

**DECLARATION OF CONDOMINIUM  
OF  
BOUCHELLE ISLAND XXVI, A CONDOMINIUM**

**BOUCHELLE ISLAND DEVELOPMENT CORPORATION**, an Illinois corporation (hereinafter called the "Developer"), does hereby declare as follows:

**SECTION 1: INTRODUCTION AND SUBMISSION:**

- A. **THE LAND:** The Developer owns the fee title to certain land located in Volusia County, Florida, as more particularly described as Building 170 in Exhibit A attached hereto, which is hereinafter referred to as the "Land."
- B. **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.
- C. **NAME:** The name by which this condominium is to be identified is BOUCHELLE ISLAND XXVI, A CONDOMINIUM (hereinafter called the "Condominium").

**SECTION 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:

- A. "Act" means the Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date this Declaration is recorded.
  - B. "BOUCHELLE ISLAND Covenants" means the Declaration of covenants and Restrictions for BOUCHELLE ISLAND 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.
  - C. "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.
  - D. "Association" or "Condominium Association" means BOUCHELLE ISLAND XXVI CONDOMINIUM ASSOCIATION, INC., a not for profit Florida corporation and the entity responsible for the operation of the Condominium.
  - E. "Board of Directors" or "Board" means the Association's board of administration.
  - F. "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.
  - G. "By-Laws" mean the By-Laws of the Association.
- (1) "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.

- H. "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.
- I. "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.
- J. "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.
- K. "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.
- L. "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.
- M. "County" means the County of Volusia, State of Florida.
  - (1) "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) "Developer" means Bouchelle Island Development Corporation, an Illinois 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.

- N. "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.
- O. "Institutional First Mortgagee" 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.
- P. "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.
- Q. "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.
- R. "Unit" means a part of the Condominium Property which is subject to exclusive ownership.
- S. "Unit Owner," "Owner of a Unit" or "Owner" means the Owner of a Condominium Parcel.

### **SECTION 3. DESCRIPTION OF CONDOMINIUM:**

- A. **IDENTIFICATION OF UNITS:** The Land has constructed thereon one (1) four-story Building 170, which contains sixteen (16) Units, with eight (8) containing three bedrooms and three bathrooms and eight (8) containing two bedrooms and two bathrooms. Each Unit is identified by a separate designation set forth on 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.
- B. **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:

- (1) **Upper And Lower Boundaries:** The Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries.
  - (a) **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.
  - (b) **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.
  - (c) **Interior Divisions:** Except as provided in subsections (a) and (b) above, no part of a nonstructural interior wall shall be considered a boundary of a Unit.
- (2) **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.
- (3) **Apertures:** Incases 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.
- (4) **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.
- (5) **Role of Survey:** In cases not specifically covered in this Section 3.B, 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.

C. **LIMITED COMMON ELEMENTS:** The Limited Common Elements shall consist of the areas, spaces, structures and fixtures described in Subsections 3.C. (1-5). 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.

- (1) **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.

- (2) **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.
- (3) **Garages:** Each garage in Buildings "P" and "P2" is a Limited Common Element as shown in the Plot Plan.
- (4) **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.
- (5) **Air Conditioning and Heating Equipment:** Any air conditioning and/or heating equipment which exclusively services a Unit shall be a Limited Common Element appurtenant to the Unit it services.
- (6) **Mortgages 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.

**D. EASEMENTS:** The following easements are hereby created (in addition to any easements created under the Act):

- (1) **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.
- (2) **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.
- (3) **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.

- (4) **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 subparagraph (4) 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.
- (5) **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.
- (6) **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.
- (7) **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.

- (8) **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.
- (9) **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.

- E. **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.

**SECTION 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.

**SECTION 5. OWNERSHIP OF COMMON ELEMENTS AND COMMON SURPLUS AND SHARE OF COMMON EXPENSES; VOTING RIGHTS:**

- A. **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 equal to 1/16th.
- B. **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.

**SECTION 6. AMENDMENTS:** Except as elsewhere provided, Amendments may be effected as follows:

- A. **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:
- (1) 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
  - (2) 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
  - (3) 100% of the Board of Directors; or
  - (4) 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.
- B. **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.
- C. **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.



- D. **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.

## **SECTION 7. MAINTENANCE AND REPAIRS:**

- A. **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 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.
- B. **COMMON ELEMENTS:** Except to the extent expressly provided to the contrary in Section 7.0 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) shall perform such maintenance and repair except to the extent the proceeds of insurance are made available therefor).
- C. **LIMITED COMMON ELEMENTS:**
- (1) **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.
  - (2) **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.
  - (3) **Air Conditioning and Heating Equipment:** Each Unit Owner shall, at his sole cost and expense, maintain any and all air conditioning and heating equipment which is a Limited Common Element appurtenant to his Unit.
- D. **DEFINITION OF MAINTENANCE:** When used in this Section 7, 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.

**SECTION 8. ADDITIONS, ALTERATIONS, 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.

**SECTION 9. ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY UNIT OWNERS:**

- A. 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.

**B. BY THE DEVELOPER:**

- (1) Generally:** The restrictions and limitations set forth in Section 9.A shall not be applicable to Units owned by the Developer. The Developer shall have the additional

right, with the consent or approval of the Board of Directors and a majority of all other Unit Owners and of 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), and Developer may, without such approval, (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.

- (2) **Changes in Developer-Owned Units:** Without limiting the generality of the provisions of Paragraph 9.B(1) above, the Developer shall have the right, with the vote or consent of the Association, a majority of Unit Owners, and the Community Services Association, to (a) change the layout or number of rooms in any Developer-owned Units; (b) 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 (c) reapportion among the Developer-owned Units affected by such change in size or number pursuant to the preceding clause (B), 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 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.B(2) may be effected by the Developer alone. Without limiting the generality of Subsection 6.D hereof, the provisions of this Subsection may not be added to, amended or deleted without the prior written consent of the Developer.

**SECTION 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 B and C, 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 in lands 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.D(7) 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.

In 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.

- J. 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 Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property.
- K. 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.
- L. 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.
- M. 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).

**SECTION 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.

**SECTION 12. COLLECTION OF ASSESSMENTS:**

- A. 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.

**B. 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, unless within that time an action to enforce the lien is commenced. The claim of lien secures all unpaid Assessments which are due and which may accrue subsequent to the entry of a certificate of title together with interest and all reasonable costs and attorney's fees incurred by the Association incident to collection. 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.

**C. 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 12.0 are satisfied if the Unit owner records a Notice of Contest of Lien as provided in the Act.

**D. APPOINTMENT OF RECEIVER TO COLLECT RENTAL:** If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court, in its discretion, may require the Unit Owner to pay a reasonable rental for the Unit. If the unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver shall be paid by the party which does not prevail in the foreclosure action.

**E. INSTITUTIONAL FIRST MORTGAGEE:** The liability of a first mortgagee or its successor assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title is limited to the lesser of:

- (1) The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 6 months immediately preceding the acquisition of

title and for which payment in full has not been received by the Association; or

- (2) One percent of the original mortgage debt. The provisions of this paragraph shall not apply unless the first mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.
- F. 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 one year thereafter, subject to extension for each of two one-year periods at Developer's option. 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 \$492.91 per quarter until expiration of the above period as extended.
- G. CERTIFICATE OF UNPAID ASSESSMENTS:** Each Unit Owner has the right to require from the Association a certificate showing the amount of unpaid Assessments against him with respect to his Unit.
- H. 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 the payment dates.
- I. RECEIVING AGENT:** 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.

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

**A. PURCHASE, CUSTODY AND PAYMENT:**

- (1) **Purchase:** All insurance policies described herein covering portions of the Condominium Property 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".
- (2) **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.

- (3) **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.
- (4) **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.
- (5) **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.
- (6) **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.B(2) below), and for their personal liability and living expense and for any other risks.

**B. COVERAGE:** The Association shall maintain insurance covering the following:

- (1) **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:
  - a. **Loss or Damage by Fire and other Hazards:** covered by a standard extended coverage endorsement; and
  - b. **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.



- (2) **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.
- (3) **Workmen's Compensation** and other mandatory insurance when applicable.
- (4) **Flood Insurance** if required by the Primary Institutional First Mortgagee or if the Association so elects.
- (5) **Fidelity Bonding.** The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the Association, in an amount that will cover the maximum funds that will be in the custody of the Association or its management agent at any one time. Such persons include, but are not limited to, the president, secretary, and treasurer of the Association and those persons authorized to sign checks.
- (6) **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: (a) subrogation against the Association and against the Unit Owners individually and as a group, (b) 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 (c) 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 Owner.

- C. **ADDITIONAL PROVISIONS:** All policies of physical damage insurance shall provide that such policies may not be canceled 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.
- D. **PREMIUMS:** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.
- E. **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:

- (1) **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 (2) below.
- (2) **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.
- (3) **Mortgagees:** No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

F. **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:

- (1) **Expenses of the Trust:** First, all expenses of the Insurance Trustee shall be paid or provided for.
- (2) **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.
- (3) **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.E 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.
- (4) **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.

- G. ASSOCIATION AS AGENT:** The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- H. 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.
- I. BENEFIT OF MORTGAGEES:** Certain provisions in this Section 13 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- J. 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.

**SECTION 14. RECONSTRUCTION OR REPAIR AFTER FIRE OR OTHER CASUALTY:**

- A. 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.

- B. 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 mortgagees) the plans for which are to be substantially altered.
- C. 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.
- D. 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 obtain reliable and detailed estimates of the cost to rebuild or repair.
- E. 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.

F. **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:

- (1) **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.
- (2) **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:
  - a. **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.
  - b. **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 (a) 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.
  - c. **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.

- d. **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 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.
- e. **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.

- G. **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.

## **SECTION 15. CONDEMNATION.**

- A. **DEPOSIT OF AWARDS WITH INSURANCE TRUSTEE; AUTHORITY OF ASSOCIATION:** The taking of portions of the Condominium Property by the exercise of the power of 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.
- B. **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.
- C. **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.

**D. 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.

- (1) **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.
- (2) **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.

**E. 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:

- (1) **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.
- (2) **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.
- (3) **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:
  - a. 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.D

hereof (the "Percentage Balance"); and

- b. divide the percentage of each Unit of a continuing owner prior to this adjustment, but after any adjustments made necessary by subsection 15.D hereof, by the Percentage Balance.

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

- (4) **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.
- (5) **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.

**F. 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.

**G. 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.

## **SECTION 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:



- A. 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.A shall not be applicable to units owned by the Developer.
- B. 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.
- C. ALTERATIONS:** Without limiting the generality of Subsection 9.A 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.A 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.
- D. 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.

- E. 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.
- F. 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.

- G. 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 shall place a security deposit equal to one month's rent into an escrow account maintained by the Association to protect against damages to the common elements or Association property. All lessees of Units shall also comply with and be subject to the provisions of Section 17 hereof.
- H. EXTERIOR IMPROVEMENTS; LANDSCAPING:** Without limiting the generality of Subsection 9.A or Subsection 16.D 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.
- APPLICABLE WARRANTIES OF THE DEVELOPER, IF ANY, SHALL BE VOIDED BY VIOLATIONS OF THESE RESTRICTIONS AND REQUIREMENTS.
- I. 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.
- J. 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).

- K. EFFECT ON PRIMARY INSTITUTIONAL FIRST MORTGAGEE:** The restrictions and limitations set forth in this Section 16 shall not apply to the Primary Institutional First Mortgagee or any of its affiliates or to Units owned by any of them.
- L. EFFECT ON DEVELOPER:** The restrictions and limitations set forth in this Section 16 shall not apply to the Developer or its affiliates or to Units owned by any of them, except that 16.B and 16.G shall apply to the Developer and its affiliates.
- M. RELIEF BY ASSOCIATION:** 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.
- N. TIME-SHARE-ESTATES:** Time-share estates are prohibited.

**SECTION 17. SELLING, LEASING AND MORTGAGING OF UNITS:** No Unit Owner other than the Developer may sell his Unit, and no Unit Owner may lease his Unit, except by complying with the following provisions:

- A. 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.G 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, then 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.G 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.

- B. 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.
- C. 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.
- D. RELEASE BY THE ASSOCIATION OF THE RIGHT OF FIRST REFUSAL:** The right of first refusal contained in Subsection 17.A may be released or waived by the Association only in the manner provided in Section 17.E. 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.A.
- E. 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.A 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.
- F. 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 by an encumbrance or hypothecation of any portion of the Condominium Property other than the Unit to be purchased.

- G. **EXCEPTIONS:** The provisions of Subsection 17.A 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.
- H. **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.
- I. **MORTGAGE OF UNITS:** Each Unit Owner shall have the right to mortgage his Unit without restriction.
- J. **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.

**SECTION 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:

- A. **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 of 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.
- B. **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.

- C. **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.
- D. **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.

**SECTION 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.

**SECTION 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:

- A. 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;
- B. Receive notice of Association meetings and attend such meetings;
- C. 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
- D. 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;



- E. 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;
- F. Receive notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- G. 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.

**SECTION 21. THE BOUCHELLE ISLAND DEVELOPMENT:** The Condominium is part of a development known as BOUCHELLE ISLAND 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 (and 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.

**SECTION 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.

**SECTION 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.

#### **SECTION 24.**

#### **ADDITIONAL PROVISIONS:**

- A. 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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.
- F. 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.
- G. 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.

- H. **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.
- I. **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.
- J. **GENDER AND 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.
- K. **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 14<sup>th</sup> day of April, 2004.

2003 FEB 26 PM 2:01

ARTICLES OF INCORPORATION

OF

BOUCHELLE ISLAND XXVI CONDOMINIUM ASSOCIATION, INC.

A FLORIDA CORPORATION NOT FOR PROFIT

ARTICLE I

The name of this corporation is, "BOUCHELLE ISLAND XXVI CONDOMINIUM ASSOCIATION, INC.", whose principal office is located at 3424 S. Atlantic Avenue, Daytona Beach Shores, FL 32118, and whose mailing address is located at 285 West Dundee Road, Palatine, Illinois 60067. The registered office address is 415 Canal Street, New Smyrna Beach, Florida 32168.

ARTICLE 1.

The duration of the Corporation is perpetual.

ARTICLE 2.

This corporation is not authorized to issue stock.

ARTICLE 3.

The purpose for which this corporation is organized is to provide an entity for the management and operation of Bouchelle Island XXVI, a Condominium to be created in accordance with the provisions of the Condominium Act and to be located at New Smyrna Beach, Florida (hereinafter the "Condominium").

EXHIBIT "B"

ARTICLE 4.

In accordance with Section 617.0203, Florida Statutes, the date when corporate existence shall commence is the date of filing of these Articles of Incorporation.

ARTICLE 5.

All owners of record of title in fee simple to a Unit in the Condominium shall, by virtue of such ownership, be members of this corporation. Membership shall terminate upon the alienation of such ownership interests.

ARTICLE 6.

The Corporation shall have all of the powers enumerated in: (a) Chapter 718, Florida Statutes (the Condominium Act); and (b) Chapter 617, Florida Statutes, to the extent that such powers are consistent with the provisions of Chapter 718.

ARTICLE 7.

The incorporator is Corinne LeClaire, whose address is 3424 South Atlantic Avenue, Daytona Beach Shores, Florida 32118.

ARTICLE 8.

The initial Board of Directors shall consist of three (3) persons. The names and addresses of the initial directors are as follows:

<u>Name</u>	<u>Address</u>
Anthony DiMucci	285 West Dundee Road Palatine, IL 60067
Sid Vihlen	200 N. Park Ave., Suite 200 Sanford, FL 32771
Corinne LeClaire	3424 South Atlantic Avenue Daytona Beach Shores, FL 32118

Subsequent Boards of Directors shall be constituted and elected as set forth in the By-Laws of the Corporation. All directors, other than the initial directors, shall be members of the Corporation.

ARTICLE 9.

The officers of the corporation shall be elected by the Board of Directors in accordance with provisions of the By-Laws of the Corporation.

ARTICLE 10.

The Corporation shall indemnify each Officer and Director, including former Officers and Directors, to the full extent permitted by law.

ARTICLE 11.

The By-Laws of the Corporation shall be adopted by the initial Board of Directors and may thereafter be amended in accordance with the provisions thereof.

ARTICLE 12.

On all matters upon which the members of the Corporation shall be entitled to vote under the By-Laws, there shall be one vote for each Unit in the Condominium, which vote shall be cast as provided for in the By-Laws.

ARTICLE 13.

The Corporation reserves the right to amend or repeal any provisions contained in these Articles of Incorporation or any amendment to them, and any right conferred upon the members is subject to this reservation.

ARTICLE 14.

The initial registered office of the Corporation shall be located at 415 Canal Street, New Smyrna Beach, Florida 32168 and the initial registered agent shall be Robert S. Thurlow, at that address.

IN WITNESS WHEREOF, the undersigned subscriber has executed these Articles of Incorporation this 19<sup>th</sup> day of March, 2003.

Corinne B. LeClaire  
CORINNE LECLAIRE, Incorporator

CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE  
FOR THE SERVICE OF PROCESS WITHIN FLORIDA,  
NAMING AGENT UPON WHOM PROCESS MAY BE SERVED

IN COMPLIANCE WITH SECTION 48.091, FLORIDA STATUTES, THE  
FOLLOWING IS SUBMITTED:

FIRST--THAT BOUCHELLE ISLAND XXVI CONDOMINIUM  
ASSOCIATION, INC. DESIRING TO ORGANIZE OR QUALIFY UNDER THE LAWS OF  
THE STATE OF FLORIDA, WITH ITS PRINCIPAL PLACE OF BUSINESS IN THE  
TOWN OF DAYTONA BEACH SHORES, STATE OF FLORIDA, HAS NAMED ROBERT S.  
THURLOW, LOCATED AT 415 CANAL STREET, NEW SMYRNA BEACH, FLORIDA  
32168 AS ITS AGENT TO ACCEPT SERVICE OF PROCESS WITHIN THE STATE OF  
FLORIDA.

DATED: 19<sup>th</sup> March, 2003

Corinne B. LeClaire  
CORINNE LECLAIRE, INCORPORATOR

HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE  
STATED CORPORATION, AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I  
HEREBY CERTIFY THAT I UNDERSTAND THE OBLIGATIONS OF A REGISTERED  
AGENT, AND AGREE TO ACT IN THIS CAPACITY, AND I FURTHER AGREE TO  
COMPLY WITH THE PROVISION OF ALL STATUTES RELATIVE TO THE PROPER  
AND COMPLETE PERFORMANCE OF MY DUTIES.

DATED: March 21, 2003

Robert S. Thurlow  
ROBERT S. THURLOW



## BY-LAWS OF

### BOUCHELLE ISLAND XXVI CONDOMINIUM ASSOCIATION, INC.

#### A FLORIDA CORPORATION NOT FOR PROFIT

1. **IDENTITY:** These are the By-Laws of BOUCHELLE ISLAND XXVI CONDOMINIUM ASSOCIATION, INC. (the "Association"), a corporation not for profit incorporated under the laws of the State of Florida, and organized for the purpose of administering a condominium located in Volusia County, Florida known as BOUCHELLE ISLAND XXVI, A CONDOMINIUM.
  - A. **PRINCIPAL OFFICE:** The principal office of the Association shall be at 3424 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office.
  - B. **FISCAL YEAR:** The fiscal year of the Association shall commence each April 30, and end each April 29 of the subsequent calendar year.
  - C. **SEAL:** The seal of the Association shall bear the name of the corporation, the word "Florida," the words "Corporation Not For Profit," and the year of incorporation.
2. **DEFINITIONS:** For convenience, these By-Laws shall be referred to as the "By-Laws" and the Articles of Incorporation of the Association as the "Articles". The other terms used in these By-Laws shall have the same definition and meaning as those set forth in the Declaration for the Condominium, unless herein provided to the contrary, or unless the context otherwise requires.
3. **MEMBERS:**
  - A. **ANNUAL MEETING:** The annual members' meeting of all the Unit Owners of the Condominium shall be held on the date, at the place and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than twelve (12) months after the last preceding annual meeting. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors and to transact any other business affecting the Condominium authorized to be transacted by the members, or as stated in the notice of the meeting sent to Unit Owners in advance thereof. Unless changed by the Board, the first annual meeting shall be held on the first Thursday in the month of December following the year in which the Declaration is recorded.
  - B. **SPECIAL MEETINGS:** Special members' meetings may be called for the entire membership, for those matters affecting the Condominium or the members thereof, and shall be held at such places as provided herein for annual meetings, and may be called by the President or by a majority of the Board of Directors of the Association, and must be called by the President or Secretary upon receipt of a written request from a majority of the members of the Association, or as provided elsewhere herein or in the Act. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.
  - C. **NOTICE OF MEETING AND WAIVER OF NOTICE:** Notice of a meeting of members stating the time and place and the purpose(s) for which the meeting is called shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place on the

Condominium at least fourteen (14) continuous days prior to the date of the meeting. The notice of the annual meeting shall be sent by mail to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the annual meeting by mail. The delivery or mailing shall be to the address of the member as it appears on the roster of members. The mailing of the notice shall be effected not less than sixty (60) days prior to the date of the meeting. Proof of posting and proof of mailing of the notice shall be given by affidavit of the Secretary of the Association.

Notice of specific meetings may be waived before or after the meeting and the attendance of any member (or person authorized to vote for such member) shall constitute such member's waiver of notice of such meeting, except when his (or his authorized representative's) attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

**D. QUORUM:** A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast a majority of the votes of the entire membership.

**E. VOTING:**

- (1) NUMBER OF VOTES:** Except as provided in paragraph 3.J hereof, and except when the vote is to be determined by a percentage of shares of ownership in the Condominium (as contemplated in specific portions of the Declaration), in any meeting of members, the Owners of Units shall be entitled to cast one vote for each Unit owned. The vote of a Unit shall not be divisible.
- (2) MAJORITY VOTE:** The acts approved by a majority of the votes present in person or by proxy at a meeting at which a quorum shall have been attained shall be binding upon all unit Owners of the particular constituency for which the action was taken for all purposes except where otherwise provided by law, the Declaration, the Articles or these By-Laws. As used in these By-Laws, the Articles or the Declaration, the terms "majority of the Unit Owners" and "majority of the members" shall mean a majority of the votes of members and not a majority of the members themselves and shall further mean more than 50% of the then total authorized votes present in person or by proxy and voting at any meeting of the Unit Owners at which a quorum shall have been attained. Similarly, if some greater percentage of members is required herein or in the appropriate Declaration or Articles, it shall mean such greater percentage of the votes of members and not of the members themselves.
- (3) VOTING MEMBER:** If a Unit is owned by one person, his right to vote shall be established by the roster of members. If a Unit is owned by more than one person, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record owners of the Unit according to the roster of Unit Owners and filed with the Secretary of the Association. Such person must be one of the joint owners. If a Unit is owned by a corporation, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by an appropriate officer of the corporation and filed with the Secretary of the Association. Such person need not be a Unit Owner. Those certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote for a Unit may be revoked by any record owner of an undivided interest in the Unit. If a certificate designating the

person entitled to cast the vote for a Unit for which such certificate is required is not on file or has been revoked, the vote of the Owner(s) of such Unit shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association or the appropriate voting constituency shall be reduced accordingly until such certificate is filed, except: if the Unit is owned jointly by a husband and wife. If a Unit is owned jointly by a husband and wife, they may, without being required to do so, designate a voting member in the manner provided above. Such designee must be a Unit Owner. In the event a husband and wife do not designate a voting member, the following provisions shall apply:

- (a) If both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting, and their vote shall not be considered in determining whether a quorum is present on that subject at the meeting (and the total number of authorized votes in the Association shall be reduced accordingly for such subject only).
- (b) If only one is present at a meeting, the person present shall be counted for purposes of a quorum and may cast the Unit vote just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.
- (c) If both are present at a meeting and concur, either one may cast the Unit vote.

F. **PROXIES:** Votes may be cast in person or by general or limited proxy, but only as permitted to statute. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawful adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be filed in writing, signed by the person authorized to cast the vote for the unit (as above described) and filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Holders of proxies must be Unit Owners.

G. **ADJOURNED MEETINGS:** If any proposed meeting cannot be organized because a quorum has not been attained, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Except as provided by law, proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.

H. **ORDER OF BUSINESS:** If a quorum has been attained, the order of business at annual members' meetings, and, if applicable, at other members' meetings, shall be:

- (1) Collection of ballots not yet cast;
- (2) Call to order by President;
- (3) Appointment by the President of a chairman of the meeting (who need not be a member or a director);

- (4) Proof of notice of the meeting or waiver of notice;
- (5) Reading of minutes;
- (6) Reports of officers;
- (7) Reports of committees;
- (8) Determination of number of Directors;
- (9) Election of Directors;
- (10) Unfinished business;
- (11) New business;
- (12) Adjournment

Such order may be waived in whole or in part by direction of the chairman.

- I. **MINUTES OF MEETING:** The minutes of all meetings of Unit Owners shall be kept in a book available for inspection by Unit Owners or their authorized representatives and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.
- J. **ACTION WITHOUT A MEETING:** Anything to the contrary herein notwithstanding, to the extent lawful, any action required to be taken at any annual or special meeting of members, or any action which may be taken at any annual or special meeting of such members, may be taken without a meeting, without prior notice and without a vote if a consent: in writing, setting forth the action so taken, shall be signed by the members (or persons authorized to cast the vote of any such member as elsewhere herein set forth) of the appropriate voting constituency having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of such members at which an appropriate quorum of such members (or authorized persons) entitled to vote thereon were present and voted. Within ten (10) days after obtaining such authorization by written consent, notice must be given to the appropriate members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action. Regardless of any such action or actions, the Association must hold an annual meeting of the members.

#### 4. **DIRECTORS:**

- A. **MEMBERSHIP:** The affairs of the Association shall be governed by a Board of not less than three (3), nor more than nine (9) directors, the exact number to be determined in the first instance in the Articles, and thereafter, except as provided herein, from time to time upon majority vote of the membership. Directors not appointed by the Developer must be Unit Owners.
- B. **ELECTION OF CONDOMINIUM DIRECTORS:** Election of Directors shall be conducted in the following manner:

- (1) Election of Directors shall be held at the annual members' meeting, except as provided herein to the contrary.
- (2) Nominations for Directors and additional directorships created at the meeting shall be made as prescribed by statute and state regulations.
- (3) The election shall be by written ballot and by a plurality of the votes cast, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting, nor voting by proxy.

**C. VACANCIES AND REMOVAL:**

- (1) Except as to vacancies resulting from removal of Directors by the members electing such Directors, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining Directors, provided that all vacancies in directorships to which Directors were appointed by the Developer pursuant to the provisions of paragraph 4.0 hereof, shall be filled by the Developer without the necessity of any meeting.
- (2) Any Director elected by the members may be removed by agreement in writing by a majority of all voting interests, or by concurrence of a majority of the votes of the constituency electing such Director at a special meeting of such constituency called for that purpose in accordance with the Florida Administrative Code, Chapter 61B. Such a meeting may be called by 10% of the Unit Owners giving notice of the meeting as required for a meeting of Unit Owners. The vacancy in the Board of Directors so created shall be filled by the members of the constituency at the same meeting, unless the Director was appointed by the Developer, in which case the Developer shall appoint another Director without the necessity of any meeting. The conveyance of all Units owned by a Director in the Condominium (other than appointees of the Developer) shall constitute the resignation of such Director.
- (3) No Director named by the Developer shall be subject to removal by members other than the Developer. No Director elected by Unit Owners other than the Developer may be removed by the Developer.
- (4) If a vacancy on the Board of Directors results in the inability to obtain a quorum of directors in accordance with these By-Laws, any Owner may apply to the Circuit Court within whose jurisdiction the Condominium lies for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the Circuit Court, the Unit Owner shall mail to the Association and post in a conspicuous place on the Condominium a notice describing the intended action and giving the Association an opportunity to fill the vacancy(ies) in accordance with these By-Laws. If, during such time, the Association fails to fill the vacancy(ies), the Unit Owner may proceed with the petition, if a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs and attorneys' fees. The receiver shall have all powers and duties of a duly constituted Board of Directors, and shall serve until the Association fills the vacancy(ies) on the Board sufficient to constitute a quorum in accordance with these By-Laws.

- D. TERM:** Except as provided herein to the contrary, the term of each Director's service shall extend until the next annual meeting of the members and subsequently until his successor is

duly elected and qualified, or until he is removed in the manner elsewhere provided.

- E. **ORGANIZATIONAL MEETING:** The organizational meeting of newly-elected or appointed members of the Board of Directors shall be held within ten (10) days of their election or appointment at such place and time as shall be fixed by the Directors at the meeting at which they were elected or appointed, and no further notice to the Board of the organizational meeting shall be necessary.
- F. **REGULAR MEETINGS:** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, facsimile or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Regular meetings of the Board of Directors shall be open to all unit Owners and notice of such meetings shall be posted conspicuously on the Condominium at least forty-eight (48) hours in advance for the attention of the members of the Association, except in the event of an emergency, provided that Unit owners shall abide by rules enacted by the Board of Directors governing participation, at any such meeting.
- G. **SPECIAL MEETINGS:** Special meetings of the Directors may be called by the President, and most he called by the President or Secretary at the written request of one-third (1/3) of the Directors. Notice of the meeting shall be given personally, by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting, and shall be transmitted not less than three (3) days prior to the meeting. Special meetings of the Board of Directors shall be open to all Unit Owners and notice of a special meeting shall be posted conspicuously on the Condominium at least forty-eight (48) hours in advance for the attention of the members of the Association, except in the event of an emergency, provided that Unit Owners shall abide by rules enacted by the Board of Directors governing participation, at any such meeting.
- H. **WAIVER OF NOTICE:** Any Directors may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said Director of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, except when his attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.
- I. **QUORUM:** A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is specifically required by the Declarations, the Articles or these By-Laws.
- J. **ADJOURNED MEETINGS:** If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.
- K. **PRESIDING OFFICER:** The presiding officer at the Directors' meetings shall be the president (who may, however, designate any other person to preside).
- L. **ORDER OF BUSINESS:** If a quorum has been attained, the order of business at Directors'

meetings shall be:

- (1) Proof of due notice of meeting;
- (2) Reading and disposal of any unapproved minutes;
- (3) Reports of officers and committees;
- (4) Election of officers;
- (5) Unfinished business;
- (6) New business;
- (7) Adjournment.

Such order may be waived in whole or in part by direction of the presiding officer.

**M. MINUTES OF MEETINGS:** The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Unit Owners, or their authorized representatives, and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.

**N. EXECUTIVE COMMITTEE; OTHER COMMITTEES:** The Board of Directors may, by resolution duly adopted, appoint an Executive Committee to consist of members of the Board of Directors (but less than a quorum of the Board) with equal representation from the Condominium. Such Executive Committee shall have and may exercise all of the powers of the Board of Directors in management of the business and affairs of the Condominium during the period between the meetings of the Board of Directors insofar as may be permitted by law, except that the Executive Committee shall not have the power (a) to determine the Common Expenses required for the affairs of the Condominium, (b) to determine the Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium, (c) to adopt or amend any rules and regulations covering the details of the operation and use of the Condominium, or (d) to exercise any of the powers set forth in paragraph G. and P. of Section 5 below.

The Board may by resolution also create other committees and appoint persons to such committees and invest in such committees such powers and responsibilities as the Board shall deem advisable.

**O. PROVISIO:** Notwithstanding anything to the contrary contained in this Section 4 or otherwise, the Board shall consist of three directors during the period that the Developer is entitled to appoint a majority of the Directors, as hereinafter provided. The Developer shall have the right to appoint all of the members of the Board of Directors until Unit owners other than the Developer own fifteen percent (15%) or more of the Units in the Condominium that will be operated ultimately by the Association. When Unit Owners other than the Developer own 15% or more of the Units that will be operated ultimately by the Association, the Unit Owners other than the Developer shall be entitled to elect not less than one-third (1/3) of the members of the Board of Directors. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors (a) three years after fifty percent (50%) of the Units that will be operated ultimately by the Association

have been conveyed to the Purchasers; (b) three months after ninety percent (90%) of the Units that will be operated ultimately by the Association have been conveyed to Purchasers; (c) when all of the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business, (d) when some of the Units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business, or (e) seven years after recordation of the Declaration of Condominium, whichever occurs first. The Developer is entitled (but not obligated) to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business 5% of the Units that will be operated ultimately by the Association. Upon election of the first Unit Owner by members other than the Developer, the Developer shall forward to the Division the name and mailing address of the Unit Owner Board member so elected. The Developer can turn over control of the Association to Unit Owners other than the Developer prior to such dates in its sole discretion by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Unit Owners other than the Developer to elect Directors and assume control of the Association. Provided at least seventy-five (75) days' notice of Developer's decision to cause its appointees to resign is given to Unit Owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations even if the Unit Owners other than the Developer refuse or fail to assume control.

At the time that Unit Owners other than the Developer elect a majority of the members of the Board of Directors of the Association, the Developer shall relinquish control of the Association and shall deliver to the Association all property of the Unit Owners and of the Association held by or controlled by the Developer, including, but not limited to, the following items, if applicable, except that for the purposes of subparagraph (7) below delivery shall occur not more than ninety (90) days thereafter:

- (1) The original or a photocopy of the recorded Declaration of Condominium, and all amendments thereto. If a photocopy is provided, the Developer must certify by affidavit that it is a complete copy of the actual recorded Declaration;
- (2) A certified copy of the Articles of Incorporation for the Association;
- (3) A copy of the By-Laws of the Association;
- (4) The Minute Books, including all Minutes, and other books and records of the Association;
- (5) Any rules and regulations which have been adopted;
- (6) Resignations of resigning officers and Board members who were appointed by the Developer;
- (7) The financial records, including financial statements, of the Association, and source documents since the incorporation of the Association to the date of turnover. The records shall be reviewed by an independent certified public accountant. The minimum report required shall be a review in accordance with generally accepted accounting standards as defined by the rule of the Florida State Board of Accountancy. The accountant performing the review shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid



invoices, to determine if expenditures were for Association purposes, and billings, cash receipts and related records to determine that the Developer was charged and paid the proper amounts of Assessments. To the extent required by law, the Developer is required to bear all expenses of the Association and of the operation of the Condominium in excess of assessments or other sums collected or due from Unit Owners or others prior to the time the Developer relinquishes control;

- (8) Association Funds or the control thereof;
- (9) All tangible personal property of the Association that is or was represented by the Developer in writing to be part of the Common Elements or is ostensibly part of the Common Elements, and an inventory of such;
- (10) A copy of the plans and specifications utilized in the construction or remodeling of the improvements and the supplying of equipment, and for the construction and installation of all mechanical components servicing the Improvements and the Condominium, with a Certificate, in affidavit form, of an officer of the Developer or an architect or engineer authorized to practice in Florida, that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium and the construction and installation of the mechanical components serving the Improvements and the Condominium;
- (11) A list of the names and addresses, of which the Developer had knowledge at any time in the development of the Condominium, of all contractors, subcontractors, and suppliers used in the construction or remodeling of the improvements and in the landscaping of the Condominium or Association property.
- (12) Insurance policies;
- (13) Copies of any Certificates of occupancy which may have been issued for the Condominium;
- (14) Any other permits issued by governmental bodies applicable to the Condominium in force or issued within one (1) year prior to the date the Unit Owners take control of the Association;
- (15) All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective;
- (16) A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the Developer's records;
- (17) Leases of the Common Elements and other Leases to which the Association is a party, if applicable;
- (18) Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or Unit Owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service; and

(19) All other contracts to which the Association is a party.

5. **POWERS AND DUTIES:** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Condominium and may take all acts, through the proper officers of the Association, in executing such powers, except such acts which by law, the Declaration, the Articles or these By-Laws may not be delegated to the Board of Directors by the Unit Owners. Such powers and duties of the Board of Directors shall include, without limitation (except as limited elsewhere herein), the following:
- A. Operating and maintaining all of the Common Elements.
  - B. Determining the expenses required for the operation of the Condominium and the Association.
  - C. Collecting the Assessments for Common Expenses from Unit Owners.
  - D. Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements.
  - E. Adopting and amending rules and regulations concerning the details of the operation and use of the Condominium, subject to a right of the Unit Owners of the Condominium to overrule the Board as provided in Section 13 hereof.
  - F. Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.
  - G. Purchasing, leasing or otherwise acquiring Units or other in the name of the Association, or its designee.
  - H. Purchasing Units at foreclosure or other judicial sales, in the name of the Association, or its designee.
  - I. Selling, leasing, mortgaging or otherwise dealing with Units acquired by, and subleasing Units leased by, the Association, or its designee.
  - J. Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Units or other.
  - K. Obtaining and reviewing insurance for the Condominium.
  - L. Making repairs, additions and improvements to, or alterations of, the Condominium, and repairs to and restoration of the Condominium, in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.
  - M. Enforcing obligations of the Unit Owners, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Condominium.
  - N. Levying fines against the Unit Owners for violations of the rules and regulations established by the Association to govern the conduct of such Unit Owners.

- O. Purchasing or leasing Units for use as housing by resident employees for the Condominium.
- P. Borrowing money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements or the acquisition of and granting mortgages on and/or security interests in Association owned; provided, however, that the consent of the Owners of at least two-thirds (2/3rds) of the Units in the Condominium represented at a meeting at which a quorum thereof has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum with respect to the Condominium in excess of \$50,000.00. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subparagraph (P) is not repaid by the Association, a Unit Owner of the Condominium who pays to the creditor such portion thereof as his interest in his Common Elements bears to the interest of all the Unit Owners in their Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect, such Unit Owner's Unit. The Association shall take no action authorized in this paragraph without the prior written consent of the Developer as long as the Developer owns any Unit.
- Q. Contracting for the management and maintenance of the Condominium and authorizing 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 the condominium documents and the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- R. At its discretion, authorizing Unit Owners or other persons to use portions of the Common Elements for private parties and gatherings and imposing reasonable charges for such private use.
- S. Granting easements and licenses over the Condominium as permitted by the Declaration or the Florida Condominium Act.
- T. Imposing a lawful fee in connection with the approval of the transfer, lease, sale or sublease of Units, not to exceed the maximum amount permitted by law in any one case.
- U. Exercising all powers specifically set forth in the Declaration, the Articles, these By-Laws, and in the Florida Condominium Act, and all powers of a Florida corporation not for profit.
- V. Contracting with and creating special taxing districts.

6. **OFFICERS:**

- A. **EXECUTIVE OFFICERS:** The executive officers of the Association shall be a President, a Vice-President, a Treasurer, and a Secretary (none of whom need be Directors), all of whom shall be elected by the Board of Directors and who may be peremptorily removed at any meeting by concurrence of a majority of all of the Directors. A person may hold more than one office except that the president may not also be the Secretary. No person shall sign an

instrument or perform an act in the capacity of more than one office. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association. Officers need not be Unit Owners.

- B. PRESIDENT:** The President shall be the chief executive officer of the Association, and shall have all of the powers and duties that are usually vested in the office of president of an association.
- C. VICE-PRESIDENT:** The Vice-President shall exercise the powers and perform the duties of the President in the absence or disability of the President, shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the vice president of an association and as shall otherwise be prescribed by the Directors.
- D. SECRETARY:** The Secretary shall keep the minutes of all proceedings of the Directors and the members; shall attend to the giving of all notices to the members and Directors and other notices required by law; shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed; shall keep the records of the Association, except those of the Treasurer; and shall perform all other duties incident to the office of the secretary of an association and as may be required by the Directors or the President.
- E. TREASURER:** The Treasurer shall have custody of all of the Association, including funds, securities and evidences of indebtedness; shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times; shall submit a treasurer's report to the Board of Directors at reasonable intervals; and shall perform all other duties incident to the office of treasurer. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.
- F. DEVELOPER APPOINTEES:** No officer appointed by the Developer may be removed except as provided in Section 4.0 hereof and by law.
- G. COMPENSATION:** Neither Directors nor officers shall receive compensation for their services as such, but this provision shall not preclude the Board of Directors from employing a Director or officer as an employee of the Association, nor preclude contracting with a Director or officer for the management of the Condominium or for any other service to be supplied by such Director or officer. Directors and officers shall be compensated for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.
- H. RESIGNATIONS:** Any Director or officer may resign the post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such later date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Units owned by any Director or officer (other than appointees of the Developer or Directors or officers who are not Unit Owners) shall constitute a written resignation of such Director or officer.

- 9. FISCAL MANAGEMENT:** The provisions for fiscal management of the Association, set forth in the Declaration and Articles shall be supplemented by the following provisions:

**A. BUDGET:**

- (1) **ADOPTION BY BOARD; ITEMS:** The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium (which shall detail all accounts and items of expenses and contain at least all, items set forth in Section 718.504(21) of the Act, if applicable), determine the amount of Assessments payable by the Unit Owners to meet the expenses of the Condominium and allocate and assess such expenses among the appropriate Unit Owners in accordance with the provisions of the Declaration. In addition to annual operating expenses, each budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing. The amount of reserves shall be computed by means of a formula in which estimated remaining useful life is divided by estimated replacement cost of each reserve item. Although reserve accounts must be included in the budget, funding thereof may be waived if the appropriate members of the Association have, by a majority vote at a duly called meeting of such appropriate members, determined for a specific fiscal year to provide no reserves or reserves less adequate than required hereby.

The adoption of a budget for each Condominium shall comply with the requirements hereinafter set forth:

- (2) **NOTICE OF MEETING:** A copy of the proposed budget for the Condominium shall be mailed to each Unit Owner in the Condominium not less than fourteen (14) days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meeting. The Meeting shall be open to the Unit Owners, subject to rules established by the Board of Directors for participation.
- (3) **SPECIAL MEMBERSHIP MEETING:** If a budget is adopted by the Board of Directors which requires assessments against such Unit Owners in any year exceeding one hundred fifteen percent (115%) of such assessments for the preceding year, as hereinafter defined, upon written application within twenty-one (21) days of ten percent (10%) of the Unit Owners a special meeting shall be held within sixty (60) days of adoption of the annual budget. Each Unit Owner shall be given at least fourteen (14) days' notice of said meeting. At the special meeting, Unit Owners shall consider and adopt a budget. The adoption of said budget shall require a vote of Owners of not less than fifty percent (50%) of all the Units (including Units owned by the Developer) in the Condominium.
- (4) **DETERMINATION OF BUDGET AMOUNT:** In determining whether a budget requires assessments against Unit Owners in any year exceeding one hundred fifteen percent (115%) of assessments for the preceding year, there shall be excluded in the computations any authorized provisions for reasonable reserves made by the Board of Directors in respect of repair or replacement of the Condominium or in respect of anticipated expenses of the Association in respect of the Condominium which are not anticipated to be incurred on a regular or annual basis, and there shall be excluded from such computation assessments for improvements to the Condominium property, all assessments imposed for the benefit of the Community Services Association and all special assessments (including surcharges) against specific Unit Owner(s).

- (5) **PROVISO:** As long as the Developer is in control of the Board of Directors of the Association, the Board shall not impose assessments for a year greater than one hundred fifteen percent (115%) of the prior year's Assessments, as herein defined, without the approval of Unit Owners owning a majority of the Units (including Units owned by the Developer) in the Condominium.
- (6) **ADOPTION BY MEMBERSHIP:** In the event that the Board of Directors shall be unable to adopt a budget for the Condominium in accordance with the requirements of Subsection 9.A(l) above, the Board of Directors may call a special meeting of Unit Owners in the Condominium for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for such special meetings in said subsection, or may propose a budget in writing to the members of the Condominium, and if such budget is adopted by the members, upon ratification by a majority of the Board of Directors, it shall become the budget of the Condominium for such year.
- B. **ASSESSMENTS:** Assessments against the Unit Owners for their share of the items of the budget shall be made for the applicable fiscal year annually, if possible, at least ten (10) days preceding the year for which the assessments are made. Such assessments shall be due in equal installments, payable in advance on the first day of each quarter of the year for which the assessments are made. If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior assessment, and quarterly installments on such assessment shall be due upon each installment payment date until changed by an amended assessment in the event the annual assessment proves to be insufficient, the budget and assessment may be amended at any time by the Board of Directors, subject to the provisions of Section 9.A hereof, if applicable. Unpaid assessments for the remaining portion of the fiscal year for which an amended assessment is made shall be payable in as many equal installments as there are full quarters of the fiscal year left as of the date of such amended assessment, each such quarterly installment to be paid on the first day of the quarter, commencing the first day of the next ensuing quarter if only a partial month quarter remains, the amended assessment shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution. Regular quarterly installments shall be due one full quarter in advance.
- C. **ASSESSMENTS FOR CHARGES:** Charges by the Association against members for other than common Expenses shall be payable in advance. Charges for other than Common Expenses may be made only after approval of a member or when expressly provided for in the Declaration or the exhibits annexed thereto, as the same may be amended from time to time, which charges may include, without limitation, charges for the use of portions of the Condominium Property, maintenance services furnished for the benefit of an Owner and fines and damages and other sums due from such Owner.
- D. **ASSESSMENTS FOR EMERGENCIES:** Assessments for Common Expenses for emergencies that cannot be paid from the annual assessments for common expenses shall be due immediately upon notice given to the Unit Owners concerned, and shall be paid in such manner as the Board of Directors of the Association may require in the notice of assessment.
- E. **DEPOSITORY:** The depository of the Association shall be such bank or banks in the State as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. All sums

collected by the Association from assessments or contributions to working capital or otherwise may be commingled in a single fund or divided into more than one fund, as determined by a majority of the Board of Directors.

- F. ACCELERATION OF ASSESSMENT INSTALLMENTS UPON DEFAULT:** If a Unit Owner shall be in default in the payment of an installment upon an assessment, the Board of Directors or its agent may accelerate the remaining installments of the assessment upon notice to the Unit Owner not less frequently than quarterly unless a lien is first recorded, and the then unpaid balance of the assessment shall be due upon the date stated in the notice, but not less than five (5) days after delivery of the notice to the unit Owner, or not less than ten (10) days after the mailing of such notice to him by certified mail, whichever shall first occur.
- G. FIDELITY BONDS:** Fidelity bonds shall be required by the Board of Directors for all persons handling or responsible for Association funds in such amount as shall be determined by a majority of the Board, but no less than the amount required by statute. The premiums on such bonds shall be paid by the Association as a Common Expense.
- H. ACCOUNTING RECORDS AND REPORT:** The Association shall maintain accounting records in the State, according to accounting practices normally used by similar associations or the manager under any applicable management contract. The records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of them shall be supplied at least annually. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) an account for each Unit designating the name and current mailing address of the Unit Owner, the amount of each assessment, the dates and amounts in which the assessments come due, the amount paid upon the account and the dates so paid, and the balance due. Written summaries of the records described in clause (a) above, in the form and manner specified below, shall be supplied to each Unit Owner annually.

Within sixty (60) days following the end of the fiscal year, the Board shall mail, or furnish by personal delivery, to each Unit owner a complete financial report of actual receipts and expenditures for the Condominium for the previous twelve (12) months. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- (1) Cost for security;
- (2) Professional and management fees and expenses;
- (3) Taxes;
- (4) Cost for recreation facilities;
- (5) Expenses for refuse collection and utility services;
- (6) Expenses for lawn care;
- (7) Cost for building maintenance and repair;
- (8) Insurance costs;

(9) Administrative and salary expenses; and

(10) General reserves, maintenance reserves, and depreciation reserves.

**I. APPLICATION OF PAYMENTS:** All payments made by a Unit Owner shall be applied as provided in these By-Laws and in the Declaration or as determined by the Board.

**J. NOTICE OF MEETINGS:** Notice of any meeting where assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

**10. ROSTER OF UNIT OWNERS:** Each Unit Owner shall file with the Association a copy of the deed or other document showing ownership. The Association may rely upon the accuracy of such information, for all purposes until notified in writing of changes therein as provided above. Only Unit Owners of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at such meeting, unless prior to such meeting other. Owners shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of such meeting.

**11. PARLIAMENTARY RULES:** Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles or these By-Laws.

**12. AMENDMENTS:** Except where the Declaration provides otherwise, these By-Laws may be amended in the following manner:

**A. NOTICE:** Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered and shall comply with the provisions of Section 718.112(2)(h), Florida Statutes.

**B. ADOPTION:** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors 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. The approval must be:

(1) by not less than a majority of the votes of all members of the Association represented at a meeting at which a quorum has been attained and by not less than 66-2/3% of the entire Board or Directors; or

(2) after control of the Association is turned over to Unit Owners other than the Developer, by not less than 80% of the votes of the members of the Association represented at a meeting at which a quorum has been attained; or

(3) by not less than 100% of the entire Board of Directors.

**C. PROVISIO:** 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 consent of said Developer and mortgagees in each instance. No amendment shall be made that is in conflict with the Articles or Declaration. No amendment to this section shall be valid.



**D. EXECUTION AND RECORDING:** A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the Declaration and By-laws, which certificate shall be executed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by the Developer alone, if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Developer. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of the County.

**13. RULES AND REGULATIONS:** Attached hereto as Schedule A and made a part hereof are rules and regulations concerning the use of portions of the Condominium. The Board of Directors may, from time to time, modify, amend or add to such rules and regulations, except that subsequent to the date control of the Board is turned over by the Developer to Unit owners other than the Developer, owners of a majority of the Units of each condominium represented at a meeting at which a quorum thereof is present may overrule the Board with respect to any such modifications, amendments or additions relating to the Condominium. Copies of such modified, amended or additional rules and regulations shall be furnished by the Board of Directors to each affected Unit. Owner not less than thirty (30) days prior to the effective date thereof. At no time may any rule or regulation be adopted which would prejudice the rights reserved to the Developer.

In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine not exceeding the maximum allowed by law for each day of each violation may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, lessees or employees, to comply with any covenant, restriction, rule or regulation herein or in the Declaration, or Articles of Incorporation or By-Laws, provided the following procedures are adhered to:

- A. NOTICE:** The Association shall notify the Owner or occupant of the infraction or infractions. included in the notice shall be a date and time of a meeting of a committee of Owners appointed by the Board of Directors at which time the Owner or occupant shall present reasons why penalties should not be imposed. The Owner or occupant may be represented by counsel and may cross-examine witnesses.
- B. HEARING:** The non-compliance shall be presented to the Committee of Owners after which the Committee shall hear reasons why penalties should not be imposed. A written decision of the Committee shall be submitted to the owner or occupant by not later than twenty-one (21) days after the Committee's meeting.
- C. PAYMENT OF PENALTIES:** Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the penalties.
- D. APPLICATION OF PENALTIES:** All monies received from fines shall be allocated as directed by the Board of Directors.
- E. NON-EXCLUSIVE REMEDY:** These fines shall be construed to be non-exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled.

**14. CONSTRUCTION:** 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 genders.

**15. CAPTIONS:** The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these By-Laws or the intent of any provision hereof.

THE FOREGOING were adopted as the BY-LAWS OF BOUCHELLE ISLAND XXVI CONDOMINIUM ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, on this 14<sup>th</sup> day of April, 2004.

SCHEDULE A TO BY-LAWS  
RULES AND REGULATIONS  
FOR  
BOUCHELLE ISLAND XXVI CONDOMINIUM ASSOCIATION, INC.

The following Rules and Regulations supplement those contained in the Declaration of Condominium of BOUCHELLE ISLAND XXVI CONDOMINIUM ASSOCIATION, INC. They are applicable to all occupants of Units as well as to Unit Owners.

1. The entrance ways, passages, vestibules, lobbies, halls and similar portions of the Common Elements shall be used only for ingress and egress to and from the Condominium Property. No personal property shall be stored in them except bicycles may be stored in bicycle racks under the first floor stairwells.
2. Each Unit Owner's personal property must be stored within his Unit or within storage lockers or spaces, if any, appurtenant to his Unit as Limited Common Elements.
3. The Common Elements shall not be obstructed, littered, Defaced, or misused in any manner.
4. No articles shall be placed in the hallways.
5. No articles except suitable furniture, plants and planters shall be placed on balconies, terraces or similar areas.
6. Neither rugs, laundry nor any other articles shall be shaken or hung from windows, doors, balconies, terraces or exterior walls.
7. Garbage and other refuse shall be placed only in designated areas.
8. Employees of the Association are not to be engaged by Unit Owners for personal errands. The Board of Directors shall be solely responsible for directing and supervising the Association's employees.
9. No Unit Owner shall make disturbing noises in the Building or permit his family, servants, employees, agents, visitors, or licensees to do so. In particular, no Unit Owner shall play (or permit to be played in his Unit or the Common Elements appurtenant to it) any musical instrument, phonograph,

- television, radio or the like in a way that unreasonable disturbs or annoys other Unit Owners or Occupants.
10. No radio or television installation or other electronic equipment shall be permitted in any Unit if it interferes with the television or radio reception of another Unit.
  11. With the exception of signs used or approved by the Developer, no signs, advertisements, notices or lettering may be exhibited, displayed, inscribed, painted or affixed in, on or upon any part of the Common Elements or any part of a Unit so as to be visible outside the Unit. Additionally, no awning, canopy, shutter, air-conditioning unit or other projection shall be attached to, hung, displayed or placed upon the outside walls, doors, balconies, windows, roof or other portions of the Building or on the Common Elements.
  12. The Association may retain a pass-key to all Units. If a Unit Owner shall alter or install any new lock, the Unit Owner shall provide the Association with a new key.
  13. No flammable, combustible or explosive fluids, chemicals or other substances may be kept in any Unit or in the Common Elements or Limited Common Elements.
  14. A Unit Owner who plans to be absent must prepare his Unit prior to his departure by designating a responsible firm or individual to care for his Unit should the Unit suffer damage and furnishing the Association with the name(s) of that firm or individual.
  15. Beverages in glass containers may not be consumed on the Common Elements.
  16. Curtains and drapes (including their linings) which face on exterior windows or glass doors of Units shall be subject to the Board's disapproval, and, if disapproved, shall be removed and replaced with acceptable items.
  17. No aluminum foil may be placed in any window or glass door of a Unit, and no reflective substance may be placed on any glass

in a Unit except a substance previously approved by the Board of Directors for energy conservation purposes.

18. No exterior antennae shall be permitted on the Condominium Property, provided that the Developer shall have the right (but not the obligation) to install and maintain community antennae, radio and television lines and security systems, as well as temporary communications systems.
19. Children shall be the direct responsibility of their parents or legal guardians, who must supervise them while they are within the Condominium Property. Full compliance with these Rules and Regulations and all other rules and regulations of the Association shall be required of children. Playing shall not be permitted in any of the lobbies, hallways, stairways, elevators and lobby areas, and loud noises will not be tolerated.
20. Pets are not permitted on any part of the Common Elements (except a balcony or terrace appurtenant to the Unit of the animal's owner) except when they are leashed and being walked or transported directly off the Condominium Property or directly to their owner's Unit.
21. Every Owner and occupant shall comply with these rules and regulations as set forth herein, any and all rules and regulations which from time to time may be adopted, and the provisions of the Declaration, By-Laws and Articles of Incorporation of the Association (all as amended from time to time), to the extent applicable. Failure of an Owner or occupant to comply shall be grounds for legal actions which may include, without limitation, an action to recover sums due for damages, an action for injunctive relief, and any combination of such actions.

In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine not exceeding the maximum allowed by law per day per violation may be imposed

upon an Owner for failure of an Owner, his family, guests, invitees, lessees or employees, to comply with any covenant, restriction, rule or regulation herein or in the Declaration, or Articles of Incorporation or By-Laws, provided the following procedures are adhered to:

(a) **NOTICE:** The Association shall notify the Owner or occupant of the infraction or infractions. Included in the notice shall be a date and time of a meeting of a Committee of Owners appointed by the Board of Directors at which time the Owner or occupant shall present reasons why penalties should not be imposed. The Owner or occupant may be represented by counsel and may cross-examine witnesses.

(b) **HEARING:** The non-compliance shall be presented to the Committee of Owners after which the Committee shall hear reasons why penalties should not be imposed. A written decision of the Committee shall be submitted to the owner or occupant by not later than twenty-one (21) days after the Committee's meeting.

(c) **PAYMENT OF PENALTIES:** Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the penalties.

(d) **APPLICATION OF PENALTIES:** All monies received from fines shall be allocated as directed by the Board of Directors.

(e) **NON-EXCLUSIVE REMEDY:** These fines shall be construed to be non-exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled.

# **BOUCHELLE ISLAND XXVI CONDOMINIUM ASSOCIATION**

430 Bouchelle Drive  
New Smyrna Beach, FL 32169

May 11, 2006

Unit Owner(s)

Notice of subject matter of approved amendments is being sent to all Unit Owner(s).

At the November 10, 2005 Annual Meeting, a vote passed by 100% of the Board of Directors of Bouchelle Island XXVI Condominium Association, Inc. will change the following documents. These changes shall comply with the provisions of Section 718.112(2)(I), Florida Statutes.

The Association does hereby amend Schedule A to the By-Laws, Rules and Regulations as follows.

Change Section 1 -- To eliminate the storage of bicycles under the first floor stairwell.

Add Section 21 -- To reflect a minimum length for rental and lease agreements to Three (3) Months.

Add Section 22 -- To establish a procedure for owners wishing to lease or rent their unit in Building 430 Bouchelle Drive.

These Amendment changes along with a Certificate will be recorded in the Public Records of Volusia County.

**BOARD OF DIRECTORS BOUCHELLE ISLAND XXVI CONDOMINIUM ASSOCIATION**


CERTIFICATE OF AMENDED RULES AND REGULATIONS


OF

BOUCHELLE ISLAND XXVI CONDOMINIUM ASSOCIATION

A resolution by the Board of Directors was passed to amend Schedule A to the By-Laws. The Amendments were adopted bay majority of the Annual Meeting, at which a quorum was present, on November 10, 2005. Every unit owner has received a copy of the Amended Rules, via registered mail. The Amendments shall be effective as of January 1, 2006.

This Certificate is certifying that the Amendments were duly adopted by the Board of Directors, as per Bouchelle Island XXVI Condominium Association documents.

By  5/01/06  
Dennis Davis, President Date

By  5/2/06  
Howard Bowie, Secretary Date

BOUCHELLE ISAND XXVI CONDOMINIUM ASSOCIATION, INC.  
A NOT-FOR-PROFIT CORPORATION

Management Company:

All Florida Realty Services, Inc.  
152 Ridgewood Avenue  
Holly Hill, FL 32117  
Teri Wimmer, CAM



## SCHEDULE A TO BY-LAWS

### RULES AND REGULATIONS (amended 5/2006)

#### FOR

#### BOUCHELLE ISLAND XXVI CONDOMINIUM ASSOCIATION, INC.

The following Rules and Regulations supplement those contained in the Declaration of Condominium of BOUCHELLE ISLAND XXVI CONDOMINIUM ASSOCIATION, INC. They are applicable to all occupants of Units as well as the Unit Owners.

1. The entranceways, passages, vestibules, lobbies, halls and similar portions of the Common Elements shall be used only for ingress and egress to and from the Condominium Property. No personal property shall be stored in them.
2. Each Unit Owner's personal property must be stored within his Unit or within storage lockers or spaces, if any, appurtenant to his Unit as Limited Common Elements.
3. The Common Elements shall not be obstructed, littered, Defaced, or misused in any manner.
4. No articles shall be placed in the hallways.
5. No articles except suitable furniture, plants and planters shall be placed on balconies, terraces or similar areas.
6. Neither rugs, laundry nor any other articles shall be shaken or hung from windows, doors, balconies, terraces or exterior walls.
7. Garbage and other refuse shall be placed only in designated areas.
8. Employees of the Association are not to be engaged by Unit Owners for personal errands. The Board of Directors shall be solely responsible for directing and supervising the Association's employees.
9. No Unit Owner shall make disturbing noises in the Building or permit his family, servants, employees, agents, visitors, or licensees to do so. In particular, no Unit Owner shall play (or permit to be played in his Unit or the Common Elements appurtenant to it) any musical instrument, phonograph, television, radio or the like in a way that unreasonable disturbs or annoys other unit Owners or occupants.
10. No radio or television installation or other electronic equipment shall be permitted in any Unit if it interferes with the television or radio reception of another Unit.
11. With the exception of signs used or approved by the Developer, no signs, advertisements, notices or lettering may be exhibited, displayed, inscribed, painted or affixed in, on or upon any part of the Common Elements or any part of a unit so as to be visible outside the Unit. Additionally, no awning, canopy, shutter, air-conditioning unit or other projection shall be attached to, hung, displayed or placed upon the outside walls, doors, balconies, windows, roof or other portions of the Building or on the Common Elements.
12. The Association may retain a pass-key to all units. If a unit Owner shall alter or install any new lock, the unit Owner shall provide the Association with a new key.
13. No flammable, combustible or explosive fluids, chemicals or other substances may be kept in any Unit or in the Common Elements or Limited Common Elements.
14. A Unit Owner who plans to be absent must prepare his unit prior to his departure by designating a responsible firm or individual to care for his unit should the Unit suffer damage and furnishing the Association with the name(s) of that firm or individual.

15. Beverages in glass containers may not be consumed on the Common Elements.
16. Curtains and drapes (including their linings) which face on exterior windows or glass doors of Units shall be subject to the Board's disapproval, and, if disapproved, shall be removed and replaced with acceptable items.
17. No aluminum foil may be placed in any window or glass door of a unit, and no reflective substance may be placed on any glass in a unit except a substance previously approved by the Board of Directors for energy conservation purposes.
18. No exterior antennae shall be permitted on the Condominium Property, provided that the Developer shall have the right (but not the obligation) to install and maintain community antennae, radio and television lines and security systems, as well as temporary communications systems.
19. Children shall be the direct responsibility of their parents or legal guardians, who must supervise them while they are within the Condominium Property. Full compliance with these Rules and Regulations and all other rules and regulations of the Association shall be required of children. Playing shall not be permitted in any of the lobbies, hallways, stairways, elevators and lobby areas, and loud noises will not be tolerated.
20. Pets are not permitted on any part of the Common Elements (except a balcony or terrace appurtenant to the Unit of the animal's owner) except when they are leashed and being walked or transported directly off the Condominium Property or directly to their owner's Unit.
21. All rental and lease agreements must be for a minimum of three months.
22. Any unit owner wishing to lease or rent their unit must submit the approved form provided by the Association along with a copy of the proposed lease or rental agreement to the Board of Directors prior to tenant occupancy.
23. Every Owner and occupant shall comply with these rules and regulations as set forth herein, any and all rules and regulations Which from time to time may be adopted, and the provisions of the Declaration, By-Laws and Articles of Incorporation of the Association (all as amended from time to time), to the extent applicable. Failure of an Owner or occupant to comply shall be grounds for legal actions which may include, without limitation, an action to recover sums due for damages, an action for injunctive relief, and any combination of such actions.

In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine not exceeding the maximum allowed by law per day per violation may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, lessees or employees, to comply with any covenant, restriction, rule or regulation herein or in the Declaration, or Articles of Incorporation by By-Laws, provided the following procedures are adhered to:

- A. **NOTICE**: The Association shall notify the Owner or occupant of the infraction or infractions. Included in the notice shall be a date and time of a meeting of a Committee of Owners appointed by the Board of Directors at which time the owner or occupant shall present reasons why penalties should not be imposed. The Owner or occupant may be represented by counsel and may cross-examine witnesses.
- B. **HEARING**: The non-compliance shall be presented to the Committee of Owners after which the Committee shall hear reasons why penalties should not be imposed. A written decision of the Committee shall be submitted to the owner or occupant by not later than twenty-one (21) days after the Committee's meeting.
- C. **PAYMENT OF PENALTIES**: Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the penalties.

- D. **APPLICATION OF PENALTIES**: All monies received from fines shall be allocated as directed by the Board of Directors.
- E. **NON-EXCLUSIVE REMEDY**: These fines shall be construed to be non-exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled.