

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR BISCAYNE POINTE**

This Declaration made this 26th day of April, 1991 by BISCAYNE POINT  
PROPERTIES, INC., a Florida corporation.

**WITNESSETH:**

WHEREAS, Declarant is the Owner of certain property in Santa Rosa County, Florida,  
which is more particularly described as follows, to-wit:

BISCAYNE POINTE, a subdivision according to plat thereof recorded in Plat Book E,  
Page 99, public records of Santa Rosa County, Florida.

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

**ARTICLE I**

**Definitions**

Section 1. "Association" shall mean and refer to Biscayne Pointe Homeowners  
Association of Santa Rosa County, Inc., a Florida corporation not-for-profit, its successors and  
assigns.

Section 2. "Common Area" shall mean and refer to any and all real property (together  
with improvements thereon) owned by the Association for the common use and enjoyment of the  
Owners. The Common Area to be owned by the Association at the time of conveyance of the  
first Lot by Declarant shall be any areas designated as "Common Area" or "Private" on the Plat;  
any and all roads and streets shown on the Plat; any and all retention ponds shown on the Plat;  
any and all easements indicated on the Plat; and any and all other land areas included in the  
platted lands, but not designated as a Lot.

Section 3. "Declarant" shall mean and refer to Biscayne Point Properties, Inc., a Florida  
corporation, its successors and assigns.

Section 4. "Lot" shall mean and refer to each and all of the lots shown on the Plats of the  
subdivisions.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more  
persons or entities, of fee simple title to any Lot in the Subdivision, including contract sellers  
pursuant to an unrecorded contract. Owner shall not include those persons or entities having a  
record interest in a Lot merely as security for the performance of an obligation.

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR BISCAZYNE POINTE**

**Section 6.** "'Plat" shall mean and refer to the plat recorded in Plat Book E, Page 99 of the public records of Santa Rosa County, Florida. ("Biscayne Pointe") and the plat recorded in Plat Book F, Page 14 of the public records of Santa Rosa County, Florida. ("Pine Ranch Subdivision"), the annexation of which is recorded in Official Record Book 1213, Page 354 of the public records of Santa Rosa County, Florida.

**Section 7.** "Subdivision" shall mean and refer to Biscayne Pointe and Pine Ranch subdivisions situated in Santa Rosa County, Florida, according to the Plat.

**ARTICLE II**

**Membership and Voting Rights**

**Section 1.** The Association shall consist of all Owners of Lots shown on the Plat. Every Owner of a Lot in this Subdivision shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot.

**Section 2.** All Owners of Lots in the Development shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as determined by the Owners thereof, but in no event shall more than one vote be cast with respect to any Lot.

**ARTICLE III**

**Architectural Control**

No residential structure, fence, wall, mailbox, detached storage or maintenance shed, driveway, boat dock, pier or other structure or improvement of any nature whatsoever shall be commenced, erected, placed or altered on or abutting any Lot or Common Area in the Subdivision until the design, location, plans, specifications and plot plans showing the location, nature, kind, shape, height, materials, color and other specifications have been approved in writing as to the quality of workmanship and materials, harmony of the exterior design with the requirement of this Declaration and with existing structures and location with respect to topography and finish grade by a majority vote of the Architectural Review Committee, or by the Architectural Review Representative selected by a majority vote of the Architectural Review Committee. In the event the Architectural Review Committee, or the Architectural Review Representative, fails to approve or disapprove any complete set of plans within forty-five (45) days after submission thereof in writing in accordance with this Article, the homeowner shall be entitled to appeal to the Board of Directors for resolution. The Board shall approve or disapprove the plans within 30 days. If the Board fails to approve or disapprove any complete set of plans within 30 days, the plans will be deemed to have been approved.

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR BISCAYNE POINTE**

**ARTICLE IV**

**Use Restrictions**

**Section 1.** All Lots shall be used and occupied solely for residential purposes and shall not be used for commercial, trade, public amusement, public entertainment or business purposes of any kind or character, other than a home office specifically authorized in writing by the Architectural Review Committee or the Architectural Review Representative; provided, however, that in no event shall any such permitted home office be one where clients, customers, sales persons or others would routinely visit. No structure shall be erected, altered, placed or permitted to remain on any residential Lot other than one single family structure with a private garage attached to the main structure (or a detached garage in conformity with architectural design of the residential structure) for at least two vehicles. A servants' room, tool room and/or laundry room may be attached to the residential structure or garage. Notwithstanding the foregoing, a builder who is constructing residences for sale within the Development may, with the prior approval of and within guidelines established by the Architectural Review Committee, construct a residence within the subdivision which may be used by that builder as a model home for customary purposes.

**Section 2.** All residential structures erected or constructed on any Lot shall not exceed three stories in height and shall contain a minimum square footage determined as follows:

LOTS	MINIMUM SQUARE FOOTAGE
Lots J through 44, Block H	1,500
Lots 11 and 12, Block D	1,800
All Lots in Block F and I, and Lots 1-10 in Block A	2,000
All Lots other than those specified above	1,650

Residential structures with more than one story shall have a minimum ground floor area of at least 1,000 square feet. All buildings shall be set back 25 feet from the front Lot line; 25 feet from the rear Lot line; 15 feet from any side street line; and shall be set back from each side Lot line 15 feet or 10% of the lot width, whichever is less. Waiver of any of the preceding fixed setback requirements is hereby granted for unintentional violations which do not exceed 10% or the particular setback distance in question. Additional waivers of the preceding setback requirements of up to 5 feet (or more in the case of cul-de-sac and nonrectangular Lots) may be granted in writing by the Architectural Review Committee or the Architectural Review Representative. In the event the setbacks herein provided for are less than that indicated upon the Plat of the Subdivision, the setbacks herein reflected upon the Plat shall govern.

**Section 3.** The minimum square foot area of proposed buildings and structures or additions and enlargements thereto shall be determined by multiplying the outside length and width dimensions of each story of the building or structure, except that garages, open porches, patios and terraces shall not be taken into account in calculating the minimum square foot area required.

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR BISCAYNE POINTE**

**Section 4.** In accordance with Florida Statute 720.304, any homeowner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag, in a respectful manner, not larger than 4½ feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag. In addition, any homeowner may erect a freestanding flagpole no more than 20 feet high on any portion of the homeowner's real property, if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The homeowner may further display in a respectful manner from that flagpole one official United States flag, not larger than 4½ feet by 6 feet, and may additionally display one official flag of the State of Florida or the United States Army, Navy, Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such additional flag must be equal in size to or smaller than the United States flag.

**Section 5.** All dwellings, yards (including any area located in road right-of-ways between the actual lot line and paved surface of such road), drives and landscaping must be maintained at all times. Owners of unimproved Lots shall keep such Lots trimmed and neat for at least the first 5 feet from the street front. Failure to provide such maintenance shall be grounds for suit by any other property Owner in the Subdivision, the Association, the Declarant and/or any appropriate governmental agency.

**Section 6.** Outside clothes lines or other items detrimental to the appearance of the Subdivision shall not be permitted on any of the Lots except that a clothes line which is enclosed or camouflaged from view from all Lot lines shall be permitted only to the rear of the back line of the residential structure when approved in advance by the Architectural Review Committee or the Architectural Review Representative.

**Section 7.** All garbage and trash containers, bottled gas tanks and the like shall be kept clean and sanitary, and must be positioned underground, placed in a walled-in area or screened from view so that they shall not be visible from any street. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste.

**Section 8.** No trailer, house trailer, motor home, basement, tent, garage, barn or other out-building shall, at any time, be used as a residence, temporary or permanent, nor shall any structure of temporary character be used as a residence. No building that is unfinished on the exterior shall be occupied.

**Section 9.** Every residential structure shall include, at a minimum, a two-car garage. Off road vehicles, beach buggies, boats, jet skis, campers, trailers, motor homes, recreational vehicles, motorcycles, motorbikes, tractors, commercial trailers of any kind, shall not be parked temporarily or permanently, except in garages or behind a minimum six foot privacy fence. Operating passenger vehicles may be parked in driveways. Parking on lawns is forbidden at all times. During hurricane season, lot owners with boats docked on the water, may park boat and trailer on their property until such time as the storm passes and boat can be returned to the dock. Boats and Recreational Vehicles may be parked on driveways temporarily for minor maintenance, loading and unloading. For the safety of residents and guests, all vehicles will be parked in driveways or garages. Only when there is no room in the driveway (e.g. when hosting

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR BISCAYNE POINTE**

a party) or the resident requires temporary use of the driveway for other purposes (e.g. while edging along driveway) are vehicles allowed to be parked on the street, and only for a short time. In no case shall vehicles be parked on both sides of the street so as to obstruct traffic, nor shall vehicles remain on the street for more than 12 (twelve) consecutive hours in any consecutive seven (7) day period.

**Section 10.** Noxious or offensive activity shall not be carried on or upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to other Owners.

**Section 11.** No animals, livestock or poultry of any kind shall be kept or maintained on any Lot except that dogs, cats and other household pets may be kept provided that they are duly licensed, if applicable; that they do not constitute an annoyance or nuisance; that they are not kept or bred for any commercial purposes; and further, provided that such pets are not permitted to be present beyond the boundaries of the Owner's Lot without being leashed or caged.

**Section 12.** No fences or walls shall be constructed and no hedge shall be planted until its design, construction and location are approved by the Architectural Review Committee or the Architectural Review Representative. It is intended that the Architectural Review Committee or the Architectural Review Representative shall prohibit chain-link fences (except where concealed from view from any street). No fence or wall may be constructed and no hedge planted nearer to the front Lot line than the front of the residential structure, nor, if a corner Lot, nearer to the side street than the side of the residential structure. This restriction does not apply to any growing fence or hedge which does not exceed four feet in height.

**Section 13.** Residences shall be designed so that all elevations, as well as the front of each residence, are attractive in appearance.

**Section 14.** Any construction commenced upon a Lot shall be pursued diligently and such construction must be completed within 6 months.

**Section 15.** No sign of any kind shall be displayed to public view on any Lot except:

- A. One sign of reasonable size advertising the property for sale or rent,
- B. Signs used by a builder to advertise the property during the construction and sales period,
- C. In accordance with Florida Statute 720.304(6), a sign of reasonable size provided by a contractor for security services within 10 feet of any entrance to the home.

**Section 16.** No Lot shall be increased in size by filling in of any wetlands, body of water, creek or any waterway on which it may abut without required governmental permits and prior written approval of the Architectural Review Committee or the Architectural Review Representative, which approval may require either a no-action letter or permit from any environmental agency or other agency typically having jurisdiction with respect thereto.

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR BISCAIYNE POINTE**

**Section 17.** No Lot shall be clear-cut of all trees, nor shall trees be cut on any Lot so that there is less than one (1) mature tree of at least 6 inches in diameter (measured 4 feet from the ground) for each 2,000 square feet of land area. No tree with a diameter greater than 6 inches (measured 4 feet from the ground) shall be removed unless it shall interfere with the construction of the residential structure or as otherwise approved by the Architectural Review Committee or the Architectural Review Representative.

**Section 18.** All Lots shall be conveyed as a whole except that two or more contiguous Lots may be re-subdivided into an equal or lesser number of contiguous parcels provided that: (a) The square foot area of each re-subdivided parcel equals or exceeds the square foot area of the smallest platted Lot in the Subdivision; and (b) The Architectural Review committee and the Board of Directors of the Association shall approve same by an instrument recorded in the public records of Santa Rosa County, Florida. Thereafter, such re-subdivided Lots shall constitute Lots for purposes of this Declaration.

**Section 19.** All federal laws, laws of the state of Florida, laws of Santa Rosa County and any related rules and regulations of their respective administrative agencies now and hereafter in effect with regard to sewage disposal, water supply, sanitation, and environmental matters are incorporated herein and by reference made a part hereof.

**Section 20.** In the interest of public health and sanitation and in order that the Subdivision and all other land in the same locality may be benefitted by a decrease in hazards of pollution and for protection of water supplies, recreation, wildlife and other public uses of storm drainage facilities, no Owner or occupant of any Lot in the Subdivision shall use such Lot for any purpose that would result, directly or indirectly, in the draining or dumping into any drainage system of any refuse, sewage, or other material which might tend to pollute.

**Section 21.** All freestanding mailboxes and any permitted detached garage or storage or maintenance buildings shall be constructed of wood, brick, or other decorative material, shall be in conformity with the architectural design of the residential structure, and shall be approved in writing and in advance of construction by the Architectural Review Committee or the Architectural Review Representative. Portable storage units (e.g. Portable On Demand Storage (PODS), moving trailers) shall either be placed behind privacy fencing or, when approved in advance by the ARC, may be placed in the driveway of the residence for a specified time to allow packing, unpacking, or temporary storage during home improvements. In no case shall the storage unit remain in the driveway for more than 30 days.

**Section 22.** No drilling, mining, exploration or the like for oil, gas or other minerals shall be permitted or allowed on or under any Lot in the Subdivision.

**Section 23.** Other than by roads shown on the Plat, there shall be no direct access (be it by driveway, sidewalk, pathway or the like) from any Lot directly onto U.S. Highway 98 or lands adjoining easterly or westerly of the Subdivision.

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR BISCAAYNE POINTE**

**Section 24.** A general utility easement 5 feet in width along all interior and rear Lot lines of each Lot for purposes of installation and maintenance of public utilities and drainage easements is hereby reserved. Within such easements, no structures, planning or other materials of a permanent nature shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of such utilities, or which may change the direction or flow of drainage channels in the easements, or obstruct or retard the flow of water through any such drainage channels. This easement area of each Lot and all improvements within same shall be maintained continuously by the Lot Owner, except for those improvements for which a public authority or utility company is responsible. In the event the easements herein provided are for less than that indicated upon the recorded Plat of the Subdivision, the easement reflected upon the recorded Plat shall govern.

**Section 25.** In the interest of facilitating proper surface water drainage throughout the Subdivision, with respect to the swales and other Subdivision improvements between the front Lot line (and the side Lot line, in the case of corner Lots) the paved edge of the street upon which such Lot abuts, each such Owner:

- A. Shall completely sod same and maintain same in such manner as might be required from time to time as to facilitate surface water drainage for the entire Subdivision.
- B. Shall not construct improvements or plantings which might change the direction or flow of drainage, or obstruct or retard the flow of drainage water, other than a driveway with a properly sized culvert specifically approved by the Architectural Review Committee (or, in lieu thereof, the Architectural Review Committee in its good faith discretion, may require a paved swale as a part of the driveway construction).

**Section 26.** In accordance with Florida Statute 720.304 (5), any Lot Owner may construct an access ramp if a resident or occupant of the Lot has a medical necessity or disability that requires a ramp for egress and ingress under the following conditions:

- A. The Owner must submit to the Association an affidavit from a physician attesting to the medical necessity or disability of the resident or occupant of the Lot requiring the access ramp. Certification used for FS 320.0848 shall be sufficient to meet the affidavit requirement.
- B. The ramp must be as unobtrusive as possible, be designed to blend in aesthetically as practicable, and be reasonably sized to fit the intended use.
- C. Plans for the ramp must be submitted in advance to the ARC. The ARC may make reasonable requests to modify the design to achieve architectural consistency with surrounding structures and surfaces.

**Section 27.** The Architectural Review Committee and the Architectural Review Representative shall have the authority to waive in writing violations of any of the provisions of this Article IV and/or grant minor deviations or variances where it is clearly demonstrated by the Owner or other person requesting same that doing so will not impact adversely upon the

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR BISCAYNE POINTE**

aesthetic qualities of the proposed improvements, the Lot upon which same is located and the Subdivision as a whole, and, that same is consistent with a first class single residential Subdivision. Neither the Architectural Review Committee nor any of its members shall in any way or manner be held liable to any Owner, the Association, or any other person or entity for its good faith exercise of the discretionary authorities conferred by this section.

**ARTICLE V**

**Assessments**

**Section 1. Creation of the Lien and Personal Obligation Assessments.** The Owner of each Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (a) an annual assessment, and (b) any special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable legal fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable legal fees, shall also be the personal obligation of the person(s) who is the Owner of such Lot at the time when the assessment becomes due.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to provide for the acquisition, improvement, construction, management, care and maintenance of any Common Area, any property owned by the Association, Subdivision fencing or any public property adjacent to or in the same general locality as the Subdivision. The Association shall have the obligation to maintain any Common Areas (including, without limiting the generality of the foregoing, any and all roads and roadways, drainage facilities, structures, holding and retention ponds, the privacy fence along the northerly boundary of the subdivision constructed by Declarant (does not include fencing along eastern or western boundaries, which shall remain the responsibility of the individual Lot owners), whether denominated as such on the recorded plat or otherwise) and shall pay all ad valorem property taxes assessed upon them. The Association shall fund in a reserve account such sums as it determines in good faith are necessary and adequate to make periodic repairs and improvements to any Common Areas.

**Section 3. Annual Assessments.** From and after January 1, 2011, the maximum annual assessment shall be \$262.50 per Lot.

- A. From and after January 1, 2011, the maximum annual assessment may be increased each year not more than 10% above the potential maximum assessment for the previous year without a vote of the membership.
- B. From and after January 1, 2011, the maximum annual assessment may be increased above 10% of the previous year's potential maximum assessment by a vote of 2/3 of the members who are voting in person or by proxy at a meeting duly called for this purpose at which the appropriate quorum has been attained.
- C. The Board of Directors of the Association shall fix the annual assessment at an amount not in excess of the potential maximum assessment.



**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR BISCAVNE POINTE**

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment per Lot applicable to that year only for the purpose of defraying, in whole or in part, the cost of any acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Area, real property owned by the Association or public property adjoining or in the same general locality as the Subdivision, including fixtures and personal property related thereto, provided that any assessment shall have the assent of 2/3 of the voting interests present, in person or by proxy, at a meeting duly called for this purpose and at which a quorum has been attained. Written notice of the amount and due date of any special assessment shall be mailed postage prepaid to every Owner subject thereto.

**Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 (b) or 4 of this Article shall be sent by United States Mail, postage prepaid, to all Owners (as of 90 days prior to date of mailing such notice) not less than 15 days nor more than 30 days in advance of this meeting. In accordance with Florida Statute 720.306 (1) (a), the percentage of voting interests required to constitute a quorum at a meeting of the members shall be 30 percent of the total voting interests. Decisions that require a vote of the members must be made by the concurrence of at least a majority (50% plus 1) of the voting interests present, in person or by proxy, at a meeting at which a quorum has been attained.

**Section 6. Uniform Rate of Assessment.** Both annual and special assessments shall be fixed at a uniform rate for all Lots in the Subdivision.

**Section 7. Annual Assessment Periods and Due Date.** The fiscal year of the Association shall begin on the first (1<sup>st</sup>) day of January and end on the thirty-first (31<sup>st</sup>) day of December of every year. The annual assessment shall be assessed on this fiscal year basis and shall be due and payable on such date as set forth by a resolution of the Board of Directors of the Association. The Board of Directors of the Association shall fix the amount of the annual assessment for each Lot in advance of each annual assessment period. Written notice of the annual assessment shall be mailed to every Owner. The Association shall, upon written request and for a reasonable charge, furnish a sealed certificate signed by an officer of the Association stating what assessments are outstanding against any Lot and the due date for such assessment. A properly executed and sealed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.** In accordance with Florida Statute 720.3085 (3):

- A. Any annual or special assessment and installments on assessments not paid within 30 days after the due date shall bear interest from the due date at the rate of 18% per annum.
- B. The Association may also charge an administrative late fee in an amount not to exceed the greater of \$25 or 5 percent of the amount of each installment that is paid past the due date.

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR BISCAIYNE POINTE

- C. Any payment received by the Association and accepted shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. This applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of Florida Statute Chapter 687 and is not a fine.
- D. The Association may bring an action in its name to foreclose a lien for unpaid assessments secured by a lien in the same manner that a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The action to foreclose the lien may not be brought until 45 days after the parcel owner has been provided notice of the Association's intent to foreclose and collect the unpaid amount. The Association may recover any interest, late charges, costs, and reasonable attorney's fees incurred in a lien foreclosure action or in an action to recover a money judgment for the unpaid assessments.
- E. In accordance with Florida Statute 720.305 (3), the voting rights of a member shall be suspended when the payment of regular annual dues are delinquent in excess of 90 days.

Section 9. Subordination of Assessment Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage which was originally recorded as a first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a foreclosure of such a first mortgage or any proceeding or conveyance in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to the date of such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter coming due or from the lien thereof.

Section 10. Maintenance. In the event an Owner shall fail (after 30 days written notice from the Association, the Architectural Review committee or the Architectural Review Representative sent United States Mail, postage prepaid) to maintain a Lot or to maintain the improvements situated thereon in a neat, clean and orderly fashion, consistent with this Declaration, or otherwise satisfactory to the Board of Directors of the Association, the Architectural Review committee or the Architectural Review Representative may have the right, through its agents, employees and contractors, to enter upon said Lot and to repair, maintain and restore the Lot and/or exterior of the building or any other improvements erected thereon. The cost of such Lot and/or exterior maintenance, together with interest and fees in accordance with Section VIII of this Article, as well as reasonable legal fees and costs, shall be a charge on the Lot, shall be a continuing lien on the Lot and shall also be the personal obligation of the Owner of such Lot at the time such maintenance is performed.

Section 11. Biscayne Circle Drive. With respect to "Biscayne Circle Drive" (as named as such on the Plat, including any bridge, causeway and any and all improvements relating thereto), and notwithstanding any other provision contained in this Declaration to the contrary:

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR BISCAVNE POINTE**

- A. Declarant is under no obligation to any Owner, the Association or any others to improve same.
- B. Should Declarant in fact improve same, subject to all rights of Declarant herein, the use of Biscayne Circle Drive shall be limited to owners of Lots 1 thru 6, Block I ("Block I Lot Owners") and their respective families, guests, tenants, contract purchasers who reside thereon, contractors performing work for them, suppliers and purveyors of services solicited by them, deliverymen, law enforcement, firefighting and postal authorities, and to any other persons, organizations or entities who, in the normal course of their operation, respond to public or private emergencies, or who provide public or private utility services.
- C. The obligation to maintain Biscayne Circle Drive shall not be that of the Association, but that of the Block I Lot Owners. In this regard, the Block I Lot Owners may levy a special assessment for such uses and purposes in the same manner (and each Block I Lot Owner and Lot in Block I shall be subject to the same liens, obligations, liabilities and (responsibilities) as provided for in this Article V as if Block I Lot Owners constituted a separate association and Biscayne Circle Drive constituted their own common area.

**ARTICLE VI**

**Common Areas**

**Section 1. Owner's Easements of Use and Enjoyment.** Every Owner shall have a right and easement of use and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon any Common Areas;
- B. In accordance with Florida Statute 720.305, each member and the member's tenants, guests, and invitees, and the Association, are governed by, and must comply with, Florida Statute 720, the governing documents and rules of the Association. Actions at law, in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the Association or by any member against the Association, a member, any director or officer of the Association who willfully and knowingly fails to comply with these provisions, or any tenants, guests, or invitees occupying a parcel or using the common areas. The Association shall have the right to suspend, for a reasonable time, the rights of a member or a member's tenants, guests, or invitees, or both, to use Common Areas and facilities and may levy reasonable fines, not to exceed \$100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000 in the aggregate. A fine shall not become a lien against a parcel. In any action to recover

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR BISCAIYNE POINTE**

a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the non-prevailing party as determined by the court.

- 1) A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.
  - 2) The requirements of this subsection do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due (see Article V, Section 8).
  - 3) Suspension of Common-Area-use rights shall not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.
- C. The right of the Association to dedicate or transfer all or any part of any Common Area to any public agency, governmental body or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast 2/3rds of the votes of members of the Association has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Owner not less than 30 days and no more than 60 days in advance;
- D. The right of the Association, in accordance with its articles and bylaws, to borrow money for the purpose of improving and maintaining the Common Areas and facilities, and in aid thereof, to mortgage said property, but the rights of said mortgagee in said properties shall be subordinate to the rights of Owners hereunder;
- E. The right of the Association, in accordance with its articles and bylaws, to reasonably limit the use of any Common Areas by published rules and regulations, including the number of guests and prescribing hours of usage.

**Section 2. Delegation of Use.** Subject to the provisions of Section 1 of this Article, any Owner may delegate, in accordance with the bylaws of the Association, his right of use and enjoyment of the Common Areas and facilities to the members of his family, guests, tenants, contract purchasers who reside on the property, contractors performing work for the Owner, suppliers and purveyors of services solicited by the Owner, and deliverymen.

**Section 3. Grant/Reservation of Easements.**

- A. Declarant does hereby grant a nonexclusive perpetual easement and right of ingress and egress across, under and to all Common Areas unto each and all law

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR BISCAVNE POINTE**

enforcement, fire fighting and postal or delivery organizations, and to any other persons, organizations or entities who, in the normal course of their operation, respond to public or private emergencies, or who provide public or private utility services.

- B. Declarant, for itself, its successors and assigns, does hereby reserve a nonexclusive perpetual easement and right of ingress and egress across, under and to all Common Areas and all streets within the Subdivision for purposes of construction thereon and thereabout of improvements, sale of Lots and such other purposes and uses as Declarant deems appropriate or necessary in connection with the sale and development of the Lots within the Subdivision.
- C. Declarant does hereby grant to the Association a non-exclusive perpetual access easement 5 feet in width along all interior and rear Lot lines of each Lot adjoining the northerly, easterly and westerly boundaries of the subdivision for purposes of maintaining, repairing, replacing and constructing on the rear 2 feet of each such Lot a subdivision privacy. This grant of easement allows, but does not require, the Association to maintain, repair, replace, or construct a privacy fence.

**ARTICLE VII**

**General Provisions**

**Section 1.** The Association, the Declarant, or any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges imposed by the provision of this Declaration. Failure by the Association, the Declarant, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If any court proceedings are required for the successful enforcement of any condition, restriction or covenants herein contained (due to its violation or breach) or lien against any Lot or against any person or entity, said Owner, person or entity expressly agrees to pay all costs, including reasonable legal fees, to the Owner, the Declarant or the Association who initiates such successful judicial proceedings for the enforcement of said condition, restriction, covenant, reservation, charge or lien.

**Section 2.** Invalidation of any one of the covenants, conditions or restrictions herein contained by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect thereafter.

**Section 3.** The covenants, conditions and restrictions of this Declaration shall run with and bind the land, shall be deemed a part of all deeds and contracts for conveyance of any and all Lots, and shall be binding on all Owners and all persons claiming under them for a period of 25 years from the date this Declaration is recorded, unless amended in accordance with Article VIII. After the initial 25 year term, this Declaration shall be automatically extended for successive periods of 10 years, unless amended in accordance with Article VIII.

**Section 4.** Additional property adjacent to the Subdivision may be annexed by either Declarant or the Association, by written instrument recorded in the public records of Santa Rosa

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR BISCAYNE POINTE**

County, Florida, whereupon the Owners of such additional property shall thereupon and thereafter have the same rights, privileges and benefits, including, but not limited to, the right to use the Common Areas, and be subject to the same responsibilities and obligations, as if such annexed Lot(s) and/or building site(s) (and the Owners of same) were originally described herein. Prior to any future annexation by the Developer: (1) The Association shall first determine that the adjacent property proposed to be annexed is of comparable style, quality, size and cost and will be consistent with Biscayne Pointe; and, (2) VA approval of the annexation shall be obtained.

Section 5. Neither the Association, Declarant, the Architectural Review Committee nor the Architectural Review Representative shall, in any way or manner, be held liable to any Owner or any other person or entity for failure to enforce the conditions, restrictions and covenants herein contained or any violation of the conditions, restrictions and covenants set forth herein by any Owner other than itself.

Section 6. Any single violation of any use restriction by an Owner shall constitute a continuing violation which shall allow the Association, Declarant or any other Owner to seek permanent injunctive relief. In no event shall a violation of these conditions, restrictions or covenants ever be interpreted to work a reverter or forfeiture of title.

**ARTICLE VIII**

**Amendments**

This Declaration of Covenants, Conditions, and Restrictions may be amended at a meeting of the general membership, either the annual meeting or a special meeting called for this purpose, at which a quorum of at least thirty percent of the total voting interest of the association is present, in person or by proxy. Approval of any amendment requires the duly recorded affirmative vote of 2/3 of the voting interests present at such meeting. Alternatively, this Declaration of Covenants, Conditions, and Restrictions may be amended by an instrument signed by a majority of the Lot Owners, the signatures for which need not be gathered at a meeting of the general membership.