

NOTICE OF RECORDING AMENDMENTS TO  
DECLARATION OF COVENANTS OF  
THE BOUCHELLE ISLAND II CONDOMINIUM  
ASSOCIATION, INC.

06/04/2002 13:32  
Instrument # 2002-120584  
Book: 4872  
Page: 4656

The undersigned affirm this 10th day of MAY, 2002, that attached hereto and incorporated herein is a true and correct copy of the Amendment to Declaration of Covenants of The Bouchelle Island II Condominium Association, Inc., a Florida not for profit corporation.

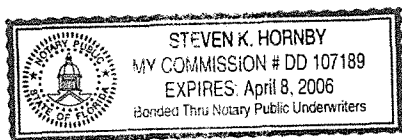
BOUCHELLE ISLAND II CONDOMINIUM  
ASSOCIATION, INC.

Robert L. Black  
Secretary

Nancy K. Murphy  
President

STATE OF FLORIDA )  
COUNTY OF VOLUSIA )

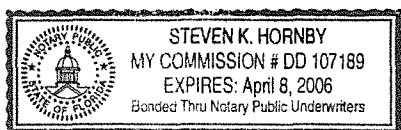
BEFORE ME the undersigned Notary Public, duly authorized in the State and County aforesaid to take oaths and acknowledgments, appeared BEFORE ME, as President of **BOUCHELLE ISLAND II CONDOMINIUM ASSOCIATION, INC.** who (☒) is personally known to me, or (☐) provided identification in the form of \_\_\_\_\_ and acknowledged that he/she executed the foregoing instrument on behalf of the corporation and for the purposes therein expressed and did/did not take an oath this 10 day of MAY, 2002.



Steven K. Hornby  
Notary Public  
My Commission Expires:  
APRIL 8TH 2006

STATE OF FLORIDA )  
COUNTY OF VOLUSIA )

BEFORE ME the undersigned Notary Public, duly authorized in the State and County aforesaid to take oaths and acknowledgments, appeared BEFORE ME, as Secretary of **BOUCHELLE ISLAND II CONDOMINIUM ASSOCIATION, INC.**, who (☒) is personally known to me, or (☐) provided identification in the form of \_\_\_\_\_ and acknowledged that he/she executed the foregoing instrument on behalf of the corporation and for the purposes therein expressed and did/did not take an oath this 10 day of MAY, 2002.



Steven K. Hornby  
Notary Public  
My Commission Expires:  
APRIL 8TH 2006

## CERTIFICATE OF AMENDMENT

THE UNDERSIGNED, being the duly elected and acting President of **BOUCHELLE ISLAND II, CONDOMINIUM ASSOCIATION, INC.**, a Florida not for profit corporation, does hereby certify that the following resolution was duly adopted by the Board of Directors, and on **March 27, 2002**, at a meeting of the members when a quorum was present, after due notice, also were approved and adopted by the votes indicated, for the purposes of amending The Declaration of Condominium of Bouchelle Island, II a Condominium.

1. The following resolution was approved by the owners of at least 60% of the units:

RESOLVED: That the Declaration of Condominium of Bouchelle Island, II, a condominium, is hereby amended, and the amendment is adopted in the form attached hereto as Exhibit "A" and made a part hereof.

IN WITNESS WHEREOF, this 10th day of MAY, 2002.

BOUCHELLE ISLAND, II,  
CONDOMINIUM ASSOCIATION, INC.

[Signature]  
Witness  
[Signature]  
Witness

By: Nancy K. Murphy  
NANCY K. MURPHY President

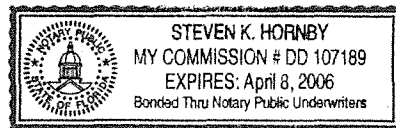
(Corporate Seal)

STATE OF FLORIDA )  
COUNTY OF VOLUSIA )

Before me, the undersigned authority, personally appeared [Signature] as President of Bouchelle Island, II Condominium Association, Inc. who is known to me known to me to be the person described in and who executed the foregoing instrument, or     has provided     as identification.

Sworn to before me on this 10 day of MAY, 2002.

[Signature]  
NOTARY PUBLIC -- STATE OF FLORIDA  
Print Name: STEVEN K. HORNBY



**AMENDMENT TO  
DECLARATION OF COVENANTS OF  
THE BOUCHELLE ISLAND II  
CONDOMINIUM ASSOCIATION, INC.**

**16. Residential Occupancy and Use Restrictions.**

**16.7. Leases.** No portion of a Unit (other than an entire Unit) may be rented, and no Unit may be rented for a term of less than two (2) ~~weeks~~ months. All leases of Units shall be on forms approved by the Association and shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, applicable rules and regulations, the Bouchelle Island Covenants, or other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association or the Community Services Association. The leasing of Units shall also be subject to the prior written approval of the Association. All Unit Owners will be jointly and severally liable with their tenants to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant. All lessees of Units shall also comply with and be subject to the provisions of Section 17 hereof.

Dated this 10th day of May  
\_\_\_\_\_, 2002.

Text that is ~~struck through~~ is deleted.

Text that is double underlined is added.

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BOOK PAGE  
VOLUSIA COUNTY  
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PREPARED BY AND RETURN TO:  
JAMES W. PEEPLES III, ESQ.  
POST OFFICE BOX 787  
COCCOA BEACH, FL 32931

## DECLARATION OF CONDOMINIUM

OF

BOUCHELLE ISLAND II, A CONDOMINIUM

I.D.C., INC., a Florida corporation (hereinafter called the "Developer"), does hereby declare as follows:

1. Introduction and Submission.

1.1 The Land. The Developer owns the fee title to certain land located in Volusia County, Florida, as more particularly described as Building 107 on Sheet 10 and as Buildings 108, 109 and 110 on Sheets 11 and 12 of Exhibit "A" hereto (the "Land").

1.2 Submission Statement. The Developer hereby submits the Land and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date hereof.

1.3 Name. The name by which this condominium is to be identified is BOUCHELLE ISLAND II, A CONDOMINIUM (hereinafter called the "Condominium").

2. Definitions. The following terms when used in this Declaration and in its exhibits, and as they may hereafter be amended, shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning:

2.1 "Act" means the Condominium Act (Chapter 710 of the Florida Statutes) as it exists on the date this Declaration is recorded.

2.2 "Bouchelle Island Covenants" means the Declaration of Covenants and Restrictions for Bouchelle Island recorded (or to be recorded) in the Public Records of the County, and when the context permits, shall also mean the Articles of Incorporation and By-Laws of the Community Services Association, all as now or hereafter amended, modified or supplemented.

2.3 "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner.

2.4 "Association" or "Condominium Association" means BOUCHELLE ISLAND II CONDOMINIUM ASSOCIATION, INC., a not for profit Florida corporation and the entity responsible for the operation of the Condominium.

2.5 "Board of Directors" or "Board" means the Association's board of administration.

2.6 "Building" means the structure or structures which are located in or on the Land and in which the Units are located, irrespective of the number of such structures.

2.7 "By-Laws" mean the By-Laws of the Association.

2.8 "Common Elements" mean and include:

- (a) The portions of the Condominium Property which are not included within the Units.
- (b) Easements through Units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility and other facilities for the furnishing of utility and other services to Units and the Common Elements.

- (c) An easement of support in every portion of a Unit which contributes to the support of the Building.
  - (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.
  - (e) Any other parts of the Condominium Property designated as Common Elements in this Declaration.
- 2.9 "Common Expenses" mean all expenses incurred by the Association for the Condominium. In order to effect economies of scale, expenses relating to all management, maintenance, security and operational services performed both for the Condominium Property and for other properties located in Bouchelle Island Lands (as described in Section 21 hereof) may be equitably apportioned among all such properties, including, without limitation, the Condominium Property, and the portion of such expenses attributable to the Condominium Property shall be deemed part of the Common Expenses.
- 2.10 "Common Surplus" means the excess of all receipts of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.
- 2.11 "Community Services Association" means Bouchelle Island Community Services Association, Inc., a Florida corporation not for profit and the entity responsible for administration of the Bouchelle Island Covenants.
- 2.12 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.
- 2.13 "Condominium Property" means the Land and personal property that are subjected to condominium ownership under this Declaration, all improvements on the Land, all easements and rights appurtenant thereto intended for use in connection with the Condominium, and all other property, real, personal or mixed, which is made subject to this Declaration as hereinafter described, and the support columns and other structural elements described as part of the Condominium Property in the Bouchelle Island Covenants.
- 2.14 "County" means the County of Volusia, State of Florida.
- 2.15 "Declaration" or "Declaration of Condominium" means (and "hereof", "herein", "hereto" and words of similar import refer to) this instrument, as it may be amended from time to time.
- 2.16 "Developer" means I.D.C., Inc., a Florida corporation and any successor or assignee of all or part of that corporation's rights hereunder; provided that no Unit Owner shall, solely by reason of his purchasing a Unit, be considered a successor or assignee of such rights unless he is expressly designated as such in an instrument executed and recorded by the Developer.
- 2.17 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) which are located on the Condominium Property, including, but not limited to, the Building.
- 2.18 "Institutional First Mortgage" means any of the following that holds a first mortgage on a Unit or Units: a bank, a savings and loan association, an insurance company, a real estate or mortgage investment trust, a pension fund, an agency of the United States Government, a mortgage company, a mortgage banker, a lender generally recognized as an institutional-type lender, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Developer, or the assignee of any such mortgage originally held by one of the foregoing.

2.19 "Limited Common Elements" means those ~~Common~~ Elements the use of which are reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. Any reference herein to Common Elements shall include also all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

2.20 "Primary Institutional First Mortgagee" shall mean the lender which advances the bulk of the funds for the Condominium's construction until that institution's mortgage on the Condominium Property is completely satisfied, and thereafter shall mean the Institutional First Mortgagee which at any time owns all the existing mortgages on Units or owns mortgages on Units securing a greater aggregate indebtedness than that secured by mortgages on Units owned by any other Institutional First Mortgagee.

2.21 "Unit" means a part of the Condominium Property which is subject to exclusive ownership.

2.22 "Unit Owner", "Owner of a Unit" or "Owner" means the Owner of a Condominium Parcel.

### 3. Description of Condominium.

3.1 Identification of Units. The Land has constructed thereon the Building consisting of four (4) structures, (buildings 107, 108, 109, and 110), two (2) of which contain fifteen (15) Units, one (1) of which contains eight (8) Units, and one (1) of which contains twelve (12) Units. Each Unit is identified by a separate designation set forth on Sheets 13 through 22, inclusive, of Exhibit "A" attached hereto. Exhibit "A" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Building in which the Units are located, and a plot plan thereof. Said Exhibit "A", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and approximate dimensions. There shall pass with each Unit as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time; and (d) other appurtenances as may be provided in this Declaration.

3.2 Unit Boundaries. Each Unit shall include that part of the Building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

(a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

(i) Upper Boundaries. The horizontal plane(s) of the unfinished lower surface(s) of the structural ceiling (which, in the case of a multi-story Unit, shall be deemed to be the ceiling of the top story of the Unit) including, in the case of a Unit in which the ceiling forms more than one plane, the plane(s) formed by the unfinished vertical surface(s) that join the horizontal planes.

(ii) Lower Boundaries. The horizontal plane(s) of the unfinished upper surface(s) of the concrete floor of the Unit (which, in the case of a multi-story Unit, shall be deemed to be the concrete floor of the first story of the Unit), including, in the case of a Unit in which the floor forms more than one horizontal plane, the plane(s) formed by the unfinished vertical surface(s) that join the horizontal planes.

(iii) Interior Divisions. Except as provided in Subsections (i) and (ii) above, no part of a nonstructural interior wall shall be considered a boundary of a Unit.

(b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.

(c) Apertures. In cases in which there are apertures in a boundary (including, but not limited to, windows, doors, conversation pits and skylights) the Unit's boundaries shall be extended so that the interior unfinished surfaces of such apertures (including all frameworks thereof) and the exterior surfaces of such apertures that are made of glass or other transparent material (including all framing and casings therefor) are within the boundaries of the Unit.

(d) Exceptions. Any piping or other fixtures which are located within one Unit but which service another Unit or Units exclusively and any structural walls, columns, beams, floor slabs and other structural members located within the Unit boundaries shall be Common Elements.

(e) Role of Survey. In cases not specifically covered in this Section 3.2, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "A" hereto shall control in determining the boundaries of a Unit.

3.3 Limited Common Elements. The Limited Common Elements shall consist of the areas, spaces, structures and fixtures described in Subsections 3.3(a), 3.3(b), and 3.3(c). Whenever these paragraphs refer to a Limited Common Element being appurtenant to a Unit, the intent is that the Limited Common Element is reserved for the exclusive use of the Owner of that Unit and the occupants of the Unit to the extent the occupants are entitled to use the Unit. Any transfer of a Unit shall operate to transfer the right of exclusive use of the Limited Common Element appurtenant to that Unit, unless otherwise provided specifically to the contrary herein.

(a) Balconies and Patios. Any balcony or patio (including any railing or parapet partially surrounding it and any planter or lighting or other fixture that is part of or contained on or within it) which adjoins a Unit that is the only Unit having direct and immediate access to it shall be a Limited Common Element appurtenant to that Unit.

(b) Storage Spaces. Each storage space or room which adjoins and opens onto a balcony or patio that is appurtenant to a Unit as a Limited Common Element shall be a Limited Common Element appurtenant to that same Unit.

(c) Certain Fixtures. Any piping or other fixture which is located within one Unit but which serves another Unit or Units exclusively shall be a Limited Common Element appurtenant to that other Unit or Units.

(d) Mortgagee Provision. Anything to the contrary herein notwithstanding, if a Unit Owner mortgages his Unit together with the right to use the Limited Common Elements appurtenant to it, his rights to use the Limited Common Elements shall not be assignable apart from the Unit unless they are released from the lien of such mortgage.

3.4 Easements. The following easements are hereby created (in addition to any easements created under the Act):

(a) Support. Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

- (b) Utility and Other Services; Drainage. Easements for utility and other services are reserved under, through and over the Condominium Property as may be required from time to time to serve the Condominium. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility or other services or drainage facilities or the use of these easements. The Board of Directors of the Association or its designee shall have a right of access to each Unit to inspect it, to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, service and drainage facilities and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall be made on not less than one (1) day's notice.
- (c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit or on any portion of the Common Properties (as defined in the Bouchelle Island Covenants) or vice versa; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachment hereafter occurs as a result of (i) construction of the Improvements, (ii) settling or shifting of the Improvements, (iii) alteration or repair to the Common Elements made by or with the consent of the Association, or (iv) repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and its maintenance as long as the Improvements involved stand.
- (d) Ingress and Egress. A non-exclusive easement as part of the Common Elements in favor of each Unit Owner and resident, their guests and invitees, shall exist (i) over streets, walks, and other rights-of-way of the Common Properties created under the Bouchelle Island Covenants and intended and designated by the Bouchelle Island Covenants to provide ingress and egress from the Condominium Property to South Causeway (Highway A-1-A), and (ii) over the entrance road to Harbor Boulevard. None of the easements specified in this sub-paragraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) shall automatically be subordinate to the rights of Unit Owners with respect to such easements.
- (e) Construction; Maintenance. The Developer and its designees, contractors, successors and assigns shall have the right, in its and their sole discretion, at any time or times to enter the Condominium Property and take all other action necessary or convenient for the purpose of constructing, remodeling or operating any part or parts of the Condominium Property, or any improvements located or to be located on or as part of the Properties (as defined in the Bouchelle Island Covenants) and to repair, replace and maintain the Condominium Property or any part thereof when the Association fails to do so.
- (f) Sales Activity. The Developer and its designees, successors and assigns shall have the right to use any such Units and parts of the Common Elements for model apartments and sales offices, to show model apartments and the Common Elements to prospective purchasers and tenants of Units or of other apartments or commercial space in or on the Bouchelle Island Lands (as defined in the Bouchelle Island Covenants), to erect on the Condominium Property signs and other promotional materials to advertise Units and/or such other apartments or commercial space for sale or lease (without regard to the size or aesthetic qualities of



the materials) and to take any and all actions which, in the Developer's opinion, may be helpful for selling or leasing Units or such other apartments or commercial space or for promoting the Bouchelle Island Lands and its operations generally.

- (g) Cable Television. The Developer reserves unto itself, its successors, assigns, contractors, designees and nominees, (i) ownership of any closed circuit television system, master antenna system, community antenna television system or the like (including any and all related conduits, wires, amplifiers, antennas, towers and other apparatus and equipment) which it (or one of its successors, assigns, designees or nominees) installs in part or whole on the Condominium Property (any such system and its related apparatus and equipment being hereinafter referred to as "the System"), (ii) a perpetual easement over, through and across the Condominium Property for the installation, servicing, maintenance, repair, replacement and removal of the System or any part thereof, (iii) the right to connect the System to whatever receiving source the owner of the System deems appropriate, and (iv) the right to provide (or cause to be provided) services to Units through the System (and related, ancillary services to Units) at charges not to exceed those normally paid for like services by residents of, or providers of such services to, single-family homes or condominium units.
- (h) Additional Easements. The Developer and the Association, on their behalves and on behalf of all Unit Owners (each of whom hereby appoints the Developer and the Association as his irrevocable attorney-in-fact for this purpose), shall each have the right to grant additional electric, gas or other utility or service easements in any portion of the Condominium Property, to relocate any existing utility or service easements or drainage facilities in any portion of the Condominium Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property, as the Developer or the Association deems necessary or desirable for the proper operation and maintenance of the Improvements (or any portion thereof), for the general health or welfare of the Unit Owners, or for the purpose of carrying out any provisions of this Declaration or the Bouchelle Island Covenants, provided that the easements as created or relocated will not prevent or unreasonably interfere with the reasonable use of the Units for the intended purposes.
- (i) Signs. No sign which bears most or all of the Condominium's name and/or a logo and which was attached to, painted on or engraved in the Building when this Declaration was recorded may be removed without the Developer's prior written consent. The Developer shall be entitled to maintain any such sign and to replace it with a substantially similar sign if it deteriorates or is damaged, and hereby reserves an easement through, over and across the Condominium Property to enable it to do so.

3.5 Support Elements. Any columns and other structural elements lying within the Common Properties (as defined in the Bouchelle Island Covenants) but necessary to the support and structural integrity of the Building shall be and are hereby declared to be Common Elements of the Condominium whether or not included in Exhibit A hereto.

- 4. Restraint Upon Separation and Partition of Common Elements. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

5. Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights.

5.1 Percentage Ownership and Shares. The undivided percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses, appurtenant to each Unit is 1/50th.

5.2 Voting. Each Unit shall be entitled to one vote in Condominium Association matters to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association. Each Unit Owner shall be a member of the Condominium Association.

6. Amendments. Except as elsewhere provided herein, amendments may be effected as follows:

6.1 By the Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, approvals must be by affirmative vote of:

(a) Unit Owners owning a majority of the Units represented at any meeting at which a quorum has been attained and by not less than 66 2/3% of the Board of Directors of the Association; or

(b) After control is turned over to Unit Owners other than the Developer, Unit Owners owning not less than 80% of the Units represented at any meeting at which a quorum has been attained; or

(c) 100% of the Board of Directors; or

(d) Not less than 50% of the entire membership of the Board of Directors in the case of amendments to the section hereof entitled "Insurance" or other sections that clearly affect the interest of Institutional First Mortgagees.

6.2 By The Developer. The Developer, during the time it is in control of the Board of Directors may amend the Declaration, the Articles of Incorporation, the By-Laws of the Association and applicable rules and regulations to correct an omission or error, or effect any other amendment, except that this procedure for amendment cannot be used if such an amendment would, in the reasonable opinion of the Developer, materially adversely affect substantial property rights of Unit Owners, unless the affected Unit Owners consent in writing. The execution and recording of any amendment by the Developer pursuant to this Paragraph 6.2 shall be conclusive evidence that the amendment does not materially adversely affect substantial property rights of Unit Owners who did not join in or consent to such execution, and any such amendment shall be effective as provided below unless subsequently rescinded. Without in any way limiting the generality of the foregoing, as long as it owns one or more Units, the Developer shall have an absolute right to make any amendments to this Declaration (without any other party's consent or joinder) that are requested or required by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or any other governmental or quasi-governmental body which owns or expects to own one or more institutional first mortgages on Units or to insure the payment of one or more such mortgages or that are requested or required by any Institutional First Mortgagee or prospective Institutional First Mortgagee to enhance the salability of its first mortgages on Units to one or more of the foregoing.

6.3 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed in the form required for the execution of a deed. Amendments effected by the Developer must be evidenced in writing and recorded, but a certificate of the Association is not required. An amendment of the Declaration is effective when properly recorded in the Public Records of the County.

6.4 Proviso. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless the record Owner(s) of the affected Unit(s), and all record owners of mortgages or other liens thereon, shall join in the execution of the amendment. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Units without the written consent of the Developer and those mortgagees in each instance; no amendment shall make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless the Primary Institutional First Mortgagee joins in the amendment. The foregoing sentence may not be amended.

7. Maintenance and Repairs.

7.1 Units. All maintenance of any Unit, whether ordinary or extraordinary, (including, without limitation, maintenance of screens, windows (both sides), the interior side of the entrance door and all other doors within or affording access to a Unit, that portion of the electrical (including wiring) and plumbing (including fixtures and connections), fixtures and outlets, appliances, carpets and other floor covering lying within the boundaries of the Unit, all interior surfaces and, in general, the entire interior of the Unit), as well as the air-conditioning and heating equipment lying within and without the boundaries of the Unit, shall be performed by the Owner of such Unit at that Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.

7.2 Common Elements. Except to the extent expressly provided to the contrary in Section 7.3 or elsewhere herein, all maintenance in or to the Common Elements shall be performed by the Association. The cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent it arises from or is necessitated by the negligence or misuse of a specific Unit Owner or Owners in the opinion of the Board (in which case such Unit Owner(s) and except to the extent the proceeds of insurance are made available therefor.

7.3 Limited Common Elements.

(a) Storage Spaces. The interior of each storage space the use of which is appurtenant to a particular Unit as a Limited Common Element shall be maintained by that Unit Owner at his sole cost and expense.

(b) Balconies. Each Unit Owner shall, at his sole cost and expense, maintain the surface of the floor, ceiling and walls of any balcony that is appurtenant to his Unit as a Limited Common Element, the surface of the interior face of any parapet that partially surrounds that balcony and any wiring, electrical outlets, light bulbs and other fixtures located on or in that balcony.

7.4 Definition of "Maintenance". When used in this Section 9A, unless the context requires otherwise, the term "maintenance" and its correlatives shall be read to mean keeping the item to be maintained in a clean and orderly condition and painting, repairing and replacing it when reasonably necessary.

8. Additions, Alterations or Improvements by the Association. Whenever in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of \$50,000.00 (which amount shall be increased each twelve (12) month period after this Declaration is recorded to keep pace with increases in the Consumer Price Index as published by the United States Bureau of Labor Statistics [or if that index be unavailable, some other suitable index designed to reflect changes in the cost of living selected by the Board]) in the aggregate in any calendar year, the Association may proceed with making such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Units represented at a meeting at which a quorum is attained. Any such additions, alterations or improvements to such Common Elements, or any part thereof, costing \$50,000.00 (increased as aforesaid) or less in the aggregate in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses.

9. Additions, Alterations or Improvements by Unit Owners.

9.1 By Non-Developer Unit Owners. No Unit Owner other than Developer shall make any structural addition, alteration or improvement in or to the Common Elements, his Unit or any Limited Common Element, without the prior written consent of the Board of Directors. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement in such Unit Owner's Unit or Limited Common Elements within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association and all other Unit Owners harmless from any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association. If the Board approves or is deemed to have approved any addition, alteration or improvement which is visible from any location exterior to the Building, such approval shall be presented to the Community Services Association for its approval as provided in the Bouchelle Island Covenants and no such addition, alteration or improvement shall be undertaken without the additional approval of the Community Services Association. Either or both of the Board and the Community Services Association may impose administrative charges for considering any such proposal.

9.2 By the Developer.

(a) Generally. The restrictions and limitations set forth in this Section 9 shall not be applicable to Units owned by the Developer. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners or the Community Services Association, to (a) make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it (including, with limitation, the removal of walls, floors, ceilings and other structural portions of the improvements), (b) move and modify piping and other fixtures located within the Common Elements but serving exclusively a Unit or Units owned by the Developer, and (c) provide additional and/or expand and/or alter and/or eliminate recreational facilities.

(b) Changes in Developer-Owned Units. Without limiting the generality of the provisions of Paragraph 9.2(a) above, the Developer shall have the right, without the vote or consent of the Association or Unit Owners or the Community Services Association, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Developer-owned Units; (iii) change the size and/or number of Developer-owned Units into two or more separate Units, combining separate Developer-owned Units (including those resulting from such subdivision or otherwise) into one or more Units, or otherwise; and (iv) reapportion among the Developer-owned Units affected by such change in size or number pursuant to the preceding clause (iii), their appurtenant interest in the Common Elements and share of the Common Surplus and Common Expenses; provided, however, that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that the Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to such Units, provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by actions taken pursuant to this Paragraph 9.2(b) may be affected by the Developer alone. Without limiting the generality of Subsection 6.4 hereof, the provisions of this Subsection may not be added to, amended or deleted without the prior written consent of the Developer.

10. Operation of the Condominium by the Association; Powers and Duties. The Association shall be responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the Articles of Incorporation of the Association and its By-Laws (copies of which are attached hereto as Exhibits J and K, respectively), as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

(a) The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements therein, or at any time and by force, if necessary, for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit or Units.

- (b) The power to make and collect Assessments and ~~Other~~ charges against Unit Owners and to lease, maintain, repair and replace the Common Elements.
- (c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times.
- (d) The power and right to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair, and replacement of the Common Elements with funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by this Declaration and the Condominium Act, including, but not limited to the making of Assessments, the promulgation of rules and the execution of contracts on the Association's behalf.
- (e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, provided that such actions are approved by a majority of the entire membership of the Board of Directors and of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing.
- (f) Subsequent to the recording of this Declaration, the Association, when authorized by a majority of the Units represented at a meeting at which a quorum has been attained, shall have the power to acquire and enter into agreements for the acquisition of fee interests, leaseholds, memberships, and other possessory or use interests inlands or facilities, including, but not limited to, country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the lands of the Condominium, intended to provide for the use or benefit of the Unit Owners. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.
- (g) The power to adopt and amend rules and regulations covering the details of the operation and use of the Condominium Property.
- (h) The power to employ personnel (part-time or full-time) (if part-time, such personnel may be employees of one or more other Cluster Associations [as defined in the Bouchelle Island Covenants], one or more of the Developer's affiliates, or the Community Services Association, in which case their compensation shall be equitably allocated among the parties for which the employee provides services).
- (i) Subject to Subsection 3.4(g) hereof, the power to grant licenses and easements over the Common Elements as required or convenient to permit cable television service or other communications services to one or more Units.

The event of conflict between the powers and duties of the Association or the terms and provisions of this Declaration, exhibits attached hereto and the Bouchelle Island Covenants or otherwise, the Bouchelle Island Covenants shall take precedence over this Declaration; this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time.

- 10.1 Limitation Upon Liability of Association. Notwithstanding its duty to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owner for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property.
- 10.2 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.
- 10.3 Approval or Disapproval of Matters Generally. Whenever the decision of a Unit Owner is required upon any matter (whether or not the subject of an Association meeting), that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of record Owners is specifically required by this Declaration or by law.
- 10.4 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors of the Association, is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable rules and regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, the Association may condition such action or approval in any manner it deems appropriate or may refuse to take or give such action or approval, in either case without the necessity of establishing the reasonableness of its conditions or refusal (as the case may be).
11. Determination of Common Expenses and Fixing of Assessments Therefor. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessment payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of the operation, maintenance, repair, replacement and management of the Common Elements, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable rules and regulations or by the Association. Any budget adopted shall be subject to change to cover actual expenses at any time. Any such change must be adopted consistently with the provisions of the By-Laws.
12. Collection of Assessments.
- 12.1 Liability for Assessments. Every Unit Owner, regardless of how he acquired his Unit, (including a purchaser at a judicial sale) shall be liable for all Assessments coming due while he owns the Unit. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for his share of the Common expenses or otherwise up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

- 12.2 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the highest lawful rate from the due date until paid. The Association has a lien on each Condominium Parcel for any unpaid Assessments on it including interest thereon at the highest lawful rate and for reasonable attorney's fees and costs incurred by the Association in connection with the collection of the Assessments or enforcement of the lien. The lien is effective for a period of one (1) year from and after recording a claim of lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the amount due and the due dates. The lien is in effect until all sums secured by it have been fully paid or until barred by law, or one (1) year after recording, whichever is later. The claim of lien includes only Assessments which are due when the claim is recorded, together with other sums specified herein. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments, together with other sums specified herein, without waiving any claim of lien.
- 12.3 Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered against a Unit Owner until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association may not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified mail, return receipt requested, addressed to the Unit Owner. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this Subsection 12.3 are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.
- 12.4 Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit and the Association is entitled to the appointment of a receiver to collect the rent.
- 12.5 Institutional First Mortgagee. If an Institutional First Mortgagee obtains title to a Unit as a result of foreclosure of its mortgage, or as a result of a deed given in lieu of foreclosure, such Institutional First Mortgagee, its successors and assigns, shall not be liable for the share of Common Expenses or Assessments or other charges imposed by the Association pertaining to such Condominium Parcel or chargeable to the former Unit Owner of such Condominium Parcel which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed in lieu, unless such share is secured by a claim of lien that is recorded prior to the recording of the foreclosed mortgage. Such unpaid share of Common Expenses or Assessments or other charges shall be deemed to be Common Expenses collectible from all of the Unit Owners, however, including such acquirer, and such acquirer's successors and assigns.
- 12.6 Developer's Liability for Assessments. The Developer shall be excused from the payment of the share of the Common Expenses and Assessments relating to Units it is offering for sale, for a period beginning with the recording of this Declaration and ending December 31, 1988. However, the Developer must pay the portion of Common



Expenses incurred during that period which exceeds the amount assessed against other Unit Owners. The Developer guarantees that a Unit Owner's assessments shall not exceed \$345.00 per quarter until after December 31, 1988.

12.7 Certificate of Unpaid Assessments. Each Unit Owner has the right to require from the Association a certificate showing the amount unpaid Assessments against him with respect to his Unit.

12.8 Installments. Unless changed by action of the Board, Assessments will be payable in advance in quarterly installments, and a Unit Owner must remain at all times at least one quarter in advance of payment dates.

12.9 Receiving Agent. The Developer may, at any time and from time to time, appoint the Condominium Association, another Cluster Association (as defined in the Bouchelle Island Covenants), the Community Services Association, or an independent receiving agent as agent to receive all Assessments and all assessments and other charges payable under the Bouchelle Island Covenants, this Declaration or other Cluster Declarations (as defined in the Bouchelle Island Covenants) in one lump sum and to then disburse such sums to all the parties entitled thereto, first to the Community Services Association and then to the Association and such other Cluster Associations. No agent shall have any liability except for its gross negligence or willful misconduct in receiving and disbursing monies. All enforcement actions shall remain solely within the respective associations individually, except as elsewhere herein provided to the contrary.

13. Insurance. Insurance covering portions of the Condominium Property shall be governed by the following provisions:

13.1 Purchase, Custody and Payment.

- (a) Purchase. All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida and which, in the case of hazard insurance, has either a financial rating in Best's Financial Insurance Reports of Class VI or better or a financial rating therein of Class V and a general policyholder's rating of at least "A".
- (b) Approval. Each insurance policy, the agency and company issuing the policy and the insurance trustee hereinafter described (the "Insurance Trustee") shall be subject to the approval of the Primary Institutional First Mortgagees in the first instance.
- (c) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be additional insureds.
- (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee, and all policies and endorsements thereto shall be deposited with the Insurance Trustee.
- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to

each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

- (F) Personal Property and Liability. Unit Owners may obtain insurance coverage at their own expense and in their own discretion upon the property lying within the boundaries of their unit, including, but not limited to, their personal property (except as covered in Section 13.2(a) below), and for their personal liability and living expense and for any other risks.

13.2 Coverage. The Association shall maintain insurance covering the following:

- (a) Casualty. The Building (including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units initially installed in accordance with the original plans and specifications therefor, and replacements thereof of like kind or quality, but excluding all floor, wall and ceiling coverings and all furniture, furnishings and other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners and excluding all other alterations, capital improvements and betterments made by Unit Owners or such tenants) and all Improvements located on the Common Elements from time to time, together with all service machinery contained therein (collectively the "Insured Property"), shall be insured in an amount not less than one hundred percent (100%) of the insurable value thereof (based on replacement cost), excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:
- (i) Loss or Damage by Fire and Other Hazards covered by a standard extended coverage endorsement; and
  - (ii) Such Other Risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.
- (b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such additional coverage as shall be required by the Board of Directors of the Association, and with coverage of not less than \$1,000,000 per each accident or occurrence, for personal injury and/or property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa.
- (c) Workmen's compensation and other mandatory insurance when applicable.
- (d) Flood insurance, if required by the Primary Institutional First Mortgagee or if the Association so elects.
- (e) Fidelity bonding of all the Association's directors, officers, employees and managing agents who handle Association funds, in the principal sum of at least \$10,000 for each such person.
- (f) Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's standard right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, or by a member of the Board of Directors of the Association or by one or more Unit Owners.

13.3 Additional Provisions. All policies of physical damage insurance shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.

13.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of any one or more Units or their appurtenances or of the Common Elements by, or any other action or omission of, particular Unit Owners shall be assessed against and paid by such Owners.

13.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board of Directors and which, if so appointed, shall be a bank, or trust company in Florida with trust powers, with its principal place of business in the County. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee (if appointed) shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee:

(a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.

(b) Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the insured Property (all as determined by the Association in its sole discretion) (collectively the "Optional Property"), if any, collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or of other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.

(c) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any

13.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

- (a) Expenses of the Trust. First, all expenses of the Insurance Trustee shall be paid or provided for.
- (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.
- (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Subsection 13.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.
- (d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

13.8 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurances as to all such and other risks not covered by insurance carried by the Association.

13.10 Insurance Trustee Not Appointed. The Board of Directors shall have the option in its discretion of appointing an Insurance Trustee hereunder. Anything to the contrary in this Declaration notwithstanding, if the Association fails or elects not to appoint an Insurance Trustee, the Association shall perform directly all obligations imposed upon the Insurance Trustee by this Declaration.

14.1 Determination to Reconstruct or Repair. In the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty (unless 75% or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is destroyed or substantially damaged and Unit Owners owning .80% or more of the Units

elect not to proceed with repairs or restoration and Institutional First Mortgagees holding mortgages on at least 51% of the Units subject to mortgages held by Institutional First Mortgagees approve such election], the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Insurance Trustee shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. If 75% or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Unit Owners owning 80% of the Units duly and promptly resolve not to proceed with the repair or restoration thereof and the Institutional First Mortgagees holding mortgages on at least 51% of the Units subject to mortgages held by Institutional First Mortgagees approve such resolution, the Condominium property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no Payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit in the order of priority of such mortgages and liens. Whenever in this Section the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Insurance Trustee notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work. The Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

- 14.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements; or if not, then in substantial accordance with the plans and specifications approved by the Board of Directors, and if the damaged property which is to be substantially altered is the Building or the Optional Property, by the Owners of not less than 80% of the applicable interests in the Common Elements, as well as the Owners of all Units and other portions of the Optional Property (and their respective mortgages) the plans for which are to be substantially altered.
- 14.3 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit-by-Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

14.4 Estimate of Costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall estimate the costs of reconstruction and repair of the property or repair.

14.5 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements, and on account of damage to the Optional Property, in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.

14.6 Construction Funds. The funds for payment of the costs of reconstruction and repair, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from Assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

(a) Association. If the total Assessments made by the Association in order to provide funds for payment of the costs of reconstruction and repair which are the responsibility of the Association are more than \$50,000.00, then the sums paid upon such Assessments shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such Assessments and disburse the same in payment of the costs of reconstruction and repair.

(b) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$50,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon written request to the Insurance Trustee by the Primary Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

(ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$50,000.00, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.

(iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such

damage to each affected unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.

(iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable to any mortgagee.

(v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee (if appointed) shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

14.7 Benefit of Mortgagees. Certain provisions in this Section 14 are for the benefit of mortgagees of Units and may be enforced by any of them.

## 15. Condemnation.

15.1 Deposit of Awards with Insurance Trustee; Authority of Association. The taking of portions of the Condominium Property by the exercise of the power or eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a special Assessment shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner. The Association shall represent the Unit Owners in any condemnation proceedings relating to any part of the Common Elements and in negotiations, settlements and agreements with the condemning authorities for the acquisition of any part of the Common Elements.

15.2 Determination whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain shall also be deemed to be a casualty.

15.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made useable in the manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee after a casualty, or as elsewhere in this Section 15 specifically provided.

15.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium.

(a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit.

(b) Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.

(c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:

(i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and

(ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

15.5 Unit Made Uninhabitable. If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable (in the sole opinion of the Association), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

(a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units as their interests may appear. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.



- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:
- (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by sub-section 15.4(c) hereof (the "Percentage Balance"); and
  - (ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by subsection 15.4(c) hereof, by the Percentage Balance.
- The result of such division for each Unit shall be the adjusted percentage for such Unit.
- (d) Assessments. If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.
- (e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 30 days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be three appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Unit Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

15.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements useable in the manner approved by the Board of Directors; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to

these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

15.7 Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association.

16. Residential Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Units in the Condominium Property shall be restricted as follows:

16.1 Occupancy of Units. Each Residential Unit shall be used as a residence only, except as otherwise herein expressly provided. A Unit owned by an individual, corporation, partnership, trust or other fiduciary may only be occupied by the following persons, and such persons' families and guests: (i) the individual Unit Owner, (ii) an officer, director, stockholder or employee of such corporation, (iii) a partner or employee of such partnership, (iv) the fiduciary or beneficiary of such fiduciary, or (v) permitted occupants under an approved lease or sublease of the Unit (as described below), as the case may be. Occupants of an approved leased or subleased Unit must be the following persons, and such persons' families and guests: (i) an individual lessee or sublessee, (ii) an officer, director, stockholder or employee of a corporate lessee or sublessee, (iii) a partner or employee of a partnership lessee or sublessee, or (iv) a fiduciary or beneficiary of a fiduciary lessee or sublessee. Under no circumstances may more than one family reside in a Unit at one time. "Families" or words of similar import used herein shall be deemed to mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than four (4) persons not so related who maintain a common household in a Unit. In no event shall occupancy (except for temporary occupancy by visiting guests) exceed two (2) persons per each bedroom in the Units. The Board of Directors shall have the power to authorize occupancy of a Unit by persons in addition to those set forth above. The restrictions in this Subsection 16.1 shall not be applicable to units owned by the Developer.

16.2 Pets. No animal may be kept anywhere on the Condominium Properties unless it is a small bird or fish, a dog weighing less than twenty (20) pounds, a household cat or some other "household pet" (as defined by the Board of Directors) capable of being hand-carried. With the exception of birds and fish housed in a cage or aquarium within the Owner's Unit, no Owner may keep more than one (1) pet on the Condominium Property. No pet may be kept, bred or maintained for any commercial purpose or become a nuisance or annoyance to neighbors. Unit Owners must pick up all solid wastes of their pets and dispose of such wastes appropriately. All pets (including cats) must be leashed or carried by hand at all times when outside the Unit. No animal may be kept on a balcony or terrace when its owner is not in the Unit. Without limiting the generality to Section 18 hereof, violation of the provision of this Paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property upon three (3) days' notice.

16.3 Alterations. Without limiting the generality of Subsection 9.1 hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant thereto or Common Elements (including, but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antenna, machinery or air-conditioning units, installing

balcony enclosures or in any other manner changing the appearance of any portion of the Building) without obtaining the prior written consent of the Association (in the manner specified in Subsection 9.1 hereof) and the Community Services Association (as specified in the Bouchelle Island Covenants). Without limiting the generality of the foregoing, nothing shall be hung, displayed, installed, affixed or placed upon the exterior of the Building, nor may any other change be made to the Building which would affect its exterior appearance in any way, without the prior written consent of the Association and the Community Services Association. In general, the Condominium Property shall be kept free and clear of unsightly material.

- 16.4 Use of Common Elements. The Common Elements shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.
- 16.5 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium Property, nor shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants.
- 16.6 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth.
- 16.7 Leases. No portion of a Unit (other than an entire Unit) may be rented. All leases of Units shall be on forms approved by the Association and shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, applicable rules and regulations, the Bouchelle Island Covenants, or other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association or the Community Services Association. The leasing of Units shall also be subject to the prior written approval of the Association. All Unit Owners will be jointly and severally liable with their tenants to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant. All lessees of Units shall also comply with and be subject to the provisions of Section 17 hereof.
- 16.8 Exterior Improvements; Landscaping. Without limiting the generality of Subsection 9.1 or Subsection 16.4 hereof, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, furniture, fixtures and equipment), nor to be planted or grown any type of shrubbery, flower, tree, vine, grass or other plant life outside his Unit, without the prior written consent of the Association and the Community Services Association.
- 16.9 Weight and Sound Restriction. Hard and/or heavy surface floor coverings, such as tile, wood, etc., will be permitted only in kitchens, bathrooms and first floor units. All other areas are to receive sound absorbent, less dense, floor coverings, such as carpeting. Use of a hard and/or heavy surface floor covering in any other location must be submitted to and approved by the Board and must meet applicable structural requirements. Owners will be held strictly liable for violation of these restrictions and for all damages resulting therefrom and the Association has the right to

require immediate removal of violations.

APPLICABLE WARRANTIES OF THE DEVELOPER, IF ANY, SHALL BE VOIDED BY VIOLATIONS OF THESE RESTRICTIONS AND REQUIREMENTS.

- 16.10 Community Services Association Veto. The Community Services Association shall have the power to veto any action taken or approved by the Condominium Association which is deemed by the Community Services Association to be improvident, and the Community Services Association may enjoin and otherwise act to prohibit implementation of such action.
- 16.11 Security. The rights of access and use established with respect to the Condominium Property and the Common Properties (as defined in the Bouchelle Island Covenants) shall be subject to security checks and restrictions. Security personnel shall have the right to stop and question persons and to require satisfactory evidence of any such person's right to be where such person is stopped. Persons not establishing that right to the satisfaction of the security personnel may be required to leave (even if such person actually has the right to be where stopped, but is unable to prove such right satisfactorily).
- 16.12 Effect on Developer and Primary Institutional First Mortgagee; Relief by Association. The restrictions and limitations set forth in this Section 16 shall not apply to the Developer or the Primary Institutional First Mortgagee or any of their respective affiliates or to Units owned by any of them. The Board of Directors shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 16 for good cause shown.
- 16.13 Time-Share Estates. Time-share estates are prohibited.
17. Selling, Leasing and Mortgaging of Units. No unit Owner other than the Developer may sell his Unit, and no Unit Owner other than the Developer may lease his Unit, except by complying with the following provisions:
  - 17.1 Right of First Refusal. Any Unit Owner who receives a bona fide offer to purchase or lease his Unit (such offer to purchase or lease a Unit, as the case may be, is called an "Outside Offer," the party making any such Outside Offer is called an "Outside Offeror," and the Unit Owner to whom the Outside Offer is made is called an "Offeree Unit Owner") which he intends to accept shall give notice by certified mail to the Board of Directors of the receipt of such Outside Offer. Said notice shall also state the name and address of the Outside Offeror, the terms of the proposed transaction and such other information as the Board of Directors may reasonably require. The giving of such notice to the Board of Directors shall constitute an offer by such Unit Owner to sell his Unit or to lease his Unit to the Association or its designee upon the same terms and conditions as contained in such Outside Offer and shall also constitute a warranty and representation by the Unit Owner who has received such Outside Offer to the Association that such Unit Owner believes the Outside Offer to be bona fide in all respects. The Offeree Unit Owner shall submit in writing such further information with respect thereto as the Board of Directors may reasonably request. Not later than twenty (20) days after receipt of such notice, together with such further information as may have been requested, the Association or its designee may elect, by sending written notice to such Offeree Unit Owner before the expiration of said twenty (20) day period, by certified mail, to purchase such Unit or to lease such Unit, as the case may be, upon the same terms and conditions as contained in the Outside Offer and as stated in the notice from the Offeree Unit Owner.

In the event the Association shall timely elect to purchase such Unit or to lease such Unit, or to cause the same to be purchased or leased by its designee, title shall close or a lease shall be executed at the office of the attorneys for the Association, in accordance with the terms of the Outside Offer, within forty-five (45) days after the

giving of notice by the Association of its election to accept such offer. If, pursuant to such Outside Offer to purchase said Unit, the Outside Offeror was to assume or take title to the Unit subject to the Offeree Unit Owner's existing mortgage or mortgages, the Association may purchase the Unit and assume or take title to the Unit subject to said existing mortgage or mortgages, as the case may be. At the closing, the Offeree Unit Owner, if such Unit is to be sold, shall convey the same to the Association, or to its designee, by statutory warranty deed, with all tax and/or documentary stamps affixed at the expense of such Unit Owner, who shall also pay all other taxes arising out of such sale. Title shall be good and marketable and insurable and the Offeree Unit Owner shall deliver an abstract or provide a title binder (and, subsequently, title insurance) at its expense at least thirty (30) days prior to such closing. Real estate taxes, mortgage interest, if any, and Common Expenses shall be apportioned between the Offeree Unit Owner and the Association, or its designee, as of the closing date. In the event such Unit is to be leased, the Offeree Unit Owner shall execute and deliver to the Board of Directors or to its designee a lease between the Offeree Unit Owner, as landlord, and the Association, or its designee, as tenant, covering such Unit, for the rental and term contained in such Outside Offer.

In the event the Association or its designee shall fail to accept such offer or, in the case of a lease, shall fail to reject the proposed lease as permitted by Subsection 16.7 hereof, within twenty (20) days after receipt of notice and all additional information requested, as aforesaid, the Offeree unit Owner shall be free to accept the Outside Offer within sixty (60) days after (i) notice of refusal is given by the Association, or (ii) the expiration of the period in which the Association or its designee might have accepted such offer, as the case may be. In the event the Offeree Unit Owner shall not, within such sixty (60) day period, accept, in writing, the Outside Offer or if the Offeree Unit Owner shall accept the Outside Offer within such sixty (60) day period but such sale or lease, as the case may be, shall not be consummated in accordance with the terms of such Outside Offer or within a reasonable time after the date set for closing thereunder, the, should such Offeree Unit Owner thereafter elect to sell such Unit or to lease such Unit, as the case may be, the Offeree Unit Owner shall be required to again comply with all of the terms and provisions of this Section.

Any deed or lease to an Outside Offeror shall provide (or shall be deemed to provide) that the acceptance thereof by the grantee or tenant shall constitute an assumption of the provisions of the Declaration, the By-Laws, the Articles of Incorporation, applicable rules and regulations, the Covenants and all other agreements, documents or instruments affecting the Condominium Property or administered by the Association or the Homeowners' or Master Association, as the same may be amended from time to time.

Any lease executed in connection with the acceptance of any Outside Offer to lease a Unit shall be consistent herewith and with the By-laws and rules and regulations and shall provide specifically that (i) it may not be modified, amended, extended or assigned, without the prior consent in writing of the Board of Directors, (ii) the tenant shall not assign his interest in such lease or sublet the demised premises or any part thereof without the prior consent in writing of the Board of Directors, and (iii) the Board of Directors shall have the power, but shall not be obligated, to terminate such lease and/or to bring summary proceedings to evict the tenant in the name of the landlord thereunder, in the event of (a) a default by the tenant in the performance of its obligations under such lease, or (b) a foreclosure of the lien granted under the Act. Such lease shall also comply with the provisions of Subsection 16.7 hereof.

Except as hereinbefore set forth, the form of any such lease executed by the Association or an Outside Offeror shall contain such other modifications as shall be required in writing by the Board of Directors. Any lease executed by the Association as tenant shall

provide that the Association may enter into a sublease of the premises without the consent of the landlord.

Any purported sale or lease of a Unit in violation of this Section shall be voidable at any time at the election of the Association and if the Board of Directors shall so elect, the Unit Owner shall be deemed to have authorized and empowered the Association, as agent and attorney-in-fact for such Unit Owner, to institute legal proceedings to evict the purported tenant (in case of an unauthorized leasing) in the name of said Unit Owner. Said Unit Owner shall reimburse the Association for all expenses (including attorneys' fees and disbursements) incurred in connection with such proceedings.

The foregoing restrictions shall not apply to Units owned by or leased to the Developer or by or to any Institutional First Mortgagee acquiring title by foreclosure or by a deed in lieu of foreclosure. The Developer and such Institutional First Mortgagees shall have the right to sell, lease or sublease Units they own or lease without having to first offer the same for sale or lease to the Association.

- 17.2 Consent of Unit Owners to Purchase or Lease of Units by the Association. The Association shall not exercise any option hereinabove set forth to purchase or lease any Unit without the prior approval of Owners of a majority of the Units present in person or by proxy and voting at a meeting at which a quorum has been obtained.
- 17.3 No Severance of Ownership. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements, except as provided herein with respect to certain Limited Common Elements.
- 17.4 Release by the Association of the Right of First Refusal. The right of first refusal contained in Subsection 17.1 may be released or waived by the Association only in the manner provided in Section 17.5. In the event the Association shall release or waive its right of first refusal as to any Unit, such Unit may be sold, conveyed or leased free and clear of the provisions of said Subsection 17.1.
- 17.5 Certificate of Termination of Right of First Refusal. A certificate executed and acknowledged by an officer of the Association stating that the provisions of Subsection 17.1 have been satisfied by a Unit Owner, or stating that the right of first refusal contained therein has been duly released or waived by the Association, or approving the proposed sale or lease, and that, as a result thereof, the rights of the Association thereunder have terminated, shall be conclusive with respect to all persons who rely on such certificate in good faith. The Board of Directors shall furnish such certificate upon request to any Unit Owner in respect to whom the provisions of such Section have, in fact, terminated or been waived. No fee shall be charged by the Association in connection with the furnishing of such certificate in excess of the charges reasonably required for same, and such charges shall not exceed the maximum amount allowed under the Act. No charge shall be made in connection with the consideration of the approval of an extension or renewal of a previously approved lease.
- 17.6 Financing of Purchase of Units by the Association. The purchase of any Unit by the Association shall be made on behalf of all Unit Owners. If the available funds of the Association are insufficient to effectuate any such purchase, the Board of Directors may levy an Assessment against each Unit Owner (other than the Offeree Unit Owner), in proportion to his share of the Common Expenses, and/or the Board of Directors may, in its discretion, finance the acquisition of such Unit, provided, however, that no such financing may be secured

- 17.7 Exceptions. The provisions of Subsection 17.1 shall not apply with respect to any lease, sale or conveyance of any Unit by (a) the Unit Owner thereof to his spouse, adult children, parents, parents-in-law, adult siblings or a trustee, corporation or other entity where the Unit Owner or the aforementioned related persons are and continue to be the sole beneficiary or equity owner of such trustee, corporation or other entity, or to any one or more of the above, (b) the Developer, (c) the Association, (d) any proper officer conducting the sale of a Unit in connection with the foreclosure of a mortgage or other lien covering such Unit or delivering a deed in lieu of foreclosure, or (e) an Institutional First Mortgagee (or its designee) deriving title by virtue of foreclosure of its mortgage or acceptance of a deed in lieu of foreclosure; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 17.
- 17.8 Gifts and Devises, Etc. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or to have his Unit pass by intestacy, without restriction; provided, however that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 17.
- 17.9 Mortgage of Units. Each Unit Owner shall have the right to mortgage his Unit without restriction.
- 17.10 Rights of Developer. Anything to the contrary herein notwithstanding, as long as the Developer holds dwelling units for sale within the Bouchelle Island Lands (as defined in the Bouchelle Island Covenants), before the Association approves any sale of a Unit or elects to purchase the Unit itself, the Association must first offer such Unit to the Developer and allow the Developer to accept the Outside Offer. Notice of receipt of an Outside Offer must be delivered to the Developer by the Association within five (5) days after such notice is received by the Association as aforesaid. The Developer's election shall be given to the Board in writing within ten (10) days of the date the Developer is notified of the Outside Offer in writing. The approval of any sale by the Association, however, in violation of this Section shall be conclusive and may be relied upon by an Outside Offeror acting in good faith and acquiring the Unit for value. The Association shall, however, in such case be liable to the Developer in damages.
18. Compliance and Default. Each Unit Owner and every occupant of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:
- 18.1 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the association.
- 18.2 Compliance. In the event a Unit Owner or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the applicable provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations, or the Bouchelle Island Covenants, or any other agreement, document or instrument affecting the Condominium Property, the Association shall have the right to bring an action for damages or for injunctive relief, or both, as provided in Section 718.303, Florida Statutes (1986).

- 18.3 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees) as may be awarded by the court.
- 18.4 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
19. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a consent of Owners of at least 75% of the Units and of Institutional First Mortgagees holding mortgages on at least 75% of the Units that are subject to mortgages held by Institutional First Mortgagees. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common, in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the Public Records of the County. This Section may not be amended without the consent of all Institutional First Mortgagees and, so long as it owns any Unit, the Developer.
20. Additional Rights of Institutional First Mortgagees. In addition to all other rights herein set forth, every Institutional First Mortgagee and every insurer and governmental guarantor of a first mortgage held by an Institutional First Mortgagee shall have the right, upon written request to the Association identifying itself and the Units subject to a first mortgage it holds or has insured or guaranteed, to:
- 20.1 Examine, during normal business hours or other reasonable circumstances, the Association's books, records and financial statements, and current copies of this Declaration, of the Association's Articles and By-Laws, and of its rules and regulations;
  - 20.2 Receive notice of Association meetings and attend such meetings;
  - 20.3 Receive notice of an alleged default by any Unit Owner whose Unit is subject to a mortgage it holds or has insured or guaranteed, if the default is not cured within sixty (60) days after notice of the default to the Unit Owner; and
  - 20.4 Receive notice of any condemnation or casualty loss which affects a Unit subject to a mortgage it holds or has insured or guaranteed or which affects a major portion of the Condominium Property.
  - 20.5 Have prepared at its (i.e., the requesting Institutional First Mortgagee's, insurer's or guarantor's (as the case may be)) expense,



within a reasonable time after it requests it, an audited financial statement of the Association for the immediately preceding fiscal year.

- 20.6 Receive notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- 20.7 Receive notice of any proposed action by the Association which would require hereunder the consent or approval of a specified percentage of Institutional First Mortgagees.
21. The Bouchelle Island Development. The Condominium is part of a development known as Bouchelle Island to be created on the Bouchelle Island Lands (as defined in the Bouchelle Island Covenants). The Bouchelle Island Covenants contain certain rules, regulations and restrictions relating to the use of the Common Properties (as defined in the Bouchelle Island Covenants) as well as the Condominium Property, which Bouchelle Island Covenants, as amended hereafter, are hereby incorporated herein by this reference. Each Unit Owner will be a member of the Community Services Association and will be subject to all of the terms and conditions of the Bouchelle Island Covenants, as amended from time to time. Among the powers of the Community Services Association are the power to assess Unit Owners (an other members of the Community Services Association) for a pro-rata share of the expenses of the operation and maintenance of, and the management fees relating to, the Common Properties, and to impose and foreclose liens in the event such assessments are not paid when due.
22. Water and Sewer Lines. The water line from each building up to, but not including, the water meter, shall be part of the Common Elements and maintained by the Association. Each water meter and the lines supplying water from the water source to the water meter is not a part of the Condominium Property and is owned and maintained by the City of New Smyrna Beach Utilities Commission as part of the Water System (as defined in the Bouchelle Island Covenants). The sewer line from each building up to, but not including, the main collection line, shall be part of the Common Elements and maintained by the Association. The main collection line and the sewer line from there to the sewage treatment facility is not a part of the Condominium Property and is owned and maintained by the City of New Smyrna Beach Utilities Commission as part of the Sewer System (as defined in the Bouchelle Island Covenants). The Condominium Association shall promptly reimburse the Developer for the cost of repairs to the Water System or the Sewer System which are necessitated by the negligence of any of the Unit Owners or the Condominium Association's agents or employees.
23. Covenant Running With the Land. All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association, as well as the Bouchelle Island Covenants, and all management contracts affecting the Unit Owners (whether or not recorded), shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable rules and regulations, as well as the Bouchelle Island Covenants, as they may be amended from time to time, and all applicable management contracts entered into by the Association (whether or not recorded in the Public Records of the County) (which management contracts, as amended from time to time, are incorporated herein by this reference). The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, as well

as the Bouchelle Island Covenants and applicable management contracts, as they may be amended from time to time, by such Unit Owner, tenant or occupant.

24. Additional provisions.

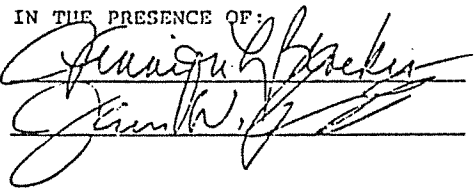
- 24.1 Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address, as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received.
- 24.2 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 24.3 Mortgagees. The Association may assume each unit is free of any mortgages or liens, unless written notice of the existence of a mortgage or lien on the Unit is received by the Association.
- 24.4 Exhibits. There is hereby incorporated in this Declaration any materials contained in the Exhibits annexed hereto which under the Act are required to be part of the Declaration
- 24.5 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a vice-president may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 24.6 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 24.7 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, applicable rules and regulations adopted pursuant to such documents, or applicable management contracts, as the same may be amended from time to time, shall not affect the validity of the remaining portions hereof or thereof which shall remain in full force and effect.
- 24.8 Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.
- 24.9 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be

deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and the applicable rules and regulations and management contracts are fair and reasonable in all material respects.

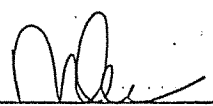
24.10 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

24.11 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed this 22 day of April, 1988.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:  


I.D.C., INC., a Florida corporation

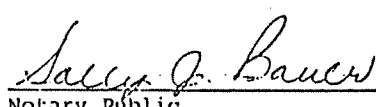
By:   
NANCY ARDUCKLE, President

(CORPORATE SEAL)

STATE OF FLORIDA )  
                              ) SS:  
COUNTY OF BREVARD )

BEFORE ME, the undersigned authority, duly authorized by law to take oaths and acknowledgments, personally appeared NANCY ARDUCKLE, as President of I.D.C., INC., a Florida corporation, who after being first duly sworn, acknowledged before me that she executed the foregoing instrument as such officer for the reasons and purposes therein expressed.

WITNESS my hand and official seal in the county and state last aforesaid on this 22 day of April, 1988.

  
Notary Public

My commission expires:

0576p      Notary Public, State of Florida  
10p      My Commission Expires July 17, 1988  
            Bonded thru Troy Tele Insurance, Inc.