OF THE ACOE OR SJRWMD. ANY AMENDMENT TO THIS DECLARATION WHICH AMENDS THE RESPONSIBILITIES OR OBLIGATIONS OF THE PARTIES WITH RESPECT TO THE REFERENCED PERMITS, MUST HAVE PRIOR WRITTEN APPROVAL OF THE ACOE AND SJRWMD, AS APPLICABLE. IN THE EVENT THAT THE ASSOCIATION IS DISSOLVED, PRIOR TO SUCH DISSOLUTION, ALL RESPONSIBILITY RELATING TO THE SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM AND THE PERMITS MUST BE ASSIGNED TO AND ACCEPTED BY AN ENTITY APPROVED BY THE ACOE AND SJRWMD.

# **ARTICLE 11** **RIGHTS AND EASEMENTS RESERVED BY DEVELOPER**

ARTICLE 11.1. **Easements for Ingress, Egress, Utilities and Drainage.** The Developer reserves for itself, its successors, assigns and designees, a right-of-way and perpetual, nonexclusive easement for ingress and egress and to erect, maintain and use utilities, electric, telephone and street lighting poles, wires, cables, conduits, storm sewers, sanitary sewers, water mains, gas, sewer, water lines, drainage ways and structures, cable television and radio equipment or other public conveniences or utilities, on, in and over, (i) any portion of the Common Area; (ii) any area designated as an easement, private street or right-of-way area on any plat of all or any portion of the Property; and (iii) a strip of land within each Lot ten feet in width along the front, rear and sides of each Lot.

ARTICLE 11.2 **Drainage Flow.** Drainage flow shall not be obstructed or diverted from drainage easements. The Developer or the Association may, but shall not be required to, cut drainways for surface water wherever and whenever such action may appear to be necessary to maintain reasonable aesthetic standards relative to the Property and surrounding properties. These easements include the right to cut any trees, bushes or shrubbery, make any grading of the land, or to take any other reasonable action necessary to install utilities and to maintain reasonable aesthetic standards, but shall not include the right to disturb any permanent improvements erected upon a Lot which are not located within the specific easement area designated on the plat or reserved in this Declaration. Except as provided herein, existing drainage shall not be altered so as to divert the flow of water onto an adjacent Lot or into sanitary sewer lines.



ARTICLE 11.3 **Future Easements.** Developer reserves the right to impose further restrictions and to grant or dedicate additional easements and rights of way on any Lots within the Property owned by Developer. In addition, Developer hereby expressly reserves the right to grant easements and rights-of-way over, under and through the Common Area so long as Developer shall own any portion of the Property. The easements granted by Developer shall not materially or adversely affect any improvements or unreasonably interfere with the enjoyment of the Common Area.

ARTICLE 11.4 **Cable Television or Radio.** Developer reserves for itself, and its successors and assigns, an exclusive easement for the installation, maintenance and supply of radio and television cables within the rights of way and easement areas depicted upon any plat of any portion of the Property or within any easement reserved by this Declaration.

ARTICLE 11.5 **Easements for Maintenance Purposes.** The Developer reserves for itself, the Association, and their respective agents, employees, successors or assigns, easements, in, on, over and upon each Lot and the Common Area as may be reasonably necessary for the purpose of preserving, maintaining or improving roadways, landscaped areas, wetland areas, lakes, ponds, hammocks, wildlife preserves or other areas, the maintenance of which may be required to be performed by the Developer or the Association.

ARTICLE 11.6 **Developer Rights Re: Temporary Structures, Etc.** Developer reserves the right for itself, its successors, assigns, nominees and grantees, to erect and maintain such temporary dwellings, model houses, construction offices/modular structures, customer service offices, parking facilities and/or other structures upon any Lot within the Property, which it may deem advisable for development purposes and to do all acts reasonably necessary in connection with the construction and sale of improvements located on the Lots within the Property or other properties. Nothing contained in this Declaration shall be construed to restrict the foregoing rights of Developer.

## ARTICLE 12

### **RIGHTS AND EASEMENTS GRANTED BY DEVELOPER AND/OR ASSOCIATION**

ARTICLE 12.1 **Easement for Ingress and Egress.** All Owners and their guests, invitees, agents and employees, and all delivery, pickup and fire protection services, police, and other authorities of the law, United States mail carriers, representatives of the utilities authorized by the Association to serve the Property, holders of mortgage liens on any portion of the Property and such other persons as the Developer or the Association may designate from time to time, shall have the non-exclusive and perpetual right of vehicular and pedestrian ingress and egress over and across all paved areas located within the real property more particularly described on Exhibit E attached hereto and made a part hereof (the "Roadways"). To the extent that additional lands are made subject to this Declaration pursuant to Article 3.2 hereof, the easement granted hereby may be expanded to include additional roadways by specific reference thereto contained in one or more Supplementary Declarations referenced in Article 3.2 hereof.

Article 12.2 **Easement for the Benefit of Out Parcel.** Developer hereby grants the present and future owners of the out parcel lying adjacent to and North of Island Cottage Way and West of State Road A-1-A, as shown on the Plat of Island Cottages, their guests and invitees,

a perpetual nonexclusive easement for ingress and egress over, across and through the streets and right-of-ways shown on said Plat of Island Cottages.

**ARTICLE 12.3      Rights of Developer to Restrict Access.** Except for the rights of ingress and egress granted in the Article 12.2 above, which may not be impaired or impeded, and notwithstanding the provisions contained elsewhere in this Declaration to the contrary, the Developer and the Association shall have the unrestricted and absolute right to deny ingress to any person who, in the opinion of the Developer or the Board, may create or participate in a disturbance or nuisance on any part of the Property or on any land owned by the Developer which is adjacent to or near the Property. The Developer and the Association shall have the right, but no obligation, from time to time to control and regulate all types of traffic on the Roadways referenced in this Article 12 including the right to prohibit use of the Roadways by traffic or vehicles (including and without limitation, motorcycles and "go carts") which in the sole opinion of the Developer or the Board would or might result in damage to the Roadways or pavement or other improvements, or create a nuisance for the residents, and the right, but no obligation, to control and prohibit parking on all or any part of such Roadways. The Developer and the Association shall have the right, but no obligation, to remove or require the removal of any fence, wall, hedge, shrub, bush, tree or other things natural or artificial, placed on or located on any portion of the Property, if the location of the same will in the sole judgment and opinion of the Developer or the Board, obstruct the vision of a motorist upon any of the Roadways referenced in this Article 12. In the event and to the extent that the Roadways or easements over and across the Roadways for ingress and egress shall be dedicated to or otherwise acquired by the public, the preceding provisions of this Article 12.3 thereafter shall be of no further force or effect.

**ARTICLE 12.4      Rights of Developer to Alter Roadways.** Developer and its successors and assigns shall have the sole and absolute right at any time, with the consent of St. Johns County or the governing body of any municipality or other governmental body or agency then having jurisdiction over the Property, to dedicate to the public all or any part of the Roadways and all or any part of the easements reserved herein or on any plat of any portion of the Property. In addition, Developer shall have the right to redesignate, relocate or terminate any of the easement areas described in Article 12.1 without the consent or joinder of any party so long as no Lot is denied reasonable access to a public dedicated street or highway by such redesignation, relocation or closure.

### **ARTICLE 13 CONSERVATION EASEMENTS**

**ARTICLE 13.1      Conservation Easement Areas.** Pursuant to the provisions of Section 704.06, Florida Statutes, the Developer has granted to the St. Johns River Water Management District (the "District") a conservation easement in perpetuity over the property described in the Conservation Easement recorded on July 20th, 2004, in Official Records Book 2245, Page 1161, Public Records of St. Johns County, Florida. The Developer granted the Conservation Easement as a condition of permit number 40-109-88139-1 issued by the District, solely to offset adverse impacts to natural resources, fish and wildlife, and wetland functions.

ARTICLE 13.2 **Purpose.** The purpose of the Conservation Easement is to assure that the Conservation Easement Areas will be retained forever in their existing natural condition and to prevent any use of the Conservation Easement Areas that will impair or interfere with the environmental value of these areas.

ARTICLE 13.3 **Prohibited Uses.** Any activity in or use of the Conservation Easement Areas inconsistent with the purpose of the Conservation Easement is prohibited. The Conservation Easement expressly prohibits the following activities and uses:

Construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.

Dumping or placing soil or other substance or material as landfill or dumping or placing trash, waste or unsightly or offensive materials.

Removing, destroying or trimming trees, shrubs, or other vegetation.

Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.

Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.

Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

Acts or uses detrimental to such retention of land or water areas.

Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

ARTICLE 13.4 **Responsibilities.** The Association, its successors and assigns, are responsible for the operation and maintenance of the Conservation Easement Areas. In addition, the Association its successors and assigns, are responsible for the periodic removal of trash and other debris which may accumulate in the Conservation Easement Areas.

ARTICLE 13.5 **Rights of District.** To accomplish the purposes stated in the Conservation Easement, the Developer conveyed the following rights to the District:

To enter upon and inspect the Conservation Easement Areas in a reasonable manner and at reasonable times to determine if the Association or its successors and assigns are complying with the covenants and prohibitions contained in the Conservation Easement.

To proceed at law or in equity to enforce the provisions of the Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Conservation Easement Areas that may be damaged by any activity inconsistent with the Conservation Easement.

ARTICLE 13.6      **Amendment.** The provisions of the Conservation Easement may not be amended without the prior written approval of the District.

## ARTICLE 14 **GENERAL PROVISIONS**

ARTICLE 14.1      **Remedies for Violations.** If any Owner or other person shall violate or attempt to violate any of the covenants or restrictions herein set forth, it shall be lawful for the Association, the Developer, or any Owner (i) to prosecute proceedings at law for the recovery of damages against those so violating or attempting to violate any such covenant; or (ii) to maintain any proceeding against those so violating or attempting to violate any such covenant for the purpose of preventing or enjoining all or any such violations, including mandatory, injunctions requiring compliance with the provisions of this Declaration. The SJRWMD shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water or Stormwater Management System. In the event litigation shall be brought by any party to enforce any provisions of this Declaration, the prevailing party in such proceedings shall be entitled to recover from the non-prevailing party or parties, reasonable attorneys fees for pre-trial preparation, trial, and appellate proceedings. The remedies in this Article shall be construed as cumulative of all other remedies now or hereafter provided or made available elsewhere in this Declaration, or by law.

ARTICLE 14.2      **Fines.** In addition to all other remedies, and to the maximum extent allowed by law, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, lessees, invitees or employees, to comply with any covenant or restriction herein contained, or rule of the Association, provided the following procedures are adhered to:

(a) For a first violation, the Association shall warn the Owner of the alleged infraction in writing.

(b) For a subsequent violation, the Association shall provide the Owner with a notice of its intent to impose a fine for such violation. Included in the notice shall be the date and time of a meeting of a committee appointed by the Board of Directors (the "Rules Enforcement Committee") at which time the Owner shall present argument as to why a fine should not be imposed. At least fourteen (14) days prior notice of such meeting shall be given.

(c) At the meeting, the alleged infractions shall be presented to the Rules Enforcement Committee, after which the Committee shall receive evidence and hear argument as to why a fine should not be imposed. A written decision of the Rules Enforcement Committee shall be submitted to the Owner not later than thirty (30) days after the Board of Directors meeting. At the meeting, the Owner shall have the right to be represented by counsel and to cross-examine witnesses.

(d) The Rules Enforcement Committee, by majority vote, may impose a fine not to exceed the maximum amount allowed by law from time to time.



(e) Fines shall be paid not later than five (5) days after notice of the imposition or assessment thereof.

(f) The payment of fines shall be secured by one or more liens encumbering the Lot or Lots owned by the offending Owner. Such fines and liens may be collected and enforced in the same manner as regular and special assessments are collected and enforced pursuant to Article 8 hereof.

(g) All monies received from fines shall be allocated as directed by the Board of Directors.

(h) The imposition of fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association or any Owner may be otherwise legally entitled; provided, however, any fine paid by an offending Owner shall be deducted from or offset against any damages which may be otherwise recoverable from such Owner.

The Rules Enforcement Committee shall be comprised of not less than three (3) members who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director or employee.

ARTICLE 14.3 **Severability.** Invalidation of any of the provisions of this Declaration by judgment or court order shall not affect or modify any of the other provisions, which shall remain in full force and effect.

ARTICLE 14.4 **Additional Restrictions.** No Owner, without the prior written consent of the Developer, may impose any additional covenants or restrictions on any part of the Property, but the Developer may include in any contract or deed hereafter made and covering all or any part of the Property, any additional covenants or restrictions applicable to the Property so covered which are not inconsistent with and which do not lower standards established by this Declaration.

ARTICLE 14.5 **Titles.** The addition of titles to the various Articles of this Declaration are for convenience and identification only and the use of such titles shall not be construed to limit, enlarge, change, or otherwise modify any of the provisions hereof, each and all of which shall be construed as if not entitled.

ARTICLE 14.6 **Termination or Amendment.** The covenants, restrictions, easements and other matters set forth herein shall run with the title to the Property and be binding upon each Owner, the Developer, the Association, and their respective successors and assigns for a period of fifty (50) years, and shall be automatically renewed for successive ten (10) year periods unless terminated as herein provided. The Owners holding two-thirds (2/3) or more of the total votes of the Association may alter, amend or terminate these covenants provided, however, that so long as the Developer owns any land within the Property or owns any property contiguous to the Property, no such termination or amendment shall be effective without the written consent and joinder of the Developer. Further, until such time as the Developer shall not own any lands subject to this Declaration, the Developer shall have the

unilateral right to amend this Declaration without the consent or joinder of any other party in any manner which does not materially and adversely affect the value of any Lot or other building parcel located within the Property or to bring this Declaration into compliance with the requirements of the Federal Department of Housing and Urban Development ("HUD"), the Veteran's Administration ("VA"), or any other governmental authority having jurisdiction. Any amendment to this Declaration which alters any provision relating to the Surface Water or Stormwater Management System, beyond maintenance in its original condition, including the water management portion of the Common Areas, must have the prior written approval of the SJRWMD. This Declaration may not be terminated unless adequate provision for transferring perpetual maintenance responsibility for the Surface Water or Stormwater Management System obligation to the then Owners of the Lots is made, and said transfer obligation is permitted under the then existing requirements of the SJRWMD or its successors and the County or any other governmental body that may have authority over such transfer. Any such amendment to this Declaration shall be executed by the Association and, Developer, if applicable, and shall be recorded in the current public records of St. Johns County, Florida.

ARTICLE 14.7 **Assignment of Permit Responsibilities and Indemnification.** In connection with the platting and development of the Property, the Developer assumed certain obligations in connection with the maintenance of the Surface Water or Stormwater Management System. The Developer hereby assigns to the Association, and the Association shall be solely responsible for, all of the Developer's obligations and responsibilities for maintenance of the Surface Water or Stormwater Management System pursuant to all applicable permits and the plat of the Subdivision. Subsequent to the termination of the Class B Membership, the Association shall indemnify, defend and hold the Developer harmless from all suits, actions, damages, liability and expenses in connection with loss of life, bodily or personal injury or property damage, or any other damage arising from or out of an occurrence in, upon, at or resulting from the operation or maintenance of the Surface Water or Stormwater Management System, occasioned wholly or in part by any act or omission of the Association or its agents, contractors, employees, servants or licensees.

ARTICLE 14.8 **Conflict or Ambiguity in Documents.** To the extent of any conflict, ambiguity, or inconsistency between this Declaration, the Articles, or the Bylaws, the terms of this Declaration shall control both the Articles and Bylaws.

ARTICLE 14.9 **Usage.** Whenever used, the singular shall include the plural and the singular, and the use of any gender shall include all genders.

ARTICLE 14.10 **Effective Date.** This Declaration shall become effective upon its recordation in the public records of St. Johns County, Florida.

ARTICLE 14.11 **Disclaimers as to Water Bodies.** NEITHER THE DEVELOPER, THE ASSOCIATION, NOR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUB-CONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY ADJACENT TO OR WITHIN THE PROPERTY, EXCEPT AS

SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY NOTIFIED THAT LAKE BANKS AND SLOPES WITHIN CERTAIN AREAS OF THE PROPERTY MAY BE STEEP AND THAT DEPTHS NEAR SHORE MAY DROP OFF SHARPLY. BY ACCEPTANCE OF A DEED TO, OR USE OF, ANY LOT OR OTHER PORTION OF THE PROPERTY, ALL OWNERS OR USERS OF SUCH PROPERTY SHALL BE DEEMED TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ANY AND ALL LIABILITY OR DAMAGES ARISING FROM THE DESIGN, CONSTRUCTION, OR TOPOGRAPHY OF ANY LAKE BANKS, SLOPES, OR LAKE BOTTOMS LOCATED THEREIN.

ARTICLE 14.12      **Prohibited Rules and Regulations.**      Notwithstanding any provision herein to the contrary, until such time as all Lots have been improved with the construction of a residence thereon, but in no event later than 60 months following the date that the first deed conveying a Lot from the Developer to an owner is recorded in the public records of St. Johns County, Florida, the Association may not, in fact, or by rule or regulation: (i) cause a gate to be placed so as to control vehicular access to the Property from any public road unless said gate remains open at all times between the hours of 7:30 a.m. and 6:00 p.m. seven days per week; (ii) prohibit any marketing and/or directional signage placed on the Property by the Developer and/or the Developer's designee; (iii) prohibit the Developer and/or the Developer's designee from maintaining a Construction and Customer Service Trailer on a Lot owned by the Developer; (iv) prohibit the Developer and/or the Developer's designee from maintaining two model homes, staffed with sales representative on Lots owned or leased by the Developer and/or the Developer's designee; or (v) take any action or adopt any rule or regulation which impedes the ability of the Developer and/or the Developer's designee to improve any Lot by the construction of a residence thereon or places any conditions on construction activities.

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IN WITNESS WHEREOF, the Developer has caused this instrument to be executed under seal this 6<sup>th</sup> day of July, 2004.

Signed, sealed and delivered in the presence of:

**ST. AUGUSTINE DEVELOPMENT CORPORATION**, a Florida corporation

Linda Paulaitis  
 Print Name Linda Paulaitis  
Roberta J. Halyburton  
 Print Name Roberta J. Halyburton

By: [Signature]  
 Print Name: Robert H. Hahnemann  
 Title: President  
 509 Anastasia Blvd.  
 St. Augustine, Florida 32080

STATE OF FLORIDA     )  
   ) SS  
 COUNTY OF ST. JOHNS)

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of July, 2004, by Robert H. Hahnemann, the President of **ST. AUGUSTINE DEVELOPMENT CORPORATION**, a Florida corporation, on behalf of the corporation.



Roberta J. Halyburton  
 MY COMMISSION # DD083994 EXPIRES  
 January 25, 2006  
 BONDED THRU TROY FAIN INSURANCE, INC.

Roberta J. Halyburton  
 (Print Name)  
 NOTARY PUBLIC, State of Florida at Large  
 Commission # \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_  
 Personally Known X  
 or Produced I.D. \_\_\_\_\_  
 [check one of the above]  
 Type of Identification Produced \_\_\_\_\_

Signed, Sealed and Delivered  
in the presence of:

SUNTRUST BANK

Print Name: Molly B Seiter By: Molly B Seiter  
Title: Vice President

Michelle Diaz  
Print Name: Michelle Diaz

STATE OF FLORIDA                 }  
COUNTY OF Duval               } SS

The foregoing instrument was acknowledged before me this 19 day of July, 2004 by Mark D. Kapelka, the Vice President of SunTrust Bank on behalf of said Bank.

Jocelyn Gabriel Jocelyn Gabriel  
(Print Name)

NOTARY PUBLIC

State of Florida at Large

Commission #

My Commission Expires: \_\_\_\_\_

☒ Personally Known

or [ ] Produced I.D.

[check one of the above]

### Type of Identification Produced



**Jocelyn Gabriel**  
Commission #DD192038  
Expires: Mar 10, 2007  
Bonded Thru  
Atlantic Bonding Co., Inc.

Exhibit "A"

LOT "A" AND PART OF AN UN-NAMED LOT, REMINGTON ESTATES, AS RECORDED IN MAP BOOK 22, PAGES 114 & 115, AND A PARCEL OF LAND LYING IN THE NORTH 300' OF THE SOUTH 700' OF GOVERNMENT LOTS 3 & 4, SECTION 15, TOWNSHIP 8 SOUTH, RANGE 30 EAST, ST. JOHNS COUNTY, FLORIDA, LYING WEST OF STATE ROAD A-1-A; BEING ALSO KNOWN AS PART OF LOTS 31, 32, & 33, MOORES UNRECORDED SUBDIVISION BY J.W. SUMMERVILLE AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SURFWIND ESTATES SUBDIVISION AS RECORDED IN MAP BOOK 12, PAGES 93 AND 94 OF THE PUBLIC RECORDS OF SAID COUNTY, ALSO BEING THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 22 MINUTES 26 SECONDS WEST, ASSUMED BEARING ALONG THE NORTH LINE OF SAID SURFWIND ESTATES, 839.47 FEET; THENCE SOUTH 89 DEGREES 28 MINUTES 06 SECONDS WEST ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF HIDDEN HARBOR AS RECORDED IN MAP BOOK 13, PAGES 81 AND 82 OF THE PUBLIC RECORDS OF SAID COUNTY, 345.00 FEET; THENCE SOUTH 00 DEGREES 31 MINUTES 54 SECONDS EAST, ALONG THE EAST LINE OF UN-NAMED LOT, OF SAID REMINGTON ESTATES, BEING A REPLAT OF LOT 1, OF SAID HIDDEN HARBOR, 90.00 FEET; THENCE SOUTH 89 DEGREES 28 MINUTES 06 SECONDS WEST, ALONG THE NORTHERLY RIGHT-OF-WAY OF TRADE WIND LANE, 15.91 FEET; THENCE NORTH 00 DEGREES 31 MINUTES 54 SECONDS WEST, ALONG THE EASTERLY RIGHT-OF-WAY OF REMINGTON AVENUE, 90.00 FEET; THENCE NORTH 89 DEGREES 28 MINUTES 06 SECONDS EAST, 3.41 FEET; THENCE NORTH 00 DEGREES 31 MINUTES 54 SECONDS WEST, 176.40 FEET; THENCE NORTH 89 DEGREES 26 MINUTES 06 SECONDS EAST, 39.31 FEET; THENCE NORTH 16 DEGREES 28 MINUTES 08 SECONDS WEST, ALONG THE WESTERLY LINE OF LOT A, OF SAID REMINGTON ESTATES, 125.70 FEET TO THE SOUTHERLY LINE OF COASTAL POINT, P.U.D., MAP BOOK 15, PAGES 71 - 75; THENCE NORTH 89 DEGREES 15 MINUTES 00 SECONDS EAST, ALONG SAID SOUTH LINE, 985.19 FEET, THENCE SOUTH 14 DEGREES 55 MINUTES 00 SECONDS EAST, 150.00 FEET, THENCE SOUTH 41 DEGREES 31 MINUTES 54 SECONDS WEST, 13.49 FEET; THENCE SOUTH 00 DEGREES 37 MINUTES 34 SECONDS EAST, 45.73 FEET; THENCE SOUTH 22 DEGREES 39 MINUTES 40 SECONDS EAST, 16.37 FEET TO THE POINT OF CURVATURE OF A CURVE BEING CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 6.00 FEET, DELTA OF 67 DEGREES 57 MINUTES 54 SECONDS, AND ARC LENGTH OF 7.12 FEET; THENCE ALONG THE CHORD OF SAID CURVE, SOUTH 56 DEGREES 38 MINUTES 37 SECONDS EAST, 6.71 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE NORTH 89 DEGREES 22 MINUTES 26 SECONDS EAST, 146.44 FEET, TO THE EAST RIGHT OF WAY LINE OF STATE ROAD A-1-A; THENCE SOUTH 14 DEGREES 55 MINUTES 00 SECONDS EAST, ALONG SAID EAST RIGHT OF WAY LINE, 82.55 FEET TO THE POINT OF BEGINNING.