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(73) This Document Prepared by:

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**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS FOR**  
**ISLANDER TOWNHOMES**

**THIS DECLARATION** is made this 15<sup>th</sup> day of December, 2010, by KB HOME JACKSONVILLE LLC, a Delaware limited liability company, its successor or assigns ("Declarant"), and joined in by Islander Townhome Homeowners Association, Inc., a Florida corporation not-for-profit ("Association") and Islander 312, LLC, a Florida limited liability company ("Islander").

**WITNESSETH:**

**WHEREAS**, Islander is the owner of that certain real property located in St. Johns County, Florida, and is legally described on **Exhibit "A"** attached hereto ("the Property");

**WHEREAS**, Declarant is developing the Property as Islander Townhomes, a townhome subdivision;

**WHEREAS**, Declarant has deemed it desirable for the efficient preservation of the values and amenities established as aforesaid to create a not-for-profit corporation pursuant to Chapter 617 and 720, Florida Statutes, known as the Islander Townhome Homeowners Association, Inc., which Association has joined in this Townhome Declaration and to which there has been and will be delegated and assigned certain powers and duties of operation, administration, maintenance and repair of portions of Islander Townhomes, including the collection and disbursement of the "Operating Expenses" (as that term is hereinafter defined), all as more particularly set forth herein; and

**NOW, THEREFORE**, Declarant and Islander declare that the Property is and shall be owned, used, sold, conveyed, encumbered, demised, and occupied subject to the covenants, conditions, restrictions, easements, reservations, regulations, burdens, liens, and all other provisions of this Townhome Declaration, all as hereinafter set forth, which shall run with the Property and be binding on all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each "Owner" (as that term is hereinafter defined) thereof.

## ARTICLE I

### Definitions

The following words and phrases when used in this Townhome Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Access Area" shall mean and refer to that portion of each Improved Lot which surrounds the exterior of the Dwelling Unit.

(b) "Adjacent Lot" shall mean and refer to that Townhome Lot or those Townhome Lots immediately to either side of a Townhome Lot.

(c) "Amenities" shall mean and refer to the pool and clubhouse, including any equipment and furniture serving such areas, now located or hereinafter located on the Property.

(d) "Architectural Review Committee" or "Committee" shall mean and refer to a committee appointed by Declarant pursuant to Article XI, Section 3, herein.

(e) "Articles" shall mean and refer to the Articles of Incorporation of Islander Townhome Homeowners Association, Inc., a Florida corporation not-for-profit, attached hereto as **Exhibit "B,"** as may be amended from time to time.

(f) "Assessment" shall mean and refer to the share of Association Expenses assessed from time to time against a Townhome Lot and the Owner(s) thereof or a Member of the Association for Common Operating Expenses and Townhome Operating Expenses. Assessment will also have the meaning set forth in Section 720.301, Florida Statutes.

(g) "Assessment Period" shall be the same period as a calendar year, from January 1 to December 31 of any given year.

(h) "Association" shall mean and refer to the Islander Townhome Homeowners Association, Inc., a Florida corporation not-for-profit, its successors or assigns, which has its principal place of business in St. Johns County, Florida. The Association is NOT a condominium association. Association will also have the meaning set forth in Section 720.301(9), Florida Statutes.

(i) "Association Expenses" shall mean and refer to the expenses and charges described in this Townhome Declaration, incurred or to be incurred by the Association and assessed or to be assessed against the Townhome Lots and the Owners thereof and the Members through annual or special Assessments.

(j) "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

(k) "Building" shall mean and refer to a building in Islander Townhomes containing attached Dwelling Units sharing party walls and a common roof.

(l) "Bylaws" shall mean and refer to the Bylaws of the Association, attached hereto as **Exhibit "C,"** as may be amended from time to time.

(m) "Common Area" shall mean and refer to those portions of Property owned or used by the Association, and devoted to the common use and enjoyment of all Members, together with any improvements thereon, including, without limitation the Amenities and any other recreational facilities, landscape buffers, any wetlands areas, open space, off-street parking areas, utilities and sidewalks, within or about the Property and intended for the common use of all Members, all as further described in Article IV hereof. Tract C as shown on the Plat (as defined below) is a retention pond forming part of the Common Areas.

(n) "Common Operating Expenses" shall mean and refer to those Operating Expenses for which all Members are liable to the Association.

(o) "Condominium Property" shall mean and refer to the real property subject to that certain Declaration of Condominium for Islander Carriage Homes recorded in Official Records Book 3045, page 1933 of the public records of St. Johns County, Florida.

(p) "Condominium Unit" shall mean and refer to a unit of Islander Carriage Homes, a condominium, as described in that certain Declaration of Condominium for Islander Carriage Homes recorded in Official Records Book 3045, page 1933 of the public records of St. Johns County, Florida. "Condominium Unit Owner" shall mean and refer to the owner of a Condominium Unit.

(q) "Conservation Easement" shall mean and refer to those areas depicted on the Plat as "Conservation Area" or "Conservation Easement". All Conservation Areas and Conservation Easements shall be maintained by the Association consistent with the terms and conditions of the Conservation Easement, with such maintenance constituting a portion of the Common Operating Expenses of the Association.

(r) "County" shall mean and refer to St. Johns County, Florida.

(s) "Declarant" shall mean and refer to KB Home Jacksonville LLC, a Delaware Limited Liability Company, duly authorized to do business in the State of Florida, its designee, successors and assigns, and subsidiaries. Declarant may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of the Property (as hereinafter defined). In the event of a partial assignment, the assignee shall not be deemed Declarant, but may exercise such rights of Declarant specifically assigned to it. Any such assignment may be made on a nonexclusive basis. The rights of Declarant under this Townhome Declaration are independent of Declarant's rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Owners, the Board or the Association upon the transfer of control of the Association.

(t) "Declaration of Easements" shall mean that certain Declaration of Covenants, Easements and Shared Facilities executed by Islander 312, LLC and Islander Carriage Homes Condominium Association, Inc., dated \_\_\_\_\_ and recorded in Official Records Book 3385, page 1404 of the public records of St. Johns County, Florida.

(u) "Development" shall mean and refer to the proposed development area commonly known as Islander Townhomes as shown on the Plat.

(v) "Dwelling Unit" shall mean and refer to a residential Townhome unit to be used as an abode for one family.

(w) "Improved Lot" shall mean and refer to any Townhome Lot upon which a Dwelling Unit has been constructed.

(x) "Institutional Mortgagee" shall mean and refer to a lending institution having a first mortgage lien upon a Townhome Lot including any of the following institutions: (a) Federal or State Savings and Loan or Building and Loan Association, a national or state bank or real estate investment trust, or mortgage banking company doing business in the State of Florida, or life insurance company; (b) any "Secondary Mortgage Market Institution" including the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration and such other Secondary Mortgage Market Institution as the Board shall hereafter approve in writing which has acquired a first mortgage upon a Townhome Lot; (c) any and all investors or lenders, or the successors and assigns of such investors or lenders which have loaned money to Declarant to acquire or construct improvements upon the Property and who have a mortgage lien on all or a portion of the Property securing such loan; or (d) such other lenders as the Board shall hereafter approve in writing which have acquired a first mortgage upon a Townhome Lot. Institutional Mortgagees shall have the rights provided in this Townhome Declaration including the rights set forth in Article XIII, Section 16.

(y) "Islander" or "Islander Townhomes" shall mean and refer to the proposed townhome development (including Townhome Lots and Common Areas) to be located on the Property described in Exhibit "A".

(z) "Lot" or "Townhome Lot" means any platted lot, whether improved or unimproved, intended for the construction of a Townhome Dwelling Unit and located within any lands that are subject to this Townhome Declaration.

(aa) Townhome Declaration "Members" shall mean and refer to all Owners of Townhome Lots and all owners of Codominium Units, who by virtue of such ownership become Members of the Association as provided in Article III, Section 2(a).

(bb) "Operating Expenses" shall mean and refer to the expenses for which Owners are and Condominium Unit Owners may be liable to the Association as described in this Townhome Declaration and in any other document governing Islander Townhomes, and include, but are not limited to, the costs and expenses incurred by the Association in fulfilling its obligations hereunder and in administering, operating, owning, constructing, reconstructing, financing, maintaining, repairing and replacing the Common Areas, other real property, or portions of either and improvements thereon, as well as expenses incurred by the Association in fulfilling its obligations under this Townhome Declaration, the Declaration of Easements and any other document governing portions of Islander Townhomes subject to this Townhome Declaration, which mean and include the costs and expenses described in these documents as such and include regular and special assessments made by the Association in accordance

with the terms hereof, less any contributions received by any owners of the Adjacent Property pursuant to the Declaration of Easements.

(cc) "Owner" or "Townhome Lot Owner" shall mean and refer to the record owner (other than Declarant), whether one (1) or more persons, firms or entities, who has acquired fee simple title to any Improved Lot. The term "Owner" shall not mean or refer to any mortgagee, grantee or beneficiary under a mortgage, deed of trust or security deed unless and until such mortgagee, grantee or beneficiary has acquired title pursuant to foreclosure or any proceeding or conveyance in lieu of foreclosure.

(dd) "Party Wall" shall mean and refer to the entire wall, from front to rear, all or a portion of which is used for support of each adjoining structure, situated, or intended to be situated, on the boundary line between adjoining Townhome Lots.

(ee) "Plat" shall mean and refer to the Subdivision Plat of Islander Subdivision as recorded in Map Book 66, Pages 34 through 38 of the Public Records of St. Johns County, Florida.

(ff) "Property" shall mean and refer to the property described in **Exhibit "A"** attached hereto and made a part hereof and any additional property hereafter made subject to this Townhome Declaration by the Declarant by filing a Supplemental Declaration in accordance with the provisions of this Townhome Declaration.

(gg) "Property Line" shall mean and refer to the perimeter boundary lines of a Townhome Lot (herein defined) within the Property.

(hh) "Rules and Regulations" shall mean and refer to the rules and regulations promulgated by the Board in accordance with the terms of this Townhome Declaration.

(ii) "Surface Water" or "Stormwater Management System" shall mean a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to applicable rules of the water management district. Except as otherwise specifically excepted herein, all Surface Water or Stormwater Management Systems located on lands subject to this Townhome Declaration shall be part of the Common Areas of Islander Townhomes and shall be maintained by the Association as part of the Common Operating Expenses.

(jj) "Townhome Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Islander Townhomes, as may be amended from time to time.

(kk) "Townhome Maintenance Areas" shall mean the maintenance of the exterior surface of the Townhome including exterior surfaces of front doors (but not door, glass or window replacement), the roof and roof sheathing, gutters, if any, and the landscaping and lawn in the front and rear yards of the Townhome Lots, as more fully provided in Article VI, Section 2 of this Townhome Declaration. The Members shall have the right to expand Townhome Maintenance Areas by amending this definition and Section VI, Section 2. "Common Maintenance Areas" shall also include the maintenance of any roadways or any other maintenance obligations of the Association pursuant to the Declaration of Easements.

(ll) "Townhome Operating Expenses" shall mean and refer to those Operating Expenses for which only Owners of Townhome Units are liable to the Association.

## ARTICLE II

### Description, Plans for Development and Declarant's Rights and Powers

Section 1. Islander Townhomes. Islander Townhomes are comprised of approximately 6.87 acres located in St. Johns County, Florida,

Section 2. General Plan of Development. Islander is the owner of Islander Townhomes and Declarant presently plans to develop Islander Townhomes as a townhome subdivision as contract purchaser under a purchase and sale agreement with Islander. Declarant has the right, but is not obligated, to build up to seventy two (72) Dwelling Units within the Property or to convey all or a portion of the Property to third parties for the purpose of building a townhome development on the Property.

Section 3. Condominium Property. The Condominium Property is not part of Islander Townhomes; however, the Condominium Unit Owners are entitled to the use and enjoyment of the Common Areas as Members of the Association and are obligated to contribute to the Association's Common Operating Expenses as set forth in this Townhome Declaration and in the Declaration of Easements.

## ARTICLE III

### Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Townhome Lot which is or is at any time made, subject to this Townhome Declaration, and each owner of a Condominium Unit, shall be a Member of the Association. Membership shall be appurtenant to and inseparable from ownership of a Lot or Condominium Unit. Transfer of Townhome Lot or Condominium Unit ownership either voluntarily or by operation of law shall terminate membership in the Association, and said membership shall thereupon be vested in the transferee.

When any one (1) Townhome Lot or Condominium Unit is owned by more than one (1) person, firm, individual, corporation or other legal entity, the composite title holder shall be and constitute one (1) Member of the Association and shall designate one person to cast votes on behalf of such Member. Any person, firm, individual, corporation or legal entity owning more than one (1) Townhome Lot or Condominium Unit shall be as many Members as the number of Townhome Lots or Condominium Units owned.

Section 2. Classes of Memberships and Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class A Members shall be all Owners and Condominium Unit Owners, with the exception of the "Declarant" (as long as the Class B Membership shall exist, and thereafter, Declarant shall be a Class A Member to the extent it would otherwise qualify). When entitled to vote, each Class A Member shall have one vote for each Dwelling Unit, Townhome Lot, or Condominium Unit owned by such Member.

(b) Class B Member. The Class B Member shall be the Declarant, or a representative thereof, who shall have the sole vote until Transition including the right to elect all of the Members of the Board of Directors of the Association. "Transition" shall occur at the time provided in the Articles of Incorporation. Transition shall occur no later than three (3) months after 90 percent of the parcels in the community that will ultimately be operated by the Association have been conveyed to members other than Declarant. The Class B Membership shall terminate at Transition. For purposes of this provision, the term "members other than Declarant" shall not include builders or contractors who purchase a parcel for the purpose of constructing improvements thereon for resale.

After Transition, Declarant shall be entitled to elect at least one member of the Board of Directors of the Association as long as Declarant holds for sale in the ordinary course of business at least five (5) percent of the parcels in the community. After Declarant relinquishes control of the Association, Declarant may exercise the right to vote any Declarant-owned voting interests in the same manner as any other member, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board of Directors.

Section 3. Membership and Voting Procedure. The Articles and Bylaws of the Association shall more specifically define and describe the procedural requirements for the Association and voting procedures, but shall not substantially alter or amend any of the rights or obligations of the Development as set forth herein.

## ARTICLE IV

### Common Areas

Section 1. Common Areas. Common Areas are those portions of the Property designated as such in this Townhome Declaration, Plat, or other written instrument recorded in the Public Records of the County. Common Areas may be for recreational or other purposes. So long as Declarant appoints a majority of the Board of Directors, the Common Areas shall be only that property designated as such by Declarant. Declarant and Islander shall have the right, and the power, but neither the duty nor the obligation, in their sole discretion, to, or to cause others to, convey, lease or grant a license or other use right to real property within the Property to the Association for such purposes as may be expressed in the instrument of conveyance, lease or grant of license or use. No such real property shall be considered to be a Common Area until actually so conveyed or leased or until a grant of license or other use right is created by a written instrument. The Association shall accept from Declarant, or others approved by Declarant, any such conveyance, lease, grant of license or grant of use right.

Section 2. Maintenance Areas. The Association shall maintain all of the Common Areas and Townhome Maintenance Areas in an attractive condition and in a manner that is harmonious with the Property and in accordance with any applicable governmental or agency permitting requirements. If the Association fails to maintain the Common and Maintenance Areas in accordance with the foregoing, so

long as Declarant or Islander owns a Townhome Lot, Declarant and Islander shall have the right, but no obligation, to enter upon any such Common or Maintenance Area to perform such maintenance or work which may be reasonably required, all at the expense of the Association, which expense shall be payable by the Association to Declarant or Islander, if the work is performed by Islander, on demand.

Section 3. Easements. Declarant and Islander each reserve the right for themselves and their designees to grant additional easements for use, ingress and egress, governmental services and utilities over, across and under the Common Areas, for the use and benefit of persons who are not Members of the Association so long as Declarant owns any Townhome Lot in the Development.

Section 4. Maintenance. The Association may enter into agreements with other persons or entities to provide for the maintenance, upkeep and repair of any of the Common Areas or any other property which the Association has the obligation to maintain, upkeep and repair under this Townhome Declaration.

Section 5. Title in Association. Within six months after issuance of a final certificate of occupancy as to all improvements to be made to the real property known as Islander Townhomes, Islander, or its successors and assigns, shall convey and transfer to the Association the record fee simple title of those portions of Islander Townhomes that constitute the Common Areas (as that term is herein defined) and the Association shall accept such conveyance. To preserve and enhance the property values and amenities of Islander Townhomes, the Common Areas, and any facilities now or hereafter built or installed thereon, these shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the Common Areas may include, but not be limited to, the repair and maintenance of landscaped areas, walkways, recreational facilities (if any), or signs. The Association, by its execution of this Townhome Declaration, covenants and agrees to accept all conveyances of Common Areas. This section shall not be amended to reduce or eliminate the obligation for maintenance or repair of the Common Areas without the prior written consent of Declarant so long as Declarant owns a Townhome Lot in the Development.

The Association shall be responsible for the maintenance of the Common Areas in a continuous and satisfactory manner and for the payment of taxes assessed against Common Areas and any improvements and any personal property thereon accruing from and after the conveyance to the Association, and such taxes shall be prorated as of the date of conveyance. Prior to completion of the Common Areas and conveyance of the title thereto to the Association, the taxes assessed against such non-public property shall be paid by Declarant or its successors or assigns.

Section 6. Title to Additional Common Areas. From time to time, Declarant reserves the right, but not the obligation, to convey to the Association legal title to additional Common Areas, subject only to the condition that such properties shall be a part of the Development as set forth in the Plat.

Section 7. Surface Water/Stormwater Management System. Islander Townhomes contains a Surface Water Management System (the "System") including, but not necessarily limited to, the drainage and water management areas shown on the Plat as Tract C.

Section 8. Surface Water or Stormwater Management System.

(a) Definition. Surface Water or Stormwater Management System means a system which is designed and constructed or implemented within the Property and the Adjacent 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 4OC-4, 4OC-40, or 4OC-42, Florida Administrative Code, or regulations of similar import. For purposes of this Townhome Declaration, the Surface Water and Stormwater Management System located within the Property shall be deemed to be a part of the Common Area and shall include any drainage swales located within the Property.

(b) Duties of Association; Maintenance of Surface Water or Stormwater Management System. The Association shall be responsible for the maintenance, operation and repair of the Surface Water and Stormwater Management System. Maintenance of the Surface Water and Stormwater Management System shall mean the exercise of practices which allow the Surface Water and Stormwater Management System to provide drainage, water storage, conveyance of other surface water, or stormwater management capabilities as permitted by the St. Johns River Water Management District (the "SJRWMD"). The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the Surface Water and 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 Section shall be a Common Expense of the Association to be collected and paid in the manner prescribed by this Townhome Declaration. 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 and Stormwater Management System permitted by the SJRWMD, and any monetary contribution due from the Association to the condominium association for the Adjacent Property for the maintenance of the portion of the Surface Water and Stormwater Management System located on the Adjacent Property.

(c) Easements. The Association shall have a perpetual non-exclusive easement for drainage over the entire Surface Water and Stormwater Management System. By this easement, the Association shall have the right to enter upon the Common Area which are a part of the Surface Water and Stormwater Management System at a reasonable time and in a reasonable manner, to operate, maintain, or repair the Surface Water and Stormwater Management

System as required by the SJRWMD. No person shall alter the drainage flow of the Surface Water and Stormwater Management System, including buffer areas or swales, without the prior written approval of the SJRWMD.

(d) Amendment. Any amendment to this Townhome Declaration which alters any provision relating to the Surface Water and Stormwater Management System, beyond maintenance in its original condition, including the water management portion of the Common Area, must have the prior written approval of the SJRWMD.

(e) Assessments. Assessments shall be used for the maintenance and repair of the Surface Water and Stormwater Management System including, but not limited to, work within retention areas, drainage structures, and drainage easements.

(f) Enforcement. The SJRWMD shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Townhome Declaration which relate to the maintenance, operation and repair of the Surface Water and Stormwater Management System and/or jurisdictional wetlands or conservation areas subject to the control of the SJRWMD, and it shall be the Association's responsibility to assist the SJRWMD in any such enforcement proceedings.

(g) Association Powers and Duties. The Association shall operate, maintain, and manage the Surface Water and Stormwater Management System in a manner consistent with SJRWMD Permit No. 40-109-21552-4 ("Permit") requirements and applicable SJRWMD rules, and shall assist in the enforcement of the restrictions and covenants herein contained. The Association shall levy and collect adequate Assessments against Members of the Association for the costs of maintenance and operation of the Surface Water and Stormwater Management System.

(h) Jurisdictional Areas and Permits. THE PROPERTY HAS BEEN OR WILL BE DEVELOPED IN ACCORDANCE WITH REQUIREMENTS OF THE PERMITS ISSUED BY THE ACOE, SJRWMD OR OTHER ENVIRONMENTAL AGENCIES. 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 ANY OWNER VIOLATING ANY PROVISION OF THE PERMITS. In the event that a Member violates the terms and conditions of the Permit and for any reason Declarant or the Association is cited therefore, the Member agrees to indemnify and hold Declarant and the Association harmless from all costs arising in connection therewith, including without limitation, all costs and attorneys' fees, as well as costs of curing such violation.

(i) Permit Responsibilities and Indemnification. The Association shall be solely responsible for maintenance and operation of the Surface Water and Stormwater Management System pursuant to the Permit. The Association shall indemnify, defend and hold the Declarant 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 and Stormwater Management System, occasioned wholly or in part by any act or omission of the Association or its agents, contractors, employees, servants or licensees. The Declarant has the right and obligation to assign all of its rights and obligations under the Permit to the Association.

(j) Dissolution. This Townhome Declaration may not be terminated unless adequate provision for transferring perpetual maintenance responsibility for the Surface Water and Stormwater Management System obligation to the then Owners of the Dwelling Units 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. In the event that the Association is dissolved, prior to such dissolution, all responsibility relating to the Surface Water and Stormwater Management System and the Permits must be assigned to and accepted by an entity approved by the SJRWMD.

(k) Use of Surface Water and Stormwater Management System. No structure of any kind shall be constructed from any Townhome Lot abutting the Surface Water and Stormwater Management System into the Surface Water and Stormwater Management System and no person other than Declarant or the Association shall draw any water from the Surface Water and Stormwater Management System for any purpose.

(l) Maintenance. The Association shall maintain all of the landscaping, sprinkler systems and grass areas originally installed on each Townhome Lot as part of the initial construction of a Dwelling Unit, including the portions of any Townhome Lot which abut the Surface Water and Stormwater Management System. A nonexclusive easement is hereby reserved in favor of Declarant, the Association and their designees for ingress, egress, and access to any portion of the Property in order to maintain the Surface Water and Stormwater Management System. All costs of maintenance of the Surface Water and Stormwater Management System shall be an Operating Expense, unless otherwise provided in this Townhome Declaration. Declarant or the Association shall have the right to enter into agreements with third parties to maintain the Surface Water and Stormwater Management System.

#### Section 9. Jurisdictional Areas.

(a) The Plat of the Property may depict certain wetland jurisdictional lines and/or environmental buffer zones and/or conservation easements as established by the SJRWMD. No

Member shall make any vegetative or topographic alterations to the land lying waterward of such jurisdictional lines and/or within environmental buffer zones and/or lying within any conservation easement without obtaining a permit from the applicable agency. Any Member violating this provision shall indemnify and hold Declarant, builder and the Association harmless from all fines, penalties, costs or damages arising out of such violation.

(b) Pursuant to the provisions of Section 704.06(1)(A-H)(1), Florida Statutes, restrictions are hereby placed on the Property that all construction, including clearing, dredging, or filling, except that which is specifically authorized by the SJRWMD or which may be authorized by a future SJRWMD permit, which is waterward of the jurisdictional wetland line and/or within environmental buffer zones as depicted on the plat(s) of the Property is prohibited. The foregoing restriction may be enforced by the SJRWMD. Notwithstanding any other provision, the restriction set forth in this subsection (b) may not be amended with the approval of the SJRWMD.

(c) In addition, in the event that the governmental agencies having jurisdiction over the Property require the granting of a conservation easement over the Property or any part thereof, the Owners of any land subject to the conservation easement shall abide by all restrictions contained therein.

(d) This Townhome Declaration is subject to the rights of the State of Florida and the United States over any portion of the Property which may be considered wetlands, marshes, sovereignty, or jurisdictional lands and Declarant has obtained certain permits to allow the development of the Property. The SJRWMD has issued the Permit for the development of Islander Townhomes. The construction period for works authorized by the Permit is finite, the Permit itself, with its limitations and prohibitions do not expire.

Notwithstanding any other provisions contained elsewhere in this Townhome Declaration, the SJRWMD shall have the rights and powers enumerated in this paragraph. The SJRWMD shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Townhome Declaration which relate to the maintenance, operation and repair of the Surface Water and Stormwater Management System and/or jurisdictional lands subject to the regulation of the SJRWMD. Any repair or reconstruction of the Surface Water and Stormwater Management System shall be as permitted, or if modified, as approved by the SJRWMD.

(e) Use of Stormwater Retention Ponds. With respect to the stormwater retention pond areas ("SRPs") now existing, or which may be hereafter created within the Property, no Member shall:

(1) pump or otherwise remove any water from such SRPs for the purpose of irrigation or other use;

(2) place rocks, stones, trash, garbage, untreated sewage, rubbish, debris, ashes, or other refuse in such SRPs or in any other portion of the land owned by Declarant lying adjacent to or near the Property;

(3) construct, place or maintain therein or thereon any docks, piers, bulkhead or other similar facilities, without the prior approval of any governmental or quasi-governmental agency having jurisdiction, and Declarant so long as there is a Class B membership, or thereafter subject to the prior approval of the Association;

(4) fish with the use of nets or with any other trap or spear; or

(5) operate or maintain thereon any gas or diesel driven vehicles; provided, however, boats used for the maintenance of SRPs shall be permitted.

(f) Maintenance of SRPs. Declarant, for so long as there is a Class B membership, shall have the sole and absolute right, but no obligation, to control the surface water level of the SRPs. The Association shall be responsible for the maintenance of the SRPs including, without limitation, the control of the growth and eradication of plants, fowl, reptiles, animals, fish and fungi in and on such SRPs. This Townhome Declaration cannot be terminated to extinguish the Association's obligation to maintain the SRPs unless adequate provisions for transferring this obligation to the then Owners of the Townhome Lots subject to the easement on a pro rata basis is made and said transfer of obligation is permitted under then existing requirements of the SJRWMD or its successors and any other governmental body that may have authority over such transfer of obligation. In connection with the platting and development of the Property, Declarant assumed certain obligations in connection with the maintenance of the water in the SRPs. The Declarant hereby assigns to the Association and the Association hereby agrees to assume all the obligations and responsibilities for maintenance of the SRPs by Declarant under the Plat. The Association further agrees that subsequent to the termination of the Class B membership, it shall indemnify and hold Declarant harmless from 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 occurrence in, upon, at or from the maintenance of the SRPs, occasioned wholly or in part by any action or omission of the Association or its agents, contractors, employees, servants or licensees.

## ARTICLE V

### Grant and Reservation of Easements

Section 1. Easement of Enjoyment. Each Member and each tenant, agent or invitee of Members shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title of the Townhome Lot, subject to this Townhome Declaration, including the following:

(a) The right and duty of the Association to levy Assessments against each Townhome Lot and Condominium Unit for the purpose of maintaining the Common Areas and facilities as provided in this Townhome Declaration;

(b) The right of Declarant, and of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and in aid thereof, to mortgage the Common Areas. In the event of a default upon such mortgage, the lender's rights thereunder shall be limited by the rights of the Members as described therein;

(c) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

(d) The right of the Association to adopt and enforce rules and regulations governing the use of the Common Areas and all facilities at any time situated thereon;

(e) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes. Prior to the termination of the Class B membership, such dedication or transfer may be effected by Islander without further consent from the Members or their mortgagees. Subsequent to the termination of the Class B membership, no such dedication or transfer shall be effective until agreed to by a vote of two-thirds (2/3) of the votes of the Members and unless an instrument has been recorded, signed and sworn to by the Secretary of the Association stating that such a vote was duly held and that two-thirds (2/3) of the votes of all Members favored such dedication or transfer. Provided, however, the granting of an easement, license or permit over the Common Areas by the Association shall not be deemed to be a dedication or transfer of the Common Area requiring approval as provided herein but may be granted by the Association without further consent of the Members or their mortgages;

(f) The right of Declarant and the Association to grant and reserve easements and rights-of-way in, through, under, over and across the Property for the installation, maintenance, and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television and other utilities, and the right of Declarant to grant and reserve easements and rights-of-way in, through, under, over, upon and across the Property for the completion of the Development; and

(g) The rights of Members, Owners and their respective tenants to use the facilities on the Common Areas.

Section 2. Access Easements. Declarant does hereby establish and create for the benefit of the Association and for the benefit of any and all Members, their tenants, invitees and Institutional Mortgagees and does hereby give, grant and convey to each of the aforementioned, the following easements, licenses, rights and privileges:

(a) Right-of-way for ingress and egress by vehicles or on foot, as practicable, in, through, over, under and across the streets, roads, and walks within Common Areas (as they may be built or relocated in the future) for all purposes.

(b) Right-of-way for ingress and egress for pedestrian traffic and for access, as necessary, over, under, and across the Access Areas for each Townhome Lot. This easement shall not be construed to permit the operation of any type of motorized vehicle on any portion of the Access Areas of a Townhome Lot, except as may be required or permitted by other easements providing for maintenance, construction or access by emergency vehicles.

Section 3. Public Easements. Fire, police, health, sanitation, and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Property as needed.

Section 4. Easement for Encroachments on Townhome Lots or Common Areas.

(a) If any portion of any roadway, walkway, fence, gate, parking area, roof drainage system, roof, trellis, water lines, sewer lines, utility lines, sprinkler system or any other structure as originally constructed by Declarant or its designee, successor or assign encroaches on any Townhome Lot, Condominium Unit, or Common Area, it shall be deemed that the Owner of such Townhome Lot, Condominium Unit, or Common Area has granted a perpetual easement to the Owner of the adjoining Townhome Lot or Common Area or the Association as the case may be, for continuing maintenance and

use of such encroaching roadway, walkway, fences, gates, parking area, roof drainage system, roof, trellis, water line, sewer line, utility line, sprinkler system or other structure originally constructed by Declarant. The foregoing shall also apply to any replacement of any such roadway, walkway, fence, gate, parking area, roof drainage system, roof, trellis, water lines, sewer lines, utility lines, sprinkler system or other structure, if same are constructed in substantial conformance to the original. Other encroachments may hereafter be maintained as provided in a Supplemental Declaration. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of this Townhome Declaration.

(b) There shall be an easement for encroachment in favor of the Association and all Townhome Townhome Lot Owners in the event any Dwelling Unit now or hereafter encroaches upon any other Dwelling Unit as a result of minor inaccuracies in survey, construction or reconstruction or due to settlement or movement. The encroaching improvements shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching improvement in favor of the Dwelling Unit Owners, their designees, mortgagees and the Association. If any portion of any Townhome Lot encroaches upon the Access Areas and Common Areas as a result of the construction, reconstruction, repair, shifting settlement or moving of any portion of the Property, a valid easement for the encroachment and for the maintenance of same shall exist so long as the encroachment exists.

Section 5. Easement for Maintenance by Association. Declarant hereby grants to the Association, its employees, subcontractors, agents and designees, a non-exclusive, perpetual easement over, through, across and under each Townhome Lot to permit the Association, its employees, subcontractors, agents or designees to maintain and replace, as necessary, those portions of the Townhome Lot required to be maintained, replaced and repaired by the Association, as provided in this Townhome Declaration.

Section 6. Easement for Sprinkler System. Declarant hereby reserves to itself and grants to the Association, its employees, subcontractors, agents and designees, a non-exclusive, perpetual easement over, through, across and under each Townhome Lot for the installation, maintenance, operation, repair and replacement of sprinkler system lines and sprinkler heads, which lines and heads are hereby deemed to be the property of the Association; provided, however, no lines shall be located under a Dwelling Unit on a Townhome Lot. Should a sprinkler line(s) or sprinkler head(s) be required to be maintained, repaired or replaced as a result of the negligence by an Owner, his family, servants, guests or invitees, the applicable Owner shall be responsible for the costs thereof, and the Association shall have the right to levy an assessment against the Owner of said Townhome Lot for same, which assessment shall have the same force and effect as all other special assessments.

Section 7. Utility Easement. Declarant hereby grants to the Owner of each Townhome Lot and Condominium Unit a non-exclusive perpetual easement on, over, under and across the Common Areas and all other Townhome Lots for the installation, maintenance, operation, repair and replacement of utility lines, including water and sanitary sewer lateral pipes servicing the Townhome Lot or Condominium Unit, together with wires, pipes, conduits, cable television lines, telephone lines and equipment and drainage lines.

Section 8. Conservation Easements. Those portions of the Plat designated as Conservation Easements or Buffers have been established to preserve existing wetlands on the Property. The

Conservation Easements are not intended to be used except as a passive, visual amenity and only in strict compliance with all applicable state and local laws and regulations. The Conservation Easements and Buffer Zones shall be maintained by the Association as part of the Common Areas, regardless of whether any portion of a Conservation Easement is located on a Townhome Lot or Common Area.

Section 9. Landscape Buffers. Any portion of the Plat designated as "Landscape Buffers" are dedicated to and will be conveyed to the Association, including signs, lighting, and landscaping located within the Landscape Buffers and the Association shall be solely responsible for the maintenance of such improvements and landscaping. The cost of this maintenance shall be assessed by the Association as part of the Common Expenses.

Section 10. Reservation of Easements by Declarant.

(a) Easements for Development and Sales. So long as Declarant or Islander owns any Townhome Lot:

(1) Declarant and Islander reserve the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the Property, including all Townhome Lots, for the purpose of constructing adjacent properties and completing the work in developing and providing for the development of the Property; and, toward this end, reserve the right to grant and reserve easements and rights-of-way, through, under, over and across the Property, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, electric and other utilities and for any other materials or services necessary for the completion of such work.

(2) Declarant and Islander also reserve the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers, and drainage lines which may from time to time be in or along the streets and roads of other areas of the Common Areas.

(3) Declarant and Islander also reserve the right for themselves, their designees, successors and assigns, to continue to use the Property, and any roadways, sales offices, model homes, signs and parking spaces located on the Property, in its efforts to market or develop Dwelling Units, Condominium Units, or Townhome Lots in the Development.

(b) Utility Easements. A perpetual, nonexclusive alienable and releasable easement is hereby reserved to Declarant, Islander, and their successors and assigns, over, under and above a ten foot (10') strip at the rear of each Townhome Lot and also over, under and above those easements shown on the recorded Plat of the Property for the construction, installation and maintenance of drainage ditches and facilities, power, telephone, lighting, heating, gas, water, electric, sanitary and storm sewer facilities and other public or private utility installations of every kind. However, said Townhome Lot line easements shall not extend into the Conservation Easement areas on Townhome Lots which are adjacent and contiguous to a Conservation Easement. Said rear utility easement shall be located adjacent to and landward of the Conservation Easement area. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The Owner of any Townhome Lot or Townhome Lots subject to such easements shall

acquire no right, title or interest in or to any pipes, wires, poles, equipment or other appliances placed on, over or under said easement areas. The Owner of any Townhome Lot or Townhome Lots subject to such easements shall remove any structures, planting, trees or shrubbery in said easement areas upon demand of Declarant, and its successors and assigns, where such structures, planting, trees or shrubbery interfere with the use of the said easement for the purposes for which the same have been reserved. The easements and rights hereinabove granted and reserved to Declarant, and its successors and assigns, shall not pass from Declarant, and its successors and assigns, by deed conveying any of said Townhome Lots but shall exist and continue in Declarant, and its successors and assigns, only or in those persons or corporations to whom Declarant, and its successors and assigns, shall have expressly conveyed said easements and rights. The Declarant shall have the right to grant subordinate easements to utility companies, governmental bodies and others within such easement area for the purpose of carrying out or facilitating such construction, installation and maintenance.

(c) Amendment. This Section 10 may not be amended without the prior written consent of Declarant and Islander.

Section 11. Surface Water/Stormwater Management System Maintenance Easement. An easement for maintenance of the Surface Water/Stormwater Management System shall exist as provided for in Article IV, Section 7 and 8 of this Townhome Declaration.

COPY

ARTICLE VIMaintenance

Section 1. Maintenance of Common Areas. The Association shall at all times maintain in good repair, operate, manage, insure and replace as often as necessary, any and all improvements situated on the Common Areas, including, but not limited to, any courtyards, fences, gates, recreational facilities, lawns, landscaping, sprinkler systems, paving, drainage structures, lakes, street lighting fixtures and appurtenances, sidewalks and other structures, and utilities, all of such work to be done as ordered by the Board of Directors of the Association acting on a majority vote of the Board Members. The cost of Common Area maintenance shall be a Common Expense.

Section 2. Townhome Lot Maintenance.(a) Association.

(1) The Association, through action of its Board of Directors, shall provide exterior maintenance at its expense upon Townhome Maintenance Areas as follows: paint, repair, replace and care for roofs, gutters, downspouts, and exterior building surfaces, including window and door trim (but not replacement or repair of windows and exterior doors) all as originally installed by Declarant. The Association shall be responsible for the painting or staining the exterior of any front door and garage door as required but shall not be responsible for the maintenance of any hardware or mechanical component of any garage door or any garage door opener, such maintenance being the responsibility of the Townhome Lot Owner. The cost of maintenance described in this subsection shall be a Townhome Operating Expense.

(2) In addition to the exterior maintenance referred to in the preceding sentence, the Association shall be obligated to maintain in good repair and replace as necessary that part of the fences, gates, drainage structures, landscaping, trees, shrubs, grass, and sprinkler systems situated on each Townhome Lot, all as originally installed by Declarant. The Association shall not maintain any additional or replacement landscaping or grass installed by any Townhome Lot Owner, nor will it maintain any deck or patio area of a Dwelling Unit or plantings thereon, which will specifically be the responsibility of the Townhome Lot Owner to maintain. The Association shall be responsible for irrigating and the irrigation system for the grassed area and landscaping on the Townhome Lot, excluding (i) the back yard of any Townhome Lot, and (ii) any grass and landscaping NOT originally installed by Declarant. The time and frequency of watering shall be determined by the Association subject to applicable rules of the SJRWMD. The cost of sprinkling as well as the maintenance and repair of the sprinkling system shall be an Operating Expense. The cost and expense of repair, maintenance and replacement of any part of the sprinkler system damaged by a Townhome Lot Owner, his family, lessees, guests, servants or invitees, may be assessed against said Townhome Lot. The cost of maintenance and irrigation described in this subsection shall be a Townhome Operating Expense.

(3) The Association shall contract for garbage removal, unless provided by the City of St. Augustine or the County of St. Johns. The Townhome Lot Owner shall comply with the regulations promulgated in such regard. The cost and expense of garbage removal shall be a Common

Operating Expense, unless such garbage removal is provided by the City of St. Augustine or the County of St. Johns.

(4) The Association shall not maintain any other portion of the Townhome Lot and improvements thereon.

(5) Maintenance of the Surface Water/Stormwater Management System shall be as provided in Article IV, Section 7 and 8 of this Townhome Declaration and shall be a Common Operating Expense.

(b) Townhome Lot Owner. The Townhome Lot Owner is responsible to maintain and repair everything on the Townhome Lot, including, but not limited to, the Dwelling Unit, back yard of the Townhome Lot, and any other improvements, except for items which the Association is required to maintain, as specifically provided in the paragraph above. Provided, however, Townhome Lot Owners shall be responsible for the maintenance, repair and replacement, if applicable, of water and sanitary sewer lateral pipes servicing their Dwelling Units, which laterals extend from the applicable water and sewer main to the Dwelling Units, notwithstanding that a portion of such lateral may be located within the Common Area. The Townhome Lot Owner is responsible to maintain, repair and replace the air-conditioning and heating system and appurtenances thereto, servicing the Dwelling Unit and improvements located on his Townhome Lot and any other portion of the air-conditioning and heating system or appurtenances thereto servicing his Dwelling Unit which may be located on the Common Area. The Townhome Lot Owner shall also maintain all screening, glass, and all doors, windows or other openings in the exterior of the Dwelling Unit, except for any periodic painting or staining required. The Townhome Lot Owner shall be responsible for damage to the Dwelling Unit and its contents caused by water intrusion into the Dwelling Unit unless such intrusion is caused solely by the negligence of the Association in failing to maintain the roof of the Townhome.

Section 3. Assessments. All maintenance performed by the Association pursuant to Sections 1 and 2 (a) above shall be paid for by the Association as Common Operating Expenses or Townhome Operating Expenses, as applicable, through Assessments imposed by the Board of Directors in accordance with Article VII. Assessments for Common Operating Expenses shall be against all Townhome Lots and Condominium Units equally. Assessments for Townhome Operating Expenses shall be against all Townhome Lots equally. No Member may waive or otherwise escape liability for the Assessments for such maintenance by non-use of the Common Areas or abandonment of his right to use the Common Areas. Assessments for Common Operating Expenses shall include payment for insurance and taxes on the Common Areas. The cost and expense of the Association-provided maintenance shall be funded by an Association Assessment against all Owners and shall be paid by the Association notwithstanding that title to the Common Area may be vested in Declarant or Islander.

Section 4. Disrepair of Dwelling Units and Townhome Lots. If the Owner of any Townhome Lot shall fail to maintain his Townhome Lot, and the improvements situated thereon, as required by any provision of this Townhome Declaration, in a manner reasonably satisfactory to the Board of Directors of the Association or any committee established by such Board, except for such areas as the Association is required to maintain, upon direction of the Board of Directors, the Association shall have the right, through its agents and employees, to enter upon the Townhome Lot to maintain and restore the improvements erected on such Townhome Lot. The cost of any maintenance supplied by the

Association pursuant to this Section shall be added to and become part of the Assessment to which such Townhome Lot is subject.

Section 5. Access at Reasonable Hours. For the purpose solely of performing the maintenance required by this Article, the Association, through its duly authorized agents and employees, shall have the right, without notice, to enter upon any Owner's Townhome Lot at reasonable hours on any day except Sunday and legal holidays.

Section 6. Negligence of Owner. Should any portion of a Dwelling Unit which the Association is required to maintain pursuant to this Article be required to be maintained, repaired or replaced as a result of the negligence of the Owner, his family, lessee, guests, servants or invitees, the applicable Owner shall be responsible for the cost thereof and the Association shall have the right to levy an assessment against the Owner of said Townhome Lot for same, which assessment shall have the same force and effect as all other assessments.

Section 7. Management. The Association, through the action of its Board of Directors, shall have the right to employ a manager or management firm which employment may either be on the basis of an employee of the Association or as an independent contractor.

## ARTICLE VII

### Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of the Assessments. Each Owner of any Townhome Lot, and each owner of a Condominium Unit, by acceptance of a deed or instrument of conveyance, whether or not it shall be so expressed in such deed or other instrument of conveyance, including any purchaser at a judicial sale, or by the acquisition of title in any other manner, or by joining in this Townhome Declaration, shall be deemed to covenant and agree to pay to the Association annual assessments or charges for the maintenance of the Townhome Lots and Common Areas as provided in this Townhome Declaration, including such reasonable reserves as the Association may deem necessary, special assessments as provided in this Article, and assessments for maintenance as provided herein. Assessments for Common Operating Expenses and Townhome Operating Expenses shall be fixed, established and collected from time to time as herein provided. The annual, special and other assessments, together with such interest and costs of collection as hereinafter provided, shall, upon the recordation of a claim of lien, 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 and costs of collection, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment became due. All Assessments by the Association for Common Operating Expenses shall be assessed against all platted Townhome Lots and Condominium Units equally, and all Assessments by the Association for Townhome Operating Expenses shall be assessed against all platted Townhome Lots equally. No Member may waive or otherwise escape liability for the Assessments provided herein by non-use or abandonment. Furthermore, the obligation of the Association and the Owners for Assessments and the obligation for maintenance shall commence upon conveyance of the Townhome Lot, and the obligation of the owners of Condominium Units for Assessments shall commence upon the recordation of this Townhome Declaration.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners in Islander Townhomes and Members of the Association and, in particular, for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the appropriate portion of the Common Areas and of the Townhome Lots situated upon the Property, including, without limiting the foregoing, the payment of taxes (if any), insurance, repair, replacement, maintenance, additions, and the cost of labor, equipment, materials, utilities, services, management and supervision, as well as any other costs set forth in this Townhome Declaration for which the Association is responsible.

Section 3. Commencement of Payment.

(a) The Association's Board of Directors shall, from time to time, but at least annually, fix and determine a budget representing the sum or sums necessary and adequate for the continued operation of the Association. The Board shall determine the total amount of Common Operating Expenses and Townhome Operating Expenses, including the operational items such as insurance, repairs, replacements, reserves, maintenance and other expenses, as well as charges to cover any deficits from prior years and capital improvements and reserves approved by the Board. The total annual assessments and any supplemental assessments shall be shared by all Townhome Lots based upon the formula and terms and provisions set forth herein and in the Articles and Bylaws.

(b) Each Townhome Lot shall commence paying its share of the Association assessments representing Townhome Operating Expenses commencing with the day title of the Townhome Lot is conveyed by deed from Declarant to the first grantee thereof; provided, however, a conveyance by Declarant to a related or affiliated entity or subsidiary shall not be deemed a conveyance to the first grantee. Subject to the provisions of Section 4 immediately below (which provisions are only applicable during any guarantee period or any extension thereof), the assessment for Townhome Operating Expenses for each Townhome Lot shall be the total anticipated Townhome Operating Expenses reflected by the budget, other than those Townhome Operating Expenses which are properly the subject of a special assessment, multiplied by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of all Townhome Lots which have been conveyed by Declarant as of the date the budget was adopted. The total number of Townhome Lots responsible for payment of Operating Expenses will be adjusted from time to time in accordance with this Townhome Declaration. All questions regarding the number of Townhome Lots subject to assessments shall be determined by the Association.

(c) Each Member shall commence paying its share of the Association assessments representing Common Operating Expenses commencing with:

(1.) In the case of the Owner of a Townhome Lot, the day title of the Townhome Lot is conveyed by deed from Declarant to the first grantee thereof; provided, however, a conveyance by Declarant to a related or affiliated entity or subsidiary shall not be deemed a conveyance to the first grantee; and

(2.) In the case of the owner of a Condominium Unit, the day this Townhome Declaration is recorded in the public records.

(d) Subject to the provisions of Section 4 immediately below (which provisions are only applicable during any guarantee period or any extension thereof), the assessment for Common Operating Expenses for each Member shall be the total anticipated Common Operating Expenses reflected by the budget, other than those Common Operating Expenses which are properly the subject of a special assessment, multiplied by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of all platted Townhome Lots plus the total number of Condominium Units. All questions regarding the number of Townhome Lots subject to assessments shall be determined by the Association.

(e) Additionally, each Owner of a Townhome Lot shall pay a one-time initial fee of \$400.00, due on the day title of the Townhome Lot is conveyed by Deed, whether such conveyance is the first conveyance or a subsequent conveyance; however, a conveyance by Declarant to a related or affiliated entity or subsidiary shall not be deemed a conveyance for this purpose. These funds may be used for purchases of amenities or for improvements to or replacements of amenities, or such other similar purposes as may be determined by the Association.

Section 4. Declarant Assessment Guarantee. As provided in Section 720.308, Florida Statutes, during the period that Declarant is in control of the Association (that is, prior to Transition as provided in Section 720.307, Florida Statutes), Declarant may either (a) pay the amount of Operating Expenses of the Association incurred during that period and not produced by Assessments receivable from other Lot Owners in the amount as specified in the operating budget of the Association or (b) pay Assessments on the aggregate Townhome Lots owned by Declarant and Islander.

Section 5. Due Dates; Duties of the Board of Directors. All Assessments shall be payable annually in advance or on such other basis as is ordered by the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the Assessment against each Townhome Lot and Member and shall prepare a roster of the Townhome Lots and Assessments applicable, which shall be kept in the office of the Association and shall be open to inspection by any Member. Upon the written request of a Member or his Institutional Mortgagee, the Board shall promptly furnish such Member or his Institutional Mortgagee with a written statement of the unpaid charges due from such Member.

Section 6. Effect of Non-Payment of Assessment; The Personal Obligation of the Member; The Lien; Remedies of the Association. If an Assessment is not paid within thirty (30) days after the due date, then at the option of the Board, such Assessment, together with the balance of the annual Assessment established by the Board, shall become delinquent and shall, together with such interest thereon, late charges and the cost of collection thereof, including reasonable attorneys' fees and court costs, thereupon become a continuing lien on the Member's Townhome Lot or Condominium Unit which shall bind such property in the hands of the Member, his heirs, devisees, personal representatives and assigns. Such lien shall be prior to all other liens except: (a) tax or assessment liens of the taxing division of any governmental authority, including, but not limited to, state, county and school district taxing agencies; and (b) all sums unpaid on any bona fide first mortgage held by an Institutional Mortgagee of record encumbering the Dwelling Unit. A late charge of up to \$25.00 may be assessed by the Board and the Association through its Board. The Board may bring an action at law against the Member or former Member personally obligated to pay the same or it may bring an action to foreclose the lien against the property. There shall be added to the amount of such Assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such

judgment shall include interest on the Assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the cost of the action and the aforesaid late charge.

Section 7. Selling, Leasing and Gifts of Townhome Lots, Etc.

(a) No Member shall convey, mortgage, pledge, hypothecate, sell or lease his Townhome Lot and the Dwelling Unit thereon or Condominium Unit unless and until all unpaid Assessments assessed against such Townhome Lot or Condominium Unit shall have been paid as directed by the Board of Directors; such unpaid Assessments, however, may be paid out of the proceeds from the sale of the Townhome Lot or Condominium Unit or by the purchaser of such Townhome Lot or Condominium Unit. If all unpaid Assessments are not paid out of the proceeds of sale, the successor Member will be deemed to have agreed to pay the same.

(b) Upon the written request of a Member or his Institutional Mortgagee, the Board or its designee shall furnish a written statement of the unpaid charges due from such Member which shall be conclusive evidence of the payment of amounts assessed prior to the date of the statement but unlisted thereon. A reasonable charge may be made by the Board for issuance of such statements.

(c) The provisions of this section shall continue to apply in the event of the acquisition of a Townhome Lot or Condominium Unit by an Institutional Mortgagee who shall acquire title to such by foreclosure or by deed in lieu of foreclosure, subject to the provisions of Section 720.3085(2)(a), Florida Statutes (2009). In such event the unpaid Assessments against the Townhome Lot or Condominium Unit which were assessed for Operating Expenses and became due prior to the acquisition of title by such Institutional Mortgagee shall not be deemed waived by the Association. Additionally, such provisions shall also apply to any Assessments which are assessed and become due after the acquisition of title by the Institutional Mortgagee and to any purchaser from such Institutional Mortgagee.

(d) Whenever the term Townhome Lot or Condominium Unit is referred to in this section, it shall include the Member's interest in the Association and the Member's interest in any property acquired by the Association. Any Member may convey or transfer his Townhome Lot or Condominium Unit by gift during his lifetime or devise the same by will or pass the same by intestacy.

(e) The provisions of this section shall not apply to Declarant. This section may not be amended without the prior written consent of Declarant.

Section 8. Subordination of Lien. The lien for Assessments provided for in this Article shall be superior to all other liens, except tax liens, mortgage liens in favor of Institutional Mortgagees, and mortgage liens in favor of mortgagees under mortgages now existing or hereafter granted by Declarant, as mortgagor.

Section 9. Exterior Maintenance Assessment. The Association, through action of its Board of Directors, shall provide exterior maintenance upon each Townhome Lot as provided in Article VI. The cost of the exterior maintenance referred to in Article VI shall be a Townhome Operating Expense.

Section 10. Capital Improvements. Funds necessary for capital improvements, emergencies or non-recurring expenses may be levied by such Association as special assessments, upon approval of a majority of the Board of Directors.

Section 11. Certificate of Assessment. The Association shall upon demand at any time furnish to any Member liable for an Assessment a certificate in writing signed by an officer of the Association, setting forth whether such Assessment has been paid as to any particular Townhome Lot or Condominium Unit. Such certificate shall be conclusive evidence of payment of any Assessment to the Association therein stated to have been paid.

## ARTICLE VIII

### Common Structural Elements

Section 1. Definition. Each Building contains or shall contain certain elements, features or parts which are structural elements of the Building or of more than one Dwelling Unit (such elements, features, or parts being hereinafter referred to as "Common Structural Elements"). The Common Structural Elements of each Building shall include the following:

(a) Party Walls. All division walls between two (2) Townhomes beginning at the unfinished surface of each side of such wall (hereinafter referred to as "Party Walls") located upon a Property Line between two (2) Townhomes, provided that the mere fact such a division wall between two (2) Townhomes is found not to be on a Property Line shall not preclude such division wall from being a Party Wall.

(b) Roofing. The entire roof of the Building, any and all roof support structures, and any and all appurtenances to such roof and roof support structures, including, without limitation, the roof covering, roof trim and roof drainage fixtures, all of which are collectively referred to herein as the "Roofing." Should the Roofing or part thereof extend beyond the Townhomes, same shall not be deemed to violate the provisions of this Townhome Declaration and such easements as may be necessary to accommodate and permit the Roofing as same shall be constructed or hereby imposed.

(c) Foundation. The entire concrete floor slab or wood floor system if used in lieu thereof and all foundational and support structures and appurtenances thereto, all of which are collectively referred to as the "Foundation." Should the Foundation or part thereof extend beyond the Townhomes, same shall not be deemed to violate the provisions of this Townhome Declaration and such easements as may be necessary to accommodate and permit the Foundation as same shall be constructed or thereby imposed.

Section 2. General. Each Owner shall own that portion of the Party Wall which stands on his own Townhome Lot. To the extent not inconsistent with the provisions of this Article, the general rule of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to each Party Wall (or party fence, if applicable) which is built by Declarant as part of the original construction of the Dwelling Units upon the Townhome Lots and any replacement thereof.

Notwithstanding the foregoing, if any portion of any structure, as originally constructed by Declarant or its designee, including any Party Wall or fence, shall protrude over two (2) adjoining Townhome Lots, it shall be deemed that said Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection, Party Wall or fence and each such Owner shall own that portion of the Party Wall from its centerline to the unfinished surface forming the wall of his Dwelling Unit. The foregoing shall also apply to any replacements of any

structures, Party Walls or fences, if same are constructed in conformance with the original structure, Party Wall or fence. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

Section 3. Sharing Maintenance or Repair. The costs of reasonable repair and maintenance of Common Structural Elements shall be shared equally by the Owners who make use of the wall in proportion to such use, except as otherwise provided herein. Such costs shall not be an Operating Expense.

Section 4. Destruction by Fire or Other Casualty. In the event of damage or destruction of Common Structural Elements from any cause whatsoever, other than the negligence or willful misconduct of either Owner thereto, the Owners shall, at their joint expense, repair or rebuild said Common Structural Elements in accordance with the requirements of Article XI of this Townhome Declaration, and each Owner, his successors and assigns, shall have the right to full use as herein contained of said Common Structural Elements so repaired or rebuilt. If damage or destruction is a result of one Owner's negligence or willful misconduct, that party shall be responsible for the total repair and replacement in a timely fashion. If either Owner fails to pay his share of repair or replacement, as aforesaid, then the other Owner shall have such Common Structural Elements repaired or reconstructed and shall be entitled to file in the Public Records of the County a claim of lien on the premises of the Owner failing to pay for the amount of such defaulting Owner's share of the repair or replacement costs. Owner shall have the right to foreclose said claim of lien in accordance with the same procedural requirements as now provided for in Florida Statutes for foreclosure of a mortgage; provided, however, said claim of lien shall be filed within ninety (90) days from date repairs or replacements were made to the Party Wall, and suit thereon shall be commenced one (1) year from date such lien is filed. If either or both Owners shall give or shall have given a mortgage or mortgages upon his property to an Institutional Mortgagee, then such Institutional Mortgagee shall have the full right, at its option, to exercise the rights of its mortgagor as an Owner hereunder and, in addition, the right to add to the outstanding balance of such mortgage any amounts paid by the Institutional Mortgagee for repairs hereunder and not reimbursed to said Institutional Mortgagee by the Owners.

Section 5. Easement for Repairs. If repairs or reconstruction to the Common Structural Elements shall be necessary, all necessary entries on or into the adjacent Dwelling Unit upon the Adjacent Townhome Lot shall not be deemed a trespass so long as the repairs and reconstruction shall be done in a timely and workmanlike manner. Consent is hereby given to enter on or into adjacent Dwelling Units to effect necessary repairs and reconstruction.

Section 6. 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 7. Weather Proofing. Notwithstanding other provisions of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary repair and protection against such elements.

Section 8. Arbitration. In the event of any dispute arising concerning Common Structural Elements, or under the provisions of this Article, each party shall choose one arbiter, and such arbiters

shall choose one additional arbiter, and the decision of a majority of all of the arbiters shall be final and conclusive of the questions involved.

Section 9. Alterations. The Owner of a Dwelling Unit sharing a Party Wall with an adjoining Dwelling Unit shall not cut windows or other openings in the Party Wall, nor make any alterations, additions or structural changes in the Party Wall.

Section 10. Structural Cross Easements. Cross easements of support and use over, upon, across, under, through and into the Common Structural Elements shall exist in favor of the Association, the Owners or their designees for the continued use, benefit and enjoyment and continued support, service, maintenance, repair and design of all Dwelling Units and Common Structural Elements within any of the Buildings.

## ARTICLE IX

### Insurance

#### Section 1. Common Areas.

(a) General Liability. The Association, by action of its Board of Directors, shall maintain public liability insurance, to the extent obtainable, covering the Association and each Association Member, lessee and occupant, and the managing agent, if any, against liability for any negligent act of commission or omission attributable to them which occurs on or in the Common Areas.

(b) Additional Insurance. To the extent obtainable, the Board of Directors shall also be required to obtain the following insurance:

(1) Vandalism and malicious mischief endorsements, insuring the Common Areas; and,

(2) Worker's compensation insurance, if required by law; and,

(3) Directors' and Officers' liability insurance, fidelity insurance and other insurance it may deem proper to protect the Association, its Members and property.

(c) Common Area Casualty Insurance. All casualty insurance policies purchased by the Association hereunder shall be for the benefit of the Association and all Owners and their mortgagees as their interests may appear and shall provide that all proceeds covering casualty losses of \$10,000.00 or less shall be paid to the Association. Any sum in excess of \$10,000.00 shall be paid either to the Association or to an insurance trustee as the Association shall determine at the time. An "Insurance Trustee" shall be any bank or trust company or other corporate trustee authorized for and doing business in Florida, as designated by the Board of Directors of the Association. The duty of the Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust pursuant to the terms of the Insurance trust agreement to be executed by the Association and the Insurance Trustee, which shall not be inconsistent with any of the provisions herein set forth.

(d) Payment of Premiums. The Board of Directors shall collect and pay the premiums for insurance as a part of the Common Operating Expenses. Expenses of any Insurance

Trustee appointed shall be paid by means of special assessment by the Board. Under no circumstances shall the Condominium Unit Owners be required to pay any part of the cost of the premium for insuring Buildings, Townhome Maintenance Areas or any other structure or improvement located on any Townhome Lot.

(e) Mandatory Repair. Unless there occurs substantial damage or destruction to all or a substantial part of Common Area facilities, the Association and the Members shall use insurance proceeds to repair, replace and rebuild the damage caused by casualty loss. Related costs and expenses not covered by insurance shall be borne by the Members in a fair and equal manner.

(f) Association as Agent. The Association is hereby irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association, and to execute releases thereof.

Section 2. Townhome Dwelling Units, Townhome Lots.

(a) Owner's Insurance Coverage. Each Owner shall be required to obtain and maintain adequate insurance on his Dwelling Unit which shall insure the property for its full replacement value, with no deductions for depreciation, against loss by fire, storm or other hazards or casualty. Such insurance shall name the Association an additional insured and shall be sufficient to cover the full replacement value, or to cover necessary repair or reconstruction work. Such insurance shall be written in the manner acceptable to the Board of Directors of the Association and shall contain a clause which provides ten (10) days prior written notice to the Board of Directors of the Association before the policy can be cancelled. Each Owner shall be required on an annual basis, within thirty (30) days prior to the expiration of its existing insurance coverage, to supply the Board of Directors with evidence of renewal of the insurance coverage on his Dwelling Unit which complies with the provisions of this Section. Each Owner shall also be responsible for the purchasing of liability insurance for accidents occurring on his or her Townhome Lot.

(1) Action by Board. If the insurance provided under this Section has not otherwise been adequately obtained by each Owner, as determined by the Board of Directors, then the Board shall endeavor to obtain such insurance coverage. Insurance obtained by the Board of Directors shall be written in the name of the Association, as Trustee, for the benefit of the applicable Dwelling Unit Owner.

(2) Payment of Premium. Premiums for insurance obtained by the Board of Directors for the benefit of an individual Owner, as provided hereinabove, shall not be an Operating Expense, but shall be an individual assessment (special assessment) payable in accordance with the provisions of Article VII of this Townhome Declaration.

(3) Repair or Replacement of Damaged or Destroyed Property. Each Owner shall be required to reconstruct or repair any Dwelling Unit destroyed by fire or other casualty, covered by insurance written in the name of the Association as Trustee. The insurance proceeds shall be deposited in a bank or other financial institution, subject to withdrawal only by the signature(s) of an agent(s) duly authorized by the Board of Directors. If no repair or rebuilding has been contracted for or otherwise substantially started by the Owner within thirty (30) days of the receipt of the insurance

proceeds, the Board of Directors shall itself initiate the repair or rebuilding of the damaged or destroyed portions of the structure and/or exterior of the Dwelling Unit pursuant to Section 2(b) hereinbelow.

(b) Association Action. Notwithstanding the provisions of the above subsection (a) of this Section 2, the following provisions shall also apply to Dwelling Units which have Common Structural Elements:

(1) Association Approval. The insurance referred to in subsection (a) of this Section shall be written in a manner acceptable to the Association. The Association shall carry out the functions set forth hereafter.

(2) Insurance Trustee. Each policy shall contain a loss payment provision which provides that the proceeds of any loss shall be payable to the Association who shall hold such funds in trust to insure that repairs are made as hereinafter set forth. Each policy shall also contain a clause that it is non-cancelable without ten (10) days prior written notice to the Association. Each Owner shall be required to supply the Association with evidence of insurance coverage on his Dwelling Unit which complies with the provisions of this Section.

(3) Action by Board. If the insurance provided under this Section has not otherwise been adequately obtained by each Owner, as determined by the Board of the Directors of the Association, then the Board of Directors of the Association shall endeavor to obtain such insurance coverage. The purpose of such insurance will be to protect, preserve and provide for the continued maintenance and support of separately owned Dwelling Units which shall include Common Structural Elements. Insurance obtained by the Board of Directors of the Association shall be written in the name of the Association, as Trustee, for the benefit of the applicable Owner.

(4) Payment of Premiums. Premiums for insurance obtained by the Board of Directors for the benefit of an individual Owner, as provided hereinabove, shall not be a part of the Operating Expenses, but shall be an individual assessment (special assessment) payable in accordance with the provisions of Article VII of this Townhome Declaration.

(5) Repair or Replacement of Damaged or Destroyed Property. Each Owner shall, with the concurrence of the Owner's Institutional Mortgagee, if any, and the Board of Directors of the Association, be required to reconstruct or repair any Dwelling Unit destroyed by fire, storm or other casualty in accordance with the requirements of Article XI of this Townhome Declaration. Insurance proceeds issued for such repair shall be in the name of the Association, as Trustee. The insurance proceeds shall be deposited in a bank or other financial institution, subject to withdrawal only by the signature(s) of an agent(s) duly authorized by Board of Directors of the Association. If no repair or rebuilding has been contracted for or otherwise substantially started by the Owner within thirty (30) days after the Association receives the insurance proceeds, the Board of Directors of the Association is hereby irrevocably authorized by such Owner to initiate the repair or rebuilding of the damaged or destroyed portions of the structure and/or exterior of the Dwelling Unit. Repairs should be done in a good and workmanlike manner in conformance with the original plans and specifications. The Board of Directors of the Association may advertise for sealed bids from any licensed contractors and may then negotiate with said contractors. The contract or contractors selected to perform the work shall provide full performance and payment bonds for such repair or rebuilding, unless such requirement is waived by the Board of Directors of the Association. If the insurance proceeds are insufficient to fully pay the

costs of repairing and/or rebuilding the damaged or destroyed portions in a good and workmanlike manner, the Board of Directors of the Association shall levy a special assessment against the Owner in whatever amount is required to make up the deficiency. If the insurance proceeds exceed the cost of repairing and/or rebuilding, such excess shall be paid over to the respective Owner and/or the Owner's mortgagee in such portions as shall be independently determined by those parties.

(c) Administrative Fee. Should the Association obtain the insurance coverage on a Dwelling Unit pursuant to this Article, then the Association may charge, and the applicable Owner shall be responsible for, as a special assessment against the Townhome Lot, an administration fee of \$100.00. Said fee is in addition to the charge for the premium, for which Owner is also responsible.

(d) No Liability for Association. Notwithstanding anything to the contrary in this Article, neither the Association nor its Director or officers shall be liable to any person should the Association be unable or fail for any reason whatsoever to obtain insurance coverage on a Dwelling Unit.

## ARTICLE X

### The Association

The Association shall have all statutory and common law powers of a Florida corporation not-for-profit, to the extent they do not conflict with all powers provided in its Articles and Bylaws, and all powers granted in this Townhome Declaration.

## ARTICLE XI

### Building and Use Covenants

Section 1. Land Use. The use of a Dwelling Unit or of the Common Areas by a Member or other occupant shall be subject to the rules, regulations and provisions of this Townhome Declaration, the Articles and Bylaws and the Rules and Regulations of the Board of Directors. A Dwelling Unit shall be used only for residential purposes for immediate members of a single family and their guests and invitees.

Section 2. Building Type. No building shall be erected, altered, placed or permitted to remain on any Townhome Lot other than the Townhome Dwelling Unit of the type and style originally constructed by Declarant.

Section 3. Architectural Control.

(a) No building, wall, fence, decking, paving, awning, pool, storage shed, door screening or other structure or improvement of any nature other than such structures originally constructed by Declarant shall be erected, placed, modified, altered or permitted to remain on any Townhome Lot or Common Area unless the construction plans and specifications and a plan showing the kind, shape, materials, colors and location of the structure, exterior elevations, and landscaping, as may be required by the Architectural Review Committee, have been approved in writing by the Architectural Review Committee. In the case of structures initially constructed by Declarant on a Common Area or Townhome Lot prior to the conveyance of the Common Area to the Association or the

sale of that Townhome Lot to the initial Owner other than Declarant, no review and approval by the Architectural Review Committee shall be required. All other buildings, walls, fences, or other structures or improvements of any nature, together with the landscaping, shall be erected, placed or altered upon the Property only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans, specifications and plot plan, or any of them, may be based on any grounds, including purely aesthetic grounds, which, in the sole discretion of said Architectural Review Committee, seems sufficient. Any change in the exterior appearance of any building, wall, fence or other structure or improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The Architectural Review Committee shall have the power to promulgate such rules and regulations, including the power to adopt and charge appropriate uniform fees for required reviews, as it deems necessary to carry out the provisions and intent of this paragraph.

(b) The Architectural Review Committee shall review the proposed submission as to the type and quality of materials, harmony of the exterior design and location of the building or structure with existing buildings or structures, location of the building or structure with respect to topography, trees, vegetation and the finished grade elevation and floor slab, exterior color(s) of any building or structure and any other relevant considerations. Upon completion of the proposed improvements, an "as-built" survey showing the finished floor and grade elevation and location of all improvements shall be filed with the Association and with the Architectural Review Committee.

(c) The Architectural Review Committee shall be comprised of not less than three (3) nor more than seven (7) persons. The Members of the Committee shall be appointed by Declarant, its designees, successors or assigns. The membership, rules of procedure and duties of the Committee shall be prescribed by and, from time to time, changed or modified by Declarant. If and when Declarant deems the circumstances appropriate, Declarant, in its sole discretion, may assign to the Association, or any other body, all or part of the rights, duties, and functions of the Architectural Review Committee as set forth in this Townhome Declaration. From and after the date of any such assignment, Declarant shall be relieved of any further duties or obligations concerning the Committee, and the Association or other body shall assume the duties and obligations and perform the functions as set forth herein.

(d) If the Architectural Review Committee shall disapprove, in whole or in part, any submission required herein, the Committee shall notify the person, firm or entity making the submission of the reasons for such disapproval. If the Architectural Review Committee fails or refuses to approve or disapprove a submission containing all the requirements as set forth herein within sixty (60) days after submission is received by the Committee, it shall then be presumed that the submission has been disapproved by the Architectural Review Committee.

Section 4. Change in Buildings. Neither the Association nor any Owner shall make or permit any structural modification or alteration of any Building except with the prior written consent of the Architectural Review Committee, or its successor, and all Institutional Mortgagees holding a mortgage on a Dwelling Unit within said Building. Consent may be withheld if, in the sole discretion of the party requested to give the same, it appears that such structural modification or alteration would affect or in any manner endanger other Dwelling Units. No Building shall be demolished or removed without the prior written consent of all Owners of all other Dwelling Units within such Building and of all Institutional Mortgagees holding a mortgage on a Dwelling Unit within said Building, and also the prior written consent of Declarant or its successors. Declarant shall have the right, but shall not be obligated, to assign all of its rights and privileges under this Article to the Association. No garage shall

at any time be used as a residence or enclosed and incorporated into a residence, except that Declarant and/or a builder buying Townhome Lots from Declarant, with Declarant's prior approval, shall be permitted to enclose the garage of model homes, and if the garage is so enclosed, the Townhome cannot be sold or occupied without the enclosed garage being converted to a garage with an approved garage door.

Section 5. Regulations. Regulations promulgated by the Board of Directors, or any committee established by the Board of Directors, or any committee established by the Board concerning the use of Islander Townhomes shall be observed by the Members and their family, invitees, guests and tenants; provided, however, that copies of such regulations are furnished to each Member by personal delivery or by regular mail prior to the time the regulations become effective.

Section 6. Building Location. Buildings shall be located in conformance with this Townhome Declaration, the applicable ordinances of the City of St. Augustine or the County of St. Johns and any specific approvals thereunder, or as originally constructed on a Townhome Lot by Declarant or its successors or assigns.

Section 7. Damage to Buildings. If a Dwelling Unit is damaged, through Act of God or other casualty, then the Owner shall promptly cause his Dwelling Unit to be repaired and rebuilt substantially in accordance with the architectural plans and specifications used by Declarant for the original construction of such Dwelling Unit. It shall be the duty of the Association to enforce such repair or rebuilding of the Dwelling Unit to comply with this responsibility in accordance with this Article XI. To accomplish the requirements of this Section, each Owner shall insure his Dwelling Unit at the highest insurable value, including, but not limited to, full replacement value of the premises, in accordance with Article IX.

Section 8. Temporary and Accessory Structures. No accessory building or structure of a temporary character, or trailer, tent, mobile home, or recreational vehicle shall be permitted on any Townhome Lot or Common Areas at any time or used as living quarters or for storage at any time, either temporarily or permanently, except as permitted by the Architectural Review Committee. No gas tank, gas container, or gas cylinder serving a Dwelling Unit shall be permitted to be placed on or about the outside of any Dwelling Unit or any ancillary building, and all gas tanks, gas containers and gas cylinders shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative screen approved by the Architectural Review Committee. Gas grills must be concealed from view when not in use.

Section 9. Signs. A single "for sale" sign of no more than one foot by two feet (1' x 2') may be displayed on a Townhome Lot during any period when the Dwelling Unit is being offered for sale. The Committee shall have the right to adopt and enforce uniform standards as to the appearance and method of display of such "for sale" signs. In addition, any Owner may display a sign of reasonable size provided by a contractor for security services within 10 feet of any entrance to the home. No other sign, advertisement or poster of any kind shall be erected or displayed to the public view on the Property without the prior written approval of the Architectural Review Committee as to size, color, content, material, height and location. The Committee shall have the authority to enter upon any Townhome Lot and summarily remove any signs which do not meet the provisions of this paragraph. This paragraph shall not apply to Declarant.

Section 10. Intersection Sight Lines. No fence, wall, hedge or shrub planting which obstructs a sight line at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Townhome Lot within the triangular area formed by the street property lines, or, in the case of a rounded property corner, from the intersection of the street property lines extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines. Nothing contained in this Townhome Declaration shall prevent the Declarant, or any person designated by the Declarant, from erecting or maintaining such fence, wall, hedge or shrub planting.

Section 11. Pets, Livestock and Poultry. No animals, livestock, or poultry of any kind or size shall be raised, bred or kept on any Townhome Lot, except that dogs, cats or other household pets may be kept subject to the rules and regulations governing their keeping adopted by the Board of Directors. In no event shall the number of pets exceed two (2) for any Townhome Lot. No permitted pet may be kept, bred or maintained for any commercial purpose. No permitted pet may be kept if the pet becomes a nuisance or annoyance to any neighbor, as determined by the Board of Directors. No dogs or other pets shall be permitted to have excretions on the Common Areas<sup>2</sup>, except in locations designated by the Association.

Section 12. Nuisances. No noxious or offensive activity, including, without limitation, loud music, shall be carried on upon any Townhome Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the neighborhood.

Section 13. Antenna. No television, radio, electronic or other type antenna or satellite dish may be erected on the Property or attached to any Dwelling Unit thereon without prior approval of the Architectural Review Committee.

Section 14. Exterior Appearances and Landscaping. The paint, coating, stain, and other exterior finishing colors on all buildings may be maintained as originally installed by Declarant without prior approval of the Architectural Review Committee. Prior approval by the Architectural Review Committee shall be necessary before any such exterior finish color is changed. Furthermore, prior approval shall be required if the Association or any Owner wishes to paint, varnish, stain or make any application to exterior trellises or wood treatment, if any. The landscaping, including, without limitation, the trees, shrubs, lawns, flower beds, walkways, and ground elevations, shall be maintained as originally installed by Declarant, unless the prior approval for any substantial change is obtained from the Association and the Architectural Review Committee. Neither aluminum foil, paper, nor anything which the Architectural Review Committee deems objectionable, may be placed on windows or glass doors, including without limitation, window air conditioning units. No Owner may place any furniture, equipment or objects of any kind or construct any structures, slabs or porches beyond the limits of any Building or patio wall or place any objects such as bicycles, toys, barbecues, etc., on the rear patio unless concealed from the view of the road frontage and other Dwelling Units, except, however, customary outdoor furniture. All Townhome Lots shall be kept in a clean and sanitary manner and no rubbish, refuse or garbage shall be allowed to accumulate or any fire hazard allowed to exist.

Section 15. Commercial Vehicles, Trucks, Trailers, Campers and Boats. No trucks or commercial vehicles, campers, mobile homes, motor-homes, automobiles which are not currently registered and capable of legal operation on public roads, recreational vehicles, boats, house trailers, boat trailers, horse trailers, or trailers of every other description shall be permitted to be parked or to be

stored overnight at any place on any Townhome Lot or Common Area in the Property; except if such vehicle is being used in the construction or renovations of improvements on the Property and then only during the periods of approved construction on said Townhome Lot, or if parked in an area designated by Declarant for such purpose or parked in a fully enclosed garage with the garage door fully closed. This prohibition of parking shall not apply to the Declarant or Islander, and their agents and employees, vehicles which serve both as a Townhome Lot Owner's personal and commercial vehicle, nor does the prohibition apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery and other commercial services. Non-commercial vans used for personal purposes shall not be prohibited. No person shall park a vehicle so as to obstruct any person's use of ingress or egress rights created by this Townhome Declaration or park a vehicle on any unpaved portion of any Townhome Lot or Common Area, except as expressly permitted by Declarant.

Section 16. Rentals; Interval Ownership. No Townhome Lot or Dwelling Unit thereon may be rented or sublet without written notice to the Board of Directors of the Association. In addition, notice of the sale of the Townhome will also be given to the Association. This provision is for the purpose of assuring that subsequent owners and renters understand the rights and obligations of Members of the Association, including this Townhome Declaration, the Rules and Regulations and payment of assessments. In addition, the Board of Directors may authorize the use of a registration form to be completed by prospective purchasers or renters. No Dwelling Unit may be rented, leased or sublet for a period of less than thirty (30) days. All enforcement procedures applicable to this Townhome Declaration shall be equally applicable to enforcement of this section. Interval ownership and timeshares are prohibited.

Section 17. Walls/Fences. No fence, wall, gate, hedge, or other structure shall be erected or maintained on any Townhome Lot, except as originally installed by Declarant or Declarant's assignee, or except any approved in writing by the Architectural Review Committee as provided herein.

Section 18. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited on any Townhome Lot except in areas designated by the Association for such purpose. All equipment for storage or disposal of such material shall be kept in clean and sanitary condition and shall be kept hidden from view except on trash pick-up days.

Section 19. Outdoor Drying and Laundry. No clothing, laundry or wash shall be aired or dried on any portion of any Townhome Lot or Common Area in an area viewable to any other Townhome Lot or Dwelling Unit or roadway. No garments, rugs, etc., shall be hung from windows or doorways of Dwelling Units, and no clotheslines or similar type structure shall be permitted on any Townhome Lot in an area viewable from any other Townhome Lot, Common Area or roadway.

Section 20. Swimming Pools and Screen Enclosures. All screen enclosures, deck areas, patios, hot tubs, jacuzzis, and sun decks, except for such structures originally installed by Declarant as part of the first construction of a Dwelling Unit or Common Area, must be approved in writing by the Architectural Review Committee.

Section 21. Lawful Conduct. No immoral, improper, offensive or unlawful use shall be made of any Townhome Lot or other improvements. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be strictly observed.

Section 22. Risks. No Owner shall permit or suffer anything to be done or kept in his Dwelling Unit or upon his Townhome Lot which will increase the rate of insurance to other Owners or as to their Townhome Lots or to the Association with respect to the Common Areas.

Section 23. Parking Spaces. Each Owner shall have the exclusive right to use the driveway and paved portions of the Owner's Townhome Lot for parking and shall not park on any unpaved areas. Any parking spaces located on the Common Areas will not be assigned, but shall be for the common use and benefit of Owners, their guests and invitees, subject to the right of the Board to adopt regulations concerning the use of such spaces. Declarant shall have the right to use any such unassigned spaces for parking by prospective purchasers and such other parties as Declarant, in its sole discretion, deems advisable. All common area parking spaces shall be maintained by the Association and available for use by the Members.

Section 24. Basketball Boards. Basketball boards are prohibited, whether attached to the Dwelling Unit or free-standing.

Section 25. Skateboard Ramps. Skateboard ramps are prohibited on any Townhome Lot or Common Area.

Section 26. Flagpoles. Any Owner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day may display, in a respectful manner, portable, removable official flags, not larger than 4 1/2 feet by 6 feet, which represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard regardless of any other rules or requirements dealing with flags or decorations. Other decorative flags on the front of any Townhome are subject to the review and approval of the Architectural Review Committee.

Section 27. ADA Ramps. An Owner may construct an access ramp if a resident or occupant of the parcel has a medical necessity or disability that requires a ramp for egress and ingress under the following conditions: (1) The ramp must be as unobtrusive as possible, be designed to blend in aesthetically as practicable, and be reasonably sized to fit the intended use and (2) plans for the ramp must be submitted in advance to the Architectural Review Committee. The Architectural Review Committee may make reasonable requests to modify the design to achieve architectural consistency with surrounding structures and surfaces. The Owner must submit to the Architectural Review Committee an affidavit from a physician attesting to the medical necessity or disability of the resident or occupant of the parcel requiring the access ramp. Certification used for Section 320.0848, Florida Statutes, shall be sufficient to meet the affidavit requirement.

Section 28. Decorative Items. The use of decorative items, including, but not limited to, statues, gates, rocks, planters, bird baths and other ornamental accessories are prohibited, unless the Architectural Review Committee has given written permission for their installation prior to use, installation or construction.

Section 29. Mailboxes. All mailboxes shall be of the standardized type originally installed by Declarant or as thereafter may be designated by the Architectural Review Committee as to style, location, material, color, height and type of post mounting. To ensure uniformity, maintenance, repair and replacement of mailboxes will be the responsibility of the Association.

Section 30. Lighting. All exterior lighting, including, but not limited to, walkway, driveway, accent, or Common Areas, must be approved by the Architectural Review Committee prior to construction or installation.

Section 31. Occupancy. Dwelling Units shall be utilized for single family residential purposes. No business or business activity shall be carried on in any Dwelling Unit at any time; provided, however, that, to the extent allowed by applicable zoning laws, private business activities may be conducted in a Dwelling Unit as long as such use is incidental to the primary residential use of the Dwelling Unit and does not violate any applicable law, involve any exterior signage or advertising of the Unit as a place of business, require frequent visits by clients or business associates to the Property, or unduly contribute to parking, traffic, telecommunications or security problems for the Property. In the event of a dispute as to whether business activities within a Dwelling Unit meet the requirements of this sub-section, the decision of the Board of Directors is conclusive.

The above provisions shall not preclude (i) such business activity of the Association or any Management Agent as is reasonably required for the effective operation of the Property and the Association, (ii) the use, rental or leasing of any Dwelling Units as permitted by the Townhome Declaration or for activities determined by the Board of Directors to be beneficial to the Association or the Owners; (iii) showing of any Dwelling Unit for sale or lease during normal business hours and in accordance with any reasonable procedures established by the Board of Directors to preserve a congenial, pleasant, safe and dignified living atmosphere, or (iv) business operations of Declarant, its agents, successors, assigns or designees during the period of marketing or managing the Property, including, without limitation, leasing, sales, administration, storage, or similar activities. Nothing in this restriction shall prohibit Declarant and its assigns from operating sales models and/or a sales and leasing office on any portion of the Property.

Section 32. Wells, Mining, Drilling and Excavation. No wells, mining, drilling or excavation of any type, except for such excavation as may be necessary for construction of Dwelling Units and Common Areas, shall be permitted on any portion of the Property. The foregoing notwithstanding, Declarant may install wells in Common Areas for irrigation purposes. No Owner of any Dwelling Unit shall draw water from any water body on or adjacent to any of the Property.

Section 33. Sewage Disposal. Each Owner of a Townhome Lot shall pay when due the periodic charges or rates for the furnishing of sewage collection and disposal service. No septic tank or sewage disposal unit shall be installed or maintained on any Townhome Lot.

Section 34. Violations. The Association may levy reasonable fines, not to exceed \$100 per violation, against any Member or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine shall not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the non-prevailing party as determined by the court.

The Board of Directors may impose fines against the Townhome Lot, Dwelling Unit, or Condominium Unit owned by the Member as follows:

- (i) First non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).
- (ii) Second non-compliance or violation: a fine not in excess of Five Hundred Dollars (\$500.00).
- (iii) Third and subsequent non-compliance, or a violation or violations which are of a continuing nature after notice thereof (even if in the first instance): a fine not in excess of One Thousand Dollars (\$1,000.00).

Provided, however, to the extent that state law is later modified to permit fines of greater amount, this Townhome Declaration shall be automatically amended to include such increase (without incorporating the statute).

A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

The requirements of this subsection do not apply to the imposition of suspensions or fines upon any Member because of the failure of the Member to pay Assessments or other charges when due if such action is authorized by the governing documents.

Section 35. Declarant Rights. Notwithstanding any other provision in this Townhome Declaration, Declarant is irrevocably empowered to sell, lease or rent Townhome Lots on any terms to any purchasers or lessees for as long as it owns any Townhome Lot. This section is intended to provide Declarant with the broadest authority and power to transact and implement its business, and such activities shall be free and clear of any restrictions contained in this Townhome Declaration which would impede such activities. Declarant shall have the right to transact any business necessary to consummate sales and leases of said Townhome Lots, temporary uses for model homes, parking lots and/or sales offices, maintain signs, have employees in the office, use the Common Areas and show Townhome Lots. Sales office signs and all items pertaining to sales shall not be considered property of the Association and shall remain property of Declarant.

## ARTICLE XII

### Additional Powers Reserved to Declarant

Section 1. Declarant Related Documents. So long as Declarant shall own any of the Property, no Declarant-related amendment shall be made to the Townhome Declaration, to any Supplemental Declaration, to the Articles, Bylaws, Rules and Regulations, or any other similar Association document, nor shall any such Declarant-related amendments or documents be executed, adopted or promulgated by the Association or the Board of Directors unless such Declarant related amendment or document shall be specifically approved in writing by Declarant and Islander in advance of such execution, adoption, promulgation and recording.

Section 2. Definitions. For the purposes of Section 1 of this Article, an amendment or document which does any of the following shall be considered to be a Declarant-related amendment:

- (a) Discriminates or tends to discriminate against Declarant as an Owner or otherwise;
- (b) Directly or indirectly by its provisions or in practical application relates to Declarant in a manner different from the manner in which it relates to other Owners;
- (c) Modifies the definitions provided for by Article I of this Townhome Declaration in a manner which alters Declarant's rights or status;
- (d) Modifies or repeals any provision of Article II of this Townhome Declaration;
- (e) Alters the character and rights of membership as provided for by Article III of this Townhome Declaration or affects or modifies in any manner whatsoever the rights of Declarant as a Member of the Association;
- (f) Alters any previously recorded or written agreement with any public or quasi-public agencies, utility company, political subdivision, public authorities or other similar agencies or bodies, respecting zoning, streets, roads, drives, easements or facilities;
- (g) Denies the right of Declarant or Islander to convey the Common Areas to the Association;
- (h) Modifies the basis or manner of Association Assessments as applicable to Declarant or any Townhome Lots owned by Declarant as provided for by Articles VI and VII;
- (i) Modifies the provisions of Article XI (architectural control) as applicable to Declarant or any Townhome Lots owned by Declarant;
- (j) Denies the right to Declarant, its contractors and subcontractors, to maintain temporary construction trailers, sheds or other buildings upon the Property; or
- (k) Alters or repeals any of Declarant's rights or any provision applicable to Declarant's rights as set forth in any provision of this Townhome Declaration or other document applicable to Declarant.

The decision to approve or not approve any Declarant-related document or Amendment by Declarant and Islander in accordance with Section 1 of this Article shall be in the sole and absolute discretion of Declarant and Islander and neither Declarant nor Islander shall be liable to the Association, its Members or any party as a result of granting or refusing to grant such approval.

Section 3. Declarant Lands. So long as Declarant continues to construct any facilities in the Development, no action may be taken by the Board or the Association applicable to Declarant or any of the Townhome Lots or other land owned by Declarant or Islander unless such action shall be approved in writing by Declarant and Islander, or unless the need therefor shall be waived by Declarant and

Islander in writing. Nothing herein contained shall be construed to prohibit legal action against Declarant as contemplated by Section 720.3075(1)(b), Florida Statutes.

## ARTICLE XIII

### General Provisions

Section 1. Beneficiaries of Easements, Rights and Privileges. The easements, licenses, rights and privileges established, created and granted by this Townhome Declaration shall be for the benefit of and restricted solely to, the Association, Declarant and its subsidiaries and assigns, the Owners of Townhome Lots and Condominium Units, and to any other party to whom Declarant or Association is entitled to grant such easements, licenses, rights and privileges under this Townhome Declaration; and any Member may also grant the benefit of such easement, license, right or privilege to his tenants and guests and their immediate families for the duration of their tenancies or visits, subject to the Rules and Regulations of the Board of Directors; but, the same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public.

Section 2. Duration. The covenants and restrictions of this Townhome Declaration shall run with and bind the land that has been made a part of the Association and shall inure to the benefit of and be enforceable by Declarant, the Association, the owner of any land subject to this Townhome Declaration or the Declaration of Easements and their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Townhome Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by then Owners of two-thirds (2/3) of the Townhome Lots and Condominium Units and all Institutional Mortgagees of Townhome Lots and Condominium Units has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 3. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Townhome Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by Declarant, its assigns, the Association, the Architectural Review Committee, or any Owner of five (5) or more Townhome Lots by any proceeding at law or in equity, including without limitation, injunctive relief, against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure by Declarant, the Association, the Architectural Review Committee, any Owner or other party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The SJRWMD shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Townhome Declaration which relate to the maintenance, operation and repair of the System. The prevailing party in any proceeding at law or in equity provided for in this Section shall be entitled to recover in said suit the cost of the action, including reasonable attorneys' fees as fixed by the court, including attorneys' fees in connection with appeal of any action.

Section 5. Disposition of Assets Upon Dissolution of Association. Upon dissolution of the Association, its real and personal assets, including the Common Areas, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the case of the Surface Water/Stormwater Management System which is maintained by the Association, the responsibility for the operation and maintenance of the System must be transferred to and accepted by an entity which would comply with applicable rules of the SJRWMD in the Florida Administrative Code and be approved by the SJRWMD prior to any termination, dissolution or liquidation of the Association. If such dedication is refused acceptance, which refusal in the case of the local government shall be by formal resolution of local government, such assets shall be granted, conveyed and assigned to any corporation not-for-profit, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of the Association properties shall be effective to divest or diminish any right or title to any Member vested in him under the licenses, covenants and easements of this Townhome Declaration, or under any subsequently recorded covenants and deeds applicable to Islander Townhomes, unless made in accordance with the provisions of this Townhome Declaration or said covenants and deeds.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect any other provisions which shall remain in full force and effect.

Section 7. Amendment. The covenants, restrictions, easements, charges, and liens of this Townhome Declaration may be amended, changed, added to, derogated, or deleted at any time and from time to time, upon the execution and recordation of any instrument executed by:

- (1) Declarant and Islander, until transition of the Association control from Declarant to non-Declarant Members as contemplated by Section 720.307, Florida Statutes or
- (2) Not less than two-thirds vote of the membership in the Association, or by an instrument signed by the President and Secretary of the Association attesting that such instrument was approved by Members entitled to vote two-thirds (2/3) of the total votes of the Association, at a meeting of the Members called for such purpose, subject to the requirement of approval by Declarant and Islander in the case of a Declarant-related amendment. Provided, however, that any amendment that is materially adverse to the Condominium Unit Owners must be approved by at least two-thirds of the Condominium Unit Owners:

Any amendment must be properly recorded in the Public Records of the County to be effective.

Institutional Mortgage holders shall have the rights to approve amendments as provided in Article XIII, Section 16, below.

Because the availability of institutional financing benefits all Owners, the Declarant shall have the right to amend this Section as necessary to obtain Veterans Administration, Federal Housing

Administration, Federal National Mortgage Association financing for the subdivision. Any amendment pursuant to the requirements of the Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, its successors and assigns, SJRWMD, FDEP, U.S. Army C.O.E., or such similar institutions or associations, may be made without further consent of any of the Owners and all Owners acknowledge that such amendment shall be binding upon and shall constitute covenants running with the land irrespective of the date of amendment.

Any amendment to this Townhome Declaration which alters the Surface Water/Stormwater Management System, beyond the maintenance in its original condition, including the water management portions of the Common Areas, must have the prior approval of the SJRWMD.

Section 8. Administration. The administration of the Association shall be in accordance with the provisions of this Townhome Declaration and the Articles of Incorporation and Bylaws which are made a part of this Townhome Declaration and attached hereto as **Exhibits "C" and "D"**, respectively.

Section 9. Interpretation. In all cases the provisions set forth or provided for in this Townhome Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the general plan of development of Islander Townhomes. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended and enlarged by implication as to make them fully effective.

Section 10. Conflict. In case of any conflict between the Articles and Bylaws, the Articles shall control. In case of any conflict between the Articles or Bylaws and this Townhome Declaration, this Townhome Declaration shall control. In case of any conflict between this Townhome Declaration and the Declaration of Easements, the Declaration of Easements shall control.

Section 11. Effective Date. This Townhome Declaration shall become effective upon its recordation in the Official Records of St. Johns County.

Section 12. Captions. The captions of the paragraphs hereof are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraph to which they refer.

Section 13. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable and the use of the masculine pronoun shall include the neuter and feminine, wherever applicable.

Section 14. Approval of Declarant. Where in this Townhome Declaration the consent or approval of Declarant is required to be obtained, no action requiring such consent or approval shall be commenced or undertaken until after a request in writing seeking the same has been submitted to, and approved in writing by, Declarant. Such request shall be sent to Declarant by Certified Mail with return receipt requested. In the event that Declarant fails to act on any such written request within sixty (60) days after the same has been submitted to Declarant as required above, the consent or approval of Declarant to the particular action sought in such written request shall be constructively denied; however, no action shall be taken by or on behalf of the person or persons submitting such written request which violates any of the covenants and restrictions herein contained.

Section 15. Approval of Association Lawsuits by Owners. Disputes shall be subject to mediation and/or arbitration as provided in Section 720.311, Florida Statutes. Certain lawsuits must be approved by a majority of the Owners as set forth in Section 720.303(1), Florida Statutes.

Section 16. Institutional Mortgagee's Rights. Upon written request to the Association by an Institutional Mortgagee, such Institutional Mortgagee, if its request specifies the name, address and factual basis of entitlement of the requesting party, shall be entitled to prompt written notice of:

- (a) any condemnation or casualty loss that affects either a material portion of the Condominium Property or any Dwelling Unit encumbered by its Mortgage;
- (b) any 60 day delinquency in the payment of Assessments, Special Assessments or charges owed by the Dwelling Unit Owner of any Dwelling Unit on which it holds the Mortgage;
- (c) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) any proposed action which requires the consent of a specified percentage of Institutional Mortgagees.

Any Institutional Mortgagee, upon written request, shall be entitled to receive from the Association a financial report for the immediately preceding fiscal year. Any Institutional Mortgagee who has registered its name with the Association shall be provided with written notice prior to the effective date of any proposed, material amendment to this Townhome Declaration, or the Articles or Bylaws.

Section 17. Assignment of Declarant's Rights. The Declarant and Islander shall have the sole and exclusive right at any time and from time to time to transfer and assign by written assignment executed by Declarant and Islander any or all rights, obligations, powers, easements, privileges, authorities and reservations given to or reserved by Declarant as developer and declarant in this Townhome Declaration. Upon such assignment, all rights and obligations of Declarant, including Declarant's guaranty of assessments, shall be transferred to and be assumed by Declarant's designated assignee and Declarant will be relieved of any rights and obligations under this Townhome Declaration. Upon the termination of the Class B Member, the rights of Declarant hereunder shall vest automatically in the Association which shall assume all obligations thereof.

Section 18. Declarant's Right to Re-Subdivide. The Declarant and Islander reserve the right to re-subdivide or replat Islander Townhomes in any way they see fit for any purpose whatsoever consistent with the Development. The restrictions herein contained, in case of any such replatting or re-subdividing, shall apply to each Townhome Lot as replatted or re-subdivided.

Section 19. Disclaimers. By accepting a deed to his Lot and membership in the Association, each Owner acknowledges and agrees that the Association shall not be liable or responsible for, or in any manner guarantor or insurer of the health, safety, welfare, or property of any Owner or occupant of any portion of the Property, including without limitation owners, tenants, residents and their families, guests, invitees, agents, employees, contractors, or subcontractors. Any provision of this Townhome Declaration, the Articles of Incorporation or Bylaws relating to health, safety, or welfare shall be interpreted and applied only as limitation on the uses of assessment funds by the Association and not as creating a duty on the part of the Association to protect or further the health, safety, or

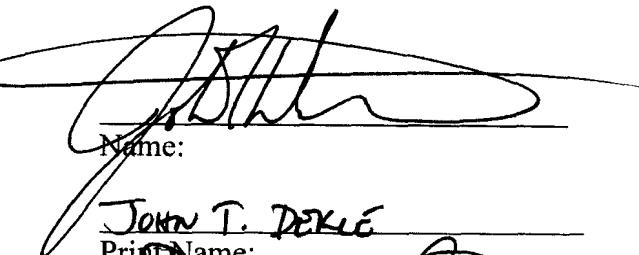
welfare of any person or persons, even if assessment funds are chosen to be used for any such reason. This Townhome Declaration, the Articles of Incorporation and Bylaws of the Association, and the rules and regulations which may be adopted from time to time by the Association which govern or regulate the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Property and the value thereof. The Association is not authorized, created, or empowered to enforce or protect against tortious or negligent activities or to enforce or ensure compliance with federal, state, or local laws and ordinances. Each Owner, by virtue of his acceptance of a deed to his Lot, and every other person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section 19 and shall be deemed to have automatically waived any and all rights, claims, demands, and causes of action against the association arising out of or connected with any matter for which the liability of the Association has been disclaimed.

For purposes of this Section, "Association" shall include within its meaning all of the Association directors, officers, committee and board members, employees, agents, contractors, management companies, subcontractors, successors and assigns. The provisions of this Section shall inure to the benefit of the Declarant and Islander and their successors, assigns, members, officers, and agents, all of which shall be fully protected hereby.

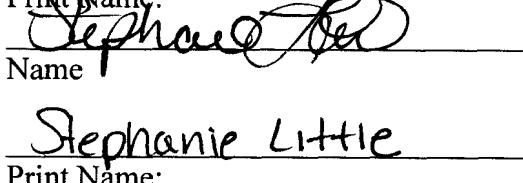
COPY

IN WITNESS WHEREOF, Declarant has hereunto caused this document to be signed by its proper officers this 12<sup>th</sup> day of November, 2010.

Signed in the presence of:



Name: John T. Dukic  
 Print Name: John T. Dukic



Name: Stephanie Little  
 Print Name: Stephanie Little

**KB HOME JACKSONVILLE LLC,  
 A DELAWARE LIMITED LIABILITY  
 COMPANY**

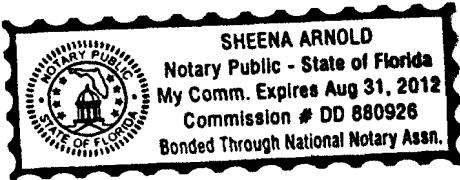


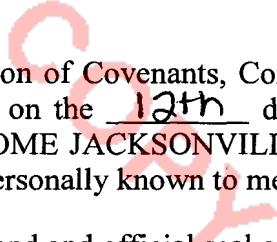
By: Vince DePorre  
 Name: Vince DePorre  
 Title: Executive Vice President

STATE OF FLORIDA  
 COUNTY OF Duval

The foregoing Declaration of Covenants, Conditions and Restrictions for Islander Townhomes were acknowledged before me on the 12<sup>th</sup> day of Nov., 2010, by Vince DePorre as Exe. Vice Pres of KB HOME JACKSONVILLE LLC, a Delaware limited liability company, on behalf of the company. He is personally known to me and did not take an oath.

WITNESS my hand and official seal on the day and year last aforesaid.



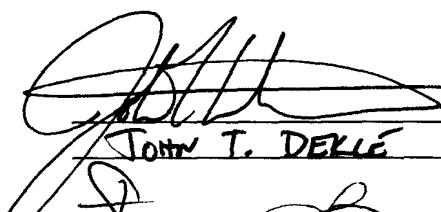
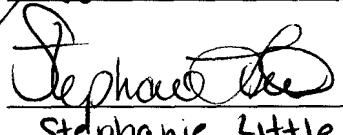
  
 Notary Public, State of Florida

**ACCEPTANCE**

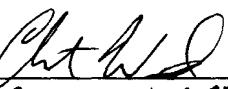
**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt whereof is hereby acknowledged, Islander Townhome Homeowners Association, Inc., a Florida corporation not-for-profit, hereby agrees to accept all of the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Townhome Declaration and Exhibits attached hereto.

**IN WITNESS WHEREOF**, the above described corporation, a Florida corporation not-for-profit, has caused these presents to be signed in its name by its President and its corporate seal affixed this 12<sup>th</sup> day of November, 2010.

Signed, Sealed and Delivered  
In the presence of

  
John T. Dekle  
  
Stephanie Little

**ISLANDER TOWNHOME HOMEOWNERS  
ASSOCIATION, INC.**, a Florida corporation not-for-profit

By:   
Name: CHRIS WARD  
Title: President

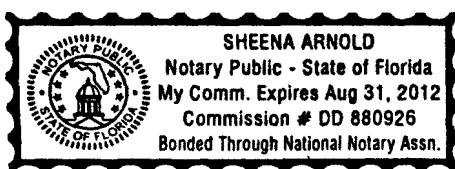
(Corporate Seal)

STATE OF FLORIDA  
COUNTY OF

The foregoing Acceptance was acknowledged before me the 12 day of November, 2010, by Chris Ward as President of HOA of Islander Townhome Homeowners Association, Inc., a Florida corporation not-for-profit, on behalf of the corporation.

WITNESS my hand and official seal on the day and year last aforesaid.

  
Sheena Arnold  
Notary Public, State of Florida



**MORTGAGEE JOINDER**

Bank of St. Augustine, by and through its undersigned officer, hereby joins in the execution of this Townhome Declaration for the limited purpose of subordinating its mortgage as recorded in Official Records Book 3247, Page 1478 of the current Public Records of St. Johns County, Florida, to the provisions of the Townhome Declaration.

Printed Name: Leta Hartland

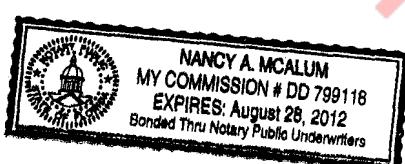
Printed Name: Leta Hartland

By: Linda H. Whittington  
Name: Linda H. Whittington  
Title: Sr. VICE PRESIDENT

STATE OF FLORIDA  
COUNTY OF St. Johns

The foregoing Acceptance was acknowledged before me the 14 day of December, 2010, by Linda H. Whittington, as the Sr. VICE PRESIDENT of Bank of St. Augustine, on behalf of the credit union.

WITNESS my hand and official seal on the day and year last aforesaid.



*Nancy A. McAlum*  
Notary Public, State of Florida

## CONDOMINIUM UNIT OWNER CONSENT AND JOINDER

The owners of condominium units in Islander Carriage Homes, a condominium, hereby join in and consent to the terms and conditions of this Declaration.

Signed, sealed and delivered in the presence of: **Unit 3, Building 18**

By: Jesse Kellerman  
Name: Jesse Kellerman

William E. Conkin  
William E. Conkin

By: Victor Risch  
Name: Victoria Risch

Caroline W. Conkin  
Caroline W. Conkin

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 17 day of November, 2010,  
by William E. Conkin, who \_\_\_\_\_ is personally known to me or has produced  
as identification.

Notary:

Print Name: Victoria Risch

Notary Public, State of Florida

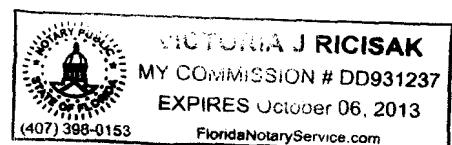
My commission expires: 10-6-2013

Personally Known  OR

Produced Identification

Type of Identification

Produced Driver's license



STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 17 day of November, 2010,  
by Caroline W. Conkin, who \_\_\_\_\_ is personally known to me or has produced  
as identification.

Notary:

Print Name: Victoria Risch

Notary Public, State of Florida

My commission expires: 10-6-2013

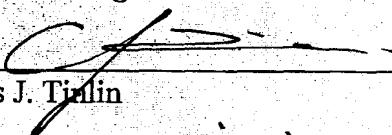
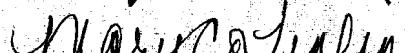
Personally Known  OR  Produced

Identification

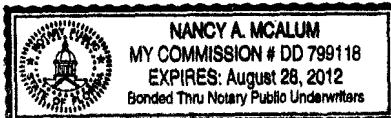
Type of Identification

Produced Driver's license



Signed, sealed and delivered in the presence of: **Unit 4, Building 18**By: Donna L. Watkins  
Name: Donna L. Watkins  
Charles J. TinlinBy: Nancy A. McAlum  
Name: Nancy A. McAlum  
Mary C. Tinlin

STATE OF FLORIDA

COUNTY OF ~~Duval~~ St JohnsThe foregoing instrument was acknowledged before me this 17 day of November, 2010,  
by Charles J. Tinlin, who \_\_\_\_\_ is personally known to me or has produced  
as identification.

Notary:

Print Name: Nancy A. McAlum

Notary Public, State of Florida

My commission expires:

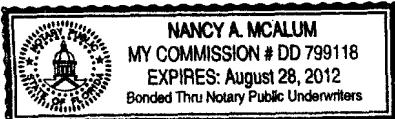
 Personally Known **OR** 

Produced Identification

Type of Identification

Produced \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF ~~Duval~~ St JohnsThe foregoing instrument was acknowledged before me this 17 day of November, 2010,  
by Mary C. Tinlin, who \_\_\_\_\_ is personally known to me or has produced  
as identification.

Notary:

Print Name: Nancy A. McAlum

Notary Public, State of Florida

My commission expires:

 Personally Known **OR** 

Produced Identification

Type of Identification

Produced \_\_\_\_\_

Signed, sealed and delivered in the presence of: Unit 1, Building 18

By: Jim Pritchett  
Name: Jim Pritchett

James B. Paron  
James B. Paron

By: Cynthia Pritchett  
Name: Cynthia Pritchett

Isle H. Paron  
Isle H. Paron

Nicole Paron  
Nicole L. Paron

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 16 day of November, 2010, by James B. Paron, who \_\_\_\_\_ is personally known to me or has produced as identification.



Notary:  
Print Name: Crystal Williams  
Notary Public, State of Florida  
My commission expires: 8/18/2013  
 Personally Known OR   
Produced Identification  
Type of Identification  
Produced

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 16 day of November, 2010, by Isle H. Paron, who \_\_\_\_\_ is personally known to me or has produced as identification.



Notary:  
Print Name: Crystal Williams  
Notary Public, State of Florida  
My commission expires: 8/18/2013  
 Personally Known OR   
Produced Identification  
Type of Identification  
Produced

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 16 day of November, 2010, by Nicole L. Paron, who \_\_\_\_\_ is personally known to me or has produced as identification.



Notary:	<u>Crystal Williams</u>
Print Name:	<u>Crystal Williams</u>
Notary Public, State of Florida	
My commission expires:	<u>8/18/2013</u>
<input checked="" type="checkbox"/> Personally Known OR <input type="checkbox"/>	
Produced Identification	
Type of Identification	
Produced	

JAX\1454281\_1

-49-

## EXHIBIT "A"

Legal Description of Property

A PARCEL OF LAND IN THE SOUTHEAST  $\frac{1}{4}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 28, TOWNSHIP 7 SOUTH, RANGE 30 EAST, ST. JOHNS COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF BEGINNING COMMENCE AT THE SOUTHWESTERLY CORNER OF LOT 1, AS SHOWN ON THE PLAT OF ANASTASIA LAKES, AS RECORDED IN MAP BOOK 27, PAGES 84 THROUGH 87 OF THE PUBLIC RECORDS OF SAID COUNTY (SAID CORNER LYING ON THE EASTERLY RIGHT OF WAY LINE OF MIZELL ROAD, A 60 FOOT RIGHT OF WAY), AND RUN SOUTH  $89^{\circ} 07' 58''$  EAST, ALONG THE SOUTHERLY LINE OF SAID ANASTASIA LAKES, A DISTANCE OF 1,303.06 FEET TO A POINT ON THE WESTERLY LINE OF LOT 52, AS SHOWN ON THE PLAT OF SEAGATE WOODS, AS RECORDED IN MAP BOOK 36, PAGES 52 AND 53 OF SAID PUBLIC RECORDS; RUN THENCE SOUTH  $01^{\circ} 05' 49''$  WEST, ALONG SAID WESTERLY LINE OF LOT 52, TO AND ALONG THE WESTERLY LINE OF LOTS 53 AND 54, SAID SEAGATE WOODS, ALSO TO AND ALONG THE WESTERLY LINE OF LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1188, PAGE 216, SAID PUBLIC RECORDS, A DISTANCE OF 231.05 FEET; THENCE NORTH  $88^{\circ} 41' 52''$  WEST, A DISTANCE OF 79.64 FEET; THENCE SOUTH  $01^{\circ} 18' 08''$  WEST, A DISTANCE OF 114.26 FEET; THENCE NORTH  $88^{\circ} 41' 52''$  WEST, A DISTANCE OF 15.00 FEET; THENCE SOUTH  $01^{\circ} 18' 08''$  WEST, A DISTANCE OF 11.85 FEET TO A POINT ON THE NORTHERLY LINE OF STATE ROAD NO. 312 (A 200 FOOT RIGHT OF WAY); RUN THENCE NORTH  $80^{\circ} 41' 55''$  WEST, ALONG SAID NORTHERLY RIGHT OF WAY LINE OF STATE ROAD NO. 312, A DISTANCE OF 741.29 FEET TO A POINT OF CURVATURE; RUN THENCE IN A WESTERLY DIRECTION ALONG THE ARC OF A CURVE IN LAST SAID NORTHERLY RIGHT OF WAY, SAID CURVE BEING CONCAVE NORTHERLY AND HAVING A RADIUS OF 2,764.79 FEET, AN ARC DISTANCE OF 129.08 FEET TO A POINT ON A CURVE, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH  $79^{\circ} 21' 40''$  WEST, 129.07 FEET; RUN THENCE IN A NORTHERLY DIRECTION ALONG THE ARC OF A CURVE, SAID CURVE BEING CONCAVE EASTERLY AND HAVING A RADIUS OF 100.00 FEET, AN ARC DISTANCE OF 62.92 FEET TO THE POINT OF TANGENCY OF SAID CURVE, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH  $17^{\circ} 25' 25''$  WEST, 61.89 FEET; THENCE NORTH  $00^{\circ} 36' 04''$  EAST, A DISTANCE OF 77.19 FEET TO A POINT OF CURVATURE; RUN THENCE IN A NORTHWESTERLY DIRECTION ALONG THE ARC OF A CURVE, SAID CURVE BEING CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 30.00 FEET, AN ARC DISTANCE OF 46.98 FEET TO THE POINT OF TANGENCY OF SAID CURVE, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH  $44^{\circ} 15' 57''$  WEST, 42.33 FEET; RUN THENCE NORTH  $89^{\circ} 07' 58''$  WEST, TO AND ALONG THE NORTHERLY LINE OF LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 2041, PAGE 1343 OF SAID PUBLIC RECORDS, A DISTANCE OF 296.07 FEET TO A POINT ON THE PREVIOUSLY MENTIONED EASTERLY RIGHT OF WAY LINE OF MIZELL ROAD; RUN THENCE NORTH  $00^{\circ} 38' 58''$  EAST, ALONG LAST SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED LANDS CONTAIN 6.87 ACRES, MORE OR LESS.

Exhibit "B"

Articles of Incorporation

COPY