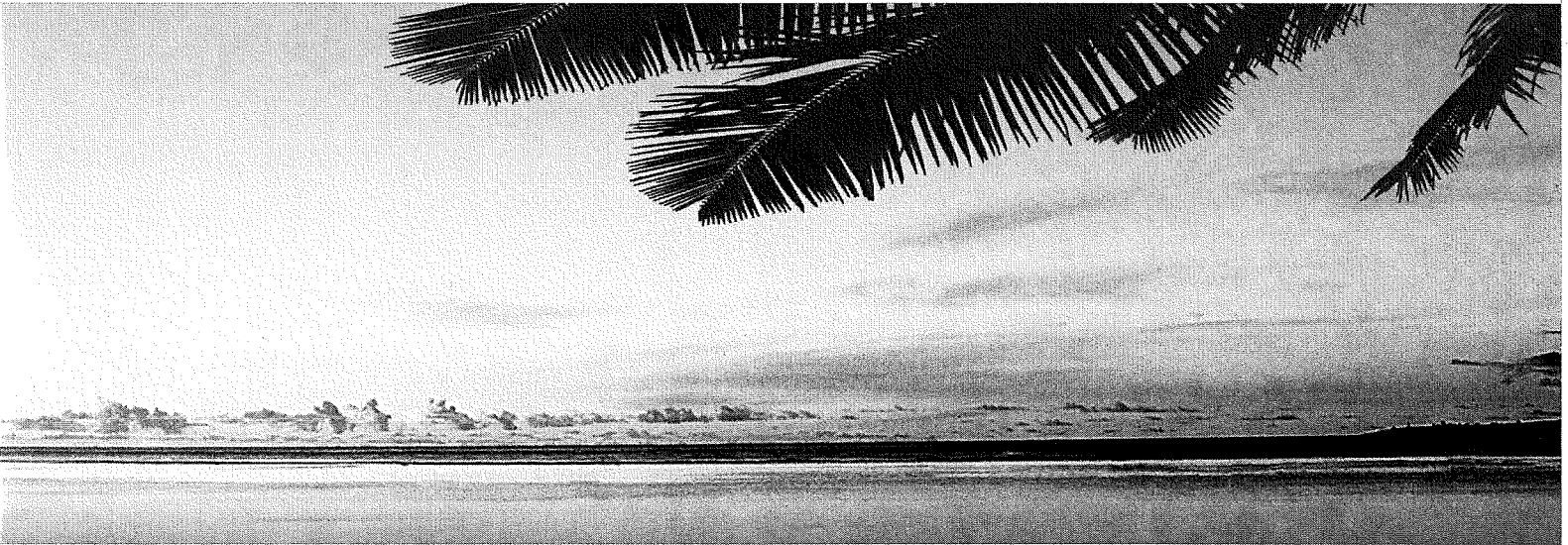


Sunset Pointe Homeowners Association

Bylaws



WELLINGTON

MANAGEMENT, INC.

Professional Community Association Management

**FIRST AMENDED BY-LAWS OF
MONTAUK HARBOR HOMEOWNERS ASSOCIATION, INC.,
a Florida corporation not for profit
organized under the laws of the State of Florida**

**ARTICLE 1
IDENTITY**

These are the By-Laws of MONTAUK HARBOR HOMEOWNERS 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 residential real estate project known as "Sunset Pointe," located in Palm Beach County, Florida (the "Property").

Section 1. Principal Office. The principal office of the Association shall be at 3300 University Drive, Coral Springs, FL 33065, 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.

Section 2. Fiscal Year. The fiscal year of the Association shall be the calendar year.

Section 3. 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.

**ARTICLE 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 definition and meaning as those set forth in that certain Declaration of Covenants, Conditions and Restrictions for Sunset Pointe (the "Declaration"), unless herein provided to the contrary, or unless the context otherwise requires.

**ARTICLE 3
MEMBERS**

The members of the Association ("Owners") shall be as specified in the Articles and Declaration.

Section 1. Annual Meeting. The annual Owners' meeting shall be held on the date, at the place and at the time determined by the Board from time to time, provided that there shall be an annual meeting every calendar year. To the extent possible, the annual meeting shall be held during January, February or March and 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 authorized to be transacted by the Owners, or as stated in the notice of the meeting sent to Owners in advance thereof.

Section 2. Special Meeting. Special Owners' meetings 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. A special meeting must be called by the President or Secretary upon receipt of a written request from a majority of the Owners. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.

Section 3. Notice of Meeting: Waiver of Notice. Notice of a meeting of Owners 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 within the Property. The notice of the annual meeting shall be hand delivered or sent by mail to each Owner, unless the 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 Owner as it appears on the roster of Owners described in Section 10 hereof. The posting and mailing of the notice shall be effected not less than fourteen (14) days, nor more than sixty (60) days, prior to the date of the meeting. Proof of posting or hand delivery may be given by affidavit, and proof of mailing of the notice may be given by retention of post office receipts, or by affidavit.

Notice of specific meetings may be waived before or after the meeting. The attendance of any Owner (or person authorized to vote for such member) shall constitute such Owner'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.

Section 4. Quorum. A quorum at Owners' meeting shall be attained by the presence, either in person or by proxy, persons entitled to cast one vote more than thirty percent (30%) of the votes of Owners.

Section 5. Voting

(a) Number of Votes. In any meeting of Owners, the Owners of Lots shall be entitled to cast one vote for each Lot owned. The vote of a Lot shall not be divisible.

(b) 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 Owners for all purposes except where otherwise provided by law, the Declaration, the Articles or theses By-Laws. As used in these By-Laws, the Articles or Declaration, the terms "majority of the Owners" and "majority of the Owners" shall mean a majority of the votes of Owners and not a majority of the Owners 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 Owner at which a quorum shall have been attained. Similarly, if some greater percentage of Owners is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of Owners and not of the Owners themselves.

(c) Voting Owner. If a Lot is owned by one person, his right to vote shall be established by the roster of Owners. If a Lot is owned by more than one person, the person entitled to cast the vote for the Lot for such Lot shall be designated by a certificate signed by all of the record owners of such Lot and filed with the Secretary of the Association. Such person need not be an Owner, nor one of the joint owners. If a Lot is owned by a corporation or other entity, the person entitled to cast the vote for the Lot shall be designated by a certificate signed by an appropriate officer or principal of the corporation or entity and filed with the Secretary of the Association. Such person need not be a Owner. Those certificates shall be valid until revoked or until suspended by a subsequent certificate or until a change in the ownership of the Lot concerned. A certificate designating the person entitled to cast the vote for a Lot may be revoked by any record owner of an undivided interest in the Lot. If a certificate designating the person entitled to cast the vote for a Lot is not on file or has been revoked, the vote of the Owner(s) of such Lot 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 shall be reduced accordingly until such certificate is filed, except if the Lot 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 Owner in the manner provided above. Such designee need not be a Owner. In the event a husband and wife do not designate a voting member, the following provisions shall apply:

(i) 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).

(ii) If only one is present at a meeting, the person present shall be counted for purposes of a quorum and may cast the vote for such Lot just as though he or she owned the Lot individually, and without establishing the concurrence of the absent person.

(iii) If both are present at a meeting and concur, either one may cast the vote for such Lot.

Section 5. Proxies. Votes may be cast in person or by proxy. 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 lawfully 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 authorized to cast the vote for the Lot (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 need not be Owners, but no person other than a designee of the Developer may hold more than 5 proxies.

Section 6. Adjourned Meetings. If any proposed meeting cannot be organized because a quorum has not been attained, the Owners 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.

Section 7. Order of Business. If a quorum has been attained, the order of business at annual Owners' meetings, and, if applicable, at other Owners' meetings, shall be:

- (a) Call to order by President;
- (b) Appointment by the President of a chairman of the meeting (who need not be a Owner or a Director);
- (c) Proof of notice of the meeting or waiver of notice;
- (d) Reading of minutes;
- (e) Reports of officers;
- (f) Reports of committees;
- (g) Appointment of inspectors of election;
- (h) Determination of number of Directors;
- (i) Election of Directors;
- (j) Unfinished business;
- (k) New business;
- (l) Adjournment.

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

Section 8. Minutes of Meeting. The minutes of all meetings of Owners shall be kept in a book available for inspection by Owners or their authorized representatives or Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.

Section 9. Action Without a Meeting. Anything to the contrary herein notwithstanding, to the extent lawful, any action herein required to be taken at any annual or special meeting of Owners, or any action which may be taken at any annual or special meeting of such Owners, 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 Owners (or persons authorized to cast the vote of any such Owner as elsewhere herein set forth) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of 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 Owners who have not consented in writing. The notice shall fairly summarize the material features of the authorized action.

Section 10. Approval of Developer Notwithstanding anything contained herein to the contrary, so long as Developer owns any Lot, no vote or other action taken by the Owners shall be effective without the written consent of Developer.

ARTICLE 4 **DIRECTORS**

Section 1. Ownership. The affairs of the Association shall be managed and governed by a Board of Directors (the "Board") of not less than three (3), nor more than five (5) Directors, the exact number initially to be as set forth in the Articles, and from time to time upon majority vote of the membership. Directors appointed by Developer need not be Owners. All other Directors must be Owners.

Section 2. Election of Directors. The election of Directors shall be conducted in the following manner:

(a) Election of Directors shall be held at the annual Owners' meeting, except as provided herein to the contrary.

(b) Nominations for Directors and additional directorships created at the meeting shall be made from the floor.

(c) The election shall be by written ballot (unless dispensed with by majority consent of the Lots represented at the meeting) and decided by a plurality of the votes cast for each candidate. Each Lot entitled to vote shall have a number of votes equal to the number of vacancies to be filled. No Lot may cast more than one vote for one candidate. There shall be no cumulative voting.

Section 3. Vacancies and Removal.

(a) Except as to vacancies resulting from removal of Directors by Owners, vacancies on the Board occurring between annual meetings of Owners shall be filled by majority action of the remaining Director(s), provided that all vacancies in directorships to which Directors were appointed by the Developer pursuant to the provisions of Section 15 hereof shall be filled by the Developer without the necessity of any meeting.

(b) Any Director elected by the Owners may be removed by concurrence of a majority of the votes of the Owners present (in person or by proxy) at a special meeting of Owners called for that purpose at which a quorum has been attained. The vacancy in the Board so created shall be filled by the Owners at the same meeting. The conveyance of all Lots owned by a Director

in the Property who owned one or more Lots in the Property at the time he was elected or appointed (other than appointees of the Developer) shall constitute the resignation of such Director.

(c) Until a majority of the Directors are elected by the Owners other than the Developer, no Directors named by the Developer shall be subject to removal by Owners other than the Developer. Directors appointed by the Developer and Directors replacing them may be removed and replaced by the Developer without the necessity of any meeting.

(d) If a vacancy on the Board of Directors results in there being no incumbent Directors, any Owner may apply to the Circuit Court in and for Palm Beach County, Florida 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 in Palm Beach County, Florida, the Owner shall mail to the Association by certified or registered mail and post in a conspicuous place in the Property a notice describing the intended action and giving the Association an opportunity to fill a sufficient number of vacancies so that a quorum can be assembled in accordance with these By-Laws. If, during such time, the Association fails to fill the vacancies so that a quorum can be assembled, the 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 and all other expenses of the receivership. The receiver has all powers and duties of a duly constituted Board and shall serve until the Association fills a sufficient number of vacancies on the Board so that a quorum can be assembled.

Section 4. Term. Except as provided herein to the contrary, the term of each Director's service shall extend until the next annual meeting of the Owners and subsequently until his successor is duly elected and qualified, or until he is removed in the manner provided herein.

Section 5. Organizational Meeting. The organizational meeting of newly-elected or appointed members of the board 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 or by the Board of the organizational meeting shall be necessary.

Section 6. Regular Meetings. Regular meetings of the Board 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 or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Regular meetings of the Board shall be open to all Owners except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be covered by the attorney client privilege and notice of such meetings shall be posted conspicuously in the Property at least forty-eight (48) hours in advance for the attention of the Owners of the Association, except in the event of an emergency, provided that Owners shall not be permitted to participate, and need not be recognized at any such meeting.

Section 7. Special Meetings. Special meetings of the Directors may be called by the President, and must be called by the President or Secretary at the written request of two-thirds (2/3) of the Directors. Notice of the meeting shall be given to Directors 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 shall be open to all Owners except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be covered by the attorney client privilege and notice of a special meeting shall be posted conspicuously in the Property at least forty-eight (48) hours in advance for the attention of the Owners of the Association, except in the event of an emergency, provided that Owners shall not be permitted to participate, and need not be recognized, at any such meeting.

Section 8. Waiver of Notice. Any Director 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.

Section 9. Quorum. A quorum at Directors' meetings shall consist of a majority of the then incumbent 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, except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws.

Section 10. Adjourned Meetings. If, at any proposed meeting of the Board, 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.

Section 11. Presiding Officer. The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other person to preside).

Section 12. Order of Business. If a quorum has been attained, the order of business at Directors' meetings shall be:

- (a) Proof of due notice of meeting;
- (b) Reading and disposal of any unapproved minutes;
- (c) Reports of officers and committees;
- (d) Election of officers;
- (e) Unfinished business;
- (f) New business;
- (g) Adjournment.

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

Section 13. Minutes of Meetings. The minutes of all meetings of the Board shall be kept in a book available for inspection by Owners, or their authorized representative, and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.

Section 14. Executive Committee; Other Committees. The Board may, by resolution duly adopted, appoint an Executive Committee to consist of three (3) or more members of the Board. Such Executive Committee shall have and may exercise all of the powers of the Board in management of the business and affairs of the Association during the period between the meetings of the board insofar as may be permitted by law, except that the Executive Committee shall not have power (a) to determine the expenses required for the affairs of the Association, (b) to determine the Assessments payable by the Owners to meet the expenses of the Association, or (c) to adopt or amend any rules and regulations covering the details of the operation and use of the Property.

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, subject to any limitations on Directors' rights to delegate authority as may exist under general corporate law.

Section 15. Developer Control of Board; Turnover. Within ninety (90) days after the date that members other than the Developer are entitled to elect any directors, as provided in the Articles, or within sixty (60) days after the Developer notifies the Association that it intends to turn over control of the Board to the other members, the Association shall call, and give not less than thirty (30) days nor more than ninety (90) days notice of, a special meeting of the members to elect any directors the members are then entitled to elect, or to replace the appropriate number of directors previously appointed by the Developer. Directors appointed by the Developer shall serve until the date set by Developer for said meeting. At such special meeting the members shall be required to elect any directors which they are entitled to elect, and if they fail to do so any directors appointed by the Developer which would have been replaced by any directors elected by the members may resign without further liability or obligation to the Association and neither the Developer nor such appointees shall be liable in any manner in connection with such resignations even if the Owners other than the Developer refuse or fail to assume control. In the event such a special meeting is called and held, at the meeting of the members may elect not to hold the next annual meeting of the members is such next annual meeting would be less than four (4) months after the date of the special meeting, and upon such election the next annual meeting of the members shall not be held. Except as provided above, the members shall elect directors at the annual members' meetings. Upon such turnover the Developer shall retain all voting rights incident to its ownership of Lots.

Within a reasonable time after control of the Association is turned over to Owners other than the Developer (but not more than ninety (90) days after such event), the Developer shall deliver to the Association all property of the Association held by or controlled by the Developer, including, but not limited to, the following items, if applicable:

- (a) The original or a photocopy of the recorded Declaration, 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;
- (b) A certified copy of the Articles of Incorporation for the Association and each amendment thereto;
- (c) A copy of the By-Laws of the Association and each amendment thereto;
- (d) The Minute Books, including all minutes, and other books and records of the Association;
- (e) Any rules and regulations which have been adopted;
- (f) Resignations of resigning officers and Board members who were appointed by the Developer;
- (g) 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 may be reviewed, at the Association's expense, by an independent certified public accountant;
- (h) Association funds or the control thereof;
- (i) All tangible personal property that is the property of the Association, and an inventory of such property;
- (j) A copy of the plans and specifications utilized in the construction or remodeling of any Improvements on the Common Areas or other property that the Association is obligated to maintain, repair, or replace;
- (k) Insurance policies;
- (l) Copies of any Certificates of Completion which may have been issued for the Common Areas;
- (m) Any other permits issued by governmental bodies applicable to the Common Areas or other property that the Association is obligated to maintain, repair, or replace
- (n) All written warranties of contractors, sub-contractors, suppliers and manufacturers, if any, that are still effective with respect to the Common Areas or other property that the Association is obligated to maintain, repair, or replace;
- (o) A roster of Owners and their mailing addresses and parcel identifications and telephone numbers, if known, as shown on the Association's records;
- (p) Leases to which the Association is a party, if applicable;
- (q) Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or 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,
- (r) All other contracts to which the Association is a party and bids received by the Association for work to be performed within the preceding one year period.

Section 16. Approval of Developer. Notwithstanding anything contained herein to the contrary, so long as the Developer owns any Lot, no vote or other action taken by the Board shall be effective without the written consent of the Developer.

ARTICLE 5 POWERS AND DUTIES

The Board shall have the powers and duties necessary for the management and administration of the affairs of the Association 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 by the Owners. Such powers and duties of the Board shall include, without limitation (except as limited elsewhere herein), the following:

- (a) Operating and maintaining the Common Areas and other property owned by the Association.
- (b) Determining the expenses required for the operation of the Association ("Common Expenses") together with the amount of appropriate capital and replacement reserves.
- (c) Collecting the Assessments for Common Expenses of the Association from Owners.
- (d) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Areas and other property owned by the Association.
- (e) Adopting and amending rules and regulations concerning the details of the operation and use of the Property and any property owned by the Association, subject to a right of the Owners to overrule the Board as provided in Article 13 hereof.
- (f) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.
- (g) Purchasing, leasing or otherwise acquiring Lots or other property in the name of the Association, or its designee.
- (h) Purchasing Lots at foreclosure or other judicial sales, in the name of the Association, or its designee.
- (i) Selling, leasing, mortgaging or otherwise dealing with Lots acquired by the Association.
- (j) Settling or compromising claims of or against the Association in which all Owners have a common interest.
- (k) Obtaining and reviewing insurance for the Common Areas and other property owned by the Association.
- (l) Making repairs, additions and improvements to, or alterations of, the Common Areas, 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 Owners, allocating profits and expenses and taking

such other actions as shall be deemed necessary and proper for the sound management of the Property.

- (n) Levying fines against appropriate Owners for violations of the Declaration or rules and regulations established by the Association to govern the conduct of such Owners.
- (o) Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of the Common Areas or the acquisition of property, and granting mortgages on and/or security interests in Association owned property; provided, however, that the consent of at least two-thirds (2/3) of the Owners' votes represented at a meeting of Owners at which a quorum has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum in excess of \$10,000.00. 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 Lot.
- (p) Contracting for the management and maintenance of the Common Areas or other property owned by the Association 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 Areas or other Association property 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 Declaration, including, but not limited to, the making of assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (q) At its discretion, authorizing Owners or other persons to use portions of the Common Areas or other property owned by the Association for private parties and gatherings and imposing reasonable charges for such private use.
- (r) Exercising (i) all powers specifically set forth in the Declaration, the Articles, and these By-Laws, and (ii) all powers incidental thereto, and all other powers of a Florida corporation not for profit.
- (s) Imposing a lawful fee in connection with the approval of the transfer, lease, or sale of Lots, not to exceed the maximum amount permitted by law in any one case.
- (t) Contracting with and creating special taxing districts.

Anything herein, in the Declaration, or elsewhere to the contrary notwithstanding, no general funds of the Association shall be utilized for bringing, supporting, investigating, or otherwise abetting any legal action, claim, or extra-judicial action against the Developer, and such purposes shall not be generally deemed valid expenses of the Association subject to payment by assessment of the Lots or Owners. Funds of the Association may only be spent for such purposes by 85% of the votes of the Owners of the Association. This provision may not be amended.

ARTICLE 6 OFFICERS

Section 1. Executive Officers. The executive officers of the Association shall be a President, Vice-President, a Treasurer and a Secretary (none of whom need be Directors), all of whom shall be elected by the Board and who may be peremptorily removed at any meeting at which a quorum of Directors is attained by concurrence of a majority of all of the present 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 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 appointed by Developer or elected by the Directors appointed by Developer need not be Owners.

Section 2. President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association.

Section 3. Vice-President. The Vice-President shall exercise the powers and perform duties of the President in the absence or disability of the President. He also 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.

Section 4. Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the Owners. He shall attend to the giving of all notices to the Owners and Directors and other notices required by law. He shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. He 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.

Section 5. Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He 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 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.

Section 6. Developer Appointees. No officer appointed by the Developer may be removed except as provided in Article 4, Section 15 hereof and by law.

ARTICLE 7 COMPENSATION

Neither Directors nor officers shall receive compensation for their services as such, but may be compensated for services performed outside the scope of their service as officers or Directors.

ARTICLE 8 RESIGNATIONS

Any Director or officer may resign his 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 Lots owned by any Director or officer (other than appointees of the Developer or Directors appointed by Developer who are not Owners when elected or appointed) shall constitute a written resignation of such Director or officer.

ARTICLE 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:

Section 1. Budget.

(a) Adoption by Board; Items. The Board shall from time to time, and at least annually, prepare a budget for the Association, determine the amount of Assessments payable by the Owners to meet the expenses of the Association, and allocate and assess such expenses among the Owners in accordance with the provisions of the Declaration.

The adoption of a budget for the Association by the Board shall comply with the requirements hereinafter set forth:

- (i) Notice of Meeting. A copy of the proposed budget shall be mailed to each Owner not less than fourteen (14) days prior to the meeting of the Board 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 Owners, provided that Owners shall not have the right to participate, and need not be recognized, at such meeting.
- (ii) Special Owners' Meeting. If a budget is adopted by the Board which

requires assessments against Owners in any year exceeding one hundred fifteen percent (115%) of such Assessments for the preceding year, as hereinafter defined, upon written application of ten percent (10%) of the Owners, a special meeting of the Owners shall be held within thirty (30) days of delivery of such application to the Board. Each Owner shall be given at least ten (10) days' notice of said meeting. At the special meeting, Owners shall consider and adopt a budget. The adoption of such budget shall require the affirmative vote of a majority of the votes entitled to be cast at such meeting of Owners, which are present at such meeting (in person or by proxy) at which a quorum is attained.

- (iii) Determination of Budget Amount. In determining whether a budget requires Assessments against Owners in any year exceeding one hundred fifteen percent (115%) of Assessments for the preceding year, there shall be excluded from the computations any authorized provisions for reasonable reserves made by the Board in respect of repair or replacement of the Common Areas or in respect of anticipated expenses of the Association 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 Common Areas and all special assessments (including surcharges against specific Owner[s]).
- (iv) Proviso. Anything herein to the contrary notwithstanding, prior to the date on which the Developer turns over control of the Association, the budget may be set by the Board without holding any meeting, giving notice thereof, or being subject to the 115% limitation set forth in (ii) above.

(b) Adoption by Membership. In the event that the Board shall be unable to adopt a budget in accordance with the requirements of Article 9, Section 1 (a) above, the Board may call a special meeting of Owners 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. Alternatively, the Board may propose a budget in writing to all Owners of the Association. If either such budget is adopted by a majority of the votes of Owners present at such meeting, or receiving such written budget, upon ratification by a majority of the Board, it shall become the budget for such year.

(c) Copy of Budget. The Association shall provide each Owner with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the Owner.

Section 2. Annual Assessments. Assessments against the Owners for their share of the items of the budget ("Annual Assessments") 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 (or other period at the election of the Board) of the year for which the

Assessments are made. If an Annual Assessment is not made as required, Assessments shall be presumed to have been made in the amount of the last prior Assessment, and quarterly installments of such Assessment shall be due upon each installment payment date until changed by an amended Assessment.

Section 3. Individual Assessments. Charges by the Association against less than all Owners for other than routine Common Expenses, shall be payable in advance. These charges may be collected by assessment against the Owners of the Lot(s) affected thereby ("Individual Assessment"). Individual Assessments may be made only 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 property maintenance services furnished at the expense of an Owner, other services furnished for the benefit of an Owner and fines and damages and other sums due from such Owner.

Section 4. Special Assessments. In the event the Annual Assessment proves to be insufficient, the Board may adopt a special assessment to cover any shortfall in the manner otherwise set forth for the adoption of regular Annual Assessments and as further provided in the Declaration. Special assessments shall be made in the manner and for the purposes otherwise provided in the Declaration.

Section 5. Depository. The depository of the Association shall be such bank(s) or savings and loan association(s) in the State of Florida 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 the Board.

Section 6. Acceleration of Assessment Installments Upon Default. If an Owner shall be in default in the payment of an installment upon an Assessment for more than thirty (30) days, the Board or its agent may accelerate the remaining installments of the annual Assessment upon written notice to such Owner, 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 or ten (10) days after mailing of the notice, whichever shall first occur.

Section 7. Fidelity Bonds. Fidelity bonds may be required by the Board 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 \$10,000 for each such person so bonded, if any. The premiums on such bonds shall be paid by the Association as a Common Expense.

Section 8. Accounting Records and Reports. The Association shall maintain accounting records in the State of Florida, 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 Owners or their authorized associates or the manager under any

applicable management contract. The records shall be supplied 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 Lot designating the name and current mailing address of the 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.

Within sixty (60) days following the end of the fiscal year, the Board shall prepare an annual financial report for the previous twelve (12) months. Within ten (10) business days thereafter the Association shall provide each Owner with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the Owner. The report, must consist of either (a) financial statements presented in conformity with generally accepted accounting principles, or (b) a financial report of actual receipts and expenditures, cash basis, which must show the beginning and ending cash balances of the Association and the amounts of receipts by accounts and receipt classifications and the amounts of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- (a) Cost for security;
- (b) Professional and management fees and expenses;
- (c) Taxes;
- (d) Cost for recreation facilities;
- (e) Expenses for refuse collection and utility services;
- (f) Expenses for lawn care;
- (g) Cost for building maintenance and repair;
- (h) Insurance costs;
- (i) Administrative and salary expenses; and
- (j) General reserves, maintenance reserves and depreciation reserves.

Section 9. Application of Payment. All payments made by an Owner shall be applied as provided in these By-Laws and in the Declaration or as determined by the Board.

Section 10. Notice of Meeting. Notice of any meeting where Assessments against 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.

Section 11. Developer Exemption From Assessments for Lawsuits. The Developer shall not be liable for the payment of any Assessments applicable to Lots it owns which relate in any way to the payment of legal or other fees to persons or entities engaged for the purpose of suing, or making, preparing or investigating possible claims against the Developer.

ARTICLE 10 ROSTER OF UNIT OWNERS

The Association shall maintain current information regarding the title holders of all Lots. Such information shall be obtained by requiring each Owner to file with the Association a copy of the deed or other document showing his ownership. The Association may rely upon the accuracy of any such information for all purposes until notified in writing of changes therein.

Only 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.

ARTICLE 11 AMENDMENTS

Except as in the Declaration provided otherwise, these By-Laws may be amended in the following manner:

Section 1. Notices. 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.

Section 2. Adoption. A resolution for the adoption of the proposed amendment shall be adopted either: (a) by unanimous vote of all of the directors; or (b) by not less than a majority of the votes of the entire membership of the Association. Any amendment approved by the members may provide that the Board may not further amend, modify or repeal such amendment. Notwithstanding anything contained herein to the contrary, so long as the Developer is entitled to appoint a majority of the directors, the Developer shall have the right to unilaterally amend these By-Laws without the joinder or approval of the Board or any Owner, and so long as the Developer owns any Lot, no amendment to these By-Laws shall be effective without the written approval of the Developer.

Section 3. Proviso. 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 institutional mortgagees holding a mortgage on any portion of the Property without the consent of said Developer or 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.

Section 4. Execution and Recording. A copy of each amendment to these By-Laws shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the By-Laws, which certificate shall be executed by the President or Vice-

President and attested by the Secretary or Assistant Secretary of the Association, or by the Developer alone if the amendment has been adopted consistent with the provisions of the Declaration or these By-Laws allowing such action by the Developer. The amendment shall be effective when the certificate and a copy of the amendment is signed as above set forth.

ARTICLE 13 RULES AND REGULATIONS

The Board may, from time to time, adopt, modify, amend or add to rules and regulations concerning the use and operation of the Property, except that subsequent to the date control of the Board is turned over by the Developer to Owners other than the Developer, Owners of a majority of the Lots represented at a meeting of Owners at which a quorum is present may overrule the Board with respect to the adoption or modification of any rules and regulations. Copies of such rules and regulations shall be furnished by the Board to each affected 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.

ARTICLE 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. If any portion hereof shall be found by competent judicial authority to be unenforceable, then only that portion shall be deemed deleted and the remainder shall be given its nearest permissible meaning and effect.

ARTICLE 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.

ARTICLE 16 CONFLICT

In the event there should be found any irreconcilable conflict among or between the Declaration, the Articles and/or these By-Laws and in the absence of any express language indicating which document controls the particular subject matter, then the provisions of the Declaration shall be paramount, the Articles next paramount and these By-Laws subordinate.

ARTICLE 17
INDEMNIFICATION OF OFFICERS AND DIRECTORS

Subject to the further provisions of this Article , the Association shall indemnify and hold harmless all officers and Directors, (and members of a Tribunal, as provided in paragraph 18.3 hereof) past or incumbent, from and against all costs, claims, damages, expenses and liabilities of any kind whatsoever, including attorneys' fees and costs at all tribunal levels, arising out of the performance of such person's duties hereunder. Such indemnification and hold harmless provision shall (i) exist regardless of whether the Association itself is named as a party defendant or alleged to have any liability (ii) include the payment of any settlements upon approval by the Board, and (iii) include indemnification of the estate and heirs of the indemnified party. Such indemnification and hold harmless provision shall not be applicable (i) to the extent the claim or liability is covered by insurance, or (ii) in the event a court of competent jurisdiction finally determines, after all appeals have been exhausted or not timely pursued, that the indemnified party did not act in good faith within what he reasonably believed to be the scope of his duty and/or authority and for purposes which he reasonably believed in the best interests of the Association or its Owners generally and such court further specifically determines that indemnification should be denied. The provisions of this paragraph may not be amended to terminate the effect hereof as to any persons who became officers or Directors while this paragraph was effective.

ARTICLE 18
SUSPENSIONS OF PRIVILEGES; FINES

In the event of an alleged violation of the Declaration, the Articles, these By-Laws or the rules and regulations adopted hereunder, and after written notice of such alleged failure is given to the Owner in the manner herein provided, the Board shall have the right, after the alleged violator has been given an opportunity for an appropriate hearing and upon an affirmative vote of the Board, to suspend or condition said Owner's and his family's, guests, tenants, and invitees right to the use of the Common Areas (except for the portions thereof which are necessary as a means of ingress and egress) and to fine such Owner. Any such suspension shall be for a period of not more than thirty (30) days for any non-continuing infraction, but in the case of a continuing infraction (including nonpayment of any Assessment after the same becomes delinquent) the suspension may be imposed for so long as the violation continues. No fine shall exceed the sum of \$50.00 per violation against any member or any tenant, guest or invitee, however, a fine may be levied on the basis of each day of a continuous violation, with a single notice and opportunity for hearing. Repair or replacement costs shall not be deemed fines subject to the foregoing limitation. Any continuing violation shall be a separate violation for each day it continues. No fine under this section shall be assessable for delinquent Assessments. The failure of the Board to enforce the rules and regulations, these By-Laws, the Articles or the Declaration shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by these By-Laws, or by law shall be cumulative and none shall be exclusive. However, any individual Owner must exhaust all available internal remedies of the Association prescribed by these By-Laws, or by

any rules and regulations adopted by the Association, before that Owner may resort to a court of law for relief from any provisions of the Declaration, the Articles, these By-Laws or the rules and regulations. The rights of the Association to impose interest charges, accelerate Assessment payments, as elsewhere provided in the Declaration and these By-Laws, shall not be subject to the provisions of this Article 18 or require the notice and hearing provided herein.

Section 1. Written Complaint. A hearing to determine whether a right or privilege of an Owner or any of his family or tenants ("Respondent") under the Declaration or these By-Laws should be suspended or conditioned or a fine imposed shall be initiated by the filing of a written Complaint by any Owner or by any officer or Director with the President or Secretary of the Association. The Complaint shall constitute a written statement of charges which shall set forth in ordinary concise language the acts or omissions with which the Respondent is charged, to the end that the Respondent will be able to prepare his defense. The Complaint shall specify the specific provisions of the Declaration, the Articles, these By-Laws or the rules and regulations which the Respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such provisions without supporting facts.

Section 2. Discovery. After initiation of a proceeding in which the Respondent is entitled to a hearing, the Respondent and the individual filing the Complaint, upon written request made to the other party, prior to hearing and within fifteen (15) days after service by the Board of Directors of the Complaint or within ten (10) days after service of any amended or supplemental Complaint, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, and (2) inspect and make a copy of any statements, writings and investigate reports relevant to the subject matter of the hearing. Nothing in this section, however, shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as work product.

Section 3. Tribunal. The President shall appoint a Tribunal of three Owners (or the designees thereof) upon receipt of a written Complaint. No member of the Tribunal shall be and Officer Director or employee of the Association nor the spouse, parent, child, brother or sister of an Officer, Director or employee, nor shall any member of the Tribunal be involved in any prior investigation of the matter on behalf of the Board nor related by blood or marriage to either the complaining party or the Respondent. In appointing the members of the Tribunal, the President should make a good faith effort to avoid appointing any Owners who are witnesses to the alleged violation giving rise to the Complaint. The decision of the President shall be final, except that the Respondent may challenge any member of the Tribunal for cause, where a fair and impartial hearing cannot be afforded, at any time prior to the taking of evidence of the hearing. In the event of such a challenge, the Board shall meet to determine the sufficiency of the challenge, without the President voting. If such challenge is sustained, the President shall appoint another Owner to replace the challenged member of the Tribunal. All decisions of the Board in this regard shall be final. The Tribunal shall elect a Chairman. The Tribunal shall exercise all other powers relating to the conduct of the hearing.

Section 4. Notice of Hearing. The Tribunal shall serve a notice of hearing, as

provided herein, on all parties at least fourteen (14) days prior to the hearing.

Section 5. Hearing.

(a) Whenever the Tribunal has commenced to hear the matter and a member of the Tribunal is forced to withdraw prior to a final determination by the Tribunal, the remaining members shall continue to hear and decide the case. Oral evidence may be considered only on oath and affirmation administered by an officer of the Association. The use of affidavits and written interrogatories in lieu of oral testimony shall be encouraged by the Tribunal.

(b) Each party shall have the right to be represented by counsel; to call and examine witnesses; to introduce exhibits; to cross examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If the Respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

(d) Neither the accusing Owner nor the allegedly defaulting Owner must be in attendance at the hearing. The hearing shall be open to attendance by all Owners. In rendering a decision, official notice may be taken at any time of any generally accepted matter within the Declaration, the Articles, these By-Laws, the rules and regulations or the workings of the Association.

Section 6. Decision. The Tribunal will prepare written findings of fact and recommendations for consideration by the Board of Directors. The Tribunal shall make its determination only in accordance with the evidence presented to it and in accordance with these By-Laws. After all testimony and documentary evidence has been presented to the Tribunal, the Tribunal shall vote by secret written ballot upon the matter, with a majority of the entire Tribunal controlling. A copy of the findings and recommendations of the Tribunal shall be posted by the Board at a conspicuous place on the Common Areas, and a copy shall be served by the President on each party in the matter and his attorney, if any. Disciplinary action and fines under the Declaration, these By-Laws or the rules and regulations shall be imposed only by the Board, and based upon the findings and recommendations of the Tribunal. The Board may adopt the recommendations of the Tribunal in their entirety, or the Board may reduce the proposed penalty and adopt the balance of the recommendations. In no event shall the Board impose more stringent disciplinary action than recommended by the Tribunal. The decision of the Board shall be in writing and shall be served and posted in the same manner as the findings and recommendations of the Tribunal. The decision of the Board shall become effective ten (10)

days after it is served upon the Respondent, unless otherwise ordered in writing by the Board. The Board may order a reconsideration at any time within fifteen (15) days following service of its decision on the parties on its own motion or upon petition by a party.

The foregoing was adopted as the By-Laws of Montauk Harbor Homeowners' Association, Inc., a corporation not for profit under the laws of the State of Florida, at its first meeting of the Board of Directors on the 12 day of July, 1996.

Approved:

Thomas Vogel Pres.
Thomas Vogel, President

Cora Di Fron, Sec.
Cora Di Fron, Secretary